



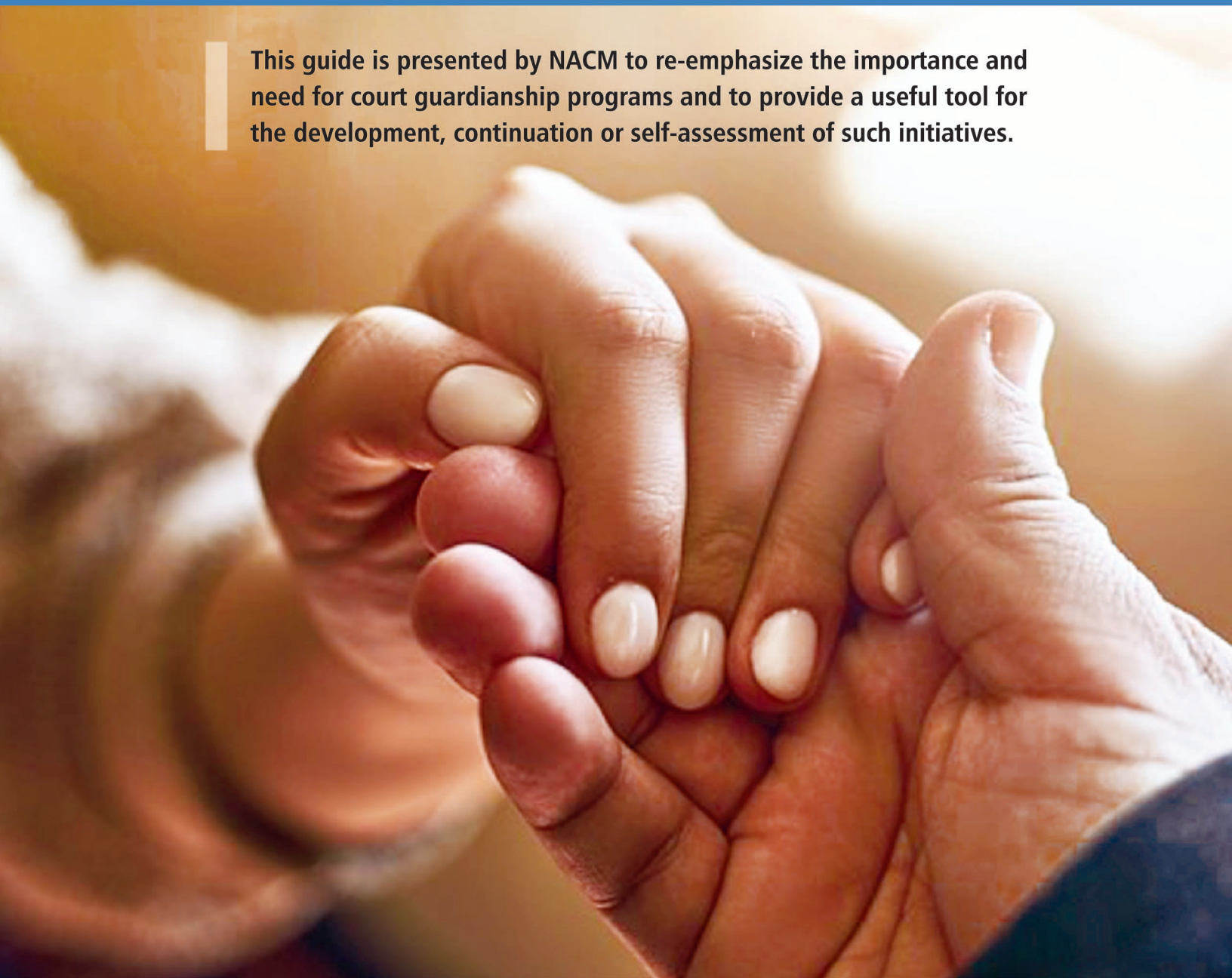
**National Association** for **Court Management**  
*Strengthening Court Professionals*

2022 GUIDE (UPDATE)

# ADULT GUARDIANSHIP GUIDE

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

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





# ADULT GUARDIANSHIP GUIDE

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



**National Association for Court Management**  
*Strengthening Court Professionals*

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

NATIONAL ASSOCIATION FOR COURT MANAGEMENT

## PURPOSE

Court systems, in response to a heightened awareness of issues within guardianships, have been called on from national, state, and local levels to review, analyze and evaluate existing guardianship processes and implement systemic changes that aim to protect and serve our nation's most vulnerable populations.<sup>1</sup> In every state, the need to plan, develop and sustain a comprehensive court guardianship program is deepened by ongoing trends that will sharply increase the number of guardianships in coming years. Courts must be prepared to confront these demographic eventualities.

State courts are urged and expected to undertake a thorough evaluation of individuals requiring guardianships, thoughtful consideration of alternatives to guardianships, and diligent monitoring of the guardianships that are granted. A wide spectrum of adults with differing abilities may need the assistance of a guardian, including those with serious mental illness (SMI), intellectual

disability, traumatic brain injury (TBI), and individuals with significant cognitive decline.

The number of adults with SMI increased from 8.3 million people in 2008 to 13.1 million in 2019, with the greatest increase among young adults aged 18 to 25.<sup>2</sup> Over 7 million people in the United States have an intellectual disability, with many requiring assistance.<sup>3</sup> The Centers for Disease Control and Prevention estimates that each year there are over 2.87 million visits to emergency departments and hospitalizations due to TBI, some of which result in death or long-term disability.<sup>4</sup> The Department of Defense reports that over 400,000 U.S. service members experienced a TBI between 2000 and 2019.<sup>5</sup> Individuals with SMI, intellectual disability, and TBI may require short-term or long-term guardianship depending upon the progression and treatment of their disability.

The number of older adults in the United States is growing. In 2020, the U.S. population of individuals aged 65 years and over was approximately 56 million. By 2060, this group

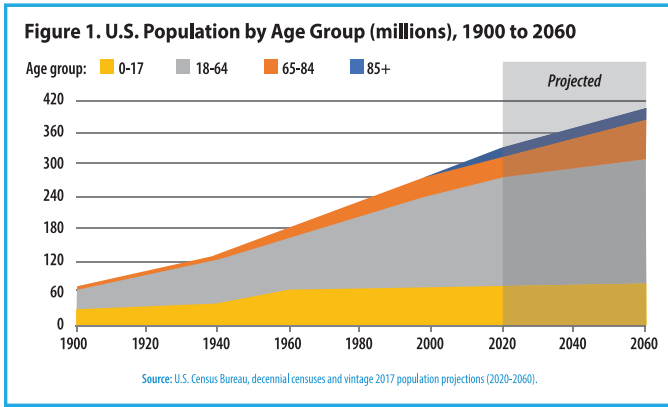
<sup>1</sup> Some states use the term *conservator* to mean the person appointed by the court responsible for managing the estate and financial affairs of the incapacitated person and the term *guardian* to describe the person responsible for overseeing the physical welfare of the person. Some states use *guardian* to describe both. For consistency and simplicity, this guide will use the term *guardian* to refer to both. A person for whom a guardian has been appointed has often been called "an incapacitated person," "a protected person," or "a ward." Recently, such terms are being replaced by "adult subject to guardianship" or similar wording. This guide will use the term "person(s) subject to guardianship," unless citing to or quoting from another resource that uses a different term.

<sup>2</sup> Substance Abuse and Mental Health Services Administration (SAMSHA), 2019 National Survey of Drug Use and Health, available at <https://www.samhsa.gov/data/release/2019-national-survey-drug-use-and-health-nsduh-releases>.

<sup>3</sup> National Disability Navigator, Resource Collaborative. See <https://nationaldisabilitynavigator.org/ndnrc-materials/fact-sheets/population-specific-fact-sheet-intellectual-disability/>.

<sup>4</sup> Centers for Disease Control and Prevention, *Surveillance Report of Traumatic Brain Injury-related Emergency Department Visits, Hospitalizations, and Deaths* (Atlanta: Centers for Disease Control and Prevention, 2014), available at [https://www.cdc.gov/traumaticbraininjury/pdf/TBI-Surveillance-Report-FINAL\\_508.pdf](https://www.cdc.gov/traumaticbraininjury/pdf/TBI-Surveillance-Report-FINAL_508.pdf).

<sup>5</sup> Department of Defense, TBI Worldwide Numbers, available at <https://tinyurl.com/2p98twsa>.



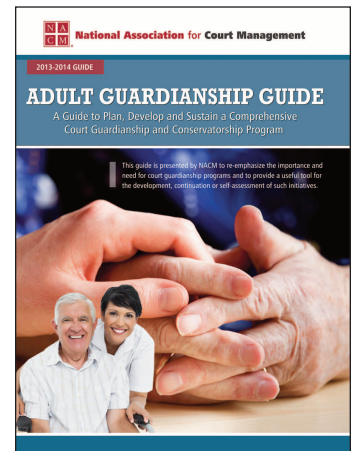
is expected to increase by 69 percent to 94.7 million.<sup>6</sup> The fastest growing segment of our population consists of those 85 and older. The number of people in that age group is expected nearly to double by 2035 (from 6.5 million to 11.8 million) and nearly to triple by 2060 (to 19 million people). In addition to the growing senior population, trends include:

- An increase in the number of individuals with Alzheimer’s disease and other dementias
- Rising incidences of elder abuse
- An increasing number of guardianship programs that must make critical decisions about persons subject to guardianship, sometimes with high caseloads

The [National Association for Court Management](#) (NACM) and other organizations have long recognized the importance of protecting adults who may need help in decision-making. To meet this demand, state and local courts require support and technical assistance to enhance their adult guardianship functions. In 2020, the [American Bar Association](#) (ABA) urged Congress to create and fund a Guardianship Court Improvement

Program modeled after the State Court Improvement Program (CIP) for child welfare agencies.<sup>7</sup> [Resolution 105](#), which was adopted by the House of Delegates, recommended that a national, federally funded guardianship court improvement program would “improve outcomes for adults subject to or potentially subject to guardianship, increase the use of less restrictive alternatives to guardianship, and enhance collaboration among courts, the legal system and the aging and disability networks.”<sup>8</sup> In 2021, NACM supported a [Resolution of the Conference of Chief Justices](#) (CCJ) and the [Conference of State Court Administrators](#) (COSCA) urging Congress to create and fund such a Guardianship Court Improvement Program for adult guardianship in support of state court efforts to improve the legal process within the adult guardianship system.<sup>9</sup>

This guide is presented by NACM in the form of an update to the 2013-14 Adult Guardianship Guide to re-emphasize the importance and need for court guardianship programs and to provide a useful tool for the development, continuation, and self-assessment of such initiatives.



## AUDIENCE

As with most court programs, there are several stakeholders involved with guardianships. Guardianships are handled in either a general

<sup>6</sup> U.S. Dept. of Commerce and U.S. Census Bureau, *Population Estimates and Projections, 2020* (Washington, DC: U.S. Dept. of Commerce and U.S. Census Bureau, 2020).

<sup>7</sup> A. Robert, “ABA Pushes for a Federal Guardianship Court Improvement Program,” *ABA Journal*, February 1, 2021, <https://www.abajournal.com/magazine/article/aba-pushes-for-a-federal-guardianship-court-improvement-program>.

<sup>8</sup> American Bar Association, Resolution 105, August 3-4, 2020, <https://www.americanbar.org/content/dam/aba/directories/policy/annual-2020/105-annual-2020.pdf>.

<sup>9</sup> See Conference of Chief Justices and Conference of State Court Administrators (CCJ/COSCA), Resolution 4, “In Support of an Adult Guardianship Court Improvement Program,” available at [https://ccj.ncsc.org/\\_data/assets/pdf\\_file/0018/67014/Resolution-4\\_Adult-Guardianship.pdf](https://ccj.ncsc.org/_data/assets/pdf_file/0018/67014/Resolution-4_Adult-Guardianship.pdf).



jurisdiction court; a separate probate, surrogate, or orphans' court; or a separate family, probate, or civil division of the court. NACM envisions a broad audience for this guide to include trial court administrators, judges and judicial officers,

division managers, probate, specialty or family division staff, information technology staff, finance division staff, volunteers, justice agency partners and members of the bar.



# Executive Summary

NATIONAL ASSOCIATION FOR COURT MANAGEMENT

## Planning and Leadership

The size and scope of guardianship caseloads can vary widely from a handful of cases in a small court to thousands of active guardianship cases in large metropolitan courts. Courts may have millions of dollars in assets under review annually.

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*The individual court or state must allocate adequate resources to ensure persons subject to guardianship receive the protections needed prior to and during a guardianship.*

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Funding is a central requirement for courts to have an effective and sustainable guardianship program. The individual court or state must allocate adequate resources to ensure persons subject to guardianship receive the protections needed prior to and during a guardianship. Many programs have been started with good intentions and then lose momentum due to a lack of resources and leadership. Consequently, effective planning is required to develop the scope of the guardianship program at the outset. Issues identified in this guide which are critical for planners to consider include:

- Strengthening protections and enhancing rights of persons subject to guardianship
- Identifying alternatives to guardianship including supported decision-making
- Providing meaningful due process including access to counsel

- Identifying opportunities for modification, termination, and restoration of rights
- Identifying, tracking, and documenting the number of guardianship cases and adoption of data standards
- Implementing meaningful guardianship monitoring
- Formalizing a process for bringing complaints or concerns to the attention of the court
- Developing response protocols for abuse, neglect, or exploitation
- Developing readily accessible materials for the public including clear, plain-language forms and informational resources
- Developing and institutionalizing training programs and materials for judges and court staff, judicial officers, managers, staff, and volunteers to include specialized training to recognize and identify abuse, neglect, and exploitation
- Developing and institutionalizing training programs for guardians
- Maintaining and strengthening relationships between the courts and the local probate bar while promoting the importance of court-community collaboration
- Regularly evaluating guardianship processes and outcomes

## Establishment of Guardianships

A court order establishes the guardianship between an adult in need and a guardian, who may be a relative, a private individual,

a professional guardian, a public guardian, or an agency. The court order sets out expectations for the care of the person for both physical well-being and financial affairs.<sup>10</sup> Full or plenary guardianships remove essentially all of an individual's basic rights to make decisions regarding the individual's person or property and should be used only as a last resort. Model courts look for alternatives to plenary guardianships such as supported decision-making where appropriate, and order limited guardianships based on the individual's specific range of capacity and needs.

The [National Center for State Courts](#) (NCSC) has developed a [pre-appointment protocol](#) that highlights the basic steps in determining the necessity of a guardianship. The protocol alerts court staff to potential risk factors so they can implement strategies to prevent the problems that can arise in guardianship cases.<sup>11</sup>

### **Managing the Guardianship Caseload**

An effective program requires leadership, commitment, and resources, both human and financial. Knowing the number of active guardianships within a court is essential to establishing a comprehensive program. Courts should begin with an inventory of the guardianships under the court's supervision.

Technology plays a vital role in managing the guardianship caseload. Researchers have found that deficiencies in data collection, both in local jurisdictions and across states, are compounded by the inability of many case management systems to identify guardianships under the court's supervision and key case events for guardianships. More specifically, "having accurate data increases the chances that courts will become

aware of and respond appropriately to problems, identify trends or patterns, and improve the protection of vulnerable citizens."<sup>12</sup>

### **Monitoring**

Court monitoring of guardians is essential to ensure that the well-being and financial stability of the person subject to guardianship are protected. The [National Probate Court Standards](#) (NPCS) provide that the safety and well-being of the respondent and the respondent's estate remain the responsibility of the court following appointment.<sup>13</sup> Court monitoring can assist in identifying resources within the community available to guardians, identify situations in which the appointment of a particular guardian is not a good "fit" given the needs of a particular person, provide a safeguard against abuse, neglect and exploitation, and assess the ongoing need for the guardianship. Court monitoring should be used in conjunction with training programs for appointed guardians.

### **Implementing a Complaint Process**

Model courts have a clearly stated complaint process accessible to anyone who has concern about an established guardianship matter, including persons subject to guardianship, those serving as guardians, and others having a relationship to or an interest in the well-being of a person subject to guardianship. The court should develop transparent, accessible processes that provide a means for persons to notify the court of concerns and that outline the court's responsibility, expected responses, and timeliness. The [Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act](#) (UGCOPAA) includes a grievance process against a guardian.

<sup>10</sup> An order for the appointment of a guardian will establish expectations for physical well-being, and an order for appointment of a guardian, conservator, or both will establish the expectations for financial affairs.

<sup>11</sup> See <https://perma.cc/LU9N-HBDS>.

<sup>12</sup> R. Schaffler and B. Uekert, "The Need for Improved Adult Guardianship Data," *Caseload Highlights* 15, no.2 (2008).

<sup>13</sup> National College of Probate Judges, *National Probate Court Standards* (NPCS), at Commentary for National Probate Court Standard 3.3.19, available at <https://ncsc.contentdm.oclc.org/digital/collection/spcts/id/240>. Note. The NPCS use the term respondent to refer to a person about whom a guardianship proceeding has been brought, as well as to a person subject to guardianship.

### **Developing Response Protocols**

Model courts have clear, defined processes to follow when concerns arise about a guardianship, either from the court's regular monitoring or from an external complaint. These processes ensure that all concerns are evaluated and acted upon in a timely manner.

### **Implementing Training Programs**

Training programs are important for any court improvement process. Development and implementation of programs for the orientation, education, and assistance of guardians should be developed for the public, judges and court staff, program volunteers, judicial officers, and

attorneys. Several courts have made significant advances in the development of training programs and resources for those appointed as guardians, many of which can be adapted for use in other courts throughout the country.

### **Evaluation**

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



# Adult Guardianship Guide

NATIONAL ASSOCIATION FOR COURT MANAGEMENT

## ESTABLISHING THE GUARDIANSHIP

In the United States, all adults are considered legally capable of making decisions regarding their personal and financial affairs unless a court of law determines otherwise.<sup>14</sup> A judge or other judicial officer may appoint a person or an agency to act as the guardian after reviewing the petition for guardianship and determining that sufficient evidence has been presented to warrant an order of appointment of a guardian. A guardianship can be terminated when the person regains capacity or if other decision-making options become available and are appropriate.<sup>15</sup> In reality, however, many guardianships continue until the death of the person subject to guardianship.

## Indications for Guardianship

In determining the need for guardianship for an adult, the foremost consideration is state law.<sup>16</sup> State laws typically include medical conditions, cognitive impairments, functional limitations, and risks of harm as factors to be considered in determining the potential need for guardianship.<sup>17</sup>

In addition to general guardianship proceedings, state laws often provide for emergency guardianship petitions in situations such as when:

- the person's assets are being rapidly depleted by the person or by a third party; and/or

- a life-threatening medical situation exists and the person lacks the capacity to give informed consent.

The American Bar Association (ABA) Commission on Law and Aging developed a reference of [state-specific emergency guardianship provisions](#).

## Alternatives to Guardianship

Oftentimes, an individual seeking a guardianship in the court would be better served by exploring alternatives. A guardianship screening process might steer eligible persons toward less restrictive alternatives. The [National Probate Court Standards \(NPCS\)](#) call for a guardianship to be considered by the court as a last resort, only used when less restrictive alternatives are inappropriate.<sup>18</sup>

### NPCS, Standard 3.3.10 – Less Intrusive Alternatives

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

<sup>14</sup> See NPCS and summary of probate jurisdiction compiled by the National College of Probate Judges, *available at* <https://ncsc.contentdm.oclc.org/digital/collection/spcts/id/240>.

<sup>15</sup> See Uniform Law Commission, *Guardianship, Conservatorship and Other Protective Arrangements Act* (UGCOPAA) § 316(a) (2017), *available at* <https://www.uniformlaws.org/committees/community-home?CommunityKey=2eba8654-8871-4905-ad38-aabbd573911c>.

<sup>16</sup> For an overview of the statutes governing guardianship proceedings, see American Bar Association, "Adult Guardianship Statutory Table of Authorities," *available at* [https://www.americanbar.org/content/dam/aba/administrative/law\\_aging/2019-adult-guardianship-statutory-table-of-authorities.pdf](https://www.americanbar.org/content/dam/aba/administrative/law_aging/2019-adult-guardianship-statutory-table-of-authorities.pdf).

<sup>17</sup> American Bar Association Commission on Law and Aging, American Psychological Association, and National College of Probate Judges, *Judicial Determination of Capacity of Older Adults in Guardianship Proceedings: A Handbook for Judges* (American Bar Association and American Psychological Association, 2006), *available at* [https://www.americanbar.org/content/dam/aba/administrative/law\\_aging/2011\\_aging\\_bk\\_judges\\_capacity.pdf](https://www.americanbar.org/content/dam/aba/administrative/law_aging/2011_aging_bk_judges_capacity.pdf).

<sup>18</sup> NPCS, Standard 3.3.10.

In many cases, less restrictive alternatives can prevent unnecessary and/or overbroad guardianships while maintaining the person’s health and safety and adequately managing the person’s financial affairs.

Most states have enacted laws that require a court to consider testimony and other evidence to explore less restrictive means as practical alternatives to guardianship while still meeting the adult’s needs.<sup>19</sup> Common alternatives to guardianship that should be explored before determining whether a plenary or limited guardianship is necessary include family and community supports, Social Security representative payees,<sup>20</sup> VA fiduciaries, trusts including special needs trusts, financial powers of attorney, and advance healthcare directives.

The UGCOPAA includes an additional alternative – a protective arrangement, for cases in which needs can be met through a court order that is tailored to the adult’s circumstances and needs and that is narrower in scope and generally shorter in duration than an ongoing guardianship order.<sup>21</sup> For example, the court may order visitation with a family member, friend or other individual the person wants to see – or may restrict visitation by a specified individual who could put the person at risk of harm or whose conduct is disruptive or disturbing to the person. The court may also ratify or invalidate a contract, trust or will, power of attorney or restrict access to estate property by a specified person whose access may cause financial harm.

Almost all states have statutory provisions concerning the need to examine less restrictive alternatives before imposing guardianship.<sup>22</sup> However, in practice, this step may not be pursued rigorously by attorneys and by courts. Tools to ensure screening for less restrictive alternatives are important. One such tool is the *Practical Tool for Lawyers: Steps in Supporting Decision-Making*, published by the ABA Commission on Law and Aging.<sup>23</sup> The UGCOPAA requires that a court order for guardianship include a specific finding that needs cannot be met by a protective arrangement or less restrictive alternative.<sup>24</sup> The report from the 2021 *Fourth National Guardianship Summit* (FNGS) recommends that “[e]very state should have a guardianship diversion program tasked with facilitating alternatives to guardianship, reducing the likelihood that guardianships will be granted where not necessary.”<sup>25</sup>

Alternatives to Guardianship	Alternatives to Conservatorship
<ul style="list-style-type: none"> <li>• Advance health care directives</li> <li>• Instructional health care powers of attorney</li> <li>• Supported decision-making</li> <li>• Informal supports (family, friends, neighbors)</li> <li>• Community-based supports (respite support, counseling, mediation)</li> <li>• Interventions (e.g., eldercaring coordination)</li> <li>• Protective arrangements</li> <li>• Health care consent statutes</li> </ul>	<ul style="list-style-type: none"> <li>• Durable powers of attorney</li> <li>• Establishment of trusts</li> <li>• Supported decision-making</li> <li>• Protective arrangements</li> <li>• Designation of a representative payee</li> <li>• ABLE Accounts</li> <li>• Account signatory authority</li> </ul>

<sup>19</sup> See “Least Restrictive Alternative References in State Guardianship Statutes,” American Bar Association, available at [https://www.americanbar.org/content/dam/aba/administrative/law\\_aging/06-23-2018-lra-chart-final.pdf](https://www.americanbar.org/content/dam/aba/administrative/law_aging/06-23-2018-lra-chart-final.pdf).

<sup>20</sup> Federal agencies may appoint representative payees to manage federal benefits for individuals who are not able to manage such benefits. The Social Security Administration and the Veterans Administration have the largest payee programs. Representative payee appointments and state court guardianship appointments serve generally the same populations, and often the roles are performed by the very same people, yet there is little coordination between the two systems, which can sometimes put individuals at risk. See “Guardianships: Collaboration Needed to Protect Incapacitated Elderly People,” GAO-04-655, available at <http://www.gao.gov/assets/250/243297.pdf>. In 2020, the Administrative Conference of the U.S. published a Congressionally mandated report on information sharing between state courts and the Social Security Administration. See “Social Security Administration’s Representative Payee Program: Information Sharing with States,” available at [https://s3.us-west-2.amazonaws.com/napa-2021/studies/ssarpp/Final\\_SPSBA\\_Report\\_to\\_SSA.pdf](https://s3.us-west-2.amazonaws.com/napa-2021/studies/ssarpp/Final_SPSBA_Report_to_SSA.pdf).

<sup>21</sup> UGCOPAA, Article 5.

<sup>22</sup> *Id.*

<sup>23</sup> American Bar Association Commission on Law and Aging, *Practical Tool for Lawyers: Steps in Supporting Decision-Making* (2016).

<sup>24</sup> UGCOPAA, Section 310.

<sup>25</sup> National Guardianship Network, *Fourth National Guardianship Summit* (FNGS), Recommendation 3.3, available at The Fourth National Guardianship Summit: Maximizing Autonomy and Ensuring Accountability | Syracuse University College of Law (2021).

## Supported Decision-Making

One tool that allows individuals to retain their decision-making capacity by choosing supporters who can help them make choices is supported decision-making. Most guardianships remove rights from an individual and require that basic decisions are made by another person, and therefore, these court appointments are considered a last resort. Supported decision-making is an alternative to guardianship that allows a person to choose a trusted person or trusted persons to assist them in gathering and understanding information, making decisions, and communicating those decisions to others. It ensures a person’s right to make their own important life decisions and to have their decisions followed with the support of people they choose. A recommendation from the [Fourth National Guardianship Summit](#) suggests that “[s]tatutes, court rules, policies, and processes in every state should require courts to consider supported decision-making as one of the alternatives to guardianship at appointment and periodically thereafter.”<sup>26</sup> Recommendations further support a national approach to providing education, training, and outreach programs about supported decision-making.<sup>27</sup>

Several states have statutorily recognized supported decision-making as an alternative to guardianship. In 2015, Texas became the first state to recognize supported decision-making agreements as legally enforceable documents. As of 2021, twelve states and the District of Columbia have enacted supported decision-making laws: Delaware (2016), District of Columbia (2018), Wisconsin (2018), Alaska (2018), Indiana (2019), Nevada (2019), North Dakota (2019), Rhode Island (2019), Louisiana (2020), Colorado (2021), Oklahoma (2021), and Virginia (2021).

<sup>26</sup> [FNCS](#), Recommendation 2.3.

<sup>27</sup> *Id.*, Recommendation 2.1.

<sup>28</sup> It is important to note that even where a public guardian exists, the scope of services available through that office may not cover all individuals in need of guardianship services. For example, the New Jersey Office of the Public Guardian for Elderly Adults is authorized by N.J.S.A. 52:27G-37(b) to serve only individuals aged 60 years or older, and the New Jersey Department of Human Services, Bureau of Guardianship Services, is authorized by N.J.S.A. 30:4-165.12 to serve as guardian of the person only for individuals receiving services from the state Division of Developmental Disabilities.

In Maryland, public guardianship is administered by the local Departments of Social Services for those age 18-64, and the local Area Agencies on Aging for those age 65 and older.

<sup>29</sup> See Center for Guardianship Certification, [www.guardianshipcert.org](http://www.guardianshipcert.org).

<sup>30</sup> See, e.g., Volunteer Guardian Program of Central Ohio, information available at

## The Guardians

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

TYPES OF NON-FAMILY GUARDIANS	
<i>Public Guardians</i>	Nearly all states have public guardians, who primarily serve in cases where there are no friends or family able and willing to act in the person’s interest. Public guardian agencies tend to be underfunded and in some states the services they offer are restricted to specific populations. <sup>28</sup>
<i>Private Professional Guardians</i>	Private professional guardians may be appointed when relatives are not available or appropriate to serve. Alaska and California have licensing requirements, while Arizona, Florida, Texas, and Washington have mandatory certification programs for professional guardians. Other states have various requirements for certification through the Center for Guardianship Certification. <sup>29</sup>
<i>Volunteer Guardians</i>	Some states or jurisdictions rely on volunteer guardians, who are typically managed by a professional staff person from an agency or by designated court staff and are required to undergo criminal background checks and attend training sessions. <sup>30</sup>
<i>Agencies as Guardians</i>	Agencies also serve as guardians. The agency may be public, for-profit, or nonprofit.



## Court Process

The [Fourth National Guardianship Summit](#) adopted a recommendation that courts ensure that all judicial proceedings that may impact any of an adult's rights to legal capacity provide meaningful due process, including:

- Right to a qualified and compensated lawyer, paid a reasonable fee using public funds if the adult is unable to pay, and appointed by the court should the adult not have a lawyer of their own choosing.
- Reasonable notice provided in the adult's preferred language in an understandable and accessible format, served in a manner that ensures timely receipt.
- An impartial, valid, and reliable assessment by a compensated and qualified person conducting a capacity assessment who has knowledge and training about decision-making in the area(s) related to the proceedings, using the adult's preferred reasonable accommodations and method of communication.
- Protection of the adult's right to participate in the proceeding consistent with their preferences, including preferred communication accommodations, after the right to appear and the purpose of the proceeding have been explained to the adult through means adult understands.<sup>31</sup>

### *Petition for Guardianship*

The court process for establishment of a guardianship differs based upon state law and local court procedures but is generally initiated by the filing of a petition to commence a court proceeding. The [NPCS](#) recommend that this petition include the following information:

- The name, age, address, and nationality of the respondent
- The address of the respondent's spouse, children, parents, siblings, or other close kin,

if any, or an adult with whom the respondent has resided for at least the six months prior to the filing of the petition

- The name and address of any person responsible for the care or custody of the respondent
- The name and address of any legal representative for the respondent.
- The name and address of any representative payee for the respondent.
- The name and address of the person(s) designated under any powers of attorney or health care directives executed by the respondent
- The name, address, and interest of the petitioner
- The reasons why a guardianship and/or conservatorship is being sought
- A description of the nature and extent of the limitations in the respondent's ability to care for herself/himself or to manage her or his financial affairs
- Representations that less intrusive alternatives to guardianship or conservatorship have been examined
- The guardianship powers being requested and the limits and duration of those powers
- The nature and estimated value of assets, the real and personal property included in the estate, and the estimated annual income (conservatorship).<sup>32</sup>

This standard further recommends that the petition: (1) be accompanied by a written statement from a physician or licensed mental health services provider identifying the physical, mental, and/or emotional conditions that limit the respondent's ability to care for herself/himself or to manage her or his financial affairs,<sup>33</sup> and (2) identify other parties who have an interest in the court proceeding, such as a person with whom the respondent has lived for the past six months

[https://coaaa.org/cms/images/docs/services/VGP\\_Brochure.pdf](https://coaaa.org/cms/images/docs/services/VGP_Brochure.pdf); Volunteer Guardianship One-on-One, serving Hunterdon County, New Jersey, information available at <https://www.volunteerguardianship.org/>.

<sup>31</sup> [FNCS](#), Recommendation 1.2.

<sup>32</sup> [NPCS](#), Standard 3.3.1.

<sup>33</sup> For an overview of state law standards as to capacity, see American Bar Association, "Capacity Definition and Initiation of Guardianship Proceedings," available at [https://www.americanbar.org/content/dam/aba/administrative/law\\_aging/chartcapacityandinitiation.pdf](https://www.americanbar.org/content/dam/aba/administrative/law_aging/chartcapacityandinitiation.pdf).

and any person responsible for the care and custody of the respondent. The petition may include requests for interim relief, such as the freezing of bank accounts to avoid dissipation of assets or the appointment of someone with limited authority to address time-sensitive medical needs.

The [UGCOPAA](#) recommends the petition include the reason a guardianship is necessary and a brief description of: (A) the nature and extent of the respondent’s alleged need; (B) any protective arrangement instead of guardianship or other less restrictive alternatives for meeting the respondent’s alleged need that have been considered or implemented; (C) if no protective arrangement instead of guardianship or other less restrictive alternatives have been considered or implemented, the reason(s) they have not been considered or implemented; and (D) the reason a protective arrangement instead of guardianship or other less restrictive alternative is insufficient to meet the respondent’s alleged need.<sup>34</sup>

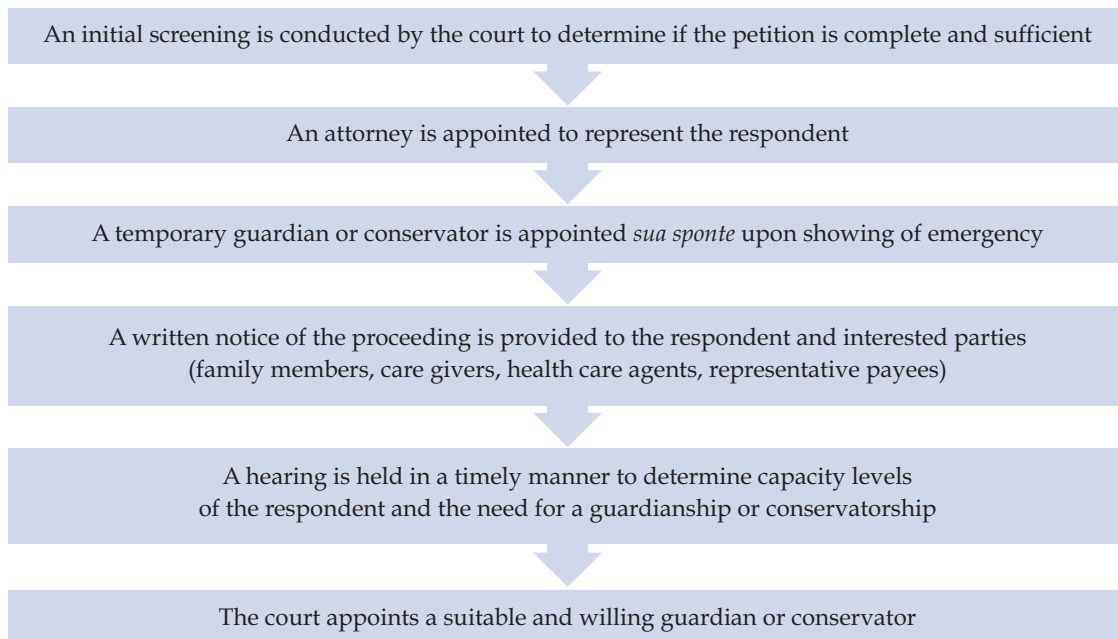
Following the submission of a petition, most courts have provisions in state statutes and/or local rules establishing a timeframe for subsequent actions that ultimately lead to a hearing

and appointment of a guardian if appropriate. A model process is outlined below, though actual procedures vary considerably based on state laws and resources.

Courts are encouraged to provide a standardized form for the petition for guardianship that is available on or from the court’s website, written in plain language, easy to understand and complete, and with instructions in languages commonly spoken in the community. Several courts provide petitions for guardianship and other forms on their websites as listed in [APPENDIX A – Links to Website information and forms](#) at the end of this Guide.

### *Initial Review and Screening*

Courts are encouraged to establish an initial review and screening procedure. Such a review ensures that all the information required to initiate the guardianship proceeding is provided in the petition. This review may be conducted by trained court staff, volunteers, or provided through pro bono services. Review by trained court staff can ensure the most efficient use of court resources. In some states, an initial review is conducted by the judge or a judicial officer.<sup>35</sup>



<sup>34</sup> [UGCOPAA](#), Section 302(4).

<sup>35</sup> *E.g.*, in Georgia, upon the filing of a petition, “the court shall review the petition and affidavit, if any, and determine whether there is probable cause to believe that the person is in need of” a guardian and/or a conservator. O.C.G.A. §§29-4-11(a) and 29-5-11(a).



## Notice

Because guardianship can remove fundamental rights, notice of the guardianship proceedings must always be served upon the respondent, typically by personal service. In general, the notice to the respondent should advise him or her of the right to oppose the guardianship action either independently, with court-appointed legal counsel, or through a privately retained attorney.<sup>36</sup> If the court has granted interim relief without notice, then the respondent must be permitted to seek dissolution of such relief.<sup>37</sup>

The notice should be in plain language and large type and should alert the respondent to rights during the hearing, as well as rights that may be lost as a result of the hearing, and, to the extent feasible, be given in a language in which the person to be notified is proficient.

### NATIONAL PROBATE COURT STANDARD 3.3.7

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

## Appointment of Counsel

Depending on state law, the court may or must appoint an attorney to represent the respondent if they do not have one of their own choosing.<sup>38</sup> The role of this attorney is distinct from that of a court-appointed visitor, investigator, or *guardian ad litem*. The NPCS recommend that counsel ultimately be appointed in most cases, specifically if “(1) requested by the respondent; (2) recommended by the visitor; (3) the court determines that the respondent needs representation; or (4) otherwise required by law.”<sup>39</sup> Although this is consistent with Alternative A of UGCOPAA Section 305, the Fourth National Guardianship Summit recommends the adoption of Alternative B of Section 305, which requires courts to appoint counsel for all respondents regardless of their ability to pay.<sup>40</sup> For many states, implementation of Alternative B will require additional state funding to pay for representation of respondents who lack the resources to pay their attorneys.

As contemplated by the NPCS and UGCOPAA, the role of the attorney representing the respondent is that of an advocate. This means the attorney is to maintain a normal attorney-client relationship to the extent possible and to ascertain and advocate for the client's wishes, even if those wishes conflict with what the attorney believes is in the person's best interest.<sup>41</sup> Given the potential loss of fundamental rights at stake in guardianship proceedings, the right to counsel might be considered analogous to and also as important as the right of persons charged with criminal offenses to be represented by an attorney.

An effective advocate helps ensure the proceeding is fair and that all alternatives to guardianship are explored, and can help prevent unnecessary or overly broad guardianships.

<sup>36</sup> NPCS, Standard 3.3.7.

<sup>37</sup> *Id.*, Standard 3.3.6.

<sup>38</sup> See “Representation and Investigation in Guardianship Proceedings,”

[https://www.americanbar.org/content/dam/aba/administrative/law\\_aging/chartrepresentationandinvestigation.pdf](https://www.americanbar.org/content/dam/aba/administrative/law_aging/chartrepresentationandinvestigation.pdf).

<sup>39</sup> See NPCS, Standard 3.3.5, pp. 50-51, including commentary.

<sup>40</sup> FNGS, Recommendation 3.1.

<sup>41</sup> ABA Model Rule of Professional Conduct Rule 1.14.

To clarify the attorney's role, duties, and training and eligibility requirements, several state courts have adopted court rules, handbooks, and model forms.<sup>42</sup> See [Training Programs for Attorneys](#) below for more information.

State laws and courts should also recognize that the appointment of a guardian does not remove a person's right to retain counsel to modify or challenge the terms of the guardianship.<sup>43</sup> Depending on state law or court rules, the court may also appoint an attorney to represent the adult subject to guardianship for other good cause. The [Fourth National Guardianship Summit](#) urges states to establish funding to safeguard the rights of individuals subject to guardianship to include continued representation by a qualified attorney throughout the case.<sup>44</sup>

### ***Court Visitors, Investigators, and Guardians ad Litem***

Separate from the appointment of counsel, the [NPCS](#) and [UGCOPAA](#) promote the appointment of a court visitor upon the filing a petition.<sup>45</sup> In some states, a visitor is referred to as an "investigator," "examiner," or "evaluator."<sup>46</sup> Regardless of the designation, the role of this person is to gather and provide information during the pre-appointment phase of the case. The visitor's qualifications and duties are generally defined by state law but may include explaining the nature and consequences of the petition to

the respondent, ascertaining that person's views about the petition or the proposed guardian(s), investigating facts alleged in the petition, assessing whether there are less restrictive alternatives available, and filing a report with the court.<sup>47</sup>

[UGCOPAA](#) and the laws of some states also provide for the appointment of a *guardian ad litem*, when deemed appropriate, to represent the best interests of the respondent and to provide to the court a report of the *guardian ad litem's* opinion as to what would be in the respondent's best interest.<sup>48</sup> Following the appointment of a guardian, the court also may appoint a visitor, investigator, or *guardian ad litem* to assist with monitoring.

### ***Hearing; Adjudication***

The guardianship hearing should be set as promptly as practicable to the circumstances of the particular case to determine the capacity levels of the respondent and whether there is a need for a guardianship. The respondent should be present at the guardianship hearing unless the court finds good cause to accept a waiver of that right. If it would be difficult for the respondent to be present in the courtroom, the court should make reasonable accommodations to ensure the respondent's participation, including virtual participation for all parties.<sup>49</sup>

The burden of proving that a person is incapacitated and in need of a guardian rests upon the party seeking guardianship. State laws may set

<sup>42</sup> See, e.g., Md. Rule 10-106; *Maryland Guidelines for Attorneys Representing Minors and Alleged Disabled Persons in Guardianship Proceedings*; N.J. Ct. R. 4:86-4; [https://www.njcourts.gov/forms/12756\\_gdnshp crt app atty.pdf?c=4K6](https://www.njcourts.gov/forms/12756_gdnshp crt app atty.pdf?c=4K6) (*Guidelines for Court-Appointed Attorneys in Guardianship Matters*); [https://www.njcourts.gov/forms/12789\\_gmp rpt counsel aip.docx](https://www.njcourts.gov/forms/12789_gmp rpt counsel aip.docx) (mandatory form, Report of Court-Appointed Counsel for Alleged Incapacitated Person); [https://www.lacsn.org/images/stories/Attorney\\_Training\\_Manual\\_Part1.pdf](https://www.lacsn.org/images/stories/Attorney_Training_Manual_Part1.pdf).

<sup>43</sup> See Nina Kohn and Catheryn Koss, "Lawyers for Legal Ghosts: The Legality and Ethics of Representing Persons Subject to Guardianship," *Washington Law Review* 91 (2016): 581 (outlining constitutional and other grounds for affording people under guardianship the right retain representation to challenge the terms of their guardianship and to exercise certain other rights).

<sup>44</sup> [FNCS](#), Recommendation 4.3.

<sup>45</sup> See [NPCS](#) Standard 3.3.4 and [UGCOPAA](#) Section 405.

<sup>46</sup> See e.g., La. Code Civ. Pro. § 4545, Ariz. Rev. Stat. § 14- 5308, and N.Y. Mental Hygiene Law § 81.09.

<sup>47</sup> "State Statutory Provisions for Guardians ad Litem v. Court Visitors," *available at* [https://www.americanbar.org/content/dam/aba/administrative/law\\_aging/2018-gal-court-visitor-guidlines-full-chart.pdf](https://www.americanbar.org/content/dam/aba/administrative/law_aging/2018-gal-court-visitor-guidlines-full-chart.pdf); and See e.g., Idaho Code, § 15-5-308.

<sup>48</sup> [UGCOPAA](#) Section 115; see also, "State Statutory Provisions," *id.*

<sup>49</sup> See [NPCS](#), Section 3.3.8. See N.M. Stat. Ann. § 45-5-303(G) (at the location of the respondent who is unable to appear in court); Nev. Rev. Stat. § 159.0535(1) (respondent must attend unless qualified professional certifies that attendance would be detrimental); and N.J.S.A. 3B:12-24.1 (alleged incapacitated person shall appear in court unless plaintiff and court-appointed attorney certify that they are unable to appear because of physical or mental incapacity).

different standards as to the burden of proof in a guardianship action versus a conservatorship, but in forty states, proof of incapacity and need for a guardian is required by clear and convincing evidence.<sup>50</sup> If the plaintiff fails to satisfy the burden of proof, then the guardianship action is dismissed. Dismissal may coincide with the establishment of less restrictive alternatives, such as the execution of an advance directive for healthcare or financial power of attorney or trust to manage financial affairs. If the court finds that a guardianship is needed, using the standards set by state law, the court then determines the scope of the guardianship and appoints a guardian.

### ***Appointment of Guardian; Background Screening; Bond***

Courts must take appropriate care to appoint a suitable and willing person or agency to serve as guardian of the person, estate, or both. State law may set forth priorities among individuals or agencies that may be appointed,<sup>51</sup> and/or categories of individuals who are disqualified from serving. Where appropriate, courts should appoint an individual requested by the person or related to or known by the person, with preference given to any written designation (as through a durable power of attorney or advance directive) made by the person while competent, and great weight should be given to a person's expressed desires. Courts should also consider the training, education, experience, and geographical proximity of a prospective guardian to determine whether they can timely and competently perform the current and future responsibilities of guardianship. Ultimately, courts retain discretion in appointment of a guardian and should seek a guardian with the least potential

for a conflict of interest. In some cases, it may be appropriate to appoint a public administrator, public guardian, professional guardian, attorney or other professional, or person or corporation with special qualifications, certification, or expertise that may be beneficial to the person. However, courts should not appoint any agency, public or private, that financially benefits from directly providing housing, medical, or social services as a guardian.<sup>52</sup>

Because of the significant authority that a guardian holds and the potential for misuse of that authority, a majority of states and the **UGCOPAA** require that courts conduct some form of background screening of prospective guardians, and eleven states disqualify prospective guardians from appointment if their history reveals certain convictions.<sup>53</sup> The **NPCS** recommend that probate courts request a national background check on all prospective guardians, other than certain institutions or professionals subject to such checks through certification or licensing procedures, before an appointment is made.<sup>54</sup> This will identify whether the individual has been convicted of a relevant crime; has been determined to have committed abuse, abandonment, neglect, or financial or sexual exploitation of a child, spouse, or other adult; has been suspended or disbarred from law, accounting, or other professional licensing for misconduct involving financial or other fiduciary matters; or has a poor credit history. In determining whether any relevant history identified through the check should disqualify a prospective guardian from appointment, courts should weigh the seriousness of the offense(s) or misconduct, the relevance to the responsibilities of a guardian, how recently the offense(s) or misconduct occurred,

<sup>50</sup> See **NPCS**, Standard 3.3.9, and "Conduct and Findings of Guardianship Proceedings," available at [https://www.americanbar.org/content/dam/aba/administrative/law\\_aging/chartconduct.pdf](https://www.americanbar.org/content/dam/aba/administrative/law_aging/chartconduct.pdf). Compare, Wyo. Stat. § 3-2-104(a) (preponderance) and N.H. Rev. Stat. Ann. § 464-A:8IV (beyond a reasonable doubt).

<sup>51</sup> See, e.g., N.J.S.A. 3B:12-25 (establishing priorities for appointment of guardian).

<sup>52</sup> See Commentary **NPCS**, 3.3.11.

<sup>53</sup> A summary of state laws requiring criminal and credit background checks for guardians compiled by the ABA Commission on Law and Aging is available at [https://www.americanbar.org/content/dam/aba/administrative/law\\_aging/chartfelonycreditcheck.pdf](https://www.americanbar.org/content/dam/aba/administrative/law_aging/chartfelonycreditcheck.pdf). In 2021, the New Jersey Supreme Court approved a comprehensive Judiciary Background Screening Policy for Proposed Guardians of Incapacitated Adults, along with supporting rule amendments and new and revised forms. The policy is available at <https://www.njcourts.gov/notices/2021/n210503a.pdf>.

<sup>54</sup> **NPCS**, Standard 3.3.12.



the prospective guardian's record since the offense(s) or misconduct occurred, and the vulnerability of the person.

Depending on the amount and nature of the person's assets and the relationship of the guardian to the person, the court may require as a condition of appointment that the guardian post a bond from a licensed surety company in an amount equal to the value of the unrestricted assets and anticipated annual income of the guardianship estate. The purpose of the bond is to safeguard the estate, ensuring that it will be made whole against any losses in the event of malfeasance by the guardian. Some state laws require the appointing courts to require the posting of a surety bond by a conservator.<sup>55</sup>

Bond premiums may be paid from or reimbursed through the guardianship estate and are related to the value of the bond; for example, the premium for a bond on a \$200,000 estate is less than that of a \$2,000,000 estate. To properly preserve the guardianship estate, the court should modify the bond amount as needed during the guardianship to reflect increases or decreases in the estate value. The court may also discharge a bond if all estate assets are spent down.

Some guardians may be unable to be bonded because of credit or other issues. In such cases, the court may add or substitute a different individual or institution as guardian or may restrict the authority of the guardian to only those assets for which they can be bonded. Courts should seek persons, agencies, or institutions who/that can post a sufficient bond so as not to prolong, unduly, the period the person is potentially exposed to risk. Restrictive accounts may also

be used to reduce bond amounts, or as an alternative to bond in a few states in which bonds are not required.

### *Court Order*

Statutory requirements as well as state and local court practices differ on the provisions to be included in a court order appointing a guardian. The [NPCS](#) sets out required content for the order, including specifying the powers of the guardian; the rights retained by the individual; and the guardian's responsibilities to the individual, the estate, and the court.<sup>56</sup> A model order form in the [capacity handbook](#) for judges by the [ABA Commission on Law and Aging](#), [American Psychological Association \(APA\)](#), and [National College of Probate Judges \(NCPJ\)](#) lists key provisions recommended for inclusion.<sup>57</sup> Also helpful are the recommended provisions of an order set out in the [UGCOPAA](#).<sup>58</sup> Based on these resources, the order might include the following:

- Findings that the jurisdiction and venue are proper, and that notice was served properly;
- A specific finding that the evidence established a need for a guardian according to state law, and reasons why less restrictive alternatives and supports cannot meet the need;
- If the order is for a full guardianship, reasons why a limited order would not suffice should be included;
- The specific powers of and limitations on the guardian, including any requirements for the guardian
- to qualify prior to assuming duties;
- The specific rights retained by the person subject to guardianship;
- Any provisions regarding persons entitled to subsequent notices;<sup>59</sup>

<sup>55</sup> *E.g.*, O.C.G.A §29-5-40(a) (Georgia) provides that a conservator appointed by the court "shall give bond with good and sufficient security." Certain financial institutions and trust companies are exempt from this requirement under O.C.G.A §29-5-40(b).

<sup>56</sup> [NPCS](#), Standard 3.3.13.

<sup>57</sup> American Bar Association Commission on Law and Aging, American Psychological Association, and National College of Probate Judges, *supra* note 17, pp. 33-34.

<sup>58</sup> [UGCOPAA](#), Section 310.

<sup>59</sup> For examples, see form of Order Appointing Guardian/Conservator in Minnesota, *available at* <https://www.mncourts.gov/mncourtsgov/media/CourtForms/GAC-8-U.pdf?ext=.pdf>; Order Appointing Guardian of Person/Estate in Washington State, *available at* <https://www.courts.wa.gov/forms/?fa=forms.contribute&formID=75>; Model Judgment of Legal Incapacity and Appointment of a Guardian of the Person and Estate for New Jersey, form 11802 at [https://www.njcourts.gov/forms/11802\\_grdnshp\\_model\\_order.pdf](https://www.njcourts.gov/forms/11802_grdnshp_model_order.pdf). When ordering the filing of periodic guardianship accounts, courts

- A statement of the guardian’s duties according to state law, including the duty to inform the court of any change of address of the guardian and/or the individual, as well as any major changes in the health or status of the individual, including death;
- Notice of all reporting requirements applicable to the guardian, which may include the filing of a [guardianship plan](#), periodic guardianship reports, and periodic accounts (if the guardian is handling financial affairs); and
- Any provisions regarding the assessment of court costs and fees and the required posting of any bond(s).<sup>59</sup>

### Limited Guardianships

In recent years, more courts have moved away from a one-size-fits-all approach to guardianships in favor of guardianships tailored to the specific needs and abilities of individuals subject to guardianship, crafting more person-centered orders.<sup>60</sup> Persons in need of guardianship may retain capacity in certain areas. A limited guardianship preserves the autonomy of a person with limited capacity while still protecting the well-being and assets of the person. The scope of the guardian’s authority is described in the court order granting the guardianship or issuing a protective order and, where applicable,

in the Letters of Guardianship issued by the court to the guardian.

The [UGCOPAA](#) requires the court to state the basis for granting a full guardianship with specific findings, and to use less restrictive alternatives such as a limited guardianship that meet the needs of the adult. This provision is designed to ensure that courts engage in a thorough fact-finding and consider less restrictive alternatives and approaches to tailor orders before appointing a full guardian.<sup>61</sup> The [Fourth National Guardianship Summit](#) recommends that “[s]tates should eliminate plenary guardianship, allowing people to retain the maximum of rights, and if guardianship is imposed, require tailored guardianship orders in all cases.”<sup>62</sup>

### Modification/Termination & Restoration of Rights

All states have laws providing for the modification of a court order, as well as termination of the order and restoration of rights if guardianship is no longer necessary. All courts should consider that: the condition of the person subject to guardianship may have changed; there may be more supports available, reducing or eliminating the need for guardianship; or additional evidence may be available to show that the person does not meet the legally required criteria for appointment of a guardian. The [UGCOPAA](#) provides that unless the court orders otherwise, courts should apply the same procedural protections at termination that they require at appointment of a guardian,<sup>63</sup> and many states have adopted similar language. The [NPCS](#) direct courts to consider periodically the necessity for continuing a guardianship.<sup>64</sup> In practice, restoration is very rare,<sup>65</sup> and the challenges for an adult who

#### NATIONAL PROBATE COURT STANDARD 3.3.10(c)

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

should be mindful that the Strengthening Protections for Social Security Beneficiaries Act of 2018, codified at 42 U.S.C. § 405(j)(3)(D), exempts parents of disabled adults who reside with their parents and spouses who serve as Social Security representative payees from annual reporting to the Social Security Administration.

<sup>60</sup> [NPCS](#), Standard 3.3.10(c).

<sup>61</sup> [UGCOPAA](#) § 310(c) and commentary.

<sup>62</sup> [FNGS](#), Recommendation 3.2.

<sup>63</sup> [UGCOPAA](#), Section 319(e).

<sup>64</sup> [NPCS](#), Standard 3.13 (E).

<sup>65</sup> J. Cassidy, “Restoration of Rights for Adults Under Guardianship,” *Bifocal: Journal of the ABA Commission on Law and Aging* 36, no. 3 (2015), available at <https://www.americanbar.org/content/dam/aba/publications/bifocal/BIFOCALJanuary-February2015.pdf>.



already has been determined to be incapacitated can be daunting. The [Fourth National Guardianship Summit](#) recommended that the process to restore rights include:

- A clearly defined statute, regulation, court rule or policy which sets forth the procedures and the evidentiary burden and timelines;
- Representation of the adult whose rights were legally restricted by a qualified and compensated lawyer, paid a reasonable fee through the use of public funds if the adult is unable to pay, and appointed by the court should the adult not have a lawyer of their own choosing;
- A process triggered by informal or formal means;
- Notice to the adult whose rights have been legally restricted of the opportunity to restore their rights, annually and upon a change in the applicable law, regulation, rule or policy;
- A meaningful periodic review by a court or other appropriate entity, inclusive of the perspective of the adult whose rights were restricted, of whether it is necessary to continue to restrict the adult's rights;
- A guardian trained on the rights restoration process and the guardian's obligations in regards to the restoration of rights, the training to occur initially upon appointment and upon a change in the applicable law, regulation, rule or policy;
- Courts and lawyers trained on the rights restoration process; and
- A prohibition on guardian interference with the restoration of rights, and as appropriate guardian facilitation of the restoration of rights.<sup>66</sup>

## MANAGING THE GUARDIANSHIP CASELOAD

The expectation is that courts will strive, continuously and throughout the duration of every guardianship, to protect the well-being

and estates of all persons subject to guardianship under their jurisdiction and within their oversight. Consequently, the court manager's role in guardianship cases may extend beyond filing and tracking case information to that of developing or managing monitoring and oversight functions.

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

### Case Management Basics

Following the establishment of guardianships, management of the caseload becomes critical. While most other civil cases are closed at disposition, guardianships remain active on the court's dockets until the persons subject to guardianship pass away or have their rights restored and their guardianships terminated, or the cases are otherwise closed or are transferred to other jurisdictions. Yet many case management systems were not designed to account for cases remain open and active for lengthy periods and that require periodic submissions and reviews of reports and accountings post initial disposition. Consequently, case management systems may need modifications that will adequately allow staff to document and track the pending guardianship caseload.

At its core, a case management system must account for filing requirements and deadlines. While states vary in terms of reporting requirements, the [NPCS](#) identify some basic timeframes and expectations for the submission of reports,<sup>67</sup> which are summarized in the table below.

<sup>66</sup> [FNGS](#), Recommendation 1.3.

<sup>67</sup> [NPCS](#), Standard 3.3.16.

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

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

There are a number of data management issues that can be addressed to improve the efficiency of the guardianship process. First, reporting forms should be standardized and include deadlines or due dates. Second, electronic filing (“e-filing”) should be available for the submission of the most common reports. Third, the case management system should include automated “tickler” systems that will generate reminder and compliance notices for every guardian/conservator and for court staff. Fourth, the system should generate a listing of all mandatory filing deadlines in every case.

**Data Standards.** Courts cannot effectively manage their guardianship cases without collecting necessary data to track and monitor guardianships. The [Fourth National Guardianship Summit](#) adopted a recommendation that the state’s highest court should require ongoing collection of timely guardianship data through the following steps:

- Establish a multidisciplinary user group to review and adopt data standards reflective and inclusive of the community’s diversity, based upon the [National Open Court Data Standards \(NODS\)](#) and the [Conservatorship Accountability Project \(CAP\)](#) standards.
- Develop and implement technology that includes mechanisms to validate reports, flag potential problems, and track monitoring.
- Establish a multidisciplinary user group reflective and inclusive of the community’s diversity to develop monitoring reports of the status and well-being of adults, and to manage cases effectively, develop and evaluate policy, conduct research, and budget.<sup>68</sup>

Data standards ensure that different jurisdictions are using common language and measuring what the court intends to measure. Without data standards, terms as simple as “open” or “closed” for the status of cases may have different meanings. The [NODS](#), a joint effort of the COSCA and NCSC, are business and technical standards developed to support the creation, sharing, and integration of court data. The [NODS](#) provide standard definitions for individual courts to consider.<sup>69</sup>

<sup>68</sup> [FNCS](#), Recommendation 4.1.

<sup>69</sup> Further information regarding the standards can be obtained at <https://www.ncsc.org/services-and-experts/areas-of-expertise/court-statistics/national-open-court-data-standards-nods>.

In order to further support state courts responsible for monitoring guardianship and conservatorship cases, the *Guardianship/Conservatorship Monitoring – Recommended Data Elements*, published by the NCSC’s Center for Elders and the Courts (October 2020), provides more detailed guidance. This document highlights data elements particularly useful for these types of cases and provides a data governance framework.<sup>70</sup>

**Standardized Forms.** In states that have unified court systems, the majority of guardianship forms have been standardized and are used by all trial courts throughout the state.<sup>71</sup> While the use of standardized forms is commonplace, there are a number of states in which the format and design of reporting forms is a matter of local practice. In fact, some jurisdictions do not have a standard packet of forms, including accounting forms. In these instances, the lack of standardized forms creates unnecessary challenges in the proper review of reports and limits the opportunity for data management.

**E-Filing.** Ideally, forms should be available online and filed electronically. Florida’s 17th Judicial Circuit has been a leader in the use of guardianship reporting software.<sup>72</sup> Their list of “smartforms” that can be e-filed include the following:

- Application for appointment as guardian/guardian advocate
- Initial guardianship inventory
- Initial guardianship plan
- Annual guardianship plan
- Annual guardianship accounting
- Simplified annual accounting
- Disclosure statement

- Employee statement with a fiduciary obligation to a person subject to guardianship
- Mandatory guardianship investigation checklist – non-professional
- Mandatory guardianship investigation checklist – professional
- Professional guardianship checklist – additional appointments
- Petition for order authorizing payment of attorney's fees and expenses
- Petition for order authorizing payment of compensation and expenses of guardian

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

**“Tickler” Systems.** At a basic level, software can be implemented to create a “tickler” system that alerts the court and guardians to due dates of particular reports such as annual accountings, compliance notices, bond issues, and closure dates. Several courts have implemented electronic notification systems that are being expanded beyond reminders of court dates to include reminders of critical filing dates.

A “tickler” system can also play an important role in the use of graduated sanctions and in tracking specific cases over a long period of time. For example, the court may establish a protocol in which a guardian who has failed to file a report has 30 days to respond, at which time

<sup>70</sup> See [https://www.eldersandcourts.org/\\_\\_data/assets/pdf\\_file/0029/54758/GuardianshipConservatorship-Monitoring-Recommended-Data-Elements.pdf](https://www.eldersandcourts.org/__data/assets/pdf_file/0029/54758/GuardianshipConservatorship-Monitoring-Recommended-Data-Elements.pdf).

<sup>71</sup> For example, the New Jersey Judiciary has promulgated standardized forms for statewide use by guardians, attorneys, self-represented litigants, interested parties, and the court. The forms are available at <https://www.njcourts.gov/selfhelp/catalog.html?keywords=Adult%20Guardian%20set>. The Maryland Courts maintain a comprehensive index of statewide guardianship forms at <https://www.courts.state.md.us/family/guardianship-forms>.

<sup>72</sup> See Probate and Guardianship Smart Forms Home Page, at <http://www.17th.flcourts.org/index.php/judges/probate/probate-and-guardianship-smart-forms>.

## Technological Innovations

In 2011, Minnesota became the first state in the nation to implement a statewide, online program for conservators to submit their account information to the courts. The Conservator Account Monitoring Preparation and Electronic Reporting (CAMPER) Program provided a standardized method for all conservators to file their initial inventory and annual accounts in an electronic format.

Based on the success of CAMPER, Minnesota leveraged a grant from the State Justice Institute (SJI) to develop [MyMNConservator](#). The first-of-its-kind online reporting system provides text and video support for conservators, automatically performs calculations, and provides ready access to expense and receipt details. Most importantly, the system contains built-in “red flag” logic that automatically reviews filed accounts and alerts auditors to possible errors, inconsistencies, or transactions that require further review.

Most recently, in 2019, Minnesota launched [MyMNGuardian](#), which allows court-appointed guardians to submit reports and documents electronically.

a “show cause” hearing will be scheduled automatically. The lack of compliance may indicate that the adult subject to guardianship is deceased or has been relocated to another jurisdiction, or that the guardian is failing to fulfill the required duties. By identifying this subset of cases, the court can devote resources to follow up on a relatively smaller number of cases that need greater attention.

An example of an advanced system is the District of Columbia Superior Court’s Probate Division “tickler,” or alerts, system which is set within the case. When a task or filing is not completed/ filed timely, the tickler system will alert the court that the appointed guardian failed to comply with their duties. If after notification, the guardian has failed to respond, then the court may take action including setting a summary hearing. Tickler systems can include automated notices generated by the court’s electronic monitoring system. New Jersey’s statewide eCourts Guardianship application issues automated notices to guardians who fail timely to qualify or file mandatory periodic reports. An additional tracking system, triggered when a guardian fails to respond within thirty (30) days of the automated notice, may prompt possible court intervention.

### Technological Innovations

The development of a strong technological approach can strengthen the case management process, provide important information about individual cases, enhance the ability to monitor guardians, permit courts to assess their entire caseload, and help meet the court’s operational, planning, budgeting, and management needs. Recommendations from the [Fourth National Guardianship Summit](#) encourage courts to use available technology to develop and implement mechanisms to validate reports, flag potential problems, and track monitoring.<sup>73</sup>

State and local courts across the country seek to protect vulnerable adults through proactive management of guardianship cases. Too often, however, these efforts are complicated by unavailability of accurate case monitoring data, limited ability to track the work of guardians and lack of cross-court information sharing. While many jurisdictions have robust case management systems, others are not designed to capture and track guardianship case information. The lack of funding and cost has been a contributing factor to a lack of technology programs. 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 [NODS](#) and [CAP](#).

See [APPENDIX B – Technological Innovations of Note](#) for list of state-specific examples.

<sup>73</sup> FNCS, Recommendation 4.1



## Innovative Case Management Tools

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

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

**Need for Guardians.** Courts must find ways to address the ongoing need for guardians. There are a handful of states that do not have a public guardianship program. However, even in states with public guardians, many jurisdictions do not have public agencies at their disposal to act as a guardian for indigent adults. Court managers may be hard pressed to identify a group of qualified volunteers to serve in this capacity. Outreach to local social service agencies, community senior

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

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groups, and retired professionals should be considered where there is an unmet demand for guardians. [Area Agencies on Aging](#) may be a good starting point. A number of courts have been able to build a pro bono program in which attorneys rotate through assignments on a voluntary basis by teaming with local agencies and bar associations. Starting in 2021, New Jersey allows attorneys who provide twenty-five (25) hours of services in guardianship matters - including as court-appointed permanent guardians and temporary pendent lite guardians - to claim an exemption from mandatory pro bono requirements for the following year. An additional tool to consider is a “fiduciary list” for guardianship appointments. In the District of Columbia, the court maintains a “fiduciary panel” which includes eligible persons who have been approved to serve as guardians. This panel was first limited to members of the bar but has been expanded to include non-attorney guardians in specialized fields particularly useful when addressing the needs of those subject to guardianship, such as nursing, occupational therapy, and geriatric social work.

**Support for Guardians.** The job of guardian can be challenging even for the most qualified.

The personal, financial, and emotional demands sometimes lead to the resignation of a guardian or to abuse or malfeasance. A Guardianship Assistance Program (GAP) can provide the level of support necessary to care for the adult subject to guardianship and to help guardians complete the reporting requirements of the court. For example, [New York State’s Guardian Assistance Network \(GAN\)](#) assists individuals to take the

New York’s Guardian Assistance Network (GAN) is a spin-off of the Vera Institute of Justice, Inc., and was started in April 2005 to provide free help to family guardians who have been appointed in Kings County (Brooklyn) under Article 81 of the New York State Mental Hygiene Law. In 2006, the Unified Court System, through the Office of Court Administration, received funding from the State Justice Institute to expand the program to what it is today.



steps needed to become a guardian, set up a guardian bank account, write reports and accountings required by the court, find social services, apply for government benefits, make plans for the adult that allow as much independence as possible, and locate additional resources.

See [APPENDIX C - Support for Guardians](#) for list of state-specific initiatives and programs.

**Contested Cases.** Anecdotally, it has been suggested that contested guardianships are becoming more common and adversarial. A case may be contested because the respondent or another interested person objects to the guardianship, the proposed guardian(s), or the scope of the guardianship. Even after the initial appointment, cases may continue to be contentious, resulting in multiple hearings over a number of years and, often, causing unnecessarily excessive fees that diminish the assets of the persons subject to guardianship.

The [NPCS](#) encourage the use of mediation and other forms of alternative dispute resolution (ADR) to resolve disputes that arise in guardianship cases.<sup>74</sup> As in other types of cases, ADR is often less expensive than litigation and “can better accommodate all interests and maintain long-term familial relations than litigation.”<sup>75</sup> The cost of ADR can be paid out of the guardianship estate or split among the parties.

The rights of the adult at risk of or subject to guardianship should remain the focal point of any ADR process. Tied to this is ensuring their

participation in the process when appropriate and practicable. This means assessing and making necessary accommodations to facilitate their participation, ensuring their attorney and any chosen supporters are included in the process, and screening for and safeguarding against power imbalances and abuse.<sup>76</sup>

The Commentary to [NPCS](#), Standard 2.5.1, advises that courts “should ensure that ADR professionals and volunteers in court-connected alternative dispute resolution have received training on the nature of and key issues in probate matters. This training should include methods for effectively communicating with elders and persons with mental health and developmental disabilities.”<sup>77</sup> The Association for Conflict Resolution established the [Elder Care and Elder Family Decision-Making Training Objectives](#), which include specific objectives for adult guardianship mediation.<sup>78</sup> The [Center for Social Gerontology](#) developed a manual for establishing adult guardianship mediation programs that includes guidance for mediators handling these cases.<sup>79</sup> Some state guardianship mediation programs include:

- The District of Columbia operates an [Elder Mediation Program](#) available after a finding of incapacity (1) to make recommendations to the court about who would be the best person to serve as guardian or for the customized crafting of a guardian’s powers and (2) when an issue is brought to the attention of the court after the appointment of a permanent guardian

<sup>74</sup> [NPCS](#), Standard 2.5.

<sup>75</sup> *Id.* An evaluation of Alaska's mediation program for guardianships and conservatorships concluded that “mediation for adult guardianship cases with significant conflicts appeared to be successful in most instances.” T. W. Carns and S. McKelvie, “Alaska’s Guardianship Mediation Project Evaluation,” report, Alaska Judicial Council, March 2009, at <http://www.ajc.state.ak.us/publications/docs/research/AdultGuard03-09.pdf>.

<sup>76</sup> The Center for Social Gerontology, *Mediating Elder Rights*, available at <http://tcsg.org/wp/mediation-and-aging/>; ADA Mediation Guidelines, available at <https://www.mediate.com/pdf/ADA%20MEDIATION%20GUIDELINES.pdf>; M. C. Brown & D. J. Weider-Hatfield, “Serving an Aging Population Through Mediation,” *St. Louis Bar Journal*, Spring 2021, available at <https://usam.com/wp-content/uploads/2021/05/Serving-an-Aging-Population-Through-Mediation.pdf>; ABA Section on Dispute Resolution Task Force Elder Abuse and Neglect Screening Guidelines for Mediators, available at [https://www.americanbar.org/content/dam/aba/administrative/law\\_aging/2020-elder-abuse-screening-tool-abadr-section.pdf](https://www.americanbar.org/content/dam/aba/administrative/law_aging/2020-elder-abuse-screening-tool-abadr-section.pdf).

<sup>77</sup> See also, A. Crampton, “Elder Mediation in Theory and Practice: Study Results from a National Caregiver Mediation Demonstration Project,” *Journal of Gerontology Social Work* 56 (2013).

<sup>78</sup> ACR Section on Elder Decision-Making and Conflict Resolution Committee on Training Standards, *Elder Care and Elder Family Decision-Making Mediation: Training Objectives and Commentary* (2012).

<sup>79</sup> Association for Conflict Resolution established Elder Care and Elder Family Decision-Making Training Objectives, available at [http://acrelldersection.weebly.com/uploads/3/0/1/0/30102619/eldercareobjectives\\_7\\_30\\_2012.pdf](http://acrelldersection.weebly.com/uploads/3/0/1/0/30102619/eldercareobjectives_7_30_2012.pdf); The Center for Social Gerontology’s *Adult Guardianship Mediation Manual* is available for purchase at <http://tcsg.org/wp/>.

and the court would find it helpful for the interested persons, including the person subject to guardianship, to meet and attempt to resolve the issue outside of a court setting.<sup>80</sup>

- The Supreme Court of Nevada adopted a [court rule and manual](#) governing guardianship mediations.<sup>81</sup>
- North Carolina requires mediators who handle guardianship matters to receive at least 10 hours of training that cover these issues and more.<sup>82</sup> There, the Clerk may, on the Clerk's own initiative or in response to a motion requesting mediation filed by a party or other interested person, enter an order requiring mediation of some or all issues related to a proceeding seeking the appointment of a guardian for an adult.<sup>83</sup>
- In some New Jersey counties, the probate judge utilizes a staff mediator to assist the parties and resolve issues in contested guardianships. This has proven a particularly cost-effective alternative to protracted litigation and has assisted those who otherwise may have been unable to afford a mediator.

*Eldercaring Coordination* is a form of ADR that has been gaining traction as a tool in high-conflict cases. In Eldercaring Coordination, "an Eldercaring Coordinator assists elders, legally authorized decision-makers, and others who participate by court order or invitation, to resolve disputes with high conflict levels that impact the elder's autonomy and safety by: enabling more effective communication, negotiation and

problem-solving skills; offering education about elder care resources; facilitating the creation and implementation of an elder care plan; making recommendations for resolutions; and making decisions within the scope of a court order or with the parties' prior approval."<sup>84</sup>

Florida is the first state to authorize courts to appoint Eldercaring Coordination by statute,<sup>85</sup> but legislative authority may not be necessary for a court to refer appropriate cases to Eldercaring Coordination.<sup>86</sup> Pilot projects in Eldercaring Coordination have been held in Indiana, Idaho, Maryland, Minnesota, and Ohio. The [Fourth National Guardianship Summit](#) recommended eldercaring coordination as a means of addressing fiduciary conflicts.<sup>87</sup>

**Guardian and Attorney Fees.** Excessive fees are one of the most frequent concerns of critics of the guardianship process. In recent years, several court systems have been the target of negative publicity after the courts failed to monitor cases in which guardians and attorneys charged what were considered to be excessive fees. Other courts have found it a challenge to balance adequate compensation for the guardians and attorneys involved in a case with the protection of the person's estate from depletion through unreasonable fees.

Guardians and attorneys should receive reasonable compensation for the services performed.<sup>88</sup> As the commentary to [NPCS 3.1.4](#) notes, "Defining what is reasonable compensation can be a complex, thorny determination." The [UGCOPAA](#)

<sup>80</sup> Superior Court, District of Columbia, "The Elder Mediation Program Serving Older Adults and Persons with Disabilities." Available at <https://www.dccourts.gov/sites/default/files/matters-docs/Eldermediationbrochure.pdf>.

<sup>81</sup> See [https://nvcourts.gov/AOC/Committees\\_and\\_Commissions/Guardianship/Documents/mediation\\_manual\\_5\\_7\\_20/](https://nvcourts.gov/AOC/Committees_and_Commissions/Guardianship/Documents/mediation_manual_5_7_20/).

<sup>82</sup> Clerk Rule 9, Certification of Mediation Training Programs, available at <https://www.nccourts.gov/assets/inline-files/Rules-of-Mediation-for-Matters-Before-the-Clerk-of-Superior-Court-Codified-1-October-2021.pdf?RY6jdmcdwSgB2g5KjUdE87IFQn8gbcc3>.

<sup>83</sup> N.C. Gen Stat. 7A-38.3B.

<sup>84</sup> See

[https://www.afccnet.org/Portals/0/PublicDocuments/Guidelines/ACR\\_Guidelines\\_for\\_Eldercaring\\_Coordination\\_AFCC.pdf](https://www.afccnet.org/Portals/0/PublicDocuments/Guidelines/ACR_Guidelines_for_Eldercaring_Coordination_AFCC.pdf).

<sup>85</sup> Elder Justice Initiative on Eldercaring Coordination, Association for Conflict Resolution Task Force on Eldercaring Coordination (2017).

<sup>86</sup> Fla. Stat. Ann. § 44.407.

<sup>87</sup> [FNCS](#), Recommendation 5.2.

<sup>88</sup> See [NPCS 3.1.4](#) and [UGCOPAA](#) Sec. 120.

sets out a list of factors for the court to determine compensation – such as the necessity for and quality of the services, the guardian’s training and experience, the difficulty of the services performed, and the effect of the services on the individual.<sup>89</sup> When attorneys are serving as guardians, the fees should reflect the guardianship services provided (as opposed to the attorney’s rate for legal work).

On the other side of the compensation issue is the concern that unrealistically low fees paid to guardians are a barrier to recruitment and retention. In some jurisdictions, guardians are expected to carry a high number of pro bono cases in addition to fee-generating cases. In other jurisdictions, guardian compensation is limited by Medicaid regulations to around \$30 per case per month.

Court managers would be well advised to work with their judiciary to establish fee schedules or guidelines to enhance consistency in compensation and reduce the court’s burden in determining compensation on a case-by-case basis.<sup>90</sup> Generally, a schedule of fees and/or services tend to be based on (1) a percentage of the estate or (2) a range of acceptable fees based on years of professional experience and services performed. For example, in California, guardian, conservator or trustee fees may be requested based upon a guideline of 1% of the fair market value of assets at the end of the accounting period or 6% of income. Similarly, in New Jersey, a guardian of the estate is entitled to statutory commissions on 6% of the guardianship estate’s income and up to 5% of its corpus, with any additional fees subject to court approval.<sup>91</sup> In Florida’s 13th Judicial Circuit, a [Guardian Fee Workgroup](#) used a statewide

fee survey to establish pay scales, based on years of experience. The Workgroup also established a monthly cap for services such as paying bills, clerical work, and shopping.<sup>92</sup> Florida’s 17th Judicial Circuit has likewise established guidelines for fees and expenses in guardianship proceedings within its [Handbook for Guardians](#). As of 2019, the reasonable and customary fee for professional guardians was set at up to \$85, and up to \$25 for clerical and ministerial services provided by staff. Connecticut sets the fee for court-appointed conservators at \$52 per hour and for their employees at \$26, with case maximums depending on where the person resides.<sup>93</sup>

Arizona has established rules that prioritize the sustainability of the estate. Conservators are required to create and follow a budget at the time of filing an inventory and at each annual accounting. An amendment to the budget must be filed if projected expenditures exceed any specific category beyond a rate determined by the Arizona Supreme Court. The rules also require conservators to file budgets, accountings, and sustainability calculations on standardized forms.<sup>94</sup>

**Compliance and Sanctions.** Guardianships require the submission and review of annual reports, as well as prompt response to information learned from the reports. The [NPCS](#) direct courts to enforce its orders by taking appropriate actions, and to take action timely to ensure the safety and welfare of an adult subject to guardianship upon learning that the adult is missing, neglected, or abused, or where the adult’s estate is endangered.<sup>95</sup> The Standards offer the following examples of court sanctions. in response to issues that arise.

<sup>89</sup> [UGCOPAA](#) Sec 120. See C. Seal and S. Crona, “Standards for Guardian Fees,” *Utah Law Review* (2012): 1575-1610, for a thorough discussion of guardian fees.

<sup>90</sup> [NPCS](#) 3.1.4(B).

<sup>91</sup> See N.J.S.A. 3B:18-13 and -14.

<sup>92</sup> See NCSC’s [Center for Elders and the Courts](#) for additional details.

<sup>93</sup> Regulation 16, Court-Appointed Conservator Fee Schedule, available at <https://tinyurl.com/bdf7v6cz>.

<sup>94</sup> Ariz. Code of Judicial Administration §3-303: Statewide Fee Guidelines.

<sup>95</sup> [NPCS](#), Standard 3.3.19.



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

Additional options for responding to issues are included in the [Judicial Response Protocol for Guardianship and Conservatorship Abuses](#).<sup>96</sup>

### Differentiated Case Management

Differentiated case management (DCM) represents an effort to manage resources by assigning specific actions to a subset of cases. DCM is described as a technique that allows courts to tailor the case management process to the requirements of individual cases. Rather than using a first-in, first-out basis that treats all cases identically, DCM uses a triage approach to assign cases into different categories, and hence, case management tracks.

The Maricopa County Superior Court of Arizona was the first court to take a formal approach to DCM in guardianship cases. The instrument – the probate court post appointment [risk assessment tool](#) – was based on a list of “red flags”

purportedly indicative of a higher likelihood of abuse, neglect or exploitation.<sup>97</sup> The tool is designed to help the court gauge the level of priority the case might need for monitoring by identifying known risk factors that might exist in a given case.

Idaho also uses a differentiated case management tool to determine how closely to provide oversight. The court visitor or an Idaho Department of Health and Welfare evaluation committee completes an assessment to systematically identify those cases that potentially need more attention.<sup>98</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 indicates 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.

New Jersey’s level of monitoring of guardianship financial reports is differentiated based on the value of estate assets and the number of appointments held by guardians. The statewide [model order](#) requires judges to specify the form(s) of periodic reporting required, and sets forth presumptive guidelines based on estate value for the ordering of various forms of periodic financial reporting.<sup>99</sup> All periodic guardian financial reports are reviewed by Guardianship Monitoring Program (GMP) volunteers. Periodic guardian financial reports of estates valued above \$10,000, or of smaller estates where a volunteer has identified concerns, garner a second level of quality assurance review by dedicated judiciary staff that have finance

<sup>96</sup> Judicial Response Protocol for Guardianship and Conservatorship Abuses, complaint flow chart, National Center for State Courts, 2020, available at

<https://www.eldersandcourts.org/guardianship-conservatorship/resources-for-courts/responses-to-allegations-of-wrongdoing>.

<sup>97</sup> Probate Court Post Appointment Risk Assessment Tool, Risk Assessment Form, Instructions, and Order, available at <https://www.azcourts.gov/portals/85/pdf/2011/instrriskassesstooljun911.pdf>.

<sup>98</sup> Idaho Ct. Admin. Rule 54.4-.5. The tool is available at <https://isc.idaho.gov/files/dcm-tool-adult-all-districts-2020.xlsx>.

<sup>99</sup> See Judgment of Incapacity and Appointment of Guardian(s) of the Person and Estate, available at [https://www.njcourts.gov/forms/11802\\_grdnshp\\_model\\_order.pdf](https://www.njcourts.gov/forms/11802_grdnshp_model_order.pdf).

background and experience. Financial reports of those appointed as guardian in four or more cases statewide are subject to a specialized annual review to detect patterns or trends across cases that may indicate potential malfeasance or exploitation. Issues identified through GMP review are directed to the county's probate judge for appropriate follow up.

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

### **Integrative Planning Strategies and Performance Measures**

In a model guardianship program, data are used to make continual improvements. At the very minimum, courts should establish performance measures. While national measures have not yet been established, the revised [NPCS](#) are the definitive resource on which measures can be based. One example of performance measures comes from the District of Columbia Superior Court's Probate Division. A sample of items in their Management Action Plans (MAPs) follows (the goal for each item is 90 percent of cases):

- Issue letters of appointment within one day of processing order or qualifying event
- Review guardianship reports within 30 days of filing
- Audit accounts within 45 days of filing
- Issue Guardianship Assistance Program (GAP) report on adult subject to guardianship within 120 days of appointment of student/staff visitor
- Schedule hearings timely
  - o Adult guardianship general proceedings within 45 days of filing case
  - o Adult guardianship hearings on approval of accounts within 45 days of completion of the audit
  - o Summary hearings within 45 days of noncompliance

- Identify delinquent filings timely and take appropriate action within 10 calendar days of delinquency

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

Together, these case management strategies are ambitious, and may be unrealistic for many courts based on the tight timeframe to complete these tasks. The key to building a successful program lies in data management. All successful programs start with the documentation of cases. Once the number and types of cases are recorded, case management systems can be built to develop due date reminders, automated compliance notices, e-filing processes, automated check of fees, and ultimately, identification of cases that need additional follow-up. In guardianship cases, court managers have a unique opportunity to develop tools that will help courts protect our nation's most vulnerable persons.

### **MONITORING GUARDIANSHIPS**

The court's responsibilities do not end with the appointment of a guardian. Rather, courts have an ongoing responsibility to make certain that the adult subject to guardianship is receiving the services and care required, the estate is being managed appropriately, and the terms of the order remain consistent with the needs and condition of the adult subject to guardianship.<sup>100</sup> Active monitoring remains one of the biggest challenges for courts.

In 2020, NCSC conducted a [survey](#) of guardians, judges, court staff, attorneys, Adult Protective Services (APS) staff, and others focused on guardianship monitoring. The survey revealed that several advancements have been made in monitoring practices, while highlighting the need for increased staffing and improved data collection and data quality. Areas of needed

<sup>100</sup> [NPCS](#), Standard 3.3.17.

improvement included: routinely requiring future care plans, vigorously reviewing annual accounting and well-being reports, making regular visits to individuals subject to guardianship, and holding periodic hearings to assess the continuing need for the guardianship. Deficiencies noted included lack of or insufficient funding and routine tracking of key data elements.

Recommendations from the [Fourth National Guardianship Summit](#) suggest that courts should enhance the well-being and safety of all adults who have court-appointed guardians by implementing a post-appointment, person-centered monitoring system that includes the following elements:

- Uniform statewide forms available online and in hard copy, in multiple languages, with clear instructions and sample completed forms in plain language;
- Written care and financial management plans serving as baselines for subsequent reports, which can be filed electronically or in hard copy;
- In addition to regular review of guardian reports and accountings, periodic in-person visits, verification of financial reports, and status review of the appropriateness of the choice of guardian and implementation of less restrictive options to enhance autonomy; and
- An independent statewide entity to investigate the guardian's conduct in appropriate cases.<sup>101</sup>

## Guardianship Plan

A guardianship plan, often referred to as a forwarding-looking document, gives the court a picture of the individual's current needs and what measures the guardian will take to address those needs. According to state law, a guardian may file a guardianship care plan setting out

objectives for medical care and living arrangements, and a conservator may file a financial management plan or budget detailing how funds will be spent. The guardian's plan is distinct from a "care plan" often required in settings such as nursing homes or assisted living, but the two should be coordinated.

The objectives of the plan are to provide accountability and establish baselines to measure performance. The individual subject to guardianship should be included in the development of the plan, when feasible. Requirements and timing of the plans vary per court and state, from requiring filing upon initial petition, a number of days after appointment, or on a set schedule of annual filings. The [NPCS](#) confirms the need for the prompt filing of a guardianship plan.<sup>102</sup>

In Maine, one of the first states to adopt the [UGCOPAA](#), the petitioner for the appointment of a guardian must file with the petition a plan identifying details of the care of the adult, taking into consideration the adult's preferences, values and prior directions, if known, for approval by the court.<sup>103</sup> Each plan is to include identification of the:

- Living arrangement, services and supports the guardian expects to arrange, facilitate or continue for the adult;
- Adult's medical conditions, cognitive functioning, everyday functioning and levels of supervision needed;
- Social and educational activities the guardian expects to facilitate on behalf of the adult;
- Name(s) of any person with whom the adult has a relationship and any plan the guardian has for facilitating visits with the person;
- Anticipated nature and frequency of the guardian's visits and communication with the adult;
- Goals for the adult including any goal related to the restoration of the adult's rights and how the guardian anticipates achieving the goals;

<sup>101</sup> [FNCS](#), Recommendation 4.2.

<sup>102</sup> See [NPCS](#), Standard 3.3.16(A) (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).

<sup>103</sup> Me. Rev. Code § 18-C 5-316(1).



- Existence of a plan already in place and, if so, whether the guardian’s plan is consistent with the adult’s plan; and
- Statement or list of the amount the guardian proposes to charge for each service the guardian anticipates providing to the adult.

Any subsequent revision to the plan is to be filed with the court, with a copy provided to the adult subject to guardianship. Maine also requires a conservator’s plan for protecting, managing, expending, and distributing the assets of the estate.<sup>104</sup>

A number of other states also provide for plans. Nevada offers an initial [care plan template](#), and Massachusetts provides a [care plan/report](#) for filing 60 days after appointment and annually thereafter. In Maine and Indiana, the petitioner files the plan as part of the petition,<sup>105</sup> while in Oklahoma it must be filed within ten days of appointment.<sup>106</sup> Currently, fifteen states require guardians to file care plans, sometimes called implementation plans or initial reports.<sup>107</sup>

### Promising Monitoring Practices

The [NPCS](#) recommend that courts monitor the well-being of the adult subject to guardianship

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

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and the status of the estate on an ongoing basis, including but not limited to:

- ✓ Determining whether a less restrictive alternative may suffice
- ✓ Ensuring that plans, reports, inventories, and accountings are filed on time
- ✓ Reviewing promptly the contents of all plans, reports, inventories, and accountings
- ✓ Independently investigating the well-being of the respondent and the status of the estate, as needed
- ✓ Assuring the well-being of the adult and the proper management of the estate, improving the performance of the guardian/conservator, and enforcing the terms of the guardianship/conservatorship order.<sup>108</sup>

Because of the numerous requirements of guardianships, national practices seldom meet standards. A report based on a [survey](#) of judges and court administrators found a wide variation in guardianship monitoring practices.<sup>109</sup> The survey revealed significant differences in how expectations are communicated, what resources are made available to guardians and conservators, how late or missing reports are treated, how cases are reviewed, and what measures are taken in response to malfeasance. To prevent and detect negligence or malfeasance, courts need to routinely require future care plans and budgets, vigorously review annual accounting and well-being reports in the context of the plans and budgets, make regular visits to individuals subject to guardianship, and hold periodic hearings to assess the continuing need for the guardianship.

A number of state and local courts lead the way in innovative strategies to monitor care

<sup>104</sup> Me. Rev. Code § 18-5-419.

<sup>105</sup> Me. Rev. Code § 18-C § 5-316 (2019); In. Code § 29-3-5-1(a)(11) (2019).

<sup>106</sup> 30 Okla. Stat. Ann. § 30-3-120(B)(1).

<sup>107</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>108</sup> [NPCS](#), Standard 3.3.17.

<sup>109</sup> D. Robinson, S. Trescher, and M. Hamilton, *Adult Guardianship Monitoring: A National Survey of Court Practices* (Williamsburg, VA: National Center for State Courts, 2021), available at <https://ncsc.contentdm.oclc.org/digital/collection/famct/id/1690/rec/1>.

of individuals subject to guardianship and financial accountability of those subject to conservatorship. From a practical point of view, the financial aspects of a conservatorship offer opportunities for the court to audit accountings, whereas the physical and emotional well-being of an individual subject to guardianship is vital but difficult to monitor.

Several states have been successful in developing centralized auditing and review functions and distributing workload. Exemplary programs are characterized by visionary leadership, innovative financing, and collaboration between the court, agencies, and community partners. Furthermore, a number of the programs capitalize on technology applications to improve their auditing processes. They provide the framework that can be used by other courts to develop and expand similar programs.

See [APPENDIX D – Audit and Review Functions](#) for list of state-specific examples.

### Staffing

A [report](#) based on a survey of judges and court administrators found that, in many cases, guardianship monitoring is being neglected as a result of a shortage in staff and resources.<sup>110</sup> Among the findings from the survey is that “specialized court staff are essential to raise guardianship monitoring standards.” Yet staffing has been especially challenging as courts in a number of states have lost resources in response to budget cuts. This has resulted in greater reliance on volunteer monitoring programs, or in the worst-case scenario, the inability to actively monitor guardians according to standards.

### Specialized Court Staff

The promising monitoring practices summarized above demonstrate the importance of specialized court staff to investigate and respond to guardianship cases. However, most states and jurisdictions have not devoted sufficient resources to hire and train court staff to actively monitor guardianship cases.

#### SPECIALIZED COURT STAFF

Idaho instituted its monitoring program by creating the positions of Guardianship and Conservatorship Monitoring Coordinators (GCM Coordinators) in all seven of its judicial districts. The GCM Coordinators provide vital support for court staff, stakeholders, and the public. Their duties include providing subject matter expertise, reviewing annual reports filed by guardians and conservators, and answering inquiries about guardianships and conservatorships. Over the last five years, the GCM Coordinators have assisted with thousands of cases involving minors and adults, conducted hundreds of home visits, and answered countless questions from those who need procedural guidance when going through a guardianship or conservatorship case.

### Audit and Review

Florida 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. 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). 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. Once the investigation is completed, the Clerks’ SIA makes a finding of whether the allegation is substantiated but makes no recommendations. SIA will notify OPPG, and the court and court clerk make referrals as appropriate.

<sup>110</sup> See B. K. Uekert, *Adult Guardianship Court Data and Issues Results from an Online Survey* (Williamsburg, VA: National Center for State Courts, 2010), available at <https://nsc.contentdm.oclc.org/digital/collection/famct/id/291/>

In California, court investigators are responsible for investigating and monitoring adult guardianships, which are called conservatorships according to the state's statute. Once a guardian is appointed, the court investigator stays involved.<sup>111</sup> Six months after the appointment, the investigator reviews the case to make sure the guardian is fulfilling his or her responsibilities and that the adult's rights are being upheld. The investigator reviews the case again in another six months and at the end of each twelve-month period after that. During those reviews, the investigator conducts an unannounced home visit and interviews the adult and guardian to ensure the guardian is acting responsibly, the residence is clean and appropriate, hygiene is appropriate, and the adult subject to guardianship appears nourished and healthy.

Additionally, the investigator may contact relatives and agencies that provide services to the adult 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 the case, enter reminders/ticklers, and assign the case to an investigator on the day the guardianship is adopted. If the investigator thinks the guardian is acting in the best interests of the adult and the court agrees, the court can reduce the scope of future reports, but the investigator must make a personal visit and interview the adult 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 adult. 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 adult. This may start the legal process to sanction or remove the conservator, appoint a successor conservator, or

end the conservatorship.<sup>112</sup> The California courts assess the adult'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>113</sup>

See [APPENDIX E – Specialized Court Staff](#) for additional state-specific examples.

### *Volunteer Monitor and Visitor Programs*

Rather than regularly monitoring the condition, health, and well-being of the person subject to guardianship, most courts simply record compliance with annual accountings and health status reports.<sup>114</sup> The ABA, COSCA, and CCJ “all agree that whether the information is of a financial or personal nature, steps must be taken to verify the disclosures made by the guardian.”<sup>115</sup> It is apparent that staffing shortages create significant barriers to verifying guardian reports. As a result, volunteer monitor and visitor programs are becoming more commonplace.

Generally, these volunteer programs are court-sponsored efforts that will enhance the court's capacity to monitor the care, condition, and assets of adults, and to assist guardians in fulfilling their reporting responsibilities.<sup>116</sup> Some of the typical tasks carried out by volunteer monitors include:

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

These programs are managed directly by the court or through a partnership with a community

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

<sup>113</sup> Cal. Prob. Code § 1851.5 (2019).

<sup>114</sup> See Uekert, *supra* note 110, p. 26.

<sup>115</sup> W. A. Solomon-Cuthbert, “Guardianship Monitoring: Helping the Forgotten Speak,” final project, Court Executive Development Program, Institute for Court Management, Williamsburg, Virginia, p. 49.

<sup>116</sup> R. Van Duizend, *Probate Court Volunteer Visitors Program: An Implementation Handbook* (Williamsburg, VA: National Center for State Courts, 2005).



## Volunteer Monitor and Visitor Programs

In Utah, the Administrative Office of the Courts conducts a statewide Court Visitor Program. The Program assigns volunteer Court Visitors to investigate guardianship and conservatorship cases, under the direction of a judge. The trained volunteers perform one or more of four important roles: conducting interviews about a person's ability to attend the guardianship hearing; investigating the person's situation and well-being before or after the appointment of a guardian; reviewing records to find a guardian for whom the court has lost contact; and examining financial documents to ensure proper financial management. The judge may determine the need for a Court Visitor, or an interested person may request a Court Visitor in all eight court districts. Judges appoint Court Visitors in a court order, and they rely on the Visitor reports. Court Visitors are volunteers who commit to serve for at least one year, and who agree to contribute approximately eight to ten hours a month. The volunteers come from a variety of backgrounds; some are retired professionals. They receive specialized training and support from court staff. They must undergo a background check. The Program began with a grant from the State Justice Institute, and later received state funding.

organization, university, or the local bar. Program requirements vary from one program to another; programs that include home visits tend to have additional criteria and protocols.

See [APPENDIX F – Volunteer Monitor and Visitor Programs](#) for list of state-specific program examples.

There are two guides that courts may find useful when developing a volunteer monitoring program: The ABA Commission on Law and Aging's three-part *Court Volunteer Guardianship Monitoring Handbook* and the NCSC implementation guide for Georgia.<sup>117</sup>

Generally, the development of a volunteer monitoring or visitor program requires the court to define the duties of the volunteer monitors/visitors and the Program Director and establish operating procedures.<sup>118</sup> Effective management requires staff skilled in recruiting, conducting background checks, supervising, and retaining volunteers. A summary of suggested steps follows:

1. Identify and recruit potential volunteers.

The types of volunteers the court recruits depend on the nature of the tasks assigned. For example, monitors responsible for reviewing or auditing financial reports should demonstrate aptitude in accounting, finance, or business, while programs that require home visits would be wise to seek individuals with experience in social work, nursing, allied health professions, or social services. Colleges, universities, and law, social work or nursing schools may be able to provide interns who receive credit for the experience. Some courts have successfully tapped into the local senior community to serve as volunteers. Both students and retired professionals can be effective volunteer guardianship monitors, but there are different factors to take into account in planning. For example, students may only be available for a semester. Whereas retired volunteers can be long-term and can develop expertise, yet may need flexibility for travel. Social media, press releases, and court websites can be utilized to highlight the need for volunteer monitors.

2. Screen applicants.

The vulnerability of adults subject to guardianship, as well as the sensitive nature of the dynamics involved in each case, warrant the requirement that applicants undergo a criminal background check and are screened for

<sup>117</sup> "Probate Court Volunteer Visitors Program: An Implementation Handbook," May 2005, available at <http://cdm16501.contentdm.oclc.org/cdm/ref/collection/famct/id/302>.

<sup>118</sup> *Id.*



inclusion in any abuse registries. Any criminal or abuse history that would put the safety of adults or their personal or financial data at risk should result in screening out the applicant. Volunteers should be interviewed by trained judicial personnel to rule out potential conflicts and, if applicable, to familiarize them with the court's code of conduct. An initial appointment may be for a defined term, such as one year, with a probationary period of 60 to 90 days. The screening process may culminate in the volunteer's appointment and/or swearing into the program.

3. Train the volunteers.

Volunteers must receive training, which includes, at minimum, an overview of the jurisdiction's guardianship laws and procedures, the purposes of the program, and the duties associated with the assignment. Experiential-based training and a strong mentorship program are desirable. Training should be ongoing so that volunteers are apprised of any changes to the monitoring or visiting program, including any updates to the monitoring technology. Courts may collaborate in their training programs with staff from agencies on aging, adult protective services, and disability agencies.

4. Provide ongoing support.

Retention and the enthusiasm of volunteers are necessary to maintain a vigorous monitoring program. Volunteer awards, appreciation events, and open lines of communication can be vital for any program survival. The program director and program mentors should work closely with recently appointed volunteers and be available to offer advice and respond to procedural questions. Ongoing support should include quality control checks and supplemental training that enhances performance. A culture of recognition

and appreciation can demonstrate the value of volunteer work and encourage ongoing participation from the community.

5. Evaluate the program.

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

**NATIONAL PROBATE COURT STANDARD  
3.3.18 – COMPLAINT PROCESS**

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

**ESTABLISHING A COMPLAINT PROCESS**

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

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

To aid courts in knowing how best to respond to complaints, NCSC has developed a [Judicial Response Protocol](#) with a complaint flow chart.<sup>119</sup> Additionally, the grievance protocol set out in [UGCOPAA](#) allows anyone who reasonably believes that a guardian 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 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 months and the court has followed the procedures set out in the section.<sup>120</sup>

A court’s development of a standardized process provides court users with the information, procedure, and forms to help them bring potential problems to the court’s attention. Streamlining the process for court users and providing standardized procedures and forms strengthen the goals of statutes and court rules by increasing access for some of the most vulnerable court users. Washington and Idaho offer examples of how three steps can help guide the court in establishing a complaint process.

## Suggested Steps to Establish a Complaint Process

### STEP 1: Streamline Complaint Procedures

- Identify a Complaint Procedure - Include roles and responsibilities and timelines.
- Write Procedures for Non-Attorneys - Laypersons should be able to easily utilize the forms. Consider translating instructions into other languages.
- Create Appropriate Forms and Orders for use by parties and the court. Consider plan for accessibility to forms and procedures, such as websites and public libraries. Prepare staff or volunteers to assist parties in completing the forms if necessary.

### STEP 2: Establish Internal Protocols to Respond to Complaints

- Identify Roles and Responsibilities
- Set Time Goals
- Develop a Complaint Tracking System - Include a plan for sharing this information with judges and other stakeholders who may utilize the information to improve monitoring or training programs.

### STEP 3: Review and Evaluate

- Identify Timelines to Review Complaint Process
- Develop system to track complaints and results; review data regularly (monthly, bimonthly, annually, etc)
- Plan for discussion among judges, monitors, and others
- Make changes as appropriate

## Streamline Complaint Procedures

Access to a complaint process is improved when family members, persons subject to guardianship, attorneys and others are provided with information describing the process and the requirements, easily accessible forms, and clear expectations of the court’s possible response to a complaint. Jurisdictions may begin the streamlining process by reviewing their current guardian complaint procedures and rewording them so

<sup>119</sup> Judicial Response Protocol, *supra* note 96.

<sup>120</sup> [UGCOPAA](#) Sec 127. See Me. Rev. Stat. tit. 18-C §§ 316(2)-(3), 419 (2)-(3) (2019).

that most individuals may easily understand and follow them.

- The complaint process from the Washington State Guardianship Program Rules has been reformatted into a step-by-step procedure to file a complaint against a professional guardian. The process is available on their [website](#), including a [link](#) to the complaint form.<sup>121</sup> Complaints may also be filed against a lay or professional guardian directly with the superior court.
- The Idaho judiciary website's Guardianship/Conservatorship Program includes a prominent [link](#) for filing a complaint. The link includes a description of the complaint process and the [complaint form](#).<sup>122</sup>

### Establish Internal Protocols to Respond to Complaints

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

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

- Idaho mandates the clerk to send a receipt letter to the guardian and parties within three days. Ultimately, requests are addressed by a magistrate judge, who may review the court file and take action supported by the record or require a hearing compelling attendance

and response by the guardian or conservator. The magistrate judge may also decline to take further action. The clerk or other administrative staff will advise the complainant, guardian, and all interested parties of the action taken by the magistrate judge within 10 days of that action.

- All Superior Courts in Washington have standard complaint protocols per statute.<sup>123</sup> Effective January 1, 2022, the state adopted the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act. The Act establishes new provisions for complaints against guardians.<sup>124</sup> A separate [protocol](#) exists for grievances filed against certified professional guardians.

A number of other jurisdictions have similar review processes. In any court, there should be a plan to communicate clear information about the process and requirements to the parties. In 2019, the New Mexico legislature passed a law to create a [grievance process](#) to file a complaint about a court-appointed guardian or conservator. The court responded with a recorded [video](#) providing instructions on how to file a grievance.<sup>125</sup>

New Jersey provides a model pro se kit on its web site for filing a guardianship motion to ask the court to review a guardian's conduct. The motion may be filed by any party or party in interest to a guardianship and is heard within sixteen days. However, upon case management review, the motion can be brought before the probate judge on an emergent basis.<sup>126</sup>

Whether the complaint is handled based on the papers filed, by court hearing, or referral to a visitor or other professionals, communicating

<sup>121</sup> Washington Courts, Certified Professional Guardian Board, *available at* [http://www.courts.wa.gov/programs\\_orgs/forms/index.cfm?fa=forms.display&theFile=grievanceComplaintInstructions](http://www.courts.wa.gov/programs_orgs/forms/index.cfm?fa=forms.display&theFile=grievanceComplaintInstructions).

<sup>122</sup> State of Idaho Judicial Branch, Guardianships and Conservatorships, *available at* <https://isc.idaho.gov/guardianship/complaintprocess>.

<sup>123</sup> Wash. Rev. Code §1.88.120(2).

<sup>124</sup> Wash. Rev. Code §11.130.140.

<sup>125</sup> New Mexico Judiciary, "Grievance Against a Guardian or Conservator," *available at* <https://adultguardianship.nmcourts.gov/grievance/>.

<sup>126</sup> New Jersey Courts web site, at [https://www.njcourts.gov/forms/12032\\_motion\\_guardianship.pdf](https://www.njcourts.gov/forms/12032_motion_guardianship.pdf); New Jersey Court Rule 4:86-7.



the process enhances both public access and the court's ability to achieve its ultimate goal of providing protections for those subject to guardianship.

### **Review and Evaluate**

Identification of a mechanism to track complaints received, results and dispositions of the complaints may offer important information to the court. Across the country, very few jurisdictions track the number of complaints against guardians. One notable exception is Washington State, which includes information on its website about the filing of grievances regarding complaints against certified professional guardians, and which has tracked complaints filed since 2003, reporting that 80 grievances were filed in 2020. The [annual reports](#) note grievances that resulted in disciplinary proceedings against guardians and disciplinary proceedings against agencies.<sup>127</sup>

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

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

The court relies on persons affected and the public to bring potential complaints and grievances against guardians to its attention. The availability of an easy-to-use and defined process increases both public access and the court's ability to address its role in ensuring the safety and well-being of individuals under court supervision, and can help build trust and confidence in the court.

## **RESPONDING TO ALLEGATIONS OF ABUSE, NEGLECT AND EXPLOITATION**

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

An active guardianship monitoring program increases the likelihood of uncovering cases in which there is a concern that the guardian is having difficulty meeting the court's requirements or may be abusing or exploiting the individual placed under his or her care. Response protocols such as the NCSC's [Judicial Response Protocol for Guardianship and Conservatorship Abuses](#), that describe the steps taken when certain conditions are met, provide consistency and timely action. For example, if the first review of an accounting indicates errors or questionable transactions, subsequent reviews, third party verification, and a formal investigation might be appropriate. The protocol gives court staff and volunteers guidance on how to proceed and escalates the level of scrutiny. It also ensures that complaints or concerns will not be lost in the day-to-day business of the court.

<sup>127</sup> Washington Courts, Certified Professional Guardianship Board, *available at* <https://www.courts.wa.gov/guardianportal/index.cfm?fa=guardianportal.board&content=annualreports>.



In hopes of better predicting the potential for problem cases, a handful of courts have begun to experiment with risk assessment tools. Currently, the development of tools is formative at best. Empirically based studies that link the presence of specific factors to subsequent abuse, neglect, or exploitation in guardianship cases do not exist. Anecdotal lists of “red flags” have been

put forward to alert court staff of potential problems. The [NPCS](#) 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, adult protective services, or law enforcement; or initiate a higher level or frequency of monitoring.<sup>128</sup>

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

Active court monitoring of guardianships will result in the identification of cases in which there is a strong suspicion of abuse, neglect, or financial exploitation of a vulnerable adult. In many states, officers of the court are mandatory reporters under the state’s adult protective services law. Depending upon state law, mandatory reporters may also include guardians appointed by the court. Regardless of state law, courts will

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*When courts learn of a missing, neglected, or abused adult subject to guardianship or that assets are endangered, they should take timely action.*

*(National Probate Court Standard 3.3.19B)*

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<sup>128</sup> [NPCS](#), at 72. Adapted from M. J. Quinn & H. S. Krooks, “The Relationship Between the Guardian and the Court,” *Utah Law Review* (2013): 1611, 1664.

be well served by the creation of a protocol that delineates how and when cases of possible abuse are reported.

## TRAINING PROGRAMS FOR JUDICIAL OFFICERS AND STAFF

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

Judicial training on guardianship matters has not kept pace with the demands.<sup>129</sup> Based on a report by the U.S. Senate Special Committee on Aging, most probate judges receive very little education that would enable them to address complicated guardianship issues.<sup>130</sup> The lack of judicial training is associated with greater use of full guardianships, questionable monitoring practices, and difficulties identifying and replacing poor performing guardians.<sup>131</sup>

The **NPCS** emphasize the need for continuing professional education on probate issues.<sup>132</sup> However, while state and national training opportunities exist on the general topic of probate, specific educational sessions on managing adult guardianship caseloads are merged into more comprehensive educational programs. For example, the National College of Probate Judges offers two conferences each year. Adult guardianship issues are addressed, as are other topics that are

of interest to probate courts, such as estates and trusts.<sup>133</sup> The NCSC's Center for Elders and the Courts offers several **training options**, including the online courses *Justice Responses to Elder Abuse* and *Finding the Right Fit*, the **10 Tips Series**, an **Elder Abuse Curriculum** that can be adapted to state laws and practices, and a **webinar** for court staff on guardianship and other resources and protocols.<sup>134</sup> New Jersey provides guardianship training courses to judges at its annual Judicial College and judicial education conferences. Maryland's Judicial College offers "nuts and bolts" and advanced courses for guardianship judges on alternating years. Maryland WINGS members and the WINGS Coordinator also provide additional training, technical assistance, and networking opportunities to guardianship judges and court staff.

Local and state educational programming for probate court employees should prepare staff for all elements of their work. Nebraska has a full day of mandatory education for court staff working with guardianships and conservatorships, which provides an overview of the staff responsibilities and use of the case management tools available for these critical and challenging cases. Additional specialized education is available regarding monitoring of guardian annual reports and other aspects of the case process. New Jersey developed core curriculum training for court staff that addresses, in part, the guardianship process and post-judgment monitoring of guardianships. It also offers specialized substantive and technical training for court staff who are involved in the Guardianship Monitoring Program (GMP). Some of the pressing training needs for staff who work on adult guardianship matters include the following:

<sup>129</sup> Uekert, *supra* note 110.

<sup>130</sup> United States Senate Special Committee on Aging, *Guardianship for the Elderly: Protecting Rights and Welfare of Seniors with Reduced Capacity* (Washington, DC: United States Senate, 2007).

<sup>131</sup> Uekert, *supra* note 110.

<sup>132</sup> **NPCS**, Standard 2.3.4.

<sup>133</sup> The National College of Probate Judges welcomes court managers as well as judges and judicial officials.

<sup>134</sup> Center for Elders and the Courts, *Guardianship Webinar*, available at <https://www.eldersandcourts.org/training/guardianship-webinar>.

- Statutory changes and their effect on current procedures
- The use and development of standardized forms
- The use of experts and documentation in capacity hearings, and the identification of less restrictive options including supported decision-making
- The goals, strategies and timing of status conferences and show cause hearings
- Staff guidance on reviewing executed orders for special circumstances that may require additional follow-up, such as interim reports
- The development and refinement of automated systems that generate reminders of important due dates (“tickler systems”)
- Progress in the application of the [National Open Court Data Standards](#) (NODS) and the [Conservatorship Accountability Project](#) (CAP) standards.
- Topics of special interest, such as common aspects of aging, the causes and effects of dementia, the Americans with Disabilities Act, and effective communication strategies<sup>135</sup>

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

In addition to judicial programming, a number of states have developed adult guardianship bench book sections, judicial checklists, and bench cards. For example, Idaho has a set of laminated bench cards including one on [guardianship of adults](#) and one on [conservatorship](#). Utah has an “adult guardianship checklist” for a determination of capacity and appointment of a guardian. New Jersey has bench cards for uncontested guardianship bench decisions and for background screening of proposed guardians. Minnesota developed judicial bench cards for both guardians and conservators. Each card includes questions for the judicial officer to consider before appointment, when to grant an emergency, requirements to cover if appointed, items to consider during hearings and termination/successor.

## TRAINING PROGRAMS FOR GUARDIANS

At the most basic level, guardians – whether professional guardians, volunteers, or family members – need training to understand their role and responsibilities and where to seek help when needed. Courts are increasingly developing a combination of training programs and delivery systems rather than relying on training conducted in a traditional classroom setting. The training

### TRAINING FOR GUARDIANS

Maryland requires prospective guardians to watch a brief orientation video prior to appointment. The video explains the role and responsibilities of being a guardian and the role of the court as the ultimate guardian, and frames the guardian’s relationship with the court as a partnership. Court rules require guardians of the person to complete a post-appointment training within 120 days of appointment. Guardians of the property must complete a separate training within 60 days of appointment. The trainings cover the guardian's responsibilities in greater detail, available community resources, and include short videos on topics including decision-making standards and identifying and responding to abuse, neglect, and exploitation. There are online versions of the training programs, but some courts direct guardians to attend in-person programs. The orientation and training videos and resources including forms, handbooks, and checklists are available on the court’s [website](#).

<sup>135</sup> Many of these issues are addressed in “Justice Responses to Elder Abuse,” a comprehensive and free online course from the National Center for State Courts. Visit [www.eldersandcourts.org](http://www.eldersandcourts.org) for additional information.

needs of a guardian may change during the course of the guardianship, particularly if the need for assistance of the person subject to guardianship increases or changes from a home setting to an assisted living or institutional setting. Moreover, guardianships often last for decades, and require the guardian to make decisions such as where the person subject to guardianship should reside, how to handle changes in residence, whether to consent to medical procedures, hiring care aides, paying taxes, arranging investments, and other financial matters.

The development and implementation of programs for the orientation, education and assistance of guardians is a key recommendation in the [NPCS](#).<sup>136</sup> The education and training goal is for the court or responsible entity to “ensure that guardians ... receive sufficient ongoing, multi-faceted education to achieve the highest quality of guardianship possible.”<sup>137</sup>

Lack of guardianship training was cited as a major issue that poses particular challenges for the courts in the Uekert and Dibble report (2008).<sup>138</sup> In [Adult Guardianship Court Data and Issues: Results from an Online Survey](#), the author noted that the “lack of guardianship training is especially apparent in cases where family or friends are assigned as guardians with little guidance on the boundaries of their authority or knowledge of appropriate actions.”<sup>139</sup> With the use of various forms of technology increasing in many courts, it should be easier to offer more training programs through the use of virtual platforms.

### Basic Training Elements

Like training for judges, judicial officers and staff, training for guardians needs to include training on the duties and responsibilities of guardians, the applicable law of that jurisdiction

concerning guardianships, and the proper use of forms. In addition, guardianship training should include basic information on:

- What reports must be filed with the court and when
- How to report suspected neglect, abuse, or financial exploitation
- How to seek assistance from the court
- What court proceedings may be held after appointment
- The relationship between the person and the guardian – how the guardian will maximize the person’s participation in decision-making
- The relationship between guardians and other decision makers
- What steps to take to ensure that the person subject to guardianship receives proper medical care and treatment and use of applicable standards for decision making
- How to manage funds, determine that the person subject to conservatorship is receiving all benefits for which he or she is eligible, and comply with the court’s record keeping requirements for all financial transactions
- What to do when you no longer wish or are able to serve as a guardian
- How to end a guardianship – use of less restrictive options including supported decision-making in restoration of rights; use of progressive plans to restore rights over time
- What to do in the case of the death of a person subject to guardianship

The challenge for the court lies in creating a training program that provides the basic information that is needed to properly act as a guardian without overwhelming or discouraging potential or new guardians. Consequently, in establishing a training program, it may be helpful to identify those issues that are fundamental and needed at the outset of guardianship and those

<sup>136</sup> [NPCS](#), Standard 3.3.14.

<sup>137</sup> “Third National Guardianship Summit Standards and Recommendations,” Recommendation 2.1, *Utah Law Review* (2012): 1193, available at <https://tinyurl.com/55sbdjs8>.

<sup>138</sup> B. K. Uekert and T. Dibble, “Guardianship of the Elderly: Past Performance and Future Promises,” *Court Manager* 23, no.4 (2008): 11.

<sup>139</sup> Uekert, *supra* note 110, p. 7.



issues for which “just in time” training can be offered when the issue is salient. Examples may include how to arrange for a person subject to guardianship to move or to transfer out of a hospital, how to prepare an advance directive, or what to do when the person subject to guardianship dies.

### Establishing a Training Program

Training programs may include a mix of methods and settings, ranging from traditional in-classroom training to orientation seminars or tutorials, available either in person or on-line. Training materials may also be made available on the court’s website, in the form of interactive forms, answers to frequently asked questions, online tutorials, brochures, videos, webinars, and links to additional resources. While it is helpful to make training materials available to guardians to use voluntarily, states increasingly are moving toward a requirement for basic training (for example, through a required online video tutorial) at or near the time of appointment, at least for non-certified guardians. The basic course could be enhanced by a menu of additional specific courses at later points, which could be either mandated or taken voluntarily.

The use of a combination of materials and delivery styles is recommended by the CCJ/COSCA Joint Committee on Elders and the Courts, together with NCSC’s Center for Elders and the Courts (Recommendation 2): “Each state court system should develop written and online materials to inform non-professional guardians about their responsibilities and how to carry out those responsibilities effectively.”<sup>140</sup> The development of alternative training approaches takes into account the needs, preferences and experience level of guardians. Lastly, creating a mentoring

program in which experienced guardians mentor those less experienced has also been suggested as a guardian training tool.<sup>141</sup>

### Examples of Training Programs

There are a variety of training programs — some are required for guardians while others are optional. Some training is targeted prior to appointment, while other programs follow the appointment and are very specific. For example, the Arizona court system, through an [administrative order](#),<sup>142</sup> requires non-licensed fiduciaries to complete training prescribed by the Supreme Court. Training for non-licensed fiduciaries includes a general overview for those appointed guardians, conservators, and personal representatives, in addition to individual training sessions for each separate appointment. These programs are delivered online and in alternate formats through the Superior Court in each county.<sup>143</sup> Maryland also has required guardian training, implemented statewide requirements through court rules.<sup>144</sup>

The ABA Commission on Law and Aging produced a [list of state adult guardianship education and training videos](#). Many describe or demonstrate duties of guardians, and some include information on the process for guardianship appointment.<sup>145</sup> With regard to guardian training prior to appointment, some states require completion of an online course; others have training available, but it is not required; and some states have county offices that provide optional guardianship training. Post-appointment training also varies considerably, with some local jurisdictions offering continuing education programs and guardianship workshops or conferences.

<sup>140</sup> *Id.*, p. 4.

<sup>141</sup> Third National Guardianship Summit, *supra* note 137, Standard 4.14 and Standard 3.3.14, *available at* <https://tinyurl.com/55sbdjs8>; NCPS, Standard 3.3.14, Orientation, Education, and Assistance, note 178.

<sup>142</sup> Supreme Court of Arizona, Administrative Order No. 2012-62, *at* <http://www.azcourts.gov/Portals/22/admorder/orders12/2012-62.pdf>.

<sup>143</sup> Arizona Judicial Branch, Probate, *at* <http://www.azcourts.gov/probate/Training.aspx>

<sup>144</sup> Md. Rules 10-108, 10-205.1, 10-304.1, and the *Guidelines for Court-Appointed Guardians of the Person and Guidelines for Court-Appointed Guardians of the Property* (Appendices to Title 10 of the Maryland Rules).

<sup>145</sup> *Available at*

[https://www.americanbar.org/content/dam/aba/administrative/law\\_aging/2019-gshp-adult-gship-hdbks-state.pdf](https://www.americanbar.org/content/dam/aba/administrative/law_aging/2019-gshp-adult-gship-hdbks-state.pdf).

See [APPENDIX G – Training Programs of Note](#) for additional state-specific examples.

## 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, these procedures uniformly prove an additional means to identify qualified guardians and to investigate and sanction errant guardians.

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 a guardian fails to follow state law and standards of practice.<sup>146</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.

Ten additional states look to the CGC to provide disciplinary oversight to professional guardians.<sup>147</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>148</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*. 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>149</sup>

A recommendation from the [Fourth National Guardianship Summit](#) suggests that states should regulate court-appointed professional guardians through licensure, certification, or both with sufficient funding and standards for education and training, as well as disciplinary measures for guardians.<sup>150</sup>

## Additional Resources for Guardians

The NCSC has developed two online courses—*Justice Responses to Elder Abuse* and *Finding the Right Fit*—for the courts and the general public to learn about alternatives to guardianship as well as to address and reduce elder abuse.<sup>151</sup> With a mix of expert presentations, video clips, interactive resources and supplemental resources, the courses, which are offered at no charge, provide information on the physical, cognitive and emotional changes of an older person which may increase the risk of elder abuse, as well as barriers to effective remedies for victims of elder abuse.

The [Consumer Financial Protection Bureau](#) (CFPB) [Office for Older Americans](#) is the only

<sup>146</sup> Ariz. Code of J. Admin. § 7-202, available at <https://tinyurl.com/y7d2hwnc> (accessed 1/23/2021); Fla. Stat. § 744.2003 (2019); Tex. Estate Code § 1104.251-.306 (2019); Wash. Sup. Court Gen. Rule 23.

<sup>147</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>148</sup> Cal. Bus. & Prof. Code §§ 6501(f); 6510-6511.

<sup>149</sup> Center for Guardianship Certification, Rules and Regulations Regarding Certification and Recertification of National Certified Guardians (NCG) (Aug. 6, 2020), available at <https://guardianshipcert.org/wp-content/uploads/2020/08/NCG-Rules-Regulations.pdf>.

<sup>150</sup> FNGS, Recommendation 5.1.

<sup>151</sup> For more information, visit the “Training” tab at [www.eldersandcourts.org](http://www.eldersandcourts.org).

federal office dedicated to the financial well-being of adults age 62 and older. Along with the [ABA Commission on Law and Aging](#), CFPB developed a plain language guide for court appointed guardians of property and conservators. The guide outlines the financial responsibilities of the guardian, how to avoid problems with family or friends, and how to identify the common signs of financial exploitation, and provides resources for further information.<sup>152</sup>

## TRAINING PROGRAMS FOR ATTORNEYS

Training programs for attorneys are a crucial component of strengthening the bench-bar partnership in guardianship matters. Attorneys may receive *pro bono* or paid appointments in a variety of roles, including court-appointed attorney for the respondent, temporary *pendente lite* guardian, permanent guardian, *guardian ad litem*, and special medical guardian. The work of these roles can be complex, time-consuming, and fraught with legal and non-legal challenges. Courts have an interest in ensuring these attorneys are aware of their roles and duties. Training is critical to prepare attorneys to receive such appointments, and to ensure protection and provision of fair and equal treatment for the vulnerable adults they serve. Training may be provided through continuing legal education sponsored by the court or bar associations; bench-bar conferences; publication of manuals and other training materials; and promulgation of standardized forms.

For example, to assist court-appointed attorneys in fulfilling their duties, in 2021 New Jersey promulgated court rule amendments; revised [Guidelines for Court-Appointed Attorneys](#)

[in Guardianship Matters](#); and a form for the [Report of Court-Appointed Counsel for the Alleged Incapacitated Person](#).<sup>153</sup> New Jersey's probate judges and the probate sections of county bar associations periodically provide bench-bar conferences that address guardianship topics. The New Jersey State Bar Association's Institute for Continuing Legal Education also hosts periodic guardianship seminars, with panelists from the bench, bar, and Administrative Office of the Courts. The seminars provide a comprehensive overview of guardianship law and procedure; highlight recent developments and emerging trends in guardianship; and provide information on the state Judiciary's guardianship initiatives.<sup>154</sup> In addition, Maryland adopted training and eligibility requirements for these attorneys by [court rule](#).<sup>155</sup> Further, the Legal Aid Center of Southern Nevada Guardianship Advocacy Program developed a comprehensive [handbook](#) for attorneys representing adults who are risk of or subject to guardianship.<sup>156</sup>

## PLANNING FOR THE FUTURE

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

<sup>152</sup> N. Karp, "Managing Someone Else's Money," Consumer Financial Protection Bureau blog, October 29, 2013, at <http://www.consumerfinance.gov/blog/managing-someone-elses-money/>.

<sup>153</sup> See N.J. Ct. R. 4:86-4. The guidelines are available at [https://www.njcourts.gov/forms/12756\\_gdnshp\\_crt-app\\_atty.pdf?c=9gN](https://www.njcourts.gov/forms/12756_gdnshp_crt-app_atty.pdf?c=9gN) and report available at [https://www.njcourts.gov/forms/12789\\_gmp\\_rpt\\_counsel\\_aip.docx](https://www.njcourts.gov/forms/12789_gmp_rpt_counsel_aip.docx).

<sup>154</sup> See, e.g., "Guardianships During and After the COVID-19 Pandemic," New Jersey Institute for Continuing Legal Education, available at

<https://tcms.njsba.com/personifyebusiness/njicle/CLEPrograms/NJICLEEventsCalendar/MeetingDetails.aspx?productId=66059612>.

<sup>155</sup> Md. Rule 10-106; *Maryland Guidelines for Attorneys Representing Minors and Alleged Disabled Persons in Guardianship Proceedings*.

<sup>156</sup> See [https://www.lacsn.org/images/stories/Attorney\\_Training\\_Manual\\_Part1.pdf](https://www.lacsn.org/images/stories/Attorney_Training_Manual_Part1.pdf).



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

A key recommendation from the 2011 [Third National Guardianship Summit](#) was a call for the creation of state Working Interdisciplinary Networks of Guardianship Stakeholders (WINGS). WINGS are multidisciplinary court-stakeholder partnerships that can drive changes affecting the way courts and guardians practice. Often a WINGS is led by the state’s highest court and includes a wide range of stakeholders such as adult protective services, the state unit on aging, the protection and advocacy agency that advocates for disability rights, the bar association, the long-term care ombudsman, legal services, public and private guardianship practitioners and more.

In 2013 and 2015, SJI provided small grants to launch WINGS in nine states. In 2016, the [Administration for Community Living \(ACL\)](#) funded the ABA Commission on Law and Aging

to establish and enhance WINGS in additional states. Other states have created WINGS or similar collaborative guardianship reform groups through legislation or through court or agency initiatives. Several states have active court task forces on elder law and guardianship issues. As of this writing, over 20 states have some form of WINGS or similar stakeholder entities.<sup>157</sup>

In 2019, NCSC produced an [assessment report](#) of the state WINGS under the ABA Commission project, finding that “WINGS are a highly effective means for bringing the disparate guardianship stakeholders together in a state to address key issues regarding guardianship and generate significant legislative and programmatic change” but require additional tools, technical assistance, and funding. Also in 2019, the ABA Commission on Law and Aging published a [State WINGS Replication Guide](#).

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

This Guide challenges court managers to make efforts that will lead to improvements in the way courts handle cases involving our most vulnerable adults. NACM underscores the need for prioritization and funding of the management of guardianship cases, while offering practices and

<sup>157</sup> See [https://www.americanbar.org/groups/law\\_aging/resources/wings-court-stakeholder-partnerships0/state-wings/](https://www.americanbar.org/groups/law_aging/resources/wings-court-stakeholder-partnerships0/state-wings/).



models that can be implemented – some at little or no cost – to bring court practices in line with recommendations of the [Fourth National Guardianship Summit](#) and the [NPCS](#). For example:

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

- Courts may create training programs and resources for judges, court staff, court investigators, attorneys, guardians, and conservators or make use of existing training resources.

While increased utilization of alternatives such as supported decision-making and protective arrangements may aid in offsetting guardianship caseloads, data suggests that adult guardianships will continue to be an area of growth in the future with courts nationwide. Statistics nationally have revealed the increase in cases and substantiate the silver tsunami that was predicted. NACM encourages court managers to address the problems and challenges before the caseload reaches crisis levels, and hopes this Guide assists you in your efforts to plan, develop, and sustain a comprehensive court guardianship program.

## **APPENDIX A – Links to Website information and forms**

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

### **Arizona Judicial Branch**

- [Fiduciary Licensing Program](#)
- [Self Service Center: Guardianship/Conservatorship Appointment for Adult](#)
- [Training Videos](#)

### **California Judicial Branch – Guardianship, Forms**

### **Colorado Judicial Branch – Forms**

### **District of Columbia Courts – Probate Self-Help Center**

### **Florida 17<sup>th</sup> Judicial Circuit – Smart Forms**

### **Georgia**

- [Adult Guardianship Inventory and Asset Management Plan](#)
- [Guardianship and Conservatorship Video \(Adults English\)](#)
- [Guardianship and Conservatorship Video \(Adults Spanish\)](#)
- [Handbook for Guardians and Conservators](#)
- [Petition for the Appointment of a Guardian and or Conservator for a Proposed Ward](#)
- [Reports of Adult Guardians and Conservators \(Probate Court of Bibb County, GA\)](#)

### **Hawaii – Pro-Se Filing Packet**

### **Idaho Judicial Branch – Guardianship/Conservatorship – Filing a Complaint**

### **Maryland Courts**

- [Maryland Guardianship](#)
- [Forms](#)
- [Guardian Video Series](#)

### **Massachusetts Judicial Branch**

- [Forms](#)
- [Guardianship Care Plan](#)

### **Michigan Courts – Forms**

### **Minnesota Judicial Branch –**

- [Guardian and Conservator Registry](#)
- [Conservator and Guardianship educational video](#)
- [Forms](#)
- [MyMNGuardian \(MMG\)](#)
- [MyMNConservator \(MMC\)](#)

### **Missouri – Mo-WINGS**

### **Nebraska – Office of Public Guardian**

## **Nevada**

- [Guardianship Compliance Office](#)
- [Adult Guardianship Mediation Rule and Manual](#)

## **New Hampshire – Guardianship (e-Filing)**

### **New Jersey Judiciary**

- [Guardian Support/Guardianship Monitoring Program](#)
- [Guardianship Legal Practice Forms and Kits for Self-Represented Litigants](#)

## **New Mexico – Adult Guardian and Conservator Orientation Program (VIDEOS)**

## **New York Courts – Online Training Video**

## **North Dakota Courts – Guardianship Monitoring Program**

### **Ohio Judicial System**

- [Volunteer Guardian Program](#)
- [Establishing a Court Visitor Program to Monitor Guardianships Toolkit](#)

### **Oregon Judicial Branch**

- [Self-Help \(Guardianship\)](#)
- [Oregon WINGS](#)

## **Pennsylvania Courts – Guardianship Tracking System**

## **South Carolina – Frequently Asked Questions from a Caregiver or Potential Guardian**

## **Tarrant County, TX – Volunteer Court Visitor Program**

### **Texas Judicial Branch**

- [Guardianship Abuse, Fraud and Exploitation Deterrence Program \(GAFEDP\)](#)
- [Texas Guardianship Training](#)

### **Utah Courts**

- [Court Visitor Program \(CVP\)](#)
- [Utah WINGS](#)

### **Virginia Judicial System**

- [Appointment of Guardians and Conservators for Incapacitated Adults](#)
- [Frequently Asked Questions About Guardianship and Conservatorship](#)
- [You've Been Appointed: Information for Virginia Guardians and Conservators](#)
- [Options in Virginia to Help Another Person Make Decisions: Choices Less Restrictive than Guardianship and Conservatorship](#)

### **Washington State**

- [Guide to Filing a Complaint and Online Complaint Form](#)
- [Guardianship Forms](#)
- [Guardian Training Video](#)

## APPENDIX B – Technological Innovations of Note

- The Clerk and Comptroller’s office in Palm Beach County, **Florida** began rolling out Guardianship Inventory Reports and 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 subject to guardianship, better protects adults subject to guardianship 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 subject to guardianship (DOB, gender, marital status, reason of incapacity, residency setting, address)
- the guardian (relationship to the person subject to 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 subject to 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.<sup>158</sup>

- The **Indiana** MyINA (My Indiana Accounting) program provides reminders of due 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>159</sup>
- In 2011, the **Minnesota** Judicial Branch implemented a statewide web-based program for conservators to enter their account information online to the courts – the **Conservator Account Monitoring Preparation and Electronic Reporting** (CAMPER) Program. The system was used in all 87 counties in 10 judicial districts and was the first of its kind in the nation. CAMPER provided a standardized method for all conservators to file their initial inventory and annual accounts in an electronic format.

The CAMPER experience in Minnesota provided for an opportunity to take the process one step further, and with the assistance of a State Justice Institute (SJI) grant, Minnesota developed **MyMNConservator** (MMC). MMC is an online conservator account reporting application that allows conservators to file their inventory and annual accountings electronically. MMC provides:

<sup>158</sup> Palm Beach County Clerk of Court, GIRAFF User Guide, <https://www.mypalmbeachclerk.com/home/showdocument?id=2989>.

<sup>159</sup> MyINA Guardian User Guide, <https://myina.courts.in.gov/>.



- Help text and help video within the application assist the conservator in completing their inventory and accounting
- System generated reminders are sent to the conservator via email and on a notification tab when their next accounting is due
- Application provides template and instruction to import transactions for conservators that manage assets in financial software Integration with case management system

The [Conservator Account Auditing Program \(CAAP\)](#) and the [Conservator Account Review Program \(CARP\)](#) use MMC to conduct their work. The conservators and account users log into the system to report all annual account transactions. CAAP auditors and CARP reviewers use MMC to review the entered information, pull accounts for audit or review, and submit audit/review reports. Accounts are directed to the audit/review queue via programming within the MMC accounting program. CAAP auditors also review inventories after submission to ensure balances are correct. Reports are written to recommend balance adjustments and if balances are correct.

In November 2019, the Minnesota Judicial Branch implemented a statewide web-based program for Guardians. With the assistance of a State Justice Institute (SJI) grant, Minnesota developed [MyMNGuardian \(MMG\)](#), an application developed by the Minnesota Judicial Branch that allows court-appointed guardians to submit Personal Well-Being Reports (PWBR) and the Affidavit of Service electronically. MMG provides:

- Help text within the application to assist the Guardian completing their Personal Well-Being report.
- System generated reminders are sent to the guardian via email, text and on a notification tab when their next report is due
- Smart phone capability, easy to use and interview style questionnaire.
- Automates the annual review process for the guardian and monitoring process for courts.
- Integration with case management system
- PWBR fields systematically populated for the Guardian (Reporting period, Guardian's name, address, and phone number)
- System will not allow submission of PWBR unless all questions answered with an appropriate response and Guardian's signature

District Courts are responsible for the review and acceptance of personal well-being reports. Prior to acceptance, staff review for answers that indicate an area of concern:

- If the ward's living arrangement is indicated as "homeless"
- If the guardian describes the ward's current mental, physical, and/or social condition in such a way that indicates the ward may be a danger to himself or others
- If the guardian indicates there has been no contact with the ward over the last year (unless there is a legitimate reason for it)
- If the guardian has placed any additional restrictions on the ward's right to communicate with or visit anyone within the last year

- As part of its statewide Guardianship Monitoring Program (GMP), **New Jersey** implemented its first web-based computer application, the Guardianship Monitoring System (GMS), in 2013. GMS consisted of a standardized statewide database and report review tool. GMP volunteers working in each county Surrogate’s Office used GMS to enter guardianship case data in the database and to review inventories and periodic guardian reports.

In 2017, technological improvements led to the implementation of eCourts Guardianship for post-judgment case management and monitoring. It added electronic case jackets and other enhancements to better track guardianships, improve data collection and analysis, confirm the filing of mandated documents, issue automated notices to noncompliant guardians, review guardian financial reports, and follow up on issues of concern. Guardianship documents – many of which are promulgated as standardized statewide forms available in fillable PDF format at [www.njcourts.gov](http://www.njcourts.gov) – continue to be filed on paper with the county Surrogate’s Offices and are scanned and uploaded into eCourts Guardianship case jackets. Once uploaded, eCourts Guardianship automatically routes inventories and periodic guardian financial reports to worklists for GMP review by volunteers, vicinage Finance Department staff, and, if needed, probate judges for appropriate judicial intervention or other follow-up. During the COVID-19 pandemic, eCourts Guardianship enabled GMP review to be conducted remotely. Currently, eCourts Guardianship enables the post-judgment case management and monitoring of over 24,000 active guardianships statewide.

- In **Pennsylvania**, the state judicial branch has deployed a Guardianship Tracking System (GTS).<sup>160</sup> This integrated state-wide tool facilitates court control over management of adult guardianship cases. Using existing in-house resources, the Administrative Office of the Pennsylvania Courts (AOPC) developed this system under the direction of the Pennsylvania Supreme Court’s multi-disciplinary Elder Law Task Force.<sup>161</sup>

Deployed in Pennsylvania’s Orphan Courts in 2018, GTS provides seamless automation support active guardianship cases with the following functionality:

- Automation and streamlining of local court functions in the 67 Orphan Court Divisions of the Commonwealth’s Court of Common Pleas
  - Electronic notifications to guardians of upcoming and overdue reports
  - Compliance tracking
  - Insertion of “flags” indicating concerns of potential loss and neglect
  - State-wide propagation of alerts placed on guardians
  - Generation of state-wide statistical reports
  - Electronic filing of guardian inventories and annual reports
- Exploitation by court-appointed conservators may remain undetected due to reporting lags and insufficient auditing resources. The NCSC has worked with the Wayne County Probate Court, **Michigan**, and the Charleston County Probate Court, **South Carolina** to pilot the Rapid Response Conservatorship Project. The courts ordered conservators to enroll in Eversafe, a financial monitoring company. This company identifies suspicious real time transactions and sends an alert to the court’s Rapid Response Team.

<sup>160</sup> See <https://www.pacourts.us/Storage/media/pdfs/20210215/040150-guardianshiptrackingsystembrochure-007291.pdf>.

<sup>161</sup> M. Reinkensmeyer, “Guardianship Case Monitoring: Pennsylvania’s State-wide Integrated System Approach,” *Judicial Division Record* 23, no.2 (2020).

## APPENDIX C – Support for Guardians

Partnering with the state court system, the [Alaska State Association for Guardianship and Advocacy \(ASAGA\)](#) provides tools, resources, and advocacy in support of excellence in adult guardianships and conservatorships. The mission of this non-profit is a collaborate effort among stakeholders to engage in the furtherance of services to vulnerable individuals, including:

- Developing a network for exchange of information and referral efforts so that individuals in need of protection are provided appropriate and adequate services.
- Educating public and professionals on matters related to guardianship and alternative protective services.
- Encouraging the development of appropriate practices designed to improve services to vulnerable adults.
- Serving as an advocate for vulnerable adults, to promote self-determination on the part of those persons and to facilitate appropriate family participation.
- Collaborating with other organizations and agencies to address the needs of all persons in need of protection.
- Facilitating communication and provide a forum for exchange of information and ideas among individuals and organizations concerned with guardianship and advocacy services.
- Encouraging and aid collaborative efforts among members and organizations in developing compatible standards and procedures for a comprehensive system of services.<sup>162</sup>

The **District of Columbia** Guardianship Assistance Program (GAP) offers orientation sessions available to any guardian, offering guidance on how and where to prepare and file guardianship plans and reports and to answer questions about guardianship issues. GAP also hosts a Guardianship Conference open to all guardians which provides education sessions, forums, and a robust information fair on services available to guardians and reviews the biannual guardianship reports filed with the court. GAP prepares detailed reports on persons subject to guardianship addressing the need for continued guardianship including resources that may address unmet needs. To support this review, GAP may work in conjunction with students enrolled in a Master of Social Work program at a local university. Orientation sessions are also offered in the District on how to prepare an inventory. This is the vital baseline document when handling funds in a guardianship. The District offers a [Probate Self-Help Center](#) to assist persons who wish to file a new guardianship case or bring a matter to the attention of the court in an existing guardianship case. Lastly, the District utilizes a web-based program through Law Help Interactive to assist in the preparation of guardian reports which may be maintained in the system and updated.

**New York State’s** [Guardian Assistance Network](#) (GAN) assists individuals to take the steps needed to become an official guardian, set up a guardian bank account, write reports and accountings required by the court, find social services and help them apply for government benefits, make a plan for the adult that allows as much independence as possible, and to locate resources.

<sup>162</sup> Effective 2022, court self-help facilitators will assume day-to-day calls, functions, and support.

## APPENDIX D – Audit and Review Functions

- **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, an examination of the previously filed annual reports, interviews with the adult and service providers, and recommendations are made 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.<sup>163</sup>

As part of a 2021 ACL Elder Justice Innovation Grant on Guardianship Improvement, the court system hired a staff member for the purpose of creating tools and methodology of monitoring existing guardian and conservatorship cases.

- 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>164</sup>
- **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>165</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). 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. Once the investigation is completed, the Clerks’ SIA makes a finding of whether the allegation is substantiated but makes no recommendations.<sup>166</sup> SIA will notify OPPG, 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, as appropriate. 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>167</sup>
- **Minnesota’s** [Conservator Account Auditing Program](#) (CAAP) and [Conservator Account Review Program](#) (CARP) has a centralized staff of experts who can select individual cases for auditing and reviewing based on a number of criteria and respond to local courts who request

<sup>163</sup> See Alaska 32nd Legislature (2021-2022), HB 155 relating to court-appointed visitors and experts; powers and duties of the office of public advocacy; and powers and duties of the Alaska Court System for possible changes. Available at <http://www.akleg.gov/basis/Bill/Detail/32?Root=HB155>.

<sup>164</sup> District of Columbia Courts, Probate Court Appointments, <http://Dccourts.gov/services/probate-matters/probate-court-appointments>.

<sup>165</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>166</sup> Office of Public and Professional Guardians, *Disciplinary Guidelines* (February 2017).

<sup>167</sup> Guardianship Checklists, available at <https://circuit8.org/self-help/forms-and-checklists/>.



assistance. The program relies on software, available on-line, that all conservators must use to submit accountings. Early in the program, the state found that almost 15 percent of cases audited were identified as the highest priority – the auditor has found concerns of loss, loans from protected person, or the expenditures are not in the best interest of the protected person, or commingling of funds.<sup>168</sup> With education, outreach, and ongoing monitoring, the percentage of high priority cases has decreased to 4-5%.

- In **Nebraska**, the **Office of Public Guardian** performs periodic audits of financial records to ensure funds are not used for the benefit of someone other than the wards, and loans of any type are not made from the “ward’s, incapacitated person’s, protected person’s, and/or minor’s funds.”<sup>169</sup>
- The **New Jersey** Judiciary **Guardianship Monitoring Program** (GMP) was established in 2014 to monitor guardians in their handling of the affairs of adults subject to guardianship. The GMP is a comprehensive statewide court program involving collaboration among volunteers, vicinage staff and probate judges, county Surrogate’s Courts, and personnel in the Administrative Office of the Courts. Over 24,000 active guardianships are currently monitored through the GMP’s statewide eCourts Guardianship web-based application. The volunteers provide the first level of review of all inventories and periodic financial reporting required to be filed by a guardian. Where issues are identified, or for all estates valued in excess of \$10,000, the county court’s Finance Department provides a second level quality assurance review. The probate judge, judiciary staff and Surrogate’s Court provide the final level of review to ensure issues are addressed and resolved.
- The **New Mexico** Administrative Office of the Courts has entered into a Memorandum of Understanding with the State Auditor’s Office. In this unique collaborative working arrangement between the judiciary and an executive branch agency, the state auditors 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>170</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. 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>171</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.

<sup>168</sup> C. Boyko, “How Minnesota Courts Are Protecting the Assets of Vulnerable Persons,” presentation to the Third World Congress on Adult Guardianship, Arlington, Virginia, May 28, 2014.

<sup>169</sup> See Neb. Rev. Stat. § 6-1433.04.

<sup>170</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, December 3, 2020.

<sup>171</sup> Patricia Galindo, “New Mexico’s New and Improved Adult Guardianship System: New Forms, Training, Tools and Oversight for Judges,” presented at Massachusetts Colloquium on Guardianship, December 3, 2020.

- **Texas's** Office of Court Administration [Guardianship Abuse, Fraud, and Exploitation Deterrence Program](#) was implemented to identify deficiencies in individual guardianships and conduct financial audits in September 2019.<sup>172</sup> Program auditors review all guardianships in each of the counties they audit, identify all guardianships out of compliance with their reporting requirements, and bring guardianships with well-being or financial concerns to the court's attention for immediate action. Auditors additionally conduct financial audits on guardianships identified during county audits but also conduct financial audits on guardianships referred by any court in the state. The state of Texas consists of 254 counties and over 40,000 guardianships.

<sup>172</sup> Tx. Gov't. Code § 72.122

## APPENDIX E – Specialized Court Staff

- As a part of a 2021 ACL Elder Justice Innovation Grant on Guardianship Improvement, the **Alaska** court system created two facilitator positions for its existing family law self-help department. These positions provide information and education to the public on adult guardianship and conservatorship topics.
- 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>173</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). 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.

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>174</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.

- **Idaho** instituted its monitoring program by creating the positions of Guardianship and Conservatorship Monitoring Coordinators (GCM Coordinators) in all seven of its judicial districts. The GCM Coordinators provide vital support for court staff, stakeholders, and the public. Their duties include providing subject matter expertise, reviewing annual reports filed by guardians and conservators, and answering inquiries about guardianships and conservatorships. Over the last five years, the GCM Coordinators have assisted with thousands of cases involving minors and adults, conducted hundreds of home visits, and answered countless questions from those who need procedural guidance when going through a guardianship or conservatorship case. In 2021, the GCM Coordinators reviewed 6,644 guardianship reports and 3,421 financial reports, many of which required follow up actions such as requesting a court hearing, scheduling a home visit, or interviewing those who have close contact with persons subject to guardianship.
- The Administrative Office of the Courts (AOC) in **Maryland** supports several “guardianship liaisons” positions through grants to circuit courts. The liaisons’ responsibilities vary, but in general, they perform case management functions, train newly appointed guardians, and assist with monitoring. The AOC hosts monthly virtual meetings with the liaisons and other guardianship court staff from across the state to share information, allow them to ask questions or share ideas, and review forms and other resources developed by Maryland WINGS.

<sup>173</sup> Fla. Stat. Ann. § 744.368 (2019).

<sup>174</sup> Fla. Stat. Ann. § 744.107 (2019).

- **Minnesota** established the [Conservator Account Auditing Program \(CAAP\)](#), which features a centralized unit to focus on auditing of accounts. The CAAP operates statewide to audit conservator accounts and provide information and recommendations to the district courts and to conservators. The mission of CAAP is to safeguard the assets of persons subject to conservatorship through the oversight of conservators by conducting professional compliance audits. CAAP promotes public trust and confidence by collaborating with local courts to provide education, by establishing consistency of best practices in managing conservator accounts, and by maintaining the statewide online system for the reporting of accounts. CAAP audits all first annual accounts, subsequent accounts at regular four-year intervals with bondable assets of \$10,000 or more, and accounts referred for audit by the court or the review program. In December 2018, the program added [Conservator Account Review Program \(CARP\)](#), who provides regular review of accounts not subject to CAAP audits. CARP reviews accounts under \$10,000 and older than one year, and larger conservator accounts in-between those accounts' fourth-year audits that are conducted by CAAP. Local Courts are no longer responsible for review or examination of accounts. CARP also provides public hearing preparation documents to district courts prior to account allowance hearings. CAAP auditors and CARP reviewers use MMC to review the entered information, pull accounts for audit or review, and submit audit/review reports. Accounts are directed to the audit/review queue via programming within the MMC accounting program. CAAP auditors also review inventories after submission to ensure balances are correct. Reports are written to recommend balance adjustments and if balances are correct.
- **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.
- In **Nevada**, the [Guardianship Compliance Office \(GCO\)](#) was established in 2017 within the state's Administrative Office of the Courts.<sup>175</sup> The Office is to provide services to the courts during the administration of guardianship services. The GCO staffs one program manager, two forensic financial specialists and two investigators. GCO services are voluntary for each court and the Office is available to review guardianship cases to identify reporting deficiencies by the guardian, review annual reports and accountings, and report findings to the court.
- **New Jersey's** [Guardianship Monitoring Program \(GMP\)](#) utilizes a statewide database and standardized report review tools to track all guardianship files. As of 2021, court staff has converted over 24,000 guardianship case files from paper to eCourts Guardianship, making them available to all stakeholders involved in reviewing inventories and periodic guardian financial reports and ensuring guardians' compliance with statutory and court-ordered requirements. Dedicated judiciary staff in vicinage Civil and Finance Departments, as well as county Surrogate's Court staff, conduct additional levels of review of issues identified in guardian financial reports by volunteers and provide support to probate judges in the event court intervention is needed. Administrative Office of the Courts staff provide statewide GMP program coordination, substantive and technical training, and subject matter expertise.

<sup>175</sup> See [https://nvcourts.gov/AOC/Programs\\_and\\_Services/Guardianship\\_Compliance/Overview/](https://nvcourts.gov/AOC/Programs_and_Services/Guardianship_Compliance/Overview/).



- Effective July 1, 2022, **New Mexico** commences a pilot program, in certain judicial districts, to provide judges with volunteer court visitors (post-adjudication) to visit the protected person and issue a report about whether the guardianship should be continued, changed or dismissed.
- **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>176</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. 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>177</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>178</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 (called conservators in Tennessee); add an additional layer of review of asset management; help provide or direct to available resources to promote successful conservatorships; and educate conservators, guardians, and the general public about guardianships and conservatorships.<sup>179</sup>

In partnership with the OCM, Metro Social Services (MSS) workers do home visits to assess the health and safety of adults subject to 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.

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.

- The **Texas** Office of Court Administration (OCA) initiated the [Guardianship Abuse, Fraud, and Exploitation Deterrence Program](#) (GAFEDP) in 2019 to provide assistance to the courts

<sup>176</sup> N.Y. Mental Hyg. Law § 81.32(a) (2019).

<sup>177</sup> N.Y. Mental Hyg. Law § 81.31(b)(5) (2019).

<sup>178</sup> N.Y. Mental Hyg. Law § 81.32(f) (2019). If the estate is under \$5,000 the fee is paid by the county.

<sup>179</sup> Office of Conservatorship Management, “Policies and Procedures,” Appendix A (Metropolitan Government of Nashville and Davidson County, 2020).

relating to guardianship matters. The program's guardianship compliance specialists assist in reviewing guardianship files to identify reporting deficiencies; auditing annual accountings and report their findings back to the judge; and report to the courts any concerns of potential abuse, fraud or financial exploitation being committed against an adult subject to guardianship.<sup>180</sup> 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 accounts, and 40% were missing inventories.<sup>181</sup>

- To assist in the monitoring of conservators, in 1849, **Virginia's Commissioner of Accounts** system was established with the intent to provide a less expensive and more efficient system of estate administration. The chief judge of each of the thirty-one judicial circuits appoints one or more attorneys that serve at the pleasure of the court. The Commissioner of Accounts has general supervision of all fiduciaries qualified in the circuit court, including conservators. Estate inventories and accountings are reviewed and audited, and the commissioner will report delinquent personal representatives to the court, and initiates court proceedings to enforce the filing and estate settlement requirements.

To assist in the monitoring of guardians, the state's Department of Social Services plays an active role that is typically a responsibility of the court in every other state. When a guardian qualifies before the clerk of the circuit court, the clerk is required by § 64.2-2011 of the Code of Virginia to forward a copy of the Order of Appointment to the local department of social services (LDSS) in the jurisdiction where the adult subject to the guardianship resides. The guardian is responsible for filing an annual report on the adult's condition directly with the LDSS – typically with the LDSS adult protective services staff. The LDSS is required to file a copy of the report within 60 days of receipt with the clerk of the circuit court that appointed the guardian. Semiannually, the LDSS is required to file with the clerk a list of all guardians who are more than 90 days delinquent in filing their annual report, at which time the court may require the guardians to appear before the court to answer to delinquency.

<sup>180</sup> See "Texas Guardianship Program: Protecting the Elderly and Incapacitated," January 2019, available at [https://www.txcourts.gov/media/1443314/texas-guardianship-reform\\_jan-2019.pdf](https://www.txcourts.gov/media/1443314/texas-guardianship-reform_jan-2019.pdf).

<sup>181</sup> "Guardianship Abuse, Fraud and Exploitation Deterrence Program Annual Report," January 2021.

## APPENDIX F – Volunteer Monitor and Visitor Programs

- The **District of Columbia** created the Guardianship Assistance Program in 2008 utilizing students seeking a Master of Social Work degree at local universities. Students may be appointed to a case as student visitors by court order, thus providing them with access to medical records as part of their review.
- **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 adult subject to guardianship at least once a year. 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 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>182</sup>
- The **New Jersey** Judiciary launched a statewide Guardianship Monitoring Program (GMP) in 2014. The Administrative Office of the Courts oversees the GMP, including volunteer coordination and training handled by program coordinators assigned to specified counties. GMP volunteers use the statewide web-based eCourts Guardianship application to validate case data; perform a standardized review of inventories, periodic guardian financial reports, and other documents to ensure guardian compliance with statutory and court-ordered reporting requirements and to identify potential issues of concern; and participate in other projects as needed.<sup>183</sup> During the COVID-19 pandemic, eCourts Guardianship enabled volunteers to perform GMP duties remotely. Vicinage staff recruit and interview potential GMP volunteers, ensure that appointed volunteers comply with the Judiciary’s Code of Conduct, and maintain the volunteers’ hours in the Judiciary’s statewide Volunteer Information Processing System (VIPS).

Vicinages also host an annual recognition dinner for volunteers who serve in its multiple programs, including the GMP. Judges and court staff participate in the event and acknowledge the volunteers’ efforts, which are vital to the Judiciary’s commitment to maintain the public’s trust and confidence in the court system.

- In Stark County, **Ohio**, Guardian Visitors volunteer one or more days per month to make visits to adults subject to guardianship at local hospitals, nursing homes, group homes and private residences. The visitors report their findings to the Probate Court where appropriate action can be taken. This monitoring assists the Court in protecting individuals from situations which may result in neglect or exploitation.<sup>184</sup>

<sup>182</sup> Guardianship Monitoring Program, <https://adacounty.id.gov/judicial-court/court-administration/guardianship-monitoring-program/>.

<sup>183</sup> See Guardianship Support/Guardianship Monitoring Program (njcourts.gov) at <https://www.njcourts.gov/courts/civil/guardianship.html?lang=eng> for more information.

<sup>184</sup> See <https://www.volunteermatch.org/search/org95580.jsp>.

- In 2011, the **South Carolina** Charleston County Probate Court was chosen as a pilot program to implement the Adult Guardianship Assistance and Monitoring Program to visit persons subject to an adult guardianship, which is still implemented. The Charleston County Probate Court wants every person subject to guardianship to receive good care. As such, the court is training a group of volunteers (primarily students from the Charleston School of Law) to serve as Court Visitors. A certain percentage of cases are reviewed yearly to conduct visits in all open guardianship cases. A Court Visitor contacts the guardian to arrange a visit and the person subject to guardianship in each case. The Court Visitor reports back to the Court about the current status of the guardianship. The Court then decides whether further action is appropriate. Guardianship monitoring helps courts to manage risks, prevent abuse, and increase public confidence in the judicial system. By utilizing trained and supervised volunteers, the Court is extending the monitoring capacity of the court.
- In **Utah**, the Administrative Office of the Courts conducts a statewide Court Visitor Program.<sup>185</sup> The Program assigned volunteer Court Visitors to investigate guardianship and conservatorship cases, under the direction of a judge. The trained volunteers perform one or more of four important roles: conducting interviews about a person’s ability to attend the guardianship hearing; investigating the person’s situation and well-being before or after the appointment of a guardian; reviewing records to find a guardian for whom the court has lost contact; and examining financial documents to ensure proper financial management. The judge may determine the need for a Court Visitor, or an interested person may request a Court Visitor in all eight court districts. Judges appoint Court Visitors in a court order, and they rely on the Visitor reports. Court Visitors are volunteers who commit to serve for at least one year, and who agree to contribute approximately eight to ten hours a month. The volunteers come from a variety of backgrounds; some are retired professionals. They receive specialized training and support from court staff. They must undergo a background check. The Program began with a grant from the State Justice Institute, and later received state funding.
- In Arlington, **Virginia**, in conjunction with the Virginia Supreme Court’s Working Interdisciplinary Network of Guardianship Stakeholders (WINGS), the Circuit Court instituted a pilot program run through the County’s Department of Human Services to effectuate meaningful oversight of court-appointed guardians through a visitor program. Through a standing court order, the County staff appointed as visitor met with 40 adults subject to guardianship in cases in which guardians had not submitted timely reports. The visitor consulted with appointed guardians of the person; assessed frequency of contacts and visits by the guardian; accessed the records, including medical, and interviewed health care staff and caregivers concerning the health, well-being, and safety of the person. The visitor helped guardians to identify needs, resources, education, and pinpointed areas in which improvements were needed. The visitor reported all findings to the guardian, the County Department of Human Services, and the court; and suggested any support, services and training to assist the guardian.<sup>186</sup>
- The 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>187</sup>

<sup>185</sup> Utah Administrative Office of the Courts, “Court Visitor Program,” <https://www.utcourts.gov/gramp/>; also see <https://www.utcourts.gov/gramp/cvp/volunteer/>.

<sup>186</sup> Virginia Joint Legislative Audit and Review Commission, “Improving Virginia’s Adult Guardian and Conservator System,” 2021, pp. 43-44.

<sup>187</sup> Guardianship Monitoring Program, <http://Snohomishcountywa.gov/2106/guardianship-monitoring-program>.



## APPENDIX G – Training Programs of Note

- **Alaska** requires all newly appointed guardians and conservators to complete 1 hour or more of mandatory education within 30 days of the court appointment order. The court system offers an [online course](#) to learn more about being a guardian or conservator and to meet the education requirement.
- The **District of Columbia Superior Court** offers [Guardianships and Conservatorships for Incapacitated Adults training videos](#) and conferences for guardians and for fiduciaries managing funds. It sets training requirements for attorneys who wish to be eligible for appointment to represent respondents and provides orientation sessions for guardians and fiduciaries.
- **Florida** requires that every guardian complete an eight-hour educational course within four months of appointment.<sup>188</sup> The course covers reporting requirements, duties, and responsibilities. Professional guardians are required to complete a 40-hour course.
- **Idaho Court Administrative Rule 65** requires an [online training course](#) for both guardians and conservators prior to the issuance of permanent letters of guardianship or conservatorship. The fee for the course, which includes successfully completing the online test, is used for a guardianship monitoring pilot project in three counties.
- **Maryland** requires prospective guardians watch an [Orientation Program video](#) before they are appointed the guardian. The program covers the roles, duties, and responsibilities of a guardian and what to expect if appointed. Additional guardianship related [videos](#) are also available.
- **Minnesota** requires guardians and conservators to watch a Guardianship/Conservatorship Video before appointed and receive letters. Minnesota also offers optional self-paced Guardianship/Conservatorship training. The video and training cover roles, responsibilities, and what to expect if appointed. Additional FAQ's, tips, resources, guidelines, and the [Guardianship/Conservatorship manual](#) are offered on the public website.
- In **Nebraska**, the [Office of Public Guardianship \(OPG\)](#) offers training classes for both guardians and conservators resulting in a class certificate that the guardian must file with the court within 90 days of the issuance of letters. In addition, the OPG provides a website which offers guardians and conservators recorded education, FAQ's, and other critical information.
- **New Jersey** requires all proposed guardians to acknowledge completion of guardianship training, which includes viewing or otherwise reviewing the [court-appointed guardian video tutorial](#) and receiving copies of the relevant [guardianship training guides](#), prior to appointment.
- **New Mexico** requires any proposed guardian and/or conservator must watch a [series of videos](#) to complete the Adult Guardian and Conservator Orientation Program. A judge may also order an existing guardian and/or conservator to watch these videos.
- **New York** requires training for lay guardians, which can be completed [online](#) to ensure responsibilities are carried out. New York's [Guardian Assistance Network](#) provides court-approved, bi-monthly training to lay guardians free of charge.

<sup>188</sup> Fla. Stat. § 744.3145 (2016).

- **North Carolina** offers a [training video](#) outlining the role and responsibilities of guardians of the person, guardians of the estate, and general guardian. The content is useful as an educational tool for people who are considering guardianship, as well as, for those who are newly appointed guardians.
- **Ohio's** Superintendence Rules [60.06](#) and [66.07](#) describe mandatory [adult guardianship education](#), including a one-time fundamentals course and continuing education requirements for each following year. The courses are offered in many communities throughout state and on-line.
- **South Dakota** requires prospective guardians and conservators complete training and file certificate(s) of completion with the court prior to appointment by the court. The [training](#) is provided by the State Bar and provides basic information about the role and obligations of a guardian and conservator.
- **Texas** requires proposed guardians to complete a comprehensive [on-line training course](#) and present the training certificate to the court prior to appointment. Training modules are offered in both English and Spanish, are free of charge and the course is available to the public for basic guardianship education.
- **Utah** requires proposed guardians to successfully complete an [examination](#) to ensure that they understand the basic guidelines for court-appointed guardians and conservators. Once completed the proposed guardian signs and files the [Declaration of Completion of Testing](#) with the court.
- **Washington** requires lay guardians to complete an [on-line course](#) before they can receive their letters of guardianship. The court also distributes a volunteer lay guardian handbook at the time of appointment. The state also requires certified professional guardians to complete the University of Washington Guardian Certificate Program.
- **West Virginia** requires completion of mandatory [training](#) to be officially appointed as a guardian or conservator. This required educational training must be completed within thirty days of the court's determination that there is a protected person.

## RESOURCES

### Key Publications

Adult Guardianship Court Data and Issues: Results from an Online Survey (National Center for State Courts)

Adult Guardianships: A “Best Guess” National Estimate and the Momentum for Reform (National Center for State Courts)

American Bar Association (ABA): Court Volunteer Guardianship Monitoring Handbooks

- Program Coordinator’s Handbook
- Trainer’s Handbook
- Volunteer’s Handbook

Fourth National Guardianship Summit: Maximizing Autonomy and Ensuring Accountability. Recommendations Adopted by Summit Delegates

Guarding the Guardians: Promising Practices for Court Monitoring (AARP Public Policy Institute/American Bar Association)

Guardianship of the Elderly: Past Performance and Future Promises (*The Court Manager*)

Handbook for Judges: Judicial Determination of Capacity of Older Adults in Guardianship Proceedings (American Bar Association/American Psychological Association/National College of Probate Judges)

Implementation Guide for Modernizing Conservatorship Monitoring (National Center for State Courts)

Justice Responses to Elder Abuse (National Center for State Courts free course)

Managing Someone Else’s Money: Help for Court-Appointed Guardians of Property and Conservators (Consumer Financial Protection Bureau)

National Open Court Data Standards (National Center for State Courts)

Guardianship / Conservatorship Monitoring Recommended Data Elements

National Probate Court Standards

Probate Court Volunteer Visitors Program: An Implementation Handbook (National Center for State Courts)

Restoration of Rights in Adult Guardianship: Research & Recommendations, American Bar Association Commission on Law and Aging & Virginia Tech Center for Gerontology

Third National Guardianship Summit Standards and Recommendations

SSA Representative Payee Program (Administrative Conference of the United States)

Strengthening State Efforts to Overhaul the Guardianship Process and Protect Older Americans, U.S. Senate, Special Committee of Aging

Trends in State Courts 2014 (National Center for State Courts)

Volunteer Guardianship Monitoring Programs: A Win-Win Solution (American Bar Association)

Working Interdisciplinary Networks of Guardianship Stakeholders: WINGS State Replication Guide (2019)

**Organizations**

American Bar Association Commission on Law and Aging

Center for Elders and the Courts

Conference of Chief Justices: Policy Resolutions

National Association of Area Agencies on Aging

National Center for State Courts

National Council on Aging

National Guardianship Network

AARP

Center for Guardianship Certification

National Association for Court Management

National Center on Elder Abuse: Elder Justice

National College of Probate Judges

National Guardianship Association



## GLOSSARY

**ADVANCE DIRECTIVE** – A written instruction of a person’s wishes regarding medical treatment, such as a living will or durable power of attorney for healthcare, made to ensure those desires are carried out should the person be unable to communicate them to a doctor or others.

**ADVOCATE** – To assist, defend, or plead in favor of another.

**AGENCY ON AGING** – A state or local agency tasked with developing a plan for a continuum of services, including transportation, homemaker, health support, nutrition assistance, protective services, and information and referral. Under the federal Older Americans Act, funding for services for older Americans flows from the U.S. Administration for Community Living to each designated state agency on aging; and from the state agencies to designated area agencies on aging throughout the state.

**ARM’S-LENGTH RELATIONSHIP** – A relationship between two agencies or organizations, or two divisions or departments within one agency, which ensures independent decision-making on the part of both.

**BEST INTEREST** – The course of action that maximizes what is best for a person and that includes consideration of the least intrusive, most normalizing, and least restrictive course of action possible given the needs of the person.

**Best interest/substituted judgment standard.** The best interest standard requires the guardian to choose the alternative that produces the greatest good or benefit for the person. The substituted judgment standard requires the guardian to choose the alternative that the person would have chosen if still able to make decisions.

**CAPACITY** – The ability of an individual to make decisions (e.g., financial, housing, medical) and to understand the consequences of those decisions.

**CONFLICT OF INTEREST** – Situations in which an individual may receive financial or material gain or business advantage from a decision made on behalf of another. Situations that create a public perception of a conflict should be handled in the same manner as situations in which an actual conflict of interest exists.

**CONSERVATOR** – See “**GUARDIAN.**”

**CO-CONSERVATOR/CO-GUARDIAN** – When more than one person is appointed to serve as a decision-maker.

**COURT- REQUIRED REPORT** – A report that the guardian is required by statute or court order to submit to the court relative to the guardianship.

**COURT VISITOR** – A court visitor is the individual appointed by the court to visit with the respondent upon the filing of a guardianship petition. Typically, the visitor’s statutory duties are to explain the respondent’s rights, the guardianship proceedings, and the potential consequences of the proceeding. They may also investigate the facts of the petition and determine the need for the appointment of counsel to represent the respondent.

**DESIGNATION OF GUARDIAN** – A formal means of nominating a guardian before a guardian is needed.

**DISABLED** – the medically determinable physical or mental impairment of a minor or an adult as defined by 42 U.S.C. Section 1382c, as amended.

**DIRECT SERVICES** – Services received by an individual, including medical and nursing care, care/case management and case coordination, speech therapy, occupational therapy, physical therapy, psychological therapy, counseling, residential services, legal representation, job training, and other similar services.

**ESTATE** – Both real and personal property, tangible and intangible, and includes anything that may be the subject of ownership.

**EXTRAORDINARY MEDICAL CIRCUMSTANCE** – Includes abortion, removal of life support, sterilization, experimental treatment, and other controversial medical issues.

**FIDUCIARY** – An individual, agency, or organization that has agreed to undertake for another a special obligation of trust and confidence, having the duty to act primarily for another’s benefit and subject to the standard of care imposed by law or contract.

**FINANCIAL MANAGEMENT PLAN** – Conservator’s forward-looking plan for the upcoming year, typically filed at or shortly after the time of appointment, for the protection and management of the income and assets of the adult subject to conservatorship. The plan projects expenses and serves as a budget showing how the conservatorship estate will be administered.

**FREESTANDING ENTITY** – An agency or organization that is independent from all other agencies or organizations

**FUNCTIONAL ASSESSMENT** – A diagnostic tool that measures the overall well- being of an individual and provides a picture of how well the person is able to function in a variety of multidimensional situations. (Eric Pfeiffer, M.D., Director, University of South Florida Gerontology Department)

**GUARDIAN** – A person or entity appointed by a court with the authority to make some or all personal decisions on behalf of an individual the court determines lacks capacity to make such decisions. The term includes conservators and certified private or public fiduciaries. All guardians are accountable to the court.

**Conservator** is a person or entity appointed by a court with the authority to make some or all financial decisions on behalf of an individual the court determines needs assistance in making such decisions.

**Emergency/Temporary Guardian** is a guardian whose authority is temporary and who is usually appointed only in an emergency.

**Foreign Guardian** is a guardian appointed in another state or jurisdiction.

**Guardian of the Estate** is a guardian who possesses any or all powers and rights with regard to the property of the individual.

**Guardian of the Person** is a guardian who possesses any or all of the powers and rights granted by the court with regard to the personal affairs of the individual.

**Limited Guardian** is a guardian appointed by the court to exercise the rights and powers specifically designated by a court order entered after the court finds that the person lacks

capacity to do some, but not all, of the tasks necessary to care for his or her person or property, or after the person voluntarily petitions for appointment of a limited guardian. A limited guardian may possess fewer than all of the legal rights and powers of a plenary guardian.

**Plenary Guardian** is a person appointed by the court to exercise all delegable rights and powers of the person after the court finds the person lacks the capacity to perform all tasks necessary to care for his or her person or property. Note: In this Guide, the terms ‘full’ and ‘plenary’ are used to refer to those cases in which essentially all delegable rights of the person subject to guardianship have been removed by the court.

**Pre-Need Guardian** is a guardian who is formally nominated before a guardian is needed.

**Standby Guardian** is a person, agency, or organization whose appointment as guardian becomes effective without further proceedings immediately upon the death, incapacity, resignation, or temporary absence or unavailability of the initially appointed guardian.

**Successor Guardian** is a guardian who is appointed to act upon the death or resignation of a previous guardian.

**GUARDIAN AD LITEM** – An attorney or other person with requisite knowledge and expertise appointed by the court to assist the court in evaluating the circumstances of the case and representing the best interests of the person alleged to need a guardian. The *guardian ad litem* conducts neutral investigations and writes a report to the court. The *guardian ad litem* role is different from that of counsel who advocates for the wishes of the individual.

**GUARDIANSHIP PROCEEDING** – means a formal proceeding to determine if an adult is an incapacitated individual or in which an order for the appointment of a guardian for an adult is sought or has been issued.

**INFORMED CONSENT** – A person’s agreement to allow something to happen that is based on a full disclosure of facts needed to make the decision intelligently, i.e., knowledge of risks involved, alternatives, etc.

**LEAST RESTRICTIVE ALTERNATIVE** – A mechanism, course of action, or environment that allows the person to live, learn, and work in a setting that places as few limits as possible on the person’s rights and personal freedoms as appropriate to meet the needs of the person.

**PERSON SUBJECT TO GUARDIANSHIP OR SIMPLY “PERSON”** – A person the court has determined requires assistance in making some or all decisions, and for whom the court has appointed a guardian and/or conservator. Synonyms include Conservatee, Disabled Person, Protected Person, Incapacitated Person and Ward.

**PERSON-CENTERED PLANNING** – A family of approaches designed to guide change in a person’s life. This type of planning is carried out in alliance with the person, their family and friends and is grounded in demonstrating respect for the dignity of all involved. Recognized approaches seek to discover, understand, and clearly describe the unique characteristics of the person, so that the person:

- Has positive control over the life he/she desires and finds satisfying;
- Is recognized and valued for their contributions (current and potential) to their communities; and
- Is supported in a web of relationships, both natural and paid, within their communities.

**PROTECTED PERSON** – An individual for whom a guardian has been appointed or other protective order has been issued.

**PROTECTIVE ARRANGEMENT** – A less restrictive alternative to guardianship. Under Article 5 of the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act, if the court finds an individual needs a protective intervention, the court can instead of guardianship authorize or direct a specific transaction to meet the adult’s need. For example, the court may authorize a particular medical treatment, a move to a specified dwelling place, visitation or supervised visitation by a specified person, payment of certain funds, sale of specific property, establishment of a trust or make similar specific orders.

**PROTECTIVE ORDER** – An order appointing a conservator or relating to the management of the property of:

- (a) an incapacitated individual;
- (b) a minor;
- (c) a person who is confined, detained by a foreign power, or who has disappeared; or
- (d) a person who is disabled and in need of a court order to create and establish a special needs trust for such person’s benefit.

**PROTECTIVE PROCEEDING** – A judicial proceeding, other than a guardianship proceeding, in which a protective order is sought or has been issued.

**PRUDENT INVESTOR RULE** – All investments must be considered as part of an overall portfolio rather than individually. No investment is inherently imprudent or prudent. The rule:

- Recognizes that certain nontraditional investment vehicles may actually be prudent;
- Allows for penalizing a guardian who does not use risk reducing strategies;
- Requires the person’s assets to be diversified in most circumstances;
- Obligates the guardian to spread portfolio investments across asset classes and potentially across global markets to both enhance performance and reduce risk;
- Requires the guardian to consider the possible effects of inflation as part of the investment strategy; and
- Requires the guardian to either demonstrate investment skill in managing assets or to delegate investment management to another qualified party.

**SELF-DETERMINATION** – A doctrine that states the actions of a person are determined by that person. It is free choice of one’s acts without external force.

**SOCIAL SERVICES** – These services are provided to meet social needs, including provisions for public benefits, case management, money management services, adult protective services, companion services, and other similar services.

**SPECIAL NEEDS TRUST** – a legal arrangement and fiduciary relationship that allows a physically or mentally disabled or chronically ill person to receive income without reducing their eligibility for the public assistance disability benefits.



**SUBSTITUTED JUDGMENT** – The principle of decision- making that requires implementation of the course of action that comports with the individual person’s known wishes expressed before incapacity, provided the individual was once capable of developing views relevant to the matter at issue and reliable evidence of those views remains.

**SUPPORTED DECISION-MAKING** – “A recognized alternative to guardianship whereby people with disabilities use trusted friends, family members, and professionals to help them understand the situations and choices they face, so they may make their own decisions with the need for a guardian.”<sup>189</sup>

**WINGS** – Working Interdisciplinary Networks of Guardianship Stakeholders (WINGS) are ongoing court-stakeholder partnerships that can drive changes affecting guardianship policy and practice through planning and action.

<sup>189</sup> P. Blanck and J. Martinis, “The Right to Make Choices: The National Resource Center for Supported Decision-Making,” *Inclusion* (American Association on Intellectual and Developmental Disabilities ) 3, no. 1 (March 2015): 24 -33.



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