

**WHAT'S WORKING IN GUARDIANSHIP MONITORING:  
CHALLENGES AND BEST PRACTICES**

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## INTRODUCTION

Guardianship monitoring is a continuum or progression of post-appointment events that serve to protect the person under guardianship.<sup>1</sup> Monitoring can include receiving and reviewing periodic information from guardians, assisting guardians to know how and when to report to the court, implementing procedures to respond to concerns about the well-being of persons under guardianship, staying alert to opportunities to modify or terminate the guardianship, and aggressively watching for possible abuse. While some jurisdictions closely monitor guardians, others react only to egregious situations.

The broad variation in practice found in earlier studies and surveys remains. Courts often lack both the human and financial resources to conduct effective monitoring, and many courts do not have case management systems sufficiently robust to track guardianship cases effectively over many years. When courts do not

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

have the systems in place to accurately identify ongoing guardianship cases, resources under their management, whether court orders are still appropriate, or whether court orders are being carried out, it is impossible to ensure the wellbeing of those the courts have identified as being legally incapacitated and needing the courts' protection. If unaddressed, these issues will continue to grow with the increase in the number of older individuals, those with severe mental illness, and adults with developmental disabilities.

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

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

- 1) ensure that plans, reports, inventories, and accountings are filed on time;
- 2) review promptly the contents of all plans, reports, inventories, and accountings;
- 3) independently investigate the well-being of the respondent and the status of the estate, as needed;
- 4) assure the well-being of the respondent and the proper management of the estate by improving the performance of the guardian/conservator and enforcing the terms of the guardianship/conservatorship order;
- 5) consider whether a less restrictive alternative would be appropriate.<sup>2</sup>

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2. See COMM'N ON NAT'L PROB. CT. STANDARDS & ADVISORY COMM. ON INTERSTATE GUARDIANSHIPS, NATIONAL PROBATE COURT STANDARDS 71–73, 88, 93, 97–99 (2013) [hereinafter COMM'N ON NAT'L PROB. CT. STANDARDS & ADVISORY COMM. ON INTERSTATE GUARDIANSHIPS].

The authors examine each of the NPCCS recommended elements, the recurring issues raised, changes in legislative requirements, new reflections on current actual practices, and enhanced practices in selected jurisdictions. They focus on those facets of various monitoring systems that are working well in diverse jurisdictions, with the intention to identify best practices that could be replicated in jurisdictions large and small. The authors profile the roles of clerks, visitors, investigators, auditors, examiners, volunteers, and others who do the hard work of examining, auditing, verifying, investigating, and checking in on the well-being of persons under guardianship. They also examine practices in several states that have created statewide or cross-jurisdictional monitoring efforts, leveraging the skills and training of specialized staff members.

Knowing that practices in implementing statutes continue to vary from state to state, county to county, and even judge to judge, the authors surveyed guardians, court officials, and judges for this report to learn what practices are currently being used in local jurisdictions.”<sup>3</sup> Survey results show great variation in guardianship monitoring, including in how expectations are communicated to guardians, what resources are made available, what happens when required reports are late or missing, how cases are reviewed, and what measures are taken in response to suspected malfeasance.<sup>4</sup>

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

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3. The survey was distributed electronically through various guardianship listservs with 544 responses from forty-six states and the District of Columbia received. The full text of the survey can be found at [https://www.eldersandcourts.org/\\_\\_data/assets/pdf\\_file/0035/65969/Guardianship-Monitoring-Survey-Report.pdf](https://www.eldersandcourts.org/__data/assets/pdf_file/0035/65969/Guardianship-Monitoring-Survey-Report.pdf). This survey largely followed the format, questions, and response selections from the following published survey: See generally NAOMI KARP & ERICA WOOD, *COURT PRACTICES: A NATIONAL SURVEY OF GUARDIANSHIP MONITORING: A NATIONAL SURVEY* (2006), [https://assets.aarp.org/rgcenter/consume/2006\\_14\\_guardianship.pdf](https://assets.aarp.org/rgcenter/consume/2006_14_guardianship.pdf) [hereinafter *GUARDIANSHIP MONITORING: A NATIONAL SURVEY*]. The survey results are examined in Naomi Karp & Erica Wood, *Guardianship Monitoring: A National Survey*, 37 *STETSON L. REV.* 143 (2007).

4. DIANE ROBINSON, SARAH TRESCHER & MIRIAM HAMILTON, *ADULT GUARDIANSHIP MONITORING: A NATIONAL SURVEY OF COURT PRACTICES 2* (2021), [https://www.eldersandcourts.org/\\_\\_data/assets/pdf\\_file/0035/65969/Guardianship-Monitoring-Survey-Report.pdf](https://www.eldersandcourts.org/__data/assets/pdf_file/0035/65969/Guardianship-Monitoring-Survey-Report.pdf) [hereinafter *NATIONAL SURVEY REPORT*].

## I. MONITORING BACKGROUND

A guardianship is a formal legal relationship in which a court gives an entity or person the duty and power to make personal, financial, and/or property decisions for another person.<sup>5</sup> Once guardianships are established, courts have a duty to actively monitor the cases to ensure that the needs of the person under guardianship are being met and that their assets are being used appropriately for their support.<sup>6</sup>

*A. Purpose of Monitoring*

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

The duty to monitor is based on the courts' *parens patriae* responsibility to protect those unable to care for themselves.<sup>7</sup> Protection is the fundamental basis for guardianship and the primary

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5. NAT'L ASS'N FOR CT. MGMT., ADULT GUARDIANSHIP GUIDE: A GUIDE TO PLAN, DEVELOP AND SUSTAIN A COMPREHENSIVE COURT GUARDIANSHIP AND CONSERVATORSHIP PROGRAM 8 (2014), <https://docplayer.net/16973101-Adult-guardianship-guide-a-guide-to-plan-develop-and-sustain-a-comprehensive-court-guardianship-and-conservatorship-program.html>.

6. *Id.*

7. See NAOMI KARP & ERICA WOOD, GUARDING THE GUARDIANS: PROMISING PRACTICES FOR COURT MONITORING (2007), [https://www.aarp.org/money/estate-planning/info-2007/2007\\_21\\_guardians.html](https://www.aarp.org/money/estate-planning/info-2007/2007_21_guardians.html) [hereinafter PROMISING PRACTICES FOR COURT MONITORING]; *In re* Guardianship of D.E., 243 A.3d 908, 915 (N.H. 2020). ("The state's *parens patriae* power is precisely the source of a court-appointed guardian's authority," citing *Hook v. Simes*, 98 A.2d 165, 166 (N.H. 1953). See also *Conservatorship of Wendland*, 28 P.3d 151, 161 (Cal. 2001) (noting that "decisions made by conservators typically derive their authority from . . . the *parens patriae* power of the state to protect incompetent persons"); *In re* Conroy, 486 A.2d 1209, 1231 (N.J. 1985) (" [T]he state's *parens patriae* power supports the authority of its courts to allow decisions to be made for an incompetent that serve the incompetent's best interests."); and *In re* Guardianship of L.W., 482 N.W.2d 60, 63 (Wis. 1992).

justification for curtailing a person's civil rights. "In reality," observed one judge, "the court is the guardian; an individual who is given that title is merely an agent or arm of that tribunal in carrying out its sacred responsibility."<sup>8</sup> The NPCCS on monitoring explain that the safety and well-being of the respondent and the respondent's estate remain the responsibility of the court following appointment.<sup>9</sup> These standards provide that courts should monitor the guardianship to enforce the terms of the guardianship order and to ensure that a less restrictive alternative would not suffice.<sup>10</sup>

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

In addition to obvious harm that can happen to persons under guardianship when courts do not actively monitor their personal and financial well-being, the resulting media attention to the court's failure can undermine confidence in the judiciary.<sup>13</sup> "Failure to act can

8. *Kicherer v. Kicherer*, 400 A.2d 1097, 1100 (Md. 1979); *see also* OHIO REV. CODE ANN. § 2111.50(A)(1) (LexisNexis 2021) (The court is the superior guardian to the wards subject to its jurisdiction).

9. *See* COMM'N ON NAT'L PROB. CT. STANDARDS AND ADVISORY COMM. ON INTERSTATE GUARDIANSHIPS, *supra* note 2, at 73.

10. *See id.* at 65–66.

11. SUP. CT. COMM'N ON FAIRNESS, COMM. ON GUARDIANSHIP MONITORING, GUARDIANSHIP MONITORING IN FLORIDA: FULFILLING THE COURT'S DUTY TO PROTECT WARDS 13 (2003), <https://www.flcourts.org/content/download/218232/file/guardianshipmonitoring.pdf>.

12. CONF. OF STATE CT. ADM'RS, THE DEMOGRAPHIC IMPERATIVE: GUARDIANSHIPS AND CONSERVATORSHIPS 7 (2010), [https://cosca.ncsc.org/\\_data/assets/pdf\\_file/0009/6030/cosca-white-paper-2010.pdf](https://cosca.ncsc.org/_data/assets/pdf_file/0009/6030/cosca-white-paper-2010.pdf).

13. *See, e.g.*, David Ferrara, *Ex-Nevada Guardian to Serve Up to Forty Years Behind Bars*, LAS VEGAS REVIEW-JOURNAL (Jan. 4, 2019, 1:34 PM), <https://www.reviewjournal.com/crime/courts/ex-nevada-guardian-to-serve-up-to-40-years-behind-bars-1565690/>; Kate Santich, *Florida Tried to Fix Guardianship System. Rebecca Fierle Case Reveals It's Still Broken, Critics Say*, ORLANDO SENTINEL (Aug. 8 2019), [www.orlandosentinel.com/news/florida/guardians/os-ne-florida-guardianship-holes-in-system-20190808-cl66nfy2nzh73bjhy25unzjm3u-story.html](http://www.orlandosentinel.com/news/florida/guardians/os-ne-florida-guardianship-holes-in-system-20190808-cl66nfy2nzh73bjhy25unzjm3u-story.html).

become a public relations event with negative repercussions to the court.”<sup>14</sup>

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

### *B. What is Monitoring?*

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

#### *1. Previous Studies of Guardianship Monitoring*

How courts provide this oversight and the barriers to doing so have been closely examined in three critical studies. First in 1991,<sup>17</sup>

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14. NAT’L ASS’N FOR CT. MGMT., *supra* note 5, at 15.

15. *See* U.S. SENATE SPECIAL COMM. ON AGING, ENSURING TRUST: STRENGTHENING STATE EFFORTS TO OVERHAUL THE GUARDIANSHIP PROCESS AND PROTECT OLDER AMERICANS 5 (2018), [https://www.aging.senate.gov/imo/media/doc/Guardianship\\_Report\\_2018\\_gloss\\_compress.pdf](https://www.aging.senate.gov/imo/media/doc/Guardianship_Report_2018_gloss_compress.pdf).

16. BRENDA K. UEKERT, NAT’L CTR. FOR STATE CTS. ET AL., ADULT GUARDIANSHIP COURT DATA & ISSUES: RESULTS FROM AN ONLINE SURVEY 8 (2010), [https://www.eldersandcourts.org/\\_\\_data/assets/pdf\\_file/0019/6265/guardianshipsurveyreport\\_final.pdf](https://www.eldersandcourts.org/__data/assets/pdf_file/0019/6265/guardianshipsurveyreport_final.pdf).

17. *See generally* SALLY BALCH HURME ET AL., AM. BAR ASS’N, STEPS TO ENHANCE GUARDIANSHIP MONITORING (1991) [hereinafter STEPS TO ENHANCE GUARDIANSHIP MONITORING].



then in 2002,<sup>18</sup> and again in 2007,<sup>19</sup> researchers closely looked at the mosaic of statutes and practices in place in many courts to identify best practices and shortfalls of monitoring. In 1990 the American Bar Association (ABA), with support from the State Justice Institute, identified the essential elements for a court monitoring program in *Steps to Enhance Guardianship Monitoring*.<sup>20</sup>

The nine recommended steps, drawn from actual practices then in place and working in diverse jurisdictions, formed the backbone for much of the improvements over the next thirty years.

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

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

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18. See Sally Balch Hurme & Erica Wood, *Guardian Accountability Then and Now: Tracing Tenets for an Active Court Role*, 31 STETSON L. REV. 868 (2002).

19. NAT'L ASS'N FOR CT. MGMT., *supra* note 5, at 4.

20. See generally STEPS TO ENHANCE GUARDIANSHIP MONITORING, *supra* note 17.

21. See generally Hurme & Wood, *supra* note 18.

22. See COMM'N ON NAT'L PROB. CT. STANDARDS & ADVISORY COMM. ON INTERSTATE GUARDIANSHIPS, NATIONAL PROBATE COURT STANDARDS (1993).

23. See UNIF. GUARDIANSHIP & PROTECTIVE PROC. ACT §§ 317, 420 (UNIF. L. COMM'N 1997).

24. Hurme & Wood, *supra* note 18, at 869.

25. GUARDIANSHIP MONITORING: A NATIONAL SURVEY, *supra* note 3, at 9.

techniques to protect assets; and sanctions for failure to file or guardian malfeasance.”<sup>26</sup>

### *C. Barriers to Monitoring*

Even with decades of recommendations from advocates, significant state legislative requirements, and Congressional interest, court monitoring practices remain inadequate or uneven.<sup>27</sup> The Government Accountability Office noted in its 2010 examination of reported cases of exploitation or abuse by guardians that some “state courts failed to oversee guardians after their appointment, allowing the abuse of vulnerable seniors and their assets to continue. Courts ignored criminal and/or financial problems of guardians who served multiple roles with conflicting fiduciary interests.<sup>28</sup> They also failed to review irregularities in guardians’ annual accountings or sanction delinquent guardians.<sup>29</sup> The gaps in monitoring systems have been blamed on lack of organizational capacity and a lack of resources.

#### *1. Courts’ Capacity for Oversight*

Unfortunately, providing on-going case supervision is not a natural role for many courts. As the New York Court of Appeals’ Commission on Fiduciary Appointments observed, there exists “a court culture and court processes steeped in the traditional detachment from litigants rather than the more active management these cases demand.”<sup>30</sup> In most other civil cases, once a judgment has been entered the judge’s responsibilities for effecting that judgment are complete.<sup>31</sup>

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26. PROMISING PRACTICES FOR COURT MONITORING, *supra* note 7, at 5.

27. *See* UEKERT, *supra* note 16 at 5.

28. U.S. GOV’T ACCOUNTABILITY OFF., GAO-04-655 COLLABORATION NEEDED TO PROTECT INCAPACITATED PEOPLE 1 (2004) (“All states have laws requiring courts to oversee guardianships, but court implementation varies. Most require guardians to submit periodic reports, but do not specify court review of these reports . . . Most courts responding to our survey did not track the number of active guardianships, and few indicated the number of incapacitated elderly people under guardianship.”); U.S. GOV’T ACCOUNTABILITY OFF., GAO-10-1046 GUARDIANSHIPS: CASES OF FINANCIAL EXPLOITATION, NEGLECT, AND ABUSE OF SENIORS 8 (2010) (noting examples of failures to monitor active cases).

29. U.S. GOV’T ACCOUNTABILITY OFF., GAO-10-1046, *supra* note 28, at 8.

30. N.Y. STATE UNIFIED CT. SYS., REPORT OF THE COMMISSION ON FIDUCIARY APPOINTMENTS 6 (2005).

31. *See, e.g., Judgments*, N.Y. STATE UNIFIED CT. SYS., <https://nycourts.gov/courthelp/goingtocourt/judgments.shtml> (last visited Aug. 28, 2021).

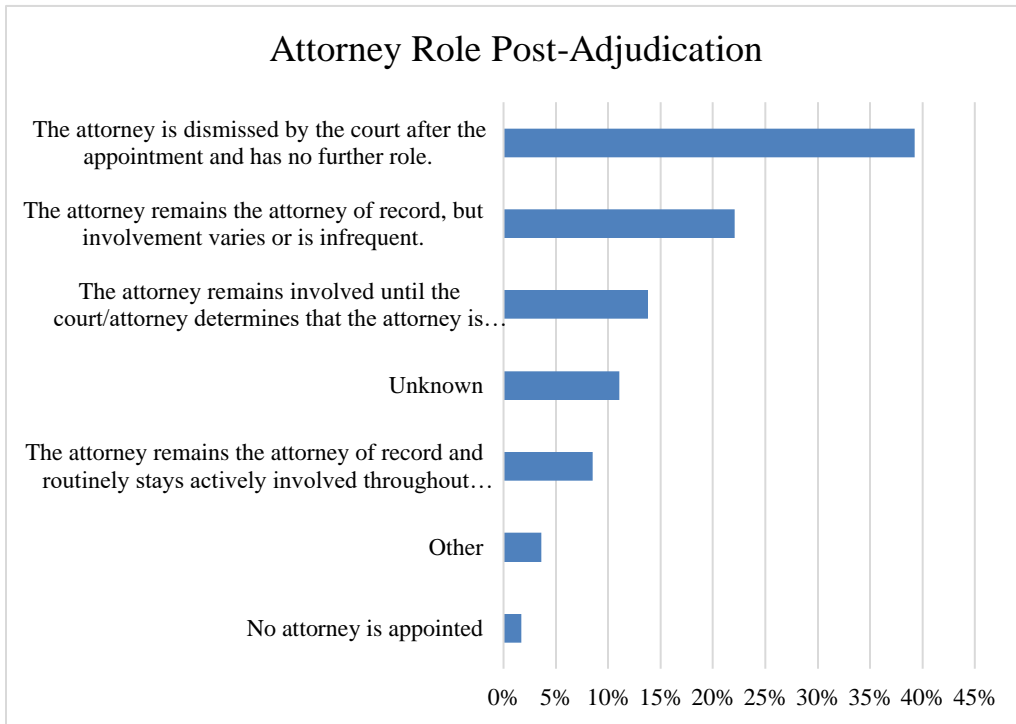
If there are any problems, the harmed party must come back to court to convince the judge that further action is required.<sup>32</sup>

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

*2. Survey Results*

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

Figure 1: Attorney Role Post-Adjudication



32. *Id.*

Part of the traditional detachment can be explained through the historical partnering of guardianship and decedents' estates. When advocates of the Uniform Probate Code (UPC) were promoting its adoption in the 1960s, a key selling point was that the UPC lessened the courts' involvement in the day-to-day administration of decedents' estates.<sup>33</sup> A predominate theory of the UPC was to make probate more administrative than adversarial.<sup>34</sup> The UPC drafters proposed that a court's role was to be "wholly passive until some interested person invokes its power to secure resolution of a matter. . . . [The court] . . . should refrain from intruding into family affairs unless relief is requested."<sup>35</sup> Guardianship provisions were grafted into the UPC with no official explanation for this inclusion. One writer has suggested that it was logical because probate courts historically had guardianship jurisdiction, functionally the responsibilities of a guardian and an administrator are similar, and guardianship laws also needed modernization and uniformity.<sup>36</sup>

In most types of court cases across the country, the case is considered to be closed once it has been adjudicated and judgment entered.<sup>37</sup> Courts' performance is often tracked on this basis, with long-open cases considered an indication of poor performance.<sup>38</sup> This provides courts with an incentive to close a guardianship case file once capacity has been initially adjudicated and an appointment made even though the guardianship remains active. On the other hand, leaving cases open indefinitely can also create confusion, as those with open petitions to be adjudicated and those open for continuing review are impossible to distinguish. This can be resolved by using a case status of "disposed/set for review."<sup>39</sup>

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33. Orley R. Lilly, Jr., *The UPC & Judges: Reforming the Traditional Role*, 12 TULSA L. REV. 234, 235 (1976).

34. UNIF. PROB. CODE, ART. III, General Comment (U.L.A. 1969) (amended 2019).

35. *Id.*

36. LAWRENCE. H. AVERILL, JR. & MARY F. RADFORD, UNIFORM PROBATE CODE AND UNIFORM TRUST CODE IN A NUTSHELL 19 (West Academic 7th ed. 2021).

37. N.Y. STATE UNIFIED CT. SYS., *supra* note 31.

38. See DIANE ROBINSON ET AL., NAT'L CTR. FOR STATE CTS., GUARDIANSHIP/CONSERVATORSHIP MONITORING: RECOMMENDED DATA ELEMENTS 6 (2020).

39. *See id.* at 7.

The wide variety of court systems that handle guardianship cases confounds easy depiction of standard monitoring practices or description of guardianship case load and available resources. In some metropolitan jurisdictions, there may be multiple judges and magistrates who are dedicated to fiduciary matters, hearing petitions and motions on hundreds of cases each year. In other jurisdictions, the probate division of a general district court manages a modest number of guardianship cases along with administration of decedents' estates.<sup>40</sup> According to the National Center for State Courts, only seventeen states have specialized probate courts.<sup>41</sup> In a significant number of other jurisdictions, the judge's docket may also include divorce and custody matters, civil litigation, and criminal cases.<sup>42</sup> Additionally, in some jurisdictions, monitoring of guardianships is bifurcated, with the executive and judicial branches sharing responsibility.

### 3. Funding

The lack of fiscal and program resources has repeatedly been identified as a key barrier to effective monitoring efforts.<sup>43</sup> Monitoring can be expensive and time consuming. In addition to the costs to set up case management systems, court personnel are needed to input and verify data about each case as it progresses through the courts.<sup>44</sup> Inputting disposed cases that still require monitoring in modern case management systems is a daunting task, often requiring staff overtime. Courts also need trained personnel to track personal status reports, care plans, inventories and accountings, review and verify the information, and investigate discrepancies or complaints.<sup>45</sup>

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40. See STEPS TO ENHANCE GUARDIANSHIP MONITORING, *supra* note 17, at 6.

41. RICHARD VAN DUIZEND & BRENDA K. UEKERT, NAT'L COLL. OF PROB. JUDGES, NATIONAL PROBATE COURT STANDARDS 5 (2013) [hereinafter VAN DUIZEND ET AL., NATIONAL PROBATE COURT STANDARDS].

42. See STEPS TO ENHANCE GUARDIANSHIP MONITORING, *supra* note 17, at 37.

43. See THE DEMOGRAPHIC IMPERATIVE, *supra* note 12, at 1 (mentioning as limits to implementation of innovative reforms, inconsistent practices, insufficient coordination among courts and service agencies, and the lack of consensus about standards and acceptable performance outcomes); see GAO-04-655, *supra* note 28, at 37 (most courts surveyed said they did not have sufficient funds for guardianship oversight).

44. See *infra*, pp. 49–56.

45. See STEPS TO ENHANCE GUARDIANSHIP MONITORING, *supra* note 17, at 37–38, 40.

Funding of court systems varies from state to state. Court funding for monitoring may come from state legislative appropriations, the county or city commission, the state court administrative office, court filing fees, assessments against the estate for investigations, or some combination to pay the salaries of judges and court staff, maintain court buildings, acquire technology, and conduct monitoring.<sup>46</sup>

According to the National Association for Court Management, “staffing has been especially challenging as courts in a number of states have lost resources in response to budget cuts.”<sup>47</sup> With state and county budgets dramatically impacted by the 2020 pandemic, court operations and budgets may see further cuts. As a result, “most states and jurisdictions have not devoted sufficient resources to hire and train court staff to actively monitor guardianship cases.”<sup>48</sup>

#### 4. Survey Results

A survey of judges and court administrators in 2007 found that, in many cases, guardianship monitoring is being neglected because of a shortage in staff and resources.<sup>49</sup> The 2020 survey respondents confirm this on-going problem (Figure 2). One third of the respondents said that dedicated funds were unavailable or clearly insufficient, with 14% indicating that some funding was available, and 11% stating it was sufficient.<sup>50</sup> However, 35% answered that they did not know.<sup>51</sup> Several respondents mentioned that there are no extra monitoring funds available other than salaries for the court staff who do the monitoring.<sup>52</sup> Nearly half of judges and court administrators (45%) in the poll indicated that funding was unavailable or insufficient.<sup>53</sup>

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46. GUARDIANSHIP MONITORING: A NATIONAL SURVEY, *supra* note 3, at 24–25.

47. NAT’L ASS’N FOR CT. MGMT., *supra* note 5, at 53.

48. *Id.* at 15.

49. *See* UEKERT, *supra* note 16, at 25.

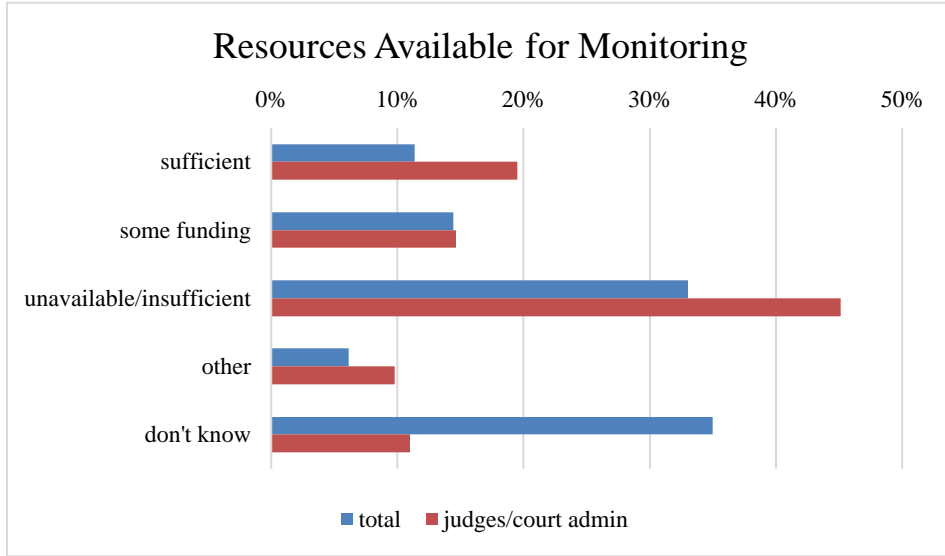
50. *See* NATIONAL SURVEY REPORT, *supra* note 4, at 19.

51. *Id.*

52. *Id.*

53. *Id.*

Figure 2: Resources Available for Monitoring



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

*D. Population Changes*

Compounding the difficulty of monitoring is the often-cited changing demographics in the United States. Within the next decade, the “Baby Boom” population, those 65 and older, will increase by fifty percent, from nearly 40 million to 60 million.<sup>54</sup> This bulge in the older population, who may become cognitively impaired to the extent that they need a guardian, is forecast to impact probate courts.<sup>55</sup>

54. See VAN DUIZEND ET AL., NATIONAL PROBATE COURT STANDARDS, *supra* note 41, at 4.

55. See *id.*; See generally CONF. STATE CT. ADM’RS., *supra* note 12.

Guardianships are not only needed for the elderly. Adults with serious mental illness (SMI) increased from 8.3 million people in 2008 to 13.1 million in 2019, with the greatest increase in young adults age eighteen to twenty-five.<sup>56</sup> Over 7 million people in the United States have an intellectual disability, with many requiring assistance.<sup>57</sup> The Centers for Disease Control and Prevention estimates that each year there are over 2.87 million visits to emergency departments, hospitalizations, and deaths due to Traumatic Brain Injury (TBI), some of which result in long-term disability.<sup>58</sup> The Veterans' Administration reports that over 400,000 U.S. service members experienced a TBI between 2000 and 2019.<sup>59</sup> Individuals with SMI, intellectual disability, and TBI may require short- or long-term guardianship depending upon the progression and treatment of their disability. Advancements in medical care not only lengthen the lifespan of the older generations; they also enhance the life expectancies of younger generations with brain injuries, SMI, or intellectual disabilities who may outlive their family caregivers.<sup>60</sup>

## II. MONITORING ELEMENTS

A comprehensive review of New York's adult guardianship practices sums up the importance of periodic reporting to the court:

56. See U.S. DEP'T OF HEALTH & HUM. SERVS & SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN., KEY SUBSTANCE USE AND MENTAL HEALTH INDICATORS IN THE UNITED STATES: RESULTS FROM THE 2019 NATIONAL SURVEY ON DRUG USE AND HEALTH 3 (2020), <https://www.samhsa.gov/data/sites/default/files/reports/rpt29393/2019NSDUHFFR1PDFWHTML/2019NSDUHFFR1PDFW090120.pdf>.

57. See NAT'L DISABILITY NAVIGATOR RES. COLLABORATIVE, POPULATION SPECIFIC FACT SHEET: WHAT TO KNOW WHEN ASSISTING A CONSUMER WITH INTELLECTUAL DISABILITY 1-3 (2014), <https://nationaldisabilitynavigator.org/ndnrc-materials/fact-sheets/population-specific-fact-sheet-intellectual-disability/>.

58. See CTRS. FOR DISEASE CONTROL & PREVENTION, SURVEILLANCE REPORT OF TRAUMATIC BRAIN INJURY-RELATED EMERGENCY DEPARTMENT VISITS, HOSPITALIZATIONS, AND DEATHS 2 (2014), [https://www.cdc.gov/traumaticbraininjury/pdf/TBI-Surveillance-Report-FINAL\\_508.pdf](https://www.cdc.gov/traumaticbraininjury/pdf/TBI-Surveillance-Report-FINAL_508.pdf) ("In 2014, there were approximately 2.87 million TBI-EDHDs in the U.S., including over 837,000 of these health events among children.").

59. See *VA Research on Traumatic Brain Injury (TBI)*, U.S. DEP'T VETERANS AFFS. (2021), <https://www.research.va.gov/topics/tbi.cfm> ("The Defense and Veterans Brain Injury Center (DVBIC) reported nearly 414,000 TBIs among U.S. service members worldwide between 2000 and late 2019.").

60. See K. Patja et al., *Life Expectancy of People with Intellectual Disability: a 35-year Follow-up Study*, 44 J. INTELL. DISABILITY RSCH. 591, 591, 597-98 (2000).



“Reports and accountings are the primary way in which the court learns of problems in the guardianship. Without a timely report (or with a failure to report at all), the court has no way of assessing the well-being of the individual or the extent to which the guardian is carrying out fiduciary duties.”<sup>61</sup>

### *A. Forward-Looking Plans*

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

#### *1. Personal Care Plans*

Starting with the premise that courts should know what a guardian is going to do to care for person and property, the first step is to require guardians to file a written plan of how the guardian proposes to enhance the adult’s wellbeing.<sup>62</sup> National Probate Court Standard 3.3.16(A) confirms the need for the prompt filing of a guardianship plan.<sup>63</sup> A plan filed shortly after appointment gives the court a picture of the individual’s current needs and what measures will be taken to address those needs.<sup>64</sup> The guardian’s plan is separate from the residential care plan prepared by the assisted living or nursing home, although it might refer to that document.

### *A. Relevant Statutes*

Advocates have recognized the advantages of care plans for decades,<sup>65</sup> though legislatures have been slow to adopt them. Currently fifteen states require guardians to file care plans, sometimes

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61. PAMELA B. TEASTER ET AL., *THE GUARDIANSHIP PROJECT, INCAPACITATED, INDIGENT & ALONE: MEETING GUARDIANSHIP AND DECISION SUPPORT NEEDS IN NEW YORK* 55 (2018).

62. *See* STEPS TO ENHANCE GUARDIANSHIP MONITORING, *supra* note 17, at 1, 21.

63. *See* VAN DUIZEND ET AL., *NATIONAL PROBATE COURT STANDARDS*, *supra* note 41, at 68, Standard 3.3.16 (“[P]robate courts should require guardians to file at the hearing or within 60 days: (1) a guardianship plan and a report on the respondent’s condition, with annual updates thereafter.”). *Id.*

64. *See id.* at 69.

65. *See* Model Guardianship & Conservatorship Stat. § 17(2), *reprinted in* DISABLED PERSONS AND THE LAW: STATE LEGISLATIVE ISSUES 562–63 (Plenum Press 1982) (such a plan would encourage a goal-oriented rather than a maintenance approach and clarify exactly what the guardian will be doing); Hurme & Wood, *supra* note 18, at 892–94; Symposium, *Third National Guardianship Summit Standards and Recommendations*, 2012 UTAH L. REV. 1191, 1192 (2012) (plan forms should be developed locally and their use required by courts).

called implementation plans or initial reports.<sup>66</sup> Items that might be addressed are what medical or care services will be provided, whether there is a need to change residency, how the individual will be involved in the development of the plan or supported in decision-making,<sup>67</sup> whether the residential facility's care plan is adequate, what education or training will be provided, how social activities the individual enjoys will be provided, how the guardian will maintain contact and facilitate visits with others,<sup>68</sup> and how expenses will be met and what applications for insurance or benefits are required.<sup>69</sup> The Iowa and Maine forms require the guardian to disclose the amount of fees to be charged.<sup>70</sup>

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

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

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66. *See, e.g.*, ALASKA STAT. § 13.26.271 (2021); COLO. REV. STAT. § 15-14-317 (2021); Superior Court of the District of Columbia: Probate Division Guardianship Plan (2014); FLA. STAT. ANN. § 744.363 (West 2021); Idaho Proposed Guardianship Care Plan (2016); IOWA CODE ANN. § 7.11 (West 2021); KAN. STAT. ANN. § 59-3076 (West 2021); Mass. Guardians Care Plan Rep. (2019), <https://www.mass.gov/doc/guardians-care-planreport-mpc-821/download>; ME. REV. STAT. ANN. tit. 18-C, § 5-316 (2021); NEV. REV. STAT. ANN. § 159.081 (West 2021); OKLA. STAT. ANN. tit. 30 § 3-120 (West 2021) (form in statute); S.C. CODE ANN. § 62-5-306(B) (2021); WASH. REV. CODE ANN. § 11.130.340 (West 2021) (effective January 1, 2022); WYO. STAT. ANN. § 3-2-109 (2021).

67. *See, e.g.*, ALASKA STAT. § 13.26.271 (2021); FLA. STAT. ANN. § 744.363 (West 2021); OKLA. STAT. ANN. tit. 30, § 3-120 (West 2021).

68. *See, e.g.*, IOWA CODE ANN. § 7.11 (West 2021); ME. REV. STAT. ANN. tit. 18-C, § 5-316 (West 2021).

69. *See, e.g.*, N.Y. MENTAL HYG. LAW § 81.30(c)(4) (McKinney 2021).

70. § 7.11; tit. 18-C § 5-316(G).

- 6) a statement or list of the amount the guardian proposes to charge for each anticipated service.<sup>71</sup>

In Maine and Indiana, the petitioner files the plan as part of the petition for guardianship,<sup>72</sup> while in Oklahoma it must be filed within ten days of appointment.<sup>73</sup> Guardians in Florida and Iowa have 60 days to file the plan and in Alaska, New York, and Washington they have 90 days.<sup>74</sup> Ohio plans are filed biennially with the biennial report.<sup>75</sup>

### *B. Survey Results*

In 2005, 34.1% of survey respondents practiced in a court that consistently required guardians to file plans for future care of the individual, while 38% of 2020 respondents indicated that care plans were consistently required.<sup>76</sup> Another 10.2% indicated they were sometimes required.<sup>77</sup>

### *2. Financial Plans*

In addition to a care plan, some jurisdictions also require a financial plan, which addresses how assets and income, including investments, will be used to meet the needs of the protected person.<sup>78</sup> Most importantly, a financial plan addresses how resources will be budgeted to ensure the person will receive the care they need throughout their lifetime. Requiring a financial plan provides a benchmark for the court to use when assessing the appropriateness of spending and financial management as reported in an annual accounting.<sup>79</sup>

71. UNIF. GUARDIANSHIP, CONSERVATORSHIP, & OTHER PROTECTIVE ARRANGEMENTS ACT § 316(a) (UNIF. L. COMM'N 2017).

72. ME. REV. STAT. ANN. tit. 18-C, § 5-316(1); IND. CODE ANN. § 29-3-5-1(1)(a) (West 20).

73. OKLA. STAT. ANN. tit. 30 § 3-120(A) (West 1988).

74. FLA. PROB. R. § 5.960(a) (West 2021); § 7.11; ALASKA. STAT. § 16(e)(1)(A) (2021); N.Y. MENTAL HYG. LAW § 81.30(a) (McKinney 2021); WASH. REV. CODE ANN. § 11.130.340(1) (West 2022).

75. OHIO REV. CODE ANN. § 2111.49 (West 2021).

76. GUARDIANSHIP MONITORING: A NATIONAL SURVEY, *supra* note 3, at 13; NATIONAL SURVEY REPORT, *supra* note 4, at 7.

77. *Id.* at 7.

78. *See e.g.*, KY. REV. STAT ANN. § 387.710(2)(a)(2) (West 2021); COLO. REV. STAT. ANN. § 15-14-418(3) (West 2021); S.C. CODE ANN. § 62-5-414(B) (2021).

79. *See, e.g.*, D.C. CODE § 21-2065(b) (2021); § 15-14-418(3); GA. CODE ANN. § 29-5-30(c) (2021); IOWA CODE ANN. § 7.12 (West 2021); § 387.710(2)(a)(2); ME.

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

- (1) . . . an estimate of the total amount of fees the conservator anticipates charging per year and . . . the amount the conservator proposes to charge for each service the conservator anticipates providing. . . ;
- (2) how the conservator will involve the individual in decisions about management of the conservatorship estate;
- (3) any step the conservator plans to take to develop or restore the ability of the individual to manage the conservatorship estate; and
- (4) an estimate of the duration of the conservatorship.<sup>80</sup>

As the comments to this UGCOPPA section explain, the plan allows for more meaningful monitoring of the conservator as the court and others can hold a conservator accountable for compliance with the plan.<sup>81</sup> It also allows the court, the individual subject to conservatorship, and other persons who have received the plan to identify potential problems.<sup>82</sup>

#### A. *Survey Results*

More than a quarter (29%) of the respondents to the 2020 survey reported that management plans are consistently required, while 10.7% respondents indicated they were sometimes required.<sup>83</sup> Several respondents wrote that financial plans are required at the start of the case but not thereafter.<sup>84</sup> Almost half (40.7%) of respondents reported that they are rarely or never required.<sup>85</sup>

### 3. *Barriers to Filing Forward-Looking Plans*

One barrier to the use of care plans and financial plans is the courts' capacity to take advantage of the information in the plans.

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REV. STAT. ANN. tit. 18, § 5-419(1)(A) (West 2021); MASS. GEN LAWS ANN. ch. 190B, § 5-416(c) (West 2021); N.Y. MENTAL HYG. LAW § 81.30(b) (McKinney 2021); OKLA. STAT. ANN. tit. 30, § 3-122 (West 2021); § 62-5-414(B).

80. UNIF. GUARDIANSHIP, CONSERVATORSHIP, AND OTHER PROTECTIVE ARRANGEMENTS ACT § 419(a)(1–4) (UNIF. L. COMM'N 2017).

81. *Id.*, Comment.

82. *Id.*

83. NATIONAL SURVEY REPORT, *supra* note 4, at 7.

84. *Id.*

85. *Id.*

Some courts are statutorily required to review the plans and approve them.<sup>86</sup> On the other hand, South Carolina provides that the courts are not required to oversee the plan of care.<sup>87</sup>

Another barrier to effective plans is the fluid nature of the adult's needs with changing conditions and circumstances. No care plan written for 2020 could have foreseen the disruption that the COVID-19 pandemic would bring. Even in times of change, an initial plan serves as a baseline for their subsequent annual report to be revised or updated as necessary.<sup>88</sup> As the National Probate Court Standards explain, “[t]he plans should be neither rote nor immutable. They should reflect the condition and situation of each individual rather than provide general statements applicable to anyone.”<sup>89</sup>

Issues that arise with care and financial plans include how detailed they should be, what information is essential to the court, and what the court is required or expected to do with the plan.<sup>90</sup> How does the court manage any variance between the plan and the annual report? In what way does the management plan coincide with the inventory?

### *B. Personal Status Reports*

All states, except California,<sup>91</sup> require guardians to file a periodic report concerning the personal status of the adult. The typical status report asks for information about current mental, physical, and social condition, living arrangements, services provided, summary of visits, changes in capacity, and recommendations on the need to continue or

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86. *See, e.g.*, COLO. REV. STAT. ANN. § 15-14-418(3) (West 2021); ME. REV. STAT. ANN. tit. 18-C, § 5-419(4) (2019); OKLA. STAT. ANN. tit. 30, § 3-122(A) (West 2021); WASH. REV. CODE ANN. § 11.130.340(4) (West, effective Jan. 1, 2022); UNIF. GUARDIANSHIP, CONSERVATORSHIP, AND OTHER PROTECTIVE ARRANGEMENTS ACT § 419(d) (UNIF. L. COMM'N 2017).

87. S.C. CODE ANN. § 62-5-306(B) (2021).

88. *See, e.g.*, ALASKA STAT. ANN. § 13.26.276(a) (West 2021); COLO. REV. STAT. § 15-14-317(1) (2021); HAW. REV. STAT. ANN. § 560:5-317 (West 2021).

89. VAN DUIZEND ET AL., NATIONAL PROBATE COURT STANDARDS, *supra* note 41, at 69.

90. *See id.*

91. JUD. COUNCIL OF CAL., HANDBOOK FOR CONSERVATORS 6-1 (3d ed. 2016). California relies on the probate court investigators' reviews in place of the conservator's personal status report. *Id.* at 7-5. According to the California *Handbook for Conservators*, some courts do require the conservator to file a status report, but it is not a statutory provision. *Id.* at 6-4. If filed, it becomes a confidential record. *Id.*

modify the guardianship.<sup>92</sup> Required information may include efforts to encourage independence,<sup>93</sup> if there are less restrictive alternatives,<sup>94</sup> if a conflict of interest has developed,<sup>95</sup> the extent to which the adult participated in decision making,<sup>96</sup> if any restrictions on association, visitation or communication are in place,<sup>97</sup> or actions taken to facilitate social activities.<sup>98</sup> The UGCOPAA additionally asks for a summary of supported decision making, technical assistance, support and services provided, any delegation to an agent, and any business relationship that has developed.<sup>99</sup>

New Mexico has focused on improving the reporting forms to cover information about living arrangements, including cleanliness, personal care, safety concerns, and whether any restrictions have been placed on the adult.<sup>100</sup> The report also includes information whether there have been any investigations by Adult Protective Services or the IRS and any arrests, charges, or convictions since the last report.<sup>101</sup> Alaska also recently revised its reporting form to make it easier for the guardian to complete, by providing clearer instructions and removing some questions that the court considered to be not useful in understanding the current circumstances of the adult.<sup>102</sup>

The National Probate Court Standards recommend that the initial report be filed within sixty days, the same deadline for conservators to

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92. *See, e.g.*, IDAHO ADMIN. CODE r. 54.2(c) (2021).

93. *See, e.g.*, CONN. GEN. STAT. § 45a-656(c) (West 2021).

94. *See, e.g.*, OKLA. STAT. ANN. tit. 30, § 4-305(A)(7) (2021).

95. *See, e.g.*, KAN. STAT. ANN. § 59-3083(b)(6) (West 2021).

96. *See, e.g.*, WASH. REV. CODE ANN. § 11.130.345(2)(f) (West 2021).

97. *See, e.g.*, MINN. STAT. ANN. § 524.5-316(a)(3) (West 2020).

98. *See, e.g.*, W. VA. CODE ANN. § 44A-3-2(a)(4) (LexisNexis 2021).

99. UNIF. GUARDIANSHIP, CONSERVATORSHIP, AND OTHER PROTECTIVE ARRANGEMENTS ACT § 317(b)(3) (UNIF. L. COMM'N 2017).

100. N.M. STAT. ANN. § 45-5-314(a) (LexisNexis 2021).

101. Patricia Galindo, Senior Staff Att'y, Admin. Off. Sup. Ct., State of N.M., New Mexico's New & Improved Adult Guardianship System: New Forms, Training, Tools and Oversight for Judges, Address at Massachusetts Guardianship Policy Institute, Colloquium on Guardianship Oversight (Dec. 3, 2020, 2:40 PM).

102. Author communication with Lisa Wawrzonek, Statewide Guardianship Compliance Officer, Working Interdisc. Networks of Guardianship Stakeholders (Nov. 16, 2020). The sources and details related to the author communication have not been independently verified by *Syracuse Law Review*. Further information may be obtained by contacting the authors directly. The form can be downloaded at <https://alaska-form-guardianship.pdfFiller.com/>.

file their inventory.<sup>103</sup> The earlier deadline allows the courts to assess the guardian's initial performance, the adult's condition, and the amount of income and assets available. Most statutes require an annual report, typically due on the anniversary date of the appointment, though some states and jurisdictions require all reports due on a specific date, regardless of the appointment anniversary date.<sup>104</sup> New York has all subsequent reports due on May 1.<sup>105</sup> West Virginia guardians file their initial report at sixty days and thereafter report annually on December 31.<sup>106</sup>

Washington allows the judge to determine the frequency of filing—annual, biennial, or triennial—based on considerations of how long the adult has been under guardianship, if past reports have been timely filed, the amount of income or assets available, if other agencies also monitor the guardian, the adequacy of the bond, and if any allegations of abuse, neglect, or breach of fiduciary duty have been made.<sup>107</sup>

### *1. Survey Results*

In the 2020 survey, 83.5% of respondents indicated that personal status reports are due annually, and another 3.5% indicated more frequently than annually.<sup>108</sup> Several of the 2020 survey respondents noted that despite the deadlines, little was done to enforce them.<sup>109</sup>

## *C. Financial Reports*

### *1. Inventory of Assets*

The guardian of property or conservator is required in all states to provide the court with an inventory of all the assets under the guardian's control. Typically, the inventory is due shortly after appointment, varying from thirty to ninety days.<sup>110</sup> Inventory forms

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103. COMM'N ON NAT'L PROB. CT. STANDARDS AND ADVISORY COMM. ON INTERSTATE GUARDIANSHIPS, *supra* note 2, § 3.3.14 cmt. at 71.

104. *See id.*; *see also, e.g.*, N.Y. MENTAL HYG. LAW § 81.31(a) (2021).

105. *Id.*

106. W. VA. CODE § 44A-3-11(a)(1)–(2) (2021).

107. WASH. REV. CODE. §§ 11.130.530(10), 11.130.345(9) (2021).

108. NATIONAL SURVEY REPORT, *supra* note 4, at 6.

109. *Id.* at 11.

110. *See, e.g.*, HAW. PROB. R. 119 (2021) (sixty days); ALA. CODE § 26-2A-146(a) (LexisNexis 2021) (ninety days); CONN. GEN. STAT. § 45a-655(a) (West 2021) (two months).

and instructions appear to be readily available on most court websites.<sup>111</sup> The inventory along with the financial plan serves as the baseline, or starting balance, for the subsequent periodic accounting.

### 2. Accounting

Periodic accounting reports include the income and expenses for the reporting period as well as a current statement of available assets.<sup>112</sup> Many courts expect the accounting to be filed annually, although some states file annually and then biennially<sup>113</sup> or as the court directs.<sup>114</sup>

In some states, the accounting and aspects of the personal care plans are combined. For example, in Tennessee the accounting must contain a statement concerning the physical or mental condition of the person that demonstrates the need, or lack of need, to continue the fiduciary's services.<sup>115</sup> The Oklahoma statute calls for the guardian of property to annually report any significant changes in physical or mental condition or financial resources or in the capacity to manage resources.<sup>116</sup> New Mexico's revised annual report for conservators includes a three-year snapshot of income and expenses to allow judges to quickly see the assets available as well as trends over time.<sup>117</sup>

### 3. Barriers to Effective Use of Personal and Financial Reports

Guardians may view annual status reports as just more paperwork that is difficult or time consuming to complete. The ability to timely fill out all the required reporting forms may depend on the availability and completeness of records as well as the sophistication of the guardian. Preparing the financial reports may be especially difficult for family guardians and may require the expense of an accountant.

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111. See, e.g., *Guardianship & Conservatorship*, CT. ASSISTANCE OFF. OF THE STATE OF IDAHO JUD. BRANCH, <https://courtsselfhelp.idaho.gov/Forms/Guardianship> (last visited Mar. 20, 2022).

112. See, e.g., OFF. OF THE STATE CT. ADM'R., INSTRUCTIONS FOR GUARDIAN AND CONSERVATOR FINAL REPORT AND ACCOUNTING FORM 1-2 (2019), <https://www.ndcourts.gov/Media/Default/legal-resources/legal-self-help/conservatorship-guardianship/Final%20Report%20%20Accounting%20Instructions.pdf>.

113. See, e.g., CAL. PROB. CODE § 2620(a) (Deering 2021).

114. See, e.g., NEB. REV. STAT. § 30-2648 (LexisNexis 2021).

115. TENN. CODE ANN. § 34-1-111(d)(2) (2021).

116. OKLA. STAT. ANN. tit. 30, § 4-303(B)(2) (West 2021).

117. Galindo, *supra* note 101.



Model forms, instructions, and training are necessary to aid the first-time guardian to successfully navigate how to set up an accurate accounting process and how to prepare the inventory and accountings. Some family guardians may face language barriers.

Courts also face barriers, as they may not have staff members with the time or skill to review and evaluate each plan, report, inventory, and accounting. This is particularly true in complex estates. In many states, there is no standard reporting format, increasing the complexity of the review process.<sup>118</sup>

#### *D. Report Review and Verification*

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

##### *1. Ensuring that Documents Are Filed*

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

Courts use a variety of methods for reminding guardians that reports are due.<sup>119</sup> For courts that have a common due date, a reminder sent out to all guardians prior to that due date is helpful.<sup>120</sup> Some jurisdictions automatically generate notices to guardians of reports due

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118. *See, e.g.*, 11 Ohio Forms of Pleading and Practice Prob. Div. § 1 (2021).

119. *See, e.g.*, N.H. REV. STAT. ANN. § 464-A:35(I) (2021) (Clerk gives notice of default by first class mail within 10 days after default); TENN. CODE ANN. § 34-1-128 (2021) (Clerk shall maintain tickler system so reporting deadlines are easily attainable).

120. Interview with Elizabeth Sykes, Charleston Cnty. S.C. Prob. Ct. (June 3, 2019); Interview with Jennifer Curry, Conservatorship/Guardianship Clerk, Charleston Cnty. S.C. Prob. Ct. (June 3, 2019); Interview with Tina Homer, Conservatorship/Guardianship Clerk, Charleston Cnty. S.C. Prob. Ct. (June 3, 2019). The sources and details related to the interviews have not been independently verified by *Syracuse Law Review*. Further information may be obtained by contacting the authors directly.

based on anniversary dates.<sup>121</sup> These alerts may go out by email, text, or mail prior to the due date.<sup>122</sup>

To ensure that required documents are filed, courts must have adequate systems for tracking due dates and receipt of reports. Some case management systems have this capacity but getting consistent data entry can be a significant challenge, particularly if no one is statutorily required to do so.<sup>123</sup>

## 2. *Sanctions for Late or Missing Reports*

Courts have a range of steps they can take when guardians do not file reports or accountings on time, with increasing severity of sanctions.<sup>124</sup> The National Probate Court Standards provide that the courts should enforce their orders by appropriate means, including the imposition of sanctions.<sup>125</sup> A first step is for a court to send a reminder that the report is past due. If the report is not forthcoming, the court may issue a show cause order or other demand to file, such as a *capias* or contempt citation, and hold a status hearing.

Statutory sanctions provide the courts with a variety of enforcement tools. In Delaware, if the accounting is not filed the guardian can be held in contempt and imprisoned.<sup>126</sup> Georgia conservators who do not file can lose their compensation.<sup>127</sup> Kentucky courts can increase the surety when guardians fail to file.<sup>128</sup> In Missouri, defaulting guardians may be held liable on their bond.<sup>129</sup>

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121. *See, e.g.*, CAL. ORDERS 2019-44, 14.77(E)(4).

122. Interview with April Maycock, Dir. of Info. Servs., Wayne Cnty. Ill. Prob. Ct. (June 12, 2019); Interview with Mike McClory, Chief Deputy Prob. Reg., Wayne Cnty. Ill. Prob. Ct. (June 12, 2019); Interview with Janet Witte, Dir. of Special Projects, Wayne Cnty. Ill. Prob. Ct. (June 12, 2019). The sources and details related to the interviews have not been independently verified by *Syracuse Law Review*. Further information may be obtained by contacting the authors directly.

123. Interview with Wynter Solomon-Cuthbert, ICM Fellow, Ninth Jud. Cir. Ct. of Fla. (June 27, 2021). The sources and details related to this interview have not been independently verified by *Syracuse Law Review*. Further information may be obtained by contacting the authors directly.

124. *See infra* Figure 3.

125. COMM'N ON NAT'L PROB. CT. STANDARDS AND ADVISORY COMM. ON INTERSTATE GUARDIANSHIPS, *supra* note 2, at Standard 3.3.17(a); *id.*, Commentary.

126. DE. CODE ANN. tit. 12, § 3944(b) (2021).

127. GA. CODE ANN. § 29-5-60(d) (2021).

128. KY. REV. STAT. ANN. § 387.090(4) (West 2021).

129. MO. ANN. STAT. § 475.190(3) (West 2021).

New Hampshire guardians who do not respond to a *capias* can be fined five dollars per day for late filings and imprisoned for up to ten days.<sup>130</sup> New Mexico can also fine guardians twenty-five dollars per day.<sup>131</sup> Texas guardians who cannot show good cause for failing to file may be fined up to \$1000.<sup>132</sup> In Utah, the penalty for willfully not filing a report or an account can be up to \$5000.<sup>133</sup> Suspension of the guardian, removal and the appointment of a substitute or successor guardian is the final sanction for courts to impose.<sup>134</sup>

Michigan tribal court judge Michael Long considers failure to respond as a warning sign of potential problems, but he recognizes that most parties who fail to report are uninformed about court protocols.<sup>135</sup> Tools other than sanctioning he might use are reconsidering the bond or appointing as a temporary measure an experienced co-guardian to work with the lay guardian.<sup>136</sup>

#### A. Survey Results

The 2020 respondents are seeing courts provide notices and imposing sanctions (Figure 3). More than a quarter (28%) reported that they receive reminders of reports due and 39% receive a notice if reports are late.<sup>137</sup> Nearly two-thirds (65.6%) report that courts issue formal notice of delinquency and 20.7% informally contact the guardian or conservator.<sup>138</sup> Show cause orders are entered routinely by the court according to 22% of respondents, while 35.8% said that it is done when appropriate, and 6.2% report that show cause orders are

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130. N.H. REV. STAT. ANN. § 464-A:37 (LexisNexis 2021).

131. N.M. STAT. ANN. § 45-5-314(C) (LexisNexis 2021).

132. TEX. EST. CODE ANN. § 1163.151(b)(2)(B) (West 2021).

133. UTAH CODE ANN. §§ 75-5-312(3)(f)(viii)(C), 417(4)(a) (LexisNexis 2021).

134. COMM'N ON NAT'L PROB. CT. STANDARDS AND ADVISORY COMM. ON INTERSTATE GUARDIANSHIPS, *supra* note 2, § 3.3.17 cmt. at 73–74.

135. Video Recording of Presentation by Hon. Rita Cobb, Senior Judge Or. & Hon. Michael Long, Judge, Grand Traverse Band of Ottawa and Chippewa Indians (Dec. 17, 2020) (available through National Center for State Court: [https://www.eldersandcourts.org/guardianship\\_conservatorship/resources-for-courts/responses-to-allegations-of-wrongdoing](https://www.eldersandcourts.org/guardianship_conservatorship/resources-for-courts/responses-to-allegations-of-wrongdoing)).

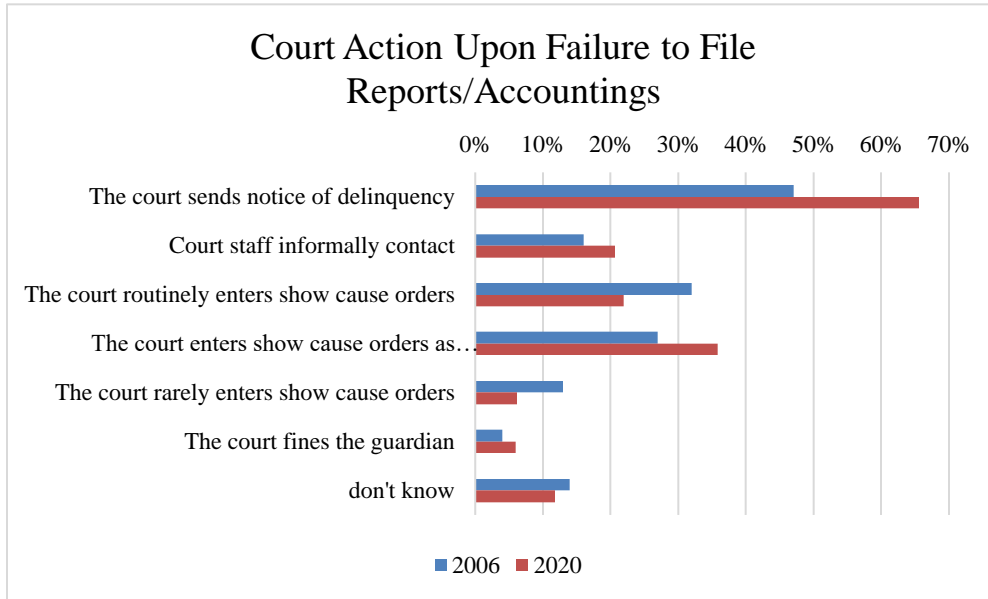
136. *Id.*

137. NATIONAL SURVEY REPORT, *supra* note 4, at 20.

138. *Id.* at 10.

rare.<sup>139</sup> Survey respondents in 2006 reported a similar range of court actions upon failure to file.<sup>140</sup>

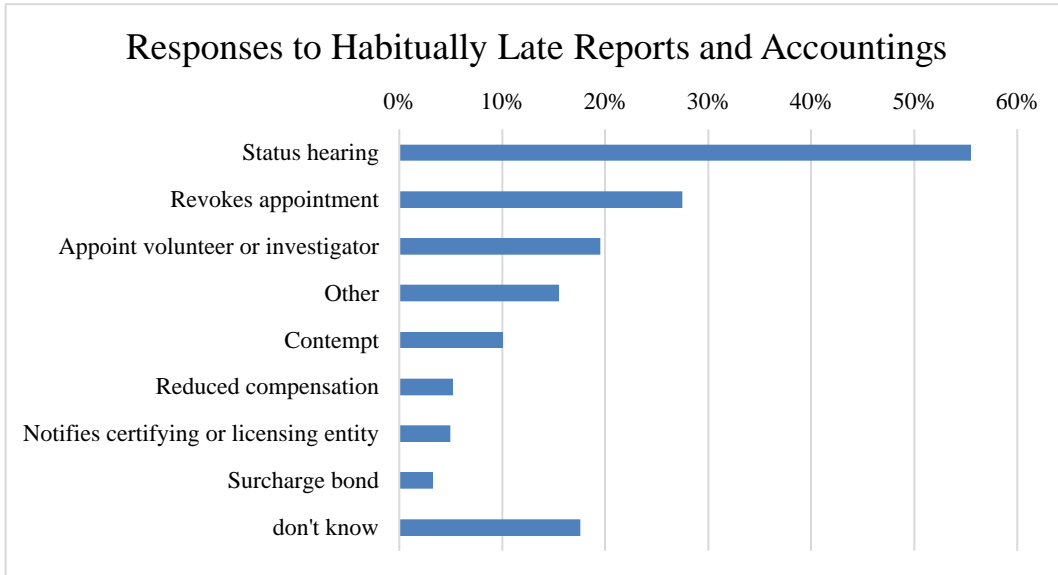
Figure 3: Court Actions



If a guardian/conservator is habitually late in filing reports or accountings, the court may be more inclined to take stronger action (Figure 4). However, in the 2020 survey, the most common response was that the court would hold a status hearing (56%), while only 28% reported that the court revokes the appointment and appoints a substitute or successor guardian or conservator.<sup>141</sup> One fifth (20%) ask a volunteer or investigator to obtain more information. Only 5% notify the certification or licensing entity and 5% reduce compensation.<sup>142</sup>

Figure 4: Responses to Habitually Late Reports

139. *Id.*  
 140. GUARDIANSHIP MONITORING: A NATIONAL SURVEY, *supra* note 3, at 16–17.  
 141. *Id.* at 11.  
 142. *Id.* at 12.



In comments with the 2020 survey, several respondents reported that there is no action, even when reports are habitually late.<sup>143</sup> One noted an important reason courts are reluctant to impose strict sanctions on guardians: “We seem to allow our guardians/conservators to continually file late reports. This is most likely because it is hard to replace the guardian/conservator here due to lack of affordable resources.”<sup>144</sup> When a lay guardian has difficulty complying with reporting and accounting requirements, in the absence of evidence of exploitation or critical mismanagement, courts may be reluctant to impose sanctions if there is no one else to appoint.

### 3. Review Guidelines

To assist the reviewers, whether volunteers, court staff, investigators, auditors, or examiners, several courts have compiled lists of actions or factors that may warrant closer examination of the guardianship, the reports and accounts, or the circumstances of the adult subject to guardianship.<sup>145</sup> The development of reviewer protocols or checklists also provides consistency within the jurisdiction.

143. *Id.*

144. NATIONAL SURVEY REPORT, *supra* note 4, at 12.

145. *See, e.g., infra* note 158.

The National Probate Court Standards has a comprehensive list of possible red flags that could indicate the need to appoint a visitor, guardian ad litem, or an attorney; refer to an investigator, to adult protective services, or law enforcement; or initiate a higher level or frequency of monitoring.<sup>146</sup> Some red flags include:

- 1) bills paid late, irregularly, or not at all;
- 2) missing income entries (Social Security, rental income);
- 3) no application for Medicaid when needed;
- 4) charges for utilities for an empty home;
- 5) purchases for items that the person cannot use (automobile);
- 6) checks written for cash or unauthorized ATM withdrawals;
- 7) guardian's lifestyle has become more affluent;
- 8) concerns about the quality of care; and
- 9) complaints from the protected person, friends, family members, or neighbors.<sup>147</sup>

#### A. *Enhanced Practices in Selected Jurisdictions*

New Mexico has a one-page checklist for judges to use when reviewing an annual report to make sure the report contains the necessary information.<sup>148</sup> They can also note any further actions to be taken, such as set a status hearing or refer to the State Auditor.<sup>149</sup> The self-help portal for Florida's 8th 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>150</sup>

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146. See VAN DUIZEND ET AL., NATIONAL PROBATE COURT STANDARDS, *supra* note 41, 72–73.

147. *Id.*; NAT'L ASS'N FOR CT. MGMT, *supra* note 5 at 13.

148. Galindo, *supra* note 101. See N.M. STAT. ANN. § 45-5-314 (LexisNexis 2021).

149. *Id.*

150. *Forms And Checklists*, THE EIGHTH JUD. CIR. OF FLA., <https://circuit8.org/self-help/forms-and-checklists/> (last visited Mar. 22, 2022).

*E. Conducting Guardianship Reviews*

*1. Court Reviews*

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

*A. Staff Reviewers*

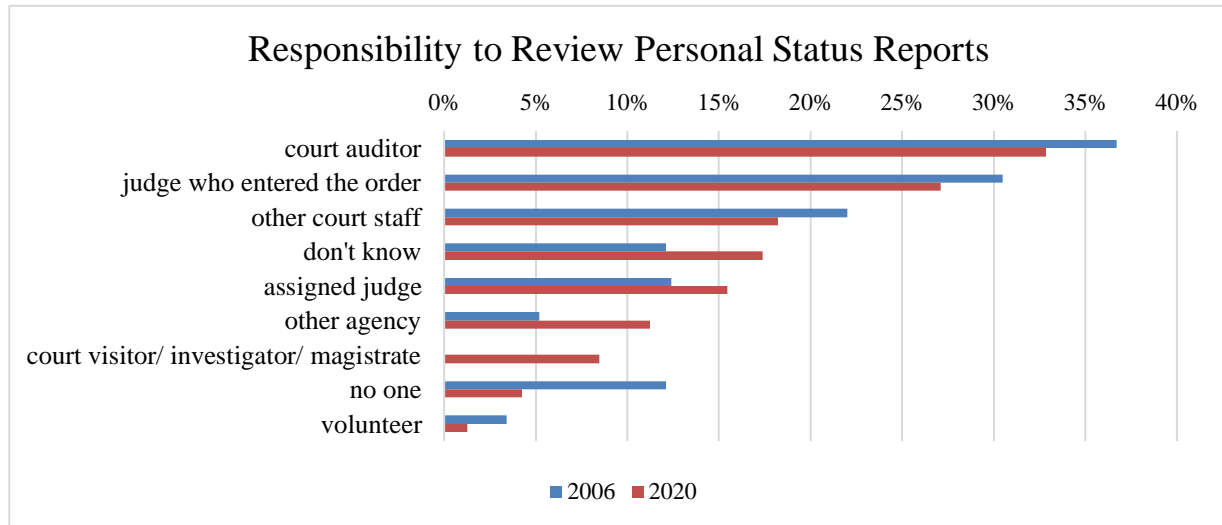
The most common reviewers of personal status and financial reports are court staff. In both the 2006 and 2020 surveys, the most common response for who reviews reports was court personnel whose primary responsibility is to review the reports (Figure 5). The second most common answer was the judge who entered the order, followed by court staff who also have other responsibilities.<sup>151</sup> The number of respondents saying that no one reviews personal status reports significantly dropped from 12% in the 2006 survey to 4% in the 2020 survey.<sup>152</sup>

Figure 5: Responsibility to Review Personal Status Reports.

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151. NATIONAL SURVEY REPORT, *supra* note 4, at 13–14.

152. *Id.* at 13.



### *B. Enhanced Practices in Selected Jurisdictions*

Because some cases need greater oversight than others, Idaho uses a differentiated case management tool (DCM) to determine how closely to provide oversight.<sup>153</sup> 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>154</sup> Some of the assessment items are objection to proposed guardian, unhealthy relationships, residential instability, need for benefits, and complex medical or mental needs.<sup>155</sup> Depending on the assessment score, the magistrate judge will indicate the appropriate monitoring level and the monitoring activities that should be completed.<sup>156</sup> By doing this assessment at the beginning of the case,

153. *Guardianships & Conservatorships*, STATE IDAHO JUD. BRANCH, [https://isc.idaho.gov/guardianship/current\\_guardianship-conservatorship/forms](https://isc.idaho.gov/guardianship/current_guardianship-conservatorship/forms) (last visited Mar. 20, 2022).

154. See STATE IDAHO JUD. BRANCH, DCM TOOL, [isc.idaho.gov/files/dcm-tool-adult-all-districts-2020.xlsx](https://isc.idaho.gov/files/dcm-tool-adult-all-districts-2020.xlsx) (last visited Mar. 20, 2022) (this URL opens an Excel spreadsheet which is the DCM Tool used by the Idaho Department of Health and Welfare. The Excel spreadsheet is fillable and contains six tabs.).

155. *Id.*

156. See STATE IDAHO JUD. BRANCH, DCM TOOL INSTRUCTIONS, <https://isc.idaho.gov/gc/DCM-Tool-Instructions-for-new-cases.pdf> (last visited Mar. 20, 2022).



the court can allocate scarce monitoring resources to where there appears to be the greatest need. This practice is in line with the National Association for Court Management's recommendation that courts "implement screening practices that help them direct resources toward cases that have the highest levels of conflict or risk of abuse."<sup>157</sup>

The well-established court investigator program in California uses local court staff both before and after appointment. Once a conservator is appointed, the court investigator stays involved.<sup>158</sup> Six months after the appointment, the investigator reviews the case to make sure the conservator is fulfilling his or her responsibilities and that the conservatee's rights are being upheld.<sup>159</sup> The investigator will review the case again in another six months and at the end of each twelve-month period after that.<sup>160</sup>

During those reviews, the investigators conduct an unannounced home visit and interview the conservatee and conservator to ensure the conservator is acting responsibly, the residence is clean and appropriate, hygiene is appropriate, and the conservatee appears nourished and healthy.<sup>161</sup> Additionally, the investigator may contact relatives and agencies that provide services to the conservatee to check for compliance.<sup>162</sup> After each interview and home/facility visit, the probate investigator files a report.<sup>163</sup> The case file system allows the bench, clerks, and investigator to flag a case, enter reminders/ticklers, and assign the case to an investigator on the day the conservatorship is adopted.<sup>164</sup>

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157. NAT'L ASS'N FOR CT. MGMT., *supra* note 5, at 32.

158. *Conservatorship*, CAL. CTS., THE JUD. BRANCH OF CAL., <https://courts.ca.gov/selfhelp-conservatorship.htm> (last visited Mar. 20, 2022) [hereinafter *Conservatorship* CAL. COURTS]. In California, conservators either of person or of property are appointed for adults, while guardians are appointed for minors. *Id.*

159. *Id.*

160. *Id.*

161. *See id.*

162. *See Conservatorship* CAL. COURTS, *supra* note 158.

163. *See id.*

164. Personal correspondence with Lezlie A. Abbott, Kings County, Supervising Ct. Investigator (Aug. 24, 2020). The sources and details related to the author correspondence have not been independently verified by *Syracuse Law Review*. Further information may be obtained by contacting the authors directly.

If the investigator thinks the conservator is acting in the best interests of the conservatee and the court agrees, the court can reduce the scope of future reports but the investigator must make a personal visit, interview the conservatee, and file at least a short status report every year after the first year.<sup>165</sup> The court may order additional reviews as necessary to protect the conservatee.<sup>166</sup> If the investigator thinks there may be a problem after a review, he or she may ask the judge to appoint a lawyer for the conservatee.<sup>167</sup> This may start the legal process to sanction or remove the conservator, appoint a successor conservator, or end the conservatorship.<sup>168</sup> The California courts assess the conservatee's estate for the cost of the review unless the assessment would create a financial hardship. Being on MediCal, the California version of Medicaid, raises a presumption of hardship.<sup>169</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.<sup>170</sup> The goals of the office are to review the care and management provided by guardians and conservators; add an additional layer of review of asset management; help provide or direct to available resources to promote successful conservatorships; and educate conservators, guardians, and the general public about guardianships and conservatorships.<sup>171</sup>

In partnership with the OCM, Metro Social Services (MSS) workers do home visits to assess the health and safety of adults under conservatorship of the person and to refer their conservators to available resources.<sup>172</sup> With about 2400 conservatorship of the person

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165. *Information for the Conservatee*, CAL. CTS., THE JUD. BRANCH OF CAL., <https://www.courts.ca.gov/1301.htm> (last visited Mar. 20, 2022).

166. *Id.*

167. *Id.*

168. *Id.*

169. CAL. PROB. CODE § 1851.5 (Deering 2021).

170. *About the Office of Conservatorship Management*, OFF. OF CONSERVATORSHIP MGMT., <https://officeofconservatorshipmanagement.nashville.gov/about-the-office-of-conservatorship-management/> (last visited Mar. 20, 2022).

171. *Id.* In Tennessee, guardians are appointed for minors and conservators are appointed for adults, whether personal or property or both.

172. *Id.*

cases, OCM and MSS have the capacity to do well-being reviews of fifty randomly selected cases each quarter.<sup>173</sup> The MSS workers have a blanket court order that allows them to have access to all medical records, as well as to interview the person, care providers, and conservator.<sup>174</sup>

OCM's auditor reviews each of the 300 financial conservatorship cases at least once a year.<sup>175</sup> By blanket order, the auditor has access to all financial records with any financial institution.<sup>176</sup> 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.<sup>177</sup> The OCM has a strong emphasis on helping the conservators do a better job at understanding their roles and responsibilities with online resources and training opportunities.<sup>178</sup>

New York uses court-appointed examiners who must review the guardian's initial and annual reports within thirty days of filing to determine the person's condition, care, and financial well-being, and how the guardian has carried out his or her duties.<sup>179</sup> Court examiners, appointed by the appropriate Appellate Division, are assigned in every case based on a rotation list maintained by the clerk's office.<sup>180</sup> Examiners reconcile financial reports with bank statements and receipts, determine if disbursements are necessary and proper, and review the required medical statements from a doctor or social worker

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173. Interview with Amy Willoughby Bryant, Director, Off. of Conservator Mgmt. (Dec. 2, 2020). The sources and details related to the interview have not been independently verified by *Syracuse Law Review*. Further information may be obtained by contacting the authors directly.

174. *Id.*

175. *Id.*

176. *Id.*

177. *Id.*

178. Interview with Amy Willoughby Bryant, Director, Off. of Conservator Mgmt. (Dec. 2, 2020). The sources and details related to the interview have not been independently verified by *Syracuse Law Review*. Further information may be obtained by contacting the authors directly.

179. N.Y. MENTAL HYG. LAW § 81.32(a) (McKinney 2021).

180. Interview with Michael Tempesta, Exam'r, N.Y. Cnty., (Jan. 13, 2021). The sources and details related to the interview have not been independently verified by *Syracuse Law Review*. Further information may be obtained by contacting the authors directly. There are approximately thirty-three examiners in New York County. *Id.*

who has knowledge of the health and wellbeing of the adult.<sup>181</sup> The examiners can also demand the filing of a report that is late or incomplete. After the review, examiners send a report to the court with conclusions and findings along with a request that the accounting be judicially settled for a year.<sup>182</sup> The clerk reviews the report and sends it to the appointing judge for entry of the approval order.<sup>183</sup> 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>184</sup>

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>185</sup> At least half of the counties have dedicated staff to conduct these reviews and audits. Any clerk can escalate the staff review to the clerk's inspector general or to the Statewide Investigative Alliance (SIA).<sup>186</sup> Each clerk's office has a manual of best practices for guardianship auditing and worksheets for conducting reviews of care plans, reports, and audits of accounts that have been approved by the Florida Court Clerks and Comptrollers Association.<sup>187</sup>

A Florida court can also appoint court monitors on a case-by-case basis to investigate, seek information, examine documents, or interview the adult subject to guardianship.<sup>188</sup> They can be appointed in response to an interested person's concern or when the court sees a need.<sup>189</sup> 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>190</sup> Four counties (Pinellas, Broward, Orange, and Hillsborough) have permanent on-staff court monitors. In the other counties, the standard

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181. N.Y. MENTAL HYG. LAW §§ 81.31(b)(5), 81.32(a) (McKinney 2021)

182. *Id.* at 81.32(f).

183. *Id.* at 81.31(d).

184. *Id.* at 81.32(f). If the estate is under \$5000 the fee is paid by the county. *Id.*

185. FLA. STAT. ANN. § 744.368 (LexisNexis 2021).

186. *See infra* p. 53–55.

187. *See* E-mail from Anthony Palmieri, Deputy Inspector Gen., Palm Beach Cnty. Clerk's Off., to author (Jan. 6, 2021) (on file with *Syracuse Law Review*).

188. *Id.*

189. *Id.*

190. FLA. STAT. ANN. § 744.107(3) (LexisNexis 2021).

practice is to appoint an attorney.<sup>191</sup> The monitor is paid a reasonable fee from the adult's assets or as a surcharge from the wrong doer.<sup>192</sup>

In addition to monitoring individual cases, the New Jersey Guardianship Monitoring Program (GMP) staff conduct an annual specialized review of cases involving guardians with four or more cases statewide.<sup>193</sup> The purpose of the review is to identify and address patterns of potential guardian malfeasance or exploitation that might not be identifiable through standard monitoring.<sup>194</sup> If concerns are noted, either in the standard monitoring or the specialized review, GMP staff identify all cases statewide related to the guardian and notify the involved courts.<sup>195</sup>

### *C. Accountants*

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

Courts may contract with outside forensic accountants when the need arises, though funding is often a challenge. In New York, teams known as enhanced multidisciplinary teams (E-MDTs), consisting of accountants, bankers, APS representatives, local district attorneys, social workers, law enforcement officials, medical experts, and social workers, meet to review cases where financial exploitation may be present. The teams' contract with a CPA firm specializing in forensic accounting.<sup>196</sup>

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191. E-mail from Anthony Palmieri, Deputy Inspector Gen., Palm Beach Cnty. Clerk's Off., to author (Dec. 1, 2020) (on file with *Syracuse Law Review*).

192. *Id.*

193. E-mail from Kristi Robinson, Chief Civ. Prac. Liaison, N.J. Admin. Off. Cts., to author (Jan. 25, 2021) (on file with author). The sources and details related to the author communication have not been independently verified by *Syracuse Law Review*. Further information may be obtained by contacting the authors directly.

194. *Id.*

195. *Id.*

196. Drew Adamek, *Forensic Accountants Team Up to Fight Elder Abuse*, J. ACCOUNTANCY (June 1, 2020), <https://www.journalofaccountancy.com/issues/2020/jun/forensic-accountants-help-fight-elder-abuse.html>.

*D. Volunteer Reviewers*

Courts may extend their monitoring capacity with volunteers. As originally piloted in 1988 by Legal Counsel for the Elderly of AARP, trained and supervised volunteers have been used to make sure court records are up to date, trace the whereabouts of guardians who have failed to file reports, review personal status reports for concerns, audit the accounts, and assure that persons under guardianship are receiving the care and protection they need.<sup>197</sup> More than fifty jurisdictions have used volunteer monitors in some fashion.<sup>198</sup> In 2010, the ABA Commission on Law and Aging revised and updated the original AARP manual, a practical, hands-on guide to help courts establish volunteer programs.<sup>199</sup>

*E. Enhanced Practices in Selected Jurisdictions*

Utah's Guardianship Reporting and Monitoring Program (GRAMP), housed in the Administrative Office of the Courts, oversees the Court Visitor Program (CVP), which uses volunteers to help inform judges' decisions about guardianship cases.<sup>200</sup> The courts rely on the visitors to provide accurate and impartial information about the person to ensure continuing quality of care.<sup>201</sup> Among their post-appointment responsibilities are to conduct well-being investigations, report on the person's welfare and condition, track down guardians with whom the court has lost contact or whose reports are missing or late, and examine the financial documents to ensure the person's finances and estate are being responsibly managed.<sup>202</sup> Most court visitors are assigned cases by the CVP at the request of a judge, but an

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197. AM. BAR ASS'N COMM'N ON L. & AGING, VOLUNTEER GUARDIANSHIP MONITORING AND ASSISTANCE: SERVING THE COURT AND THE COMMUNITY 8 (2011) [hereinafter ABA, VOLUNTEER GUARDIANSHIP MONITORING], [https://www.americanbar.org/content/dam/aba/administrative/law\\_aging/2011/vol\\_gship\\_intro\\_1026.pdf](https://www.americanbar.org/content/dam/aba/administrative/law_aging/2011/vol_gship_intro_1026.pdf).

198. *Id.* at 9.

199. *Id.* at 9; see NAT'L CTR. FOR STATE CTS., PROBATE COURT VOLUNTEER VISITORS PROGRAM: AN IMPLEMENTATION HANDBOOK (2005), <https://cdm16501.contentdm.oclc.org/digital/collection/famct/id/302>.

200. *Court Visitor Program (CVP)*, UTAH CTS., <https://www.utcourts.gov/gramp/cvp/> (last visited Mar. 20, 2022).

201. *Id.*

202. *Id.*

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interested person can also request that a court visitor be assigned.<sup>203</sup> The Court Visitor Coordinator prepares an order for the judge to appoint a visitor, develops an assignment plan to detail what the visitor is requested to do, and reviews the volunteer's report to the court.<sup>204</sup>

In 2020, the Utah GRAMP court visitors were appointed in 215 cases, out of about 24,000 active cases statewide.<sup>205</sup> The largest group (40%) were asked to locate the whereabouts of guardians who were not current on filing reports or accounts.<sup>206</sup> Sixteen percent were needed to investigate the person's circumstances, 9% were well-being checks, and 10% were account audits.<sup>207</sup> The thirty-eight volunteers are predominately retired professionals: social workers, accountants, attorneys, judges, and parole officers. Each visitor has a court order which allows the visitor to gain access to relevant medical and financial records.<sup>208</sup> Along with uncovering illegal actions and adults living in unsafe conditions or needing improved medical attention or nutrition, visitors make suggestions to improve the adult's living situation, identify less restrictive alternatives, empower the adults to be more active participants in decisions, and reconnect guardians with the court.<sup>209</sup>

The Ada County (Idaho) Guardianship Monitoring program, housed within the court administration, uses staff along with volunteers to review reports, interview adults and their guardians, and make home visits.<sup>210</sup> The staff of three full-time employees is supplemented with volunteers to help monitor over 2,300 active

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203. *Id.*

204. Interview with Michelle Wilkes, GRAMP Ct. Visitor Coordinator (Dec. 14, 2020). The sources and details related to the author communication have not been independently verified by *Syracuse Law Review*. Further information may be obtained by contacting the authors directly.

205. Shonna Thomas, Program Dir., Utah's Guardianship Reporting & Monitoring Program, Utah's Guardianship Reporting & Monitoring Program, Address at Massachusetts Guardianship Policy Institute, Colloquium on Guardianship Oversight (Dec. 10, 2020, 2:30 PM).

206. *Id.*

207. *Id.*

208. *Id.*

209. *Id.*

210. *Guardianship Monitoring Program*, ADA CNTY., IDAHO, <https://adacounty.id.gov/judicial-court/court-administrtrtion/guardianship-monitoring-program/> (last visited Mar. 21, 2022).

cases.<sup>211</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>212</sup>

Florida's Thirteenth Judicial Circuit, covering the Hillsborough County (Tampa) area, uses the Elder Justice Center to assist with monitoring.<sup>213</sup> 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.<sup>214</sup> The Center's goal is to visit every person under guardianship at least once a year, although face-to-face visits were temporarily halted during the COVID pandemic.<sup>215</sup> Elder Justice Center staff look for changes since the last reports were filed.<sup>216</sup> They also review the reports to ensure that all questions have been thoroughly answered and adequate information has been provided.<sup>217</sup>

The New Jersey judiciary launched a statewide Guardianship Monitoring Program (GMP) in 2013.<sup>218</sup> The Administrative Office of the Courts oversees the statewide, volunteer-based program.<sup>219</sup> The volunteers use a statewide incapacitated guardianship database to track and follow up on guardianship files to ensure that guardians are complying with filing requirements and effectively managing the adult's affairs.<sup>220</sup>

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211. *Id.*

212. *Guardianship Monitoring Program*, SNOHOMISH CNTY., WASH., <https://snohomishcountywa.gov/2106/guardianship-monitoring-program> (last visited Mar. 21, 2022).

213. SUP. CT. COMM'N ON FAIRNESS, COMM. ON GUARDIANSHIP MONITORING, GUARDIANSHIP MONITORING IN FLORIDA: FULFILLING THE COURT'S DUTY TO PROTECT WARDS 14 (2003), <https://www.flcourts.org/content/download/218232/file/guardianshipmonitoring.pdf>.

214. *Id.*

215. *Id.*

216. *Id.*

217. *Id.*

218. NAT'L ASS'N FOR CT. MGMT., *supra* note 5, at 20.

219. *Id.*

220. *Id.*



*F. Court Visitors*

A number of courts rely on visitors to investigate a concern observed in report or an account or from a complaint from a family member.<sup>221</sup> These visitors, appointed on an as-needed basis, can significantly augment court resources by being an extra set of eyes and ears for the court.<sup>222</sup> When assets are available, these on-call visitors are frequently paid for from the adult's estate; otherwise, the court must budget for the visitors.<sup>223</sup>

The use of court visitors or monitors to visit those under a guardianship allows independent collaboration of the statements made on annual plans. Court visitors may observe and interact with the adults, their caregivers, family, and guardians which gives the court valuable insight into areas of their life that might otherwise remain hidden.<sup>224</sup> They can also ensure that the person is not being abused, abandoned, or placed in the wrong environment. The visitors can also help the guardians by suggesting resources.

*G. Survey Results*

In the 2020 survey, 13% of respondents reported that court staff visit individuals who are subject to guardianships regularly, and

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221. See e.g., COLO. REV. STAT. § 15-14-317(2) (2021); FLA. STAT. ANN. § 744.107(2) (West 2021) (court monitor); HAW. REV. STAT. ANN. § 560.5-317(c) (2021) (kokua kanawai); IDAHO CODE § 15-5-315(3) (2021) (guardian ad litem); 755 ILL. COMP. STAT. ANN. § 5/11a-20(b) (West 2021); IND. CODE ANN. § 29-3-9-6(e) (West 2021) (guardian ad litem); ME. REV. STAT. ANN. tit. 18-C, § 5-317(4) (2021); MD. RULE 10-106(b) (2021) (independent investigator); MASS. GEN. LAWS ANN. ch. 190B, § 5-309(d) (West 2021) (guardian ad litem); MICH. COMP. LAWS ANN. § 700.5310(4) (West 2021); MINN. STAT. ANN. §§ 524.5-316(f), 524.5-420(g) (West 2021); N.H. REV. STAT. ANN. § 464-A:35(II) (2021) (designated person); N.J. STAT. ANN. § 3B:12-42(b) (2021); N.Y. MENTAL HYG. LAW § 81.23 (McKinney 2021); OR. REV. STAT. ANN. § 125.160 (West 2021); S.C. CODE ANN. § 62-5-307(A) (2021); TEX. EST. CODE ANN. § 1054.051 (West 2021); WIS. STAT. ANN. § 54.40(1) (West 2021) (guardian ad litem).

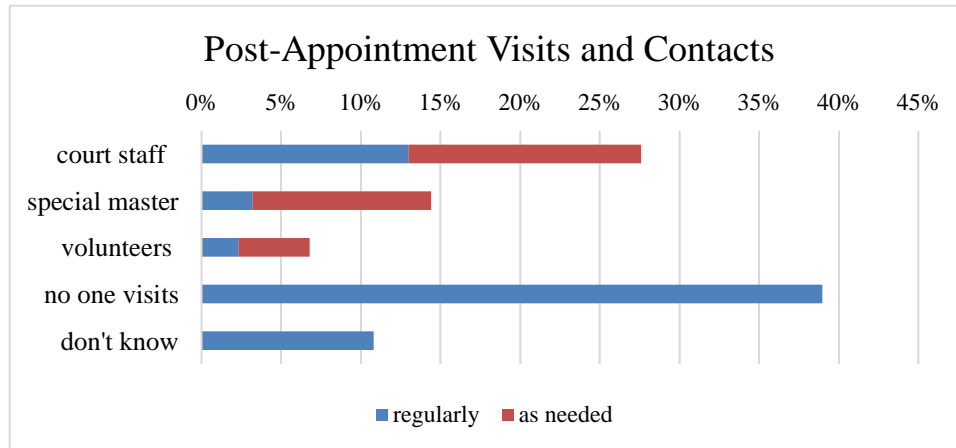
222. *Volunteer Court Visitor Program*, TARRANT CNTY., TEX, (June 10, 2015), <https://www.tarrantcounty.com/en/probate-courts/probate-court-1/guardianship/volunteer-court-visitor-program.html>.

223. JUDGE STEVE M. KING, TARRANT CNTY. PROB. CT., *THE AD LITEM MANUAL FOR 2017: FOR GUARDIANSHIP & HEIRSHIP PROCEEDINGS IN TEXAS PROBATE COURTS* 41 (2021), [https://access.tarrantcounty.com/content/dam/main/probate-courts/probate-court-1/Documents/The\\_Ad\\_Litem\\_Manual.pdf](https://access.tarrantcounty.com/content/dam/main/probate-courts/probate-court-1/Documents/The_Ad_Litem_Manual.pdf).

224. WYNTER A. SOLOMON-CUTHBERT, NAT'L CTR. STATE CTS., *GUARDIANSHIP MONITORING: HELPING THE FORGOTTEN SPEAK* 50 (2010).

14.6% reported that this occurs on an as-needed basis (Figure 6).<sup>225</sup> A total of 14.3% of respondents reported that a GAL or master appointed by the court visit individuals, and 6.8% reported that a volunteer does so.<sup>226</sup>

Figure 6: Post-Appointment Visits and Contacts



#### H. Enhanced Practices in Selected Jurisdictions

Every Texas statutory probate court must have a court visitor program, while in smaller jurisdictions the program is optional, depending on the population's needs and availability of financial resources.<sup>227</sup> Tarrant County, Texas, Probate Court Number Two uses social work students from area colleges who work under the supervision of a staff social worker.<sup>228</sup> The students visit persons under guardianship on behalf of the court and report on their condition, as well as any needs the person or their guardian may have.<sup>229</sup> The students receive course credit, with minimal costs to the court.<sup>230</sup> They submit a report of the visit to the program manager for review, and the

225. NATIONAL SURVEY REPORT, *supra* note 4, at 15.

226. *Id.*

227. TEX. EST. CODE ANN. § 1054.102(b) (West 2021).

228. See KARP & WOOD, *supra* note 7, at 33.

229. See ABA, VOLUNTEER GUARDIANSHIP MONITORING, *supra* note 197, at 9; see also KARP & WOOD, *supra* note 7.

230. NAT'L ASS'N FOR CT. MGMT., *supra* note 5, at 12.

judge uses those reports to guide decisions on whether to modify or continue the guardianship for an additional year.<sup>231</sup> The next-door Probate Court Number One uses lay volunteers.<sup>232</sup>

Alaska's Office of Public Advocacy, an executive agency, contracts with twenty to twenty-five individuals to serve as the court visitors for guardianship cases throughout the state, while the court appoints a guardian ad litem in conservatorship cases.<sup>233</sup> In addition to the visitors' pre-appointment investigative responsibilities, they also conduct a three-year review.<sup>234</sup> During this review, they examine the previously filed annual reports, interview the adult and service providers, and recommend to the court whether the guardianship should continue.<sup>235</sup> If a family member raises an issue, the court may order the visitor to conduct an interim review.<sup>236</sup> The Statewide Guardianship Compliance Officer notes that in some of the smaller towns it is hard to recruit and train visitors and to avoid conflicts of interest in communities where everyone knows everyone.<sup>237</sup>

The District of Columbia Superior Court created the Guardianship Assistance Program in 2008 utilizing students seeking a Master's in social work degree at local universities.<sup>238</sup> These student volunteers assist the court by reviewing the care provided, identifying unmet needs, and making recommendations to the court.<sup>239</sup> Students

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231. *Id.*

232. *See Volunteer Court Visitor Program*, TARRANT CNTY., TEX, (June 10, 2015), <https://www.tarrantcounty.com/en/probate-courts/probate-court-1/guardianship/volunteer-court-visitor-program.html>.

233. *See* ALASKA STAT. §§ 13.26.710, 13.26.740 (2021); Interview with Lisa Wawrzonek, Statewide Guardianship Compliance Officer, Working Interdisc. Networks of Guardianship Stakeholders (WINGS) (June 11, 2020).

234. *See* ALASKA STAT. § 13.26.276 (2021); *Court Visitors*, ALASKA DEP'T OF ADMIN., OFF. OF PUB. ADVOC., <https://doa.alaska.gov/opa/pg/visitors.html> (last visited Mar. 21, 2022).

235. Interview with Lisa Wawrzonek, Statewide Guardianship Compliance Officer, Working Interdisc. Networks of Guardianship Stakeholders (WINGS) (June 11, 2020).

236. *Id.*

237. *Id.*

238. *Probate Court Appointments*, D.C. CTS., <https://www.dccourts.gov/services/probate-matters/probate-court-appointment> (last visited Mar. 21, 2022).

239. *Id.*

are appointed as student visitors by court order, providing them with access to medical records as part of their review.<sup>240</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>241</sup>

## *2. Partnerships with Other State Agencies*

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

### *A. Enhanced Practices in Selected Jurisdictions*

The New Mexico Adult Guardianship Study Commission, following an extensive review of the state's needs, recommended that the legislature appropriate funds to hire three full-time auditors in the Administrative Office of the Courts, hire two special masters to hear grievances about guardians and conservator, and implement a computer system to automate filing and monitoring of conservatorship reports.<sup>242</sup> When appropriations were not forthcoming, the Administrative Office of the Courts entered a Memorandum of Understanding with the State Auditor's Office, which was already auditing the contracts of corporate guardians with the Developmental Disabilities Planning Council's Office of Guardianship.<sup>243</sup> In this unique collaborative working arrangement between the judiciary and an executive branch agency, the state auditors have the discretion to accept requests from a judge to conduct an audit of a conservator's

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240. *Id.*

241. NAT'L ASS'N FOR CT. MGMT., *supra* note 5, at 12.

242. Final Report from Hon. Wendy York, et al., on N.M. Adult Guardianship Study Commission Final Report, to N.M. Sup. Ct & Hon. Judith K. Nakamura (Dec. 28, 2017) 6–8, [https://adultguardianship.nmcourts.gov/wp-content/uploads/sites/9/2021/04/AGSC-Final-Report\\_FINAL.pdf](https://adultguardianship.nmcourts.gov/wp-content/uploads/sites/9/2021/04/AGSC-Final-Report_FINAL.pdf).

243. N.M. OFF. OF THE STATE AUDITOR, PILOT PROJECT REPORT OF GUARDIANS AND CONSERVATORS FOR CASES FILED IN DISTRICT COURTS 2 (2019), [https://reports.saonm.org/media/audits/218\\_AOC\\_-\\_Pilot\\_Project\\_Report\\_of\\_Guardians\\_and\\_Conservators\\_FY19\\_Final.pdf](https://reports.saonm.org/media/audits/218_AOC_-_Pilot_Project_Report_of_Guardians_and_Conservators_FY19_Final.pdf).

accountings and to issue a report to the judge for further action.<sup>244</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.<sup>245</sup>

In a pilot project undertaken by State Auditor Brian Colón, auditors found 194 “risk factors” in annual reports filed among more than 300 conservator cases sampled.<sup>246</sup> Among the risk factors cited by auditors: lack of supporting documentation, conflicting information, and assets being understated or unaccounted for.<sup>247</sup> Auditors also found instances of checks written directly to conservators or conservators charging large fees for services or reimbursement of expenses.<sup>248</sup>

Under Virginia’s bifurcated review system to review personal status reports and accountings, guardians file their status reports with the local Department of Social Services (DSS) where the adult resides,<sup>249</sup> while conservators file with the county Commissioner of Accounts.<sup>250</sup> The DSS staff reviews the reports to determine if the report is complete or if there is a concern for or risk of abuse, exploitation, or neglect.<sup>251</sup> If the report is incomplete, the reviewer contacts the guardian to request the missing information.<sup>252</sup> If there is a concern for abuse, the worker may open an Adult Protective Services case for further investigation.<sup>253</sup> When there are no concerns with the report, it is filed with the clerk of court.<sup>254</sup> Commissioners of

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244. N.M. OFFICE OF THE STATE AUDITOR, *supra* note 243, at 20.

245. *Id.* at 9.

246. BRIAN S. COLÓN, PILOT PROJECT REPORT OF GUARDIANS AND CONSERVATORS FOR CASES FILED IN DISTRICT COURTS 16 (2018).

247. *See id.* at 17.

248. *See id.* at 14.

249. *See* VA. CODE ANN. § 64.2-2020 (West 2020).

250. *See id.*

251. *See* VA. DEP’T FOR AGING & REHABILITATIVE SERVS., ADULT PROTECTIVE SERVICES DIVISION MANUAL, CH. 7, GUARDIANSHIP AND CONSERVATORSHIP 23 (Aug. 2020). (Appendix C of the manual has guidelines for reviewing the report. The manual also includes sample letters to send to guardians to remind of the coming due date or that the report is overdue, and to report delinquent reports to the court. *See id.* at 33–40).

252. *See id.*

253. *See id.*

254. *See id.* at 20.

Accounts, who are appointed by the circuit court judge, maintain their own offices, approve or settle all probate and conservatorship accounts, determine the adequacy of any bond, inspect all inventories, notify the clerk of delinquent filings, and collect court-approved fees for services.<sup>255</sup> The DSS office and the Commissioner of Accounts are completely separate county offices and have no shared data systems, despite the fact that an individual serving as both a guardian and a conservator must report to each.<sup>256</sup>

In a collaborative partnership between the court and the county Department of Health and Human Services, under the aegis of Virginia WINGS, Arlington County, Virginia, hired a full-time social worker approved by the circuit court to contact guardians whose reports have not been timely filed and make visits to review the case and report back to the court.<sup>257</sup>

### 3. *Statewide or Regional Systems*

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

#### A. *Enhanced Practices in Selected Jurisdictions*

Florida, with its more than 550 public and professional guardians and more than 50,000 guardianship cases in 67 counties, has developed a statewide system to assist the individual jurisdictions with monitoring.<sup>258</sup> The clerks of court in six of the larger counties have

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255. See *Commissioners of Accounts*, VA. JUD. SYS., <http://www.courts.state.va.us/courts/circuit/resources/coa/home.html> (last visited Mar. 21, 2022).

256. See *id.*

257. Author communication with Erica Wood, Virginia WINGS representative (Oct. 15, 2019). The sources and details related to the author communication have not been independently verified by *Syracuse Law Review*. Further information may be obtained by contacting the authors directly.

258. See *Office of Public & Professional Guardians (OPPG)*, DEP'T ELDER AFF., <https://elderaffairs.org/programs-services/office-of-public-professional-guardians-oppg/> (last visited Sept. 3, 2021).

joined in an “investigative alliance” to pool their accredited inspector general personnel to conduct investigations and audits of professional guardians.<sup>259</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).<sup>260</sup> The OPPG then contracted with the Clerks’ Statewide Investigations Alliance (SIA).<sup>261</sup>

Complaints are referred to the Chief Guardianship Investigator who reviews the allegations for legal sufficiency and assigns the case to one of the six alliance offices.<sup>262</sup> The referral may be made to the office where the guardian is located, to an office which has special expertise in the complaint’s subject matter, has a similar complaint about the same guardian, or has staffing availability.<sup>263</sup> Although the alliance was initially formed by the clerks of six of the largest counties, they cover the entire state.<sup>264</sup> Once the investigation is completed, the Clerks’ SIA makes a finding of fact: the allegation is substantiated, is unsubstantiated, is unfounded, or is legally not sufficient to investigate.

As an independent investigator, the SIA makes no recommendations, but forwards the findings of fact to OPPG or to the referring court or clerk.<sup>265</sup> OPPG then takes appropriate administrative action, such as removing the registration or issuing a

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259. *About Florida’s Guardianship Partnership*, FLA. DEP’T ELDER AFF., STATEWIDE INVESTIGATIVE ALLIANCE, <https://flclerksia.com/> (last visited Mar. 21, 2022) (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).

260. See FLA DEP’T ELDER AFF., *supra* note 259.

261. Interview with Anthony Palmieri, Chief Guardianship Investigator and Admin. Coordinator, Clerk’s Statewide Investigations All. (Jan. 4, 2021). The sources and details related to the author communication have not been independently verified by *Syracuse Law Review*. Further information may be obtained by contacting the authors directly.

262. FLA DEP’T ELDER AFF., *supra* note 259.

263. *Id.*

264. STATE OF FLA. AUDITOR GEN., DEP’T OF ELDER AFFAIRS: OFFICE OF PUBLIC AND PROFESSIONAL GUARDIANS AND SELECTED ADMINISTRATIVE ACTIVITIES OPERATIONAL AUDIT, REPORT NO. 2021-010 3, 22 (2020), [https://flauditor.gov/pages/pdf\\_files/2021-010.pdf](https://flauditor.gov/pages/pdf_files/2021-010.pdf).

265. Statewide Investigation Alliance, *Policies and Procedures*, STATE OF FLA. DEP’T OF ELDER AFFS. (2020).

letter of concern, following a schedule of disciplinary options.<sup>266</sup> SIA will notify the court and court clerk, make referrals to the Florida bar association or other licensing agency, and refer instances of abuse, neglect, or exploitation to Adult Protective Services.<sup>267</sup>

Between 2016 and 2020 the SIA investigated 1,342 allegations and substantiated 144 or 10.7%.<sup>268</sup> The total breaches of fiduciary duties or standards amounted to \$2,830,084.<sup>269</sup> Thirty-two referrals were made to law enforcement, with twenty-one referrals to Adult Protective Services.<sup>270</sup> As a result of these investigations, OPPG sent letters of concern to fifty guardians and ordered remedial actions, such as reimbursements or education, for six guardians.<sup>271</sup> A total of ten guardians have been removed from OPPG registration, effectively making them ineligible for appointment.<sup>272</sup> The direct costs of the SIA investigations are charged to the Department of Elder Affairs under the contractual arrangement with the OPPG. In 2020, the total cost for the SIA investigations was \$593,892.<sup>273</sup> The clerk's office provides overhead, such as office space, phones, and computers, for the SIA inspectors general.<sup>274</sup>

Texas courts are highly diverse, ranging from very rural, lightly populated counties with non-attorney judges to major metropolitan

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266. See STATE OF FLA. DEP'T OF ELDER AFFS, OFFICE OF PUBLIC & PROFESSIONAL GUARDIANS: DISCIPLINARY GUIDELINES 1 (2017).

267. See Statewide Investigation Alliance, *About Florida's Guardianship Partnership*, STATE OF FLA. DEP'T OF ELDER AFFS. (2016) <https://flclerksia.com/>; FLA. ADMIN. CODE ANN. r. 58M-2.009 (2021).

268. Communication from Anthony Palmieri, Chief Guardianship Investigator and Admin. Coord., Clerk's Statewide Investigations All. (Jan. 5, 2020). The sources and details related to the author communication have not been independently verified by *Syracuse Law Review*. Further information may be obtained by contacting the authors directly.

269. *Id.*

270. *Id.*

271. *Id.*

272. FLA. STAT. ANN. § 744.2003(9) (LexisNexis 2021).

273. Communication from Anthony Palmieri, Chief Guardianship Investigator and Admin. Coord., Clerk's Statewide Investigations All. (Jan. 5, 2020). The sources and details related to the author communication have not been independently verified by *Syracuse Law Review*. Further information may be obtained by contacting the authors directly.

274. *Id.*



areas with dedicated probate courts.<sup>275</sup> Six Texas counties have more than 2,000 active guardianship cases, while fifty-nine have no active cases.<sup>276</sup> Because of the wide variation of resources available to these courts, the Texas Office of Court Administration (OCA) established the Guardianship Compliance Project (GCP) in 2015 and the Guardianship Abuse, Fraud and Exploitation Deterrence Program (GAFEDP) in 2019.<sup>277</sup> The OCA staff members review files to identify reporting deficiencies, audit accountings, and report findings to the local judge.<sup>278</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.<sup>279</sup> Of the cases reviewed, 34% were missing annual reports, 47% were missing annual accounts, and 40% were missing inventories.<sup>280</sup> The office is developing an electronic tool for filing required reports and accountings to make it easier to monitor compliance and access the reports.<sup>281</sup>

Nebraska has a system to use experienced court staff in lower-workload courts to supplement the staff in high-volume courts in other counties.<sup>282</sup> Called Guardian/Conservator Extra Duty Specialists, they can step in to assist in training new county court staff, answering questions, and doing the reviews for particularly complex or time-consuming guardian/conservator annual reports.<sup>283</sup>

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275. *See Courts of Appeals Districts*, TEX. LEG. COUNCIL (Feb. 2, 2012), [https://www.txcourts.gov/media/10872/COA05\\_map2012.pdf](https://www.txcourts.gov/media/10872/COA05_map2012.pdf); *Statutory Probate Courts*, OFF. OF CT. ADMIN. (Sept. 1, 2014), <https://www.txcourts.gov/media/440184/ProbateCourts.pdf>.

276. THE STATE OF TEX. OFF. OF CT. ADMIN., TEXAS GUARDIANSHIP COMPLIANCE: GUARDIANSHIP ABUSE, FRAUD AND EXPLOITATION DETERRENCE PROGRAM ANNUAL REPORT 6 (2021), <https://www.txcourts.gov/media/1452503/gafedp-fy20-annual-report.pdf> [hereinafter TEXAS GUARDIANSHIP COMPLIANCE].

277. *Guardianship Abuse, Fraud and Exploitation Deterrence Program*, TEX. JUD. BRANCH, <https://www.txcourts.gov/programs-services/guardianship-abuse-fraud-and-exploitation-deterrence-program-gafedp/>.

278. *Id.*

279. TEXAS GUARDIANSHIP COMPLIANCE, *supra* note 276, at 5.

280. *Id.*

281. *See id.* at 4.

282. Interview with Sharyl Connolly, Trial Ct. Servs. Dir., Admin. Off. of the Cts. and Prob. (Jan. 21, 2021). The sources and details related to the author communication have not been independently verified by *Syracuse Law Review*. Further information may be obtained by contacting the authors directly.

283. *Id.*

#### *4. Use of Automation to Enhance Monitoring*

In 2019, the National Center for State Courts worked with Minnesota to attempt to use predictive analytics to identify cases requiring higher audit levels.<sup>284</sup> The project identified ten risk indicators, including round transactions; expenses for vehicles, transportation, clothing, dining out, hobbies, groceries, and “other” household expenses; conservator fees; and the number of bank accounts.<sup>285</sup> When used to predict the need for higher audit levels, these risk indicators did not differentiate cases needing the highest level of audits from other cases requiring audits.<sup>286</sup> Possible reasons include poor data quality among data self-reported and manually entered by conservators, the lack of historic data on the cases, and the difficulty of simplifying complex predictive results into operational red flags.<sup>287</sup>

The Wayne County Probate Court in 2020 began participating in a pilot project of the National Center for State Courts to provide ongoing, real-time financial monitoring.<sup>288</sup> The court ordered guardians to enroll with a company that monitors bank, investment, and credit card accounts.<sup>289</sup> The court identified the red flags they wished to monitor and received alerts when one of the identified activities occurred.<sup>290</sup> Although timely alerts are valuable tools, evaluation of the effectiveness of this approach is ongoing.

#### *F. Ongoing Consideration of Less Restrictive Alternatives*

The ABA recommended in 1991 that courts hold periodic hearings to determine whether the need for the guardianship continues

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284. See CATE BOYKO ET AL., NAT’L CTR. FOR STATE CTS., IMPLEMENTATION GUIDE FOR MODERNIZING CONSERVATORSHIP MONITORING 5 (2019), [https://www.eldersandcourts.org/\\_\\_data/assets/pdf\\_file/0020/54614/modernizing-conservatorship-guide-final\\_May2021.pdf](https://www.eldersandcourts.org/__data/assets/pdf_file/0020/54614/modernizing-conservatorship-guide-final_May2021.pdf).

285. *Id.* at 16.

286. *Id.*

287. *Id.*

288. Interview with April Maycock, Dir. of Info. Servs., Wayne Cnty. Ill. Prob. Ct. (June 12, 2019); Interview with Mike McClory, Chief Deputy Prob. Reg., Wayne Cnty. Ill. Prob. Ct. (June 12, 2019); Interview with Janet Witte, Dir. of Special Projects, Wayne Cnty. Ill. Prob. Ct. (June 12, 2019). The sources and details related to the author communication have not been independently verified by *Syracuse Law Review*. Further information may be obtained by contacting the authors directly.

289. *Id.*

290. *Id.*

or if rights of self-determination can be restored.<sup>291</sup> While most annual reports require that the guardian indicate whether there is a need to continue or to modify the guardianship,<sup>292</sup> several states have a more specific direction that the court periodically review the appropriateness of the guardianship order.<sup>293</sup>

### *1. Survey Results*

In the 2020 survey of guardianship practices, only 9% indicated that the court in which they practice most frequently holds hearings on the need to continue or modify the guardianship regularly.<sup>294</sup> Another 70% do so as necessary or on request.<sup>295</sup> Slightly fewer courts hold hearings on the need to continue or modify conservatorships, with 6% doing so regularly and 62% doing so as needed or on request.<sup>296</sup> Eight percent of respondents reported that review hearings are not held and another 8% did not know for guardianships and 16% did not know for

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291. HURME ET AL., *supra* note 17, at 53.

292. *See, e.g.*, ARK. CODE ANN. § 28-65-322 (2021); COLO. REV. STAT. § 15-14-317 (2021); D.C. CODE § 21-2047(a)(5) (2021); MINN. STAT. ANN. § 524.5-316(a)(5) (West 2021).

293. *See, e.g.*, UNIF. GUARDIANSHIP, CONSERVATORSHIP, AND OTHER PROTECTIVE ARRANGEMENTS ACT §§ 317(b)(3), 317(e)(2), 423(e)(2) (UNIF. L. COMM'N 2017) (monitor at least annually to determine if guardianship should continue); D.C. CODE § 21-2045.01(e) (2021) (within 90 days after the reviewer report is submitted, the court shall review to determine if the guardianship should continue or be modified); FLA. STAT. ANN. § 744.372 (West 2021) (court shall review appropriateness and extent of a guardianship annually and: if an objection to the guardianship report has been filed; an interim review has been requested; if a person, including the ward, has filed a suggestion of increased capacity; or if the guardian has failed to respond to a show cause order for failure to file a report); KAN. STAT. ANN. § 59-3084(a)(3) (West 2021) (court review to determine if modifications are necessary to protect the interest of the person); MD. CODE ANN. EST. & TRUSTS § 13-708(b)(8)(ii)(2) (LexisNexis 2021) (if court not satisfied that original grounds continue, shall hold hearing at which guardian has burden of proof that grounds continue to exist); MICH. COMP. LAWS. SERV. § 700.5309 (LexisNexis 2021); MO. ANN. STAT. § 475.082(1) (West 2021) (review to determine if incapacity or disability has ceased or changed); TEX. EST. CODE ANN. §§ 1201.002(a), 1201.052 (West 2021).

294. NATIONAL SURVEY REPORT, *supra* note 4, at 18.

295. *Id.*

296. *Id.*

conservatorships.<sup>297</sup> For those who reported frequency, every ten years was the most common interval.<sup>298</sup>

## 2. *Enhanced Practices in Selected Jurisdictions*

Connecticut courts review each conservatorship not less than three years after the first annual report or account, including receiving written medical evidence from a physician or psychologist of the adult's condition.<sup>299</sup> The court must find by clear and convincing evidence that the adult continues to be incapable of managing affairs or caring for self and that no less restrictive means are available.<sup>300</sup> If the court does not make such a finding of continued incapacity, the court is to terminate the conservatorship.<sup>301</sup>

New Mexico law requires the court to hold a status hearing not later than every ten years after the initial appointment to review the person's capacity and the continued need for a guardian.<sup>302</sup> A hearing must be held in North Dakota to extend a conservatorship order for more than five years.<sup>303</sup> Nevada court rules requires hearings every three years.<sup>304</sup>

Maryland has statutorily created community review boards in each county to review all public guardianship cases.<sup>305</sup> The public guardian may be the director of either the county department of social services (DSS) or the office on aging.<sup>306</sup> The volunteer board members, appointed by the county commissioners and confirmed by the county council, include a local social services department representative; a physician, nurse practitioner, or physician's assistant; a psychiatrist; a commission on aging representative; a local nonprofit social service organization representative; a lawyer; a registered nurse; a professional in the field of disabilities; a person with a physical disability, and two community members.<sup>307</sup> They review each public

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297. *Id.* fig.13.

298. *See id.* at 28–29.

299. CONN. GEN. STAT. ANN. § 45a-660(c) (West 2021).

300. CONN. GEN. STAT. § 45a-660(d) (West 2021).

301. *Id.*

302. N.M. STAT. ANN. § 45-5-307(G) (2021).

303. N.D. CENT. CODE § 30.1-29-08(3) (2021).

304. NEV. SUP. CT. R. ADKT 507 (effective through 2020).

305. *See* MD. CODE ANN., FAM. LAW § 14-401(a) (2021).

306. MD. RULE § 10-103(h) (2021).

307. MD. CODE ANN., FAM. LAW § 14-402(a) (2021).

agency guardianship at least twice each year.<sup>308</sup> Six months after the initial appointment the panel conducts a full face-to-face review where the guardian discusses the adult's condition, services and treatment being provided, significant placement or medical decisions, and any anticipated problems.<sup>309</sup> The board determines if the next review in six months should be another full review or a paper review, though a full review must be held at least annually.<sup>310</sup>

### *G. Community Input*

Members of the community or family and friends often play a role in monitoring guardianships, but courts must have a strategy to accept and use the information they provide.

#### *1. Notice to Parties*

One way to provide this extra “eyes and ears” for the court is to require that guardians provide copies of care and management plans, reports, inventories, and accounts to interested persons who can then object if they have concerns.<sup>311</sup> This type of notice system allows those who are familiar with the adult's circumstances to verify from personal knowledge the information in the status report or accounting.<sup>312</sup> The UGCOPAA requires the guardian and the conservator to give notice of filing and send a copy of the plan, report,

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308. MD. CODE ANN. FAM. LAW § 14-404(a)(1)(i) (2021).

309. *See id.* at 14-404(a)(1)(iii).

310. *Id.*

311. *See, e.g.*, 2021 MINN. STAT. ANN. §§ 524.5-316(c), 524.5-420(e) (2021) (interested person may dispute statements or conclusions in the report); NEV. REV. STAT. ANN. § 159.181(1) (LexisNexis 2021) (any person may appear at annual review); OKLA. STAT. tit. 30, § 4-307(A)(3), (B)(1)(a) (2021) (persons getting notice may object within 15 days, and shall hold hearing if objection); S.C. CODE ANN. § 62-5-307(A) (2021) (interested person may make informal request for relief by submitting a written request); S.D. CODIFIED LAWS §§ 29A-5-403, 29A-5-408 (2021) (any interested person may request hearing on report or account); VT. STAT. ANN. tit. 14, § 3062(c) (2021) (any interested person may seek review of guardian's proposed or past action by filing motion); VA. CODE ANN. § 64.2-1209 (2021) (any interested person or next friend may object to commissioner of accounts).

312. *See HURME ET AL., supra* note 17.

inventory and accounts to those entitled to notice with a statement of the opportunity to object.<sup>313</sup>

One concern about providing notice to others is identifying who should properly receive the notice to avoid release of confidential or private information.<sup>314</sup> States typically specify who, other than the person under guardianship, is entitled to notice, or have a process by which an interested person can request to receive notice.<sup>315</sup>

## 2. *Grievance Protocols*

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

The National Center for State Courts' Center for Elders and the Courts has called for the need for "proactively and timely responding to allegations of abuse, neglect or exploitation."<sup>316</sup> The National Probate Court Standards calls for the courts to "establish a clear and easy-to-use process for communicating concerns."<sup>317</sup> To aid courts in

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313. UNIF. GUARDIANSHIP, CONSERVATORSHIP AND OTHER PROTECTIVE ARRANGEMENTS ACT §§ 316(b), 317(d), 419(b), 423(d) (UNIF. L. COMM'N 2017). See ME. REV. STAT. tit. 18-C, §§ 5-316(2)-(3), 5-419 (2)-(3) (2021).

314. See, UNIF. GUARDIANSHIP, CONSERVATORSHIP AND OTHER PROTECTIVE ARRANGEMENTS ACT § 409; VAN DUIZEND ET AL., NATIONAL PROBATE COURT STANDARDS, *supra* note 41 at 30 (the personal and financial information in the reports may compromise personal information or generate family disagreements).

315. See, e.g., UNIF. GUARDIANSHIP, CONSERVATORSHIP AND OTHER PROTECTIVE ARRANGEMENTS ACT § 116 (individual not otherwise entitled to notice must file a statement of why they are interested in the person's welfare).

316. NAT'L CTR. FOR STATE CTS., ADULT GUARDIANSHIP INITIATIVE, STRATEGIC ACTION PLAN 2 (2016).

317. VAN DUIZEND ET AL., NATIONAL PROBATE COURT STANDARDS, *supra* note 41 at 73.

knowing how best to respond to complaints, the NCSC has developed a Judicial Response Protocol with a complaint flow chart.<sup>318</sup>

The grievance protocol set out in the UGCOPAA allows for anyone who reasonably believes that a guardian or conservator has breached a fiduciary duty to file a grievance with the court.<sup>319</sup> The court must review the grievance and any related court records.<sup>320</sup> If the court reasonably believes that removal may be necessary or termination or modification may be appropriate, it must hold a hearing.<sup>321</sup> 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.<sup>322</sup> 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>323</sup>

### *3. Enhanced Practices in Selected Jurisdictions*

Idaho has implemented a clear and easy to use process. On the court website is a form for an interested person to use along with the step-by-step process to file the form with the court.<sup>324</sup> Provided examples are stealing money, withholding necessary medical treatment, failing to provide necessary food or shelter, or physically abusing the individual.<sup>325</sup> To provide transparency, 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

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318. *The Judicial Response Protocol for Guardianship and Conservatorship Abuses*, NAT'L CTR. FOR STATE CTS., CTR. FOR ELDER & THE CTS. (2020), [https://www.eldersandcourts.org/guardianship\\_conservatorship/resources-for-courts/responses-to-allegations-of-wrongdoing](https://www.eldersandcourts.org/guardianship_conservatorship/resources-for-courts/responses-to-allegations-of-wrongdoing).

319. UNIF. GUARDIANSHIP, CONSERVATORSHIP AND OTHER PROTECTIVE ARRANGEMENTS ACT § 127(a) (UNIF. L. COMM'N 2017). *See, e.g.*, WASH. REV. CODE ANN. § 11.130.140 (2022).

320. *Id.* § 127(b)(1).

321. *Id.* § 127(b)(2).

322. *Id.* § 127(b)(3)(A)-(D).

323. *Id.* § 127(c); *see* ME. REV. STAT. ANN. tit. 18-C, § 5-126(3) (2021).

324. *Guardianship/Conservatorship Filing a Complaint*, STATE OF IDAHO JUD. BRANCH (current through July 2021), <https://isc.idaho.gov/print/guardianship/complaintprocess>.

325. *Id.*

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.<sup>326</sup>

In Washington, those who have a concern about a guardianship are directed on the court's website to either fill out a form or write a letter.<sup>327</sup> The form asks for specific information about the concern as well as contact information for others who have knowledge of the facts.<sup>328</sup> Also online is a list with the name and address of the specific person within each court who is designated to receive the complaint forms.<sup>329</sup> Within fourteen days, the court can issue a show cause, appoint a court visitor, dismiss the complaint, direct the guardian or conservator to submit a report, or defer the matter to the next scheduled review hearing.<sup>330</sup> Similarly, New Mexico has a recorded video providing instructions on how to file a grievance,<sup>331</sup> while New Jersey has a pro se kit on its website for filing a motion to ask the court to review a guardian's conduct.<sup>332</sup>

Ohio by Supreme Court rule requires that each probate court establish a process to receive and review complaints.<sup>333</sup> The process to handle complaints includes: designating a person to accept and consider complaints; providing a copy of the complaint to the guardian; giving prompt consideration and taking appropriate action; maintaining a record of the complaint's nature and disposition; and notifying the complainant and guardian of the disposition.<sup>334</sup> Because the Ohio courts are not unified, each county sets up their own system,

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326. NAT'L ASS'N FOR CT. MGMT., ADULT GUARDIANSHIP GUIDE: A GUIDE TO PLAN, DEVELOP AND SUSTAIN A COMPREHENSIVE COURT GUARDIANSHIP AND CONSERVATORSHIP PROGRAM 33 (2022)

327. See *Court Forms: Guardianship / Conservatorship Complaint*, GDN-ALL-031, WASH. CTS. (Jan. 1, 2022), <https://www.courts.wa.gov/forms/?fa=forms.contribute&formID=135>.

328. *Id.*

329. *Guardianship Complaint Contacts*, WASH. CTS. (February 2020), <http://www.courts.wa.gov/content/publicUpload/CPG/CourtDesignee.pdf>.

330. WASH. REV. CODE ANN. §11.130.140(2)(c) (West 2021).

331. *Grievance Against a Guardian or Conservator*, N.M. JUDICIARY (last visited Apr. 11, 2022), <https://adultguardianship.nmcourts.gov/grievance>.

332. *How to File a Motion in a Guardianship Case*, N.J. CTS. (last visited Apr. 11, 2022), [https://www.njcourts.gov/forms/12032\\_motion\\_guardianship.pdf](https://www.njcourts.gov/forms/12032_motion_guardianship.pdf).

333. OHIO SUP. CT. R. 66.03 (2021).

334. *Id.* at 66.03 (B).



making it challenging for the public to know where and how to file a complaint.

Senior Judge Rita Cobb of Oregon has stressed the importance for courts to have a formal process to receive and act on any complaints.<sup>335</sup> The judge and staff need to know what to do with a concern from the public, whether it is a call or a walk-in to the clerk's office, an issue raised by court staff about inappropriate expenditures or a late filing, or a report from law enforcement. Documenting the concern in a dated memo that becomes part of the file helps the judge know what steps to take next. Those next steps could be appointing a court investigator, visitor, or guardian ad litem to obtain additional details. If the adult appears to be at significant risk, immediate action with a show cause hearing is appropriate. Another possible step is to send a letter to the guardian requesting more information with a deadline to reply. If there is no response, Judge Cobb will schedule an immediate hearing and appoint counsel for the adult.<sup>336</sup> Referrals to adult protective services for investigation or to law enforcement for a welfare check are other possible steps.<sup>337</sup> Judge Cobb emphasizes the importance of maintaining a tickler system and strictly enforcing any court-set deadlines, so the complaint does not get ignored.<sup>338</sup> Once the facts have been further developed through investigation and a hearing, a range of next steps can be employed: order the guardian to get additional training in how to properly set up financial records and do an accounting, be given an experienced co-guardian as a mentor for a year, set up a schedule of enhanced monitoring, reconsider the bond, order mediation, modify the guardianship order to further protect the property, remove the guardian and appoint a successor, and refer to the district attorney for criminal proceedings.<sup>339</sup>

#### *H. Improving the Guardian's Performance*

Although there is not national data to know the relationship of the person appointed as guardian to the person under guardianship, a reasonable assumption is that the great majority of guardians are

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335. Video Recording of Presentation by Hon. Rita Cobb & Hon. Michael Long, *supra* note 135.

336. *Id.*

337. *Id.*

338. *Id.*

339. *Id.*

family members who are unfamiliar with court procedures and know little about the scope of their legal and fiduciary responsibilities. Courts can and do assist both professional and family guardians in carrying out their responsibilities in multiple ways. As Denver Probate Court Judge C. Jean Stewart explained, “By and large appointees want to do the right thing. For most of them, our role is to educate them in the courtroom, send them reminders about due dates and their responsibilities, correct minor errors and let them know that sloppy work will put them back in front of the court.”<sup>340</sup>

### *1. Clear Expectations*

Ways to set clear expectations about guardians include specifying reporting responsibilities in the guardianship order. At the close of the adjudication the judge can inform the newly appointed guardians of their duties and powers, including any limitations, as well as their responsibilities in the filing of plans, inventories, accountings, and reports.<sup>341</sup> The order should clearly set the due date for the initial report, inventory, or accounting, or this can be done at the time of qualification or acceptance of the appointment.<sup>342</sup>

#### *A. Enhanced Practices in Select Jurisdictions*

In Ramsey County, Minnesota, the judge at the time of appointment explains the duties and responsibilities and provides a handout.<sup>343</sup> The clerk then follows up with a letter outlining expectations and provides a phone number to call for further assistance.<sup>344</sup> In Idaho, the judge hands out a two-page memorandum that explains the reporting requirements.<sup>345</sup> The Alaska Guardianship Compliance Officer provides each guardian with a monthly tracking

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340. DAVID C. STEELMAN, ALICIA K. DAVIS, & DANIEL J. HALL, IMPROVING PROTECTIVE PROBATE PROCESSES: AN ASSESSMENT OF GUARDIANSHIP AND CONSERVATORSHIP PROCEDURES IN THE PROBATE AND MENTAL HEALTH DEPARTMENT OF THE MARICOPA COUNTY SUPERIOR COURT 20 (2011).

341. VAN DUIZEND ET AL., NATIONAL PROBATE COURT STANDARDS, *supra* note 41 at 63–65 (Standard 3.3.13(B–C)).

342. *Id.* (Standard 3.3.13(E)).

343. KARP & WOOD, *supra* note 7, at 40.

344. *Id.*

345. *Id.*

form for annual reporting.<sup>346</sup> The National Guardianship Association has developed small cards that list ethical principles for all guardians to follow.<sup>347</sup> These cards are available free of charge in printer-ready format to download so that courts can hand them out from the bench to each new guardian.<sup>348</sup>

## 2. *Licensing/Certification*

An additional layer of oversight is provided by certification or licensing of professional guardians. Fourteen states require professional guardians to be certified either through a state entity or the Center for Guardianship Certification (CGC).<sup>349</sup> Although the details of how each state provides this oversight varies, as explained in detail in the companion article by Catherine Seal and Pamela Teaster, these procedures uniformly prove an additional means to identify qualified guardians and to investigate and sanction errant guardians.<sup>350</sup>

Four states have developed statewide programs to certify professional guardians by determining eligibility to be certified, requiring pre-qualification and continuing education, administering an examination, and providing for a process to receive complaints about guardian performance.<sup>351</sup> The governing boards determine appropriate sanctions if the guardian fails to follow state law and standards of

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346. Author communication with Lisa Wawrzonek, Statewide Guardianship Compliance Officer, Working Interdisc. Networks of Guardianship Stakeholders (Nov. 16, 2020). The sources and details related to the author communication has not been independently verified by *Syracuse Law Review*. Further information may be obtained by contacting the authors directly.

347. See *National Guardianship Association Ethical Principles*, NAT'L GUARDIANSHIP ASS'N (2016), <https://www.guardianship.org/wp-content/uploads/2017/07/Ethical-Principles-2017.pdf>.

348. *Standards*, NAT'L GUARDIANSHIP ASS'N, <http://guardianship.org/standards/> (last visited Mar. 23, 2022).

349. *State Specific Information*, CTR. FOR GUARDIANSHIP CERTIFICATION, <https://guardianshipcert.org/become-certified/state-specific-information/> (last visited Mar. 23, 2022).

350. See Hurme & Wood, *supra* note 18, at 885–92.

351. ARIZ. REV. STAT. ANN. § 7-702(E) (2021); FLA. STAT. ANN. §§ 744.2003, 744.2004 (West 2021); TEX. EST. CODE ANN. §§ 1104.251–.306 (West 2021); WASH. R. GEN. APPLICATION 23 (West 2021).

practice.<sup>352</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.<sup>353</sup>

Nine states look to the CGC to provide disciplinary oversight to professional guardians.<sup>354</sup> Either by court rule or legislation, they require professional guardians to maintain certification through CGC. Additionally, 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>355</sup> CGC's disciplinary process relies on the public to raise concerns that a CGC-certified guardian has violated the National Guardianship Association's *Standards of Practice*.<sup>356</sup> Other reasons for removing a certification under CGC protocols could include making false representations or misstatements on the application regarding prior criminal, civil, or other disciplinary actions that reflect negatively on the guardian's ability to carry out fiduciary responsibilities.<sup>357</sup> In the 2020 survey, only 14% of respondents indicated that a court would report a guardian to a professional licensing board in response to malfeasance.<sup>358</sup>

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352. ARIZ. REV. STAT. ANN. §§ 7-201(H)(24), 7-202(H)(2) (2021); FLA. STAT. ANN. § 744.2004(2) (West 2021); TEX. EST. CODE ANN. § 1104.256 (West 2021); WASH. R. GEN. APPLICATION 23(c)(2)(viii) (West 2021).

353. ARIZ. REV. STAT. ANN. §§ 7-201(D)(5)(c)(2), 7-202(H)(2) (2021); FLA. STAT. ANN. § 744.2004(2) (West 2021); TEX. CODE ANN. § 155.253(b)(4)–(6) (2021); WASH. R. GEN. APPLICATION 23(c)(2)(ix) (West 2021).

354. ALASKA STAT. § 8.26.010(a) (2021); IDAHO CT. ADMIN. R. 54.6(b) (West 2021); 755 ILL. COMP. STAT. ANN. 5/13-1.2 (West 2021); NEV. REV. STAT. ANN. § 159.0595(3)(a) (LexisNexis 2021); N.H. PROB. CT. R. 16(1) (West 2021); N.M. STAT. ANN. 45-5-311(D) (West 2021); N.D. SUP. CT. ADMIN. R. 59(C)(1), (D)(1) (West 2021); OR. REV. STAT. ANN. § 125.240(1)(a) (West 2021); UTAH CODE ANN. § 75-5-311(1)(a) (LexisNexis 2021).

355. CAL. BUS. & PROF. CODE §§ 6511, 6539 (West 2021).

356. See *Rules & Regulations Regarding Certification and Recertification of National Master Guardians (NMG)*, CTR. FOR GUARDIANSHIP CERTIFICATION 1, 7 (Aug. 6, 2020), <https://guardianshipcert.org/wp-content/uploads/2020/08/NMG-Rules-and-Regulations.pdf>.

357. *Id.*

358. NATIONAL SURVEY REPORT, *supra* note 4, at 17.

### 3. *Assistance to Guardians*

Basic educational materials are delivered through a range of media from videos,<sup>359</sup> web-based tutorials,<sup>360</sup> handbooks,<sup>361</sup> and pamphlets.<sup>362</sup> Court self-help websites are another place to obtain forms and assistance for *pro se* litigants. In some jurisdictions, legal aid or pro bono attorneys are available to assist guardians fill out monitoring forms.

### 4. *Guardianship Courses*

Florida requires family guardians to take an approved eight-hour course within four months of the appointment.<sup>363</sup> The courses, taught across the state by experienced guardians, covers legal duties, adults' rights, local resources, and the preparation of plans, reports, and accounts.<sup>364</sup> Florida professional guardians take a forty-hour course as a prerequisite to becoming registered.<sup>365</sup> Washington professional guardians must take an extensive ninety-hour course offered through the University of Washington.<sup>366</sup> However, due to the pandemic and

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359. *See, e.g., Educational Videos*, OFF. OF CONSERVATORSHIP MGMT., <https://officeofconservatorshipmanagement.nashville.gov/ocm-educational-materials/> (last visited Mar. 23, 2022); *Guardianship and Conservatorship Training*, STATE BAR OF S.D., <https://www.statebarofsouthdakota.com/page/guardianship> (last visited Mar. 23, 2022); *Guardianship Videos by State*, AM. BAR ASS'N, [https://www.americanbar.org/content/dam/aba/administrative/law\\_aging/guardianship-videos-8-2010.pdf](https://www.americanbar.org/content/dam/aba/administrative/law_aging/guardianship-videos-8-2010.pdf) (last updated July 2019).

360. *See, e.g., Guardianship Training*, N.D. CT. SYS. (2021), <https://guardianship.ndcourts.gov/>.

361. *See Adult Guardianship Handbooks by State*, AM. BAR ASS'N, [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) (last updated July 2019).

362. *See You've Been Appointed: Information for Virginia Guardians and Conservators*, THE OFF. OF THE EXEC. SEC'Y, SUP. CT. OF VA. (July 2020), [http://www.courts.state.va.us/courts/circuit/resources/guardian\\_conservator\\_pamphlet.pdf](http://www.courts.state.va.us/courts/circuit/resources/guardian_conservator_pamphlet.pdf).

363. FLA. STAT. ANN. § 744.3145(2)-(4) (West 2021).

364. *8 Hour Family Guardianship Training*, TRAINING FIDUCIARIES, <https://playbythelaw.com/course/8hrfamilyguardian/> (last visited Mar. 23, 2022).

365. *Becoming a Guardian*, FLA. STATE GUARDIANSHIP ASS'N, <https://www.floridaguardians.com/education/becoming-a-guardian/> (last visited Mar. 23, 2022).

366. *New Professional Guardianship Program Launched*, UNIV. OF WASH. NEWS (Apr. 10, 2008), <https://www.washington.edu/news/2008/04/10/new-professional-guardianship-program-launched/>.

the need to revise course materials because of extensive changes in Washington law, the course requirement was on pause for 2020 to resume in 2021.<sup>367</sup> Washington lay guardians must take four online modules within ninety days of appointment.<sup>368</sup> Guardians in Maryland are also required to take a training course, either online or as directed by the court.<sup>369</sup> Guardians of the person have 120 days after appointment to complete the training, while guardians of property have sixty days.<sup>370</sup> In Ohio, guardians must take a six-hour fundamentals course upon appointment and three-hours of continuing education each year.<sup>371</sup>

#### A. Survey Results

The 2020 respondents noted that court assistance was common, whether through court-provided written instructions or manuals (45%), court-provided samples or model forms (29%), educational videos in the courthouse or online (27%), or court-provided training sessions (16%).<sup>372</sup> Many noted that more than one source of help was available.<sup>373</sup> Such aids not only help the guardian accurately complete the reporting requirements, but also save court staff time if they do not have to spend time coaching guardians or rejecting incomplete or inaccurate forms.

Making court forms readily available is essential. Nearly two-thirds (63%) of 2020 respondents reported that courts have personal status forms that can be downloaded from the court website, while another 37% got forms from the clerk's office and 24% directly from

367. *Certified Professional Guardianship Board Mission*, WASH. CTS., <https://www.courts.wa.gov/guardianportal/index.cfm?fa=guardianportal.board> (last visited Feb. 19, 2022).

368. *Adult Lay Guardianship*, WASH. CTS., <https://www.courts.wa.gov/guardianportal/index.cfm?fa=guardianportal.adultLayGuardianship> (last visited Mar. 23, 2022).

369. *Guardians of Disabled Persons Training Program*, MD. CTS., <https://www.courts.state.md.us/family/guardianship/guardianofdisabledpersontrainingprogram> (last visited Mar. 23, 2023).

370. *Id.*

371. *Ohio Adult Guardianship Education Program*, THE SUP. CT. OF OHIO & THE OHIO JUD. SYS., <https://www.supremecourt.ohio.gov/Boards/judCollege/adultGuardianship/default.asp> (last visited Mar. 23, 2022).

372. NATIONAL SURVEY REPORT, *supra* note 4, at 9.

373. *Id.*

the court.<sup>374</sup> Some are fillable PDFs, while others can be filed electronically.<sup>375</sup>

Twenty-six percent of 2020 respondents said some type of instructional material was available, with 27% able to view videos (up from 17.1% in 2006), 16% reporting that the court provided training (up from 10.9%), and 23% reported that training was available from another organization.<sup>376</sup> In 2020, 12.4% of respondents said that no assistance was available, down from 22% in 2006.<sup>377</sup>

### III. COLLECTING AND USING ACCURATE DATA

Effective monitoring of guardianship and conservatorship cases is not possible without accurate data. Each of the components of guardianship monitoring discussed in this article requires data relative to the specific services provided, individuals involved, or date reports are due and received. A comprehensive case management system provides the framework to record information about guardianship cases and the individuals involved and is used to meet the court's operational, planning, budgeting and management needs. The National Center for State Courts has published a list of recommended data elements for courts to collect in guardianship cases.<sup>378</sup>

#### *A. Principles of Data Collection*

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

##### *1. Courts Need Data to Identify Problems & Responses to Those Problems.*

The purpose of monitoring is for the court to respond effectively to situations involving guardians who are not meeting the court's expectations, as well as those involving abuse, neglect, fraud, or mismanagement. Data collection is necessary to detect problems and respond appropriately to them. Data also increase the ability of courts

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374. *Id.* at 8.

375. *Id.* at 9.

376. NATIONAL SURVEY REPORT, *supra* note 4, at 10.

377. *Id.* at 10; KARP & WOOD, *supra* note 7, at 34 (found in App. A, Question 7).

378. ROBINSON ET AL., *supra* note 38.

to identify trends or patterns in abuse, neglect, fraud, or mismanagement and prevent them in the future.

*2. It is Necessary & Important to Collect Information on Changes Over the Life of the Case.*

Courts have historically been ill-equipped to monitor cases that extend for years beyond disposition of the initial petition, particularly as the needs of the adult change over time. Guardianship cases often extend far beyond the tenure of the judge who granted the petition and the lifetimes of the attorneys initially representing the parties.<sup>379</sup> It has not been uncommon for courts to lose track of these cases, leaving newly assigned judges unable to verify even basic information about the adults under guardianship.<sup>380</sup>

*3. To Protect Individuals Subject to Guardianships, Courts Must Communicate with Other Courts & Other Entities*

“Both those subject to a guardianship . . . as well as those serving as guardians . . . frequently cross jurisdictional . . . and state lines. Being able to share data and exchange information is critical to detect and prevent abuse and fraud.”<sup>381</sup> Without the ability to share data, a problem guardian can merely move to a new jurisdiction.

*B. Data Governance*

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

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379. *Id.* at 4.

380. *Id.* at 6.

381. NATIONAL SURVEY REPORT, *supra* note 4, at 4.



*1. Accessible, Accurate, & Standardized Data*

For data to be usable over the life of the case, it is essential that courts use a standard case status function to delineate between those cases in which a petition is pending (usually called open or pending cases), those in which the court maintains a responsibility to monitor the person's well-being and the estate (disposed/set for review), and those in which the guardianship is no longer active (disposed/closed). New Mexico, for example, has established a status of "adjudicated case-report review" to clearly delineate these cases while Arkansas uses "set for review" as the status.<sup>382</sup>

Clear data standards are essential. Data standards are the rules by which data are described and recorded. On the national level, the National Open Court Data Standards (NODS) project and the Conservatorship Accountability Project (CAP), both projects of the National Center for State Courts, published data standards for guardianships and conservatorships in 2020.<sup>383</sup> These data standards include basic case information such as case number, court, case type, and date filed.<sup>384</sup> They also include essential case type data, including the reason a pleading was initially filed (e.g., medical condition, financial exploitation, disability, abuse, or neglect) and reasons for subsequent pleadings (e.g., modification or restoration).<sup>385</sup> Entering accurate and specific order types is also essential for readily locating key documents (e.g., orders of appointment, to surcharge bond, or to suspend).

*2. Guardianship Case Elements*

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

Courts can only effectively monitor cases if they track the dates that plans, inventories, well-being reports, and accountings are due and when they are received. A well-designed case management system

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382. BOYKO ET AL., *supra* note 284 at 9; DAWN CASTLE & JACKIE WRAY, COVERSHEET 101: PROBATE, 7 (2017), <https://www.arcourts.gov/sites/default/files/Cover%20Sheet%20-%20Probate%20-%20Presentation.pdf>.

383. NATIONAL SURVEY REPORT, *supra* note 4, at 3.

384. *Id.* at 7.

385. *Id.* at 12.

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

When concerns are raised regarding a guardianship, it is necessary for courts to record the date a complaint was raised, the source of the complaint, and what was done in response. Just as the reason that a guardianship was established should be recorded in the case management system, so should the reason the case closed. In some situations, the case may close because of a restoration of rights or change to a less restrictive alternative.<sup>386</sup> Other common reasons for guardianships to close is death of the individual, a transfer to another jurisdiction, because the temporary order expired, or because the case was dismissed.<sup>387</sup>

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

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

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386. *Id.* at 8.

387. *Id.*

*C. Case Management Systems*

While many jurisdictions have robust case management systems, others are not designed to capture and track guardianship case information. Different jurisdictions in the same state may use different systems and may use different data definitions and business practices for data entry in shared systems.<sup>388</sup> 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 data standards.<sup>389</sup>

Even sophisticated case management systems require consistent data entry and, potentially, attention to entry of data from long-established guardianship cases. Missing data from older cases is a significant problem cited by several jurisdictions.<sup>390</sup> A problem cited in Virginia is a disconnect between the case management systems of the civil and probate courts and the lack of data sharing with the executive branch agency and commissioner of accounts separately tasked with receiving and reviewing guardianship and conservatorship reports.<sup>391</sup>

*1. Enhanced Practices in Selected Jurisdictions*

Minnesota's MyMNConservator (MMC) is an online reporting system that allows conservators to file both inventories and annual accountings electronically.<sup>392</sup> It includes alerts for possible errors, inconsistencies, or potentially problematic expenses.<sup>393</sup> The Conservator Account Auditing Program (CAAP) audits or reviews all financial reports and submits reports, including findings and

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388. ROBINSON ET AL., *supra* note 38 at 3.

389. *Id.*

390. Author interview with Norma Gates, Cir. Ct. Services Manager, Va. Judicial Sys., and Jo Fronfelter, Ct. Analyst, Va. Dep't. of Jud. Services (Jan. 28, 2021). The sources and details related to this interview has not been independently verified by *Syracuse Law Review*. Further information may be obtained by contacting the authors directly.

391. *Id.*

392. MINN. JUD. BRANCH, MYMN CONSERVATOR (MMC) USER MANUAL FOR CONSERVATORS 1, 4 (2020) [https://mncourts.gov/mncourtsgov/media/scao\\_library/MMC/MMC-Manual-for-Conservators.pdf](https://mncourts.gov/mncourtsgov/media/scao_library/MMC/MMC-Manual-for-Conservators.pdf) [hereinafter MYMN CONSERVATOR (MMC) USER MANUAL].

393. BOYKO ET AL., *supra* note 284 at 30.

recommendations, to judges.<sup>394</sup> Based on the success of MMC, Minnesota has also introduced the MyMNGuardian program which allows for electronic submission of personal well-being reports.<sup>395</sup> The MyINA (My Indiana Accounting) program similarly 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>396</sup>

Pennsylvania established the Guardianship Tracking System (GTS) to address the problem of disparate data systems (Figure 7).<sup>397</sup> While each court maintains responsibility for maintaining guardianship case files, the GTS allows guardians to submit well-being reports, annual accountings, and inventory reports online to a centralized system.<sup>398</sup> The statewide rollout, completed in 2018, allows courts to track compliance with report submissions and, importantly, provides immediate statewide guardian alerts in cases where concerns are raised regarding a guardian's suitability.<sup>399</sup> In one recent example, a guardian was arrested in a case of financial fraud.<sup>400</sup> Although not directly related to a guardianship, the person's information was flagged statewide, allowing all courts using that guardian to review those cases and the person's suitability to continue as guardian.<sup>401</sup> An automatic alert is also issued any time a guardian is terminated due to abuse, neglect, or financial exploitation.<sup>402</sup> Another benefit of the statewide system is that the state can accurately track the

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394. MYMN CONSERVATOR (MMC) USER MANUAL, *supra* note 392, at 5.

395. *MyMN Guardian (MMG)*, MINN. JUD. BRANCH, <https://mncourts.gov/Help-Topics/MyMNGuardian.aspx> (last visited Mar. 23, 2022).

396. MY IND. ACCT., MYINA GUARDIAN USER GUIDE 1, 4 (2021), <https://myina.courts.in.gov/>.

397. Sonja Waters, *Using Technology to Track, Manage Guardians in PA*, 41 BIFOCAL (Mar 18, 2020), [https://www.americanbar.org/groups/law\\_aging/publications/bifocal/vol-41/bifocal-vol-41-issue-4/using-technology-to-track—manage-guardians-in-pa/](https://www.americanbar.org/groups/law_aging/publications/bifocal/vol-41/bifocal-vol-41-issue-4/using-technology-to-track—manage-guardians-in-pa/).

398. ADMIN. OFF. OF PA. CT., PENNSYLVANIA COURTS GUARDIANSHIP TRACKING SYSTEM 1, 2 (2021), <https://www.pacourts.us/Storage/media/pdfs/20210215/040150-guardianshiptrackingsystembrochure-007291.pdf>.

399. *Id.* at 1.

400. Julie Shaw, *3 Court-appointed Guardians Embezzled More Than \$1M from 108 Victims, Delco DA Says*, INQUIRER, (Oct. 21, 2019).

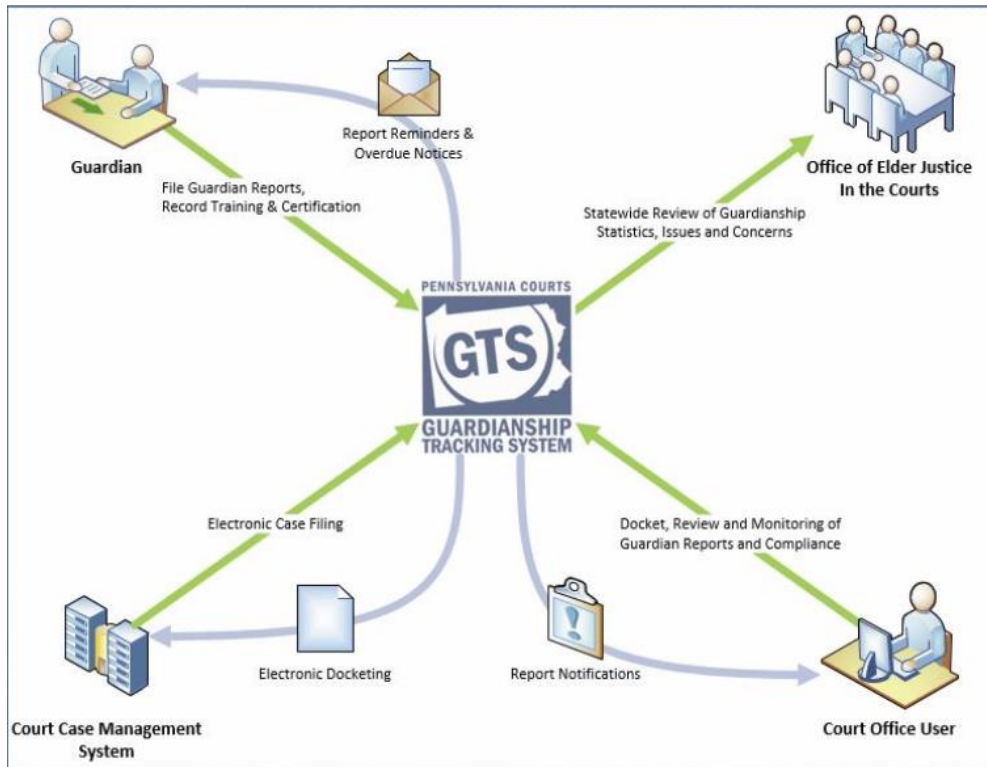
401. Waters, *supra* note 397; Shaw, *supra* note 400.

402. Waters, *supra* note 397.

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number of guardianship cases and the total amount of assets under the courts’ supervision (18,572 and \$1.9 billion respectively, as of November 2020).<sup>403</sup>

Figure 7: Pennsylvania’s Guardianship Tracking System



The Clerk & Comptroller’s office in Palm Beach County, Florida began rolling out Guardianship Inventory Reports & Accountings For Florida (GIRAFF) to guardians and attorneys in Palm Beach County in June 2018. GIRAFF is a web-based, real-time data collection and mining tool that enables live monitoring, assessing, and evaluating of Palm Beach County’s guardianship system.<sup>404</sup> GIRAFF streamlines

403. MASS. GUARDIANSHIP POL’Y INST., COLLOQUIUM ON GUARDIANSHIP OVERSIGHT, GUARDIANSHIP OVERSIGHT: IS MASSACHUSETTS APPLYING BEST PRACTICES? B-1 (2020).

404. THE FLA. CT. CLERKS & COMPTROLLERS, BEST PRACTICE: GUARDIANSHIP AUDITS (2021),

the reporting process for guardians and attorneys, saves money for persons under guardianship, better protects incapacitated persons through efficient monitoring, and standardizes the guardian's reporting of financial information.<sup>405</sup>

GIRAFF's critical data elements includes information about:

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

Having this information allows the court to ask and answer important questions about guardianships and to monitor the adults' wellbeing. The rollout of GIRAFF to more Florida counties is awaiting legislative appropriation.<sup>406</sup>

#### IV. ADEQUATE FUNDING

Adequate funding for the courts to carry out oversight responsibilities is a key component of any monitoring effort. Sufficient funds for court staff, technology, case management, judicial and guardian training, auditors, and investigators are necessary to improve monitoring. Whether in good or poor economic times, funding requests to improve court monitoring must compete with

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<https://www.mypinellasclerk.org/Portals/0/Inspector%20General/FCCC%202021%20Guardianship%20Audit%20Best%20Practice.pdf>.

405. *Id.*

406. Interview with Anthony Palmieri, Deputy Inspector Gen., Palm Beach Cnty Clerk and Comptroller Off. (July 16, 2018) (notes on file with *Syracuse Law Review*). The sources and details related to this interview has not been independently verified by *Syracuse Law Review*. Further information may be obtained by contacting the authors directly.

many other requests for appropriations. With the economic downturn resulting from the pandemic, court and state budgets have been stretched very thin.<sup>407</sup>

State or county appropriations and court filing fees and costs paid by the estate are the predominate sources of funds for monitoring efforts.<sup>408</sup> State appropriations are especially critical to avoid discrepancies in the quality of services provided in various counties. Rural counties with a lower tax base may very well be hard pressed to augment staffing capacities.<sup>409</sup> Some counties may have higher percentages of persons under guardianship than other counties because of a concentration of older persons aging in place or a state mental health facility located in the county, greatly increasing the need for guardianships.<sup>410</sup> Guardianship is a state judicial function and monitoring efforts should be state supported. For example, Florida has been successful in obtaining line-item appropriations for the Department of Elder Affairs to provide enhanced oversight of professional guardians through mandatory registration and investigations by county inspectors general.<sup>411</sup>

Many jurisdictions rely on county funding to support the court system. Judges, attorneys, and guardians can play an important role in stressing to county commissioners the need for adequate funding as well as the importance of protecting vulnerable constituents. One awareness-arising suggestion is to invite county commissioners to accompany court staff or volunteer monitors on inspection visits.<sup>412</sup>

An often-heard complaint about the guardianship process is the financial burden on the respondent, who in most circumstances is charged with the cost of medical assessments, guardians ad litem, and legal representation, often for the petitioner as well as the respondent.<sup>413</sup> After adjudication there may be filing fees for the plans, status reports, and accountings, plus the guardian's fees that come out

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407. *E.g.*, Max Mitchell, *Row Over Court Budget Could Shutter Pennsylvania's Docket System*, THE LEGAL INTELLIGENCER (May 14, 2021).

408. HURME ET AL., *supra* note 17, at 59–60.

409. *Id.* at 59.

410. *Id.*

411. S.B. 2500, FLA. SENATE 2021 SUMMARY OF LEGIS. PASSED, 9 (2021), [https://www.flsenate.gov/PublishedContent/Session/2021/BillSummary/Appropriations\\_AP2500ap\\_02500.pdf](https://www.flsenate.gov/PublishedContent/Session/2021/BillSummary/Appropriations_AP2500ap_02500.pdf).

412. Hurme & Wood, *supra* note 18, at 924.

413. HURME ET AL., *supra* note 17, at 60.

of the estate.<sup>414</sup> In some states, the adult also bears the costs of the examiner, auditor, commissioner, or other official whose role is to protect the individual's estate from mismanagement or inappropriate expenditures.<sup>415</sup> For example, the California Court Investigators and the New York Court Examiners are paid for their monitoring services out of the adult's estate.<sup>416</sup>

To facilitate access to justice, court fees need to be reasonable. The amount and structure of filing fees varies considerably. In some jurisdictions, the amount of the fee is based on the size of the estate, in others it is a flat fee.<sup>417</sup> Most jurisdictions have some provision to waive or defer fees when the individual is found to be indigent.<sup>418</sup> Nevertheless, when filing fees are waived in indigent cases, the court still needs to have the funds to pay for the services and staffing.

From time to time, there have been efforts to seek federal funding support for state guardianship courts. Senator Amy Klobuchar, as then chair of the Senate Select Committee on Aging, introduced a succession of bills between 2011 and 2013 to provide the states' highest courts with grants to assist with court needs assessment projects, data collection, and guardian background checks.<sup>419</sup> In 2019 Senators Susan Collins and Bob Casey introduced the Guardianship Accountability Act, providing for the development of a national resource center for guardianship and federal demonstration projects to develop state guardianship databases, train court visitors, and share information on background checks.<sup>420</sup>

The American Bar Association has called upon Congress to enact and fund a Guardianship Court Improvement Program (GCIP).<sup>421</sup> Modelled after the successful State Court Improvement Program for

414. *Id.*

415. N.Y. MENTAL HYG. LAW § 81.32(f) (McKinney 2021).

416. Hurme & Wood, *supra* note 18, at 924.

417. *E.g.*, N.Y. Surr. Ct. Proc. Law § 2402 (McKinney 2021); *Statewide Civil Fee Schedule*, SUPERIOR CT. OF CAL., <https://www.courts.ca.gov/documents/filingfees.pdf> (last visited Mar. 23, 2022).

418. COMM'N ON NAT'L PROB. CT. STANDARDS & ADVISORY COMM. ON INTERSTATE GUARDIANSHIPS, *supra* note 2, at 11; *see* Hurme, *supra* note 17 at 66.

419. *Court-Appointed Guardian Accountability and Senior Protection Act*, 113 S. 975, 113th Cong. 2 (2013).

420. *Guardianship Accountability Act of 2018*, 115 S. 3669, 115th Cong. (2018).

421. AM. BAR ASS'N, 105 RESOLUTION: ADOPTED BY THE HOUSE OF DELEGATES 1 (Adopted Feb. 2021).



child welfare cases in existence since 1993, the GCIP would create a national infrastructure for ongoing funding for data sharing, collection, and analysis, strengthen the use of less restrictive alternatives, create a court capacity building center; and provide for training of the multiple guardianship stakeholders.<sup>422</sup> Although the Klobuchar and Collins proposals did not advance in their respective Congresses,<sup>423</sup> hopefully the GCIP proposal will be a promising source of funds to assist state guardianship courts, as well as a national infrastructure to provide capacity-building and technical assistance according to priorities set by the state court. The companion Summit background paper by Dari Pogach and Chris Wu explains the GCIP proposal in greater detail.<sup>424</sup>

Courts sometimes access grant funding from local foundations and other sources, such as United Way or state and local bar associations. Grants have been used to develop a training video for newly appointed guardians, publish a guardianship handbook, pay volunteer expenses, and support a volunteer coordinator.<sup>425</sup> The local WINGS (Working Interdisciplinary Network of Guardianship Stakeholders) can provide support and suggestions in seeking resources and supporting legislative appropriations.<sup>426</sup> Two notable examples include Utah WINGS success in gaining funding for additional volunteer court visitors and Idaho WINGS success in procuring funding for a system of regional guardianship monitors.<sup>427</sup> WINGS in Alabama, Missouri, and Virginia have produced (or are

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422. *Id.* at 8–9.

423. S. 591, 116th Cong. 4–5 (1st Sess. 2019) (introduced Feb. 27, 2019); GOVTRACK, govtrack.us/congress/bills/116/s591 (last visited Sept. 8, 2021).

424. Dari Pogach & Christopher Wu, *The Case for a Guardianship Court Improvement Program: Federal Funding to State Courts Could Improve Guardianship Systems & the Lives of Millions of Older Adults & People with Disabilities*, 72 SYRACUSE L. REV. 491, 512–527 (2022).

425. See generally Penni A. DeWitt, *Creating and Sustaining a Volunteer Guardianship Program*, NAT'L CTR. FOR STATE CTS. (May 2013), cdm16501.contentdm.oclc.org/digital/collection/famct/id/940 (explaining the different ways court supported funding have been used in guardianship programs).

426. Dari Pogach, *Working Interdisciplinary Networks of Guardianship Stakeholders (WINGS): An Innovative and Collaborative Approach to Reform*, AM. BAR ASS'N (Aug. 26, 2020), americanbar.org/groups/senior\_lawyers/publications/voice\_of\_experience/2020/august-2020/working-interdisciplinary-networks-of-guardianship-stakeholders-/-.

427. *Id.*

working on) videos, tutorials, and guides for posting on court websites. The Maryland WINGS, in conjunction with the court's Judicial Workgroup on Guardianship, is developing a twenty-hour guardian training program.<sup>428</sup> The Alaska WINGS was instrumental in calling for a new state-funded position of Guardianship Compliance Officer.

Not all monitoring efforts need to be resource heavy. Karp and Wood have a menu of best practices that can make monitoring easier on the courts and compliance less stressful for the guardians.<sup>429</sup> Among the many suggestions are making sure reporting forms are easy to complete, with clear directions on what the court expects, and that the guardian understands requirements and deadlines before leaving the courthouse.<sup>430</sup> They suggest that having care plans and management plans filed soon after appointment help make sure the guardian is on the right track.<sup>431</sup> Equipping court staff, volunteers, or others who review plans, reports, inventories, and accountings with a review protocol can foster consistency in what the reviewers are to look for (i.e. common "red flags").<sup>432</sup> Another best practice is to require all guardians managing property to post a bond, or in the alternative, use restricted accounts to protect the adult's estate.<sup>433</sup>

#### CONCLUSION AND RECOMMENDATIONS

Much has been done to enhance court oversight. Despite a wide variation of local practices, many courts have clear reporting instructions, follow-up procedures, and case management systems for guardianship cases in place. While overall progress in monitoring practices is evident, especially in the use of technology, effective ongoing monitoring continues to be a challenge for some courts. Critical needs remain in the areas of staffing and improved data collection. Improvement is needed in routinely requiring future care plans, vigorously reviewing annual accounting and well-being reports, making regular visits to individuals under guardianship, and holding

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428. *Id.*

429. Naomi Karp & Erica Wood, *Guardianship Monitoring: Promising State and Local Court Practices to Protect Incapacitated Older Adults*, 32 GENERATIONS 23, 23–26 (2008).

430. *Id.* at 24–25.

431. *Id.* at 25.

432. KARP & WOOD, *supra* note 7, at 9.

433. *Id.* at 22.

periodic hearings to assess the continuing need for the guardianship. These steps are necessary to prevent and detect negligence or malfeasance. They are also necessary to ensure the use of the least restrictive alternative available to protect the person given that individuals' needs change over time.<sup>434</sup>

Through this examination of the mosaic of efforts by courts across the county, several recommendations are self-evident because they have been implemented in multiple jurisdictions and found to work. These recommendations may sound somewhat familiar, as they are based on the mutual efforts of the National College of Probate Judges, National Center for State Courts, and the National Association of Court Managers to enhance monitoring of guardians and guardianships. Due to the successful implementation in some jurisdictions, they bear emphasizing and replicating in those jurisdictions seeking to improve monitoring.

- 1) The lack of human and financial resources to adequately monitor guardianships remains a significant problem.
  - Cities, counties, and states should adequately fund the courts with guardianship jurisdiction.<sup>435</sup>
  - Administrative offices of the courts and local jurisdictions should develop innovative approaches and partnerships with community groups, agencies, or entities that can augment court resources.
  - Congress should enact and fund a Guardianship Court Improvement Program, modeled on the Child Welfare Court Improvement Program, to provide much needed incentives and funds to improve guardianship monitoring.<sup>436</sup>
- 2) Courts must regularly and actively review the well-being of the respondent and the proper management of the estate.
  - Courts should timely review all plans and reports and augment court staff when necessary

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434. NATIONAL SURVEY REPORT, *supra* note 4, at 3.

435. See Fourth National Guardianship Summit Standards & Recommendations, 72 SYRACUSE L. REV. 28, 35 (2022).

436. *Id.* at 39 (*Recommendation 6.1*).

by using court visitors, auditors, and volunteers to improve the court's oversight capacity.<sup>437</sup>

- 3) To reduce the failures in timely and accurately complying with monitoring requirements, the courts must provide clear expectations while recognizing that some guardians may need a greater level of support to be able to comply with guardianship responsibilities and court orders.
  - Courts should provide resources, training, assistance, and encouragement for guardians, available in multiple languages and modalities, to help them meet their responsibilities to those they serve and to the court.
  - Courts should develop community partnerships to support guardians.
- 4) Proactively addressing whether the guardianship is still necessary or is at the appropriate level is an integral part of the monitoring process.
  - Courts should periodically confirm the appropriateness of the guardianship order and evaluate the availability of less restrictive alternatives and restoration of rights.
- 5) Courts must be equipped to accept and respond to allegations that arise from the court's monitoring or from law enforcement, adult protective services, or interested parties.
  - Courts should have a clear grievance process accessible to the public.<sup>438</sup>
  - Courts should proactively and timely respond to allegations of abuse, neglect, or exploitation of a person subject to a guardianship.
  - Courts should provide a proportional response.
- 6) Consistently collecting and using data is essential to monitor guardianships efficiently as well as to facilitate court budgeting and strategic planning.<sup>439</sup> Even though courts have historically been structured to end involvement with a case once the matter is disposed, data systems for guardianships must have the capacity

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437. *Id.* at 36. (*Recommendation 4.2*).

438. *Id.* at 37 (*Recommendation 4.3*).

439. *Id.* at 36 (*Recommendation 4.1*).

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to capture case events, statuses, and documents over time.

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