

Strengthening Rights and Ensuring Accountability in Guardianship Systems and Practices: Part 1

- Hilary Dalin, Office of Elder Justice and Adult Protective Services, Administration on Aging Administration for Community Living
- Nisa C. Subasinghe, Maryland Judiciary
- Jamie Majerus, Minnesota Judicial Branch
- Christian Hale, Oregon Judicial Department
- Jeffrey Petty, Oregon Judicial Department
- Jessica Brock, Indiana Legal Services

September 22, 2022

Housekeeping

- All on mute. Use Questions function for substantive questions and for technical concerns.
- Problems getting on the webinar? Send an e-mail to NCLER@acl.hhs.gov.
- Written materials and a recording will be available at NCLER.acl.gov. See also the chat box for this web address.

About NCLER

The National Center on Law and Elder Rights (NCLER) provides the legal services and aging and disability communities with the tools and resources they need to serve older adults with the greatest economic and social needs. A centralized, one-stop shop for legal assistance, NCLER provides Legal Training, Case Consultations, and Technical Assistance on Legal Systems Development. Justice in Aging administers the NCLER through a contract with the Administration for Community Living's Administration on Aging.

About Administration for Community Living (ACL)

The Administration for Community Living was created around the fundamental principle that older adults and people of all ages with disabilities should be able to live where they choose, with the people they choose, and with the ability to participate fully in their communities.

By funding services and supports provided by networks of community-based organizations, and with investments in research, education, and innovation, ACL helps make this principle a reality for millions of Americans.

About EJI: Improving Guardianship

The Elder Justice Innovation Grants program supports the development and advancement of knowledge and approaches in new and emerging issues related to elder justice. Projects assess and implement improvements in the handling of the adult guardianship and conservatorship process by state courts.

About Indiana Legal Services

Indiana Legal Services, Inc. (ILS) is a not-for-profit law firm and the largest provider of free civil legal assistance to eligible low-income people throughout the state of Indiana. ILS helps clients who are faced with legal problems that harm their ability to have such basics as food, shelter, income, medical care, or personal safety. Most of the cases ILS handles are cases such as family law where there is domestic violence, housing, consumer law, access to health care, and access to government benefits.

Introduction

ACL's Vision for Elder Justice

A comprehensive, multidisciplinary approach that effectively supports older adults and adults with disabilities so they can exercise their right to live where they choose, with the people they choose, and fully participate in their communities without threat of abuse, neglect, or financial exploitation.

Key Principles in Guardianship

- **Support of self-determination, person-directedness in decision-making rights**
 - Guardianship is always the last resort.
 - Less restrictive alternatives universally promoted primarily through diversion, and also through a pathway to revocation, less-than plenary appointments, or customized orders.
 - In all proceedings and decisions, the voice of proposed protected persons is paramount.
- **Integrity of Guardianship Proceedings**
 - Centered in the values and wishes of proposed protected persons.
 - Ensures effective and frequent oversight of guardian performance.
 - Frequent and thorough fiscal oversight by court.
 - Assures protected persons are fully engaged in decision-making to the fullest extent possible.
 - Frequently visited by guardian and court personnel.

Key Principles in Guardianship (Continued)

- **Guardianship Reforms**

- Reform is evidence-based and data-driven.
 - Based on the research, data and proven models such as those developed through Working Interdisciplinary Networks of Guardianship Stakeholders (WINGS), National Guardianship Summits, and the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act (UGCOPAA).

Elder Justice Innovations Grants to “Highest State Courts”

- Purpose is to address the fairness, effectiveness, timeliness, safety, integrity, and accessibility of adult guardianship and conservatorship proceedings, and develop innovations to improve the experiences of individuals at risk of guardianship/conservatorship.
- Authorized and appropriated by the Elder Justice Act.

Maryland

Nisa C. Subasinghe, Esq.

Domestic & Guardianship Program Manager

Maryland Judiciary

Maryland Elder Justice Innovation Project: Focus & Goal

- **Focus:** *Diverting the Healthcare-to-Guardianship Pipeline: A Person-Centered Approach*
 - ABA Commission on Law and Aging
 - Disability Rights Maryland
 - National Center for State Courts
- **Goal:** Minimize unnecessary and overly broad guardianships

Maryland Elder Justice Innovation Project: Objectives

- **Objectives:**
 - Statewide assessment
 - Case file review
 - Interviews, focus groups, surveys
 - Comparative analysis of Maryland laws
 - Interventions
 - Targeted education and outreach
 - Mediation
 - Conflicts
 - Exploring alternatives to guardianship
 - Videos: www.mdcourts.gov/alternatives
 - “The unknown”
 - Evaluation

Healthcare Facilities & Guardianship

Consent for medical care

- Lack of accommodations or supports
- No surrogate decision-maker
- Unavailable, unresponsive, abusive surrogate

Discharge

- Stays beyond medical necessity:
 - Increased infection risk
 - Increased dementia and/or disorientation in some patients
 - Available beds
 - Uncompensated care
 - Hospital ratings
- Standard of care

Payment

- May be a requirement of a skilled nursing facility
- Application for Medicaid
 - Even if there are no assets, someone needs to prove there are no assets
- Access to financial records

Capacity in Healthcare Settings

Capacity can improve:

- Recovery from an accident, stroke, traumatic brain injury
- Changes in medication
- Experience and assistance with making decisions
- In less restrictive environments

Capacity can decline:

- Progressive dementia
- Not taking medication
- Overmedication
- In facilities
- Under an unnecessary or overly broad guardianship

Maryland Elder Justice Innovation Project Themes

Themes:

- The “pipeline” issues
 - Payment (Medical Assistance)
 - Role of Financial Institutions
- Meaningful engagement and due process
 - Focus on functional ability (vs. diagnosis)
 - Effective communication and other supports and accommodations
- Lack of resources
 - Appropriate services and supports
 - Appropriate placements
 - Mental health services
- Need for education
 - Guardianship
 - Alternatives to guardianship
 - Advance planning
 - Supports and accommodations

Minnesota

Jamie Majerus

Branch Audit Manager

Minnesota Judicial Branch

Minnesota Judicial Branch

Advancement of Vulnerable Care Project

Goal: to ensure that persons subject to guardianship or conservatorship in Minnesota are adequately protected and well cared for.

Objectives:

1. Design and implement a Guardian/Conservator complaint/investigation process to alert the court of potential maltreatment and fraud.
2. Create the capacity to detect fraud and abuse of persons subject to guardianship/conservatorship.
3. Create the capacity to document/track information received through Ob 1 & 2 by enhancing the systems.
4. Contract with Volunteers of America to provide Supported Decision-Making training to judges, attorney's guardians, conservators, interested parties, and court visitors.

Objective 1:

Design and implement a Guardian/Conservator complaint/investigation process to alert the court of potential maltreatment and fraud.

Key Tasks and Accomplishments

- Establish a hotline and create complaint form.
- Create a tab on webpage to provide information to public and access to the form.
- Create an investigation, decision process, and document procedures.
- Develop methods and procedures for reporting to the court.
- Design a system to track findings and report on complaint process.
- Supreme Court Order ADM09-8010
 - Order Authorizing Complaint and Investigation Pilot project for Guardianships and Conservatorship – signed June 30, 2022

Who Can Make a Complaint

"Interested person" includes:

- i. the adult subject to guardianship or conservatorship, ward, protected person, or respondent;
- ii. a nominated guardian or conservator, or the duly appointed guardian or conservator;
- iii. legal representative;
- iv. the spouse, parent, adult children including adult step-children of a living spouse, and siblings, or if none of such persons is living or can be located, the next of kin of the person subject to guardianship, person subject to conservatorship, or respondent;
- v. an adult person who has lived with a person subject to guardianship, person subject to conservatorship, or respondent for a period of more than six months;
- vi. an attorney for the person subject to guardianship or person subject to conservatorship;
- vii. a governmental agency paying or to which an application has been made for benefits, including the county social services agency for the person's county of residence and the county where the proceeding is venued;
- viii. a representative of a state ombudsman's office or a federal protection and advocacy program;
- ix. a health care agent or proxy appointed pursuant to a health care directive, a living will, or other similar document;
- x. in the case of a minor who is an Indian (1) the tribal chairman or delegated agent and (2) the regional director of the minor child's tribe with service by registered or certified mail; and
- xi. any other person designated by the court

Minnesota Judicial Branch Webpage

Spanish | Finnish | Somali | Other

Search

MINNESOTA JUDICIAL BRANCH

HELP TOPICS | FIND COURTS | PAY FINES | GET FORMS | ACCESS CASE RECORDS | FILE A CASE

Attorneys | Jurors | Government Partners | Media | Teachers and Students

Conservatorship

Note: A law went into effect on August 1, 2020 for guardianship and conservatorship cases. The law changed some of the words and processes used. A **MN Supreme Court Order** and related rule are also in effect that say the filing of non-public records to the court is controlled by court rules and court forms and not by the new law. Many court forms and resources have been updated to include these changes.

The Minnesota Judicial Branch has launched a new online training for individuals who have been appointed by a court to serve as a guardian or conservator. [Learn More »](#)

New program will increase audit frequency for conservatorship-managed accounts »

Contact a Self-Help Center

Help Topics Homepage

Guardianship Help Topic

Related Links:

- [MyMNConservator \(MMC\)](#)
- [Guardian and Conservator Registry](#)

Overview

Duties for
Conservators

Complaint
Process

Audit
Programs

Forms

Tips for
Conservators

Rules, Laws &
Resources

Any interested person to a Guardianship or Conservatorship as defined by **Minn. Stat. § 524.5-102, subd. 7**, including the Person Subject to Guardianship or Conservatorship ("Person"), can submit a complaint with the Minnesota Judicial Branch.

Complaint Form



MINNESOTA JUDICIAL BRANCH

MINNESOTA JUDICIAL CENTER
25 REV. DR. MARTIN LUTHER KING, JR. BLVD.
SAINT PAUL, MINNESOTA 55155

Complaint Against a Guardian and/or Conservator

1. Court File Number: _____

2. Information about You:

Full Name: _____

Telephone: _____ Email: _____

Person Subject to Guardianship/Conservatorship

Not the Person Subject to Guardianship/Conservatorship

If you are not the Person Subject to Guardianship/Conservatorship, what is your interest in the welfare of the Person Subject to Guardianship/Conservatorship or to this case? _____

3. Who are you making the complaint against?

_____, who is the Guardian Conservator.

List the complaint:

a. _____

b. _____

Complaint Process

- Complainant provides complaint:
 - Form
 - Phone
 - Verbal
- Complaint is regarding a Guardian or Conservator not acting in the best interests of the Person
- Complaint is reviewed by Examiner for alleged fraud or maltreatment.
- Complaint is sent to Guardian/Conservator for response.

Complaint Process Continued

- Investigation will include interviews of any persons that is pertinent to the complaint, review of court case documents, MyMNConservator(MMC) /MyMNGuardian(MMG), and any other necessary information.
- Report with recommendations to the court file, recommendations could include; court visitor, reappointment of attorney, further hearings on allegations in complaint, etc.
- The court will review and make determination of next steps in process.
- Other referrals are possible – Law enforcement, DHS, Adult Protective Services, CAAP Audit, etc.

Court Recommendations

- Call a hearing
- Request additional information
- Removal of Guardian/Conservator
- Repayment of funds
- Other

Note: Referral for court action—if the investigation reveals any abuse, maltreatment, exploitation, suspected evidence of illegal activities, imminent loss of assets, or any serious violation of other agency or jurisdiction rules, the Examiner will notify the local court administrator or their designee immediately for referral to the court for expedited court review.

Complaint Process Examples

Examples of a Guardian or Conservator not acting in the best interests of the Person include, but are not limited to:

- the residence is unsafe
- the Person subject to guardianship is not receiving adequate and appropriate food, proper health care, or medications
- the Guardian or Conservator is physically, mentally, or sexually abusing the Person subject to guardianship/conservatorship or failing to prevent or report abuse by another person
- family or friends are not permitted to visit or communicate with the Person subject to conservatorship/guardianship
- the Guardian or Conservator is not following the orders of the court relating to the care of the Person subject to conservatorship/guardianship

Complaint Process Examples Continued

Examples of a Guardian or Conservator not acting in the best interests of the Person include, but are not limited to:

- fails to safeguard the money or financial investments of the Person subject to conservatorship.
- doesn't keep the money of the Person subject to conservatorship in a separate account
- uses the money or property of the Person subject to conservatorship for the conservator's own benefit
- sells or otherwise disposes of property belonging to the Person subject to conservatorship without valid reason
- fails to provide an adequate accounting of the assets of the Person subject to conservatorship or fails to pay the bills of the Person subject to conservatorship

Fraud/Abuse Enhancements

- Create Audit team to conduct random audits of Personal Well Being Reports.
- MMG will contain a flagging like MMC to identify areas of concern and in need of further review.
- MMC automated follow-up process for Level 4 audits.
- Creating a follow-up process on complaint findings and any further necessary work.
- Add a tracking flag on Guardians/Conservators that have been removed for cause.

Oregon



Christian Hale, Office of Internal Audit

Jeffrey Petty, Statewide Probate Analyst

Oregon Judicial Department



Oregon's Self-Assessment Goals of Guardianship/Conservatorship Court Practices

- Find and address dysfunctional protective proceedings;
- Raise expectations of fiduciaries with respect to statutory obligations;
- Improve monitoring and business processes of circuit courts;
- Better the protective proceeding experience for protected persons;
- Emphasized focus on efficient and effective financial supervision.

Oregon's Self-Assessment Plan

Tangible Efforts in Pursuit of Our Goal

- Formed an advisory committee of stakeholders to advise on the approach and execution;
- Performed a systematic assessment through surveys, case review, and follow-up interviews with staff and judges;
- Thorough analysis of Odyssey data with case data cleanup and data collection refinement;
- Centralized, on-demand training and resources, with monthly collaborative educational sessions;
- Implementation of centralized accounting auditing for conservatorships.

Oregon's Senate Bill 578

Appointed Counsel for Respondents and Protected Persons

1. Mandates appointment of counsel under certain circumstances:
 - Respondent/Protected Person requests counsel;
 - Objection is made by any person;
 - Court visitor recommends appointment; or
 - Court determines Respondent/Protected Person needs counsel.
2. Counsel is paid by Oregon Public Defense Services if the respondent/protected person is determined financially eligible;
3. Benefits of appointing experienced counsel:
 - Familiarity with clients with diminished capacity;
 - Understands alternatives to, benefits of, and problems with protective proceedings;
 - Knowledgeable in specialized procedure of protective proceedings, Oregon Rules of Professional Conduct.

Statewide Conservatorship Auditing

Bringing Accounting Review to All Counties

1. Smaller counties with smaller caseloads can't allocate as much time or training as the largest counties;
2. Using other states' models as inspiration for a model for centralized review, a pilot program is beginning in September;
3. Benefits of a centralized model:
 - Technical expertise and sophisticated review of financial filings;
 - Provides judges with a referral service that returns comprehensive evaluation and a menu of judicial action items;
 - Establishes broader statewide expectations of fiduciary behavior and compliance.

Oregon's Auditing Program Objectives

Court Level / Program Level

- Each (pilot) circuit court has its own effective process for reviewing court filings to ensure fiduciary compliance
- Each (pilot) circuit court has its own effective process for reevaluating the need for a fiduciary in each protective proceeding case annually
- The program adds value to court oversight of protective proceedings cases
- The program maintains effective and relevant business processes to monitor and audit protective proceedings cases

Ensuring Accountability and Strengthening Rights

[A Neutral Approach]

Accountable Persons

(by establishing processes)

1. Fiduciary (G/C/Ttee)
2. Fiduciary's Attorney
3. Circuit court (staff)
4. Program staff

Protected Person's Rights

(by verifying documentation)

- ✓ Notice (of case activity)
- ✓ Opportunity to object
- ✓ Right to counsel
- ✓ Review of annual accounting and guardian's report

Sample Case Selection Criteria

Selection Methods

- Court request
- Auditor selection
 - Random sample
 - Targeting process
 - Blend of targeted and random

Sample Case Type Variables

- Minors / Adults
- Cases by years since first filing
- Courts according to judge and staff workload
- Asset amount in dollars
- (un)Timeliness of accountings
- Cases with a respondent aged 65 or older

Synthesis of Court Improvement, Fiduciary Expectations, and Attorney Appointment

Educating and training judges and court staff to better monitor filings submitted in protective proceedings.

Generally standardizing expectations for guardian and conservator performance regardless of a county's limited local resources.

Appointing counsel for respondents/protected persons in contested or otherwise controversial cases.

Preview Training: Part 2

Jessica Brock, LAVA Project Director

Indiana Legal Services

Questions

Resources

- [Elder Justice State Court Grants](#)
- [Working Interdisciplinary Networks of Guardianship Stakeholders \(WINGS\)](#)
- [WINGS Replication Guide](#)
- [4th National Guardianship Symposium](#)
- [The Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act \(UGCOPAA\)](#)

Additional Resources

- NCLER Trainings: [Guardianship & Alternatives](#)
- National Center on Elder Abuse: [Guardianship & Conservatorship Publications](#)

Visit Our Website: ncler.acl.gov

NATIONAL
CENTER ON
**LAW &
ELDER
RIGHTS**

Search for resources

Read practice tips

Sign up for the email list

Request a case consultation

Learn about upcoming trainings

ncler.acl.gov



Case Consultations

Case consultation assistance is available for attorneys and professionals seeking more information to help older adults. Contact NCLER at ConsultNCLER@acl.hhs.gov.