



Guardianship Evaluation Worksheet for Judges

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National Center for State Courts

Disclosures

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- We have no conflicts to disclose

Judicial Guardianship Evaluation Worksheet

Project Goals

To develop a tool for judges hearing guardianship cases:

- Provide consistent theory-informed framework
- Assess the potential for abuse
- Identify gaps in evidence
- Clarify respondent's strengths and limitations
- Consider less restrictive alternatives
- Identify opportunities for limited orders

AIM

Abuse Intervention/Prevention Model

Practical framework for identifying sources of risk related to elder mistreatment

Mosqueda L, Burnight K, Girona MW, Moore AA, Robinson J, Olsen B. The Abuse Intervention Model: A Pragmatic Approach to Intervention for Elder Mistreatment. *J Am Geriatr Soc.* 2016;64(9):1879–1883. doi:10.1111/jgs.14266



Guardianship Evaluation Worksheet



Vulnerable Older Adult = Respondent

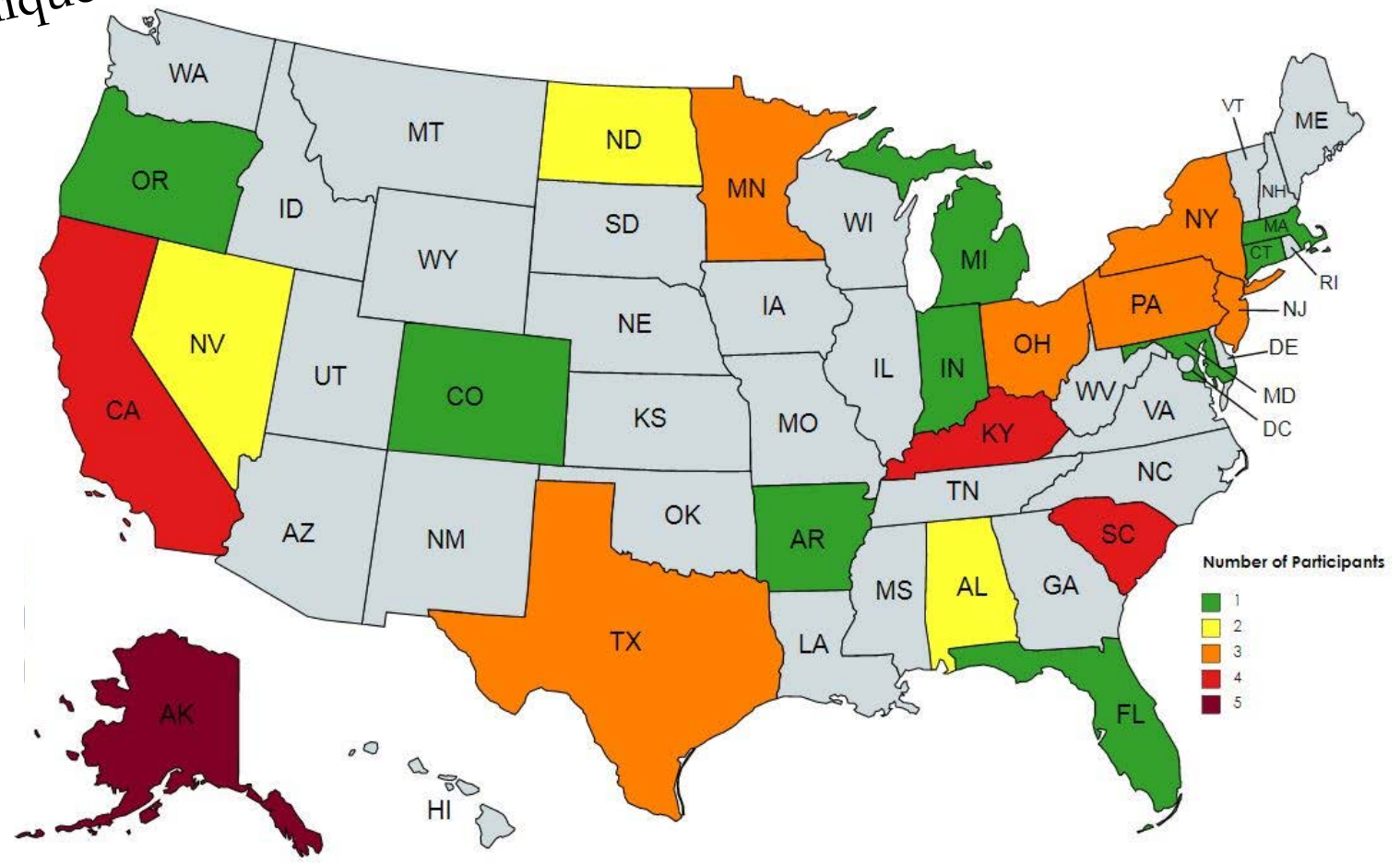
Trusted Other = Proposed Guardian

Judicial Guardianship Evaluation Worksheet Development Process

- **Expert Advisory Board:** input on general structure, language, and format
- **Focus Groups of Judges:** review draft worksheets
- **Pilot Testing:** 51 judges from 22 states
 - 30-min training session
 - Pre-test survey
 - Use with at least 5 older adult guardianship cases
 - Post-test survey
 - Exit interview

- 51 participants from
- 22 unique states

Recruitment



| Judicial Guardianship Evaluation Worksheet | | |
|---|--|---|
| CONFIDENTIAL | | |
| Case #: | Hearing date: | Link to Worksheet Orientation |
| Respondent: | Precipitating event, if any: | Link to State Probate Statutes |
| Petitioner: | | |
| Proposed guardian: | | |
| <input type="checkbox"/> Person <input type="checkbox"/> Estate <input type="checkbox"/> Other | Contested by: <input type="checkbox"/> Respondent <input type="checkbox"/> Multiple petitions <input type="checkbox"/> Other | |
| 1. RESPONDENT | | |
| A. Background | | |
| Age: _____ | Highest education: _____ | Marital/Partnership status: _____ |
| Occupational history: _____ | English literacy: <input type="checkbox"/> speak <input type="checkbox"/> read <input type="checkbox"/> write | |
| Preferred language: _____ | <input type="checkbox"/> interpreter required | Other language: _____ literacy: <input type="checkbox"/> speak <input type="checkbox"/> read <input type="checkbox"/> write |
| B. Cognition | | |
| Areas of concern: <input type="checkbox"/> memory <input type="checkbox"/> concentration <input type="checkbox"/> wandering <input type="checkbox"/> aggression <input type="checkbox"/> confusion <input type="checkbox"/> episodes of delirium | | |
| Diagnosis of dementia: <input type="checkbox"/> mild <input type="checkbox"/> moderate <input type="checkbox"/> severe Rx: _____ <input type="checkbox"/> no known deficit | | |
| <input type="checkbox"/> other: _____ | | |
| Retained abilities: _____ | | |
| C. Mental Health | | |
| Areas of concern: <input type="checkbox"/> depression <input type="checkbox"/> anxiety <input type="checkbox"/> hallucinations <input type="checkbox"/> delusions <input type="checkbox"/> impulsive behavior <input type="checkbox"/> substance abuse | | |
| <input type="checkbox"/> hoarding <input type="checkbox"/> other: _____ diagnosis: _____ Rx: _____ <input type="checkbox"/> no known deficit | | |
| Comments: _____ | | |
| D. Medical Conditions and Physical Functioning | | |
| Relevant medical diagnoses: _____ <u>Acute</u> <u>Chronic</u> <u>Reversible</u> | | |
| Areas of concern: <input type="checkbox"/> inadequate self-management <input type="checkbox"/> mobility <input type="checkbox"/> frequent falls <input type="checkbox"/> pain <input type="checkbox"/> physical frailty <input type="checkbox"/> incontinence | | |
| <input type="checkbox"/> legally blind <input type="checkbox"/> hearing impaired <input type="checkbox"/> adaptive equipment: _____ | | |
| <input type="checkbox"/> other: _____ <input type="checkbox"/> no known conditions | | |
| E. Basic Activities of Daily Living | | |
| Areas of concern: <input type="checkbox"/> eating/feeding <input type="checkbox"/> Retained <input type="checkbox"/> bathing <input type="checkbox"/> dressing <input type="checkbox"/> toileting <input type="checkbox"/> grooming <input type="checkbox"/> no known deficit | | |
| abilities: _____ | | |
| F. Instrumental Activities of Daily Living | | |
| Areas of concern: <input type="checkbox"/> meal preparation/adequate nutrition <input type="checkbox"/> housekeeping <input type="checkbox"/> personal finances <input type="checkbox"/> shopping <input type="checkbox"/> medications | | |
| <input type="checkbox"/> arranging transportation <input type="checkbox"/> internet use <input type="checkbox"/> telephone use <input type="checkbox"/> other: _____ <input type="checkbox"/> no known deficit | | |
| Retained abilities: _____ | | |
| G. Judgment, Reasoning, and Executive Functioning | | |
| Areas of concern: <input type="checkbox"/> identify abuse/neglect/protect self from harm <input type="checkbox"/> recognize potential danger/respond to emergencies | | |
| <input type="checkbox"/> understanding of care needs <input type="checkbox"/> susceptibility to exploitation/undue influence <input type="checkbox"/> prior episodes of mistreatment | | |
| <input type="checkbox"/> other: _____ <input type="checkbox"/> no known deficit | | |
| H. Social Connectedness | | |
| Areas of concern: <input type="checkbox"/> limited contact with family/friends/community <input type="checkbox"/> recent relocation <input type="checkbox"/> recent loss of significant relationship | | |
| <input type="checkbox"/> lack of significant longterm relationships/attachments | | |
| I. Values & Preferences | | |
| Accepts/desires guardian? <input type="checkbox"/> no <input type="checkbox"/> yes: _____ | | |
| Current most valued relationships/associations/activities: _____ | | |
| Consistency of preferences with past patterns: _____ | | |
| <input type="checkbox"/> importance of religious/cultural/spiritual influences <input type="checkbox"/> insistence on family care <input type="checkbox"/> pets | | |
| <input type="checkbox"/> preference to age-in-place <input type="checkbox"/> rejection of needed care <input type="checkbox"/> other: _____ | | |

| | |
|---|--|
| 2. PROPOSED GUARDIAN | |
| <input type="checkbox"/> lay guardian <input type="checkbox"/> private/professional guardian <input type="checkbox"/> public guardian <input type="checkbox"/> financial institution <input type="checkbox"/> certification | |
| A. Background | |
| Age: _____ Highest education: _____ Employment history: _____ | |
| B. Dependency | |
| <input type="checkbox"/> financially dependent on respondent <input type="checkbox"/> emotionally dependent on respondent | |
| C. Functional Limitations | |
| Cognitive concerns: _____ <input type="checkbox"/> no known deficit <input type="checkbox"/> info unavailable | |
| Mental health/Substance abuse concerns: _____ <input type="checkbox"/> no known deficit <input type="checkbox"/> info unavailable | |
| Physical concerns: _____ <input type="checkbox"/> no known deficit <input type="checkbox"/> info unavailable | |
| D. Guardian History | |
| # Of cases: current _____ previous _____ <input type="checkbox"/> ever removed <input type="checkbox"/> revoked license <input type="checkbox"/> surcharge imposed <input type="checkbox"/> rep payee | |
| <input type="checkbox"/> bonded/insured <input type="checkbox"/> poor credit history <input type="checkbox"/> criminal history <input type="checkbox"/> APS complaints <input type="checkbox"/> protective orders <input type="checkbox"/> bankruptcy | |
| Guardian history: _____ | |
| 3. CONTEXT | |
| A. Respondent Resources | |
| Sources of income: <input type="checkbox"/> pension <input type="checkbox"/> social security <input type="checkbox"/> annuity monthly total income: \$ _____ value of estate: \$ _____ | |
| Veteran status: <input type="checkbox"/> yes <input type="checkbox"/> no Health insurance: <input type="checkbox"/> Medicare <input type="checkbox"/> Medicaid <input type="checkbox"/> other: _____ | |
| <input type="checkbox"/> barriers to access/services/assessments <input type="checkbox"/> internet access | |
| B. Living Arrangements _____ Adequate?/Appropriate? _____ With whom? _____ | |
| Comments: _____ | |
| C. Relevant Relationships | |
| Family structure: _____ | |
| Family dynamics: _____ | |
| Other supportive relationships: _____ | |
| Other involved parties: _____ | |
| Areas of conflict: _____ <input type="checkbox"/> pending legal action/protective order: _____ | |
| D. Relationship with Proposed Guardian | |
| Nature and history of relationship? _____ | |
| Actual/potential conflict of interest? _____ Respondent dependent on proposed guardian: <input type="checkbox"/> yes <input type="checkbox"/> no | |
| E. Current Legal Instruments | |
| Will/Trust: Executor/Trustee _____ Date executed: _____ | |
| Medical POA: _____ Date executed: _____ Financial POA: _____ Date executed: _____ | |
| 4. LESS RESTRICTIVE ALTERNATIVES | |
| A. Decisional and Executive Supports | |
| <input type="checkbox"/> hired/family caregiver <input type="checkbox"/> home/community-based services <input type="checkbox"/> memory aids <input type="checkbox"/> assistive technology <input type="checkbox"/> medical POA <input type="checkbox"/> hired/family fiduciary <input type="checkbox"/> direct deposit <input type="checkbox"/> joint account <input type="checkbox"/> rep payee <input type="checkbox"/> financial POA <input type="checkbox"/> trust <input type="checkbox"/> SDM agreement <input type="checkbox"/> other | |
| B. Retained Capacities: _____ | |
| C. Areas to Limit Guardianship Powers: _____ | |
| D. Summary Notes: | |
| <div style="border: 1px solid black; height: 100px; width: 100%;"></div> | |

Participant Characteristics (n=51)

| <i>Characteristic</i> | <i>Percent</i> |
|--|----------------|
| 10+ yrs. judicial experience | 41% |
| 10+ yrs. experience probate guardianships | 52% |
| Practices in rural community | 37% |
| 'Moderate'/'Significant' experience with elder abuse | 71% |
| Current court assignment*: | |
| 1. Probate | 67% |
| 2. Civil | 26% |
| 3. General jurisdiction | 25% |

Implementation Approach

1. In lieu of usual process
2. In addition to usual process
3. Consulting worksheet while using usual process

* Converted skeptics - after using, prefer worksheet to their usual process, surprised by usefulness

Risk-Benefit (double edged sword)

- Tension between time to complete vs. benefit
- Best if completed prior to hearing
- Same quality (ie thoroughness) was both helpful and burdensome
- Distracting to complete during hearing, especially if judge also uses a pre-existing tool or script

Most Beneficial for:

All current probate judges

All professionals engaged in guardianship

Specific groups of judges:

- New judges
- General jurisdiction judges
- Rotating assignments

Other Users

- Court visitors/investigators/social workers
- Attorneys:
 - Guardians Ad Litem
 - Court appointed
- Petitioners
- APS personnel
- Public Guardian

| <i>Other User*</i> | <i>Percent</i> |
|---|----------------|
| Guardian ad litem | 60% |
| Court investigators/ volunteers/visitors | 53% |
| Adult Protective Services (APS) | 47% |
| Medical evaluators | 37% |

Barriers to use

- Lack of time to complete worksheet
- Lack of available information
- Court understaffed/under resourced
- Reliance on professional reports/evals.

Benefits

- Comprehensive register of relevant factors
- Highlights gaps in evidence, prompts further questioning
- Most useful in complex/contested cases
- Continuity for ongoing case review (cheat sheet)
- Reinforces objectivity/reassessment of preconceived notions
- Increases confidence in decision making
- Operationalizes "whole person" perspective

Limited Guardianship/Less Restrictive Alternatives

100% reported support for Limited Guardianship/Less Restrictive Alternatives in their jurisdiction

- Inconsistent and lack of understanding
- Assumes already considered and exhausted
- Lack of community resources
- Temporary solution
- Lack of foundational information

Tribal Court Considerations

- **Growing number** conservatorship cases
- Risk of **financial elder abuse** due to tribal revenue
- **Tribal involvement** in shaping guardianship scope
- Shared information across tribal and non-tribal health care systems
- **Adapt tool** to include tribal cultural inclusion factors
- **Restorative justice** and "wellness courts" - potential support for less restrictive alternatives/limited guardianships

Judicial Perspective on Guardianship

- Weight of work and decisions
- Do the "right thing" for individuals
- Judicial Role:
 - Not investigative
 - Identify gaps and question during hearing
- Increased confidence in decisions

Opportunities for Systemic Improvement

- Desire for evidence-base to practice
- Consistency across states
- Importance of judicial training
- Value of “whole person” perspective
- Standards for capacity assessment
- Catalyst for national discussion

Acknowledgement



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