



Office for Victims of Crime
OVC

Guardianship Review Protocol

Guardianship and Conservatorship Monitoring

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The court's duty to protect the well-being of an individual does not end when it appoints a guardian or conservator. After appointment, the court has an ongoing duty to monitor the guardianship or conservatorship, holding the guardian accountable for ensuring the person's needs are being met. "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."¹

With a monitoring protocol, the court can identify guardians who are struggling, guide a guardian who needs assistance in fulfilling their duties, and the court can stop a guardian from using their court appointed authority to abuse, neglect, or exploit an individual.

¹ What's Working in Guardianship Monitoring, p. 297, <https://lawreview.syr.edu/wp-content/uploads/2022/10/8.-HURME-ROBINSON.pdf>.

Terms

In these documents, the terms guardian and conservator will be used. Different jurisdictions use these terms differently, but in these documents these definitions will be used.

Guardian: A person appointed by the court who has the legal authority to make decisions for another person, because that person cannot make their own decisions. Also sometimes called the Guardian of the Person.

Conservator: A person appointed by a judge or court to manage a person's money and property. Also sometimes called the Guardian of the Estate or Fiduciary.

The word Guardian will be used to mean both Guardian and Conservator.

Court monitoring includes reviewing reports submitted by the guardian, providing guidance to guardians on how to provide information to the court, implementing procedures to respond to complaints about the guardian, consistently evaluating the guardianship to determine whether it remains necessary, and carefully identifying and responding to red flags that indicate possible abuse, neglect, and exploitation. According to National Probate Court Standard 3.3.17, in monitoring the well-being of the respondent and the status of the estate on an on-going basis, the court should:

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

This protocol provides a template for court and clerk staff (including but not limited to judicial officers, judicial staff, court clerks, auditors, and volunteers) to monitor guardianships of the person and the estate. The template is meant to serve as a starting point that can be modified and enhanced as needed for a particular jurisdiction. When feasible, additional resources can build on this template to support more comprehensive reviews and audits of guardianships. Importantly, the court must work to develop a rapid response team of additional professionals who can assist when needed. This network may include social workers, geriatricians, certified public accountants (CPAs), forensic accountants, financial advisors, [Adult Protective Services \(APS\)](#), the District Attorney's office, and the public guardian's office.



Getting Started

Because resources are limited, courts must establish monitoring programs that are effective and sustainable. This involves the following steps:

1. Track cases requiring monitoring.

- a. Use a case status of “Set for Review” or equivalent to be able to easily identify those cases.
- b. Send reminders to guardians of reports due.
- c. Produce and review “exception reports” to identify and act on cases that are missing required reports.
- d. Improve data collection as outlined in the Guardianship/Conservatorship Monitoring – Recommended Data Elements www.ncsc.org/nods.

2. Establish levels of monitoring and identify triggers for each.

- a. Review: a routine review of reports
- b. Audit: a more detailed review in response to concerns uncovered in routine review or brought to the attention of the court.

3. Respond to potential problems.

- a. Judicial Response Protocol for Guardianship and Conservatorship Abuses: https://www.eldersandcourts.org/guardianship_conservatorship/resources-for-courts/response-protocol



Additional Resources

National Center for State Court's Center for Elders and the Courts:

<http://www.eldersandcourts.org/>

American Bar Association Commission on Law and Aging:

https://www.americanbar.org/groups/law_aging/

Center for Guardianship Certification:

<https://guardianshipcert.org/>

National Adult Protective Services Association:

<https://www.napsa-now.org/help-in-your-area>

National Association for Court Management (NACM) Adult Guardianship Guide:

https://nacmnet.org/wp-content/uploads/AdultGuardianshipGuide_wit_hCover.pdf

National Disability Rights Network:

<https://www.ndrn.org/>

National Guardianship Association:

<https://www.guardianship.org/>

National Guardianship Association Standards of Practice:

<https://www.guardianship.org/standards/>

National Probate Court Standards:

<https://ncsc.contentdm.oclc.org/digital/collection/spcts/id/240/>

County of Santa Clara Office of the County Counsel Financial Abuse Specialist Team (F.A.S.T.):

<https://counsel.sccgov.org/financial-abuse-specialist-team-fast>

Guardianship Handbooks, by state:

https://www.americanbar.org/content/dam/aba/administrative/law_aging/2019-gshp-adult-gship-hdbks-state.pdf

Statutes For Guardianship Monitoring, by state:

https://www.americanbar.org/content/dam/aba/administrative/law_aging/chartmonitoring.pdf

What's Working in Guardianship Monitoring: Challenges and Best Practices:

<http://law.syr.edu/uploads/docs/academics/Hurme-Robinson.pdf>

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