

Brief Status report on responses to Specific Audit Recommendations

Recommendation #1:

Improve the consistency and effectiveness of court review of conservator and guardian plans and reports by establishing minimum review procedures; requiring guardians and conservators to maintain detailed information on fees and expenditures; and developing a risk-based model for reviewing higher-risk guardian and conservator cases.

**Judicial Branch Agreed to the Recommendation. Implementation date: July 2007
Summary Status of Recommendation #1 Implemented and Ongoing**

Judicial Branch and its task force response:

Review and reporting procedures have been established by creating new event codes that will automatically schedule matters for review by judges or judicial assistants. Review work has been added to the daily Order of Business (Rule 3 of the Colorado Probate Rules of Procedure) for Probate Judges and the State Court Administrator's Office has agreed to review and reevaluate the manner in which "review" time is accounted for in staffing models. Periodic report forms have been revised to require fiduciaries to report fees and expenditures in detailed categories so that problems and irregularities can more readily be identified by court staff, interested persons and judicial officer. An assessment tool (JDF 804 – Monitoring Criteria Checklist) has been developed for judges to use in evaluating risks and suggested levels of supervision in protective proceedings to the end that more regular and stringent review can be assigned to higher risk cases. The Task Force anticipates that this form will be available in March/April of 2008. The State Court Administrator has established internal audit procedures via its internal auditors to review randomly sampled probate cases for the proper documentation of required filings of guardianship and conservatorship reports and accountings.

Recommendation #2:

Consider a range of options for ensuring fees charged by guardians and conservators are reasonable and that policies for determining reasonableness are consistently applied by the courts.

**Judicial Branch Agreed to the Recommendation. Implementation date: July 2007
Summary Status of Recommendation #2 Implemented**

Judicial Branch and its task force response:

Although concerned about the reasonableness and fairness of fiduciary fees, the Task Force concluded that under Goldfarb v. Virginia State Bar, 421 U.S. 773 (1975) a fee schedule as such would constitute price-fixing and thus would violate the Sherman Antitrust Act. The Task Force concluded that the best available approach to monitoring fees is for reviewing judges to require detailed accountings and justifications. This will require judicial education as to the factors constituting reasonableness of fees. In addition, more statewide training of judges will provide less experienced judges with opportunities to develop standards for reviews based on training materials and interaction with experienced judges. Training is ongoing and curriculum will be developed.

Recommendation #3:

Improve procedures for ensuring that professional and nonprofessional guardians and conservators are qualified to perform their duties toward protected persons.

**Judicial Branch Agreed to the Recommendation. Implementation date: July 2007
Summary Status of Recommendation #3 Implemented**

Judicial Branch and its task force response:

The creation of user manuals for both guardians and conservators will help to educate and inform fiduciaries as to their duties and will provide forms and materials to improve compliance with court orders and with statutory reporting requirements. The Task Force generally is committed to the use of both lay and family fiduciaries. Numerous scenarios for the training of both have been considered by the Further Studies Subcommittee recognizing that in those states where guardians and conservators follow a state-prescribed training program, are certified, licensed, registered, regulated and disciplined by the states, significantly more financial resources at the state level are devoted to guardianship/conservatorship programs. While the Task Force recognizes that professional fiduciaries play a significant role in a system such as ours, the Task Force concluded that specific qualifications for those professional fiduciaries should only be established by legislation, if the legislature thinks that is appropriate.

Recommendation #4:

Improve communications used to inform interested parties of their rights and responsibilities related to oversight of trustees and personal representatives.

**Judicial Branch Agreed to the Recommendation. Implementation date: July 2007
Summary Status of Recommendation #4 Implemented**

Judicial Branch and its task force response:

Existing forms used to provide notice to interested persons have been revised to clarify and to highlight the rights and responsibilities of interested persons *vis-a-vis*, trustees and personal representatives. Although this recommendation is somewhat abroad from the matter of protective proceedings, in that courts seldom appoint trustees and because personal representatives are usually designated in wills, the Task Force concluded that the same general practices apply, and that the expanded notice provisions will serve all types of estates and fiduciaries. The Probate Forms Subcommittee has changed the form of notice to interested persons in decedent's estates to feature certain important notice requirements more prominently on the forms. With the encouragement of the Task Force, the Colorado Bar Association Probate and Trust Law Section's Statutory Revisions Committee has proposed a change in the procedure and the form of notice to trust beneficiaries to directly address the concern set out in the Probate Audit regarding notice to persons with interests in trusts.

Recommendation #5:

Strengthen controls over the management of probate cases by making improvements to the automated case management system.

Judicial Branch Agreed to the Recommendation. Implementation date: January 2008

**Summary Status of Recommendation #5 Implemented as to phase 1 ICON
Ongoing as to phase 2 jPOD**

Judicial Branch and its task force response:

Two tasks are underway within the Judicial Branch to improve the electronic case management system. The first is the creation of new event codes and business practices which are an adjunct to the expanded program. These codes will enable protective proceedings to be better tracked. The second task is the creation of the jPOD (Judicial Paper on Demand) program, as the successor to the present ICON/Eclipse systems. The jPOD system will enable judges and judicial assistants to more easily access protective proceedings files and to set monitoring/supervision deadlines. The jPOD system is expected to be operational statewide in the next 3 – 4 years, with some sections being completed in phases.