

Colorado Judicial Branch



PROTECTIVE PROCEEDINGS TASK FORCE

APPENDICES TO THE FINAL REPORT TO THE CHIEF JUSTICE AND STATE COURT ADMINISTRATOR

January 4, 2008

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Appendix 1

Outline of Probate Performance Audit Report

Outline of Probate Performance Audit Report

A. Factual Basis of Audit:

152 cases from six districts out of 11,700 probate cases filed state wide in FY '03. Of these, 114 involving conservators and guardians were closely examined.

B. Areas of concern:

- I. Monitoring and Supervision
- II. Appointee Compensation
- III. Appointee Screening and Selection
- IV. Interested Parties
- V. System Improvements

C. Recommendations:

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.
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
3. Improve procedures for ensuring that professional and nonprofessional guardians and conservators are qualified to perform their duties toward protected persons.
4. Improve communications used to inform interested parties of their rights and responsibilities related to oversight of trustees and personal representatives.
5. Strengthen controls over the management of probate cases by making improvements to the automated case management system.

D. Response

The State Court Administrator's Office agrees with all of the recommendations. The Chief Justice established a Protective Proceedings Task Force to address the issues outlined in the Audit Report.

Appendix 2

Order Establishing the Protective Proceeding Task Force Charging Document

SUPREME COURT OF COLORADO

OFFICE OF THE CHIEF JUSTICE

**Order establishing the
Protective Proceedings Task Force
Charging Document**

The "Colorado Uniform Guardianship and Protective Proceedings Act, section 15-14-101, et seq. C.R.S. (2006) requires each of the 22 judicial districts to establish a system for monitoring conservators and guardians, including the filing and review of required guardian and conservator reports. Although the statute does not specify the monitoring system courts must employ, the statute does allow the courts to appoint an appropriate person to review the reports, interview the protected person, and make any other investigation as directed by the court. Additionally, courts have the authority to remove a guardian or conservator, or to modify or severely limit the powers granted to the guardian or conservator to safeguard the interests of the protected person and the estate.

Pursuant to statute, guardians and conservators have certain duties they are required to perform, and courts have a responsibility to insure those duties are being performed on behalf the protected person.

A report entitled "Oversight of Probate Cases – Colorado Judicial Branch Performance Audit – September 2006" ("the Audit Report") prepared by Clifton Gunderson LLP has identified deficiencies in the supervision processes of the Judicial Branch. Although the Audit Report also noted that the supervisory responsibilities of the courts extend to personal representatives and trustees, it focused upon guardians and conservators "[b]ecause courts have a higher level of responsibility for monitoring . . . these appointees." (Audit, page 14.) Further, courts are empowered to authorize and to monitor other types of proceedings for persons with legal disabilities.

Therefore, the Protective Proceedings Task Force is hereby established and charged with the task of establishing effective procedures and controls for administering and monitoring conservatorships, guardianships, disability and special needs trusts, protective arrangements and single transactions, restricted accounts, and personal injury and insurance settlements to the extent deemed necessary.

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To this end, the Task Force is assigned to:

- study and attempt to address the concerns raised in the Audit Report of the Colorado probate courts;
- determine if it is appropriate to establish minimum standards that fiduciaries must follow in their accounting of financial activities of their estates;
- determine if it is appropriate to establish minimum standards for guardians to follow regarding their reporting functions and other duties;
- design and develop ideas for providing training programs for conservators and guardians in conjunction with the Colorado Bar Association, the state and national organizations dealing with guardians and conservators, such that they are knowingly able to perform their duties, and timely and accurately file accounting statements and other reports required for court review;
- consider the necessity for guidelines for approving and monitoring disability and special needs trusts, protective arrangements and single transactions, restricted accounts, and personal injury and insurance settlements;
- develop processes to adequately review and audit annual accounting statements prepared by conservators to ensure that expenditures are exclusively for support and care of the protected person. This may include:
 - development of analytical reports as part of ICON that can be easily used by the court;
 - establish training for judges and court staff on how to evaluate financial reports and statements
 - establish more effective judicial review procedures to more easily detect discrepancies
- establish procedures for courts to follow when discrepancies are identified (i.e., what corrective action the courts should take)
- consider and recommend to the State Court Administrator any legislation needed for implementation of any appropriate changes
- the Task Force shall prepare a report to the Chief Justice and State Court Administrator by the February 20, 2007, on the short term plan and needs that should be implemented immediately by CJD or policy, and a long term plan to address the issues as set forth in the audit.

The following are appointed to serve as members of the Task Force:

Shelly Agos
Honorable Rebecca Bromley
Honorable David Dickinson
Sandra Franklin
Honorable Sharon Hansen
Cyndi Hauber
Honorable Jon Kolomitz

John Lauce
Lauris Laue
Lee Cole
Jerry Marroney
Honorable Frederic Rogers
Honorable Caren Stanley
Honorable Jean Stewart

Done this 29th day of November, 2006.


Mary J. Mullarkey, Chief Justice

Appendix 3

**Report to the Chief Justice and State Court Administrator
February 28, 2007**

Colorado Judicial Branch



PROTECTIVE PROCEEDINGS TASK FORCE

REPORT TO THE CHIEF JUSTICE AND STATE COURT ADMINISTRATOR

February 28, 2007

Protective Proceedings Task Force Committee Members

Co-Chairs

Honorable M. Jon Kolomitz
Honorable C. Jean Stewart

District Judge, 16th Judicial District
Probate Judge, Denver Probate Court

Staff

Sandra Franklin
Cyndi Hauber

Consultant, Retired Probate Magistrate
Court Services Analyst, State Court Administrator's Office

Shelly Agos
Honorable Rebecca Bromley
Honorable David Dickinson
Sandra Franklin
Honorable Sharon Hansen
John Lauce
Lauris Laue
Lee Cole
Jerry Marroney
Honorable Frederic Rogers
Caren Stanley

Probate Registrar, 18th Judicial District
District Judge, 4th Judicial District
District Judge, 6th Judicial District
Consultant, Retired Probate Magistrate
District Judge, 22nd Judicial District
Probate Registrar, 20th Judicial District
Probate Registrar, 19th Judicial District
District Administrator, Denver Probate Court
State Court Administrator
County Judge, 1st Judicial District
District Administrator, 15th and 16th Judicial Districts

Additional Participants Requested by the Task Force

Honorable Barbara Hughes
Judy Kinney

Magistrate, 4th Judicial District
Probate Registrar, 1st Judicial District

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Introduction

A report entitled “Oversight of Probate Cases – Colorado Judicial Branch Performance Audit – September 2006” prepared by Clifton Gunderson LLP has identified deficiencies in the supervision process of the Judicial Branch. The report focused upon guardians and conservators because the auditors recognized that courts have a higher level of responsibility for monitoring these appointees.

On November 29, 2006, Chief Justice Mullarkey established the Protective Proceedings Task Force charged with the task of establishing effective procedures and controls for administering and monitoring conservatorships, guardianships, disability and special needs trusts, protective arrangements and single transactions, restricted accounts and personal injury and insurance settlements to the extent deemed necessary.

The Task Force surveyed all Judicial Districts requesting information about its procedures for managing probate cases. Over 90% of the Districts responded to the survey. The Task Force met on January 19 and February 22, 2007 to review the audit recommendations, consider the results of the statewide survey of court practices, and to formulate suggestions for improving court management of guardian and conservator cases. Many of the suggestions contained in this report can be implemented by September 1, 2007. Others require further study, computer programming changes and/or legislation and may take several months before being finalized.

SUPREME COURT OF COLORADO

OFFICE OF THE CHIEF JUSTICE

Order establishing the Protective Proceedings Task Force Charging Document

The “Colorado Uniform Guardianship and Protective Proceedings Act, section 15-14-101, et seq. C.R.S. (2006) requires each of the 22 judicial districts to establish a system for monitoring conservators and guardians, including the filing and review of required guardian and conservator reports. Although the statute does not specify the monitoring system courts must employ, the statute does allow the courts to appoint an appropriate person to review the reports, interview the protected person, and make any other investigation as directed by the court. Additionally, courts have the authority to remove a guardian or conservator, or to modify or severely limit the powers granted to the guardian or conservator to safeguard the interests of the protected person and the estate.

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To this end, the Task Force is assigned to:

- study and attempt to address the concerns raised in the Audit Report of the Colorado probate courts;
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- determine if it is appropriate to establish minimum standards for guardians to follow regarding their reporting functions and other duties;
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- consider the necessity for guidelines for approving and monitoring disability and special needs trusts, protective arrangements and single transactions, restricted accounts, and personal injury and insurance settlements;
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 - establish more effective judicial review procedures to more easily detect discrepancies
- establish procedures for courts to follow when discrepancies are identified (i.e., what corrective action the courts should take)
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Honorable Jean Stewart

Done this 29th day of November, 2006.


Mary J. Mullarkey, Chief Justice

Monitoring and Supervision

RECOMMENDATION NO. 1:

The Judicial Branch should improve the consistency and effectiveness of court review of conservator and guardian plans and reports by establishing minimum review procedures and by requiring guardian and conservator appointees to maintain documentation and report detailed information on their fees and expenses. These procedures and reviews could include:

- a. Establishing standard procedures for courts to identify and follow up on missing guardian and conservator plans and reports.*
- b. Requiring guardians and conservators to maintain supporting documentation for fees and expenses and improving guardian and conservator annual reporting forms to ensure that reports contain consistent and specific detail regarding the activities of guardians and conservators.*
- c. Developing a risk-based model for scheduling reviews of conservator and guardian reports to ensure that high-risk cases are reviewed more frequently, lower-risk cases receive less frequent review, and that all courts are reviewing reports in a systematic manner. The risk-based model should incorporate a requirement that the courts periodically request and review supporting documentation related to professional guardian and conservator compensation and expenditures*
- d. Developing standardized review forms for evaluating guardian and conservator reports. The review instructions should include a list of risk factors to assist in identifying unreasonable or questionable expenses that require further supporting documentation. Risk factors could include expenses over a certain threshold, expenditures or activities that deviate from the financial or personal care plan on file, or expenses inherently at risk for fraud and abuse (e.g., meals, travel, credit card reimbursements, or purchases of equipment that the protected person likely could not use). Individuals responsible for reviewing reports should be trained to conduct such reviews.*
- e. Exploring the implementation of formal volunteer and court visitor programs to provide assistance and or additional expertise to the courts in reviewing guardian and conservator reports. Volunteer programs should include procedures for the recruitment, training, and coordination of volunteers.*
- f. Establishing standard court practices for overseeing guardian and conservator appointees, making recommendations for improved procedures, and providing technical assistance as needed.*

After reviewing the survey results, the Task Force recognizes that procedures for monitoring the filing of guardian and conservator reports and plans vary across the state. To help standardize procedures, the Task Force began developing a list of Best Business Practices. The initial list of Best Business Practices will be complete by September 1, 2007. A draft set of Best Business Practices is set forth in Appendix A to this report. The Task Force anticipates a continuous review of court procedures to identify areas where Judicial Branch operations may be improved. Many of the items identified on the list will be implemented by that date. The list of Best Practices will be supplemented by instructions on their use, such as:

- a)** Detailed instructions for clerks to follow when entering and monitoring review dates. (See Best Practices item # 1 and # 2)
- b)** Procedures for clerks to follow when a guardian or conservator fails to file plans, reports, etc., by the due date. (See Best Practices item # 3)

- c) Recommendations for court imposed sanctions when the guardian or conservator does not respond to the clerks' reminders. (See Best Practices item # 4)

To insure consistent implementation of the Best Practices, training for clerks and judges will be necessary. The Task Force anticipates that regional trainers will be able to assist with this however; additional funding may be necessary to adequately address the training component.

In addition to creating Best Practice standards for entering, monitoring, and following up on the guardian/conservator's reporting responsibilities, the Task Force is developing several forms and checklists for the clerks and judges use so that the process is as efficient as possible. The draft of these forms will be complete by July 1, 2007. Some of the forms may require Bar Association or Supreme Court approval, which may take additional time to obtain. The list of forms is found at Appendix B.

The Task Force recommends that the dates for filing various reports be standardized so that guardians and conservators have fewer deadlines to remember and clerks' review will be simplified. For example, the initial guardian report is due within 60 days after appointment, the inventory and financial plan is due within 90 days. The Task Force recommends a statutory change, requiring all three filings to become due 90 days after appointment. In the meantime, the Task Force recommends implementing this standard as a Best Practice.

Once reports are received, the Task Force recommends following a standard format for their review. To aid the reviewer, the Task Force is developing a Conservator Review Checklist (see Draft Appendix B, Form 10) and a Guardian Review Checklist to be completed during the review of each report. The checklists highlight areas of concern identified by experienced staff and judges throughout the state and was developed as a way of minimizing problems that "slip through the cracks".

Because staffing limitations do not permit each court to review every report and plan, the Task Force recommends identifying those cases that are more or less likely to become problems. The Task Force recommends that judges create a Risk Factor Rating for each case immediately after appointing a guardian or conservator. The Risk Factor Rating would be used by courts to establish review frequency standards, review detail criteria, and to run reports. For example, a case with a high Risk Factor Rating might be set for an in-depth review every year; whereas a case with a low Risk Factor Rating might be set for an in-depth review every 4 years or it may receive a quick review every year. The application of the Risk Factor Rating would be flexible and allow each court to modify the monitoring of these cases based on current staffing and budget allocations. Additionally, courts could adjust the Risk Factor Rating during the administration of a case as circumstances warranted.

The Task Force needs additional time to determine what categories should be considered in the analysis and what type of rating factor will be assigned to each case, e.g. Low, Medium or High Risk or a specific rating number. A Risk Factor Rating Checklist has been drafted by the Task Force (see Draft Appendix B, Form 11) to aid the on-going discussion. The Task Force recommends that the Risk Factor Rating be used to create management reports. The current Judicial Branch computer system does not provide for this feature, consequently computer programming changes are necessary. In addition, further study is necessary to determine whether the Risk Factor Rating should be kept confidential and, if so, how to keep it confidential while, at the same time, entering the Rating into the courts' computer system.

Appointee Compensation

RECOMMENDATION NO. 2:

The Judicial Branch should consider a range of options that assist courts with monitoring and determining the reasonableness of fees charged by guardians and conservators. Options could include:

a. Establishing guidance for appropriate fees. This could include a total maximum fee amount for typical types of guardian and conservator services or different fees for services requiring different levels of expertise. Alternatively, the Judicial Branch could develop blended rates with established maximums to reflect the range of professional and nonprofessional services that the guardian and conservator will provide.

b. Requiring guardians and conservators to provide a detailed accounting of their fees and services, including explanations for any costs exceeding established fee guidelines, for review by the court.

Once feasible options have been identified, the Judicial Branch should implement policies for courts to consistently apply when establishing and approving fees and for appointees to use when charging and documenting fees. This can be accomplished either through Chief Justice Court Directive or by proposing statutory change, as appropriate.

While some districts indicated they would appreciate some guidance regarding fees, the committee believes it is improper for the courts to set fees for independent service providers. See Goldfarb v. Virginia State Bar, 421 U.S. 773 (1975) that found minimum fee schedules set by a county bar association constituted price-fixing and violated the Sherman Antitrust Act.

The Task Force believes it would be helpful to establish criteria to assist those who review conservator reports and petitions for approval of fees (if filed separately from the report). To that end, the Task Force developed a Conservator's Review Checklist (see Draft Appendix B, Form 10) that includes the following questions:

- Is the Conservator requesting fees?
- Did the Conservator indicate the hourly rate charged? (Fees that fall outside a range of what are usual and customary in the community may need to be scrutinized more closely.)
- Did the Conservator detail the services provided and dates upon which they were provided? (Without giving proper detail, neither interested persons nor the court can determine whether the services were reasonable and necessary.)
- If the Conservator is a family member, did he/she charge for things that are typically considered family obligations, such as dinner with the protected person, etc? (This is a red flag and should not ordinarily be approved.)
- Did the Conservator charge in the upper end of the range for tasks that could have been delegated to someone who would have charged less? (For example, a professional conservator should not charge his/her highest rate for performing tasks such as shoveling snow or running everyday errands.)

The Task Force also recommends the creation of a Guardian's and Conservator's User Manual to inform Guardian's and Conservator's about the standards related to fiduciary fees. (See Appendix C, Draft Table of Contents of the User Manual).

Appointee Screening and Selection

RECOMMENDATION NO. 3:

The Judicial Branch should improve procedures for ensuring that professional and nonprofessional guardians and conservators are qualified to perform their duties toward protected persons effectively and in accordance with the law, proposing legislation as needed. More specifically, the Judicial Branch should consider:

- a. Developing minimum training requirements, continued professional education, and registration or certification for professional guardians and conservators.*
- b. Developing minimum qualifications and training requirements for nonprofessional guardians and conservators to ensure these appointees are competent, understand their duties, and have the information necessary to access resources needed to carry out their responsibilities.*
- c. Establishing a pool of qualified professional conservator and guardian appointees that meet minimum qualifications. Individuals included in the pool should be reviewed periodically to ensure that they continue to meet these qualifications*

The Task Force agrees that well-trained guardians and conservators are needed but does not believe it is appropriate for the Judicial Branch to establish a training program because this may be perceived as a conflict of interest. Furthermore, the Court has the authority to direct the fiduciary to obtain proper training from independent sources.

As an alternative to establishing a training program, the Task Force recommends developing User Manuals to assist the newly appointed guardian and conservator to understand their responsibilities. The manuals will include information specific to their case, such as filing due dates, and general information, such as definitions, duties and responsibilities, frequently asked questions, etc. They will also include helpful forms that can be copied and, where appropriate, filed with the court. A key component of the User Manuals is the Acknowledgment of Responsibilities form (See Draft Appendix B Form 1). The form lists in one place and in simple terms many of the guardian/conservator's duties, particularly those related to filing deadlines, and it requires the guardian/conservator to acknowledge that they have been given this information. Samples of completed forms will also be included in the Manual. A sub-committee will be formed to develop the User Manuals. The sub-committee will be comprised of Judicial Branch employees, members of the bar, and other interest groups. Within the User Manuals, the Task Force plans to provide an extensive resource guide that will include training information currently available from the Bar Association and other sources.

The Task Force recognizes that many newly appointed Conservators/Guardians would better understand their duties if they were able to spend a few minutes with a staff person trained in this area, such as a protective proceeding facilitator (similar to a family court facilitator for domestic relations cases). The Task Force recommends further study of how this service could be provided. The Task Force is currently considering three ways to provide this service: **1)** creating probate facilitator positions in each judicial district, **2)** expanding the probate registrar's duties, or **3)** creating an Office of Probate Services within the Office of the State Court Administrator to provide statewide assistance on probate matters.

The Task Force recommends further study on the topic of professional guardian/conservator licensing, training, and establishing a pool of qualified professionals.

A number of the deficiencies associated with selection of guardians and conservators may have been addressed by the recent statutory requirement that nominees submit a current credit report and/or submit to a background check. When the audit was performed, this requirement had been in effect for only one year and its positive impact may not have been measurable so soon after enactment.

Interested Parties

RECOMMENDATION NO. 4:

The Judicial Branch should improve communications used to inform interested parties of their rights and responsibilities related to oversight of trustees and personal representatives. This could include establishing templates that instruct interested parties on the procedures and timelines they must follow to petition the court for review of the activities of a personal representative or trustee.

One of the purposes of the Uniform Probate Code is to shift the responsibility of protecting the rights of interested persons in trusts and decedents' estates from the courts to the persons themselves. The Task Force recognizes that interested persons often do not understand their role and rights. As a Best Business Practice, the Task Force plans to develop a document describing interested persons' roles, as well as the procedure for bringing concerns to the court's attention. A part of the Best Business Practice will be to determine the best manner for getting this document into the hands of interested persons and to recommend that all courts enter the name and address of each interested person into the computer system.

Although this recommendation is aimed at trusts and decedents' estates, the issue raised applies to all Guardianships and Conservatorships as well, and this Best Business Practice should be applicable to all probate cases.

System Improvements

RECOMMENDATION NO. 5:

The Judicial Branch should strengthen controls over the management of probate cases by making improvements to its case management system. This should include:

- a. Adding fields to track professional and nonprofessional appointees, type of professional appointee, and “active” and “inactive” cases.*
- b. Incorporating edits to ensure courts enter all critical data consistently and that data contained in fields are updated when needed to reflect the current status of cases.*
- c. Creating system flags to identify outstanding reports and notify appointees if reports are late.*
- d. Evaluating the costs and benefits of creating a system for electronic data input of guardian care plans, conservator financial plans, and annual and final reports. If developed, the system could include programming to notify the court and appointees when the activities or expenditures vary significantly from approved plans and request that the appointee provide additional information.*

By consistently following the Best Practices discussed in earlier sections, critical data will be entered and monitored. In order to assist clerks with these tasks, the committee recommends the following programming enhancements be incorporated during the development of the new computer system called JPOD. Sub-committees will be assigned to specifically address programming issues in the area of Probate. Some of the issues identified by the Task Force are as follows:

- a)** Automate the issuance of various notices and orders.
- b)** Establish a “Maintenance” or “Administration” category for all Conservatorship and Guardianship cases upon the issuances of letters. This category will identify cases that require court review of annual reports. Cases will only be in closed status when the Guardianship/Conservatorship is terminated.
- c)** Create Risk Factor Rating field.

Whether to create a system for electronic data input of guardian care plans, conservator financial plans and annual reports is an area the Task Force believes requires further study. The Task Force recognizes the potential value of such a system, but has concerns about its feasibility.

APPENDIX A

BEST PRACTICES

(Sub-committees will determine completion and implementation dates.)

1. Develop standardized procedure for entering case information, filing deadlines, and judges' review of reports into the computer system. Provide case status BRIO query to Chief Judges and District Administrators.
2. Rigorously monitor filing deadlines.
3. Notify Guardians/Conservators who have missed filing deadlines.
4. Sanction Guardians/Conservators who refuse to comply with orders regarding filing deadlines.
5. Use **Restricted Account Log** to monitor requests for withdrawal in cases where the conservator files frequent Petitions for Authority to Withdraw Funds.
6. When appointing Guardians and Conservators, set the deadline for filing the initial guardian's report, the inventory, and the financial plan on the same date. The standard filing date should be 90 days from the date of appointment, unless there is good reason to select another date.
7. Indicate the actual date in the order, rather than relying on the term "within ninety (90) days".
8. Require annual guardian reports to be filed on the anniversary date of the initial guardian's report rather than the anniversary date of the appointment. By incorporating items 6, 7, and 8, the case will have one follow-up date for most purposes. If parties wish to file on a calendar year, then they can motion the court with their request.
9. Require the initial guardian report, and the conservator's inventory and financial plan to all be filed on the same date: 90 days from the date of appointment.
10. Enter driver's license number and identifying information of guardian/conservator in eclipse so, if necessary, a sheriff will have the information necessary to personally serve the person if we need to issue a show cause order.
11. Ensure that the Order Appointing Guardian and Order Appointing Conservator, names all persons who are required to receive various notices, reports, and plans. The names of all shall be entered to the computer system to assist with the verification that such notices were properly given.
12. In appropriate cases, require the nominee to file a preliminary financial plan at or before the initial hearing.

APPENDIX B

PROPOSED CHECKLISTS AND FORMS

ALL FORMS ARE DRAFT

1. Acknowledgment of Responsibilities (JDF 40)
2. Motion for Approval of Financial Plan (JDF 41)
3. Order Regarding Motion for Approval of Financial Plan (JDF 42)
4. Delay Prevention Order (JDF 45)
5. Order to Show Cause (JDF 46)
6. Motion for Authority to Withdraw Funds (JDF 47)
7. Order Regarding Motion for Authority to Withdraw Funds (JDF 48)
8. Restricted Account Log (JDF 49)
9. Order Approving Personal Injury Settlement (JDF 53)
10. Conservator's Report Review Checklist (JDF 54)
11. Risk Factor Checklist (JDF 55)
12. Guardian/Conservator Time Tracking Sheet - to be developed.
13. Guardian's Report Review Checklist – to be developed.
14. Advisement to Interested Persons Regarding their Role and Responsibilities - to be developed.

<input type="checkbox"/> District Court <input type="checkbox"/> Denver Probate Court _____ County, Colorado Court Address: _____ <hr/> IN THE MATTER OF THE ESTATE OF: Protected Person	DRAFT ▲ COURT USE ONLY ▲
Attorney or Party Without Attorney (Name and Address): _____ Phone Number: _____ E-mail: _____ FAX Number: _____ Atty. Reg. #: _____	Case Number: _____ Division Courtroom
MOTION FOR APPROVAL OF FINANCIAL PLAN	

I, _____ (Full Name of Conservator), move this Court to approve the
 Initial Amended Financial Plan filed pursuant to §15-14-318, C.R.S. on _____ (date).

As grounds therefore, the Conservator states the following:

1. The information contained in the Financial Plan is true and complete. The proposed plan is necessary to protect and manage the income and assets of the protected person.
2. The Financial Plan is based on the actual needs and best interests of the protected person.

I understand that interested persons have the right to respond to this Motion and the Financial Plan within 30 days of the date of service or by the date of any hearing on this Motion, whichever occurs first.

Date: _____

Signature of Conservator

Certificate of Service

I certify that a copy of the foregoing Motion for Approval of Financial Plan together with a copy of the Financial Plan was served on each of the following:

Name	Address	Date	Manner of Service*
------	---------	------	--------------------

*Insert hand delivery, first class U.S. Mail, certified U.S. Mail, E-filed, or Fax.

Signature of Person Certifying Service

<input type="checkbox"/> District Court <input type="checkbox"/> Denver Probate Court _____ County, Colorado Court Address: _____ <hr/> IN THE MATTER OF THE ESTATE OF: _____ Protected Person	DRAFT ▲ COURT USE ONLY ▲ <hr/> Case Number: _____ Division: _____ Courtroom: _____
ORDER TO SHOW CAUSE	

You _____ (full name) are ordered to appear before this Court at the place, date and time listed below to show cause, if any you have, for why you should not be held in contempt of court for the failure and refusal to comply with the Delay Prevention Order issued on _____ (date) requiring you to submit various reports and documents to this Court on or before _____ (date).

Court Location: _____

Date: _____ Time: _____

Please come prepared to explain to the Court why sanctions should not be imposed. Failure to appear will cause the Court to issue appropriate sanctions, which may include your removal as Guardian or Conservator and issuance of a bench warrant for your arrest.

Date: _____

 Judge Magistrate

RETURN OF SERVICE

I hereby certify that I am over the age of 18 years, and am not an interested party herein, and that I personally served a copy of the *Order to Show Cause* upon _____ (name) identified to me as the party in contempt herein, at:

_____ (location) on _____ (date) _____ (time) by _____ (method of service).

Signature

Subscribed and affirmed, or sworn to before me in the County of _____, State of _____, this _____ day of _____, 20 _____.

My Commission Expires: _____

 Notary Public/Clerk

<input type="checkbox"/> District Court <input type="checkbox"/> Denver Probate Court _____ County, Colorado Court Address: IN THE MATTER OF THE ESTATE OF: <input type="checkbox"/> Protected Person <input type="checkbox"/> Minor	DRAFT ▲ COURT USE ONLY ▲
Attorney or Party Without Attorney (Name and Address): Phone Number: _____ E-mail: _____ FAX Number: _____ Atty. Reg. #: _____	Case Number: Division Courtroom
MOTION TO WITHDRAW FUNDS	

I, _____ (full name of Conservator), respectfully request authority to withdraw \$ _____, on deposit in the restricted account(s) listed below:

Name and Address of Financial Institution	Account Number (last 4-digits only)	Amount
		\$
Total		\$

The funds are needed for the following reason(s): invoices, receipts, documentation is attached.

The current balance(s) in the account(s) as of the date of this Motion is \$ _____. I have attached the current bank statement.

Date: _____

Signature of Conservator and/or Guardian or Attorney

Certificate of Service

I certify that a copy of the foregoing Motion to Withdraw Funds was served on each of the following:

Name	Address	Date	Manner of Service*
------	---------	------	--------------------

*Insert hand delivery, first class U.S. Mail, certified U.S. Mail, E-filed, or Fax.

Signature of Person Certifying Service

<input type="checkbox"/> District Court <input type="checkbox"/> Denver Probate Court _____ County, Colorado Court Address: _____ <hr/> IN THE MATTER OF THE ESTATE OF: <input type="checkbox"/> Protected Person <input type="checkbox"/> Minor	DRAFT COURT USE ONLY ▲ Case Number: _____ ▲ Division: _____ Courtroom: _____
ORDER REGARDING MOTION TO WITHDRAW FUNDS	

This matter comes before the Court on the Motion to Withdraw Funds filed on _____ (date). The Court, having reviewed the Motion and supporting documentation, if attached, and any responses received from interested persons, enters the following Orders:

- The Motion is **GRANTED**. The Conservator is authorized to withdraw \$ _____ from the account(s) specified in the Motion.
 - The Conservator is required to file a receipt for the purchase with the Court within ten days.
- The Motion is **DENIED** for the following reasons:

Additional Orders are as follows:

Date: _____

 Judge Magistrate

CERTIFICATE OF SERVICE

I certify that on _____ (date), I mailed, faxed, E-filed, or hand-delivered a copy of this Order to the following:

- Conservator and/or Guardian
- Other: _____
- Other: _____
- Other: _____
- Other: _____

 Clerk

<input type="checkbox"/> District Court <input type="checkbox"/> Denver Probate Court _____ County, Colorado Court Address: _____ <hr/> IN THE MATTER OF THE ESTATE OF: <input type="checkbox"/> Respondent <input type="checkbox"/> Minor	DRAFT ▲ COURT USE ONLY ▲
<hr/> Case Number: _____ Division: _____ Courtroom: _____	
ORDER APPROVING PERSONAL INJURY SETTLEMENT	

This matter comes before the Court after a hearing on _____ (date) regarding a Petition to Settle a Personal Injury Claim filed by _____ (Name of Petitioner).

The Court, having reviewed the Petition, testimony heard by the parties, and considered the statements of counsel, finds that venue is proper and that it would be in the best interests of the Respondent/Minor to settle the claim for injuries arising out of _____ that occurred on _____ (date).

The Court further finds that the appointment of a Conservator:

- Is not necessary since this matter deals with a small estate pursuant to §15-14-118, C.R.S.
- Is necessary and the powers shall be limited as set forth in the Order Appointing Conservator.

The Court orders that the Petitioner as Limited Conservator, Conservator, or Parent/Natural Guardian of the above-named minor, is authorized to accept \$ _____ in full settlement of the personal injury claim against _____ (full name). The Petitioner is authorized to execute the required releases to pay the following costs from the settlement funds:

The Court also orders the following:

- The settlement funds must be deposited in a federally insured restricted, interest-bearing investment account to be held until the minor reaches the age of 21, in accordance with the provision of the Order for Deposit of Funds to Restricted Account.
- The settlement funds will be administered by the Conservator or Limited Conservator in accordance with the provisions of the Order Appointing Conservator.
- The attorney fees of \$ _____ can be deducted from the settlement funds. The payment of the attorney fees will not be made until the Court has received an acknowledgment that the funds have been deposited in a restricted account or that the Court has approved the financial plan, if a financial plan is required.

Date: _____

 Judge Magistrate

CERTIFICATE OF SERVICE

I certify that on _____ (date), I mailed, faxed, E-filed, or hand-delivered a copy of this Order to the following:

- Conservator
- Respondent/Minor/Parent of Minor
- Other: _____

 Clerk

Conservator's Review Checklist - DRAFT

In the Matter of the Estate of: _____ Case Number: _____
Full Name of Conservator: _____ Report Due Date: _____
Report for Period: Beginning Date: _____ to Ending Date: _____
Risk Factor: High Medium Low 1st Report

Financial Plan (CPC29-FP)

Plan filed Yes No N/A
Plan appears reasonable Yes No
Sent to all Interested Persons Yes No

Inventory (CPC 20)

Inventory filed Yes No N/A
Inventory signed before a Notary/Clerk Yes No
Sent to all Interested Persons Yes No

Conservator's Report (CPC 29-CR)

General:

1. The totals shows in all categories are 'added/subtracted' correctly. Yes No

Page 1:

2. Do the beginning balances reported in the Summary of Financial Activity and Summary of Net Worth agree to the ending balances from the last report? Yes No N/A – 1st Report
3. Do the balances in the summary agree to the detail information contained within the report? Yes No

Page 2:

4. Is there any information that has changed regarding the Conservator and/or Protected Person? Yes No
 The Conservator and/or Protected Person moving many times, may be an issue.
5. Are there any major changes to the Conservatorship addressed with Part I? Yes No
 If major changes are of concern, further information may be necessary.

Page 3 and 4:

6. Did the assets change significantly from the last report? Yes No If Yes, was the "Explanation of Difference" reasonable?
 If assets increased significantly, this may be due to additional income from the sale of property, etc. and a new financial plan may be necessary to ensure that the funds are secured. If assets decreased significantly, this may be due to excessive expenditures, which should be evaluated.
7. Did the liabilities change significantly from the last report? Yes No If Yes, was the "Explanation of Difference" reasonable?
 If liabilities increased significantly, this may be due to excessive charges on credit cards or some type of major purchase and additional documentation may be necessary. If liabilities decreased significantly, determine cause as it may be attributable to payoff of mortgage that supports the increase in assets, which is reasonable.

Page 4, 5, and 7:

Review page 7 to scan for any large amounts received and/or disbursed to assist you with your review of pages 4 and 5.

- 8. Are funds held in a restricted account? Yes No If Yes, the court has approved many of the expenditures.
- 9. Do the "Receipts/Income" reported appear reasonable based on the current status of the Protected Person? Yes No
 Review sources of income, for example gambling winnings may be questionable if excessive.
- 10. Do the "Disbursements/Expenses? Reported appear reasonable based on the current status of the Protected Person? Yes No
 Evaluate large disbursements, i.e. Big Screen TV and/or expenses that may not be appropriate for the Protected Person for example Mercedes Convertible for 85 year old with no current driver's license.

Page 6:

- 11. Did the Conservator indicate the hourly rate charged? Yes No
 Fees that fall outside a range that is usual and customary in the community may need to be scrutinized more closely.
- 12. Did the Conservator detail the services provided and dates upon which they were provided? Yes No
 Without giving proper detail, neither interested persons nor the Court can determine whether the services were reasonable and necessary.
- 13. If the Conservator is a family member, did he/she charge for things that are typically considered family obligations, such as dinner with the Protected Person, etc. Yes No
 This is a red flag and should not ordinarily be approved.
- 14. Did the Conservator charge in the upper end of the range for tasks that could have been delegated to someone who would have charged less? Yes No
 For example, a professional conservator should not charge his/her highest rates for performing tasks such as shoveling snow or running everyday errands.

Page 8:

- 15. Did the Conservator send report to all Interested Persons? Yes No
 Compare Certificate of Service to information on the computer or in the case file.
- 16. Did the Court receive any responses from any of the Interested Persons? Yes No
 Evaluate the issues presented and compare to the report to determine validity, as a hearing may be necessary.

Comments:

Review:

CPC 29-FP satisfactory	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
CPC 20 satisfactory	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
CPC 29-CR satisfactory	<input type="checkbox"/> Yes <input type="checkbox"/> No
DPON to issue	<input type="checkbox"/> Yes <input type="checkbox"/> No
Hearing to be set	<input type="checkbox"/> Yes <input type="checkbox"/> No
Additional review necessary	Yes <input type="checkbox"/> No
If Yes, assigned to _____ on _____ (date).	
Court Employee or Professional	

Date: _____

Reviewed by: _____

Date: _____

Additional Review by: _____

Risk Factor Analysis Checklist - DRAFT
******Court Use Only******

In the Matter of the Estate of: _____ Case Number: _____

Full Name of Conservator and/or Guardian: _____

Initial Assessment **Supplemental Assessment**

Courts have full discretion to review all reports/plans, certain reports/plans based on a range of rating scores, or only those considered “high risk”. Some courts may not have resources to review all reports/plans requiring some type of review analysis. This assessment tool can assist courts in determining those cases that prompt a higher level of review and monitoring. Certainly, during the life of a Conservatorship and/or Guardianship case, a supplemental assessment may be necessary based on additional information received by the Court to re-evaluate the current rating score.

Criteria Evaluated	Risk (Check if Yes)	Comments
1. No Interested Person(s)		
2. Non-Professional Conservator an/or Guardian		
3. Personal Injury Settlement for Minor		
4. Inexperience of Pro Se		
5. Inexperience of Counsel		
6. Fiduciary Unbondable		
7. Credit Report Score Below xxx #		
8. Criminal History report identifies questionable offense(s)		
9. Parent is the Nominee		
10. Substantial funds not in a Restricted Account		
11. Large Estate		
12. Previous Reports not Filed Timely		
13. Other: _____		
14. Other: _____		
Total # of Boxes Checked		

Per my assessment of the criteria identified above, I find this case to have a risk rating of:

Low **Medium** **High**

Date: _____

 Judge Magistrate

APPENDIX C

USERS' MANUAL

TABLE OF CONTENTS

1. Acknowledgment Form (This is also a good place to place any Orders you receive from the Court.)
2. Definitions
3. General Information Regarding Your Appointment as a Conservator
4. FAQ's and Helpful Tips
5. Resources (Including training information currently available from the Bar Association and other sources).
6. Blank Forms to get You Started
7. Sample Forms Completed
8. Your Personal Section. (This may be a great place for you to maintain financial documentation, receipts, etc.)

APPENDIX D

SUMMARY OF ISSUES REQUIRING FURTHER STUDY AND FUNDING

1. Whether to recommend establishing an Office of Probate Services within the Office of the State Court Administrator to provide local courts statewide with assistance on probate matters.
2. Whether to recommend creation of Protective Proceedings Facilitators in each Judicial District.
3. Whether to create the concept of Supervised Conservatorships/Guardianships and Unsupervised Conservatorships/Guardianships, similar to the same concept used in decedents' estates.
4. Whether to recommend licensing and training for professional guardians and conservators and whether to establish a pool of professional guardians and conservators. The Task Force will need community participation with this study.
5. Whether to create electronic forms (E-forms similar to what the Internal Revenue Service has for tax reporting) for electronic data input of guardian care plans, conservator financial plans, and annual reports.
6. Whether to recommend that guardian and conservator cases be "suppressed" due to the sensitivity of the information contained in each file, for example medical information, financial accounts, etc.
7. Evaluate applicable probate fees to help offset the costs of the user manual and/or Protective Proceedings Facilitator and/or Office of Probate Services.
8. Evaluate whether to charge a response/intervenor fee from party who did not initiate the case. This may result in a recommendation for a statutory change.
9. Evaluate what procedures should be in place when the fiduciary, the protected person, or the incapacitated person moves out-of-state.
10. Evaluate whether to develop training materials for guardians ad litem and court-appointed counsel for respondents.

APPENDIX E

SUMMARY OF ISSUES REQUIRING LEGISLATIVE ACTION, CHIEF JUSTICE DIRECTIVES, OR COURT RULES

1. Change requirements for filing initial guardian report, inventory, and financial plan so that that all fall due on the same date. The committee recommends 90 days.
2. Change statutory requirements §15-14-110(4)(f), C.R.S. to eliminate the exception for parents residing with their children to obtain name-based criminal history checks and credit reports.

APPENDIX F

SUMMARY OF ISSUES REQUIRING COMPUTER PROGRAMMING CHANGES

DRAFT

1. Establish a "Maintenance" or "Administration" category for all Conservatorship and Guardianship cases upon the issuances of letters. This category will identify cases that require court review of annual reports. Cases will only be in closed status when the Guardianship/Conservatorship is terminated.
2. Create field for Risk Factor Rating.
3. Automate the issuance of various notices and orders.
4. Addition to summary screen: Annual Report due: _____ date. This would require a new code and management reports could generate from this code whether reports are coming due or past due.

Appendix 4

**Draft Report Prepared for Public Hearing on
September 28, 2007**

PROTECTIVE PROCEEDINGS TASK FORCE

DRAFT REPORT

PREPARED FOR PUBLIC HEARING

ON SEPTEMBER 28, 2007

This draft summarizes the work of the Protective Proceedings Task Force since February 28, 2007 and is prepared for review and comment at the public hearing to be held on September 28, 2007. To review the February 28, 2007 report to the Chief Justice, go to this link: *Report to the Chief Justice and State Court Administrator 2-28-07 with no attachments.doc*. This draft may be revised in any manner after the public hearing and further consideration, and prior to its final submission. The Protective Proceeding Task Force plans to respond to the issues addressed at the Public Hearing.

Protective Proceedings Task Force Committee Members

Shelly Agos	Probate Registrar, 18 th Judicial District
Honorable Rebecca Bromley	District Judge, 4 th Judicial District
Honorable David Dickinson	District Judge, 6 th Judicial District
Sandra Franklin	Consultant, Retired Probate Magistrate
Honorable Sharon Hansen	District Judge, 22 nd Judicial District
Cyndi Hauber	Court Services Analyst, State Court Administrator's Office
Honorable M. Jon Kolomitz	District Judge, 16 th Judicial District
John Lauce	Probate Registrar, 20 th Judicial District
Lauris Laue	Probate Registrar, 19 th Judicial District
Lee Cole	District Administrator, Denver Probate Court
Jerry Marroney	State Court Administrator
Honorable Frederic Rodgers	County/District Judge, Gilpin Combined Court
Caren Stanley	District Administrator, 15 th and 16 th Judicial Districts
Honorable C. Jean Stewart	Probate Judge, Denver Probate Court

Additional Participants Requested by the Task Force

Honorable Barbara Hughes	Magistrate, 4 th Judicial District
Judy Kinney	Probate Registrar, 1 st Judicial District

The Task Force formed the following four subcommittees to address the major issues raised by the audit. Many of the members of the subcommittees were appointed based on their specialized knowledge in the area of protective proceedings and other probate matters.

- Best Business Practices Subcommittee
- Users' Manual Subcommittee
- Forms Subcommittee
- Further Studies Subcommittee

BEST BUSINESS PRACTICES SUBCOMMITTEE REPORT

Chair Honorable C. Jean Stewart
Staff Cyndi Hauber

Shelly Agos	Arapahoe Probate Registrar - 18 th Judicial District
Lee Cole	Denver Probate District Administrator
Cathy Daly	Denver Regional Trainer - 2 nd Judicial District
Angelika Ebert	LaJunta Electronic Recording Operator - 16 th Judicial District
Carl Glatstein	Attorney – Glatstein & Obrien, LLP
Honorable Barbara Hughes	Probate Magistrate - 4 th Judicial District
Susie Jordan	Denver Probate Court Protective Proceedings Facilitator
Judy Kinney	Jefferson Probate Registrar - 1 st Judicial District
Honorable M. Jon Kolomitz	Chief Judge - 16 th Judicial District
John Lauce	Boulder Probate Register - 20 th Judicial District
Lauris Laue	Greeley Probate Registrar - 19 th Judicial District
Linda Riggle	Denver Probate Registrar

Summary Report

The Best Business Practices subcommittee is developing procedures aimed at creating uniform Guardianship and Conservatorship procedures among districts. This committee is updating the current probate section of the clerk's manual to assist the courts in understanding and implementing such procedures. This committee is developing new procedures for court personnel and recommending new codes that will assist the court in identifying reports/plans filed with the court, reports/plans reviewed by the court and the number of Delay Prevention Orders issued if reports/plans are not received. For an example of a new draft procedure for Monitoring of Conservatorships, go to this link: *Monitoring of Reports – Conservatorship*.

Implementation of many of these new procedures depends upon additional staffing at the local level. This committee supports the need for Protective Proceeding Monitoring Specialist as recommended by the Further Studies Group, to perform such duties as highlighted in the further studies section.

This committee also recommends fairly minor changes to the Colorado Rules of Probate Procedure and to Colorado Revised Statutes. Some of the recommended changes identified at this time are identified in the two documents:

Best Business Practices Working Committee\Proposed Rule Changes August 2007.doc

Best Business Practices Working Committee\Proposed Rule Changes 8.07 - Attachment.doc

This committee is also proposing some statutory changes to two sections: (1) §15-14-418, General duties of conservator – financial plan and (2) §15-14-419, Inventory. These changes would require that the Inventory with Financial Plan (single form) be filed within sixty days of appointment of the fiduciary. Under the present statutes the timelines vary for submission of various reports.

In order to bring probate case filing fees into alignment with civil case filing fees and to help support additional staffing costs, the committee recommends a variety of changes to §13-32-102, C.R.S. A summary of such recommendations are as follows:

1. Elimination of a reduced fee for small estates. Many Probate Registrars have indicated that such matters require the same amount of time to prepare.
2. A filing fee required of all parties filing a Petition requesting affirmative relief.
3. A filing fee for a disclaimer.
4. An increase in the filing fee (\$25.00) for any demand of notice filed.
5. A filing fee for any response or objection.
6. A filing fee for a Request for Correction.
7. A filing fee for a Motion to Modify or Re-Open an estate. The fee would be similar to that required in a Domestic Relations case to modify an existing order or decree.
8. An Inventory Fee on a sliding scale depending on the gross value of the estate. This fee would be a possible revenue source for funding for the positions of Facilitators/Probate Monitoring Specialists. This committee recommends that this fee be allocated to the Judicial Stabilization Fund.

USER'S MANUAL SUBCOMMITTEE REPORT

Chair Lauris Laue
Staff Cyndi Hauber

Carl Glatstein	Attorney – Glatstein & Obrien, LLP
Sandra Franklin	Consultant, Retired Probate Magistrate
Honorable M. Jon Kolomitz	Chief Judge - 16 th Judicial District
Natalie Schlidt	Probate Registrar - 17 th Judicial District

The Users' Manual subcommittee is developing a manual for newly appointed guardians and conservators that will describe, in plain English, their duties and the filing requirements. Below is the table of contents for the Conservator's Manual.

Acknowledgment Form (This is also a good place to place any Orders you receive from the Court.)

Definitions

Information Regarding Your Appointment as a Conservator

Frequently Asked Questions

Resources

Blank Forms to get You Started

- ◆ JDF 868 Motion to Withdraw Funds from Restricted Account
- ◆ JDF 869 Order Allowing Withdraw of Funds from Restricted Account
- ◆ JDF 870 Restricted Account Log
- ◆ JDF 882 Inventory with Financial Plan
- ◆ JDF 885 Conservator's Report (Not final at this time.)
- ◆ JDF 886 Income and Expense Only - Conservator's Report (Not final at this time.)

Pre-filing Report Checklist

Sample Forms Completed (Not completed at this time.)

Your Personal Section (This may be a great place for you to maintain financial documentation, receipts, etc.)

To view a draft of the Conservator's manual, go to this link: [Conservator User Manual\Complete Manual 9.07.doc](#)

FORMS SUBCOMMITTEE REPORT

Chair Honorable Barbara Hughes Staff Cyndi Hauber

Shelly Agos	Arapahoe Probate Registrar - 18 th Judicial District
David Bernhart	Assistant Attorney – Denver County Human Services Section
Kelly Dickson Cooper	Attorney - Holland and Hart
Angelika Ebert	LaJunta Electronic Recording Operator - 16 th Judicial District
Carl Glatstein	Attorney – Glatstein & Obrien, LLP
Susie Jordan	Denver Probate Court Protective Proceedings Facilitator
Judy Kinney	Jefferson Probate Registrar – 1 st Judicial District
John Lauce	Boulder Probate Register – 20 th Judicial District
Lucy Murray	Certified Public Accountant
Linda Riggle	Denver Probate Registrar
Honorable C. Jean Stewart	Presiding Denver Probate Judge

The forms subcommittee is in the process of converting all current Colorado Probate Code (CPC) forms to Judicial Department forms (JDF). This conversion brings the procedures regarding probate and protective proceedings forms into conformity with other forms in use in the state. It will allow the Judicial Branch with an opportunity to respond in a timely manner to the needs of the courts when revising existing forms or new forms as requested by court personnel. All forms approved by this subcommittee must be approved by the Supreme Court before publishing and posting to the website. It is the goal of this committee to have all the protective proceeding forms and instructions completed by March 31, 2008.

The forms that have been approved by this committee and ready for submission to the Supreme Court or have been approved by the Supreme Court are as follows:

- JDF 800 Acknowledgment and Responsibilities
- JDF 801 Delay Prevention Order
- JDF 802 Order to Show Cause
- JDF 804 Monitoring Criteria Pursuant to §15-14-420(4), C.R.S.
- JDF 806 Notice of Hearing to Interested Persons
- JDF 810 Visitor's Report
- JDF 825 Verified Consent of Parent
- JDF 826 Verified Consent or Nomination of Minor
- JDF 830 Letters of Guardianship - Minor
- JDF 835 Petition for Termination of Guardianship - Minor
- JDF 836 Order for Termination of Guardianship - Minor
- JDF 844 Notice of Appointment of Emergency Guardian and Notice of Right to Hearing
- JDF 849 Letters of Guardianship - Adult
- JDF 852 Petition for Termination of Guardianship - Adult
- JDF 853 Verified Notice of Death
- JDF 854 Order for Termination of Guardianship - Adult
- JDF 855 Petition for Modification of Guardianship - Adult and Minor

- JDF 856 Order for Modification of Guardianship - Adult and Minor
- JDF 857 Petition for Appointment of Co-Guardian/Successor
- JDF 858 Order Appointing Co-Guardian/Successor
- JDF 863 Letters of Conservatorship - Minor
- JDF 866 Order for Deposit of Funds to Restricted Account
- JDF 867 Acknowledgment of Deposit of Funds to Restricted Account
- JDF 868 Motion to Withdraw Funds from Restricted Account
- JDF 869 Order Allowing Withdraw of Funds from Restricted Account
- JDF 870 Restricted Account Log
- JDF 879 Petition for Appointment of Co-Conservator/Successor
- JDF 880 Letters of Conservatorship - Adult
- JDF 883 Order Regarding Approval of Conservator's Inventory with Financial Plan
- JDF 884 Order Appointing Co-Conservator or Successor
- JDF 891 Foreign Conservator's Sworn Statement
- JDF 892 Certificate of Ancillary Filing - Conservatorship

FURTHER STUDIES SUBCOMMITTEE REPORT

Chair Honorable M. Jon Kolomitz Staff Sandie Franklin

Jeff Clayton	Policy Analyst, State Court Administrator's Office
Honorable David Dickinson	District Judge, 6 th Judicial District
Carl Glatstein	Attorney – Glatstein & Obrien, LLP
William Hanna	Public Member at Large
Cyndi Hauber	Court Services Analyst, State Court Administrator's Office
Jane Holmes	Clerk of Court – Ouray Combined Court
Honorable Dan Kaup	District Judge, 8 th Judicial District
Alice Kitt	Guardianship Alliance
Marcie McMinimee	Public Administrator/Attorney/Elder Law Section of CBA
Christine Murphy	Governor's Policy Office
Representative Ellen Roberts	Legislature
Honorable Frederic Rodgers	County/District Judge, Gilpin Combined Court
Pat Stanis	Colorado Coalition for Elder Rights and Adult Protection
Honorable C. Jean Stewart	Presiding Denver Probate Judge
Michael Stiff	Attorney – Hutchinson and Stiff
Erica Wood	American Bar Association

The Further Studies Group agrees that professional and nonprofessional guardians, conservators and visitors need more training. The Group recommends that the State Court Administrator's Office develop and implement the training program. The Group also recommends that the State consider developing a certification or registration program for professional guardians and conservators. A special committee appointed by SCAO should develop the details of both programs.

Although not an audit item, the Further Studies Group recognizes that there is a need for public guardians and that it would be an additional means of addressing some of the issues the audit raised. The Group supports efforts to establish a pilot public guardian project to confront the unmet/unaddressed needs of those people who do not have other resources for guardianship assistance.

Many of the concerns raised in the audit regarding public access to guardianship and conservatorship records have been addressed by Revised Chief Justice Directive 05-01, effective July 1, 2007. No recommendations regarding public access are suggested at this time although there is some concern about the burden on clerks who must redact information before releasing to the public. The Further Studies Group recognizes that the Best Practices Committee may suggest methods for reducing the time required.

As a result of the work done by the Further Studies Group, the State Court Administrator's Office is reviewing the feasibility and available resources to manage a pilot project related to establishing a Protective Proceedings Facilitator/Monitoring Specialist position in some or all districts. This group believes such a position will enable districts to better monitor guardian and conservator filing requirements without impeding the existing work of the clerk's office. In addition to this type of position, the State Court Administrator's Office is considering funding for an Auditor position. This staff person will review reports, plans, etc. that are forwarded from the local court when personnel there believe a further review is necessary.

The Further Studies Group encourages serious consideration of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act by the General Assembly when it is available for adoption as another measure to insure protection of the estates of incapacitated person. The group does not specifically endorse the Act but rather is encouraging that it be reviewed and considered as another tool to help supervise these estates.

This subcommittee will continue to meet and address issues as they arise and as our budget and resources allow.

Appendix 5

Minutes from the Public Hearing Held September 28, 2007

PROTECTIVE PROCEEDINGS TASK FORCE - PUBLIC HEARING - SEPTEMBER 28, 2007
Jefferson County Courthouse, 1:00 p.m.
Minutes

The meeting was called to order by Gerald Marroney, the Colorado State Court Administrator. Members of the Protective Proceedings Task Force sat on a panel to listen to the public. Several comments were received from members of the public in writing, and such were reviewed by the members of the Task Force.

First, Mr. Robert Barry addressed the Task Force. He indicated he had reviewed hundreds of probate files in Colorado. He cited some examples of abuses from his work. He called for the process to be more open.

The next speaker was Mr. Rudy Bush. Mr. Bush explained how his mother was stripped of her rights, and how he believed that the courts system didn't do a proper job. He indicated that the cost of the legal proceedings in that case rose above \$700,000. Mr. Bush suggested that some kind of an office be created where the public could make complaints about fiduciaries.

Third was Anne Grasee. Ms. Grasee is a social worker in Colorado. Ms. Grasee complained that the audit was incomplete and/or inaccurate with respect to its treatment of professional fees, including one particular example in Case No. 01PR306 in the 1st Judicial District. She indicated that the auditors never contacted her in reference to this case. Ms. Grasee conducted her own survey research that, she believe, showed that the licensed social worker range of compensations was between \$80 and \$100, contradicting the auditors' conclusions.

The fourth speaker was Connie Eyster, who indicated that she is an attorney licensed to practice law in Colorado and does so in Boulder. She indicated that she's a member of the trust and estates section of the bar association. Ms. Eyster believed that the courts need to be more consistent statewide in the application of procedure, in particular related to non-appearance hearings. Ms. Eyster also stated that she believed that there needs to be enhanced training for judges. She also suggested the possibility of a sliding fee scale, but indicated that it might be problematic. Next, Ms. Eyster indicated that the Bar traditionally would work on forms, but that this time around they were not contacted and did not participate in the development of the new JDF forms. Finally, Ms. Eyster suggested creating some kind of an effective date on forms so people know when the form came out.

The fifth speaker was Mo Scott. She focused her remarks on three general themes: (1) that every appointee must be held accountable; (2) that there is a need to know the numbers, which she suggested we don't presently have, of how many appointees are managing how much money in our state; (3) that we need a new system that takes the profit out of the conservator and guardian business. Ms. Scott indicated that there is waste in the system and a complete lack of oversight. Ms. Scott indicated that the forms are too complex, and that a litigant should be able to just write a letter to the court. Ms. Scott believes there needs to be an annual report on fiduciaries. She indicated that we should get rid of fee driven cases. She indicated that she believed the Courts were not the appropriate agency to monitor the conservators and guardians and that instead an executive agency, the Office of Estate Management, be created to oversee all fiduciaries. She indicated that funding could come from a fee on all estates. Essentially, she proposed an administrative model housed in the executive branch to monitor conservators and guardians.

The sixth speaker was Steve Brainerd, and attorney with Davis, Graham and Stubbs. He indicated that contested cases seem are the ones that draw all of the public attention. He indicated that he thought the statutes encouraged multiple attorneys to be hired. He indicated that, in his view, Guardian Ad Litem simply lack the training and background to be successful in practice. He also suggested that they need to be better monitored, and suggested even perhaps there be Probate Guardians Ad Litem. Mr. Brainerd indicated that he also believed there was a need for additional training of court personnel. Next, he indicated that the current law and practice of awarding fees needed to be changed. He indicated that attorneys wouldn't bring some cases if they knew they couldn't get fees. He suggested that some cases don't settle solely because of attorney fees. He indicated that often estates get exhausted by litigation fees and costs. His suggestion was that the statutes governing awards of fees in this area need to be revisited, and that the Courts must strive to be more consistent statewide in practice so that parties don't litigate thinking there's a chance they are going to get fees when in fact they are not.

The seventh and final speaker was Bob Steenrod, an experience probate attorney and former judicial officer. He went through the history of how we got here today. He said there were 30 auditors in Denver District Court reviewing these cases in the 1970s. He indicated that he watched the auditing function decline over the years. Mr. Steenrod then indicated that it was his firm belief that there is a need for a specialty court in this area of the law.

Judge Marroney then thanked the participants for their comments, and the meeting was then adjourned.

Appendix 6

Summary and Task Force Response from Issues Presented During Public Hearing

Summary and Task Force Response from Issues Presented During Public Hearing

Summary of Suggestions from the Public	Task Force Response
Consistency in Statewide Application of Procedures	The Best-Business Practices Subcommittee (BBP) is in the process of updating and/or developing new sections in the clerk's/court manual to promote consistent statewide practices. One area of concern presented during the public hearing was the statewide standardization of non-appearance hearing procedures. BBP is creating a standard non-appearance procedure, updating Rule 8.8 of the Colorado Rules of Probate Procedure regarding non-appearance hearings, revising forms for such actions, and preparing a new section in the clerk's/court manual to promote a consistent best-practice. BBP is also developing a variety of procedures to improve the courts' efforts to monitor protective proceeding cases.
Enhanced Judicial Officer Training	The State Court Administrator's Office (SCAO) plans to work with the various stakeholders to improve the judicial training component. It is anticipated that a special session regarding protective proceedings and the various changes recommended by the Task Force will be held at the 2008 Judicial Conference.
Effective Dates on Judicial Department Forms (JDF)	Effective dates are reflected on all JDF forms. In addition, the Colorado Judicial Self-Help Center website lists effective dates for each form. Members of the Task Force issued in November of 2007 a CPC/JDF Conversion Notice to the Colorado Bar Association identifying the implementation of the new JDF forms during calendar year 2008.
Creation of an Administrative and/or Executive Branch Agency to Monitor Fiduciaries	The Task Force supports some function relating to the oversight, monitoring and auditing of existing guardianships and conservatorships being consolidated in a state level office. Obviously, judicial responsibilities contained in the Colorado Guardianship and Protective Proceedings Act could not be delegated appropriately to SCAO or another state agency. The Task Force recognizes substantial budget challenges to the modest improvements set out in the Task Force report; creation of a new state agency would require legislation and the raising of the necessary funds to create such an agency. Information from the presenter identified that monies for such a program could be obtained from fees for estate management, identifying a potential assessment of 3% from each estate.
Guardian Ad Litem (GAL) Training	SCAO will be developing probate-specific training components for Guardians' ad Litem in protective proceedings in Colorado.
Increased Mediation	The Task Force supports this suggestion as mediation certainly provides another method to resolve conflict which can reduce the number of hearings before the Court and reduce monies expended on behalf of the Protected Person's estate. Denver Probate Court mandates mediation in all contested protective proceedings before hearings are set. The Task Force has already suggested that ADR be explored as part of the recommended pilot project as outlined in the Further Studies Subcommittee Section. The Colorado ODR program includes probate cases.
Uniform Court Procedure, e.g. Awards of Attorney Fees.	SCAO will be developing enhanced training for judicial officers regarding the awards of fees in protective proceedings cases; however changes to the statutory framework regarding fees would require General Assembly action.

Creation of Specialty Courts	This issue has been studied numerous times and the Judicial Branch is not considering creating specialty courts at this time. Nevertheless, the Task Force appreciates the importance of specialized training and experience in handling these case types. In addition to enhanced training for judicial officers and clerk staff, it is suggested that the Chief Justice will identify judicial officers and administrative personnel in every judicial district to be “first responders” in these case types.
Bar Association Participation in Forms Development	Members of the probate bar sit on the Task Force Forms subcommittee and forms are circulated among the members of the Estate and Trust Section’s Rules and Forms Committee for comment by a date certain. In addition, this subcommittee has undertaken to assemble pro se focus groups to insure that the public generally has an opportunity to provide input on the forms most frequently used by pro se consumers.

Appendix 7

**Final Code Requests
November 15, 2007**

Final Code Requests – November 15, 2007

Case Class	Type	Code	Code Description	Description
PR	Event	CRPT	Conservator's Report Filed	Use when a party files a Conservator's Report.
PR	Event	FRPT	Inventory with Financial Plan Filed	Use when a party files an Inventory with Financial Plan (JDF 882).
PR	Event	FPRV	Inventory with Financial Plan Reviewed	Use when the court reviews the Inventory with Financial Plan. This event must be related to the FRPT event.
PR	Event	CRRV	Conservator's Report Reviewed	Use when the court reviews the Conservator's Report (JDF 885 or JDF 886). This event must be related to the CRPT event.
PR	Event	DPOP	Delay Prevention Order Issued	Use when the court issues JDF 801 - Delay Prevention Order. Upon entry of this code a REVW scheduled event should be entered 30 days out.
PR	Event	GRPT	Guardian's Report Filed	Use when a party files a Guardian Report (JDF 834 or JDF 850).
PR	Event	GRRV	Guardian's Report Reviewed	Use when the court reviews the Guardian's report. This event must be related to the GRPT event.
PR	Event	CONS	Consent	Use when consent is filed (JDF 825 or JDF 826). It is helpful to attach the party to this pleading.
PR	Event	PTGD	Petition to Terminate Guardianship	Use upon the filing of a Petition to Terminate a Guardianship case (JDF 835 or JDF 852).
PR	Event	PTCV	Petition to Terminate Conservatorship	Use upon the filing of a Petition to Terminate a Conservatorship case (JDF 888).
PR	Scheduled Event	MONH	Monitoring Hearing	Use when the Court sets a hearing and the parties are expected to appear regarding reports/plans submitted to the Court for a Guardianship and/or Conservatorship case. Note: Case will be placed in ROPN status.
PR	Case Type	DC	Disclaimer	Disclaimer

Appendix 8

Draft Monitoring of Plan and Reports - Conservatorship

MONITORING OF PLANS AND REPORTS - CONSERVATORSHIP

1. GENERAL INFORMATION - §15-14-418, C.R.S. and §15-14-420, C.R.S.

- Within a time set by the Court, but no later than 60 days after appointment, a Conservator shall file a Financial Plan with Inventory for approval by the Court.
- The Court shall establish a system for monitoring Conservatorships, including the filing and reviewing of Conservator's reports and financial plans.
- Annual reports are due one year from the date that the Financial Plan with Inventory is due, unless otherwise ordered by the Court.
- Conservator's Manual is available to assist the Conservator.
- Checklists are available to assist with the review/approval.
 - JDF 776 - Conservator's Report Review Checklist
 - JDF 777 - Income and Expense Only Conservator's Report Review Checklist
 - JDF 778 - Inventory and Financial Plan Review Checklist
- Standard forms are available
 - JDF 801 - Delay Prevention Order
 - JDF 802 - Order to Show Cause
 - JDF 804 - Monitoring Criteria Checklist
 - JDF 882 - Conservator's Inventory and Financial Plan
 - JDF 883 - Order Regarding Approval of Inventory and Financial Plan
 - JDF 885 - Conservator's Report
 - JDF 886 - Income and Expense Only Conservator's Report
- No additional filing fee required.

2. COURT PROCEDURE

- Following appointment, the Judicial Officer will set a due date for the Inventory and Financial Plan. This date shall be 60 days from appointment and the annual conservator's report shall be due 1 year from said date.
- The Clerk shall do the following:

- Enter Scheduled Event **REVV** – Review with the due date for the Inventory and Financial Plan. Type Inventory and Financial Plan due in comments.
 - Enter Scheduled Event **REVV** – Review with the due date of the annual report. Type Annual Conservators Report due in comments.
- The Court may use the **JDF 804 – Monitoring Criteria Checklist** to establish due dates for the Conservator’s Report.

3. COURT PROCEDURE – FILING OF PLANS AND REPORTS

- Enter **CRPT- Conservator’s Report and/or FRPT – Inventory and Financial Plan**. If the plan and/or reports are electronically filed, this entry will be automatically posted by selecting “type name of form” as the document type in Lexis.
- Update scheduled event **REVV** with **HELD**, that the Plan or Report was received.
 - Enter appropriate scheduled event **REVV – Review**. The court should set a future date based on their local practice for reviewing plans and reports, e.g. 30 days out from filing of report/plan.
 - After the filing of an annual report, enter new scheduled event for the report due the following year. **Next report is still due on the due date regardless of actual filing date.

4. COURT PROCEDURE – APPROVAL OF INVENTORY AND FINANCIAL PLAN

- You may use the checklist as a tool to review the sections in the plan.
- A motion for approval of the Inventory and Financial Plan is part of JDF 882 and the Court should ensure that the interested persons per the Order Appointing Conservator are identified in the Certificate of Service. To the extent possible, it is important that the Court acknowledge that the interested persons have received a copy of the financial plan and have had an opportunity to respond to such.
- If you have received any objections or negative responses, the Court may set a hearing.
- Set hearing and enter scheduled event **HMON – Monitoring Hearing**.
 - Update scheduled event as appropriate, e.g. **HELD – Held**, if testimony is taken. **VACT – Vacated**, if parties do not appear.

- Upon completion of review enter **FRPV – Financial Plan Reviewed** and relate to **FRPT**. Enter in comments if concerns are identified and what steps were taken on this action.
- If unusual issues are identified, please see the Judge. The Judge may request that a hearing be set, GAL appointed, etc.
- Complete and Issue **JDF 883 – Order Regarding Approval of Inventory and Financial Plan**.
 - You may need to enter additional scheduled events if an amended financial plan is due or a hearing is set.
 - If a hearing is necessary. Set hearing and enter scheduled event **HMON – Monitoring Hearing**.

5. COURT PROCEDURE – REVIEWING CONSERVATOR REPORTS

- You may use the appropriate checklist as a tool to review the sections in the report.
- Make sure that you check to see if the interested persons per the Order of Appointment are identified in the Certificate of Service. To the extent possible, it is important that the Court acknowledge that the interested persons have received a copy of the report and have had an opportunity to respond to such.
- If you have received any objections or negative responses, consider them during your review.
- Upon completion of review enter.
 - Update scheduled event **REWV** with **HELD** that the Report was reviewed.
 - **CRRV – Conservator Report Reviewed** and relate to **CRPT**. Enter in comments if concerns are identified and what steps were taken on this action.
- The Conservator **may file a Motion** requesting the Court to “allow” an interim/final report of a Conservator.
 - If this Motion is filed, the Conservator must give notice and set for a non-appearance hearing.
 - Enter scheduled event **REVD – Non-appearance Rule 8.8**.
- If unusual issues are identified, please see the Judge. The Judge may request that a hearing be set, GAL appointed, Visitor appointed, appoint/hire a CPA, refer to state person, etc.

- If any objections are filed prior to or on the non-appearance hearing, the Court Objector must set an appearance hearing within ten days of filing the objection. If the Objector is Pro Se, the Court should assist the Objector with setting the hearing based on their local practice.
 - Enter scheduled event **HMON** – Monitoring Hearing.
 - After hearing the Court will enter an Order.
 - If no Motion is filed, the Court will not issue an Order.

6. COURT PROCEDURE – FAILURE TO FILE PLAN OR REPORT TIMELY

- Within approximately 5 business days after the due date, the Court shall issue **JDF 801 - Delay Prevention Order** with the plan or report due in 30 days, unless otherwise ordered.
 - Vacate prior scheduled event **REVW** with **HCNT** – Held and Continued.
 - Enter new scheduled Event **REVW** with the extended due date of the plan or report.
 - Type **DPO** issued and Financial Plan or Conservator Report due in comments.
 - Enter **DPOP – Delay Prevention Order Probate**

7. COURT PROCEDURE – ISSUANCE OF ORDER TO SHOW CAUSE

- If following the issuance of the **DPO** and the Court still has not received the required plans or reports within 5 business days after the due date, the Court shall issue **JDF 802 – Order to Show Cause**.
 - The Order to Show Cause must be personally served by the Sheriff's Office.
 - Update prior scheduled event code **HELD**.
 - Enter scheduled event **SCAS**.

Appendix 9

Draft Conservator's User's Manual

User's Manual for Conservators in Colorado

This User's Manual for Conservators in Colorado is a collaborative effort of the staff of the State Court Administrator's Office, the Protective Proceedings Task Force and members of the Colorado Bar Association.

This manual is intended to assist the newly appointed Conservator and to identify your responsibilities and to introduce you to important Conservatorship issues. This is not a comprehensive manual to address every situation as we have designed this manual to highlight many of the common situations that one may need to address as a Conservator. You are expected to familiarize yourself with the provisions of the Colorado Uniform Guardianship and Protective Proceedings Act, §15-14-101, C.R.S. through §15-14-433, C.R.S. that relate to protective proceedings for minors and adults, the Colorado Rules of Probate Procedure and applicable case law. Changes in the law may have occurred since this manual was published. If you have questions on how to proceed, consult your attorney before acting. By obtaining an attorney's advice before you act, you may avoid more costly legal services later.

It is highly recommend that appropriate professionals be consulted, such as attorneys, financial advisors, and accountants. Even if you do not have an attorney, you are bound by the same rules and procedures as if you did. The cost for professional assistance may be assessed to the conservatorship estate as long as the expense was incurred in the collection, care, administration and protection of the estate.

This work is produced as a public service, and copies of these materials may be reprinted, with acknowledgment, without violation of applicable copyright laws. The User's Manual for Conservators is also available on the Colorado Judicial Branch website at www.courts.state.co.us.

We would appreciate your feedback. If you have any comments or suggestions, or if you require additional information, please feel free to contact: cyndi.hauber@judicial.state.co.us

Conservator's Manual

Table of Contents

1. Acknowledgment Form (This is also a good place to place any Orders you receive from the Court.)
2. Definitions
3. Information Regarding Your Appointment as a Conservator
4. Frequently Asked Questions
5. Resources
6. Blank Forms to get You Started
 - ◆ JDF 868 Motion to Withdraw Funds from Restricted Account
 - ◆ JDF 869 Order Allowing Withdraw of Funds from Restricted Account
 - ◆ JDF 870 Restricted Account Log
 - ◆ JDF 882 Inventory with Financial Plan
 - ◆ JDF 885 Conservator's Report
 - ◆ JDF 886 Income and Expense Only - Conservator's Report
7. Pre-filing Report Checklist
8. Sample Forms Completed
9. Your Personal Section (This may be a great place for you to maintain financial documentation, receipts, etc.)

<input type="checkbox"/> District Court <input type="checkbox"/> Denver Probate Court _____ County, Colorado Court Address: _____ In the Interests of: _____ Protected Person _____	▲ COURT USE ONLY ▲ Case Number: _____ Division: Courtroom:
ACKNOWLEDGMENT OF RESPONSIBILITIES <input type="checkbox"/> CONSERVATOR AND/OR <input type="checkbox"/> GUARDIAN	

I, _____ (full name) acknowledge that I was appointed as the Conservator and/or Guardian for _____ (full name of protected person) on _____ (date) and I understand that Letters will not be issued until this form is signed and provided to the Court. With this appointment, I agree to comply with the statutory and court requirements and understand that I am responsible for preparing and filing reports and/or plans with the Court and serving all Interested Persons as identified in the Order of Appointment.

General Information and Responsibilities

1. I am responsible for maintaining supporting documentation for all receipts into the accounts and all disbursements out of the accounts under my control during the duration of my appointment. I understand that the Court or any Interested Persons as identified in the Order of Appointment may request copies at any time.
2. I am responsible for providing the Court with any changes with my mailing or email address within 30 days.
3. If funds must be placed in a restricted account, I understand that all withdrawals must be by court order.
 - The Acknowledgment of Deposit of Funds (JDF 867) must be returned to the Court as documentation that the funds were deposited within 30 days or by _____ (date).
 - All requests for withdrawal must be in writing by submitting a Motion to Withdraw Funds (JDF 868).
4. I have received the following information to review regarding my responsibilities.
 - User's manual for Guardians
 - User's manual for Conservators
 - Viewed DVD/Video
 - Pamphlets
 - Attendance at mandatory training session on _____ (date).
 - Other: _____
5. I understand that the following reports and/or plans are due on _____ (date).
 - Initial Guardian's Report - Adult (JDF 850)
 - Conservator's Inventory with Financial Plan (JDF 882)
6. I understand that the following reports are due on _____ (date) and every year after on such day and month, unless I am notified by the Court.
 - Guardian's Report - Adult (JDF 850).
 - Guardian's Report - Minor (JDF 834).
 - Conservator's Report (JDF 885).
 - Income and Expense Only Conservator's Report (JDF 886)

My signature below indicates that I have read and understand my responsibilities as a newly appointed Guardian and/or Conservator.

Date: _____

Guardian and/or Conservator

Definitions

Conservator:	A person at least 21 years of age who has been appointed by a court to manage the estate (financial affairs) of a Protected Person or a minor child (under the age of 18).
Fiduciary:	A person or institution who manages money or property of another and who must exercise a standard of care in such management activity imposed by law.
Financial Plan:	Information to the Court that outlines how the Protected Person's assets and income will be invested or applied for his or her best interests.
Guardian:	A person at least 21 years of age who has qualified to have the care and management of an incapacitated person or a minor child (under the age of 18).
Incapacitated Person:	An adult person who lacks sufficient understanding or capacity to make or communicate responsible decisions concerning that person's physical health, safety, or self-care, even with appropriate and reasonably available technological assistance.
Interested Persons:	Persons identified by Colorado Law who must be given notice of a Conservatorship proceeding and/or Guardianship proceeding. This can be spouse, adult children, and other family members.
Letters:	A formal document issued by the Probate Court appointing one as a Guardian and/or Conservator.
Minor:	An unemancipated individual who has not attained 18 years of age.
Petitioner:	A person who files a Petition for the Appointment of a Conservator/Guardian.
Protected Person:	A person for whom a Conservator has been appointed.
Prudent Investor Rule:	A standard that a Conservator shall exercise when investing and managing the Conservator's assets. The Conservator shall exercise reasonable care and skill when making investment and management decisions.
Respondent:	A person who is the subject of a Guardianship and/or Conservatorship proceeding, prior to findings of incapacity.
Ward:	A person for whom a Guardian has been appointed.

Information Regarding Your Appointment as a Conservator & Duties as the Conservator of the Protected Person

- ◆ **Manage and invest assets appropriately.**
 - ◆ Make safe, not risky, investments.
 - ◆ Remember you are taking care of someone else's property.
 - ◆ Seek professional advice regarding investments as a fiduciary.
 - ◆ Maintain existing estate plan, such as beneficiary designations and payable on death accounts.
 - ◆ Consider notifying credit reporting bureaus that this Conservatorship has been established and providing copies of the letters.

- ◆ **Locate, collect and protect all assets.**
 - ◆ You must keep the estate's money and property separate from anyone else's, especially your own.
 - ◆ **Do not deposit the Protected Person's money into your own account.**
 - ◆ When you open a bank account for the estate, the name on the account must be as follows:

_____ *as Conservator for*
(Name of Conservator)

_____ *a Protected Person*
(Name of protected person)

Each bank may have its own way to title the account, but in any event the account title must reflect the Conservator/Protected Person relationship. Provide a certified copy of Letters of Conservatorship and Order of Appointment to each financial institution.

- ◆ If real estate property exists, you will need to record a certified copy of Letters of Conservatorship in the county where the property is located. Consult with your attorney about recording letters in other circumstances.
 - ◆ Notify the post office, creditors, utility companies, etc. if you want mail sent to your address.
 - ◆ Review will and other arrangements in order to preserve the estate plan.
 - ◆ Evaluate and consider application for public benefits.
-
- ◆ **Insurance Matters**
 - ◆ Verify coverage for health, property, auto and life insurance. Provide certified copy of Letters if necessary.
 - ◆ Confirm that premium payments are current.
 - ◆ Obtain coverage if policies have lapsed.

Frequently Asked Questions

The following are frequently asked questions to assist you with your appointment as a Conservator. Consult with your attorney if you have questions that are not addressed here.

What is the cost to obtain certified copies of Letters and Orders from the Clerk's Office?

The number of Letters required depends on the circumstances. The cost is \$15.75 a piece.

What if the Protected Person owns real estate?

Record Letters at the clerk and recorder's office in the county where the property is located. Consult with your attorney about recording letters in other circumstances.

What is the difference between a guardian and conservator?

Guardian: Assists with personal affairs, such as housing and health care.

Conservator: Assists with the financial affairs.

What happens to joint accounts?

It depends on the nature or the reason for the account. For example: if the account was established as a matter of convenience so the co-owner can write checks for the protected person, most likely the account should be transferred to the conservatorship. If it was established for estate planning purposes, no changes may be necessary.

What about business situations?

Call a lawyer.

When I was appointed I was handed a stack/notebook full of paperwork. Why?

The law requires that you file reports with the Court. This User's Manual is designed to help guide and assist you with the process and provide you with instructions and forms for the reporting requirements. Refer to the Court's order for the dates that all reports are due.

Where can I get more of these blank reporting forms?

All forms are available, free of charge, in the Self-Help section on the Colorado Judicial Department's website, www.courts.state.co.us. You may also get blank forms at the clerk's office for a charge of .75 cents per page.

Resources

AARP	www.aarp.org
Actuarial Table	www.ssa.gov/OACT/STATS/table4c6.html
Alzheimer's Association	www.alz.org
Administration on Aging	www.aoa.gov
Americans with Disabilities Act	www.ada.gov
Benefits Check Up	www.benefitscheckup.com
Colorado Dept of Public Health and Environment	www.cdphe.state.co.us
Denver Regional Council of Governments	www.drcog.com
Guardianship Alliance of Colorado	www.guardianshipallianceofcolorado.org
Healthy Aging for Older Adults	www.cdc.gov/aging/
Medicare	www.medicare.gov
Social Security Administration	www.socialsecurity.gov
United Way	http://national.unitedway.org/

<input type="checkbox"/> District Court <input type="checkbox"/> Denver Probate Court _____ County, Colorado Court Address: _____ In the Interests of: _____ Protected Person/Minor	▲ COURT USE ONLY ▲
Attorney or Party Without Attorney (Name and Address): _____ Phone Number: _____ E-mail: _____ FAX Number: _____ Atty. Reg. #: _____	Case Number: _____ Division _____ Courtroom _____
MOTION TO WITHDRAW FUNDS FROM RESTRICTED ACCOUNT	

I, _____ (full name of Conservator(s)/Custodian), respectfully request authority to withdraw \$ _____, on deposit in the restricted account(s) listed below:

Attach current bank statement.

Name and Address of Financial Institution	Account Number (last 4-digits only)	Current Balance in Account
		\$
Total		\$

The funds are requested for the following reasons(s): Attach supporting documentation for your request.

Date: _____

Signature of Conservator and/or Guardian or Attorney

Date: _____

Signature of Co-Conservator and/or Guardian or Attorney

Date: _____

Signature of Minor if 12 years of age or over

Certificate of Service

I certify that on _____ (date) a copy of this Motion to Withdraw Funds from Restricted Account was served on each of the following:

Full Name	Relationship to Protected Person	Address	Manner of Service*

***Insert one of the following: Hand Delivery, First-Class Mail, Certified Mail, E-Served or Faxed.**

Signature

<input type="checkbox"/> District Court <input type="checkbox"/> Denver Probate Court _____ County, Colorado Court Address: _____ In the Interests of: _____ Protected Person/Minor	▲ ▲ COURT USE ONLY Case Number: _____ Division: Courtroom:
ORDER ALLOWING WITHDRAW OF FUNDS FROM RESTRICTED ACCOUNT	

This matter comes before the Court on the Motion to Withdraw Funds from Restricted Account filed on _____ (date). The Court, having reviewed the Motion and supporting documentation, if attached, and any responses received from interested persons, enters the following Orders:

- The Motion is **GRANTED**. The Conservator is authorized to withdraw \$_____ from the account(s) specified in the Motion.
 - The Conservator is required to file a copy of the receipt(s) for the purchase with the Court within ten days.

Note: All Conservators are required to keep all original receipt(s).

- The Motion is **DENIED** for the following reasons:

- The Court further Orders:

Date: _____

 Judge Magistrate

CERTIFICATION

I certify that this is a true and correct copy of the original in my custody.

Date: _____

 Probate Registrar/(Deputy)Clerk of Court

CERTIFICATE OF SERVICE

I certify that on _____ (date) a copy of this Order was served on each of the following:

Full Name	Relationship to Protected Person	Address	Manner of Service*

*Insert one of the following: Hand Delivery, First-Class Mail, Certified Mail, E-Served or Faxed.

 Clerk

PREPARING TO FILE YOUR REPORT

The following is a checklist designed to help you prepare for the filing of your Inventory with Financial Plan and Conservator's Report.

To facilitate electronic reproduction of documents please type or legibly print your report in black ink.

- Does your report have the case number, the Protected Person's name and your address filled in at the top?

- If you or the Protected Person moved, did you indicate the address change?

- Did you sign the report? If there are co-conservators, did they all sign the report?

- Did you keep copies of bank statements and other financial records for possible future court review?

- Did you provide copies of the report to all interested persons as identified in the order of appointment and complete the certificate of service indicating that you did so?

Appendix 10

Draft Instructions for Minor Conservatorship – JDF 860

INSTRUCTIONS FOR APPOINTMENT OF A CONSERVATOR - MINOR

These standard instructions are for informational purposes only and do not constitute legal advice about your case. If you choose to represent yourself, you are bound by the same rules and procedures as you would be if you were represented by an attorney.

GENERAL INFORMATION

- ◆ The minor child must be a resident or be present at the time of the proceeding in the county in which you are filing the petition, or if the minor does not reside in this state, must own property in the county in which you are filing the Petition pursuant to §15-14-108, C.R.S.
- ◆ The minor or a person interested in the welfare of the minor may file the case.
- ◆ A name-based criminal history record check from the Colorado Bureau of Investigation (CBI) and a current credit report of the proposed conservator must be filed with the Court.
- ◆ The Court may appoint a conservator for a minor, if the Court finds the appointment to be in the best interest of the minor and one of the four statements below applies.
 1. The parents consent.
 2. The parents' parental rights have been terminated.
 3. The parents are unwilling or unable to exercise their parental rights, §15-14-204(1) & (2), C.R.S.
 4. Conservatorship of a child has previously been granted to a third party and the third party has subsequently died or become incapacitated and the conservator has not made an appointment of a conservator either by will or written instrument.
- ◆ For additional information, please review §15-14-401 – 433 C.R.S.
- ◆ If you have a disability and need a reasonable accommodation to access the courts, please contact your local ADA Coordinator. Contact information can be obtained from the following website:
<http://www.courts.state.co.us/chs/court/ada/coordinators.htm>

COMMON TERMS

- | | |
|------------------------|----------------------------------------------------------------------------------------------------------------------------------------|
| ⊗ Petitioner: | A person who files a Petition for the Appointment of a Conservator |
| ⊗ Conservator: | A person at least 21 years of age, resident or non-resident, who has been appointed to manage the financial affairs of another person. |
| ⊗ Interested Persons: | Persons identified by Colorado Law who must be given notice of a court proceeding. See Step 4 for a complete list. |
| ⊗ Letters: | Official document identifying the authority of the Conservator. |
| ⊗ Minor: | An unemancipated person who is under the age of 18. |
| ⊗ Conservator Nominee: | A person named in the petition to serve as the Conservator. |

If you do not understand this information, please contact an attorney.

FEES

The filing fee is \$149.00. If you have a family situation that requires you to file a conservatorship for more than one child, only one filing fee is required, if the Petitions are filed on the same day. If you are unable to pay, you must complete the Motion to File without Payment and Supporting Financial Affidavit (JDF 205) and submit it to the Court. Once you submit the completed JDF 205 form and a blank Order (JDF 206), the Court will decide whether you need to pay the filing fee.

Other fees that a party to the case may encounter are as follows:

- | | |
|--------------------------------------------------------------|---------|
| <input type="checkbox"/> Certification of Orders and Letters | \$15.00 |
|--------------------------------------------------------------|---------|

- Service Fees Varies
- Copy of Documents .75 per page
- The Court may appoint a Guardian ad Litem (GAL) to investigate and report back to the Court, for the purpose of determining if the Conservatorship is in the best interest of the minor. If the Court appoints a GAL, the Petitioner or the minor may be required to pay the hourly fee of the GAL.

FORMS

To access a form online go to www.courts.state.co.us and click on the "Self-Help Center". The packet/forms are available in PDF or WORD by selecting Probate (Conservatorship – Minor). You may complete a form online or you may print it and type or print legibly in black ink.

Read these instructions carefully to determine what forms you may need, as you may need all or some of the listed forms. Check with the Court where you plan to file your case to determine if they have any special requirements.

- JDF 714 Affidavit Regarding Due Diligence and Proof of Publication
- JDF 716 Notice of Hearing by Publication
- JDF 719 Waiver of Notice and/or Waiver of Service
- JDF 721 Irrevocable Power of Attorney
- JDF 805 Acceptance of Office
- JDF 806 Notice of Hearing to Interested Persons
- JDF 807 Notice of Hearing to Respondent/Minor
- JDF 825 Verified Consent of Parent
- JDF 826 Verified Consent or Nomination of Minor
- JDF 861 Petition for Appointment of Conservator for Minor
- JDF 863 Letters of Conservatorship - Minor
- JDF 882 Inventory with Financial Plan
- JDF 883 Order Regarding Approval of Inventory with Financial Plan
- JDF 885 Conservator's Report
- JDF 886 Income and Expense Only Conservator's Report

STEPS TO FILING YOUR CASE

Step 1: Complete Forms.

Selecting these instructions indicates that you plan to file a Conservatorship for a Minor. The caption below must be completed on all forms filed. **Be sure to make a copy for your own records of all forms you file with the Court.**

<input type="checkbox"/> District Court <input type="checkbox"/> Denver Probate Court _____ County, Colorado Court Address:	
In the Interests of:	▲ COURT USE ONLY ▲
Protected Person/Minor	
Attorney or Party Without Attorney (Name and Address):	Case Number:
Phone Number: _____ Email: _____ FAX Number: _____ Atty. Reg. #: _____	Division: _____ Courtroom: _____
NAME OF FORM	

- Petition for Appointment of Conservator for Minor (JDF 861).

- The Petitioner must complete all applicable sections on the form.
 - If the child's father is not known (no name appears on the birth certificate), then a copy of the birth certificate of the child should be attached to the Petition. If the parental rights have been terminated or the parents are deceased, copies of the termination papers or the death certificates should be attached to the Petition.
 - This form must be signed in the presence of a Court Clerk or Notary Public.
- Acceptance of Office (JDF 805).**
- Complete all applicable sections on the form.
 - Attach a legible copy of your driver's license, passport or other government-issued identification.
 - Obtain and attach a name-based criminal history record check for the proposed conservator from Colorado Bureau of Investigation (CBI). To obtain a name-based criminal history check, contact CBI at 690 Kipling Street Denver, CO 80215, (303) 239-4300, or at www.cbi.state.co.us and click on CBI Records Check.
 - Obtain and attach a current credit report of the proposed conservator. Below are a few credit reporting agencies:
 - ◆ Equifax, Inc., P.O. Box 740241, Atlanta, GA 30374, 1-800-685-1111, or at www.equifax.com
 - ◆ Experian, P.O. Box 2002, Allen, TX 75013, 1-888-397-3742, or at www.experian.com
 - ◆ TransUnion, P.O. Box 2000, Chester, PA 19022, 1-800-916-8800, or at www.transunion.com
 - This form must be signed in the presence of a Court Clerk or Notary Public.
- Irrevocable Power of Attorney (JDF 721).**
- This form must be completed **only** if the proposed conservator lives out of state.
 - The nominated conservator must complete this form and have it signed before a notary public.
- Verified Nomination or Consent of Minor (JDF 826) and/or Verified Consent of Parent (JDF 825).**
- The minor who is the subject of the appointment and is 12 years of age or older has the right to consent or refuse to consent to an appointment of a conservator. JDF 826 **can be completed by the minor** to identify his/her consent or refusal to the appointment.
 - A parent who is an interested person **can consent** to the appointment by completing JDF 825.
 - Both forms, if completed, must be signed in the presence of a Court Clerk or Notary Public
- Letters of Conservatorship - Minor (JDF 863).**
- Only complete the caption on the form. The Court will complete the remainder of the form and sign it following the appointment of the conservator.

Step 2: You are ready to file your Papers with the Court.

Provide the Court with the documents completed as described in Step 1 above, and pay the filing fee of \$149.00. You may receive a hearing date from the clerk at the time of filing. The date and time of this hearing is important because you will need to complete the Notice of Hearing or Waiver of Notice and/or Waiver of Service forms described in **Step 3**.

Step 3: Determine Method of Service (Waiver of Service, Personal Service, or Service by Publication).

Please read the information below carefully to determine the method of service.

- Waiver of Notice and/or Waiver of Service (JDF 719).**
 - If the parents are the Petitioners, this form does not need to be completed.
 - If the parents do not need to be formally served with the Petition, they may complete this form.
 - Completing this form does not indicate either consent or objection to the requested action. It merely states that the parents waive their right to be formally served with the Petition.
 - This form must be signed in the presence of a Court Clerk or Notary Public.

- Notice of Hearing to Respondent/Minor (JDF 807) with Personal Service Affidavit. This only applies when the Minor is 12 or older.**

You must personally serve the minor at least ten days prior to the hearing. **Helpful Hints to complete personal service:**

- Select the Sheriff's Department, a private process server, or someone you know who is 18 years or older, who is not involved in the case, and who knows the rules of service.
- Take a copy of the Notice (JDF 807) and copies of all documents filed with the Court and request that they personally deliver the documents to the person indicated in the Notice.
- Request the sheriff, private process server, or person serving the documents to return the completed Personal Service Affidavit to the Petitioner.
- The Petitioner should then file the original Notice of Hearing to Respondent/Minor with Personal Service Affidavit (JDF 807) together with the Clerk of the Court.

- Service by Publication.**

If you do not have the correct address for the Respondent, or the identity of any interested person is not known and cannot be ascertained with reasonable due diligence, you may need to use this method of service. Before you serve by publication, you may wish to search on the Internet, contact prior employers, friends, etc. to locate a current address.

- Notice of Hearing by Publication (JDF 716).
 - Complete this form and have it published in a newspaper of general circulation in the county where the hearing is to be held.
 - The notice shall be published once a week for three consecutive weeks, with the last date of the publication being at least ten days before the date of the hearing.
- The Petitioner must request an affidavit from the newspaper after publication is completed. This affidavit of publication, prepared by the newspaper, will serve as proof that the Notice of Hearing by Publication (JDF 716) was published. This affidavit must be filed with the Court. Attach to JDF 714.
- Affidavit Regarding Due Diligence and Proof of Publication (JDF 714).
 - Complete all sections of this form. The purpose of this form is to identify to the Court your efforts to locate the individuals listed in the Notice of Hearing by Publication (JDF 716).
 - This form must be signed in the presence of a Court Clerk or Notary Public.

Step 4: Send Copies of all Documents Filed with the Court and the Notice of Hearing (JDF 806) to All Interested Persons.

You may need several copies of documents filed with the Court, depending on the number of interested persons you plan to notify of the proposed conservatorship. Check the list below to determine the interested persons that are applicable to your circumstances.

1. The minor, if the minor is 12 years of age or older and is not the Petitioner;
2. Any person alleged to have had the primary care and custody of the minor during 60 days before the filing of the Petition,
3. Each living parent of the minor or, if there is none, the adult nearest in kinship that can be found,
4. Any person nominated as Conservator by the minor if the minor has attained 12 years of age,
5. Any appointee of a parent whose appointment has not been prevented or terminated, §15-14-203, C.R.S.
6. Any current Guardian or Conservator for the minor, whether appointed in this state or elsewhere.

- Mail copies of all documents filed with the Court and the completed Notice of Hearing to Interested Persons (JDF 806) at least ten business days before the hearing and allow three extra days for mailing.
- Complete the Certificate of Service portion on the form, listing the names and addresses of all interested persons to whom you sent the notice and the date you sent it and file it with the Court at or before your hearing.

Step 5: Hearing

- The Petitioner must appear at the hearing and should be prepared to present evidence showing why the conservatorship is in the child's best interests.
- Be prepared to present evidence to show that the parents are aware of the proceedings and that they consent to the conservatorship. If the Petitioner cannot prove that the parents consent to the conservatorship then he/she must be prepared to present evidence showing that the parents are either unwilling or unable to manage the child's financial affairs.

- If the minor is 12 years of age or older he/she should appear at the hearing or sign a form that indicates his/her consent or objection to the appointment of a conservator.
- If you are appointed, the Court will issue Letters (JDF 863) as a formal notice of the appointment and provide you with a copy of the Order Appointing Conservator.
 - You may need certified copies of Letters and Orders that will vary depending on your circumstances.
 - Copies of the Order must be provided to all interested persons identified in the Order. The Court will mail/e-file the Order.

Step 6: Requirements After the Court Appoints a Conservator.

Refer to the Order Appointing Conservator for a Minor to determine if/when the plans/reports are due. They are normally required within 60 days following the appointment. **These plans/reports must also be provided to the persons listed in the Order of Appointment.**

- Complete an Inventory with Financial Plan (JDF 882), if required.
 - Only complete the caption on the Order Regarding Approval of Inventory with Financial Plan (JDF 883). The Court will complete the remainder of the form following review of JDF 882.
- Refer to the Order Appointing Conservator - Minor (JDF 862) to determine if the Conservator is required to submit an annual Conservator's Report (JDF 885) or Income and Expense Only Conservator's Report (JDF 886). The purpose of these reports is to give details to the Court and interested person regarding management of the minor's financial affairs.

Note: A Conservator's Manual is available to assist the newly appointed Conservator. This manual identifies general responsibilities and important Conservatorship issues, along with completed sample forms to assist the preparer. A complete manual is available at www.court.state.co.us.....xxxxx.

The responsibilities of the conservator continue until the Court terminates the conservatorship. Resignation of a conservator does not terminate the conservatorship until approved by the Court.

Appendix 11

Report of the Further Studies Subcommittee on Probate Facilitators/State Office Resources of the Protective Proceedings July 25, 2007

FURTHER STUDIES SUBCOMMITTEE REPORT ON PROBATE FACILITATORS/STATE OFFICE RESOURCES FOR PROTECTIVE PROCEEDINGS

July 25, 2007

Members:
Judge Jean Stewart
Marcie McMinimee
Sandie Franklin
Jeff Clayton

I. Summary

This subcommittee calls for:

- (1) the immediate creation of a state support person or office, the Office of Protective Proceedings Support, to be piloted in the State Court Administrator's Office, and operating within the current budget allocation through the end of FY 2009;
- (2) the allocation of \$120,000.00 in FY 2009 to fund several District-level Protective Proceedings Facilitator pilot projects (to be approved by SCAO using criteria developed by the task force) in order to develop processes, staffing models, and systems that can be replicated state-wide in order to fully and completely respond to the deficiencies outlined in the audit;
- (3) a statutory clarification, or the piloting thereof by non-statutory changes, that would permit judges to impose auditing fees on conservatorship estates where an audit appears necessary and where the conservatorship estate has adequate resources to bear it.

II. Permitting Judges to Require Audits of Conservatorships (and Guardianships) at the Cost of the Protected Person's Estate.

The subcommittee started with a suggestion for a statutory change that would clarify that judges, within their discretion, have the ability to require, at the expense of the protected person's estate, an independent fee-based audit of the conservator's reports at intervals to be announced by the court.

The relevant language is now contained in C.R.S. § 15-14-420(3). There, the statute gives the court the ability to appoint a fee-based auditor, but the statute does not empower the court to order that the ward's estate be taxed for the audit. Thus, a proposed subsection three might read in relevant part:

- (4) The court may appoint a suitable person to review a report or plan, interview the protected person or conservator, and make any other investigation the court directs. In connection with a report, the court may order a conservator to submit the assets of the estate to an appropriate examination to be made in a manner the court directs. The court may order that an independent, fee-based professional be retained to perform an audit of the estate at the expense of the estate. The court may order that copies of the audit report or summaries thereof be filed by the conservator with the court and such persons as the court may direct.
- (5) In any cases where the court deems it appropriate based on the facts and circumstances before it, the court has the authority to tax the costs against the wrongdoer.

Permitting courts to require audits when a red flag seems to have been spotted through the work of court staff will partially close the monitoring gap that presently exists in regards to the "back end" of these cases. In particular, this statutory change will permit the court to order an audit in cases where there are sufficient assets in the estate to justify one but insufficient resources at the court level to commence one. Some conservatorship estates do not have the funds to pay for an audit, unless one can be performed without incurring any fees. Nonetheless, this statutory change will empower the court to have professional auditors, whether they are social service experts, accountants, or attorneys, provide services to the estate without depleting additional court resources.

The subcommittee recommends piloting the proposed change, if permissible, otherwise suggest such change in an upcoming legislative session as part of any other immediate housekeeping changes that may be suggested.

In appropriate guardianship cases where a guardian is also serving, the Court should also be empowered to order that the Conservatorship estate pay for the cost of having a social worker or other professional visit the Ward and file a report regarding the Ward's condition.

III. Creation of the Office of Probate Audit Services within the Colorado State Court Administrator's Office

The previous section addressed the need for auditors to be appointed by the court whenever courts feel that one is necessary. The previous section also focused on cases where the charges for the audit would come from the protected person's estate. Nonetheless, there are a many conservatorship cases where the protected person's estate cannot afford an audit. Furthermore, in a guardianship there are no assets at all to support the costs of an independent evaluation.

In view of the proposal regarding the creation of the pilot project, it is suggested that an Office of Protective Proceedings Support be piloted also in the State Court Administrator's Office, Planning and Analysis Division. The Subcommittee suggests that the Director of Planning and Analysis designate a Director of Protective Proceedings Support, and ensure that such person is able on a pilot basis to devote enough time necessary to the project to begin achieving the following goals and working on the following tasks:

- (1) Work with the Further Studies Group in designing basic standards for the evaluation of District grant proposals as described in the next section;
- (2) Evaluate District pilot grant proposals;
- (3) Select District grant proposals for funding, allocate limited resources across grant proposals to maximize limited resources;
- (4) Assist Districts in setting up program evaluations on the front-end such that the evaluation of the success of the pilot will be richer in terms of its ability to measure the success of the pilots;
- (5) Assist Districts in conducting reviews of their pilot projects;
- (6) Assisting the Protective Proceedings Facilitators in the pilot projects in developing systematic, cost-effective solutions to the issues identified in the audit;
- (7) Evaluating potential systematic solutions for Branch-wide implementation;
- (8) Providing a central Judicial Branch point of contact for all Protective Proceedings;
- (9) Working closely with JBITS and other branch resources to implement a system of continuous improvement in terms of standardization of processes and the use of technology to reduce the human time necessary to perform routine tasks (which ostensibly would include assisting in the development of the new system);
- (10) Assist in developing and evaluating best practices;
- (11) Maintain informational resources to assist districts; and,
- (12) Focus on the future improvement of Protective Proceedings in the future.
- (13) This subcommittee also strongly recommends that Protective Proceedings be separately coded (PP) to differentiate them from Decedents' Estates (PR). There has been much confusion over this distinction leading to many problems. During the rewrite of jPOD this distinction could easily be made and the problem could be addressed. The SCAO staff person should work toward further increasing the systematic recognition of this distinction.

Although there is no funding suggested for this aspect of the pilot project at this time, it is believed that the Planning and Analysis Division, which has already been tasked with doing some of this work unofficially, can start such an office and put the skeletal aspects of the program in place without any increase in budget over the short term, i.e., the FY 2009 budget. In particular, it is believed that the office can function immediately to get the pilot projects underway, to manage them, to get an evaluation component of the programs built-in on the front end, and then assist the staff working in the pilot projects with the development of processes and systems that can be replicated around the state.

Protective proceeding cases represent 1 percent of total District Court filings every year. Nonetheless, unlike many other cases, so many of protective proceedings continue in a monitoring status with substantial expectations and responsibilities on the courts for years after the initial appointment of a

guardian and/or conservator. Thus, 1 percent of filings does not really account for how many cases are active. If one were to estimate that 5,000 to 15,000 of cases were active at any one time, then one might view protective proceedings as comprising as much as 3 - 7 percent of the District Court cases handled in any given year. Thus, protective proceedings make up a significant portion of District Court workload.

As evidenced by the Probate Audit, even though Protective Proceedings make up a smaller percentage of District Court work than some other case types, they involve the most vulnerable among our citizens and when the court appoints fiduciaries to manage the lives and the estates of these citizens the court is charged with monitoring the activities of the fiduciaries carefully. When the Uniform Guardianship and Protective Proceedings Act was adopted there was no funding attached to the mandate that probate courts "monitor" the actions of guardians C.R.S. §15-14-317(3) and conservators CRS §15-14-420(4). As revealed in the Probate Audit this failure to fund has resulted in a gap in the monitoring of Conservatorships that must be addressed.

Because Protective Proceedings are a significant portion of the docket, because reforms in response to the audit are proceeding forward, because of the desire for uniformity across the state, and because of the likely increase in the number of these cases over the years, it appears that there is a genuine need for state office support in the limited area of Protective Proceedings, even if just to get the pilot project completed. Thus, the subcommittee recommends the creation of a revenue neutral person to operate a pilot Office of Protective Proceedings through FY 2009, to be directed by a designee of Jerry Marroney, the Colorado State Court Administrator.

IV. District-Level Protective Proceedings Pilot Projects

The Issue Subcommittee considered the creation of a pilot project that would fund specialized court staff, to be called Protective Proceedings Facilitators, and other related resources to address some of the issues in the audit and also develop systems, staffing models, and best processes that could be replicated around the state.

Sandie Franklin and Jeff Clayton met with Susie Jordan, who functions as a Clerk and as the Denver Protective Proceedings Facilitator.

The meeting disclosed that Susie's role as facilitator comprises ½ of her job duties. The other ½ of her work is working as a court clerk. Her facilitator job duties include much work at the front-end of these cases, i.e., the process leading from the filing of a conservator/guardian case to the appointment of the conservator/guardian. Her duties roughly include: (1) providing customer service to attorneys and *pro se* parties in order to assist them in properly filling-out, understanding, and filing paperwork with the Court; (2) overseeing all protective proceedings cases, tracking them, receiving and reviewing filings from File and Serve and ICON; (3) acting as central point of contact for all related agencies; (4) Managing the court visitor's programs; (5) preparing cases set before the Magistrate; and, (6) participating in training and other programs to improve branch-wide handling of protective proceedings cases.

The front-end of these cases is crucial in the sense that someone's fundamental constitutional rights are being deprived in favor of the exercise of the *parens patriae* power of the State. The 2001 monitoring statute, however, was passed in order to increase the protection of wards after a conservator or guardian was appointed, and thus focus greater court attention and provide greater reporting requirements at the so-called "back end" of these cases. The 2001 monitoring statute, however, was passed in a time of budgetary shortfall when resource follow-up was truly a necessary component; yet, instead Districts found themselves threatened in terms of their ability to simply provide the up-front due process necessary to proceed such a deprivation and thus otherwise pass constitutional muster.

Nonetheless, Issue Subcommittee members were more interested in moving forward, and decided that the issue was the extent to which Ms. Jordan's present duties, which frankly are mostly "front end," cross-cut some of the deficiencies noted in the audit. Members were also interested in her thoughts regarding the need to which her duties could be modified to then function under a pilot project in a fashion that would lead to the development of replicable back-end human and technological processes and systems for copy by other Districts. Toward that end, it is believed that a protective proceedings facilitator's duties in a

model pilot project should include some “front-end,” or “prevention” aspect¹ to his or her duties, which are presently under Ms. Jordan’s job description developed in cooperation with Human Resources, including:

- (1) Ensuring that parties have access to training materials regarding the performance of their duties, including the presently existing video, any resources provided and contracted-for from non-profits, resources presently under development by other subcommittees, etc.;
- (2) Providing a customer service point of contact for guardians, litigants, and conservators who they can contact when they have questions regarding the cases;
- (3) Spotting potential problem cases up-front and recording such observations in the files for further tracking,
- (4) The tracking of cases, including receiving and evaluating the annual reports.

It was thought in addition to keeping these duties, that Ms. Jordan, if the Denver Probate Court were selected as a model site, might drop her 0.5 FTE clerk duties, and expand that 0.5 FTE into responding to some of the issues in the audit. It appears that most, if not all, of the cases currently active in Denver could be properly monitored by Ms. Jordan during the pilot. The following job duties were discussed, and recommended to be a part of the standards used to evaluate districts’ pilot proposals:

- (1) Systematic identification and follow-up on required annual filings, including developing processes to reduce the human time necessary to get guardians and conservators to comply with filings deadlines and requirements;
- (2) Reviewing annual reports and developing standards for such review, studying potential red-flags issues in cases generally, further developing and refining review checklists;
- (3) Managing a volunteer program that would include social work students and specialists and accounting students and specialists to handle informal or formal audits of cases were a red-flag has been spotted by the facilitator or the Court;
- (4) Developing training materials and standards for volunteer programs;
- (5) Developing standards for when cases should be referred for court action or an audit;
- (6) Oversee development of further training programs for guardians and conservators; and,
- (7) Working closely with SCAO staff to put a pilot evaluation process in place at the beginning of a pilot project that will result in better pilot evaluations in order to inform decision-makers regarding the success and failures of various programmatic options in the future.

These are the basic elements suggested by the Issue Subcommittee that would form part of the basic job description of a person working under the pilot. It is hoped that, like Denver, there may be a person in every district who has probate clerk duties that can be partially reassigned to other personnel in favor of such person acting as a probate facilitator during the pilot period. Ultimately, this will depend on a particular district’s proposal.

The Subcommittee also discussed the need to have resources to refer cases for fee-based audits, whether a social work audit or a true accounting. It is suggested that SCAO devote a portion of the pilot project resources toward the funding of fee-based auditors at the pilot sites. Depending on the budget allocated to such project, SCAO should, in its discretion, assign resources to the fee-based audits based on a study of anticipated need under the pilots. This is certainly an area that needs further study in terms of the numbers that might exist, the cost of each of the audits, and the qualifications of the professionals charged with conducting these audits.

In addition, any pilot proposal accepted might also include:

- (1) funding for grants for private based guardian and conservator programs, such as the one offered by the Guardianship Alliance;
- (2) the further development of training materials generally, including new training videos.

V. Pilot Project Process

¹ Prevention might be described as programs which assist conservators or guardians in understanding the scope of their duties and responsibilities that go with the appointment and also being aware of court filing requirements and deadlines. It seems that prevention services up front, such as much already provided by Ms. Jordan, can be instrumental in gaining better compliance from appointees and also assists in the so-called “risk based” assessment of these cases.

The process suggested, in light of the political realities faced by the Branch, is that the Committee recommend a budget increase of \$120,000 to SCAO's operating budget in FY 2009, for use in starting 2-3 District-level pilot projects with the goal of creating, through study and practice, permanent replicable systems and processes that could be implemented statewide to address the issues contained in the audit. In particular, the process would proceed in such fashion:

- (1) Recommendation for budget increase, August, 2007, report to Jerry Marroney;
- (2) Internal budget process approves budget request
- (3) Budget request submitted by SCAO
- (4) Judicial's budget approved by JBC, then by GA, then governor;
- (5) Pilot program set to be operating on day one, July 1, 2008.
- (6) Pilot request letter explaining application process sent out by SCAO as early as possible (i.e., once budget request is finalized, or even prior to governor's signature)
- (7) Districts submit pilot proposals to SCAO by April 15, 2008;
- (8) SCAO evaluates and selects two pilot sites and otherwise puts a plan for resource allocations in place by May 15, 2008;
- (9) Pilot districts ramp-up, consult with SCAO re: experimental design and evaluation;
- (10) Districts begin operating pilot on July 1, 2008.
- (11) Additional interim funding for pilot extension considered, late summer/fall 2008 for the 2009 session and the FY 2010 budget year (re: continuation of pilot for an additional year)
- (12) Evaluation of pilot programs in FY 2009 completed by late summer 2008.

Appendix 12

Oversight of Probate Cases, Colorado Judicial Branch Performance Audit September 2006

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**Oversight of Probate Cases
Colorado Judicial Branch
Performance Audit
September 2006**

Submitted by Clifton Gunderson LLP

**LEGISLATIVE AUDIT COMMITTEE
2006 MEMBERS**

Senator Jack Taylor
Chair

Senator Stephanie Takis
Vice-Chair

Representative Fran Coleman
Senator Jim Isgar
Representative James Kerr
Senator Nancy Spence
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State Auditor

Cindi Stetson
Deputy State Auditor

Sarah Aurich
Legislative Auditor

Clifton Gunderson LLP
Contract Auditors

September 11, 2006

Members of the Legislative Audit Committee:

This report contains the results of a performance audit on the oversight of probate cases in Colorado. The audit was conducted pursuant to Section 2-3-103, C.R.S., which authorizes the State Auditor to conduct audits of all departments, institutions, and agencies of state government, including the Judicial Branch. The State Auditor contracted with Clifton Gunderson LLP to conduct this performance audit in accordance with Generally Accepted Government Auditing Standards. The report presents our observations, findings, recommendations, and the responses of the Judicial Branch.

Very truly yours,

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Report Summary

Authority, Purpose, and Scope

This performance audit was conducted under the authority of Section 2-3-103, C.R.S., which authorizes the State Auditor to conduct performance audits of all departments, institutions, and agencies of state government, including the Judicial Branch. The State Auditor contracted with Clifton Gunderson, LLP to conduct this performance audit in accordance with Generally Accepted Government Auditing Standards. The audit work was conducted from May through September 2006. The audit evaluated the performance of Colorado's courts with respect to the appointment and monitoring of guardians, conservators, personal representatives, and trustees in probate cases.

Background

Probate cases involve the appointment of a fiduciary to handle the wills, estates, or affairs of decedents (handled by personal representative appointees); the affairs of trust agreements and trust beneficiaries (handled by trustee appointees); and the affairs of minors and missing, protected, and incapacitated persons who are incapable of caring for themselves or making their own decisions (handled by guardian and conservator appointees). Colorado courts oversee probate matters in accordance with the Probate Code, established in Title 15, Articles 10 through 17 of the Colorado Revised Statutes. The purpose of the Probate Code is to simplify and clarify the law concerning the affairs of decedents, missing persons, protected persons, minors, and incapacitated persons and to ensure that appointees handle the affairs, assets, estates, and trusts in accordance with the intent set forth in legal documents or in the best interests of protected persons.

Probate cases are handled by Colorado's Judicial Branch, which includes district and county courts located in 22 judicial districts (districts) throughout the State. District court judges or appointed magistrates hear probate cases in each district (the 2nd District is unique in that it has a separate Probate Court). The Chief Justice of the Colorado Supreme Court is the executive head of the Colorado Judicial Branch, and as such has exclusive jurisdiction to promulgate rules governing practice and procedure in civil and criminal actions, including probate. The Supreme Court appoints a State Court Administrator to assist the Chief Justice with her executive duties. The State Court Administrator heads the State Court Administrator's Office (SCAO), which provides administrative support and services to the courts. In Fiscal Year 2005 more than 183,500 cases were filed in Colorado's District Courts. Of this amount, about 11,700 were related to probate (6 percent).

Summary of Audit Findings

Monitoring and Supervision

According to the statute, courts are to provide a higher level of supervision for guardian and conservator appointees than for personal representative and trustee appointees. Generally, this is because in the case of an estate or trust, there is a legal document, such as a will or trust, which establishes how the assets of the estate or trust are to be handled. In addition to acting in the best interests of the persons they have been appointed to protect, guardians must file a personal care plan and conservators must file a financial care plan. Once the plans have been submitted, conservators and guardians must report to the court annually on their activities in relation to the plans. Conservators must also file a final report to be discharged of their duties as an appointee. We reviewed a total of 114 probate cases that had a guardian, conservator, or combined guardian/conservator appointment during Fiscal Year 2003 to

determine whether the courts were complying with policies and monitoring procedures as required by the statute. Of these 114 cases, the appointees in 70 of the cases were required to file an initial and or annual report. We found: (1) the guardian or conservator did not file either an initial report or one or more required annual reports in 40 of the 70 cases (57 percent) reviewed; (2) five of the six courts in our sample did not systematically identify and follow up on outstanding financial and personal care plans or required annual reports; (3) some of the courts' current practices for reviewing reports were insufficient to identify errors and inappropriate expenses or to evaluate the appropriateness of care; and (4) guardian and conservator reports typically provide limited detail and supporting documentation for expenses and activities, and some of the courts do not follow up on expenditures or activities that may be questionable.

Appointee Compensation

The statute allows all conservators and guardians, whether professional or nonprofessional, to charge the estate of the protected person reasonable compensation for services they provide. We reviewed the fees charged and services provided by a sample of 114 guardians and conservators between 2003 and 2006. In the limited instances where information or documentation was available for review in the case file, we identified a number of concerns with fees charged, including: (1) substantially different fees charged by appointees performing the same service; (2) professional appointees charging the same professional fee for all types of services, regardless of whether a particular service required their expertise; and (3) excessive fees charged by professional appointees. For example, one professional guardian (who was a licensed clinical social worker) charged over \$158 per hour for services. Licensed Clinical Social Workers are typically paid between \$15 and \$27 per hour.

Appointee Screening and Selection

Since courts rely on guardians and conservators to act in the best interests of the persons they have been appointed to protect, the courts must have procedures to ensure these appointees are qualified. The statute (Sections 15-14-304, 15-14-403, 15-12-301, 15-12-402, and 15-16-101, C.R.S.) sets forth general requirements for appointing all fiduciaries (guardians, conservators, personal representatives, and trustees) to probate cases. We reviewed court practices for complying with statutory requirements for appointing guardians, conservators, personal representatives, and trustees. In general, we found that the courts we visited were complying with the broad requirements set forth in the statute for all of these types of appointments. However, we found that additional procedures describing minimum qualification and training requirements for professional and nonprofessional appointees could improve the courts' ability to review the qualifications of guardians and conservators and ensure that guardians and conservators receive sufficient training to carry out their duties.

Interested Parties

The Probate Code does not provide for ongoing court monitoring and supervision of personal representatives or trustees. The statute does allow for interested parties in personal representative or trustee cases to petition the court at any time to request: (1) appointment or removal of a trustee or personal representative; (2) review of the activities of a trustee or personal representative; (3) supervision of a personal representative; or (4) release of the registration of a trust. As a result, courts rely upon interested parties to notify the court when personal representatives or trustees are not performing their duties effectively. In the six districts we visited, we reviewed the practices used to notify interested parties of their role in monitoring the activities of personal representatives and trustees. We found that court documents and forms provided to trust beneficiaries did not inform the interested parties of their responsibilities to protect their own rights and interests as they relate to the trustee or the trust, and provided only limited instruction to interested parties in personal representative cases.

System Improvements

The Judicial Branch maintains probate case and appointee data in an automated information system, the Integrated Colorado On-Line Network (ICON). ICON is the official electronic repository for all county and district court records statewide (except for Denver County Court). Courts use ICON to manage their dockets, schedule proceedings, and track case progress. With regard to probate cases, we found that ICON lacked basic information in several areas needed to track probate cases and appointees effectively.

Weaknesses in the automated case management system limit the ability of courts to monitor the probate caseload; report critical information on the well being of protected persons and the financial solvency of estate assets; or automate basic monitoring processes for probate cases, such as notifying appointees of missing initial plans or annual reports.

Our recommendations and the response of the Judicial Branch can be found in the Recommendation Locator and in the body of the report.

Recommendation Locator

Rec. No.	Page No.	Recommendation Summary	Agency Addressed	Agency Response	Implementation Date
1	19	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	Agree	July 2007
2	24	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	Agree	July 2007
3	28	Improve procedures for ensuring that professional and nonprofessional guardians and conservators are qualified to perform their duties toward protected persons.	Judicial Branch	Agree	July 2007
4	31	Improve communications used to inform interested parties of their rights and responsibilities related to oversight of trustees and personal representatives.	Judicial Branch	Agree	July 2007
5	34	Strengthen controls over the management of probate cases by making improvements to the automated case management system.	Judicial Branch	Agree	January 2008

Overview of Probate Cases in Colorado

Background

Probate cases deal with the wills, estates, or affairs of decedents; affairs related to trust agreements and trust beneficiaries; and the affairs of minors and missing, protected, and incapacitated persons who are incapable of caring for themselves or making their own decisions. Colorado courts handle probate matters in accordance with the Probate Code, established in Title 15, Articles 10 through 17 of the Colorado Revised Statutes. Section 15-10-102, C.R.S., states that “the Probate Code shall be liberally construed and applied to promote its underlying purposes and policies.” The statute defines the purposes and policies as:

- To simplify and clarify the law concerning the affairs of decedents, missing persons, protected persons, minors, and incapacitated persons;
- To discover and make effective the intent of a decedent in distribution of his property;
- To promote a speedy and efficient system for settling the estate of the decedent and making distribution to his successors;
- To facilitate use and enforcement of certain trusts;
- To promote a speedy and efficient system for managing and protecting the estates of protected persons so that assets may be preserved for application to the needs of protected persons and their dependents;
- To provide a system of general and limited guardianships for minors and incapacitated persons and to coordinate guardianships and protective proceedings concerned with management and protection of the estates of incapacitated persons;
- To make uniform the law among the various jurisdictions.

Organization of the Probate Courts

The Colorado Judicial Branch includes district and county courts located in 22 judicial districts (districts) throughout the State. Probate cases are heard by the district court judges or appointed magistrates in each district. Judges are assisted by a probate registrar and other court personnel. The Second Judicial District (Denver) is unique in being the only district that has a separate Probate Court. In all other districts one or more district court judges or magistrates hear probate cases. The judge or magistrate presiding over a probate case is responsible for ensuring that each probate case adheres to statutory requirements. The probate registrar performs technical, administrative, and supervisory functions for probate cases. In some districts, the judge presides over all probate cases; in other districts, the probate judge decides when a magistrate will preside over a probate case.

The Chief Justice of the Colorado Supreme Court is the executive head of the Colorado

Judicial Branch. The Colorado Supreme Court has exclusive jurisdiction to promulgate rules governing practice and procedure in civil and criminal actions, including probate. The Supreme Court appoints a State Court Administrator to assist the Chief Justice with her executive duties. The State Court Administrator heads the State Court Administrator's Office (SCAO), which provides administrative support and services to the courts by:

- Providing centralized policy guidance.
- Developing and implementing standards and guidelines.
- Preparing and monitoring the budget for all the state courts.
- Managing the personnel system for all court employees.
- Developing and managing information systems for the Judicial Branch.
- Exploring and proposing ways to improve court operations.
- Serving as an advocate for the Judicial Branch in obtaining necessary resources from the Legislature.

In Fiscal Year 2005 more than 183,500 cases were filed in Colorado's district courts. Of this amount, about 11,700 were related to probate (6 percent). The majority of probate cases (about 67 percent) relate to trusts and settling estates. For the remainder of probate cases, about 19 percent relate to the affairs of protected persons and about 14 percent relate to other types of proceedings, such as determining heirship or personal injury settlements. Although probate cases comprise a relatively small portion of cases handled by district courts, they may involve family members, estate and trust beneficiaries, and people who require protection because they are minors or unable to handle their own affairs.

Probate Process

Probate proceedings are initiated when an interested person (individual with an interest in an estate or trust or in the well-being of a protected person) files a petition with the court. Petitions typically request the court to take action or address issues related to (1) an individual in need of protection, (2) a decedent's estate, or (3) a trust agreement. Petitions filed with the probate court include, but are not limited to:

- Request for appointment as a guardian, conservator, personal representative, or trustee.
- Request for the removal of an appointee.
- Request for a review of appointee activities including financial transactions and fees charged.

A district judge or magistrate handles petitions for appointments and ensures all statutory requirements have been met prior to making an appointment. (We discuss statutory provisions governing appointment later in this report.) In general, the type of probate case defines the type of appointment made. Types of appointments include, but are not limited to:

Conservator (Section 15-14-401, C.R.S.) – A person who is appointed by a court to manage the financial affairs, including both real and personal property, of a minor or a protected or incapacitated person (protected person). Before appointing a conservator, the court must determine that the individual is in need of protection and cannot handle some or all of his or her personal affairs. In most cases, a conservator is a relative or friend of the protected person. However, in circumstances where a family member or friend is unavailable or unwilling to serve, the court will appoint a professional conservator. As discussed later in the report, the

statute does not identify any specific qualifications for professional conservators. According to district staff, professional conservators may be attorneys or Certified Public Accountants (CPAs), but can also be the Public Administrator appointed by the court. Public Administrators serve at the pleasure of the appointing judge and perform conservator, personal representative, and trustee duties when needed. Statutory provisions for Public Administrators are contained in Sections 15-12-619 to 15-12-623, C.R.S. Professional conservators typically charge a fee for performing conservator duties.

Guardian (Sections 15-14-207 and 15-14-314, C.R.S.) – A person appointed by a judge to make decisions regarding a protected person’s support, care, education, health, and welfare. A guardian may be designated through a will or other legal document, or through court appointment. Court appointment is typically initiated when a person interested in the protected person’s welfare petitions the court to determine that the person is incapacitated. Petitions are usually initiated by relatives or friends, but in some instances petitions may be initiated by a representative from the County Department of Social Services or an Adult Protective Services agency. Similar to conservators, individuals appointed as guardians are typically relatives or friends of the protected person. If there is no family member or friend available to serve as guardian, the court appoints a professional guardian. Professional guardians typically perform the guardianship duties for compensation.

Personal Representative (Sections 15-12-601 to 15-12-623, C.R.S.) – A person appointed by a decedent, via his or her will, to distribute the estate’s assets in accordance with the provisions of the will. If the designated personal representative refuses to administer the estate of the decedent, the court may appoint the Public Administrator as the personal representative. Colorado statute is constructed to minimize the involvement of courts in settling estates. Therefore, once the court appoints a personal representative, the court provides no further oversight unless the court is petitioned by an interested party. For example, the court may receive a petition requesting the appointment or removal of a personal representative, the review of a personal representative’s fees or settlement of accounts, or the supervision of the decedent’s estate by the court. When a court grants a petition for the supervised administration of an estate, the personal representative can no longer transfer, surrender, or release estate assets without prior order of the court.

Trustee (Sections 15-16-101 to 15-16-307, C.R.S.) – A person appointed by a trust agreement to safeguard, invest, and distribute the trust’s valuable assets according to the provisions of the trust agreement. In the absence of an identified trustee, the court can appoint its Public Administrator to fulfill the role of the trustee. Similar to estates, the statute minimizes the involvement of courts in overseeing trust agreements. Once a trustee is appointed, the court invokes jurisdiction over a trust only upon the petition of an interested party. Among others, the court may receive a petition regarding: appointment or removal of a trustee, review of a trustee’s fees or settlement of accounts, ascertaining beneficiaries, or releasing the registration of a trust.

The Judicial Branch maintains statistics on probate cases by type of appointment. The number and percentage of probate filings for Fiscal Year 2005, by type of appointment, is displayed in the table below.

Probate Filings by Type Fiscal Year 2005		
Probate Case Type	Total Number of New Filings	Percent of Total
Conservator	541	4.6%

Guardian	1,308	11.2%
Conservator/Guardian	367	3.1%
Personal Representative	7,580	64.7%
Trustee	236	2.0%
Other (includes Determination of Heirship, Ancillary Proceedings, Personal Injury Settlements, etc.)	1,682	14.4%
TOTAL	11,714	100%
Source: Clifton Gunderson LLP's analysis of information contained in the ICON system.		

The table shows the number of new probate cases filed during a one-year period (Fiscal Year 2005). According to the Judicial Branch, probate cases typically continue for several years, and therefore, the number of "active" probate cases could be much higher. A probate case is "active" if the appointee is currently carrying out his or her duties. The Judicial Branch cannot provide aggregate data on both the total number of "active" probate cases and the average amount of time that probate cases continue to be "active." We discuss this issue in more detail later in this report.

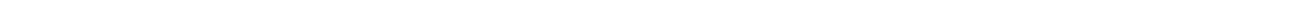
Court Oversight of Probate Cases

The statute requires courts to provide different levels of oversight on probate cases, depending on the type of appointment. As stated previously, the statute is constructed to provide limited court involvement in the settling of estates and administration of trusts. Generally, this is because in the case of an estate or trust, there is a legal document, such as a will or a trust agreement, which establishes how the assets of the estate or trust are to be handled. Therefore, courts do not monitor personal representatives or trustees once an appointment is made, unless an interested party identifies a problem and petitions the court for relief. In contrast, the statute requires courts to monitor guardians and conservators (except for the guardians of minors), on an ongoing basis after an appointment has been made. Courts have heightened monitoring responsibilities because these cases involve protected persons. Protected persons include those individuals incapable of caring for themselves or making decisions regarding their personal care or finances.

Audit Scope

The purpose of this audit was to review the performance of the courts with respect to the appointment and monitoring of guardians, conservators, personal representatives, and trustees in probate cases. As part of our audit work we visited six judicial districts including the 1st (Golden), 2nd (Denver), 4th (Colorado Springs), 18th (Castle Rock and Centennial), 19th (Greeley), and 21st (Grand Junction). We sampled 152 cases filed during Fiscal Year 2003, including 38 conservator, 53 guardian, 23 combined conservator/guardian, 30 personal representative, and 8 trustee cases. We sampled from Fiscal Year 2003 to ensure that sufficient activity occurred on the case to enable a meaningful review. Of the 114 guardian, conservator, or combined conservator/guardian cases reviewed, the appointees in 18 of the cases were professionals. Although conservator and guardian cases make up a smaller percentage of the overall probate caseload, we selected a larger volume of these cases to review because the courts have heightened responsibilities for overseeing these cases. These cases are deemed higher risk because they involve managing the assets and personal care decisions of a protected person. We also interviewed probate personnel including judges, magistrates, probate registrars, district administrators, and court clerks, and reviewed best practices

as established by National Probate Court Standards and the Second National Guardianship Conference Consensus or “Wingspan.” The National Probate Court Standards are the consensus of recommended best practices established by probate law experts. The Standards are not binding on any court or appointee. “Wingspan” is the name of the 2001 gathering of multi-disciplinary experts who collaborated to reform guardianship practices across the United States.



Oversight of Probate Cases

Introduction

Probate courts play a key role in ensuring that the: (1) estates of deceased individuals are distributed and used in accordance with the decedent's wishes; (2) assets of trust beneficiaries are safeguarded and administered in accordance with trust agreements; and (3) interests of individuals who are unable to handle their own financial, personal, or medical affairs are protected. Courts oversee probate cases by appointing or approving the appointments of personal representatives, trustees, conservators, and guardians; providing direct supervision and review of the transactions and activities of conservators and guardians; and conducting court proceedings related to any petitions filed on the probate case. As discussed previously, interested persons may file petitions that request appointment, ask for removal of appointees, or request court review of appointee activities (including financial transactions, decision-making, and fees charged, among other items). The court must hold a proceeding for each petition and make any appropriate findings of fact or law.

Probate matters are distinguished from other judicial proceedings in that for all probate cases, there is an appointee entrusted with a fiduciary responsibility. Personal representative and trustee appointees are fiduciaries for an estate or trust created by a will or trust agreement. The will or trust agreement sets forth the wishes of the person or persons who own the assets of the estate or trust and created the document. Guardian and conservator appointees are fiduciaries for individuals who are minors or who are incapacitated and cannot make financial, personal, or medical decisions for themselves. Sometimes individuals identify a guardian or conservator through a legal document (such as a general, financial, or durable medical power of attorney, or in the case of a minor child, through a will). If no guardian or conservator is nominated through such a document, or if the nominated individual declines to be appointed, courts may appoint a guardian or conservator on behalf of the protected person.

We reviewed court practices for administering probate cases and appointing and monitoring probate appointees at 6 of Colorado's 22 judicial districts. We found that some courts lack effective systems for monitoring the services provided and fees charged by guardian and conservator appointees, placing some protected persons and their estates at risk. Additionally, we identified concerns with the qualifications of guardian and conservator appointees on probate cases. Finally, we found that the Judicial Branch lacks some data needed to monitor and track probate cases and appointees effectively. We discuss these issues in detail in the remainder of this report.

Monitoring and Supervision

In the 2000 Legislative Session, the General Assembly passed House Bill 00-1375 adopting the Uniform Guardianship and Protective Proceedings Act. By adopting this Act, the General Assembly intended to make Colorado's practices for handling probate cases more consistent with those of other states. Among other changes, the Act required monitoring guardian and conservator appointees and reviewing guardians' and conservators' annual reports. In addition, the Act made guardians and conservators liable for their actions as appointees until discharged by a court-issued decree.

Court practices for monitoring guardian and conservator appointees provide a critical safeguard for ensuring that fiduciaries carry out their duties in accordance with the law and in the best interests of protected persons and beneficiaries. In accordance with the

statute, courts are to provide a higher level of supervision for guardian and conservator appointees than for personal representative and trustee appointees, as explained below.

Conservators and Guardians - The statute (Sections 15-14-317 and 15-14-420, C.R.S.) requires each of the 22 judicial districts to establish a system for monitoring conservators and guardians, including the filing and review of required guardian and conservator reports. Although the statute does not specify the monitoring system courts must employ, the statute does allow the courts to appoint an appropriate person to review the reports, interview the protected person, and make any other investigation as directed by the court. Additionally, courts have the authority to remove a guardian or conservator, or to modify or severely limit the powers granted to the guardian or conservator to safeguard the interests of the protected person and the estate.

Personal Representatives and Trustees – The statute (Sections 15-12-502 and 15-16-201(2), C.R.S.) limits the involvement of courts in the supervision of personal representatives and trustees. Since the provisions of a will or trust typically dictate the activities of personal representatives and trustees, the statute only requires courts to supervise personal representatives and trustees when petitioned to do so by an interested party. An interested party may petition the court to: (1) remove or replace a personal representative or trustee and (2) review a personal representative's or trustee's activities related to the estate or trust. Interested parties may also petition the court for the supervision of a decedent's estate. Under a supervised administration, a personal representative can not transfer, surrender, or release estate or trust assets without prior order of the court.

Because courts have a higher level of responsibility for monitoring guardians and conservators, our audit focused on court practices for monitoring these appointees.

The statute sets forth certain duties for guardians and conservators. In addition to acting in the best interests of the persons they have been appointed to protect, guardians must file a personal care plan and conservators must file a financial care plan. Guardian care plans are due to the court within 60 days of appointment and conservator financial plans are due to the court within 90 days of appointment. The statute does not require the court to approve personal care plans submitted by guardians; however, the statute (Section 15-14-418(3), C.R.S.) requires the court to approve the financial plan submitted by conservators. Once the plans have been submitted, conservators and guardians must report to the court annually on their activities in relation to the plans. Typically, guardians provide information on the current mental, physical, and social condition of the protected person; the medical, educational, or other services provided; and a summary of the guardian's visits. Conservators provide information on the assets contained in the estate, a listing of the receipts and disbursements of the estate, and a determination of whether the estate is sufficient to provide for the future needs of the protected person, among other items. Additionally, conservators are required to file with the court a final report and petition for discharge of their duties and liability as a conservator. Once the judge has issued a decree of discharge, the conservator is no longer liable for his or her activities related to the conservatorship.

We reviewed a total of 114 probate cases that had a guardian, conservator, or combined guardian/conservator appointment during Fiscal Year 2003 to determine whether the

courts were complying with monitoring procedures required by the statute. Overall, we found that some of the courts do not have sufficient controls to monitor the activities of conservators and guardians effectively. Furthermore, the Judicial Branch does not have any policies or directives establishing the standard monitoring practices courts must apply. Without sufficient monitoring, courts cannot be sure that guardians and conservators are carrying out their duties in the best interests of protected persons, and the well-being and estates of some protected persons may be at risk.

Of our sample of 114 cases, we identified 70 cases where the court required the guardian or conservator to file an initial or annual report. For the remaining 44 cases, the appointees were not required to file a report for a number of reasons, including that: (1) the protected person died prior to the report due date, (2) the guardian of a minor was a family member and the court did not require annual reports, or (3) the court had limited the duties of the guardian or conservator and provided direct oversight of the case itself. Our review focused on the 70 cases with reporting requirements because these cases should have received ongoing monitoring by the court. For these 70 cases, our audit identified problems with court monitoring practices in several areas. First, we found that five of the six courts in our sample did not systematically identify and follow up on outstanding financial and personal care plans or required annual reports. For 40 of the 70 guardian and conservator cases reviewed (57 percent), the guardian or conservator did not file either an initial report or one or more required annual reports. Furthermore, in 12 of the 70 cases (17 percent), the guardian or conservator did not file any of the required initial or annual reports. As a result, the court has no information on any of the activities performed by these twelve guardians and conservators since the court appointed them about three years ago.

For those guardians and conservators that did file their required initial or annual reports, we noted that in 15 cases, one or more reports were filed late. Additionally, a small percentage of cases were filed more than three months late. Of 29 guardian cases, 3 (10 percent) filed at least one report more than 3 months late. Of 25 conservator cases, 2 (8 percent) filed at least one report more than 3 months late. In one case, a conservator report was more than 12 months late. For about three-quarters of the missing or late reports for our sample, there was no evidence in the case file that the courts had followed up with the guardian or conservator to request the missing report.

Second, we found that when the courts receive guardian and conservator reports, not all courts review them. Of the six districts visited, two districts review both conservator and guardian reports, three districts did not review any guardian reports, and one district did not review any conservator or guardian reports. Judges and magistrates at the districts that did not review any guardian reports expressed concerns that neither they nor their staff had the specialized expertise needed to review the appropriateness of guardian activities. For the five districts that indicated they reviewed reports, we identified 28 conservator and guardian cases that did not contain documented evidence of review for one or more of the reports submitted. Only one district had written procedures for reviewing reports documented in its procedures manual.

Third, we found that some of the courts' current report review practices were insufficient to identify errors and inappropriate expenses or to evaluate the appropriateness of care. Of the five districts that conduct some type of review of conservator reports, three conduct annual desk reviews, one conducts a desk review every other year, and one conducts desk reviews on some, but not all reports. The two districts that review guardian reports perform annual desk reviews of every guardian report. We found that practices for conducting desk reviews varied substantially among the courts, ranging from a cursory review to check for missing items, to a somewhat more detailed review comparing the initial financial and personal care plans with past and current reports and looking for obvious discrepancies. Only one district had developed a checklist to aid in

the review of conservator reports.

Fourth, we found that guardian and conservator reports typically provide limited detail and supporting documentation for expenses and activities and that the courts do not always follow up on expenditures or activities that could be questionable. In the districts we visited that perform reviews of guardian and conservator reports, it is not generally the judge or magistrate that initially reviews the report, but rather a court clerk, registrar, or other staff member that conducts the review. According to court staff we spoke with, these reports are often reviewed in isolation; that is, the staff member does not typically review the report in the context of other reports or information contained in the casefile. For example, one conservator report we reviewed showed “rent” expenditures that varied from about \$1,800 per month to more than \$2,000 per month over the course of a nine-month period. There was nothing in the conservator’s report to indicate why the rent varied from month to month. In the same case, the conservator reported \$1,400 in one-time expenditures for a big screen television and clothes. There was nothing in the conservator’s report showing that the television or clothes were for the protected person. The court never reviewed the expenditures in this conservator’s report. In both instances, we brought these examples to the attention of the Judicial Branch, which upon investigation determined that the expenditures were appropriate.

Although the courts require guardians and conservators to report activities and expenses on standardized forms, we found that the forms did not require sufficient detail to permit effective review or ensure that information was reported consistently. In general, the annual reports submitted by conservators and guardians reported only the total amount of compensation paid to the guardian or conservator and did not provide a detailed accounting of the appointee’s services. Further, district review processes do not always include periodically requesting and reviewing supporting documentation for compensation paid to conservators or guardians. Both professional and nonprofessional guardians and conservators are authorized by law to charge fees for their services. According to information provided by the Colorado Bar Association, many family members who serve as guardians and conservators do not charge fees and only request reimbursement for out-of-pocket expenses, such as mileage, parking, and the like. However, professional conservators and guardians typically charge for their services. We did not see evidence in the case files that courts had requested supporting documentation from conservators or guardians, whether professional or nonprofessional, for fees charged for services.

As stated previously, the Judicial Branch does not have any statewide policies or directives to guide or direct courts in monitoring guardians and conservators. Furthermore, the Branch has not established any standard procedures for guardians and conservators that require these appointees to maintain receipts, provide detail on fees and expenses, or submit supporting documentation. Finally, the State Court Administrator’s Office does not currently review court practices to determine whether the courts are monitoring guardians and conservators effectively or to provide technical assistance.

The Colorado Bar Association has published guidance for guardians and conservators. Although this guidance is not binding on either courts or appointees, the guidance is useful for providing a perspective on the duties of guardians and conservators as viewed by professional practicing attorneys. The guidance provides that a conservator “may not profit from [his or her] position as conservator, [or] use the protected person’s assets for [his or her] benefit as opposed to the best interests of the protected [person]. . . .” The guidance also provides that the guardian is responsible for “seeing that basic daily personal needs of [the protected person] are met, including food, clothing and shelter. . . .” Furthermore, the guidance suggests that conservators and guardians who are compensated for their services should keep a record of the time they spend performing their duties on behalf of the protected person, including a description for each time entry

for the services performed. According to the guidance, conservators and guardians should not charge for time spent with the protected person for friendship or companionship.

Financial information and information on the care and the condition of protected individuals is self-reported by conservators and guardians to the courts. Review of conservator and guardian reports is the only internal control the courts have to monitor the activities of these appointees, or to determine whether the protected individual has an ongoing need for continued guardianship. Courts have indicated staff and funding are not available to conduct reviews of all conservator or guardian reports and that current staff available do not have the training or possess the skills needed to review conservator reports involving financial transactions or guardian reports involving complex medical or personal care issues. Additionally, courts report that current staff does not necessarily have the training or skills to determine whether a protected person has an ongoing need for guardian and conservator services.

Colorado's limited monitoring of guardians and conservators is consistent with practices in many other states. However, some experts in probate law have been concerned, on a national basis, about the lack of oversight of guardians and have identified best practices and recommended improvements. Some of these experts promulgated, by consensus, the National Probate Court Standards in 1993. Although these standards are not binding on courts, the standards provide helpful guidance to states that want to improve their probate court system. Similarly, the Second National Guardianship Conference Consensus (Wingspan), a multi-disciplinary group of experts from around the country who gathered in 2001 to collaborate on guardianship reform, promulgated a set of recommendations to improve court oversight of guardian services. Both the National Probate Court Standards and the Wingspan Conference recommended that probate courts improve oversight of guardians and conservators by actively monitoring their activities and conducting thorough reviews of mandated reports.

Some states have responded to the recommendations contained in the National Probate Court Standards and Wingspan by implementing more aggressive monitoring procedures for guardians and conservators. California and Florida use their full-time employees to review mandated reports. Virginia uses its social services department staff to conduct detailed reviews. Some jurisdictions (Tarrant County, Texas and the states of Maryland and Georgia) have implemented formal court visitor volunteer programs, using graduate students or community volunteers, to ensure that court appointees are properly performing their duties and that the terms of the guardianship or conservatorship are still appropriate. These volunteers act as the eyes and ears of the probate court to make certain that protected persons receive necessary care and services. Of the districts we visited, the 2nd and 4th Districts each have one volunteer that assists with the review of conservator reports although neither district has a formal volunteer program.

The statute (Section 15-10-102(2)(e), C.R.S.) states that the purpose of the probate code is to make uniform the law among the various jurisdictions. Although Judicial Branch staff indicate that this provision is intended to ensure uniformity among the states, it would appear that individual courts in Colorado should also operate uniformly in order to afford equal treatment and protection to individuals served by all courts. The current statute is uniform with regards to: (1) when a court may make an appointment; (2) the information the court must obtain to determine who to appoint, and (3) the duties appointees must perform. However, the statute does not provide uniform procedures for monitoring conservators and guardians, except that it requires reports to be filed annually and for the courts to have a system for reviewing those reports. Additionally, the State Court Administrator's Office does not monitor the filing of reports or court practices for reviewing the reports that are filed. To ensure the best interests and financial stability of protected persons are safeguarded, the Judicial Branch should take steps to standardize reporting

and review procedures for conservator and guardian cases. Establishing detailed reporting requirements and minimum standards for court review of financial and personal care plans and annual reports will greatly improve the courts' ability to effectively monitor the activities of conservators and guardians.

Recommendation No. 1:

The Judicial Branch should improve the consistency and effectiveness of court review of conservator and guardian plans and reports by establishing minimum review procedures and by requiring guardian and conservator appointees to maintain documentation and report detailed information on their fees and expenses. These procedures and reviews could include:

- a. Establishing standard procedures for courts to identify and follow up on missing guardian and conservator plans and reports.
- b. Requiring guardians and conservators to maintain supporting documentation for fees and expenses and improving guardian and conservator annual reporting forms to ensure that reports contain consistent and specific detail regarding the activities of guardians and conservators.
- c. Developing a risk-based model for scheduling reviews of conservator and guardian reports to ensure that high-risk cases are reviewed more frequently, lower-risk cases receive less frequent review, and that all courts are reviewing reports in a systematic manner. The risk-based model should incorporate a requirement that the courts periodically request and review supporting documentation related to professional guardian and conservator compensation and expenditures.
- d. Developing standardized review forms for evaluating guardian and conservator reports. The review instructions should include a list of risk factors to assist in identifying unreasonable or questionable expenses that require further supporting documentation. Risk factors could include expenses over a certain threshold, expenditures or activities that deviate from the financial or personal care plan on file, or expenses inherently at risk for fraud and abuse (e.g., meals, travel, credit card reimbursements, or purchases of equipment that the protected person likely could not use). Individuals responsible for reviewing reports should be trained to conduct such reviews.
- e. Exploring the implementation of formal volunteer and court visitor programs to provide assistance and or additional expertise to the courts in reviewing guardian and conservator reports. Volunteer programs should include procedures for the recruitment, training, and coordination of volunteers.
- f. Establishing standard court practices for overseeing guardian and conservator appointees, making recommendations for improved procedures, and providing technical assistance as needed.

Judicial Branch Response:

Appointee Compensation

Agree. Implementation Date: July 2007. The Judicial Branch takes seriously its responsibility to protect the interests of individuals who are unable to do so for themselves. As noted in the audit report, the lack of oversight of guardians and conservators is a national concern. The Judicial Branch agrees that the effectiveness of court reviews of guardian and conservator reports and plans could be improved. The Branch will consider the various options suggested by the auditor and will implement those it deems most appropriate to help ensure that the best interests and financial stability of protected persons are safeguarded.

As noted in the audit report, one of the purposes of the probate code in Section 15-10-102(2)(e), C.R.S., is “to make uniform the law among the various jurisdictions.” It should be noted that this refers to uniformity *among the 50 states* (see also Section 15-14-121, C.R.S.). This is important because, as referenced in Section 15-10-301, C.R.S., probate matters may involve Colorado property owned by non-residents or property in other states that comes into the control of a fiduciary that is subject to the laws of Colorado.

The statute allows all conservators and guardians, whether professional or nonprofessional, to charge the estate of the protected person reasonable compensation for services they provide (Section 15-14-417, C.R.S.). To

determine whether compensation is reasonable, appointees must consider the following factors: (1) the skills necessary to perform the service properly, (2) the fee customarily charged in the area for similar services, and (3) the likelihood that the service provided will preclude the appointee from other employment. In general, nonprofessional guardians and conservators request no compensation or minimal compensation from the estate for their services, while professional guardians and conservators are paid a professional fee from the estate for their services. If the judge determines that the compensation is excessive or that expenses are inappropriate, the excessive or inappropriate amount must be repaid to the estate by the appointee.

We reviewed the fees charged and services provided by a sample of 114 guardians and conservators between 2003 and 2006. As discussed previously, guardian and conservator files often contain little or no documentation or explanation of fees charged. However, in the limited instances where information or documentation was available for review in the case file, we identified a number of concerns with fees charged, including:

- **Variations in fees charged for similar services.** Public Administrators in five of the six districts we visited charged fees ranging from \$57 per hour (in Grand Junction) to \$220 per hour (in Colorado Springs) to perform conservator services. The remaining district reported that it did not know what its Public Administrator charged for services. Although courts in each district appoint the Public Administrator and the Public Administrator performs duties set forth in the statute, the Public Administrator, not the appointing court, determines the hourly fees. We also identified an instance where substantially different fees were charged by appointees performing the same service. Specifically, a conservator charged about \$13,100 for a six-month period. The court replaced the conservator with a successor conservator who charged about \$6,200 (less than half) for the second six-month period, performing essentially the same services. When appointing the successor conservator, the judge stated: “This has been a phenomenally expensive procedure for the estate. And, simply, the law-related expenses over the course of the last couple of years have been somewhere between extreme and shocking.” The successor conservator petitioned the court for a review of the prior conservator’s fees. In response to this petition, the court appointed the Public Administrator as a “Special Master” to review the prior conservator’s fees. The Public Administrator concluded that the fees charged by the prior conservator fell within fee schedules that were consistent among other lawyers and their staff members. The Public Administrator also stated that he believed his own fees were fair to those he served, and likely the prior conservator believed his or her fees were fair as well. The current statute provides limited guidance to courts when determining reasonableness and the Judicial Branch has not provided additional guidance or criteria to assist courts with determining reasonableness. Thus, courts have limited criteria to question the reasonableness of fees charged.
 - **Professional fees charged for nonprofessional services.** We found that professional appointees typically charge the same professional fee for all services regardless of whether the service they provide requires their expertise. In one case, a conservator, who was also an attorney, charged \$145 per hour for non-legal activities such as purchasing a washer, dryer, and TV; talking with an electrician; visiting the protected person’s home; and talking with the protected person’s neighbors. Over a two-month period, the cost for these non-legal services totaled about \$1,200. The same conservator charged the \$145 per hour fee for tasks requiring very different levels of expertise, including: (1) preparing an inventory of the estate assets and (2) preparing a legal petition for a court
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proceeding.

- **Fees that appeared excessive.** In one case we identified a professional guardian that was a licensed clinical social worker who charged over \$1,900 per month for services provided for a protected person. According to the plan of care, the protected person received 24-hour care in her home, including all personal and medical care, meal preparation, and housekeeping (the guardian did not provide these 24-hour services). The guardian's care plan stated that the guardian would be initially visiting the protected person two or three times per week and that eventually, visits would be reduced to once per week. The guardian indicated that her most recent visit lasted one hour. If the guardian provided 12 one-hour visits (3 visits per week) during the month for \$1,900, the guardian earned about \$158 per hour. In Colorado, licensed clinical social workers providing similar services typically earn between \$15 and \$27 per hour, depending on their education and experience. In another case, a guardian was paid \$900 for approximately three to four hours of service during a one-month period, or about \$225 to \$300 per hour. On the basis of the documentation in the case file, the guardian's duties included visiting the protected person about every 10 days for one hour and keeping in contact with the assisted living facility where the individual resided. The assisted living facility performed the day-to-day personal care for the protected person.
- **Fees related to legal disputes that quickly depleted estate assets.** In one case we reviewed, disputes arose between a family member of the protected person and the appointed guardian and conservator. As a result of these disputes, the conservator and guardian each obtained legal representation. During a one-year period, the conservator's attorney was paid \$2,100 and the guardian's attorney was paid more than \$11,600 to represent the appointees in this case. In total, the protected person's estate (valued at about \$550,000) was charged more than \$33,000 (6 percent) in a single year for professional guardian and conservator services and associated legal counsel.

Courts appoint professional guardians and conservators to provide services on behalf of a protected individual who is incapable of selecting someone to serve on his or her own behalf. As a result, courts should require some assurance that the fees charged by professional appointees are reasonable. The Americans with Disabilities Act Model Statute recommends that guardians and conservators provide a bill of accounting for their services by specifically listing the services rendered and the fee charged for each service.

The Judicial Branch has established fee schedules for other types of court appointments through Chief Justice Directives. For example, fees for state-funded legal counsel for indigent individuals involved in probate and other cases have a maximum hourly attorney rate of \$57 per hour. Similarly, fees for Alternate Defense Counsel attorneys appointed to defend an indigent person in a death penalty case are limited to \$85 per hour for the attorney's services and \$39 per

hour for the investigator's services, with a maximum total of \$15,000 for the case. These court appointees are paid from state funds and subject to direct state oversight and budget limitations. In contrast, probate appointees are paid from the protected persons' estate or assets. However, when the court appoints a professional appointee to a probate case, the court is responsible for ensuring that the fees charged by the appointed individual are reasonable. Districts we visited expressed concerns over not having any guidance for determining whether fees or other costs are reasonable. Establishing guidance for appointee fees could assist courts with assessing the reasonableness of the fees and avoid fee challenges by interested parties, resulting in potentially unnecessary litigation.

The Judicial Branch should consider options for ensuring that fees charged by guardians and conservators in probate cases are reasonable. At a minimum, guardians and conservators should be required to provide a detailed accounting of their fees and services so that courts have information to evaluate the reasonableness of the appointees' fees. Additionally, the Judicial Branch should consider establishing guidance that could include a fee schedule, with a maximum fee amount, for typical types of guardian and conservator services. The schedule could establish higher fees for services that require professional expertise and lower fees for services that do not. Alternatively, the Judicial Branch could consider a blended fee that captures the range of professional and nonprofessional services that the guardian and conservator will provide. Establishing a fee schedule and requiring that conservators and guardians explain and provide support for fees above the suggested maximum rates will help courts perform more effective reviews of expenditures, ensure guardian and conservator costs are appropriate, and safeguard the assets of protected persons.

Recommendation No. 2:

The Judicial Branch should consider a range of options that assist courts with monitoring and determining the reasonableness of fees charged by guardians and conservators. Options could include:

- a. Establishing guidance for appropriate fees. This could include a total maximum fee amount for typical types of guardian and conservator services or different fees for services requiring different levels of expertise. Alternatively, the Judicial Branch could develop blended rates with established maximums to reflect the range of professional and nonprofessional services that the guardian and conservator will provide.
- b. Requiring guardians and conservators to provide a detailed accounting of their fees and services, including explanations for any costs exceeding established fee guidelines, for review by the court.

Once feasible options have been identified, the Judicial Branch should implement policies for courts to consistently apply when establishing and approving fees and for appointees to use when charging and documenting fees. This can be accomplished either through Chief Justice Court Directive or by proposing statutory change, as appropriate.

Judicial Branch Response:

Agree. Implementation Date: July 2007. The Branch agrees that it has a statutory responsibility to review the reasonableness of the fees charged by guardians and conservators and that the Branch could improve processes for such reviews. The Branch will consider the options presented by the auditor and will implement those it deems most feasible to safeguard appropriately the assets and well-being of protected persons.

Appointee Screening and Selection

As we have discussed in the Overview Chapter, the statute charges courts, through the Probate Code, with a greater degree of responsibility for the review and oversight of guardian and conservator appointments than for personal representative or trustee appointments. Whether a protected person is served by a professional or nonprofessional guardian or conservator appointee, measures must be taken to ensure the protected individual is appropriately cared for. Since courts rely on guardians and conservators to act in the best interests of the persons they have been appointed to protect, the courts must have procedures to ensure these appointees are qualified.

The statute (Sections 15-14-304, 15-14-403, 15-12-301, 15-12-402, and 15-16-101, C.R.S.) sets forth general requirements for appointing all fiduciaries (guardians, conservators, personal representatives, and trustees) to probate cases. For all appointments, the statute requires a petition requesting the appointment; information stating why the appointment is necessary; the names of other interested persons including family members, heirs, or beneficiaries; and evidence that interested parties received notice of the petition (notice allows interested persons to object to the petition or provide additional information). The statute sets forth additional requirements for appointing guardians and conservators. More specifically, courts must:

- Determine the capacity of the potential protected person prior to appointment. Procedures to determine capacity include an evaluation conducted by qualified individual (physician or psychologist) and interviews of parties by an assigned court visitor. (Section 15-14-305, 15-14-406, C.R.S.)
- Review a guardian's or conservator's required statement. Guardians and conservators (except for some individuals that typically serve as professional appointees) are required to issue a statement attesting to whether the prospective appointee has been convicted of a felony or misdemeanor, issued a restraining order, or relieved of any previous court-appointed responsibilities. (Section 15-14-110(1), C.R.S.)
- Review criminal history record checks and current credit reports for all conservator and guardian appointments. (Section 15-14-110(2), C.R.S.) Obtain parental consent for guardianship if the guardian is a minor. (Section 15-14-204, C.R.S.)

The statute also sets forth some restrictions limiting the individuals who may be appointed as conservators or guardians. More specifically:

- Professional individuals may not serve as both guardian and conservator for the same protected person unless good cause is shown. (Section 15-14-310(5), C.R.S.)
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- An owner, operator, or employee of a long-term-care provider that provides care to a protected person cannot serve as a guardian unless related to the protected person by blood, marriage, or adoption. (Section 15-14-310(4), C.R.S.)

We reviewed court practices for complying with statutory requirements for appointing guardians, conservators, personal representatives, and trustees. In general, we found that the courts we visited are complying with the broad requirements set forth in the statute for all of these types of appointments. However, we found that additional procedures could improve the courts' ability to review the qualifications of all guardian and conservator appointees, whether professional or nonprofessional, and ensure that all guardians and conservators receive sufficient training to carry out their duties, as discussed below.

Qualifications for Guardians and Conservators

The statute provides courts with very limited guidance on the qualifications of probate appointees, including guardians and conservators. Section 15-14-110(3), C.R.S., requires courts to conduct a hearing to consider information provided by prospective guardians and conservators. Interested parties receive notice of the hearing and the proposed appointee is subject to questioning by the court. However, the statute does not require prospective guardians and conservators to submit specific information related to the skills or qualifications they possess that will enable them to perform their guardian or conservator duties. By not specifying qualifications for appointment, the statute allows for a broad pool of individuals, including family members and friends, to serve as guardians or conservators. In general, unless an interested party objects to the appointment of a guardian or conservator, the statute presumes that the person petitioning for appointment is qualified.

The statute requires even more limited information on the backgrounds and qualifications for certain types of professional appointees, including individuals appointed from the Public Administrator's office, trust companies, banks, and state or county agencies. Furthermore, the statute does not require these types of professional appointees to provide some of the information that the statute (Section 15-14-110(1) parts (a) through (d), C.R.S.) requires other appointees to report, such as information on previous performance problems including involvement in any civil judgments or prior removal from court-appointed duties. In other words, the statute does not presume that a professional guardian or conservator should be held to a higher standard of qualification than a nonprofessional appointee, or possess particular skills, certifications, or training. However, professional guardians and conservators, unlike nonprofessional guardians and conservators, receive professional fees and charge the estate or assets of the protected person for their professional services. Although the statute allows nonprofessional guardians and conservators to be compensated for their services, information from the Colorado Bar Association states that nonprofessional guardians and conservators do not typically charge for their services, other than reimbursement for out-of-pocket expenses.

Our sample of 114 probate cases included 18 cases with a total of 20 professional appointees. We reviewed these files to determine the qualifications of the professional appointees and to consider whether it appeared that the appointees had the skills to carry out their duties. We found that the files contained no documentation on the professional appointees' qualifications or skills. From our review of the nine professional conservator appointees, it appeared that one conservator was a CPA and three conservators were Public Administrators (licensed attorneys). We could not determine the professions of the

remaining five conservators. From our review of the eleven professional guardian appointees, it appeared that one was a director of a local county department of social services, three were community volunteers, and one was employed by a not-for-profit human services agency. We could not determine the professions of the six remaining professional guardians. According to the Judicial Department, courts may question an appointee on his or her qualifications during the appointment hearing; however, these discussions would not be documented in the court case file.

Earlier in this chapter, we discussed problems with conservators and guardians filing required plans and annual reports. During our file review of appointee qualifications, we evaluated whether professional or nonprofessional guardians and conservators were more likely to fail to file required reports. We found that although nonprofessionals were responsible for the majority of missing reports, one professional guardian also failed to file the required personal care plan or any of the required annual reports. (The professional guardian was the director of a local county department of social services.) Furthermore, we found that three professional guardians did not file one or more of the required annual reports.

Training

Colorado's practices for reviewing the qualifications of guardians and conservators are in line with the practices in many other states. However, several states have taken additional steps to ensure that guardians and conservators understand their responsibilities and have the skills needed to carry out their financial, personal care, and administrative responsibilities. At least four states (Texas, Florida, Washington, and Arizona) require professional guardians and conservators to complete a minimum number of hours of training and register with the State before they can be appointed. Arizona requires professionals to pass an exam to be certified, and professionals must renew their certification every two years. San Francisco County requires professionals to complete a certificate program at a university or demonstrate equivalent experience before appointment. Other states, including Florida and New York, and local jurisdictions (San Francisco County, CA and Tarrant County, TX) also require nonprofessional guardians to receive training on their duties. Generally, training for nonprofessional appointments is intended to help these individuals: (1) understand their duties and how to fulfill them, (2) understand the reporting requirements, and (3) identify the services available in their community to help them assist the individual they are assigned to protect. Such training has also been recommended by the National Probate Court Standards. Only one of the districts we visited required the nonprofessional conservator to view a training tape in 3 of the 11 conservator or guardian/conservator cases we reviewed.

One of Colorado's judicial districts, the 4th District, has attempted to ensure that professional conservators are qualified by establishing a pool of qualified conservators that courts draw upon when they need to make a professional appointment. This practice is similar to existing Judicial Branch practices requiring that courts appoint attorneys as Alternate Defense Counsel (to provide representation for indigent persons in certain criminal cases) and guardians ad litem (to provide representation for the child in dependency and neglect cases) from a pool of qualified and approved appointees.

The Judicial Branch should take steps to ensure that all individuals appointed as professional guardians and conservators are aware of their responsibilities and minimally qualified to carry out their duties under the law. Additionally, the Judicial Branch should establish higher qualification and training standards for professional appointees. One option would be to establish minimum training and continued professional education standards for professional guardians and conservators. This approach would likely

require statutory change. When considering this option, the Judicial Branch should also consider whether registration or certification of professional appointees should be required. Furthermore, the Judicial Branch should establish minimum qualification and training requirements for nonprofessional guardians and conservators. Courts should obtain some assurance that nonprofessional appointees understand and are competent to carry out their duties on behalf of protected persons. Courts could contract with qualified and experienced professional guardians and conservators to provide training to nonprofessionals, focusing on ensuring that nonprofessional appointees understand their duties under the law and have information to access resources when needed to perform their responsibilities. To minimize the administrative burden of screening prospective professional appointees, the Judicial Branch could establish a pool of pre-qualified appointees meeting the above requirements that courts can choose from when a professional appointment is needed.

Recommendation No. 3:

The Judicial Branch should improve procedures for ensuring that professional and nonprofessional guardians and conservators are qualified to perform their duties toward protected persons effectively and in accordance with the law, proposing legislation as needed. More specifically, the Judicial Branch should consider:

- a. Developing minimum training requirements, continued professional education, and registration or certification for professional guardians and conservators.
- b. Developing minimum qualifications and training requirements for nonprofessional guardians and conservators to ensure these appointees are competent, understand their duties, and have the information necessary to access resources needed to carry out their responsibilities.
- c. Establishing a pool of qualified professional conservator and guardian appointees that meet minimum qualifications. Individuals included in the pool should be reviewed periodically to ensure that they continue to meet these qualifications.

Judicial Branch Response:

Agree. Implementation Date: July 2007. The Branch takes seriously its responsibility to ensure that appropriate individuals are appointed as guardians and conservators. The Branch agrees to improve procedures for appointing guardians and conservators by considering minimum qualifications for professional appointees and training procedures for nonprofessional appointees.

As the audit notes, the courts are complying with the statutory requirements for appointing guardians and conservators. The Branch recognizes that elevated requirements for qualifications and training, beyond current statutory requirements, *may* inadvertently affect the eligibility and willingness of family members and friends to serve in this important capacity for their loved ones (and may have the unintended consequence of increasing costs to the estate). It is for this reason that statute provides the judge the authority, through a hearing, to determine and select the most qualified individual, whether professional or nonprofessional.

Interested Parties

As discussed previously, the Probate Code does not provide for ongoing court monitoring and supervision of trustees and personal representatives. The statute (Section 15-16-201(2), C.R.S.) states that “the administration of a trust shall proceed . . . free of judicial intervention and without order, approval, or other action of any court. . .” unless initiated by interested parties concerning the internal affairs of trusts. Similarly, the statute (Section 15-12-502(2)(b), C.R.S.) states that “. . . if the decedent's will directs unsupervised administration such provision shall control unless the personal representative petitions for supervised administration, in which case such petition shall be granted unless the court finds that supervised administration is unnecessary for protection of persons interested in the estate. . . .” The statute does allow for interested parties in personal representative or trustee cases to petition the court at any time to request the appointment or removal of a trustee or personal representative, the review of the activities of a trustee or personal representative, supervision of a personal representative, or the release of the registration of a trust. As a result, courts rely upon interested parties to notify the court when personal representatives or trustees are not performing their duties effectively.

When interested parties identify problems with the performance of a trustee or personal representative appointee and bring these problems to the court’s attention through a petition, judicial proceedings result. These proceedings involve litigation and typically, an attorney is hired to represent the appointee and the attorney’s fees are paid by the estate or trust. If the litigation is extensive, the resources of the trust or estate may be diminished substantially. In one of the trustee cases reviewed during our audit, some of the beneficiaries in the case protested the original trustee appointed. The court then appointed a successor trustee. The appointment of the successor trustee spurred a number of additional protests by one or more of the beneficiaries. Although the initial trustee did not charge for his services, the successor trustee charged nearly \$188,000 for trustee and bookkeeping services over a period of four years. Additionally, the successor trustee charged the estate an additional \$95,500 in attorney’s fees to represent the successor trustee against petitions filed by trust beneficiaries. The trust in this case was valued at about \$1.1 million and legal fees, alone, reduced the value of the trust by almost 9 percent over the four-year period.

In the six districts we visited, we reviewed the practices used to notify interested parties of their role in monitoring the activities of personal representatives and trustees. We found that court documents and forms provided to trustee beneficiaries did not inform the interested parties of their responsibilities to protect their own rights and interests as they relate to the trustee or the trust. In contrast, court documents provided to estate beneficiaries provided the following information with regard to oversight of personal representatives:

Interested persons have the responsibility to protect their own rights and interests within the time and in the manner provided by the Colorado Probate Code, including the appropriateness of

claims paid, the compensation of personal representatives, attorneys and others, and the distribution of estate assets, since the court will not review or adjudicate these or other matters unless specifically requested to do so by an interested person.

Although these instructions inform interested parties of their responsibilities for overseeing the activities of personal representatives, the information does not provide instructions on the specific actions interested parties must take to address problems or obtain relief. By uniformly informing interested parties of their responsibilities for overseeing both personal representatives and trustees and providing instructions on the procedures and timelines to be followed if a problem occurs, courts have better assurance that inappropriate actions of personal representatives and trustees will be identified and reported.

Recommendation No. 4:

The Judicial Branch should improve communications used to inform interested parties of their rights and responsibilities related to oversight of trustees and personal representatives. This could include establishing templates that instruct interested parties on the procedures and timelines they must follow to petition the court for review of the activities of a personal representative or trustee.

Judicial Branch Response:

Agree. Implementation Date: July 2007. The Branch agrees that the communications used to inform interested parties of their rights and responsibilities should be improved and will consider various options to instruct them on the procedures and timelines.

System Improvements

As discussed, one purpose of the Probate Code is to “make uniform the law among the various jurisdictions” (Section 15-10-102, C.R.S.). Management information at the statewide level, including aggregate data on active and inactive caseloads, types of appointees, and appointee reports and activities, is critical to ensuring that court practices consistently meet this statutory objective.

The Judicial Branch maintains probate case and appointee data in an automated information system, the Integrated Colorado On-Line Network (ICON). ICON is the official electronic repository for all county and district court records statewide (except for Denver County Court). Courts use ICON to manage their dockets, schedule proceedings, and track case progress. In addition to ICON, courts are using Lexis/Nexis to store scanned images of court documents, including initial and annual guardian and conservator reports. Our audit used ICON to extract and analyze probate case management data for Fiscal Years 2000 through 2005. We found that ICON lacked basic information in several areas needed to track probate cases and appointees effectively. Weaknesses in the automated case management system limit the ability of courts to monitor the probate caseload; supervise guardian, conservator, and supervised personal representative performance; and report critical information on the well being of protected persons and the financial solvency of estate assets.

First, we found that the case management system does not track or report aggregate

information on the number of professional versus nonprofessional (typically a family member or friend) appointees. Additionally, the system does not track or report on the types of professionals (public administrators, CPAs, attorneys, social workers) appointed to probate cases. Courts report that professional appointments represent a small portion of all probate cases, but the Judicial Branch cannot confirm this through the automated case management data. Court monitoring practices should vary depending on the risks associated with each type of appointment. Since courts cannot readily obtain or compile data to identify cases overseen by professional or nonprofessional appointees, courts do not have information necessary to structure an effective risk-based review of these cases.

Second, the case management system does not have a separate field that allows the Judicial Branch to track information on whether probate case appointees are “active,” (i.e. the appointee is currently carrying out his or her duties related to a probate case) or “inactive” (i.e., the appointee has completed his or her duties and has no further responsibilities). Some districts have found ways to query ICON on dates (input manually) that indicate future action on the case is required. This allows the district to use ICON to approximate its number of active cases. However, such manual entries are subject to error. Furthermore, not all districts manually input their dates of future actions and not all districts know how to perform this query on ICON. As a result, the Judicial Branch and some individual courts cannot review aggregate data to determine their active probate caseloads, how long their probate caseloads have been active, or identify the active caseload of any Public Administrator or professional conservator or guardian. In one district we visited, the case management system listed one Public Administrator as an appointee on 46 different probate cases. Of the 46 cases shown in ICON, the Public Administrator reported that he was only currently working on 15 probate cases. The district had to contact this appointee directly to determine the number of active cases in the appointee’s caseload. Without accessible information on the number of active and inactive cases maintained by professional appointees, the courts cannot easily determine whether an appointee is overloaded. Appointees carrying too many cases may not be managing the estate assets or monitoring the well being of the protected person effectively. Additionally, without accurate information on the size and composition of their active caseloads, it is difficult for the courts to develop efficient risk-based monitoring procedures on an ongoing basis.

Third, the case management system lacks system edits to ensure all courts enter some key information on probate cases consistently and accurately. For example, the case management system currently contains a field indicating whether a personal representative appointed to manage an estate is “supervised.” Courts report that they do not necessarily complete this field. This information is critical for the court to oversee the case since, when an estate is supervised, the personal representative cannot act independently and must submit certain decisions to the court for approval. In addition, courts do not always update the type of appointment assigned to a probate case. Each court enters an initial appointment type into the system when a case is filed. However, the ultimate outcome of the case and type of appointment may differ from the initially assigned case type. Courts do not update this case type after an appointment is made. For example, the case management system identified 23 of 152 cases (15 percent) in our sample as combination conservator/guardian appointments. However, when we reviewed the case files, we found that only 17 of the 23 cases were dual appointments. As a result of these inconsistencies in the recording and tracking of case information, courts do not have some basic aggregate data, such as the number of probate cases by type of appointment or by type of supervision. Since the court’s duties vary with the type of appointment, court staffing procedures and review processes would benefit from having accurate caseload information.

Fourth, the case management system does not automate basic monitoring processes for probate cases. The statute requires guardians to prepare a care plan and conservators

to prepare a financial plan; both guardians and conservators must annually report to the court their activities in regard to their approved plans. Conservators are also required to file a final report upon termination of a conservatorship. As discussed, these annual activity and final reports are the only controls courts currently have to determine whether guardians and conservators have effectively performed their duties under the law and in accordance with the approved plans. Currently, some courts do not have an efficient method for determining which guardians and conservators are required to file a report or when those reports are due. An automated report that routinely provides districts with a list of outstanding guardian or conservator reports would help districts to better monitor late or missing reports. Additionally, enhancing the system to automatically generate notices reminding the appointee to file an outstanding report could assist courts with following up on outstanding or missing reports more efficiently.

Finally, the districts cannot analyze required guardian and conservator reports electronically. One of the districts we visited requires attorneys who are acting as professional guardians or conservators to submit electronic copies of their written reports, which could include scanned images, Word files, or other file formats. Although these documents are submitted electronically, courts are unable to conduct any automated analysis of the information contained in these documents. Filing information electronically, where individual reporting elements are entered in a standardized, electronic format and evaluated through automation, would streamline monitoring activities and allow the system to automate some review processes, such as flagging reports that exceed the planned expenditure thresholds or lack one or more of the required reporting elements. Additionally, electronic data input of guardian and conservator reports would allow courts to compile data on estate assets and expenditures in order to better assess risk for monitoring purposes. Currently Colorado's court staff relies heavily on manual data input of information and queries to analyze probate case information. In contrast, Minnesota has implemented an electronic system for filing required report information. San Francisco is currently considering implementing a similar system.

According to the Judicial Branch, the ICON case management system was not designed to produce aggregate management information and data for monitoring and evaluating court practices. Rather, the case management system was designed as a scheduling system to aide courts in moving cases through the judicial process. Additionally, the Judicial Branch indicates that courts have limited resources available to enter data into the ICON system.

The Judicial Branch indicates that it is currently considering a number of improvements and upgrades to the ICON system to improve its effectiveness as both a docket management and court monitoring system. In considering these improvements, the Judicial Branch should incorporate the changes discussed in this report to improve overall management of probate cases. More specifically, fields should be added to track professional and nonprofessional appointments (including the expertise of professional appointees), and active and non-active cases and appointments. Additionally, the system should incorporate appropriate edits to ensure courts enter critical data into fields consistently and that data contained in fields are updated to reflect the current status of cases. Finally, the Judicial Branch should consider the costs and benefits of adding enhancements to the ICON system that would allow electronic data input of guardian care plans, conservator financial plans, annual activity reports, and the final reports related to those plans. If electronic data input of reports can be accomplished, system processes should also be capable of generating notices to guardians and conservators when annual reports are late, incomplete, or when activities appear to deviate significantly from plans. These improvements will help the courts to monitor the probate caseloads and address other concerns noted in this report.

Recommendation No. 5:

The Judicial Branch should strengthen controls over the management of probate cases by making improvements to its case management system. This should include:

- a. Adding fields to track professional and nonprofessional appointees, type of professional appointee, and “active” and “inactive” cases.
- b. Incorporating edits to ensure courts enter all critical data consistently and that data contained in fields are updated when needed to reflect the current status of cases.
- c. Creating system flags to identify outstanding reports and notify appointees if reports are late.
- d. Evaluating the costs and benefits of creating a system for electronic data input of guardian care plans, conservator financial plans, and annual and final reports. If developed, the system could include programming to notify the court and appointees when the activities or expenditures vary significantly from approved plans and request that the appointee provide additional information.

Judicial Branch Response:

Agree. Implementation Date: January 2008. The Branch agrees that the controls over the management of probate cases could be improved. The Branch’s case file management system is undergoing a three-year redevelopment. The auditor’s recommendations for improvement will be incorporated into the development process.

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