

## Briefing II – Improving Service Delivery

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# Best Practices Workgroup Report

## *PURPOSE*

In 2007, AARP and the American Bar Association (ABA) completed a report on their two-year study of guardianship monitoring, including a national survey of experts and site reviews of four exemplary courts with monitoring practices that insure the protection and improvement of the lives of the incapacitated adults under guardianship. The report concluded that the unique nature of guardianships, as well as the increase in the population of those requiring guardians, highlights the need for more active court monitoring.

Washington courts employ varied practices and differing levels of practice to monitor guardianships. The monitoring practices of each court could likely be improved by supplementing local practices with better practices used in other courts and other jurisdictions. Though courts face competing demands for limited court funds, it is likely that courts could implement additional practices without additional cost or great impact on the workload of staff. Sharing local practice, researching and understanding the practices implemented in other jurisdictions and incorporating these practices will empower a court to proactively enforce its orders and prevent costly reactive measures in response to late discovery of deficiencies, the greatest cost of which is the resulting harm to the incapacitated person.

## *HISTORY*

Judge McPhee, Pat Swartos, Frank Maiocco, and Shirley Bondon made a series of presentations at the 2009 Spring conferences for judicial officers, clerks, and court administrators. The focus was on guardianship case management, including guardianship monitoring. Eight recommendations came out of those presentations, including one for creating a set of best practices.

The Best Practice Workgroup was created by the Superior Court Judges' Association (SCJA) Guardianship and Probate Committee to create a set of best practices in guardianship monitoring for courts. The focus was to develop a "toolbox" of practices that a court could choose from in its own monitoring program.

## *METHOD*

The AOC assisted Judge Thomas McPhee, the Guardianship and Probate Committee lead on the project, in setting up a workgroup. The workgroup is composed of judicial officers, clerks, court administrators, guardianship program coordinators, advocates, and attorneys.<sup>1</sup>

The list of best practices that had been created by the WSBA Elder Law Task Force was a starting point for the workgroup. The workgroup analyzed that list and narrowed the number of best practices down from more than 40 to the following 12.

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<sup>1</sup> For a list of the workgroup members, see Appendix A.

## *SUMMARY OF RECOMMENDATIONS*

These recommendations are designed to present a set of options, or “toolbox”, for a court to consider in developing, enlarging, or improving a guardianship monitoring program. Some of the options can be implemented with little cost, others would require more funding. The workgroup decided to include recommendations without cost consideration because this is meant to be a document that will be used by the courts currently and in the future. The workgroup recommends the following best practices:

- ❖ Designate specific judicial officers to the guardianship calendar
- ❖ Ensure that all liquid assets over \$3,000 are fully bonded or in a blocked account
- ❖ Identify case reporting dates
- ❖ Use a stepped range of sanctions for failure to file reports
- ❖ Develop checklists for reviewing accounts and personal care plans
- ❖ Require court approval of all guardian reports
- ❖ Require court approval for specific transactions
- ❖ Appoint a Guardian ad Litem when needed to investigate
- ❖ Develop and implement a program for monitoring case files
- ❖ Require training for non-professional guardians
- ❖ Develop a process for filing complaints against guardians
- ❖ Develop a court website with links to resources and forms

## *SPECIFIC RECOMMENDATIONS*

### ❖ *Designate specific judicial officers to the guardianship calendar*

Judges are key to any quality guardianship monitoring program. The statute empowers judges to appoint guardians<sup>2</sup>, set bond<sup>3</sup>, monitor guardianship cases<sup>4</sup>, approve guardian reports<sup>5</sup>, oversee the sale of assets<sup>6</sup>, approve of gifting<sup>7</sup>, approve of a guardian’s fees<sup>8</sup>, modify or terminate guardianships<sup>9</sup>, etc.

Just as in the family court setting, judges trained in guardianship topics can provide a level of competence and continuity to cases. Some examples of training topics are:

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<sup>2</sup> RCW 11.88.095

<sup>3</sup> RCW 11.88.100

<sup>4</sup> RCW 11.92.010

<sup>5</sup> RCW 11.92.050

<sup>6</sup> RCW 11.92.090

<sup>7</sup> RCW 11.92.140

<sup>8</sup> RCW 11.92.180

<sup>9</sup> RCW 11.88.120

- capacity issues;
- elder issues;
- developmental disability;
- mental health;
- less restrictive alternatives;
- the impact of abuse and neglect, including self-neglect;
- domestic violence;
- undue influence;
- cultural competency;
- access issues;
- family dynamics;
- self-representation issues; and
- the roles of judges and commissioners.

When the court's resources or assignment structure does not permit designated officers, a short manual or the Guardianship Benchbook should be available for those judicial officers hearing guardianship matters.<sup>10</sup>

❖ *Ensure that all liquid assets over \$3,000 are fully bonded or in a blocked account*

In cases in which liquid assets exceed \$3,000, courts are required to set a bond or ensure that funds are in a blocked account before letters of guardianship are issued<sup>11</sup>. At the time of the appointment of a guardian, the amount of assets an incapacitated person has may not be known. Courts should:

- Review sufficiency of bond whenever a report (inventory or accounting) is filed. The bond must be sufficient to protect the full value of the case and securities.
- Require proof of bonding within specific time after change in circumstances, sale of house, etc.

For more information on bonding and blocking, see the Checklist for Guardianship Bonding and Blocking.<sup>12</sup>

❖ *Identify Case Reporting Dates*

Courts cannot monitor a guardian's actions without regular reports from guardians. Courts also need to be able to collect basic data on guardianship cases in order to monitor reporting dates.

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<sup>10</sup> Guardianship Benchbook

<https://inside.courts.wa.gov/index.cfm?fa=cntlManuals.listManuals&manualId=guardianship&manualType=jdgbench>

<sup>11</sup> RCW 11.88.100

<sup>12</sup> See Appendix B

- Courts should collect data in the following areas: guardianship status (active, closed); guardian type (lay, certified professional, or public guardian); scope of authority (person, estate, full, limited); reasons for guardianship; guardianship complaints received; and all active monitoring measures.
- Pursuant to recent amendment of RCW 11.88.095, relating to orders appointing guardians, courts are required to use a guardianship summary to list due dates for the inventory, personal care plan, designation of standby guardian, and annual/triennial reports in a guardianship summary. Have the clerk enter those dates in SCOMIS at the time of appointment.<sup>13</sup>
- Pursuant to recent amendment of RCW 11.92.040, relating to post appointment orders, courts are required to use a guardianship summary in orders approving accountings or reports to list due dates for the filing of the next accounting or report and a date for the next review or hearing on the accounting or report. Have the clerk enter those dates in SCOMIS at the time of the hearing.
- Require letters of guardianship to be kept current. Pursuant to recent amendment of RCW 11.88.095, a court must direct the clerk to reissue letters of guardianship on a regular basis. Guardianship letters will be valid for a period of up to five years, though for courts in which letters expired sooner, the time period is likely to be unchanged. Factors for a court to consider in determining the period of validity are: the length of time of the guardianship; the guardian's past performance in filing reports; whether there is any other agency monitoring the guardianship; and whether there have been any allegations of abuse, neglect, or breach of fiduciary duty.
- Guardians and their attorneys should receive sufficient notice of the expiration dates of guardianship letters, including conspicuous identification of such dates in orders appointing guardians and in guardianship letters. The AOC will amend the model forms to be consistent with the new legislation effective July 22, 2011.
- Automatically send out reminders regarding due dates to the guardian either by use of a computer generated letter or email or a phone call by volunteer.
- Use SCOMIS to track due dates. SCOMIS can currently be used to calendar due dates and to run reports to identify cases in which reports are due. SCOMIS has the capability of being upgraded to track due dates and other statistical information on guardianships using something similar to the current arbitration screens. Courts use the arbitration screens to track mandatory arbitration cases, including docketing, resolutions, etc.
- SCOMIS codes should be required to be used on all guardianship pleadings. The functionality of SCOMIS is enhanced when the proper codes for specific court actions are entered into the database. New codes have been developed to differentiate between annual, biennial, and triennial reports. Currently those codes are in the footers of model forms, but are not required for use by those filing documents. The use of codes could be addressed at conferences for elder law attorneys.

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<sup>13</sup> See Appendix C

- BOXI queries (a way to capture SCOMIS code information that can be used to prepare a report) can be used to determine when reports have not been filed for a specific period (over three years), when a report is due, and other useful information for a court. BOXI queries should continue to be developed that take advantage of new codes to create targeted reports.<sup>14</sup>

❖ Use a stepped range of sanctions for failure to file reports

Courts need to be able to have a stepped range of sanctions when reports are not filed, and changes to RCW 11.92.050 list some of those sanctions. Those could start as a delinquency notice and end with removal of the guardian. Some specific sanctions that could be used include:

- Automatic issuance of a notice of noncompliance for overdue filings, and an accompanying fee<sup>15</sup>;
- Schedule noncompliance conferences;
- Note show cause hearing for continued noncompliance;
- Automatic monetary penalty for specified days out of compliance;
- Call in bonds-see-RCW 11.92.056;
- Initiate contempt process for fiduciaries that violate court orders;
- Removal of guardian; and
- Notify Certified Professional Guardian Board when a Certified Professional Guardian is noncompliant.

❖ Develop checklists for reviewing accounts and personal care plans

Courts and guardian monitoring program staff (if any) would benefit from having checklists to review consistency and uniformity in reviewing accountings and personal care plans. Those checklists should include:

- Checklists for reviewing guardian fees<sup>16</sup>;
- Check beginning against ending balances—look to prior years' accounts' documentation establishing balances<sup>17</sup>;
- Require submission of supporting documentation with filing of accounts—bank statements, income statements, social security payee reports, etc.;

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<sup>14</sup> See Appendix C

<sup>15</sup> See Appendix D

<sup>16</sup> Appendix E

<sup>17</sup> Appendix F

- Use pattern forms for accountings; and
- Check for person's care plan issues, such as job, education, least restrictive residential setting, etc.<sup>18</sup>.

❖ Require court approval of reports and accounts

Under recent changes to RCW 11.92.050, court approval of annual/biennial/triennial reports and accounts is required. Prior to the change, the guardian had to petition for court approval if the guardian wanted his/her actions and fees approved. Guardians are now required to seek court approval of the statutorily required financial accounts and personal status reports. The court has discretion about whether to set a hearing date or review the account independently. Certified Professional Guardians are required to serve copies of all pleadings on the incapacitated person and provide notice of hearings unless otherwise directed by the court. Courts should be encouraged to set hearings on reports and accounts.

❖ Require court approval for specific transactions

Court approval is required prior to certain transactions, such as the sale of property, anything titled, and gifts<sup>19</sup>. Steps that may be taken to improve this process include:

- Creating forms for pro se guardians to use to notify/petition the court regarding these transactions;
- Ensuring this is a topic of guardian training; and
- Assisting guardian program monitoring staff with identifying these events.

❖ Appoint a Guardian ad Litem (GAL) or investigator if court requires further investigation

Courts may need more information to make a decision and can appoint a GAL or investigator to investigate.

The cost of a GAL can be high for incapacitated person's estate or for county, but there are ways to address the cost, for example:

- Assessing GAL fees to other parties per 11.88.090(10);
- Limiting duties of the GAL to only those specifically needed for the task (for example, if capacity is not an issue, don't require a medical report); and
- Saving time for the court by having the GAL investigate concerns of multiple parties, conduct in-depth reviews of accountings, review issues of regained or decreased capacity, etc.

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<sup>18</sup> Appendix G

<sup>19</sup> RCW 11.92.090 and 11.92.140

❖ *Develop and implement a program for monitoring case files*

Some Washington courts have created volunteer programs to assist the court with monitoring guardianships<sup>20</sup>; others have paid staff to assist with reviewing case files. Volunteers or paid staff can be a valuable asset to the court in reviewing reports and making sure that a report is not only filed, but that it is accurate and complete. Volunteers can visit incapacitated persons to ensure that the guardian is doing his or her job properly. Volunteers or paid staff provide the court with the ability to carry out the court's oversight functions.

- Develop and implement a monitoring program using trained volunteers (retirees, law students, social-work students, nursing students, accounting students) as visitors and reviewers.
- When volunteers participate in guardianship monitoring, it is essential that adequate resources be dedicated to volunteer recruitment, screening, training, supervision, and retention.
- Use attorneys to assist with delinquency review calendars and give them continuing education credit for training. They can also assist with going through old cases and making sure that all cases are current on reporting requirements.

❖ *Require that non-professional guardians attend training seminars*

Professional Guardians are required to attend a mandatory training of 100 hours to become certified and to attend regular continuing education. Non-professional guardians in most counties have had no training requirements at all. Under recent changes to RCW 11.88.020, 11.88.030, 11.92.043, 11.92.040, and 11.92.050, lay guardians will be required to provide evidence of successful completion of standardized training.

- The AOC should develop and provide a reference manual to accompany the online training for lay guardians, and other training materials for judicial officers and court personnel. The lay guardian training should be updated periodically to take into account legislative changes and case law changes.
- Training materials should be available on a uniform, statewide basis in a variety of formats and languages consistent with the various needs of intended audiences. In particular, the reference manual and instructional video for lay guardians should be available online or in hardcopy when needed.
- Require all guardians to fill out a Declaration of Proposed Guardian like that in Pierce County<sup>21</sup> and create a state-wide declaration form to be posted on AOC's web site. This form would clearly state the guardian's reporting requirements and duties to the incapacitated person.

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<sup>20</sup> See Appendix G

<sup>21</sup> See Appendix I



❖ Develop a process for filing complaints against guardians

Currently, any person can apply to the court for the modification or termination of a guardianship.<sup>22</sup> Some courts use this provision of the statute to address complaints against guardians, but it is not uniformly applied.

- Unrepresented persons should have the option of using a pattern form to convey concerns, complaints, and requests to courts. Courts should develop and provide such a form, which should be designed to facilitate the efficient collection of uniform, statewide guardianship data.
- See Spokane County Guardian Complaint Protocol<sup>23</sup>

❖ Develop a court web site with links to resources and forms

Superior Court web sites have links to the court's local rules and Washington pattern forms. Guardians need resource links to other information in order to carry out their duties. Resources that should be included are:

- Any local forms for guardianship matters. Court should consider encouraging uniform state forms with minor local practice distinctions.
- Information about court access and accommodation issue
- Links to legal assistance, both free and not
- Links to social service agencies for the populations of those who come under guardianship
- Links to Adult Protective Service
- Information about any court programs such as facilitators or guardianship monitoring that would be helpful to a guardian

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<sup>22</sup> RCW 11.88.120

<sup>23</sup> See Appendix J

# Best Practices Workgroup Report

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## Appendices

Appendix A:

Best Practices Workgroup Members

| <b>Name</b>               | <b>County</b>   | <b>Role</b>  |
|---------------------------|-----------------|--|
| Patricia Austin           | Benton/Franklin | Administrator                                      |
| Michelle Moore            | Jefferson       | Administrator                                      |
| Marti Maxwell             | Thurston        | Administrator                                      |
| Frank Maiocco             | Kitsap          | Administrator                                      |
| Margaret Kennedy          | Region 6        | Attorney General's Office                          |
| N.F. Jackson              | Whatcom         | Clerk and Administrator                            |
| Teri Nielsen              | Clark           | Clerk's Office                                     |
| Nancy Scott               | Skagit          | Clerk's Office                                     |
| David Lord                | State-wide      | Disability Rights Washington                       |
| Hon. Robert Bibb, Retired | Snohomish       | Guardianship Monitoring Program                    |
| Ana Kemmerer              | Spokane         | Guardianship Monitoring Program                    |
| Teresa Koza               | King            | Guardianship Monitoring Program                    |
| Hon. Dick Thorpe, Ret.    | Snohomish       | Guardianship Monitoring Program                    |
| Hon. James Lawler         | Lewis           | Judicial Officer                                   |
| Hon. Thomas McPhee        | Thurston        | Judicial Officer                                   |
| Bill Jaback               | King            | Washington Professional Guardian Association       |
| Kathryn Leathers          | State-wide      | Washington State Bar Association                   |
| Eileen Peterson           | Pierce          | Washington State Bar Association Elder Law Section |
| Barbara Byram             | King            | Washington State Bar Association Elder Law Section |
| Rob Nettleton             | Pierce          | Washington State Bar Association Elder Law Section |
| Deborah Jameson           | Thurston        | Administrative Office of the Courts                |

Appendix B:

Checklist for Guardianship Bonding  
and Blocking

CHECKLIST FOR GUARDIANSHIP BONDING AND BLOCKING  
(Establishment of Guardianship)

**A. GENERAL RULE: (RCW 11.88.100)**

**Does a bond need to be posted?**

What is the value of the estate?

If under \$3,000.00, before Letters of Guardianship are issued, the following may or should occur:

- The court may dispense with the requirement of a bond pending filing of an Inventory confirming that the estate has total assets of less than \$3,000.00.
- A hearing should be held on the Inventory to confirm value within ninety (90) days.
- The guardian shall promise or be ordered to report to the court any changes in total assets increasing the estate value to over \$3,000.00.
- The guardian shall promise or be ordered to file a yearly statement if the monthly income, excluding moneys from state or federal benefits, is over the sum of \$500.00 per month for any three (3) consecutive months.

If over \$3,000.00, before Letters of Guardianship are issued, a bond shall be posted, and the following may or should occur:

- The Court is to take into account the character of assets on hand or anticipated to become available as well as the income to be received and disbursements to be made, including:
  - Cash/Bank Accounts
  - Securities (stocks, bonds, annuities, mutual funds, retirement accounts, life insurance, promissory notes, etc.)
  - Real Property
  - Real Estate Contracts
  - Household furnishings and personal effects
  - Motor vehicles
  - Income
  - Anticipated expenditures

\* The amount of the bond must be sufficient to protect the full value of the cash and securities. *Treadwell v. Wright*, 115 Wn.App 238 (2003)

**B. REDUCTION RULE: (RCW 11.88.105)**

**Can blocking be used to eliminate the bond?**

**Can a combination of bonding and blocking be used to reduce the amount of the bond?**

- The Court may only reduce the amount of the bond needed to protect cash and securities by the amount of cash or securities held in blocked accounts when:
  - 1 The cash or securities have been placed in possession of savings and loan associations or banks, trust companies, escrow corporations, or other corporations approved by the court; and

2 A verified receipt (blocked account agreement) signed by an officer of the financial entity is filed stating that the cash or securities are held subject to order of the court.

\* Only if all cash and securities are placed in blocked account(s), may the bond be dispensed with regard to cash and securities. *Treadwell v. Wright*, 115 Wn.App 238 (2003)

**C. EXCEPTION RULE: (RCW 11.88.107)**

**Is there an exception to the bonding/blocking requirement?**

- Bank or Trust Company  
Bond/blocking not required for bank or trust company
- Nonprofit Corporation  
Bond/blocking may be waived

If a Nonprofit Corporation is being appointed in a case that has assets that exceed \$3,000.00, the court in the order of appointment may dispense with bonding or blocking. Prior to waiving the requirement the following should be considered:

- Does the Nonprofit have insurance, and if so, what are the policy limits?
- How many cases does the Nonprofit currently have?
- Is there an emergent situation that needs to be immediately addressed with the issue of bonding/blocking to be decided at a later date, such as the ninety (90) day hearing to establish a budget?
- Private Individual/Family Member  
Bond/blocking required
- CPG – Sole Proprietor  
Bond/blocking required
- For Profit CPG Agency  
Bond/blocking required

## Appendix C:

- Guardianship Summary
- BOXI Script for Guardianship Queries
- BOXI Descriptions



## GUARDIANSHIP SUMMARY

Date Guardian Appointed: \_\_\_\_\_  
 Date of Next Hearing: \_\_\_\_\_  
 New Letters Expire On: \_\_\_\_\_  
 Current Bond Amount:     \$ \_\_\_\_\_  
 Due Date for Inventory: \_\_\_\_\_  
 Due Date for Care Plan: \_\_\_\_\_

Incapacitated Person (IP)

Guardian of: [ ] Estate [ ] Person

|                                    |                                    |
|------------------------------------|------------------------------------|
| <i>phone:</i><br><i>facsimile:</i> | <i>phone:</i><br><i>facsimile:</i> |
|------------------------------------|------------------------------------|

| Interested Parties | Address | Relation to IP |
|--------------------|---------|----------------|
|                    |         |                |
|                    |         |                |
|                    |         |                |
|                    |         |                |

| <b>Active Guardianship with GDN Names and Blanks</b> |   |
|--|---|
| <i>Result Objects</i>                                | <i>Query Filters</i>  |
| Case Number  | Case Court Initials Equal to: <b>&lt;Select Court ID&gt;</b> ; and                  |
| Case Title   | Case Type Code Equal to: <b>&lt;04&gt;</b> ; and                                    |
| Case File Date                                       | Case Cause Code Equal to: <b>&lt;GDN&gt;</b> ; and                                  |
| Person Name  | Case File Date Between: <b>&lt;Begin Date&gt;</b> and <b>&lt;End Date&gt;</b> ; and |
| All Participant Type Codes = [Person Name]           | Case Current Status Code Equal to: <b>&lt;ACT&gt;</b>                               |

| <b>Active Guardianship Cases Showing Date of Filing and Order Appointing Guardian, Inventory, Personal Care Plan, and Annual Report</b> |   |
|---|---|
| <i>Result Objects</i>   | <i>Query Filters</i>  |
| Case Number   | Case Court Initials In List: <b>&lt;Select Court ID&gt;</b> ; and                   |
| Case File Date  | Case Type Code Equal to: <b>&lt;04&gt;</b> ; and                                    |
| Case Title  | Case Cause Code Equal to: <b>&lt;GDN&gt;</b> ; and                                  |
| Case Current Status Code  | Case File Date Between: <b>&lt;Begin Date&gt;</b> and <b>&lt;End Date&gt;</b> ; and |
| Docket Date   | Case Completion Code: <b>&lt;Is Null&gt;</b>  |
| Docket Code   | Docket Code in List: <b>&lt;ORAPGD; INV; PCP; ORAP; ANR&gt;</b>                     |

| <b>Active Guardianship Cases Showing Date of Filing and Date Bond Filed</b> |   |
|---|---|
| <i>Result Objects</i>   | <i>Query Filters</i>  |
| Case Court Initials   | Case Court Initials In List: <b>&lt;Select Court ID&gt;</b> ; and                   |
| Case Number   | Case Type Code Equal to: <b>&lt;04&gt;</b> ; and                                    |
| Case File Date  | Case Cause Code Equal to: <b>&lt;GDN&gt;</b> ; and                                  |
| Case Title  | Case File Date Between: <b>&lt;Begin Date&gt;</b> and <b>&lt;End Date&gt;</b> ; and |
| Case Current Status Code  | Case Completion Code: <b>&lt;Is Null&gt;</b>  |
| Docket Date   | Docket Code in List: <b>&lt;BN&gt;</b>  |
| Docket Code   |   |
| Docket Text   |   |

| <b>Active Guardianship Cases with Last Docket Date</b> |   |
|--|---|
| <i>Result Objects</i>                                  | <i>Query Filters</i>  |
| Case Number  | Case Court Initials In List: <b>&lt;Select Court ID&gt;</b> ; and                   |
| Case File Date   | Case Type Code Equal to: <b>&lt;04&gt;</b> ; and                                    |
| Case Title   | Case Cause Code Equal to: <b>&lt;GDN&gt;</b> ; and                                  |
| Case Cause Code  | Case File Date Between: <b>&lt;Begin Date&gt;</b> and <b>&lt;End Date&gt;</b> ; and |
| Case Current Status Code                               | Case Completion Code: <b>&lt;Is Null&gt;</b>  |
| Last Docket Date                                       |   |



September 21, 2009

**TO:** Judicial Officers, Court Administrators, and Court Clerks

**FROM:** Administrative Office of the Courts, Guardian Program

**RE:** GUARDIANSHIP MONITORING—NEW BOXI QUERIES

The Guardian Program of the Administrative Office of the Courts, with the assistance of Court Education Services, has developed Business Objects (BOXI) queries to assist courts with monitoring RCW Title 11 guardianships. The queries were developed as part of the Action Plan generated by the recommendations from the Spring Conference sessions on guardianship case management with clerks, administrators, and judicial officers.

We have developed four queries to date. The query results will highlight cases that will require more in-depth investigation using SCOMIS or the case file. We welcome questions regarding these queries and suggestions for the development of other queries.

1. Active Guardianships with GDN Names and Blanks.
  - a. The court can determine if a case was heard within the statutory time period of 60 days per RCW 11.88.030(5).
  - b. The court can track the number of new guardianship cases filed and resolved within a specific time period.
  - c. The court can track minor guardianships in which no GAL was appointed.

| Case Number  | Case Title                                   | Case File Date | GDN                           | GAL              | PET                            | INC             |
|--------------|--|----------------|-------------------------------|------------------|--------------------------------|-----------------|
| 09-4-00003-3 | GUARDIANSHIP OF GARY BAILEY                  | 01/02/2009     |                               | SUTTER, JANICE M | HARRISON MEDICAL CENTER        | BAILEY, GARY    |
| 09-4-00039-4 | GUARDIANSHIP OF MARY L KENNEDY               | 01/16/2009     | CAPITOL GUARDIANSHIP SERVICES | VOLLER, GLENDA   | #MULTIVALUE                    | KENNEDY, MARY L |
| 09-4-00053-0 | GUARDIANSHIP OF KARL PAYTON                  | 01/23/2009     | ZITTEL, RICHARD               | ROCHELLE, PERRI  | ISLAND HEALTH & REHABILITATION | PAYTON, KARL    |
| 09-4-00088-2 | GUARDIANSHIP OF MINORS THOMAS & ALEX WELLMAN | 02/05/2009     | MAYOU, CHIEKO                 |                  | MAYOU, CHIEKO                  |                 |

2. Active Guardianships with Last Docket Date.

- a. RCW 11.92.040(3) permits guardian reports to be filed every 36 months in appropriate cases. The court can investigate guardianship cases in which the last docket entry is older than three years and some report is clearly overdue.

| Case Number  | Case File Date | Case Title  | Case Cause Code | Case Current Status Code | Last Docket Date |
|--------------|----------------|---|-----------------|--------------------------|------------------|
| 09-4-00573-6 | 6/6/73         | GUARDIANSHIP OF CHARLOTTE BAKER                       | GDN             | ACT                      | 08/19/2009       |
| 4-16346      | 9/5/61         | IN RE THE GUARDIANSHIP OF PATRICIA ANN MANN           | GDN             | 0                        | 01/07/2005       |
| 4-20590      | 6/29/72        | IN RE THE GUARDIANSHIP OF FREDERICK JAMES WILLIAMS JR | GDN             | 0                        | 07/16/1996       |
| 4-22630      | 8/9/77         | GUARDIANSHIP OF HEIDEROSE CAMPO                       | GDN             | 0                        | 02/27/2009       |
| 4-22785      | 1/9/78         | GUARDIANSHIP OF DONNA LOUISE PETERSON                 | GDN             | 0                        | 02/15/2008       |
| 78-4-00063-0 | 5/22/78        | GUARDIANSHIP OF LOIS JEAN SETRAN                      | GDN             | ACT                      | 08/04/2005       |

### 3. Active Guardianships with Filing Date of Appointment, Inventory & PerCarePlan.

- a. The court can track whether the inventory and personal care plan were filed within 90 days of appointment as required by RCW 11.92.040(1) and 11.92.043(1). We cannot yet distinguish those cases in which a person was appointed solely as guardian or the person or estate and not required to file both reports.
- b. The court can determine if an annual report has been filed during a specific time period. New codes are being reviewed that will enable use of this query to distinguish between annual, biennial, and triennial reports. Until new codes are approved, the query will be of somewhat limited use for tracking annual reports.

| Case Number  | Case File Date | Case Title                | Case Current Status Code | Docket Date | Docket Code |
|--------------|----------------|---------------------------|--------------------------|-------------|-------------|
| 82-4-00213-4 | 05/14/1982     | GUARDIANSHIP OF KAREN DIX | 0                        | 08/27/1982  | ORAPGD      |
|              | 05/14/1982     | GUARDIANSHIP OF KAREN DIX | 0                        | 10/20/1982  | INV         |
|              | 05/14/1982     | GUARDIANSHIP OF KAREN DIX | 0                        | 09/16/1992  | PCP         |
|              | 05/14/1982     | GUARDIANSHIP OF KAREN DIX | 0                        | 09/01/1993  | PCP         |
|              | 05/14/1982     | GUARDIANSHIP OF KAREN DIX | 0                        | 12/24/2007  | ANR         |
| 82-4-00213-4 |                |                           |                          |             |             |

### 4. Active Guardianships with and without Bond.

- a. The court can track cases in which a bond was posted and the amounts (if recorded as part of the docket entry text).
- b. The court can use this query to verify that bonds were entered in cases in which posting a bond was part of the guardianship order.
- c. The court can monitor what percentage of its guardianship cases requires a bond and the size of the bond.
- d. In county pay cases where a bond was posted on or around the time of the inventory, the court can seek to recoup funds paid to the guardian ad litem or attorney for the alleged incapacitated person.

### With Bond

| Case Number  | Case File Date | Case Title                                | Case Current Status Code | Docket Date | Docket Text                  |
|--------------|----------------|---|--------------------------|-------------|------------------------------|
| 07-4-00089-5 | 03/12/2007     | GUARDIANSHIP OF: BLAIR, EARL LAWRENCE     | ACT                      | 05/11/2007  | BOND GUARDIAN'S SURETY       |
| 07-4-00089-5 | 03/12/2007     | GUARDIANSHIP OF: BLAIR, EARL LAWRENCE     | ACT                      | 09/05/2008  | BOND FROM WESTERN SURETY CO  |
| 07-4-00253-7 | 08/03/2007     | IN RE GUARDIANSHIP OF: SPENCER, BLANCHE E | ACT                      | 11/16/2007  | BOND                         |
| 07-4-00253-7 | 08/03/2007     | IN RE GUARDIANSHIP OF: SPENCER, BLANCHE E | ACT                      | 04/02/2009  | BOND                         |
| 07-4-00264-2 | 08/15/2007     | IN RE GUARDIANSHIP OF: MASON, PHYLLIS M   | ACT                      | 11/21/2007  | BOND -WESTERN SURETY COMPANY |
| 07-4-00343-6 | 11/02/2007     | GUARDIANSHIP OF DAYLE MIYE BRIGGANCE      | ACT                      | 09/09/2008  | GUARDIAN'S BOND              |

### Without Bond

| Case Number  | Case File Date | Case Title                                  | Case Current Status |
|--------------|----------------|---|---------------------|
| 07-4-00010-1 | 01/08/2007     | IN THE GUARDIANSHIP OF ANTOINETTE SANDERS   | ACTIVE              |
| 07-4-00093-3 | 03/13/2007     | IN RE GUARDIANSHIP OF: ROSE, CARL           | ACTIVE              |
| 07-4-00096-8 | 03/14/2007     | IN RE THE GUARDIANSHIP OF: CAMACBO, FIDD JR | ACTIVE              |
| 07-4-00129-8 | 04/19/2007     | GUARDIANSHIP OF RAY BEAUMARIAGE             | ACTIVE              |
| 07-4-00163-8 | 05/17/2007     | GUARDIANSHIP OF LANDVIK, PAUL               | ACTIVE              |
| 07-4-00187-5 | 05/31/2007     | GUARDIANSHIP OF PARKER BLOOD                | ACTIVE              |

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## Appendix D:

- King County Delinquency Notice
- Notice of Noncompliance
- Show Cause Order

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

IN RE THE GUARDIANSHIP OF  
IN RE GUARDIANSHIP OF

NO.

**ORDER TO APPEAR ON GUARDIANSHIP  
DELINQUENCY CALENDAR  
(OAGDC)**

From a review of the Court's record, it appears that the following action was due on: 1/4/2010

ORDER Approving Annual / Biennial / Triennial Report

You are hereby ordered to appear on the Court's Guardianship Delinquency Calendar, in the Ex Parte Department, at 1:30 p.m. in room W-325, King County Courthouse, 516 Third Avenue, Seattle, WA, on June 28, 2010.

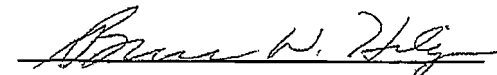
If an Order Terminating Guardianship or Order Approving Annual Report has been filed during this accounting period and the case should be removed from the calendar, please contact the Clerk's Office (206) 296-7852 and speak with the Probate Clerk.

If an Order Terminating Guardianship or Order Approving Annual Report is approved by the court and filed five working days prior to the scheduled calendar date, the case will be automatically removed from the calendar. Such orders must be entitled "Order Terminating Guardianship and Striking from Delinquency Calendar" or "Order Approving Annual Report and Striking from Delinquency Calendar", and shall have the notation "Clerk's Action Required" pursuant to King County Local Civil Rule LCR 84

Failure to appear on the calendar may result in the immediate removal of the present Guardian and the appointment of a new Guardian. **No continuances will be granted.**

An invoice from the King County Office of Finance for a non-compliance fee will be mailed to the Guardian within 30 days of this Notice, pursuant to King County Code 4.71.050.

Dated: 5/21/2010

  
Presiding Judge

A copy of this Order was mailed on 5/21/2010 By a. harshaw  
to the party(ies) listed below: Deputy Clerk



|   |
|---|
| <b>SUPERIOR COURT OF WASHINGTON<br/>COUNTY OF SPOKANE</b> |
| IN THE MATTER OF THE GUARDIANSHIP/TRUST OF:               |
| <br>  |
| AN INCAPACITATED PERSON                                   |

(Clerk's date stamp)

CASE NO:

NOTICE OF NONCOMPLIANCE

CLERK'S ACTION REQUIRED  
CODE: GS

Court records indicate the guardian has failed to file the following required document(s):

Periodic Personal Care Plan

**The document(s) must be filed no later than \_\_\_\_\_ or sanctions may be imposed against the guardian. Sanctions may include removal of the guardian.**

APR 14 2010  
\_\_\_\_\_  
DATE

  
\_\_\_\_\_  
SUPERIOR COURT COMMISSIONER

**DECLARATION OF MAILING**

On Thursday, April 15, 2010 a copy of this notice was mailed to:

Guardian of Person/Estate

Standby Guardian Person/Estate

Attorney

 Guardianship Monitoring Program Staff

(Clerk's Date Stamp)

**SUPERIOR COURT OF WASHINGTON  
COUNTY OF SPOKANE**

CASE NO:

IN THE MATTER OF THE GUARDIANSHIP/TRUST OF:

ORDER REQUIRING GUARDIAN OF  
PERSON/ESTATE TO APPEAR AND  
SHOW CAUSE

AN INCAPACITATED PERSON

(ORTSC)  
CLERK'S ACTION REQUIRED  
CODE: GS

**BASIS**

The guardian of person/estate has failed to file the following required documents and has failed to respond to a non-compliance notice to resolve why the following documents have not been filed as required:

Report and Accounting

Other:

**ORDER**

**The guardian of person/estate, \_\_\_\_\_, is ordered to appear at the time and place set forth below and to show cause why:**

1. A financial penalty should not be assessed against the guardian of person/estate if the Court determines that a minor breach of fiduciary duties has taken place,
2. The guardian of person/estate should not be removed and a successor guardian of person/estate appointed if the Court determines that repeated or major breaches of fiduciary duties has occurred, and/or

3. A Court appointed Guardian Ad Litem should not be appointed at the guardian of person/estate's expense to investigate and recommend remedial action regarding the performance of fiduciary duties if the Court finds that the incapacitated/disabled person is in need of representation.
4. Other:

**Date:** Thursday, January 25, 2007 Time: 09:00 am

**Place:** Spokane County Courthouse  
1116 W Broadway  
Spokane, Washington  
Courtroom #306

DATE

1/10/07

SUPERIOR COURT JUDGE/COMMISSIONER



#### DECLARATION OF MAILING

I certify under penalty of perjury pursuant to the Laws of the State of Washington that on Thursday, January 11, 2007 a copy of this notice was mailed to:

Attorney

Guardian of Person/Estate

Standby Guardian Person/Estate

IN THE SUPERIOR COURT OF WASHINGTON FOR THE COUNTY OF  
SPOKANE

In the Guardianship of: ) Case No.:  
 )  
 ) ORDER REMOVING GUARDIAN  
 )  
 \_\_\_\_\_ )  
 An Incapacitated Person ) (CLERK'S ACTION REQUIRED)  
 )  
 \_\_\_\_\_ )

The Court has determined that the existing Guardian needs to be removed for failing fiduciary duties and failing to appear at a Noncompliance Hearing and an Order to Show Cause Hearing, and NOW IT IS HEREBY ORDERED:

The existing guardian, \_\_\_\_\_ is removed as guardian and is restricted from acting in any capacity as guardian of person of \_\_\_\_\_.

DATED AND SIGNED IN OPEN COURT THIS \_\_\_\_\_ DAY OF \_\_\_\_\_.

\_\_\_\_\_  
**Declaration of Mailing**

I certify under penalty of perjury pursuant to the Laws of the State of Washington that on \_\_\_\_\_ a copy of this notice was mailed to:

\_\_\_\_\_  
Guardianship Monitoring Program Coordinator

Appendix E:

- Guardian and Attorney Fees

## Guardian's and Attorney's Fees:

1. Are fees adequately itemized and explained in the Annual Report?
2. What are the fees as a percentage of the guardianship estate?
3. Did the guardian engage in extraordinary activity as required by either the Court or circumstances of the incapacitated person?
4. Has the guardian properly articulated its fees to activities which have benefited the incapacitated person or his/her estate?
5. Are fees increasing or decreasing over time? If increasing, is the guardian able to explain this increase?

In Washington State guardian compensation is specifically addressed in RCW 11.92.180. The statute requires the court to allow compensation for guardians and permits the court to set an amount that is "just and reasonable". Fee petitions are not presumed reasonable. The guardian must prove that the services claimed were performed and that the fees requested are reasonable. The award of fees must be determined on the basis of the work performed and whether the work benefited the guardianship.<sup>1</sup> "If the court finds that the guardian or limited guardian has failed to discharge his or her duties as such in any respect, it may deny the guardian any compensation whatsoever or may reduce the compensation which would otherwise be allowed".<sup>2</sup> The amount of the compensation allowed is within the discretion of the trial court.<sup>3</sup> Said discretion is abused when the court's decision is manifestly unreasonable.<sup>4</sup>

### **What degree of management is permitted by law? May a court adopt standards of compensation that move away from the reasonable hours worked—reasonable hourly rate analysis common in attorney fee decisions?**

Enactment of the Trust and Estate Dispute Resolution Act (TEDRA) in 1999 provides a specific legislative statement of the broad power intended for the courts in administering all Title 11 cases. RCW 11.96A.020 provides in relevant part; (a) All matters concerning the estates and assets of incapacitated persons; (2) If this title should in any case or under any circumstance be inapplicable, insufficient, or doubtful with reference to the administration and settlement of the matters lists in subsection (1) of this section, the

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<sup>1</sup> *In re Guardianship of McKean*, 151 P.3d 223, 228, 136 Wn. App. 906 (2007).

The court may not award fees to a guardian simply on the basis of work performed; rather, the court must determine the need for the work done and whether it benefited the guardianship.

<sup>2</sup> RCW 11.92.180; *In re Carlson's Guardianship*, 162 Wash.2d, 297 P.764 (1931) Where guardian has been unfaithful, either willfully or through indifference, he is not entitled to compensation; *In re Deming's Guardianship*, 192 Wash.190, 73 P.2d 764 (1937) Where guardian fails to keep accounts or file vouchers and misappropriates funds of his ward's it is proper to deny him compensation.

<sup>3</sup> *In re Guardianship of Spiecker*, 69 Wash. 2d 32, 416 P.2d 465 (1969). Allowance of fees to guardian and attorney for guardian are largely with discretion of the superior court.

<sup>4</sup> *In re Guardianship of McKean*, 151 P.3d 223, 228, 136 Wn.App. 906 (2007).

court nevertheless has full power and authority to proceed with such administration and settlement in any manner and way that the court seems right and proper, all to the end that the matters be expeditiously administered and settled by the court.

There is no appellate decision addressing the limits of a trial court's power to administer guardianship cases and no decisions addressing such limits for any Title 11 cases after enactment of TEDRA. Clearly the power to manage guardianship cases is very broad when that power is construed in light of the legislative declaration in TEDRA. That the power to manage guardian compensation is included in the TEDRA declaration is supported by RCW 11.96A.150, which provides for payment of costs and attorney fees:

(1) Power to award costs, including reasonable attorney fees.

(2) This section applies to all proceedings governed by this title, including but not limited to proceedings involving guardianship matters. This section shall apply to matters involving guardians and guardians ad litem and shall not be limited or controlled by the provisions of RCW 11.88.090(10) [a section providing for compensating GALs.]

### **What are some models a court might consider?**

Many jurisdictions employ compensation models which provide specific guidance on the issue of reasonableness. Each model allows the court to reduce or increase compensation based on the specific services provided.

### **Ohio**

Ohio Supreme Court Superintendence Rule 75 (A) provides: "Guardian's compensation shall be set by local rule of court." Montgomery County Probate Court local rule 73.1 states that the compensation that may be taken by guardians as a credit in their accountings, without application and order first obtained, must be less than or equal to that provided by the following schedule:

- 5% of income from intangible investments and deposits and all installment receipts such as Social Security and Veteran's benefits; plus
- 10% of gross rentals from real estate managed by the guardian or 5% if proceeds of a net lease. A net lease is a property lease in which the lessee agrees to pay all expenses which are normally associated with ownership, such as utilities, repairs, insurance and taxes; plus
- \$2.50 per thousand dollars of intangible personal property investments and deposits for each year of the accounting period; plus
- 1% of distribution of personal property corpus at the conclusion of the guardianship. Intangible personal property is defined as contracts, deeds, mortgages, stocks, bonds, certificates of deposit or membership, or not cancelled United States postage or revenue stamps sold for postage or revenue purposes. The term also does not include water in pipes, conduits, ditches or reservoirs, but



does include water in bottles, wagons, tanks, or other containers. This content can be found at [www.investorwords.com/3251/net\\_lease.html](http://www.investorwords.com/3251/net_lease.html).

- For corporate guardians: A fee may be charged on the same basis as the corporate guardian charges its clients as trustee of a living trust. Each corporate fiduciary shall file its current fee schedule with this Court. Any amendments to the schedule must be filed before a fee computed under the amended schedule is credited to an account. The fee schedule shall be limited to a maximum 1% fee for all guardianship estates with a market value of \$75,000.00 or less.

The probate court's application of the terms of the local rule was affirmed in *Guardianship of Matlock*.<sup>5</sup>

Summit County, Ohio Court of Common Pleas-Probate Division Local Rule 73.1 states that guardian compensation shall be based upon the following schedule:

- 0.5% of first \$100,000.00 of income.
- 0.3% of all income over \$100,000.00.
- 0.5% of the authorized expenditures up to \$100,000.00.
- 0.3% of the authorized expenditures over \$100,000.00.

An application for extraordinary guardian's fees shall be accomplished with itemized time records. All time itemizations shall state the date and time expended, who performed the service, the nature of the service performed, the hourly rate requested, or the specific basis of the fee requested. A hearing shall be set with notice sent by the applicant to all interested parties as the Court so orders. Minimum guardian's or trustee's fees shall be allowed in the amount of three hundred dollars (\$300.00) per year.

## **Florida**

At the request of the court administrator for the Thirteenth Judicial Circuit, the Joint Circuit Workgroup on Guardian Fees was established to recommend guidelines for guardian fees. Florida's Sixth and Thirteenth Judicial Circuits adopted the guidelines recommended by the workgroup effective February 1, 2005. The adopted guidelines are provided below. After the guidelines were used for more than a year, the court provided additional guidance addressing specific areas of concern. This guidance is provided in Appendix C (Sixth Circuit Guardian Fee Issues). The non-binding guardian fee guidelines were challenged and upheld In re Guardianship of Shell.<sup>6</sup>

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<sup>5</sup> Not Reported in N.E.2d, 2007 WL 431473, Ohio App. 2 Dist.,2007, February 09, 2007

<sup>6</sup> 978 So.2d 885

Professional guardians are entitled to bill based on years of experience at the following hourly rates:

Professional Guardians with 0-5 years (60 months) are entitled to bill at a rate of \$40.00 per hour.

Professional Guardians with 6-9 years of experience are entitled to bill at a rate of \$55.00 per hour.

Professional Guardians with 10 or more years are entitled to bill at a rate of \$70.00 per hour.

The court retains the discretion to adjust hourly rates higher or lower for each professional guardian (individually), as deemed appropriate by the court.

The court provides the following rules/guidelines:

- Bill paying—Fees shall not exceed two hours of billable time (at the applicable rate) each month for bill paying without providing a written justification. If more than two hours, the guardian is given the opportunity, if faced with some extraordinary circumstances, to provide justification for seeking higher fees than the court would normally believe to be appropriate in an average month.
- Travel—Guardians would be entitled to bill travel time, but not mileage. Guardians may, of course, seek deductions of their actual mileage on their income tax returns. Guardians are required to list their actual mileage per trip, with each line-item billing entry for travel time. This will provide the court the ability to assess whether the travel time charged was reasonable. Guardians traveling from outside of the county where the court is located will only be compensated for travel time from the court's county line.
- Shopping—Imposing two standard “per-month” fee caps by rule, allowing for exceptional circumstances: *IP in home*: Cap of 2.5 hours per month or *IP in facility*: Cap of 1.0 hour per month. Guardians have been permitted to provide a detailed explanation justifying fees for shopping in excess of the fee cap guidelines. An example of when it may certainly be appropriate to exceed those caps/guidelines would be in the month of December, due to holiday shopping. Additionally, the guidelines associated with the rules should explain that, when possible, guardians should attempt to get the IP's companion(s) to perform these services. It is not in the best interest of the IP to have a guardian charge \$70.00 per hour to run to the store for milk and bread. Caretakers may be allotted a small amount of cash each month for this purpose, with the requirement that they provide receipts to the guardian to account for that cash. Guardians have been authorized to reimburse themselves up to \$20.00 per month for purchases made for the ward, without a court order—so long as receipts are maintained to back up the expenditures.

- Arranging Transportation, Appointments & Services for the IP and Attendance at Appointments. While it may not be appropriate to try to impose a cap in this category, it would be appropriate to set forth some guidelines in the Rules that would help to avoid fee inequities in this area as a result of the elimination of billing at a clerical rate. Guardians should be advised to be mindful that arranging transportation and appointments is something that could be done by clerical staff (such staff were utilized), and, therefore, does not really require the fiduciary expertise of a professional guardian. Fees for such services should be kept at a minimum and anytime that billing in this regard covers a substantial amount of time, a detailed explanation should be provided. With regard to attendance at appointments, guardians should be encouraged to utilize companions for routine visits, such as dental cleanings and eye exams. Certainly, whenever a guardian must be present to meet with a provider or otherwise exercise some fiduciary duty, billing guardian time is appropriate. If, however, a guardian can avoid lengthy periods of time where they are simply waiting in a doctor's office with the ward or attending a funeral or family function with a ward, efforts should be made to do so. Guardians should be encouraged to enlist help in this regard whenever possible. Recognizing that some hired companions charge a minimum amount of hours, if it would cost less to have the guardian attend such a function with the ward than it would to hire the companion for that minimum period that actually exceeds the time needed, then, in that event, the guardian should provide a brief statement explaining that in the fee statement.
- Copying/Faxing/Filing. Billing related to this activity should be limited to 1.0 hour per month, without a written explanation in the fee petition, explaining any extraordinary circumstances that may justify higher billing in this category.

## **Georgia**

Georgia Statute permits a commission on the gross income of the incapacitated person's estate.<sup>7</sup> The statute provides that a conservator shall be entitled to compensation for services rendered equal to:

- Two and one-half percent commission on all sums of money received by the conservator on account of the estate, except on money loaned by and repaid to the conservator, and 2 1/2 percent commission on all sums paid out by the conservator; plus,
- One-half of 1 percent computed on the market value of the estate as of the last day of the reporting period. This commission shall be proportionately reduced for any reporting period of less than 12 months;

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<sup>7</sup> GA ST § 29-5-50.

- Ten percent commission on the amount of interest earned, if it is earned during the course of the conservatorship. The conservator shall receive interest on money loaned by the conservator in that capacity and shall include the interest on the money loaned on the return to the court so as to become chargeable with the interest as a part of the corpus of the estate;
- Reasonable compensation, as determined in the discretion of the court and after such notice, if any, as the court shall direct, for the delivery over of property in kind, not exceeding 3 percent of the appraised value and, in cases where there has been no appraisal, not over 3 percent of the fair value as found by the court, irrespective of whether delivery over in kind is made pursuant to proceedings for that purpose in the court and irrespective of whether the property, except money, is tangible or intangible or personal or real; and

In the discretion of the court, compensation for working land for the benefit of the parties in interest, but not to exceed 10 percent of the annual income of the managed property.

## Appendix F:

- Financial Audit Checklist
- Best Practices Checklist
- Audit Checklist
- Other Audit Information

## Financial Audit Checklist

- \_\_\_\_\_ Is it a Guardianship of the Estate?
- \_\_\_\_\_ Is it limited? What is extent of limitation?
- \_\_\_\_\_ Does accounting correspond to anniversary date of appointment?
- \_\_\_\_\_ Do assets in accounting correspond to assets in the initial inventory?
- \_\_\_\_\_ Are all liquid assets covered by a bond or blocked accounts? (Note if guardian is a Bank or Trust Company [Not NW Trustee] no bond is required)
- \_\_\_\_\_ Have guardianship accounts been properly set up and titled to reflect a guardianship account?
- \_\_\_\_\_ Does the checking account provide cancelled checks or images?
- \_\_\_\_\_ Have checks or images been provided?
- \_\_\_\_\_ Are there ATM and/or credit cards in use by guardian or incapacitated person?
- \_\_\_\_\_ Are there cash withdrawals by check or otherwise?
- \_\_\_\_\_ Is cash provided directly to the incapacitated person? If so, is there documentation?
- \_\_\_\_\_ Is there a trust that meets any of incapacitated person's needs?
- \_\_\_\_\_ Are guardianship and trust funds accounted for separately?
- \_\_\_\_\_ Are investments prudent?
- \_\_\_\_\_ Do fees seem reasonable?
- \_\_\_\_\_ If an attorney is guardian, have legal services and guardianship services been billed at separate rates?
- \_\_\_\_\_ Has a guardianship tax return been filed?
- \_\_\_\_\_ Is the tax preparation fee reasonable?
- \_\_\_\_\_ Does the incapacitated person own real estate?
- \_\_\_\_\_ Is the incapacitated person receiving income from this real estate?

Check beginning against ending balances--look to prior years' accounts, documentation establishing balances. Require submission of supporting documentation with filing of accounts--bank statements, income statements, social security payee reports, etc.

**Required Documents:**

Beginning schedule of assets and liabilities - Verified Inventory or prior Annual Report  
Beginning copies of financial statements - Verified Inventory or prior Annual Report  
Schedule of receipts and disbursements  
Supporting general ledger or check register - have canceled checks available upon request  
Ending schedule of assets and liabilities  
Ending copies of financial statements  
Updated personal property inventory  
Proposed budget and cash flow plan  
Longevity projection given available resources and the proposed budget  
Investment policy statement - is investment plan consistent with longevity projection?

**Required Disclosures:**

Compliance with bonding and blocking requirements  
Explanation of investment plan and plan for consistent review of the plan  
Declaration that the accounting is complete to the best of the guardian's knowledge  
Details of assets liquidated during the accounting period  
Explanation of compliance with the Court-approved budget and deviation from the budget  
Summary of property/rental/liability insurance for the IP  
Disclosure of IP's estate plan and potential ademption issues faced by the guardian

## ANNUAL REPORT REVIEW

|   |  |
|---|--|
| <b>ANNUAL REPORT REVIEW</b>   |  |
| 1. Is this a Guardianship of Estate?  |  |
| 2. Is the Guardianship Limited?<br>a. What are the Limitations?   |  |
| 3. Does accounting correspond to the anniversary date of appointment?   |  |
| 4. Contact information listed:<br>a. Guardian<br>b. Incapacitated person<br>c. Other interested parties   |  |
| 5. Are there any interested Government agencies   |  |
| 6. What benefits are received on behalf of the Incapacitated person?  |  |
| 7. Accounting summary:<br>a. Do assets in accounting correspond to assets in the initial inventory or previous accounting?<br>b. Is there a Description of Assets and a Schedule of Receipts and Disbursements? (See _____ checklist)<br>c. Explanation of compliance with the previous court approved budget and deviation from the budget.  |  |
| 8. Have assets been properly set up and titled to reflect the guardianship?<br>a. Is there a separate guardianship account (operating account)?<br>1. Does the account provide cancelled checks or images and are available upon request?   |  |
| 9. Bond/Blocked Accounts<br>a. Are all liquid assets covered by a bond or blocked accounts? (Note: If guardian is a Bank or Trust Company[not NW Trustee] then no bond is required.)<br>b. Is the operating account within the bond amount?   |  |
| 10. Investments:<br>a. Are the investments prudent?<br>b. Does the guardian identify an investment plan?<br>c. What is the rate of return on the investments during the accounting period?<br>d. Are there any retirement accounts?<br>1. Has the Guardian been meeting the required minimum distributions from these accounts?<br>e. Are beneficiaries and payable on death accounts identified? |  |



|   |  |
|---|--|
| <p>11. Proposed Budget:</p> <ul style="list-style-type: none"> <li>a. Did the Guardian provide a Proposed Budget?</li> <li>b. What are the long term projections / is the budget sustainable?</li> <li>c. Review the budget surplus or deficit?</li> <li>d. What is the plan to address the budget surplus and/or deficit for the upcoming period?</li> </ul> |  |
| <p>12. Has a guardianship tax return been filed?</p>  |  |
| <p>13. Guardianship fees:</p> <ul style="list-style-type: none"> <li>a. Do the fees seem reasonable?</li> <li>b. What are the guardian's fees as a percentage of the estate value?</li> <li>c. If an attorney is the guardian, have legal and guardianship services been billed at separate rates?</li> </ul>   |  |
| <p>14. Does the incapacitated person own real estate or property?</p> <ul style="list-style-type: none"> <li>a. Does the real estate generate any income?</li> <li>b. Does the guardian have a plan for the real estate?</li> <li>c. Are the properties insured and have the taxes been paid?</li> </ul>  |  |
| <p>15. Personal Possessions:</p> <ul style="list-style-type: none"> <li>a. Did the Guardian provide a list of personal possessions?</li> <li>b. Does the Guardian have a plan for the personal possessions?</li> </ul>  |  |
| <p>16. Is there a trust that meets any of the needs of the incapacitated person?</p> <ul style="list-style-type: none"> <li>a. Are guardianship and trust funds accounted for separately?</li> </ul>  |  |
| <p>17. Is cash provided directly to the incapacitated person? If so, is there documentation?</p>  |  |
| <p>18. Are there ATM and/or credit cards in use by the guardian or Incapacitated person?</p> <ul style="list-style-type: none"> <li>a. Are there any cash withdrawals by check or other means?</li> </ul>   |  |

## **SCHEDULE OF RECEIPTS AND DISBURSEMENTS (SRD)**

Confirm that the beginning and ending balances on the Description of Assets (DOA) matches the Schedule of Receipts and Disbursements (SRD).

Check current sources of income against those reported in the Proposed Budget and prior accounting.

Check expenditures reported in SRD against the previous court approved budget and identify variances.

Confirm that there is supporting documentation for income and expenses listed on the SRD.

Identify adjustments made to balance the SRD with the DOA including gains/losses reported, corrections to the previous accountings and explanation thereof, and assets found or disposed of.

## **DESCRIPTION OF ASSETS (DOA)**

Confirm existence of assets listed with supporting documentation.

Confirm accurate titling of assets listed.

Match assets with those reported in previous accounting.

Confirm beginning balance with data from the Verified Inventory or prior accounting.

Confirm liquid assets are held in blocked accounts and blocking receipts have been filed.

Verify annuities listed, check to see if they are annuitized and income is reported on the SRD. Also inquire into health of annuity.

Verify that assets listed correspond with the Guardian's approved investment plan.

## **PROPOSED BUDGET**

Verify the income including benefits, annuities, investment income and third party sources.

Verify expenses against the SRD. If additional expenses are listed, verify that the guardian has provided and explanation to the court and vice versa.

Confirm that there is a plan in place to address the ongoing surplus or deficit.

Confirm Guardian's plans meet ongoing expenses for the upcoming period and availability of funds.

Appendix G:

- Personal Care Plan Checklist

Personal Care Plan Checklist  
For Review of Personal Care Plans by Courts

- \_\_\_\_\_ Current address of incapacitated person?
- \_\_\_\_\_ Any residential changes during reporting period?
  - If yes, reason?
    - \_\_\_\_\_ Higher level of care
    - \_\_\_\_\_ Lower level of care
    - \_\_\_\_\_ Nearer family members
    - \_\_\_\_\_ Other
- \_\_\_\_\_ Services received by IP?
- \_\_\_\_\_ Changes from prior reporting period?
  - If yes,
    - \_\_\_\_\_ Guardian plan to meet changes?
- \_\_\_\_\_ Physical status changed from prior period?
  - If yes,
    - \_\_\_\_\_ Guardian plan to meet changes?
- \_\_\_\_\_ Medical status changed from prior period?
  - If yes,
    - \_\_\_\_\_ Guardian plan to meet changes?
- \_\_\_\_\_ Mental status changed from prior period?
  - If yes,
    - \_\_\_\_\_ Guardian plan to meet changes?
- \_\_\_\_\_ Emotional status changed from prior period?
  - If yes,
    - \_\_\_\_\_ Guardian plan to meet changes?
- \_\_\_\_\_ Functional abilities changed from prior period?
  - If yes,
    - \_\_\_\_\_ Guardian plan to meet changes?
- \_\_\_\_\_ Guardian activities listed?
- \_\_\_\_\_ Request to change scope of authority?
- \_\_\_\_\_ Number of visits to Incapacitated Person listed?
- \_\_\_\_\_ Report updated from prior reporting periods significantly?

Appendix H:

Guardianship Monitoring Programs

- Snohomish County
- Spokane County
- Benton-Franklin Counties
- Jefferson County
- King County
- Skagit County

# Superior Court of the State of Washington for Snohomish County

HON. ROBERT C. BIBB (RET.)  
Program Supervisor

## **GUARDIANSHIP MONITORING PROGRAM**

**SNOHOMISH COUNTY COURTHOUSE ROOM C102  
M/S #502  
3000 Rockefeller Avenue  
Everett, WA 98201-4060**

(425) 388-3284  
fax (425) 388-3498  
e-mail addr:  
Guard.Monitor@co.snohomish.wa.us

HON. RICHARD J THORPE (RET.)  
Program Supervisor

## **TENTH ANNUAL REPORT (5/1/09 - 4/30/10)**

### **GUARDIANSHIP MONITORING PROGRAM (GMP)**

The Guardianship Monitoring Program (GMP) is a non-statutory arm of the Snohomish County Superior Court established in 2000, start-up costs being funded from a \$5000 grant from AARP. It is entirely staffed with non-paid volunteers from the community headed by two unpaid retired Superior Court Judges. Judge Richard Thorpe joined Judge Bibb in this capacity during the 10<sup>th</sup> fiscal year.

While GMP deals primarily with the court, guardians, attorneys, agency representatives, relatives and others interested in a particular guardianship or guardianships in general, its ultimate clients are those adjudicated as incapacitated persons (IP) by the court. That population consists of the developmentally disabled, those with mental illness including dementias, the latter usually elderly, those suffering from severe brain or neurologic injury or disease and some minors with property. These guardianships may be of the “person”, covering medical care, living arrangements and quality of life in general, and/or of the “estate” covering management of income, entitlements and assets. Most guardianships are of both. Some are “limited” in one or more areas.

Some IPs are beneficiaries of estates or trusts over which the court has plenary jurisdiction. Some others may be recipients of awards in civil cases resulting in a court ordered establishment of a blocked bank account, structured annuity or special needs trust. GMP assists the court in its oversight function in such cases whether or not a guardianship is established. While the term “Guardian” is used below for brevity, it includes Trustees, attorneys or others responsible for proper management of the IP’s assets involved.

GMP has been given 3 small rooms in the courthouse, open on Tuesdays and Thursdays from 9:00am till noon. Its office expenses are paid from the court administrator’s office budget. Another extremely valuable support of its operations has been the Snohomish County Clerk’s office. The Superior Court Commissioners to whom GMP submits almost all of its reports because guardianship matters are mostly in that venue have been very cooperative.

GMP has a present volunteer staff of 10, plus the two volunteer judges. Statistics for the years 2000 through 2009 show the following annual amount of volunteer time contributed in hours:

|              |      |        |      |
|--------------|------|--------|------|
| 2000         | 2945 | 2005   | 2467 |
| 2001         | 2685 | 2006   | 2188 |
| 2002         | 2586 | 2007   | 2246 |
| 2003         | 2606 | 2008   | 2281 |
| 2004         | 2531 | 2009   | 2331 |
| Total Hours: |      | 24,866 |      |

The diminishing hours over the years are a function of (1) the results of GMP's progress in getting problem guardianships on track and weeding out no longer functioning guardianships; and (2) increased efficiency from our "lay" volunteers as they climb the learning curve. Five of the ten have been with us since inception in 2000. An offset to that has been an ever-expanding utilization of the office in assisting Guardians and other interested parties in dealing with a number of different concerns about a particular guardianship. While GMP has no financial threshold for eligibility for such assistance, we attempt to confine it to low income/asset cases, although we get occasionally 'dragged' into six and even seven figure estates. While GMP's ultimate client is the IP important secondary beneficiaries are the many guardians giving care without compensation for an IP, usually but not always a family member, over many years. We try to alleviate at least their red tape burden as best we can, particularly for the many of modest means.

For those interested in GMP's reports for the previous nine years, copies may be obtained from the GMP office. Those reports go into more detail on the functioning of the GMP as it has developed over the years. Other information on Guardianships in Snohomish County or GMP's program is available by calling the office on Tuesday or Thursday 9:00am – 12:00am

In addition to cases referred to it, GMP fields many phone calls, drop-ins and e-mail requests for information or assistance from guardians, attorneys, public agencies, and the general public concerning various issues in the field of guardianships or concerning a specific guardianship. Some do result in a later case referral. GMP volunteers are not authorized to give legal advice but can explain the procedures the court utilizes. There is often a "fine line" in this area.

### **CASES REFERRED**

According to figures furnished by the Snohomish County Clerk's Office, as of January 1, 2010, there were 1182 guardianships being monitored by the Court, i.e., "open" cases. Of that number, 200 to 300 were established more than 15 years ago. There were 137 new guardianships established in 2009, 18 of which were filed "pro-se".

During its tenth year, GMP had a total of 269 referrals, all in Guardianship cases except for some civil cases involving the proceeds of settlements/judgments for I.P.s ordered to be in blocked accounts, annuities and/or trusts also monitored by the Court. The number of particular cases involved is somewhat less, estimated to be about 7.5% because of multiple referrals of the same case although for different reasons.

The following chart shows the referral figures for the reporting periods (May 1 to April 30) for the ten years of GMP operations.

**REFERRALS TO GMP BY YEAR (5/1 TO 4/30)**

| <b>Reason for Referral</b> | <b>YEAR<br/>5/01/09<br/>to 4/30/10</b> | <b>TOTAL<br/>FOR ALL<br/>TEN YEARS</b> |
|----------------------------|--|--|
| Delinquencies              | 163                                    | 2287*                                  |
| Non-Delinquent Reviews     | 84                                     | 487                                    |
| Financial Review           | 0                                      | 438                                    |
| Miscellaneous              | 22                                     | 376                                    |
| Home Visits                | 0                                      | 57                                     |
| <b>TOTAL REFERRALS</b>     | <b>269</b>                             | <b>3645</b>                            |

\* Delinquency referrals include a few cases in which the reports, etc., have been filed but are referred by the Clerk to GMP because no appropriate Court order has been entered.

The total figure for case referrals for the ten years, 5/1/00 through 4/30/10 is 3645. That figure does not include the many calls and walk-ins that GMP receives and fields from persons/agencies requesting information and/or advice on guardianships in general. Frequent subjects of these calls relate to: (1) how to commence a guardianship (GMP in 2002 published a set of forms on the subject, with instructions, which is available at the Clerk’s office for \$7.00); (2) obtaining forms developed and distributed by GMP for use in Snohomish County guardianship cases, 17 of which are now available at:

[http://www1.co.snohomish.wa.us/departments/superior\\_court/services/forms.htm](http://www1.co.snohomish.wa.us/departments/superior_court/services/forms.htm)

and (3) a great miscellany of other matters pertaining to guardianships not calling for any specific involvement of GMP. It also published a Guardians Manual in 2002 (updated in 2007) which has been printed and distributed to guardians since then.

**CASE DISPOSITIONS**

Of the 2287 cases (many being repeats over the years) referred to GMP for delinquencies since its inception on May 1, 2000, 108 or 4.4% remain without disposition. These include cases recently assigned plus older cases in which locating or maintaining contact with the Guardian and/or obtaining compliance has been a problem.



However, of the cases within the 95.6% “disposed of” by GMP, many are ones in which at the request of GMP an Order to Appear on the Delinquency Calendar, an Order Appointing GAL or similar order has been issued by the Court, which is a “disposition.” Based on prior history, it is estimated that these cases constitute about 5% of the total “disposed of.” The GMP does continue to work with the court and GALs on these cases, even after referral by it for such an order and these cases continue as part of our caseload. In some cases where the guardians and wards have been unable to be contacted over a period of months and/or clearly left the state, GMP has obtained an order terminating the guardianship, subject to reopening.

The disposition of cases referred to during GMP’s tenth year, on an estimated percentage basis, is as follows:

- (1) Orders on Review (**64%**). These Orders acknowledge receipt of an Accounting and/or Personal Status report by a guardian or trustee, provide for the term and due date for the next report(s) and order the re-issuance of letters of guardianship to expire 30 days after the next due date. The Orders expressly state that as they are entered “ex parte” without notice they do not constitute “approval” of the report(s). If actual approval is sought in most cases the guardian is advised to note the matter for a hearing. The reasons are that while GMP reviews the reports along with the file and requires the most obvious deficiencies to be corrected before submission to the court, nevertheless many of the reports are unsubstantiated, poorly drafted and often copies are not provided to parties entitled to notice. Almost all are submitted by guardians “pro-se”. For those reasons GMP’s policy is to request the court not to foreclose later challenges to the reports involved or other action taken, although after nine years that has never occurred to GMP’s knowledge.
- (2) Orders Terminating Guardianships by reason of death and obtaining or waiving final account; age of majority of minors with a Declaration of Completion/Receipt; or other reasons, such as the inability after substantial effort to locate either the guardian or ward, **13%**.
- (3) Miscellaneous orders, e.g. change of venue, substitution of guardian, appointment of GAL, show cause; and dispositions other than represented by orders, e.g. obtaining proof of blocked accounts, home visits, and providing assistance on guardianship matters to guardians, attorneys, the Court, and the public, **23%**.

### **SUMMARIZATION**

The end results of the GMP program have been summarized in the Annual Reports for the first nine years, available on request to its office, and will not be repeated here.

RCB/pp

Spokane County Guardianship Monitoring Program

Our Spokane County Guardianship Monitoring Program is thru our Superior Court. We have two Court Commissioners (Steven Grovdahl & Joseph Valente) who handle the guardianship files (including complaints and dockets.) Judge Kathleen O'Connor oversees the Program.

We have a total of 2 1/2 FTE (includes my position as Director of the program.) As well as a crew of 25 volunteers. Our volunteers are broke down into 3 groups, Records Researchers (4), Financial Auditors (13), and Court Visitors (8). All of our volunteers fill out reports that staff review and enter into our computer system. This includes our Financial Auditors reviewing guardian's report and accountings. Staff reviews annual care plans and then passes them on to Commissioners for review and approval. Thru our computer system and SCOMIS we print out Non Compliance Notices and Show Cause Orders. The Show Cause Docket actually requires the guardian to appear in Court and explain why this year's reports were not submitted in a timely manner.

GMP also offers a mandatory (per our local rule) "Family/Non Professional" Guardian Training once a month. Commissioners Grovdahl & Valente and I work afterhours to offer this service to potential guardians. There is a charge of \$15 for the manual including DVD (the actual cost is \$15.67). We then provide a verification of guardian training that is filed in the Court file.

Last year's figures for our cost of the program is as follows:

|                            |                     |
|----------------------------|---------------------|
| <b>Payroll - 2 1/2 FTE</b> | <b>\$129,517.00</b> |
| <b>Office Supplies</b>     | <b>\$ 275.00</b>    |
| <b>Printing/Letterhead</b> | <b>\$ 386.85</b>    |
| <b>Postage</b>             | <b>\$ 944.96</b>    |
| <b>Parking</b>             | <b>\$ 198.02</b>    |
| <b>Manuals</b>             | <b>\$ 3,746.40</b>  |
| <b>Volunteer Awards</b>    | <b>\$ 120.00</b>    |
| <b>Luncheons</b>           | <b>\$ 197.00</b>    |
| <b>Long Distance</b>       | <b>\$ 626.11</b>    |
|                            | <b>\$136,011.34</b> |

If you have questions, feel free to contact me.

Thank you,

**Ana Kemmerer, Coordinator  
Guardianship Monitoring Program  
1116 W Broadway Ave, Room 101  
Spokane WA 99260 0350  
(509) 477-2622**

We have a program we are implementing almost identical to Spokane County. Our biggest hurdle is running the program without staff. We have added duties on to a couple of staff members and relied heavily upon a volunteer, who had to resign.

We also received a grant from a local organization to help fund development of a volunteer self-training manual and possibly DVD. We have been very selective in our volunteer recruitment for this program to enable us to have professionals with experience in the area of home visits, financial review, and file review.

We currently are continuing to review all active cases to determine what our actual active caseload is. We have determined that we have many cases where the AIP has relocated or is deceased. In those cases we are able to usually do a change of venue or close the case - as appropriate. The end result will be a true active caseload. We have implemented the Spokane Co. forms through a Court/BAR Committee workgroup and have those available on our website. Due to the lack of staffing and the current budget woes we all are experiencing, it is doubtful we will be able to staff this program in the next year or two so we are concerned about the future of the program in that regard.

Pat Austin

Patricia Austin  
Superior Court Administrator  
Benton & Franklin Counties  
7122 W. Okanogan Place, Building A,  
Kennewick, WA 99336

**CONFIDENTIALITY STATEMENT**

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(509)736-3071 Ext. 25

[pat.austin@co.benton.wa.us](mailto:pat.austin@co.benton.wa.us)

## Jefferson County Guardianship Monitoring Program

I, Michelle Moore, am the guardianship monitoring program. I enter all guardianships and reporting dates into Microsoft office tasks to monitor the filing of all pertinent reports. I send out a first letter once a deadline has come and gone and tickle out 30 days. If I have had no response and/or the reports haven't yet been filed I send out a second letter indicating the matter will be set for review if I don't hear from them by a date certain. If the date certain passes with no response I send out a scheduling letter indicating if they fail to appear a citation may issue. If they fail to appear I request and the court issues a citation. If they fail to respond to the citation I request and the court issues a bench warrant. All costs associated with the guardianship tracking are absorbed within the Superior Court budget with no line item of its own. I personally review all guardianship reports filed.

I have received authorization from my judge to utilize my clerk hire to tackle a long overdue guardianship project. My clerk hire works for me 2 days a week, 6.5 hours a day and is reviewing all guardianships filed in the Jefferson County Superior Court from 1980 to present in an attempt to bring all of those older guardianships current or dismiss if appropriate.

*MM*

Michelle Moore  
Court Administrator  
Superior Court  
P.O. Box 1220  
Port Townsend, WA 98368  
(360) 385-9360  
[mmoore@co.jefferson.wa.us](mailto:mmoore@co.jefferson.wa.us)

## **King County Guardianship Monitoring**

Guardianship Monitoring in King County is a joint effort between the Clerk's Office, the Family Law Facilitators, Volunteer Attorneys from the KCBA Elder Law Section (approx 20) and volunteers through AARP (4).

The Clerk's Office uses a tickle system in SCOMIS to track the filing of:

- Bonds
- Receipts for funds into blocked accounts
- Notice of Loss of Voting Rights
- Inventory
- Personal Care Plan
- Standby Guardian
- Guardian's Reports and Accounting
- Order Appointing Guardian (if no Order is obtained one year after filing, an audit review will be set on the review calendar)

Each of the above items, except for the guardian's reports and accountings, are set for an initial administrative review on a review calendar. The Facilitators and Volunteer Attorneys from the KCBA Elder Law Section draft review orders for the Ex-Parte Commissioners to enter documenting the compliance/non-compliance of the guardian in filing these documents in a timely manner. These documents are not reviewed for completeness unless the parties appear in person in the Facilitator's Office or if the court has requested court hearing.

Guardian's Reports and Accountings are also monitored by due date in the Clerk's Office. If the report becomes delinquent an Order to Appear on the Guardianship Delinquency calendar is issued, setting a court date for the guardian to appear. Once the case is on the delinquency calendar, the Facilitators and/or Volunteer Attorneys from the KCBA Elder Law Section monitor the guardian's compliance with submitting the report and obtaining an Order Approving the Report by drafting review orders and Orders to Show Cause to be signed by the Ex-Parte Commissioners. Reports are not reviewed for completeness prior to judicial review unless the parties appear in person in the Facilitator's Office or at the court hearing set by the delinquency notice.

In the meantime, volunteers through AARP are provided a list of cases with upcoming reporting deadlines. They contact the guardian's by telephone to remind them (both cases with pro se guardians and those represented by attorneys). Currently the court is exploring the development and implementation of an automated e-mail system which would alert guardians to upcoming reporting deadlines. It should also be noted that guardians are provided a case schedule with reporting deadlines each time their letters are renewed.

At this time there is no financial auditing of reports.

## **SKAGIT COUNTY**

In Skagit County we started a series of meetings about two years ago with a local attorney who practices elder law, a superior court judge, superior court administrator, clerks, a professional guardian and a case manager from DSHS who works with elder abuse.

We have 3 volunteers who have spent numerous hours, and continue to do so, auditing all our guardianship files. These volunteers are a professional guardian, a retired attorney and a DSHS case manager. These files are being audited for very past due reports, status (especially minor guardianships with no final closing documents ever filed), etc. Numerous letters were sent out. We found that more cases than not needed follow up, and this audit is absolutely necessary to start a monitoring program.

One of the deputy clerks who works with the probate/guardianship cases developed a guardianship manual that is handed out to every new guardian. She is the person who meets with new pro se guardians. She also handles all phone calls pertaining to guardianships.

We tickle cases for past due 90 day reports, annual reports and letters or notices that we have not received responses on. We do this by running a calendar twice a month in SCOMIS. Every report that is due in a year we calendar for six weeks before the due date, and then we send a reminder letter to the guardian or attorney. We set the 90 day reports for one month after the due date to make sure they have been filed, and if not, we send a letter.

We have had a few show cause hearings. Most of the cases were stricken prior to the hearing because they became in compliance and two brought reports to the hearing.

We do not do home visits. Financial backing for reports is required but really not enforced.

We would like to start a volunteer group but we have no funds to pay a person to coordinate the group, or someone who will do it for free.

Appendix I:

- Declaration of Proposed Guardian



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SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR PIERCE COUNTY

IN THE GUARDIANSHIP OF:

NO.

DECLARATION OF PROPOSED GUARDIAN

An Alleged Incapacitated Person.

**1. Personal Information.**

Name of Proposed Guardian: \_\_\_\_\_

Mailing Address of Proposed Guardian: \_\_\_\_\_

Street Address (if different): \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Email Address: \_\_\_\_\_

If the proposed Guardian does not reside in Washington, provide the name, address, phone and email for the proposed Guardian's resident agent: \_\_\_\_\_.

**2. Non-Professional Status.** I am not charging fees for carrying out the duties of court-appointed guardian of three or more incapacitated persons. I acknowledge that before I may receive fees for serving as a Guardian for three or more persons, I am required to be certified in the State of Washington. See RCW § 11.88.008.

1           **3. Business Form.** If appointed, I will serve as a Guardian as an individual  
2 and not as an entity or representative of a business entity, such as a trust company of  
3 non-profit corporation.

4           **4. Background and Experience Helpful to Service as Guardian.** I have the  
5 following background, education training and experience, which may be helpful in my  
6 service as Guardian: \_\_\_\_\_  
7 \_\_\_\_\_  
8 \_\_\_\_\_  
9 \_\_\_\_\_  
10 \_\_\_\_\_

11           **5. Licenses held:** \_\_\_\_\_  
12 \_\_\_\_\_

13           **6. Relationship of Alleged Incapacitated Person.** (Such as family member,  
14 friend, etc.): \_\_\_\_\_  
15 \_\_\_\_\_  
16 \_\_\_\_\_

17           **7. Prior History as Fiduciary or Guardian.**

18           a. I have served in a fiduciary capacity (such as an attorney-in-fact  
19 pursuant to power of attorney, a trustee, an executor, an administrator, or a Guardian).

20           [ ] Yes [ ] No

21           b. I have been removed as a fiduciary.

22           [ ] Yes [ ] No

23           If the answer above is "Yes," describe the circumstances leading to your  
24 removal as a Guardian or as a fiduciary. \_\_\_\_\_  
25 \_\_\_\_\_  
26 \_\_\_\_\_

1           **8. Criminal History.** RCW 11/88.020(3) expressly provides that no person is  
2 qualified to serve as a Guardian if he or she has been “convicted of a felony or of a  
3 misdemeanor involving moral turpitude,” (*a crime involving dishonesty, misappropriation*  
4 *of funds, breach of fiduciary duty, or mistreatment of any person*).

5 I have been convicted of such a crime [ ] Yes [ ] No.

6           **9. Civil Proceedings.** Describe any civil or administrative proceeding in which  
7 there was a finding that you had engaged in dishonesty, misappropriation of funds,  
8 breach of fiduciary duty, or mistreatment of any person. Also identify any proceeding(s)  
9 where there was a settlement, even if such settlement was without specific findings by  
10 the Court. \_\_\_\_\_  
11 \_\_\_\_\_  
12 \_\_\_\_\_

13           **10. Disciplinary Proceedings.** Describe any disciplinary proceeding against you  
14 by any applicable disciplinary body or licensing agency that resulted in a finding of  
15 misconduct. This would include any proceedings by a professional organization such as a  
16 state bar association, a medical disciplinary review board and the like: \_\_\_\_\_  
17 \_\_\_\_\_  
18 \_\_\_\_\_  
19 \_\_\_\_\_  
20 \_\_\_\_\_

21           **11. Ability to Secure Bond.** In some cases, it is necessary for the Guardian to  
22 secure a bond, which is insurance coverage providing protection to the Incapacitated  
23 Person in the even of financial loss or personal harm caused by the negligent or  
24 intentional conduct of the proposed Guardian. Is there any reason (such as bankruptcy or  
25 poor credit record) why you would have difficulty obtaining a Guardian’s bond. If yes,  
26

1 please explain: \_\_\_\_\_

2 \_\_\_\_\_

3 **12. Compensation and Reimbursement.** State whether you intend to request  
4 hourly compensation for your services and describe the expenses (e.g. mileage,  
5 postage/copy charges, etc.) for which you expect to be reimbursed. \_\_\_\_\_

6 \_\_\_\_\_

7 \_\_\_\_\_

8 \_\_\_\_\_

9 **13. Summary of Guardian Duties:** The below signed proposed Guardian  
10 understands and agrees that:

11 My duties as Guardian are more fully described in:

- 12 a. The Court Order that appoints me;
- 13 b. The statutes of the State of Washington - (for example see the  
14 Revised Code of Washington (RCW) at Chapters 11.88 & 11.92 and  
15 specifically 11.92.042 and 11.92.043 RCW.);
- 16 c. The case law.

17

18 I should consult with my attorney if I have any questions. I am presumed to  
19 understand my duties and responsibilities. I can be held personally responsible if I do not  
20 properly carry out my duties as Guardian.

21 As Guardian, I act in a fiduciary capacity in my dealings on behalf of the  
22 Incapacitated Person. This means that as the Guardian, I am required to put the  
23 interests of the Incapacitated Person ahead of my personal interests in all transactions,  
24 as well as any transaction in which my interests and the interests of the Incapacitated  
25 Person may be in conflict.

26

1           Additionally, if I have been appointed Guardian of the Estate, I am charged with  
2 the responsibility of acting as a reasonably prudent person in dealing with the investment  
3 and conservation of the assets of the Incapacitated Person and to avoid self dealing.

4           For health care decisions, "Before any person authorized to provide informed  
5 consent on behalf of a patient not competent to consent exercised that authority, the  
6 person must first determine in good fait that that patient, if competent, would consent to  
7 the proposed health care. If such a determination cannot be made, the decision to  
8 consent to the proposed health care may be made only after determining that the  
9 proposed health care is in the patient's best interests." RCW § 7.70.065(3)

10           If my personal beliefs could be in conflict with the interests of the Alleged  
11 Incapacitated Person, I must first do what I believe the Incapacitated Person would do if  
12 competent. If that cannot be determined, either because of lack of knowledge or  
13 because the Incapacitated Person has always been disabled, I may act in the manner  
14 that I believe is in the best interest of the Alleged Incapacitated Person. I understand that  
15 at any time I can seek direction from the Court if there is any question of what is in the  
16 best interest of the Alleged Incapacitated Person.

17           Any attorney that I retain to assist me in this guardianship proceeding will have  
18 independent responsibilities and obligations to the Court. The attorney-client privilege  
19 may not extend to information given by me, the Guardian, to my attorney, for any failure  
20 to follow laws of a court-appointed Guardian.

21           **If I am appointed the Guardian of the Person or Guardian of the Estate I must:**

- 22           • File a Designation of Standby Guardian with the Court;
- 23           • Keep the Court informed of any change in my name, address, or bonding  
24 status;

- 1
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- File a Change of Circumstance Report within thirty (30) days of any change of location, major or permanent changes in health or finances, or of the death of the Incapacitated Person; and
  - File a Final Accounting within ninety (90) days after the termination of a guardianship. 11.92.053 RCW, see also 11.88.140 RCW

7 **If I am appointed the Guardian of the Estate I must also:**

- 8
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- Keep the Incapacitated Person's funds separate from my own, in a separate guardianship bank account;
  - Make all payments in a timely manner and with a method so there is a record of all transactions that can be verified by the Court at the time of each annual accounting (e.g. checking account);
  - File, within ninety (90) days of my appointment, an Inventory of the assets in the guardianship estate, and a budget authorizing disbursements; and
  - File, within ninety (90) days of the anniversary date of my appointment (as shown on the Letters of Guardianship), an Accounting showing the receipts and disbursements made on behalf of the Incapacitated Person during the previous accounting period.

20 **If I am appointed the Guardian of the Person I must also:**

- 21
- 22
- 23
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- 26
- File, within ninety (90) days of my appointment, a Personal Care Plan describing the care needs of the Incapacitated Person with the court; and
  - File, within ninety (90) days of the anniversary date of my appointment, a Status Report describing the care and condition of the Incapacitated Person during the previous accounting period.

1                   **If I am appointed the Guardian of the Person or Guardian of the Estate I**  
2                   **cannot:**

- 3                   • Spend, sell, borrow, loan, invest or give away ANY of the Incapacitated  
4                   Person's property (including money), without a court order;
- 5                   • Spend, loan, invest, or give away any of the Incapacitated Person's  
6                   principal or income for any purpose without a court order;
- 7                   • Borrow money on behalf of the Incapacitated Person, without a court  
8                   order;
- 9                   • Use the Incapacitated Person's money for myself or my needs, without  
10                  a court order;
- 11                  • Pay myself a fee from the Incapacitated Person's money, without the  
12                  filing of a verified petition for payment of fees with an affidavit detailing  
13                  the time spent, services provided, and compensation requested  
14                  attached thereto, and a corresponding court order approving said  
15                  petition; or
- 16                  • Force the Incapacitated Person to live ANYWHERE, including a mental  
17                  institution or nursing home facility.

18                  **14. Training.**       I have reviewed the Guardian Handbook posted at  
19                  [http://www.kcba.org/CLE/family\\_volunteer\\_guardian\\_handbook.pdf](http://www.kcba.org/CLE/family_volunteer_guardian_handbook.pdf).

20                  I have also reviewed the video posted at  
21                  [http://www.courts.wa.gov/programs\\_orgs/Guardian/?fa=guardian.display&fileName=gu](http://www.courts.wa.gov/programs_orgs/Guardian/?fa=guardian.display&fileName=guardianInstructionVideo)  
22                  ardianInstructionVideo.

23                  I certify (or declare) under penalty of perjury under the laws of the State of  
24                  Washington that the foregoing is true and correct.

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Washington that to the best of my knowledge the statements above are true and correct.

Signed at \_\_\_\_\_, Washington on this \_\_\_ day of \_\_\_\_\_,  
2010.

\_\_\_\_\_  
\_\_\_\_\_, Proposed Guardian



Appendix J:

- Guardian Complaint Protocol
- Guardian Complaint Form

## 11.88 GUARDIAN COMPLAINT PROTOCOL

1. Purpose: The protocol that follows is intended to provide a standardized complaint resolution procedure for complaints against guardians appointed pursuant to RCW 11.88 in Spokane County Superior Court. This protocol applies to **all** guardians, professional or otherwise, except where otherwise stated. All written complaints and subsequent correspondence shall be placed in the public portion of the legal file subject to General Rule 22 requirements.
  
2. Receiving Complaints: The court will not accept or act upon a telephonic complaint, other than to provide the address to which to deliver or mail a written complaint against a guardian. When the court receives a written complaint against a guardian, it shall forthwith be routed to the Guardianship Monitoring Program Coordinator, who will assign it to the appropriate Superior Court Commissioner.
  
3. Processing Procedures:
  - A. The assigned commissioner shall, within ten (10) working days of his/her receipt of the complaint, send a letter of receipt to the complainant.
  
  - B. The assigned commissioner shall review the guardianship file in its entirety in light of the complaint and within fifteen (15) working days of receipt of the complaint:
    - (1) Send a letter to the complainant dismissing the complaint as unsubstantial/inconclusive/insufficient basis; or
  
    - (2) Send a copy of the complaint to the guardian and/or the attorney for the guardian to review and direct a response within 15 working days from the date of the commissioner's letter.
  
  - C. Upon a receipt of the guardian's response, the assigned commissioner shall review the response and forward a copy of the response to the complainant within 10 working days:
    - (1) Resolve and/or dismiss the complaint by letter to all interested persons, or
  
    - (2) Set a show cause hearing, or

(3) Appoint an 11.88 Registry Guardian Ad Litem to investigate issues identified, in writing, by the assigned Commissioner. Notice of the appointment of a Guardian Ad Litem shall be mailed to the complainant, guardian, guardian's attorney and any other interest persons of record. The report of the Guardian Ad Litem is due within 14 days of the appointment unless the time is extended by the assigned Commissioner for good cause.

D. In cases involving a CPG, the Court shall notify the CPG Board that there is a complaint pending and the final disposition of the complaint.

4. Hearing to Review GAL Report: The assigned commissioner shall conduct a hearing to review the GAL's report and recommendations, and as a result of the hearing will enter written Findings of Fact and an Order:

- A. Dismissing the complaint; or
- B. Directing remedial or other relief actions to be taken by the guardian; and
- C. Directing additional review dates for hearings as appropriate; and/or
- D. Determining allocation or payment of GAL fees; and
- E. Sanctions, as appropriate, which may include reimbursement to the incapacitated person, suspension from taking new cases (Professional Guardians only), removal from the case, referral for prosecution, and other appropriate sanctions.

F. If the guardian is a Certified Professional Guardian (CPG)

The commissioner may refer the case to the CPG Board for further action regarding GR 23 Standards of Practice (ethical) violations. Such referral is mandatory in the event that the CPG is removed from a case for cause. The assigned commissioner may refer the case to the CPG Board at any stage of the complaint process. However, the CPG Board will not act on a complaint regarding a CPG involving active guardianship cases until the local Superior Court has investigated the case. While the Board will act on **any** judicial referral, it generally will not act on a complaint pending action by the local Superior Court until receipt of Findings of Fact, Conclusions of Law and Order.

G. Final Resolution: The complaint is closed only upon entry of Findings of Fact and an Order directing same and the discharge and compensation of the GAL. All pleadings and orders regarding the complaint will be filed in the appropriate guardianship court file. In cases involving a CPG, the Court shall forward the final pleadings to the CPG Board.

# A Complaint Against a Guardian

## How to Make a Complaint in Superior Court

Under Washington State law, the superior court of each county appoints and supervises all guardians. See [RCW 11.88](#) and [RCW 11.92](#).

A person who has concerns about the behavior of a guardian in a particular guardianship should present those concerns to the superior court.

By far the best way to advocate for a person who is the subject of a guardianship is to hire a lawyer to help you take the appropriate action in court. It is strongly suggested that you discuss your concerns with your attorney.

If you do not have a lawyer, you can write the superior court about your concerns with a complaint. Washington law provides the procedure by which this can be done. See ([RCW 11.88.120](#) -- Modification or Termination of Guardianship)

### Superior Court Complaint Process

Write a letter specifying concerns about the conduct of a guardian to the Presiding Judge of the County Superior Court. Upon receipt of such a letter, the statute provides that court must either schedule a “show cause” hearing, appoint a guardian ad litem, or dismiss the complaint as being frivolous on its face. The Grievance Form on this site may be used as a guideline for writing such a letter. [Click here for an address list for County Superior Courts](#).

## COMPLAINT FORM

### 1. INCAPACITATED PERSON

Name \_\_\_\_\_

County in which guardianship is filed \_\_\_\_\_

Guardianship Cause Number (upper right corner of pleading) \_\_\_\_\_

### 2. PERSON COMPLAINING

Name \_\_\_\_\_

Address \_\_\_\_\_

Phone (\_\_\_\_) \_\_\_\_\_ E-mail \_\_\_\_\_

Relationship to Incapacitated Person \_\_\_\_\_

**3. GUARDIAN**

Name of Guardian \_\_\_\_\_

Address \_\_\_\_\_

Phone (\_\_\_\_) \_\_\_\_\_ E-mail \_\_\_\_\_

Date appointed by court \_\_\_\_\_

**4. Complaint Against Guardian**

4.1 Describe the complaint. Write down what the guardian did or did not do; what they said or any other actions of the guardian that you are complaining about. Please be as specific as possible and include dates and places if you can. Use additional paper as needed.

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4.2 Is the guardianship in effect now?  Yes  No

4.3 Has the guardianship court considered the matters you are complaining about?  Yes  No

4.4 Have you discussed your concerns with the guardian involved in this matter? Please describe the discussion.

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4.5 Have you made complaint about the guardian elsewhere? If so, please describe.

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**5. PARTIES**

5.1 Please list other people such as family members, friends, facility staff or other professionals involved in this matter, and their relationship to the protected person.

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5.2 Please list all attorneys involved in this matter and who they represent, including any attorney who has represented you or the Incapacitated Person.

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5.3 Please identify anyone who has helped you fill out this form.

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**INCLUDE COPIES OF ANY COURT DOCUMENTS  
THAT ARE SIGNED BY A JUDGE OR COURT COMMISSIONER THAT YOU HAVE**

CONSENT AND AFFIRMATION

I affirm under penalty of perjury that the information provided here is true and accurate to the best of my knowledge. I understand that the filing of the form and any attachments constitutes my consent to the disclosure of the content of my grievance to the Certified Professional Guardian, the Certified Professional Guardian Board, the superior court, and others. I consent to this document and attachments being treated as a public record.

Date \_\_\_\_\_ City \_\_\_\_\_

Signature \_\_\_\_\_

Print Name \_\_\_\_\_

## State Statutory Provisions on Residency of Guardians (February 2015)

| State     | Code Citation                        | Limitations  |
|-----------|--------------------------------------|--|
| Arkansas  | Ark. Code. Ann. § 28-65-203 (f)(1)   | A nonresident natural person possessing the qualifications enumerated in this section, except as to residence, who has appointed a resident agent to accept service of process in any action or suit with respect to the guardianship and has caused the appointment to be filed with the court, whether or not he or she has been nominated by the will of the last surviving parent of a minor resident of this state to be appointed as guardian of the minor, is qualified for the appointment                 |
| Colorado  | Colo. Rev. Stat. Ann. § 15-14-102(5) | “Guardian” means an individual at least twenty-one years of age, resident or non-resident, who has qualified as a guardian of a minor or incapacitated person pursuant to appointment by a parent or by the court. The term includes a limited, emergency, and temporary substitute guardian but not a guardian ad litem   |
| Florida   | Fla. Stat. Ann. § 744.309            | <p>Nonresident.--A nonresident of the state may serve as guardian of a resident ward if he or she is:</p> <ul style="list-style-type: none"> <li>(a) Related by lineal consanguinity to the ward;</li> <li>(b) A legally adopted child or adoptive parent of the ward;</li> <li>(c) A spouse, brother, sister, uncle, aunt, niece, or nephew of the ward, or someone related by lineal consanguinity to any such person; or</li> <li>(d) The spouse of a person otherwise qualified under this section.</li> </ul> |
| Louisiana | La. Rev. Stat. Ann. § 13.3431(4)     | <p>Louisiana’s provision only applies where there is an <u>absent</u> person:</p> <p>In proceedings for appointment of a curator for an absent person, no person may be appointed who is a nonresident of the state who has not appointed a resident agent for the services of process in all actions and proceedings with respect to the curatorship, and caused such appointment to be filed in the curatorship proceedings.</p>   |

| State          | Code Citation                       | Limitations  |
|----------------|-------------------------------------|--|
| Nevada         | NRS § 159.059                       | <p>Except as otherwise provided in NRS 159.0595, any qualified person or entity that the court finds suitable may serve as a guardian. A person is not qualified to serve as a guardian who:</p> <p>5. Is a nonresident of this State and:</p> <p>(a) Has not associated as a coguardian, a resident of this State or a banking corporation whose principal place of business is in this State; and</p> <p>(b) Is not a petitioner in the guardianship proceeding.</p>   |
| North Carolina | N.C. Gen. Stat. Ann. § 35A-1213 (b) | <p>A nonresident of the State of North Carolina, to be appointed as general guardian, guardian of the person, or guardian of the estate of a North Carolina resident, must indicate in writing his willingness to submit to the jurisdiction of the North Carolina courts in matters relating to the guardianship and must appoint a resident agent to accept service of process for the guardian in all actions or proceedings with respect to the guardianship. Such appointment must be approved by and filed with the clerk, and any agent so appointed must notify the clerk of any change in the agent's address or legal residence. The clerk shall require a nonresident guardian of the estate or a nonresident general guardian to post a bond or other security for the faithful performance of the guardian's duties. The clerk may require a nonresident guardian of the person to post a bond or other security for the faithful performance of the guardian's duties.</p> |
| Oklahoma       | Okla. Stat. Ann. tit. 30, § 4-104   | <p>No person who has not been a resident, in good faith, of the State of Oklahoma for one (1) year past shall be appointed guardian of the property or person of a minor or an incapacitated or partially incapacitated person by the state courts of the State of Oklahoma, and no foreign trust company or institution shall be appointed guardian of the property or person of any minor or an incapacitated or partially incapacitated person by the state courts of the State of Oklahoma. Provided that this shall not prevent one from being appointed guardian of his own spouse, child, children, grandchild, grandchildren, parent, grandparent, brother, sister, aunt, uncle, niece or nephew even though he be a nonresident</p>   |



| State        | Code Citation                       | Limitations   |
|--------------|-------------------------------------|---|
| Rhode Island | R.I. Gen. Laws Ann. § 33-15-6       | (d) The court may appoint an out of state resident as limited guardian or guardian if the court finds that the individual meets the requirements of this section.   |
| South Dakota | S.D. Codified Laws § 29A-5-113      | A guardian or conservator who is or who later becomes a nonresident of this state shall file with the clerk of courts in the county in which the proceeding is pending a designation of an agent residing in this state to accept service of process. Such filing shall be made promptly following the appointment or removal from this state.  |
| Texas        | Tex. Estates Code Ann. § 1104.357   | However, a nonresident person who has not filed with the court the name of a resident agent to accept service of process in all actions or proceedings relating to the guardianship.  |
| Vermont      | Vt. Stat. Ann. Tit. 14, § 2711      | When on the petition of a nonresident person, or other person interested in the welfare of that person, it appears that the person owns or has an interest in real or personal estate situated in this state, and that the person, if a resident, would be liable to be put under guardianship under any of the provisions of this chapter, the probate division of the superior court may appoint a guardian as to the property of that person within this state. As to such property the guardian shall have the same powers, rights and duties as a guardian appointed for a person residing within the state. |
| Washington   | Wash. Rev. Code Ann. § 11.42.010(5) | But, nonresident of this state must appoint a resident agent to accept service of process in all actions or proceedings with respect to the estate and cause such appointment to be filed with the court.   |

## Guardian Felony Disqualification and Background Requirements

As of 4/26/13

| State      | Who Not Eligible  | Criminal Background  | Credit Background  | Notes  |
|------------|---|--|--|--|
| Alaska     |   | <p>§§ 08.26.020 &amp; 08.26.030<br/>                     Department shall issue an individual private professional guardian/conservator license if ... certified by nationally recognized organization in the field of guardianships; <b>criminal history record checks show has not been convicted of a crime within 10 years</b> of the application that would affect ability to provide the services competently and safely for the ward</p> <p>§ 08.26.070(a)<br/>                     Department request Dept. Public Safety to submit the fingerprints to the Federal Bureau of Investigation for a <b>national criminal history</b> record information check; perform a state criminal history record information check</p> | <p>§§ 08.26.020 (4) &amp; 08.26.030 (4)<br/>                     Proof able to be bonded</p> |  |
| Arkansas   | <p>§ 28-65-203(a)<br/> <b>Convicted or unpardoned felon</b></p>                             | <p>Social Services may request prospective guardian to undergo FBI, State police, and LTC resident maltreatment registry—2011 HB 1279</p>  |  |  |
| Arizona    | <p>§ 7-202 (c)<br/> <b>Convicted of felony</b></p>  | <p>§ 7-202(b)<br/>                     As condition of appointment, fiduciary must submit to full set of fingerprints to obtain <b>state and federal criminal records check</b></p>  |  | <p>Family and lay guardians provide affidavit disclosure of previous convictions of bankruptcies</p> |
| California | <p>Busi. &amp; Prof. § 6536<br/> <b>Convicted of crime</b> substantially related to the</p> | <p>Busi. &amp; Prof. § 6533.5<br/>                     To obtain a license as professional fiduciary shall submit <b>fingerprints</b> to</p>   |  | <p>Judicial discretion re criminal history and nature of crime, nation of petition,</p>              |

| State    | Who Not Eligible  | Criminal Background   | Credit Background  | Notes  |
|----------|---|---|--|--|
|          | qualifications, function or duties of professional fiduciary  | obtain criminal offender record of state and federal arrests and convictions. DOJ prepares report of fitness.   |  | case dynamics, whether can be bonded, ties with conservatee, alternatives to conservator |
| Colorado | § 15-14-310(4)<br>owner/operator where receiving long term care   | <p>§ 15-14-110(1)<br/>Statement with acceptance of office whether been convicted of, pled nolo contendere to, or received deferred sentence for a <b>felony or misdemeanor</b>; whether temporary or permanent civil protection or restraining order in any state; whether civil judgment entered; relieved of any court-appointed responsibilities</p> <p>§ 15-14-110(2)<br/>Attach <b>name-based criminal history record check</b> through CO Bureau of Investigation</p> <p>§ 15-14-110(4)<br/>Does not apply to public administrator; bank, trust company or other financial institution; state or county agency; parent residing with his or her child; and any other person or entity for whom the court, for good cause shown, determines requirements not apply</p> | § 15-14-110(2)<br>Attach credit report   |  |
| Florida  | § 744.306(3)<br><b>Convicted of a felony</b> ; is incapable of discharging the duties due to incapacity or illness, or otherwise unsuitable; has been judicially determined to have committed abuse, abandonment, or neglect against a child; or been | § 744.3135(1)<br>May require of non-professional guardians and must require of professional or public guardians and employees with fiduciary responsibility a <b>level 2 background screening</b> . Court must consider results before appointing or reappointing as guardian.  | § 744.3135(1)<br>May require of non-professional guardians and must require of professional or public guardians and employees with fiduciary responsibility to |  |

| State    | Who Not Eligible   | Criminal Background   | Credit Background  | Notes  |
|----------|--|---|--|--|
|          | found guilty of, or entered nolo contendere plea to 50 specific offenses; provides substantial services to the proposed ward; a creditor of the proposed ward; employee of any person, agency, government, or corporation that provides service to the proposed ward, unless spouse or close relative and court determines insubstantial potential for conflict of interest and clearly in best; or any other conflict of interest | <p>May require guardian or guardian employees to complete level 1 background screening.<br/>Pay clerk \$7.50 for processing files</p> <p>§ 744.3135(2)<br/>Nonprofessional undergoes state and national criminal history record check using fingerprint card. Card available from clerk. NPG submits to Dept Law Enforcement for processing. Results forwarded to clerk.</p> <p>§ 744.3135(3)<br/>Can use either electronic fingerprint record check or fingerprint card. SPGO adopts rules. G pays costs SPGP and clerk maintain records</p> | submit at own expense credit history.<br>May require guardian or guardian employees to submit credit history |  |
| Georgia  | § 29-4-2(b)<br>Minor, have conflict of interest, owner/operator of care facility where receiving care  | § 29-10-3(a)(1)<br>Public guardian must submit to <b>criminal background check</b> ; submit to an investigation of credit history & each employee and agent of the public guardian who has direct contact with wards  |  | Judge may require criminal check similar to employment check on any fiduciary; limited to State records. In process of increasing to fingerprint-based check through GA and FBI and for all adults in household of guardian for minor or adult |
| Idaho    | § 15-5-311(3)(a)<br><b>Convicted felon</b> ; person whose residence will be frequented adult and by convicted felon unless clear and convincing that appointment is in best interest   |   |  |  |
| Illinois | § 755 ILCS 5/11a-5(a)(1)<br>Unsound mind; adjudged disabled; <b>convicted of</b>   |   |  |  |

| State     | Who Not Eligible  | Criminal Background   | Credit Background | Notes  |
|-----------|---|---|-------------------|--|
|           | <p>felony unless appointment in best interest of adult, considering nature of offense, date of offense, evidence of rehabilitation. Bar if convicted of felony involving harm or threat to elderly or disabled person, including felony sex</p> |   |                   |  |
| Kentucky  | Felon is disqualified-- 2011  | <p>2011- HB 52<br/>Any person convicted of a felony shall be disqualified. Any person or entity has standing to contest the appointment or continued service for such person.</p>   |                   |  |
| Louisiana | <p>Art. 4561(B)(2)<br/>Except for good cause shown, convicted felon, person in debt to adult; adverse party in pending law suit</p>   |   |                   |  |
| Minnesota | <p>§ 524.5-309(c)<br/>Individual or agency providing residence, custodial, medical, employment training, other care or services</p>   | <p>§ 524.5-118(1)<br/>Background study once every 5 years;<br/>Criminal history data from Bureau of Criminal Apprehension, other criminal history data held by commissioner of human services, data where perpetrator of substantiated maltreatment of vulnerable adult and minor; search National Criminal Records Repository if not resided in Minn. for previous 5 years or info from BCA indicates a multistate offender or multistate offender status undetermined; background study must be done on all employees responsible for exercising guardian powers and duties; may make</p> |                   | <p>§ 524.5-118(2)<br/>Commissioner of human services conducts study, provides fingerprint card, develops forms, collects fees, notice of rights.</p> <p>§ 524.5-118(3)<br/>Central registration with state court administrator</p> |

| State    | Who Not Eligible  | Criminal Background   | Credit Background   | Notes  |
|----------|---|---|---|--|
|          |   | <p>appointment pending results of study if in adult's best interest; professional guardian must pay fees; if in forma pauperis by county; if estate, by estate; or court may order fee paid by G, by C or by court; not apply to state agency or county; parent or guardian of person with developmental disability if raised in family home unless counsel recommends; a bank.</p> |   |  |
| Nebraska | <p>§§ 30-2627; 30-2639<br/>Agency, owner providing residential care;</p>  | <p>LB 157<br/>Every prospective guardian must file background checks, including criminal history, sex offender registry, central child and adult abuse registry, and credit report with the court 10 days prior to the appointment hearing. Court may waive the requirement. Emergency temporary guardians may be appointed with security check. 2011</p>                           | <p>§ 30-2627(e)<br/>May require to furnish bond</p>   |  |
| Nevada   | <p>§ 159.059<br/>Incompetent; minor; convicted of <b>felony</b> unless court determines conviction not disqualify; suspended for misconduct or disbarred from law, accounting, other provision involving money, investment, securities, real property; nonresident without registered agent and not petitioner; judicially determined by clear and convincing evidence to have committed <b>abuse, neglect</b>, exploitation of child, spouse, parent, adult, unless court finds best</p> | <p>SB 229<br/>Private professional must undergo FBI and Nevada criminal background check with fingerprints at own expense, present to court on request. 2011</p>  | <p>§ 159.065<br/>Every guardian must execute a bond with sufficient surety to protect the ward and estate conditioned on faithful discharge of authority. Bank exempt; if no estate, no bond; in lieu of bond, G may request assets be blocked and held in manner that prevents guardian from accessing assets without specific court order</p> | <p>SB 78 (2013) § 4<br/>A guardian who, after appointment: 1. Is convicted of a gross misdemeanor or felony in any state; 2. Files for or receives protection as an individual or as a principal of any entity under the federal bankruptcy laws; 3. Has a driver's license suspended, revoked or cancelled for nonpayment of child support; 4. Is suspended for misconduct or disbarred</p> |

| State         | Who Not Eligible   | Criminal Background   | Credit Background | Notes   |
|---------------|--|---|-------------------|---|
|               | interest to appoint  |   |                   | <p>from:</p> <ul style="list-style-type: none"> <li>(a) The practice of law;</li> <li>(b) The practice of accounting; or</li> <li>(c) Any other profession which: <ul style="list-style-type: none"> <li>(1) Involves or may involve the management or sale of money, investments, securities or real property; or</li> <li>(2) Requires licensure in this State or any other state; or</li> </ul> </li> </ul> <p>5. Has a judgment entered against him or her for misappropriation of funds or assets from any person or entity in any state, shall immediately inform the court of the circumstances of those events. The court may remove the guardian and appoint a successor guardian, unless the court finds that it is in the best interest of the ward to allow the guardian to continue in his or her appointment.</p> |
| New Hampshire | § 464-A:10(III)<br>Institution or agency providing care and custody unless no one else can be found to serve | § 464-A:4(V)(a)<br>Court shall review the proposed guardian's record of criminal convictions maintained by the New Hampshire division of state police, except agency or institution; proposed |                   |   |

| State      | Who Not Eligible  | Criminal Background  | Credit Background   | Notes  |
|------------|---|--|---|--|
|            |   | <p>guardian signs a release filed with petition; court may request search of abuse registry; may search other states</p> <p>Court rule requires professional guardians to undergo criminal background check without fingerprints</p>   |   |  |
| New Jersey | <p>§ 52:27G-34(3)(a)<br/>Has <b>criminal conviction</b> or found to be civilly liable for any matter involving moral turpitude, abuse, neglect, fraud, misappropriation, misrepresentation, theft, conversion; lacks financial responsibility; committed abuse, neglect or exploitation; engages in persistent or repeated violations of court order or any impropriety involving dishonesty, fraud, deceit, misrepresentation.</p> | <p>§ 52:27G-33(2)(d)(4)<br/>Professional guardian satisfied <b>criminal history</b> record background, child abuse registry, domestic violence central registry; not subject to outstanding arrest warrants</p>  | <p>§ 52:27G-33(2)(d)(4)<br/>Professional guardian submit credit check to OPGEA from one national credit reporting agency issued within 1 month of application</p> |  |
| New Mexico | <p>§ 45-5-303(A)(4)<br/>Petition shall state G qualification, including whether convicted of <b>felony</b></p>  |  |   | Office of Court Administration directed to report on resources and procedures needed to implement background checks on G and C |
| New York   |   | <p>§ 81.19(g)(1)<br/>Allows but not requires the court to obtain and consider, and court evaluator to review, proposed guardian's criminal history, sex offender registry, statewide central register of child abuse, statewide registry of orders of protection. Upon considering the information the court</p> |   |  |



| State        | Who Not Eligible   | Criminal Background  | Credit Background   | Notes   |
|--------------|--|--|---|---|
|              |  | may appoint, refuse to appoint or revoke the appointment.  |   |   |
| Ohio         | § 2111.03(A)<br>Petition must state whether applicant ever been charged with or convicted of any <b>crime</b> involving theft, physical violence, sexual, alcohol or substance abuse |  |   | No instruction to court on what if proposed guardian has criminal record. Some courts are fingerprinting                |
| Oklahoma     | § 3-104(A)<br>Owner operator employee of facility where residing<br><br>§ 3-104(D)<br>Public agency  | § 3-101(E)<br>Court may receive <b>investigation and report on background</b> and home of prospective G. When required, include petitioner and each adult member of household to establish more record of criminal conviction, protective order, pending criminal charge. Include OK Bureau of Investigation name-based check.   | § 3-101(E)<br>Petitioner disclose case name and status of any civil or criminal matter in state or federal court, including bankruptcy involving petitioner or any adult household member |   |
| Oregon       | § 125.205<br>Incapacitated, financial incapable, minor, health care provider   | § 125.210(1)<br>Person nominated must inform the court of circumstances before appointed or <b>provide in petition if convicted of crime</b> , filed for bankruptcy, had required professional license revoked or canceled; after appointment must inform court immediately. Court may decline to appoint a person or may remove if fails to comply<br><br>§ 125.240<br>Professional fiduciary must have criminal background check paid for by fiduciary |   | Courts require credit check on periodic basis along with updated criminal background check for professional fiduciaries |
| Rhode Island | § 33-15-6(a)<br>Agency, public or private, or representative of, that  | § 33-15-6(b)<br>Shall find that individual or agency has <b>no criminal background</b> which   |   |   |

| State        | Who Not Eligible   | Criminal Background  | Credit Background | Notes |
|--------------|--|--|-------------------|-------|
|              | financially benefits from providing housing, medical, social services  | bears on suitability to serve as guardian, has capacity to manage the financial resources involved; has ability to meet unique needs of adult; has ability to meet requirements of law   |                   |       |
| South Dakota | § 29A-5-110<br>Employee of public agency, entity, or facility providing substantial services or financial assistance; creditor         | § 29A-5-504(3)<br>Reason to remove is conviction of crime that reflects on fitness to serve  |                   |       |
| Tennessee    | § 34-3-104(3)<br>Requires petition to include a statement of any felony or misdemeanor convictions of petitioner and proposed guardian |  |                   |       |
| Texas        |  | § 698<br>County clerk obtains criminal history record information maintained by Dept of Public Safety or FBI for private professional guardian; employee who has personal contact, exercise control or any duties over estate; volunteer in guardianship program; proposed guardian, other than family or attorney.<br>May submit own information 10 days before hearing;<br>Guardianship Certification Board conduct criminal history check before issuing or renewing certificate<br>Court use information to determine whether to appoint, remove, or continue appointment; GCB use to determine whether to certify |                   |       |
| Vermont      | 14 § 3072(a)(2)  | 14 § 3067(d)   |                   |       |

| State                                 | Who Not Eligible   | Criminal Background   | Credit Background | Notes |
|---------------------------------------|--|---|-------------------|-------|
|                                       | <p>Operates care facility where resides or receiving care</p> <p>14 § 3072(a)(2)<br/>Served as guardian ad litem in same proceeding</p>                                  | <p>Proposed guardian provide information and consent for complete background checks with available state registries, including adult abuse, child abuse, crime information center, sex offender. Court shall consider information received in determining if suitable. May waive reports, may remove based on information in report later received. If lived in VT less than 5 years or nonresident may order background from other state agencies where lives or has lived in past 5 years. Copies to petitioner, respondent and respondent's attorney</p> |                   |       |
| Washington                            | <p>§ 11.88.020<br/>Under 18; of unsound mind; convicted of felony or misdemeanor involving moral turpitude; court finds unsuitable</p>                                   |   |                   |       |
| West Virginia                         | <p>§ 44A-1-8(a)<br/>Individual employed by or affiliated with any public agency, entity or facility providing substantial services or financial assistance; creditor</p> | <p>§ 44A-1-8(c)<br/>Any person being considered shall provide information if convicted of any crime, other than traffic offenses; ct or mental hygiene commissioner may order a background check conducted by state police or county sheriff. Shall consider in determining fitness to be appointed</p>   |                   |       |
| Wisconsin                             |  | <p>§ 54.15(8)<br/>Sworn and notarized statement 76 hours before hearing if charged with or convicted of crime; filed for and received bankruptcy protection, had professional license revoked.</p>  |                   |       |
| Center for Guardianship Certification |  | <p>Candidate must disclose if convicted of a felony; civilly liable in an action that involved fraud,</p>   |                   |       |

| State | Who Not Eligible | Criminal Background  | Credit Background | Notes |
|-------|------------------|--|-------------------|-------|
|       |                  | <p>misrepresentation, material omission, misappropriate, moral turpitude, theft or conversion;<br/> relieved of responsibilities as a guardian by a court, employer, or client for actions involving fraud, misrepresentation, material omission, misappropriate, theft, or conversion;<br/> bonded in accordance with state statutes and local practice; liable in a subrogation action by an insurance or bonding agent. Misrepresentation on application or renewal is grounds for revocation</p> |                   |       |

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| <u>State</u>                       | <u>Accounting Frequency</u>   | <u>Status Report</u>  | <u>Status Frequency</u>   | <u>Court Review</u>  | <u>Post-Hearing Investigator</u>   | <u>Sanctions</u>  |
|------------------------------------|---|---|---|--|--|---|
| UGPPA                              | <b>420(a)</b><br>Annually unless court otherwise directs              | <b>317(a)</b><br>Current condition, living arrangement, services provide, opinion on adequacy of care, summary of visits and activities on ward's behalf, extent to which ward participated in decision making, whether institutional care plan is in best interest, plans for future care, recommendation on need for changes in scope of guardianship | <b>317(a)</b><br>30 days after appointment and at least annually or whenever ordered by court   | <b>317(c), 420(d)</b><br>Shall establish system for monitoring including filing and review of annual reports and plans | <b>317(b), 420(c)</b><br>May appoint a visitor to review a report or plan, interview person or conservator, or other investigation               | <i>Not stated</i>   |
| <b>Alabama:</b><br>Code            | <b>26-2A-147</b><br>at least every 3 years, at removal or resignation | <b>26-2A-108</b><br><b>26-2A-78(b)(5)</b><br>report condition of ward and estate  | <b>26-2A-108</b><br><b>26-2A-78(b)(5)</b><br>as ordered by court or required by court rule  | <i>Not stated</i>  | <i>Not stated</i>  | <b>26-2A-110(a)</b><br>removal if best interest   |
| <b>Alaska:</b><br>Stat.            | <b>13.26.255</b><br>as court may direct, on removal or resignation    | <b>13.26.118</b><br>status, condition, living arrangement, activities, address & contacts, services, actions<br><b>13.26.117</b> guardianship implementation report 90 days after appointment   | <b>13.26.118 (a)</b><br>after 1 <sup>st</sup> 90 days, then yearly, additional report if ordered, significant change, resign, removed, terminated, ward requests<br>Every 3 years visitor prepares report | <i>Not stated</i>  | <b>13.26.118</b><br>visitor to evaluate ward every 3 years   | <b>13.26.235</b><br>removal for good cause  |
| <b>Arizona:</b><br>Rev. Stat. Ann. | <b>14-5419 (A)</b><br>annually  | <b>14-5315(C)</b><br>major changes, be continued, summary of service, last doctor, # and last date of visit, changes in condition   | <b>14-5315 (A)</b><br>annually  | <i>Not stated</i>  | <b>14-5308(B)</b><br>as directed by the ct., additional investigations by ct.-appointed investigator to determine if necessary to continue appt. | <b>14-5307(A)</b><br>removal if best interest; court does not need to find inappropriate action<br><b>14-1105(B)</b><br>Court may order guardian to pay estate for professional fees and expenses as a result of unreasonable conduct |

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|----------------------------------|--|---|------------------------------|---|--|--|
| <b>Arkansas:</b><br>Code Ann.    | <b>28-65-320(a)</b><br>annually                        | <b>28-65-322</b><br>mental, physical, social<br>status, living situation,<br>need to continue | <b>28-65-322</b><br>annually | <i>Not stated</i>   | <i>Not stated</i>  | <b>28-65-108(b)</b><br>denial of fee<br><b>28-65-320(f)</b><br>denied fee if fail to file<br>accounting  |
| <b>California:</b><br>Prob. Code | <b>2620(a)</b><br>1 yr. from appt.,<br>then biennially | <i>Repealed</i>   | <i>Repealed</i>              | <b>1850(a)(1), (2)</b><br>court shall<br>review 6 months<br>after<br>appointment, 1<br>year after, then<br>annually | <b>1851(a)</b><br>Court Investigator<br>shall visit, inform<br>that under<br>conservatorship,<br>report if wish to<br>terminate, if<br>conservatee acting<br>in best interest, if<br>still need<br>conservatorship | <b>2620.2(c)</b><br>If fail to timely file<br>accounting, ct. must<br>punish or remove, order<br>funds to ct. supervised<br>account, appoint<br>temporary guardian,<br>appoint attorney for<br>ward, or extend time.<br><b>2650(a)-(b)</b><br>removal if fail to<br>perform duties or report |

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| <u>State</u>                           | <u>Accounting Frequency</u>  | <u>Status Report</u>   | <u>Status Frequency</u>  | <u>Court Review</u>   | <u>Post-Hearing Investigator</u>   | <u>Sanctions</u>   |
|--|--|--|--|---|--|--|
| <b>Colorado:</b><br>Rev. Stat. Ann.    | <b>15-14-317</b><br>Within 6 months of appointment and annually thereafter         | <b>15-14-317(1)</b><br>Ward's condition, location, services provided, visit/activity summary, plan adequacy, future plan, continued need | <b>15-14-317</b><br>Within 6 months of appointment and annually thereafter | <b>15-15-503(2)(g)</b><br>May review conduct of fiduciary<br><b>15-10-502</b><br>Without statement of reasons, may ask for report at any time | <b>15-14-317(2)</b><br>May appoint visitor to review, interview and investigate<br><b>15-10-503(2)</b><br>Upon petition or own motion, after hearing, may temporarily restrain fiduciary's performance, exercise of powers | <b>15-14-112(2)</b><br>Removal if best interests or for other good cause<br><b>15-10-503(1)</b><br>If emergency because of fiduciary's actions or omissions that pose imminent risk of substantial harm, may order immediate restraint, restriction, or suspension of powers, direct to appear<br><b>15-10-503(2)(d)</b><br>Suspend fiduciary if determines fiduciary has violated duties<br><b>15-10-503(2)(e)</b><br>Remove for cause<br><b>15-10-504(2)</b><br>Surcharge if breach of fiduciary duty or improper exercise of power<br><b>15-10-504(3)</b><br>Direct or indirect contempt<br><b>15-10-504(4)</b><br>Such sanctions as deem appropriate |
| <b>Connecticut:</b><br>Gen. Stat. Ann. | <b>45a-655(a), (c)</b><br>Inventory within 2 months; may require annual accounting | <b>45a-656(c)</b><br>Condition, efforts to encourage independence, whether least restrictive   | <b>45a-656(c)</b><br>At least annually                                     | <b>45a-660(c)</b><br>After 1 year; not less than 3 years thereafter; review written medical evidence  | <i>Not stated</i>  | <i>Not stated</i>  |

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| <u>State</u>                              | <u>Accounting Frequency</u>   | <u>Status Report</u>  | <u>Status Frequency</u>   | <u>Court Review</u>   | <u>Post-Hearing Investigator</u>   | <u>Sanctions</u>  |
|---|---|---|---|---|--|---|
| <b>Delaware:</b><br>Code Ann. tit. 12     | <b>12 3941 &amp; 3943</b><br>end of 1 <sup>st</sup> year, then as court requires but not more often than biennially unless special occasion | <i>Not stated</i>   | <i>Not stated</i>   | <i>Not stated</i>   | <i>Not stated</i>  | <b>12 3908(a)</b><br><b>12 3944</b><br>contempt, imprisonment, removal for failure to account |
| <b>District of Columbia:</b><br>Code Ann. | <b>21-2065(d)(1)-(2)</b><br>at least yearly or on court order   | <b>21-2047(a)(5)</b><br>ward's condition  | <b>21-2047(a)(5)</b><br>at least semi-annually or on court order                              | <i>Not stated</i>   | <i>Not stated</i>  | <b>21-2049</b><br><b>21-2061</b><br>removal if best interest                                  |
| <b>Florida:</b><br>Stat. Ann.             | <b>744.367 (1)-(3)</b><br><b>744.3678(1)</b><br>yearly<br><b>744.365</b><br>verified inventory  | <b>744.367(1)</b><br><b>744.3675(1)</b><br>annual plan, condition, address, plans for care & services, whether living arrangement best suited to needs, report of physician, restoration of rights<br><b>744.362</b><br>initial report due in 60 days<br><b>744.363</b><br>initial plan | <b>744.367(1)</b><br>yearly<br><b>744.3678(5)</b><br>waived if only SS benefits and rep payee | <b>744.3215(1) (a)-(b)</b><br><b>744.368</b><br>Clerk to review personal reports within 30 days and property reports with 90 days. Clerk report when not timely filed<br><b>744.369</b><br>court review report within 60 days of clerk's report on initial and 15 days on annual<br><b>744.372</b><br>court review appropriateness and extent | <b>744.107(2)</b><br>Court monitor investigates and report findings inquiry from interested person or from court on own; court may take action | <b>744.3685</b><br>fines, contempt for failure to report<br><b>744.474</b> removal            |



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|--|---|--|--|--|--|---|
| <b>Georgia:</b><br>Code Ann.             | <b>53-7-180(2)</b><br>yearly<br><b>29-5-22</b><br>inventory 2nd month (takes into account estate plan)<br><b>29-5-30(c)</b><br>file updated plan with annual return<br><b>29-5-60</b><br>file verified return with updated plan | <b>29-4-22</b><br>ward's general condition, changes, living situation, expenditure of funds, alterations   | <b>29-4-22</b><br>60 days after appointment, then yearly | <b>29-5-60(c)</b><br>court carefully examine each return | <i>Not stated</i>  | <b>29-4-52(a)</b><br>revoke, suspend, add security, reduce, deny compensation or other<br><b>29-4-53</b><br>cause of action for breach of fiduciary duty, damage, compel performance, enjoin, redress, constructive trust |
| <b>Hawaii:</b><br>Rev. Stat.             | <b>560:5-420</b><br>annually  | <b>560:5-317(a)</b><br>condition, living arrangement, services, visit and activities, plan in best interest, future plan for care, need to continue or change powers | <b>560:5-317(a)</b><br>at least yearly                   | <i>Not stated</i>  | <b>560:5-317(b), -420(c)</b><br>may appoint kokua kanawai to review report and investigate |   |
| <b>Idaho:</b><br>Code                    | <b>15-5-419(2)</b><br>Yearly with specific content  | <b>15-5-419(a)</b><br>ward's status  | <b>15-5-419(a)</b><br>yearly                             | <i>Not stated</i>  | <i>Not stated</i>  | <b>15-5-307(a)</b><br>remove if best interest<br><b>15-5-419(b)</b><br>removal, fines, recovery of assets, surcharge, judgment  |
| <b>Illinois:</b><br>75/5 Ill. Comp Stat. | <b>5/13-5(h)</b><br>GAL can do accounting on death if PG and large estate   | <b>5/11a-17(b)</b><br>mental, physical status; living arrangements, services received<br><b>5/13-5(g)</b><br>report of public guardian                               | <b>5/11a-17(b)</b><br>if court directs                   | <i>Not stated</i>  | <b>5/11a-20(b)</b><br>on request, court may appoint GAL to investigate                     | <b>5/11a-15</b><br>removal  |

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|-------------------------------------|---|---|---|--|--|--|
| <b>Indiana:</b><br>Code Ann.        | <b>29-3-9-6(a)(1)</b><br><b>29-3-9-5(a)</b><br>after 1 <sup>st</sup> 90 days,<br>then biennially  | <b>29-3-9-6(c)</b><br>condition & circumstances   | <b>29-3-8-1(b)</b><br>as ordered by court   | <b>29-3-9-8</b><br><b>29-3-9-6(e)</b><br>accounting not<br>final until<br>approved by<br>court after notice<br>and hearing   | <b>29-3-9-11</b><br>Div. of Family &<br>Children when<br>ordered   | <b>29-3-12-4 (a)</b><br>removal  |
| <b>Iowa:</b><br>Code Ann.           | <b>633.670(a),(b)(1)</b><br>after 1 <sup>st</sup> 60 days,<br>then yearly   | <b>633.669(2)</b><br>condition, activities, living<br>arrangements, services,<br>visits, need to continue | <b>633.669(1)</b><br>after 60 days, then yearly   | <b>633.669(5)</b><br>reports reviewed<br>and approve by<br>district judge or<br>referee<br><b>633.674</b><br>court settle each<br>account by<br>allowing or<br>disallowing | <i>Not stated</i>  | <i>Not stated</i>  |
| <b>Kansas:</b><br>Rev. Stat. Ann.   | <b>59-3083</b><br>annually, other<br>times as court<br>may specify; &<br>upon change of<br>address or<br>residence,<br>significant<br>change in health,<br>impairment, or<br>assets | <b>59-3083(a)</b><br>form prescribed by court<br>rule   | <b>59-3083</b><br>annually, other times as<br>court may specify; &<br>upon change of address<br>or residence, significant<br>change in health,<br>impairment, or assets | <b>59-3084(a)</b><br>court shall<br>review report<br>upon filing   | <b>59-3084(b) &amp;<br/>59-3085(b)</b><br>court may set<br>hearing | <b>59-3084 ( c ) &amp;<br/>59-3085 ( c )</b><br>Modify powers; require<br>filing of amended plan<br><b>59-3089</b><br>order to show cause for<br>failure to fulfill duties;<br>removal |
| <b>Kentucky:</b><br>Rev. Stat. Ann. | <b>387.710</b><br>60 days after<br>appointment,<br>then biennially;<br>informal biennial<br>report if less than<br>\$2500   | <b>387.670(1)</b><br>condition, address, services<br>received, visits, need to<br>continue                | <b>357.670(1)</b><br>annually   | <b>387.670(3)</b><br>court to review<br>report and take<br>necessary actions   | <i>Not stated</i>  | <b>384.080</b><br>Recovery of damages on<br>bond<br><b>387.090(1)</b><br>removal for failure to<br>discharge duties or to<br>account   |

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|--|---|--|---|---|---|---|
| <b>Louisiana:</b><br>Civ. Code Ann.;<br>Code of Civ.<br>Pro.; Rev. Stat.<br>Ann. | <b>CCP 4569(A)</b><br>annually<br><b>RS13:3443(A)</b>   | <b>CCP 4569(A)</b><br>condition of interdict   | <b>CCP 4569(A)</b><br>annually  | <i>Not stated</i>   | <b>CCP 4551;</b><br><b>CC 393</b><br>shall appoint<br>undercurator<br><b>CCP 4565</b><br>shall appoint<br>undercurator to<br>review accounts &<br>reports | <b>RS9:1025</b><br>removal if not<br>adequately performing<br>duties and in best interest                             |
| <b>Maine:</b><br>Me. Rev. Stat.<br>Ann. tit. 18                                  | <b>18-A 5-419(a)</b><br>as specified by<br>court  | <b>18-A 5-312(a)(5)</b><br>ward's condition  | <b>18-A 5-312(a)(5)</b><br>as required                                  | <b>18-A 5-312(a)(5)</b><br>review report<br><b>18-A 5-419(c)</b><br>court may<br>appoint visitor to<br>review reports | <b>18-A 5-419(c)</b><br><b>18-A 5-312(a)(5)</b><br>may appoint visitor<br>to review, determine<br>care needs  | <b>18-A 5-415</b><br>remove conservator for<br>good cause<br><b>18-A 5-307</b><br>remove guardian if best<br>interest |
| <b>Maryland:</b><br>Code Ann., Est.<br>& Trusts                                  | <b>Rule 10-206</b><br>annually,<br>examined by<br>trust clerk who<br>reports to court   | <b>13-708(b)(7)</b><br>residence, health status,<br>guardian's plan, need for<br>continuation  | <b>13-708(b)(7)</b><br>annually   | <i>Not stated</i>   | <b>14-404(a)</b><br>review board<br>reviews public<br>guardianship<br>annually, file<br>review every 6<br>months  | <b>13-221</b><br>removal for good cause   |
| <b>Massachusetts:</b><br>Gen. Laws ch.<br>190B                                   | <b>5-416(c)</b><br>Plan for<br>management and<br>distribution of<br>assets<br><b>5-417(a)</b><br>Inventory within<br>90 days<br><b>5-418</b><br>Not less than<br>annually | <b>5-309(b)</b><br>Condition, account for<br>funds in guardian's<br>possession, living<br>arrangements, guardian's<br>visits and activities, plan<br>for future care | <b>5-309(b)</b><br>60 days after<br>appointment, annually<br>thereafter | <b>5-309(c)</b><br>System for<br>monitoring filing<br>and review  | <b>5-309(d)</b><br>May appoint GAL<br>to review, interview,<br>or other<br>investigation  | <b>5-311(a)</b><br>Remove for good cause<br><b>5-316(a)</b><br>Show cause if report is<br>60 days past due            |

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|--|---|---|--|---|---|---|
| <b>Michigan:</b><br>Comp. Laws<br>Ann. | <b>700.5418</b><br>annually   | <b>700.5314(e)</b><br>condition, improvement or deterioration, living arrangement, medical treatment, services, guardian visits, need for continuation  | <b>700.5314(e)</b><br>annually           | <b>700.5309</b><br>court review 1 <sup>st</sup><br>then every 3<br>years            | <b>700.5310(4)</b><br>court may send<br>visitor to investigate<br>if complaint                  | <b>700.5310</b><br>removal                      |
| <b>Minnesota:</b><br>Stat. Ann.        | <b>524.5-420(a)</b><br>annually   | <b>524.5-316(a)</b><br>current condition; living arrangements; medical, educational, vocational services provided; adequacy of care; recommended changes in scope; any restrictions on right to communicate or visitation; any changes that affect guardian's most recent criminal background; amount of guardian fee from estate | <b>524.5-316(a)</b><br>at least annually | <b>524.5-316(c) &amp; 420(c)</b><br>court will establish system to monitor and file | <b>524.5-316(b) &amp; 420(c)</b><br>court may appoint visitor to review, interview, investigate | <b>524.5-112(b)</b><br>removal if best interest |
| <b>Mississippi:</b><br>Code Ann.       | <b>93-13-67</b><br>at least annually<br><b>93-13-38</b><br>If money but no guardians of estate, file financial report only as often as court requires | <b>93-13-121</b><br>account for guardian's acts and doings  | <b>93-13-121</b><br>at least annually    | <i>Not stated</i>   | <i>Not stated</i>   | <b>19-13-23</b><br>removal for sufficient cause |
| <b>Missouri:</b><br>Ann. Stat.         | <b>475.190(4)</b><br>annually   | <b>475.082(2)</b><br>address, number of contacts, date last seen by MD, need for continuation   | <b>475.082(2)</b><br>annually            | <b>475.082(1)</b><br>court review status of every ward annually                     | <b>475.082(3)</b><br>court may order mental status evaluation                                   | <b>475.082(5)</b><br>removal if best interest   |
| <b>Montana:</b><br>Code Ann.           | <b>72-5-438(1)</b><br>at least annually   | <b>72-5-321(2)(e)</b><br>condition of ward  | <b>72-5-321(2)(e)</b><br>Annually        | <i>Not stated</i>   | <i>Not stated</i>   | <b>72-5-414</b><br>removal for cause            |

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|--|--|--|---|---|--|---|
| <b>Nebraska:</b><br>Rev. Stat.           | <b>30-2648(a)(5)</b><br>as court directs<br><b>30-2647</b><br>Inventory due 30 days after appointment<br><b>30-2628(4)</b><br>If no conservator, guardian file inventory due 30 days after appointment | <b>30-2628(a)(5)</b><br>condition of ward  | <b>30-2628(a)(5)</b><br>annually                                      | <b>30-2628(a)(5)</b><br>court shall receive comments on need to continue                                      | <b>30-2623(c)</b><br>court may send visitor to guardian and ward before removal, resignation or termination                    | <b>30-2623(a)</b><br>removal if best interest   |
| <b>Nevada:</b><br>Rev. Stat              | <b>159.177(1)</b><br>annually  | <b>159.081</b><br>condition of ward; exercise of authority and performance of duties by guardian   | <b>159.081</b><br>annually  | <b>159.176</b><br>court must review every guardianship annually   | <i>Not stated</i>  | <b>159.185</b><br>removal   |
| <b>New Hampshire:</b><br>Rev. Stat. Ann. | <b>464-A:36</b><br>annually  | <b>464-A:35(I)</b><br>medical condition, medical procedures, care and treatment, services, living situation, guardian's plan, need for continuation                                | <b>464-A:25(I)(c)</b><br>annually unless court finds is not necessary | <b>464-A:25(d)</b><br>Review health care decision authority annually as part of court annual review of report | <b>464-A:35 (II)</b><br>court may send annual report to person it may designate to visit ward and if necessary request hearing | <b>464-A:37</b><br>citation, show cause, fine, removal for failure to file report or account<br><b>464-A:39(I)</b><br>removal if best interests |
| <b>New Jersey:</b><br>Stat. Ann.         | <b>3B:12-42</b><br>at intervals as ordered by the court  | <b>3B: 12-42(a)</b><br>Mental, physical and social condition, living arrangement, services provided, visits, if plan in best interest, future care, recommendation of continuation | <b>3B:12-42</b><br>at intervals as ordered by the court               | <i>Not stated</i>   | <b>3B:12-42(b)</b><br>Court may appoint individual to review report, interview ward and guardian, investigate                  | <i>Not stated</i>   |

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| <u>State</u>                         | <u>Accounting Frequency</u>  | <u>Status Report</u>  | <u>Status Frequency</u>   | <u>Court Review</u>  | <u>Post-Hearing Investigator</u>  | <u>Sanctions</u>  |
|--------------------------------------|--|---|---|--|---|---|
| <b>New Mexico:</b><br>Stat. Ann.     | <b>45-5-314</b><br>annual, form in code, progress and condition, manner conservator carried out responsibilities, continued need, court cannot waive | <b>45-5-314</b><br>form in code, progress and condition, health, medical and dental care, residence, education, employment, habilitation, manner guardian carried out duties, continued need  | <b>45-5-409(C)</b><br>annual, court cannot waive filing, may require more frequently<br><b>45-5-314(A)</b><br>Initial report within 90 days | <b>45-5-307</b><br>Shall hold status hearing upon request<br><b>45-5-307(g)</b><br>Shall hold status hearing not later than every 10 years | <i>Not stated</i>   | <b>45-5-314(C)</b><br><b>45-5-409(D)</b><br>\$5/day reports are overdue                               |
| <b>New York:</b><br>Mental Hyg. Law  | <b>81.31(b)(7), (8)</b><br>Accounting annually   | <b>81.30(a)</b><br># visits, steps taken to provide for needs<br><b>81.31(b)</b><br>form in code contact information, major changes, date last doctor exam, doctor evaluation and functional level, appropriateness of residence, med treatment, plan for treatment, social condition, resume of activities, need to continue | <b>81.30</b><br>initial report in 90 days<br><b>81.31</b><br>annually in May  | <b>81.32(a)</b><br>court examiners must examine reports with 30 days of filing   | <b>81.32(b)</b><br>examiner determines condition and care, finances, manner guardian carries out duties   | <b>81.32(c)</b><br>demand filing, order to comply, deny compensation, remove                          |
| <b>North Carolina:</b><br>Gen. Stat. | <b>35A-1264</b><br>annual  | <b>35A-1242(a)</b><br>corporation or disinterested public agent file initial status report  | <b>35A-1242(a)</b><br>initially within 6 months, 2 <sup>nd</sup> in 1 year, annually thereafter   | <b>35A-1243(d)</b><br>court shall take appropriate action  | <b>35A-1243(a)-(b)</b><br>designated agency shall certify to clerk that has reviewed, may send comments, petition clerk to order guardian to perform duties, modify terms, remove, or restore | <b>35A-1244</b><br>clerk shall order show cause if guardian fails to file report or report incomplete |

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|--|--|---|---|--|---|--|
| <b>North Dakota:</b><br>Cent. Code     | <b>30.1-29-19</b><br>Annually and as court directs   | <b>30.1-28-12(8)</b><br>If institutionalized, if continues to require guardianship, any powers to change  | <b>30.1-28-12(8)</b><br>Annually  | <i>Not stated</i>  | <b>30.1-28-7(3)</b><br>before removal, resignation or restoration, may send visitor | <b>30.1-28-12.1</b><br>if fail to report or account, issue show cause, contempt  |
| <b>Ohio:</b><br>Rev. Code Ann.         | <b>2111.14(A)</b><br>file inventory within 3 months<br><b>2111.36</b><br>shall report on money expended in improving ward's real estate within 45 days | <b>2111.49(A)(1)</b><br>content in code, changes in condition, # of contacts, necessity to continue, adequacy of care, date last dr. exam, med. statement on need to continue   | <b>2111.49(A)(1)</b><br>2 years after letter issued and then biennially or as order | <b>2111.49(A)(2)</b><br>court shall review   | <b>2111.49(A)(2)</b><br>court may direct investigator to verify                     | <b>2111.49(B)</b><br>Shall take any action necessary, termination or modification.<br>On request hearing shall be held to evaluate continued necessity   |
| <b>Oklahoma:</b><br>Stat. Ann. tit. 30 | <b>30-4-303(A)</b><br>annually   | <b>30-4-305 (person)</b><br><b>30-4-306 (property)</b><br>forms in code change in mental condition or physical condition, change in capacity to meet essential requirements, services provided, actions taken, problems addressed, why continue, why no LRA | <b>30-4-303(D)</b><br>annually  | <b>30-4-307</b><br>May hold hearing and shall hold hearing if objection to report or court considering order change. Court shall examine changes to property and adjust bond | <i>Not stated</i>   | <b>30-4-801</b><br>guardian removed for abuse of fiduciary responsibilities, failure to perform, incapacity to perform, gross immorality, conflict of interest, property guardian's insolvency |
| <b>Oregon:</b><br>Rev. Stat.           | <b>125.325</b><br>annually   | <b>125.325</b><br>form in statute, services received, care giver, physical & mental condition, # contacts, major decisions, reasons to continue   | <b>125.325</b><br>within 30 days of each anniversary                                | <i>Not stated</i>  | <b>125.160</b><br>may appoint visitor any time after fiduciary appointed            | <b>125.225</b><br>removal if fail to use good business judgment (higher standard if professional), if place in mental or nursing facility without court approval                               |

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|--|--|--|---|--|--|--|
| <b>Pennsylvania:</b><br>Cons. Stat. Ann. | <b>20-5531</b><br>whenever directed by court | <b>20-5521(c)(1)(ii)</b><br>contact, placement, major medical or mental problems, support services, need to continue, # contacts | <b>20-5521(c)(1)</b><br>at least annually   | <b>20-5512.2</b><br>may set date for review hearing in order establishing guardianship, or if petitioned, or major change, guardian fails to perform | <i>Not stated</i>  | <b>20-3182</b><br>grounds for removal of fiduciary   |
| <b>Rhode Island:</b><br>Gen. Laws        | <b>33-15-26</b><br>annually                  | <b>33-15-26.1(a)</b><br>residence, condition, change in capacity, summary of actions taken                                       | <b>33-15-26.1(a)</b><br>Annually<br><b>33-15-26.1(4)(c)</b><br>May waive for good cause shown | <b>33-15-26</b><br><b>33-15-26.1(b)</b><br>probate court shall monitor each file, shall cite if late in filing                                       | <i>Not stated</i>  | <b>33-15-26</b><br>accountable for full value of estate property if fail to comply with citation to report without sufficient excuse   |
| <b>South Carolina:</b><br>Code. Ann.     | <b>62-5-419</b><br>annually                  | <b>62-5-312(a)(5)</b><br>condition of ward   | <b>62-5-312(a)(5)</b><br>annually at least  | <i>Not stated</i>  | <b>62-5-307( c )</b><br>before removal of guardian, court shall send visitor | <b>62-5-307</b><br>may remove if best interest of ward   |
| <b>South Dakota:</b><br>Codified Laws    | <b>29A-5-408</b><br>annually                 | <b>29A-5-403</b><br>services provided, recommendation for continuation, current mental, physical, social condition               | <b>29A-5-403</b><br>annually, court order, resign, remove                                     | <b>29A-5-403</b><br>any interested person may request hearing on report  | <i>Not stated</i>  | <b>29A-5-504</b><br>removal for material mistake in petition, incapacity, substance abuse, conviction of relevant crime, waste, mismanagement, neglect, adverse interest, fails to file report |



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|-----------------------------------|--|---|---|---|--|--|
| <b>Tennessee:</b><br>Code Ann.    | <b>34-1-111(a)</b><br>6 months from appointment, then annually, then within 60 days of anniversary of appointment<br><b>34-1-115</b><br>at hearing submit property management plan for investments | <b>34-1-111(d)(2)</b><br>physical and mental condition; need for continuation; cannot be waived or excused  | <b>34-1-111</b><br>Annually as part of accounting | <b>34-1-131</b><br>clerk shall examine account and report to judge  | <i>Not stated</i>  | <b>34-1-111(h)</b><br>surcharged for failure to account or revoke<br><b>34-1-123</b><br>summons for abuse, mismanagement, may report to district attorney  |
| <b>Texas:</b><br>Estate Code Ann. | <b>1163.001</b><br>annually  | <b>1163.101</b><br>living arrangement, guardian visits, physical and mental health, medical care and evaluation, activities, unmet needs, need for modification | <b>1163.101; 1163:102</b><br>annually             | <b>1163.051</b><br>accounts must be approved by judge<br><b>1163.104</b><br>status reports must be approved by judge<br><b>1201.002</b><br>Judge to examine well-being of each ward annually<br><b>1201.052</b><br>court to review each guardianship annually to determine need for continuation, modification, termination | <b>1054.102</b><br>court may appoint visitor at any time during pendency of guardianship<br><b>1201.053</b><br>Court investigator, guardian ad litem or visitor report may be used by judge in annual review | <b>1203.051</b><br>removal for cause if neglect to quality; return inventory; post new bond; be absent from state for 3 months; cannot be served; embezzle; remove property from state; abuse; neglect to educate; gross misconduct; become incapacitated; on complaint of Certification Board |

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|---------------------------------------|---|---|---|---|---|--|
| <b>Utah:</b><br>Code Ann.             | <b>75-5-419</b><br>file on resignation, removal or as ordered     | <b>75-5-312(2)(e)(i)</b><br>ward's condition  | <b>75-5-312(2)(e)(i)</b><br>as required           | <i>Not stated</i>   | <b>75-5-307(3)</b><br>before removal, resignation, restoration, court may appoint visitor | <b>75-5-307</b><br>remove if best interest<br><b>75-5-429</b><br>conservator liability if at fault   |
| <b>Vermont:</b><br>Stat. Ann. tit. 14 | <b>14-3076(b)</b><br>Annual on anniversary date                   | <b>14-3076(b)</b><br>Report on condition and progress, manner carried out duties, need to continue  | <b>14-3076(a)</b><br>Annually                     | <b>14-3078</b><br>Annual notice of right to file motion of termination                                    | <i>Not stated</i>   | <b>14-3077(a)(2)</b><br>Termination for failure to file annual report<br><b>14-3077(a)(3)</b><br>Failure to act in accord with court order |
| <b>Virginia:</b><br>Code Ann.         | <b>64.2-2305</b><br>Annually                                      | <b>64.2-2020</b><br>Current condition, living arrangements, services, frequency of visits, if agree with current plan, need to continue                                     | <b>64.2-2020</b><br>Annually with social services | <b>64.2-2020</b><br>Social services files with court within 60 days; notifies clerk if 90 days delinquent | <i>Not stated</i>   | <i>Not stated</i>  |
| <b>Washington:</b><br>Rev. Code Ann.  | <b>11.92.040(2)</b><br>Annually within 90 day of anniversary date | <b>11.92.043(2)</b><br>Services, medical and mental status, change in functional abilities, guardian activities, need for changes in scope, professionals who have assisted | <b>11.92.043(2)</b><br>Annually                   | <b>11.88.095(1)(d)</b><br>Shall review account or report within 120 days after appointment anniversary    | <i>Not stated</i>   | <b>11.92.160</b><br>Failure to file accounting<br><b>11.92.180</b><br>Failure of duties results in a reduction in compensation             |

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|--------------------------------|--|--|---|---|---|--|
| <b>West Virginia:</b><br>Code  | <b>44A-3-11(a)(1)</b><br>Semi-annually in 1 <sup>st</sup> year and in February thereafter                    | <b>44A-3-2(a)</b><br>Current condition, living arrangements, services, visits, activities, if agree with current plan, need to continue; summary of actions to facilitate social interaction | <b>44A-3-11(a)(1)</b><br>Within 6 months and by December thereafter | <b>44A-3-2(b)</b><br>Court may hold hearing on report<br><b>44A-3-11(b)</b><br>Clerk shall notify court or mentally hygiene commissioner if report not filed or incomplete; fiduciary commission or other person shall review semi-annually, may request more information | <b>44A-3-11(e)</b><br>Parties, attorney, or mental hygiene commissioner shall report any violation or alleged elder abuse including criminal abuse to APS or prosecutor | <b>44A-3-11</b><br>Misdemeanor if knowingly violate reporting requirements at termination<br><b>44A-4-4</b><br>Removal if misstatement in petition, incapacity, substance abuse, conviction of relevant crime, waste, mismanagement, neglect, adverse interest, fails to file report |
| <b>Wisconsin:</b><br>Stat. Ann | <b>54.62</b><br>Annually before April 15<br><b>54.62(9)</b><br>At any time may require accounting at hearing | <b>54.25(1)(a)</b><br>Health condition, location, recommendations, if living in LRA  | <b>54.25(1)(a)</b><br>Annually to court and county dept.            | <b>54.62(5)</b><br>Court promptly examine accounts  | <b>54.40(1)</b><br>May appoint GAL  | <b>54.62(8)</b><br>May order show cause, issue warrant, fine   |
| <b>Wyoming:</b><br>Stat. Ann.  | <b>3-3-901(a)(i)</b><br>Annually   | <b>3-2-109</b><br>Residence, condition, information necessary to show condition of affairs   | <b>3-2-109</b><br>every 6 months                                    | <i>Not stated</i>   | <i>Not stated</i>   | <i>Not stated</i>  |