General

- Certified Professional Guardianship Board Postmortem Review……………………………………………………………………page 2

- Report of the WSBA Elder Law Section Guardianship Taskforce………………………………………………………………page 16

Certified Professional Guardian Board Postmortem Review Committee
Final Recommendation Report

January 2015

Committee Members:

Commissioner Craig Adams
Pierce County Superior Court

John Barnett, President
AARP Washington State

David Lord, Director of Public Policy
Disability Rights Washington

Kathy Van Olst, Sr. Deputy Prosecuting Attorney
Elder Abuse Unit, King County Prosecutor's Office

Page Ulrey, Sr. Deputy Prosecuting Attorney
Elder Abuse Unit, King County Prosecutor's Office

Glenda Voller, President
Washington Association of Professional Guardians

Staff:

Shirley Bondon, Manager
Office of Guardianship and Elder Services, Administrative Office of the Courts

Executive Summary

Introduction

The Certified Professional Guardianship Board (Board) is the regulatory authority responsible for regulating the practice of professional guardians in Washington State. Since 2000, the Board has established the criteria for the certification of professional guardians, guardianship standards of practice, and rules and regulations. The Board is also charged to adopt and implement procedures to review any allegation that a professional guardian has violated an applicable statute, fiduciary duty, standard of practice, rule, regulation, or other requirement governing the conduct of professional guardians and to take or decline to take disciplinary action and impose disciplinary sanctions based on the findings of its investigation. The Board includes representatives from professional guardians, attorneys, advocates for incapacitated persons, courts, state agencies, and other stakeholders employed in medical, social, health, financial, or other fields pertinent to guardianships.

The Superior Court is responsible for appointing guardians for vulnerable adults who, due to serious physical or mental disabilities, require help making decisions about their daily lives and/or finances. These vulnerable adults become “wards” of the court, meaning the court is ultimately responsible for their care. The Superior Court wants to be sure that every person under a guardianship receives good care. To accomplish this important monitoring function, after appointment the Superior Court reviews guardianship appointments on a regular basis.

The Board and the Superior Court share responsibility to supervise professional guardians. Generally speaking, when the two entities work together, the local court, if needed, will act to protect the incapacitated person involved in a specific case and the Board will act by imposing remedial action, if needed, to protect the public interest.

The local court is in the best position to take any immediate action, if needed, to protect the interests of the incapacitated person. This could include removal of the guardian and the appointment of a successor. Pursuant to statute, the court may appoint a guardian ad litem to investigate issues within a guardianship, or convene a hearing with all parties to discuss and resolve issues.

Pursuant to GR 23, the Board has jurisdiction to determine whether there has been a violation of the Standards of Practice for Professional Guardians. Its process complements the process followed by the court. While the Board’s disciplinary process may move more slowly, it has broad authority to fashion remedies to address guardian misconduct and protect the public in the future. The Board may require remedial education, installation of a case management system, imposition of a prohibition of acceptance of new cases and other remedies. The Board may place a guardian on probation with monitoring requirements and can ultimately de-certify a professional guardian.

Charge to the Review Committee

Methodology

The Review Committee performed a review of documents held by the Board and the court which are specific to the guardianship appointments being reviewed. Documents were used to reconstruct the chronology of each guardianship appointment and determine if the information provided was useful and accurate; and if additional information would have been useful.

Recommendations

The following recommendations address the concerns discovered during the document review. The committee did not fully develop each recommendation, but provides a framework for future discussion and input from other stakeholders.

Recommendations for the Court and the Administrative Office of the Court

Recommendation 1: Draft a court rule/statute to assist courts in determining how to calculate the value of the guardianship fiduciary/surety bond needed.[1] Courts should bond absent exigent circumstances.

Background:[2] A fiduciary or surety bond is court-ordered protection or a guarantee that a guardian will fulfill his or her financial and guardianship responsibilities for the benefit of the incapacitated person up to the value of the bond. It is a form of insurance that protects the incapacitated person subject to guardianship from poor investments, theft or defalcation by the fiduciary. By issuing a bond, the bonding agency agrees to repay the incapacitated person any money that might be lost because of the guardian's actions or mistakes.

Guardians of the person only rarely have to get a bond, because they have no legal authority to handle money in their limited role of managing health care issues. If a guardian of the person had access to funds, a bond should be ordered and the guardianship should be expanded to a guardianship of the estate, which includes authority over finances. Most guardians of the estate are required to post a bond, unless the incapacitated person's assets are very limited and the judge decides that a bond is not needed. If this is the case, the order will require a guardian to inform the court if additional funds have been received into the guardianship estate, so the court may then set an appropriate bond. The Order Appointing should state whether a bond is needed.

[1] Guardians also manage special needs trust, and any rule regarding bonds should apply to trustees and personal representatives in probates. No one's assets should ever be exposed to the misdeeds of a guardian or trustee.
[2] Dick Sayre contributed to the Background for Recommendation 1.

A guardian's ability to obtain a bond depends on his or her financial situation. The proposed guardian must be financially responsible, which may be determined based on the guardian's credit rating, income and resources, debt, and whether they have ever filed for bankruptcy. As a general rule, a person who has filed for bankruptcy prior to appointment as a guardian will be denied a surety bond because bonding companies require a personal guaranty from the bond holder. And so, as part of the guardianship process, the guardian ad litem must inquire as to whether the proposed guardian has any history of bankruptcy and, if so, the guardian ad litem should then ascertain whether that person can be bonded. If they cannot be bonded, they should not be appointed as a guardian of the estate if the estate has assets in excess of $3,000.

The amount paid to get a bond and maintain it, called the annual premium, is based on the amount of the bond itself. Some states use a formula as to premium costs (see Appendix A showing the California system). Absent legal requirements such as those in California, the companies set premiums based upon potential exposure. The higher the bond, the greater the potential exposure to the bonding company in the event of a claim, which will increase the size of the premium, just like any other insurance. The amount of the bond is set by the judge; the amount of the premium is set by the bonding agency. Annual premiums are paid from the incapacitated person's assets and should be included in the annual expense budget approved by the court. If a guardian pays the initial premium for establishing the bond from his or her personal funds, the guardian will generally request reimbursement from the estate of the incapacitated person by a petition to the court.

The amount of the bond, and thus the amount of the premium, can be reduced by a process called 'bonding and blocking'. Our statutes require a court to set bond in an amount sufficient to protect the incapacitated person; however, if the estate is substantial, setting a bond over all of it may be very costly to the incapacitated person and might actually be a violation of the fiduciary duty of the guardian's duty to preserve and wisely manage funds under his or her control.

Bonding and blocking is an example of an approach to reduce the cost of the bond premium without exposing the incapacitated person to risk. It is done when the estate is reduced to an amount over which the guardian has access. The rest of the estate is not accessible except by court order. Here, the court will set a bond sufficient to manage 12 months of care and expenses for the incapacitated person based upon a budget presented by the guardian and approved by the court. Assets and funds in excess of this amount will be 'blocked' by the court. For example, if the guardianship estate has $500,000 in assets, the cost of the bond premium would be substantial given the risk imposed upon the insurance company. If the court determined that the annual needs of the incapacitated person were only $25,000, the court may authorize the guardian to access a maximum of $25,000 per year, based upon estimated needs for that period of time, and direct the guardian and banks to block the balance. If this is done, the court can set bond at $25,000 and *substantially* reduce the bond expense to the incapacitated person where that extra expense would have served no beneficial purpose. Blocking orders normally require the guardian to file a 'Receipt of Blocked Account' with the

court, which is signed by the bank or brokerage confirming blocked status to verify that the blocked funds are indeed blocked and inaccessible to the guardian. The court will hold the banks or investment companies liable for any loss if they fail to follow the blocking orders. The guardian may still manage and invest the blocked accounts under direction of the court; however, the guardian cannot access any funds in excess of the bond without providing the court an accounting showing how the bonded funds were spent, and then obtain an order to 'refill' the bonded guardianship account. To use our example, if the guardian had a $25,000 bond and the balance of the funds were blocked, the guardian would put $25,000 into a guardianship operating account and would pay care costs and expenses from that account, but could not access the remaining $475,000 because access would be blocked. Once the guardian exceeds the $25,000 in the operating account (which is the bond maximum), he or she would petition the court to transfer another $25,000 to the operating account for payment of expenses, or might ask to increase the bond to a higher amount if more money was needed on an annual basis. To get the refill, the guardian would have to do an accounting showing how the first $25,000 was spent.

Statement of Need: The value of the bond must be sufficient to mitigate the risk to the incapacitated person. The bond amount should correspond to the value of the risk. There is a need to balance the cost of securing the bond in terms of premium cost, which is born by the incapacitated person and the cost of harm to the incapacitated person caused by a guardian's mistake, which, if not covered by the bond, will be shouldered by the incapacitated person with limited recourse to the guardian in many cases. Setting the right bond amount and using blocking orders to reduce the size of the premium is an essential component in protecting the estate of the incapacitated person (see Appendix A for examples of state statutes addressing calculation of the bond amount).

Recommendation 2: Guardians ad Litem (GAL)

2a. Revise statute to provide more particularity regarding special expertise and training required of GALs.

2b. Develop a selection process that includes matching GAL skills and expertise to the specific needs of the alleged incapacitated person.

Background: As the eyes and ears of the court, the guardian ad litem (GAL) plays a critical role in the guardianship process. This position has significant responsibility and is asked to perform the following tasks: (1) investigate the need for guardianship; (2) identify the triggering issue, or reason for guardianship; (3) research less restrictive alternatives; (4) determine the risk of harm; (5) determine whether there is a need for clinical evaluation; (6) determine if the alleged incapacitated person would like legal representation; (8) determine who might provide important information and/or testimony; (9) recommend limitations to guardianship and/or elements of a guardian plan, as well as evaluate capacity. In the simplest terms, this position is the doorkeeper of guardianship. Appointment of a GAL is specifically addressed in RCW 11.88.090. The

statute requires appointment of a GAL to represent the best interests of the alleged incapacitated person upon receipt of a petition for guardianship.

A GAL must:

(1) **Be selected from a registry maintained by the court pursuant to a consistent rotation system.**[3] RCW 11.88.90 4(a).

The court may deviate from the registry only in exceptional circumstances to be set forth in the Order Appointing. RCW 11.88.90 4(a).

(2) **Be free of influence from anyone interested in the guardianship proceeding.** RCW 11.88.90 3(a).

(3) **Have the requisite knowledge, training, or expertise to perform the duties required.** RCW 11.88.90 3(b).

(4) **File a Statement of Qualifications within five days of receipt of Notice of Appointment**. RCW 11.88.90 3(b).

Statement of Need: Investigating the need for guardianship may require experience with elderly persons who may be cognitively impaired for many reasons, including dementia. It may require experience with persons with developmental disabilities, mental illness and cognitive impairment due to a medical condition or drug abuse. Assessing these conditions requires very specialized knowledge and experience. The current GAL selection process does not sufficiently address the need for GALs to receive specialized training. It is not person-centered and does not focus on the needs of the alleged incapacitated person. California provides an alternative to the appointment of one person to function as a GAL.[4]

Recommendation 3. Implement robust guardianship monitoring tools.

Background: Judicial officers hearing guardianship cases are overseeing the activities of those making recommendations or decisions on behalf of others. Judicial officers ensure that guardians follow the rules and regulations which include; providing timely, complete and accurate reports, protecting the interests of the incapacitated person, advocating for the incapacitated person, providing for the health care and financial needs of the incapacitated person, and making decisions based on the substituted

[3] House Bill Report for ESSB 6257 dated February 29, 1996 improved guardian and GAL systems to protect minors and incapacitated persons. The bill provided that the court must select Title 11 GALs by systematic rotation, except in extraordinary circumstances such as particular expertise. Systematic rotation is described as selection of a person who is next on the list.

[4] **www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=0700-0799/0744/Sections/0744.331.html**

judgment and best interest standards. Generally, the judge in guardianship matters must be both a leader and a manager to assure that the court meet its responsibilities. The court's responsibilities in guardianship matters are threefold: (1) assuring that guardians, guardians ad litem and court staff are productive in carrying out their responsibilities; (2) assuring that institutional purposes and missions are achieved; and (3) assuring that the enterprise meets its social responsibilities.[5] Although judicial officers have great responsibility, they are not solely responsible for satisfying the courts' obligations. They must rely on court staff – court administrators, clerks, etc. to achieve efficient and effective guardianship case management.

Excellent guardianship case management includes all transaction processing and management control activities related to the initiation, handling, and disposition of guardianship cases that come before the court. In addition, excellent guardianship case management includes verifying that the person is being properly cared for. Determining that the person under guardianship is being properly cared for requires expanding monitoring beyond a paperwork or accounting review to observation.

Statement of Need: Adequate guardianship monitoring reduces the amount of abuse, neglect and exploitation incapacitated persons under guardianship are exposed to. 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. A quote from the report, '*Guarding the Guardians: Promising Practices for Court Monitoring*' describes the need:

> *"Adult Guardianship is a two-edged sword—a mechanism that protects some of the most vulnerable in our society from abuse, and an instrument that removes fundamental rights and thereby may increase opportunities for abuse of those we strive to protect. Court-appointed guardians step into the shoes of at-risk elders and dependent adults, making judgments about medical care, property, living arrangements, lifestyle and potentially all personal and financial decisions. Court monitoring of guardians is essential to ensure the welfare of the incapacitated persons, identify abuses, and sanction guardians who demonstrate malfeasance. Despite dramatic strengthening of guardianship statutory standards in recent years, judicial monitoring practices in many areas appear to be lax."* [6]

3a. Improve Periodic Reporting.

3a (1). Develop and require use of standardized formats for timesheets, double entry accounting spreadsheets and required supporting documents.

---

[5] David C. Steelman, *Managing Probate Workload and Dockets.* Andover, MA: National Center for State Courts, Northeastern Regional Office, 1992, *available at* http://contentdm.ncsconline.org/cgi-bin/showfile.exe?CISOROOT=/ctadmin&CISOPTR=14

[6] Naomi Karp & Erica Wood, *Guarding the Guardians: Promising Practices for Court Monitoring,* Public Policy Institute, Dec. 2007, *available at* http://www.aarp.org/money/estate-planning/info-2007/inb152_guardians.html

3a (2). Require use of web-based accounting program for submission of periodic reports.

3b. Develop a robust volunteer monitoring program.

Background: Excellent guardianship monitoring includes the ability to verify information provided in a report or accounting. Monitoring in most courts consists primarily of ensuring that the reports a guardian is required to file are filed in a timely manner, with little or no evaluation by the court of the reports' contents or accuracy. Recommendation 3a and 3b address verifying the content and accuracy of reports.

Guardians are statutorily required to file with the court an inventory, personal care plan, accountings and periodic reports, as well as reports regarding specified changes in condition. RCW 11.92.040. Some courts have adopted local guardianship forms, however, some statewide guardianship pattern forms are available on the AOC website. Use of pattern forms is not required and pattern formats for some forms, including timesheets and double entry accounting spreadsheets, are not available. The legacy Superior Court Management Information System (SCOMIS) is available to all and if used consistently can facilitate monitoring. Despite the availability of some pattern forms and SCOMIS there is a lack of consistent statewide court practices.

Due to the lack of consistent required accounting practices, each guardian develops his or her practice. The lack of consistency hinders the courts ability to provide effective oversight through reports. Generally, courts don't have the personnel (staff or volunteers) with the expertise needed to thoroughly review and audit reports and financial accounts in the manner necessary to discover losses or inappropriate expenditures.

In the late 80s, AARP created a model for a Volunteer Guardianship Monitoring Program that was used by several courts in Washington State. Today, Spokane Superior Court continues to successfully use this model to monitor guardianship under its jurisdiction. This is a time-tested proven model, which includes the following components:

1. A volunteer coordinator(s) is designated as manager or coordinator of volunteers. This person is responsible for:

   - Recruitment and selection of volunteers
   - Placement and scheduling of volunteers
   - Arranging initial and ongoing training
   - Tracking the progress of cases
   - Reporting program results

2. Volunteers. Volunteer researchers work with court records to prepare cases for assignment to volunteer visitors. Researchers obtain current addresses of

incapacitated persons and verify the status of the court file. Volunteers visit the incapacitated person, assess well-being and prepare a report for the court. Auditors conduct a systematic review of guardianship accountings.

Statement of Need: Required reports are essential to the court in ensuring that a guardian is fulfilling his or her duties. To ensure that the court receives complete and accurate information, in every case, consistent statewide practices should be implemented. Standardized forms containing the required elements are a first step toward implementing standardization that can be automated. A robust accounting system will save guardian and staff time by standardizing the reporting format, performing mathematical calculations and reducing paperwork. It will also allow ready access to expense and receipt details, minimize errors and possible exploitation and facilitate identification of overdue and incomplete reports. A volunteer monitoring program will supplement court staff and determine the accuracy of reports.

Recommendation 4. Develop standards for guardianship fees.

Background: It is undisputed that professional guardians should receive compensation for the services provided; however the appropriate level of guardian compensation is a vexing problem. According to Mary Joy Quinn, Director of the Probate Court of San Francisco Superior Court and author of *Guardianships of Adults,*[7] there are no state or national standards for fees. Each court determines how to establish guardianship fees. While many methods are used, most courts consider fees on a case-by-case basis and adhere to the "reasonableness" standard. Some courts establish fees based on a fraction or percentage of customary attorney hourly rates. Other courts glean guidance from the fee guidelines of banks and trusts. Other courts set fees by statute, court rule and administrative order. Regardless of the method used, courts lack the resources to thoroughly scrutinize all fees, therefore they rely on others to object to guardian's fees. Absent an objection, fees are often approved as submitted.

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. "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." The amount of the compensation allowed is within the discretion of the trial court. Said discretion is abused when the court's decision is manifestly unreasonable.

Statement of Need: The most common abuse reported within guardianship is pilfering of an incapacitated person's (IP) estate. Pilfering may include stealing from the IP, but

[7] Mary Joy Quinn RN, MA, *Guardianships of Adults: Achieving Justice, Autonomy, and Safety,* Springer Publishing Company, New York, 2005, Page 92.

often refers to the perception that guardians are charging exorbitant fees for grocery shopping, gift buying, dog walking and other relatively mundane tasks. This abuse has seen little reform, because it is very difficult to address. The issue of fees and stewardship is apparent in private pay and public pay guardianships. In private pay guardianships while funds are available they are likely not unlimited, thus a plan is needed to make the best use of available funds. In public pay guardianships the issue is how to provide needed services to the greatest number of persons possible given the funds available.

The Committee offers no solution to this concern, but recognizes the need for substantive discussion with many stakeholders regarding the assessment of guardian fees. A brief review of solutions used in other states is provided in Appendix B.

Recommendations for the Certified Professional Guardianship Board

Recommendation 5. Errors and Omission Insurance.

5a. Require all professional guardians to obtain errors and omissions insurance regardless of caseload.

5b. Require receipt of notification from insurance companies to the Certified Professional Guardianship Board when a guardian's insurance coverage expires or for nonpayment of premium.

5c. Require guardians to file proof of new coverage by a date and time specified by the Board.

5d. Require professional guardians to provide proof of caseload and dollars managed.

Background: Errors and Omissions (E&O) Insurance provides coverage for, "any act, error or omission made by the insured guardian/fiduciary in providing or failing to provide services. Generally, covered errors and omissions include allegations of failure to properly supervise an incapacitated person, charging excessive fees, and failure to safeguard funds or property of the incapacitated person. Professional guardians are required to maintain a minimum of $500,000 of Errors and Omissions Insurance which covers the acts of the guardian or agency, and employees of the guardian or agency, unless they have twenty-five or fewer guardianship case appointments at one time and manage less than $500,000 total countable assets, in which case they are exempt".[8]

[8] "Countable guardianship assets" shall consist of all real property, money, stocks, bonds, promissory notes and other investments in all of the guardianship estates currently managed by the guardian or agency. The value of an asset shall be its fair market value. In determining the value of an asset, the value as determined by a county assessor, or public price listed on a recognized exchange, may be used as its fair market value. The value of an asset shall not be reduced by the amount of any encumbrance on the asset. Insurance policies and other securities shall be included at face value or as listed on a recognized exchange. Countable guardianship assets shall not include burial trusts, pensions, or personal property other than as described in regulation 704.4."

Annually, as part of certification renewal, professional guardians submit the face sheet of their insurance as proof of coverage. Guardians are not required to provide the number of cases with countable assets that are managed. Often insurance coverage expires during the year and a professional guardian may not renew coverage until it is time to renew certification, or the caseload and/or assets managed exceed the exempt amounts. However, the Certified Professional Guardianship Board may not be informed about these changes.

Statement of Need: E&O insurance can be quite expensive, therefore, often if not required to purchase pursuant to regulation, some professional guardians opt not to purchase. If an uncovered guardian commits an error or omission, there may not be a way to compensate the incapacitated person for a loss resulting from the error and omission.

Recommendation 6. Reinstate audits of professional guardians and expand audits to include verification of accountings.

Background: On November 3, 2008, the Board adopted Disciplinary Regulation (DR) 520, authorizing the AOC to select certified professional guardians at least monthly and review the guardians' cases on the Superior Court Management Information System (SCOMIS) or other available case information resources. Within the Board's enabling authority, General Rule 23(c)(1)(ix), the Board is authorized to investigate to determine whether a professional guardian has violated any statute, duty, standard of practice, rule, regulation, or other requirement governing the conduct of professional guardians. DR 520 is within that scope of authority.

For approximately twelve months after adopting DR 520, the Board conducted random audits. Forty percent of the cases managed by professional guardians were audited for timeliness. The audits discovered late filings and several grievances were filed as a result. The number of late reports as a percentage of audited cases in the six counties is: Kitsap—89% late, Clark—41% late, Snohomish—46% late, Pierce—18% late, Spokane—21% late, and King—7% late. It is believed that late filings may be an indication that there are other problems in the guardian's practice and will provide a flag for review to ensure standards are being met.

Statement of Need: The monitoring of a guardian is largely complaint driven. With few exceptions, current monitoring is largely reactive not proactive. A guardian's late filing or failure to file required reports is indicative that there are other problems with the management of the guardianship, which necessitates the need for some leadership in active monitoring. There is a real concern in the community that consistent monitoring of guardians does not occur, and the Board's action under DR 520 is an excellent solution to the concern, as well as a process to help guardians understand their reporting obligations before late filings or failure to file becomes a significant problem.

Recommendation 7. Improve information available to the public regarding the guardianship and professional guardians. Create guardian profile pages which

include specific information (i.e. caseload, insurance, staff size, discipline history).

Background: Consumers, professional and nonprofessional, want good information about guardianship, including how guardians are appointed, guardian duties and standards of practice, professional guardian fee structures, guardian education, experience and qualification, the rights of the incapacitated person and their family and friends, and how to complain about the conduct of a professional guardian.

Statement of Need: Consumers, professional and nonprofessional, must navigate the guardianship process to obtain protection and decision support for persons with diminished decision-making capacity. Everyday individuals struggle to find good information with which to make decisions. Absent credible information, consumers often enter the guardianship process with unrealistic expectations. When experience falls short of expectation, disappointment and dissatisfaction will result and public trust and confidence in the guardianship process will likely decrease.

Recommendation 8. Develop a process to coordinate oversight.

Background: A number of entities including the Superior Courts, the Certified Professional Guardianship Board, Adult Protective Services, the Long-term Care Ombudsman, the Department of Social and Health Services, the Social Security Administration, the Office of Veterans' Affairs and others interact with guardians and the individuals served by guardians regularly. These entities have direct knowledge of how guardians perform, the quality of guardianship services provided, which services are effective, as well as what information, training and service is needed to address the needs of persons under guardianship. However, often this information is only shared when an investigation is in process.

Statement of Need: Working together and improving communication can ensure resources and expertise are used to assist guardians in providing quality guardianship services. Working together can facilitate focused effort on improving guardianship education and training and decrease duplication of resources for investigation. Collaboration makes it possible to stretch limited resources.

Recommendation 9.[9] Increase the number of qualified professional guardians providing guardianship services in Eastern Washington without compromising qualifications and standards.

Background: Two-hundred and eighty-eight certified professional guardians provide guardianship services in Washington State. Two-hundred and thirty-four or eighty-one percent of professional guardians reside in western Washington, heavily clustered around the state's population centers – King and Pierce counties. Fifty-four

[9] Bruce Buckles contributed to the Background of Recommendation 9.

professional guardians or nineteen percent of professional guardians reside in eastern Washington, with thirty-one residing in Spokane County.

Providing guardianship services in eastern Washington comes with a unique set of challenges. There are hundreds of square miles to traverse involving multiple jurisdictions and with different court rules and policies. In addition, there are multiple yet functionally limited health care providers and health care facilities that are spread out by hundreds of miles. The lack of specialties - especially in mental health and geriatric medicine - are a constant challenge to access across a region that involves vast "frontier" areas. These factors separate clients from not only all types of providers, but decision makers, courts, and families. Guardians can spend an inordinate time on the road seeking to provide the basic needs of their clients.

Finally, the fundamental economics of a rural professional guardianship practice is theoretically challenged. The economies of scale in a rural practice are difficult to evaluate or obtain, in the face of ever changing client needs in this vast, yet limited domain. Hence, there is increased legal peril in the face of urgent consultations and decision making with many health emergencies.

Statement of Need:

In 2010[10], 25 percent of Washington's population lived in rural areas or small cities. Residents in rural areas of the United States are more likely to be underemployed and wages in rural areas are most likely lower than those in urban areas. While the cost of living is lower, poverty rates tend to be higher. The need for community safety nets is significant. To remain in rural areas, the elderly typically need assistance from others. Without assistance from family, friends and others, many will be forced to move to nursing homes. The limited availability of social services and other supports could mean moving the elderly to urban areas. Aging in place will likely not be possible without qualified decision support.

Conclusion

Implementing some of the recommendations will require financial resources, all will require human resources, time and collaboration. However, providing decision support is an important issue requiring persistence and cooperation to achieve significant benefit to persons needing assistance making critical decisions and the public.

[10]Bill Bishop, "The States of Rural America", Daily Yonder, January 22, *Http://www.dailyyonder.com/how-rural-are-states/2012/04/02/3847*. N.p., 22 Jan. 2015

Appendix A - State Statutes or Court Rules Addressing for Bond Calculations

- **Uniform Veteran's Guardianship Act 0 RCW 63.36.090**
  http://apps.leg.wa.gov/rcw/default.aspx?cite=73.36.090

- **California Rule 7.207. Bonds of conservators and guardians**
  http://www.courts.ca.gov/cms/rules/index.cfm?title=seven&linkid=rule7_207

Appendix B - State Statutes or Court Rules Addressing Guardian Fees

- **Arizona**
  http://www.eldersandcourts.org/~/media/Microsites/Files/cec/mrozppt.ashx

- **California** (Superior Court of California, County of San Francisco, Uniform Local Rules of Court -Rule 14)
  http://www.sfsuperiorcourt.org/sites/default/files/pdfs/Local%20Rules/RULES%20final%201-1-12%20Link%201.pdf

- **Ohio (Rule 73.1)**
  http://www.mcohio.org/government/probate/docs/FINAL_LOCAL_RULESrev11_4_13

- **Florida (Guardian Fee Guidelines)**
  http://www.fljud13.org/Portals/0/Forms/pdfs/ejc/fee%20packet-guidelines.pdf

- **Texas - Standards for Court Approval of Attorney Fee Applications**
  https://www.traviscountytx.gov/images/probate/Docs/attorneyfees.pdf

Report of the Guardianship Task Force to the WSBA Elder Law Section Executive Committee

August 2009

Elder Law Section
Washington State Bar Association
1325 Fourth Ave., Ste. 600
Seattle, WA 98101-2539

Contents

Introduction 1

Executive Summary 2

Guardianship in Washington 5

1. Initiation of proceedings 5
2. Determination of incapacity 5
3. Orders and letters 6
4. Scope of guardianship 6
5. Duties of guardians 6
6. Types of guardians 7
7. Court oversight 8
8. Complaints and requests 8
9. The Office of Public Guardianship 9

Survey Findings 10

1. Mostly passive court oversight 10
2. Active monitoring in some counties 10
3. Lack of definitive complaint procedures 11
4. Lack of basic information 11

Recommendations 13

1. Courts should actively monitor guardianship cases. 13
2. Reliable guardianship data should be available on a uniform, statewide basis. 15
3. Training should be required for lay guardians. 15
4. The Office of Public Guardianship should be supported and expanded. 16
5. Adequate public funding should be allocated to the guardianship system. 16

Guardianship Task Force Members 17

INTRODUCTION

More than 16,000 Washington residents have guardians.[1] Courts appoint guardians to assist and protect people with cognitive disabilities who are unable to manage personal or financial matters. Referred to as "incapacitated persons" under the law, they are often vulnerable to financial exploitation, medical neglect, homelessness, and other kinds of harm. Guardians can dramatically reduce the likelihood of such problems by managing finances, arranging for health care, organizing living arrangements, and assisting in other ways. A guardian's work can be extremely demanding and difficult and often goes unacknowledged.

While a great many guardians provide invaluable help to the individuals they serve, guardianship does not always go well. In recent years, concerns about guardianship in Washington have been raised by legislators, journalists, judges, and lawyers. Often, concerns have focused on the performance of individual guardians. For example, one guardian reportedly hired unqualified people to care for a woman with dementia and left the caregivers unsupervised. Another guardian failed to account for $140,000 that was missing from the estate of a 94-year-old woman who died the year after the guardian was appointed.[2]

Concerns have also focused on the capacity of courts to prevent, uncover, and address problems in guardianships. In the case of the 94-year-old woman mentioned above, for example, the court failed to notice that the guardian's final financial report did not account for the missing $140,000. Whether guardianship problems are few and aberrational or widespread and systemic has been a subject of speculation.

To examine concerns about the performance of our guardianship system, the Elder Law Section of the Washington State Bar Association formed a Guardianship Task Force in 2007.[3] As part of its investigation, the Task Force surveyed courts across the state regarding guardianship policies and procedures. The Task Force also reviewed literature from Washington and elsewhere in the country describing recommended guardianship practices.

The Task Force concluded that Washington lacks a consistent, reliable, and adequately funded approach to management of guardianships. This report describes major findings from the survey and offers recommendations for improving Washington's guardianship system.

---

[1] This estimate was extrapolated from available local and statewide data.

[2] *See* Maureen O'Hagan et al., Guardianship Cases, *Your Courts, Their Secrets*, Seattle Times, Mar. 2007, *available at* http://seattletimes.nwsource.com/html/yourcourtstheirsecrets.

[3] The Task Force is comprised of practicing attorneys and other professionals from the private and public sectors. Members have expertise in many areas, including guardianship, elder law, disability rights, and public-health policy. For a list of Task Force members, see page 17.

EXECUTIVE SUMMARY

Incapacitated persons are vulnerable. Guardians who do their jobs well can significantly reduce this vulnerability and enhance quality of life. Guardians who fail to discharge their responsibilities can cause serious harm.

Because of the unique nature of guardianship, courts have special oversight responsibilities. If problems arise in a guardianship case, the incapacitated person may not be able to bring the concerns to the court's attention or may not even be aware of the problems. This differs from typical adversarial proceedings in which one party or the other is likely to bring problems before the court. Thus, an increased level of involvement is required of courts in guardianship cases.

As "superior guardians," courts ultimately have the duty to protect the interests of the individuals they determine to be incapacitated.[4] For this reason, the Task Force sought information about how courts monitor guardianships, process complaints, maintain data, and provide for training.

Summary of Findings

Major findings from the Task Force investigation are summarized below and discussed more thoroughly on pages 10-12.

1. Court oversight of guardianships varies dramatically among counties, with virtually no *active monitoring*—proactive, court-initiated oversight of guardians—occurring in most places. Passive approaches are more common, such as examining individual cases in response to complaints or reviewing reports for which guardians seek approval.

2. The majority of Washington courts do not track the outcomes of the guardianship complaints they receive. Procedures for handling complaints lack clarity and uniformity.

3. Dependable statistical information about guardianships is not available.

4. Training for lay guardians is not consistently required or readily available. Training for court staff and volunteers varies considerably.

5. Thousands of incapacitated individuals who are alone and poor continue to live without needed guardianship services.

6. Courts lack the resources needed to oversee guardianships effectively.

---

[4] *Seattle-First Nat'l Bank v. Brommers*, 89 Wn.2d 190, 200; 570 P.2d 1035 (1977).

Summary of Recommendations

In contrast to most of Washington, several counties have developed active and successful guardianship monitoring programs. Many of the procedures employed in these counties are reflected in the recommendations of the Task Force, which are summarized here and presented in detail on pages 13-16.

1. **Courts should actively monitor guardianship cases.**

   Serious guardianship problems, such as fraud and neglect, have been uncovered and remedied in counties where courts actively monitor guardianship cases. Active monitoring requires basic but proactive measures: tracking of deadlines; careful review of reports; further inquiry in response to inconsistent or missing information; thorough documentation of complaint resolution; and visits with incapacitated persons. Such practices can directly improve the physical, financial, and emotional circumstances of incapacitated persons. Active monitoring may also result in a more efficient use of public resources by reducing the likelihood that incapacitated persons are abused, neglected, or unnecessarily institutionalized.

2. **Reliable, statewide guardianship information should be available.**

   Reliable information is required for adequate assessment of the guardianship system. Yet, we have only a rough estimate of the total number of incapacitated individuals under guardianship in Washington.[5] Except in a small number of counties, statistical data about specific areas of guardianship, such as the type and frequency of complaints, is not available. If courts had an adequate data management system and were required to use it, valuable information would be readily available. Those responsible at the county and state levels, as well as members of the public, could use the information for strategic analysis and improvement of the guardianship system.

3. **Training should be required for lay guardians.**

   Although lay guardians assume fiduciary duties and other legal responsibilities for incapacitated persons, Washington does not require lay guardians to receive training. In certain counties, however, useful training is either required for lay guardians or easily accessed by those who seek it. Washington should have a minimum statewide training requirement for lay guardians and provide low-cost, easily accessible training resources.

---

[5] As noted in the introduction, the Task Force estimates that more than 16,000 individuals are under guardianship in Washington.

4. **The Office of Public Guardianship should be supported and expanded.**

   The vulnerability of many incapacitated persons is compounded by poverty and isolation. A guardianship system that fails to provide services for such individuals is unacceptable. The Washington Office of Public Guardianship already has a solid framework established for providing public guardianship services, but funds for this incipient program have been drastically reduced. Dedicated funding—commensurate with current needs—should be allocated to the Office of Public Guardianship.[6]

5. **Adequate public funding should be allocated to the guardianship system.**

   Expense is involved for the judicial branch to administer the guardianship system. Without an adequate commitment of public resources at the state level, the improvements called for by this report will not be made.

---

[6] Establishment of the Office of Public Guardianship in 2007 was spurred in part by the August 2005 report of the Elder Law Section's Public Guardianship Task Force. The report described the failure of Washington's guardianship system to serve thousands of state residents who are incapacitated, isolated, and impoverished. The OPG is discussed further on page 9.

GUARDIANSHIP IN WASHINGTON

The following section provides a brief overview of guardianship in Washington, including determination of incapacity, duties of guardians, procedures for court oversight, and other important aspects of guardianship.[7]

1. Initiation of proceedings

A guardian is a person or agency appointed by a court as a surrogate decision maker for a person who lacks the capacity to provide for his or her own needs. A guardianship proceeding begins when a person files a petition in a superior court to appoint a guardian for another person. A guardianship petition asks the court to determine whether the person is incapacitated and, if so, to appoint a guardian. Any interested person may file a guardianship petition; it is not necessary for the petitioner to want to be the appointed guardian. At this stage, the person for whom the guardianship is sought is referred to as the "alleged incapacitated person" (AIP).

2. Determination of incapacity

In order to appoint a guardian, a judge or a court commissioner must find that an AIP is incapacitated. In this context, determination of incapacity is a legal decision, not a medical one. The determination focuses on an AIP's ability to manage personal and financial matters. Although incapacity may stem from dementia, brain injury, developmental delays, or other illnesses and injuries, a medical diagnosis cannot be the sole basis for a finding of incapacity.

A hearing is required for the court to determine incapacity. An AIP is entitled to legal representation, either by a privately hired attorney, or if financial hardship exists, by a court-appointed attorney. An AIP is also entitled to a jury trial on the issue of incapacity. In advance of the hearing, the court must appoint a guardian ad litem (GAL) to investigate and make a recommendation regarding the capacity of the AIP and the appropriateness of the proposed guardian.[8] If the court determines the AIP lacks capacity and no less restrictive alternative is available, a guardian will be appointed.[9] A person under guardianship is referred to as an "incapacitated person."

---

[7] Washington guardianships are governed by RCW Chapters 11.88 and 11.92, statewide and local court rules, and case law.

[8] It is important to understand the difference between a GAL and a guardian. A GAL is appointed on a short-term basis to serve as a neutral investigator for the court and to represent the AIP's best interests for a specific purpose. Once a guardian is appointed, the GAL is dismissed. A guardian is appointed on a long-term basis to provide for an incapacitated person's health and safety, to manage financial affairs, or to do both. The findings and recommendations in this report pertain only to guardians.

[9] Less restrictive alternatives to guardianship, such as durable powers of attorney, are beyond the scope of this report.

3. Orders and letters

In Washington, courts appoint guardians by issuing orders of guardianship. The orders define the scope of the guardian's authority and set forth the guardian's legal responsibilities. Letters of guardianship authorize guardians to act on behalf of the incapacitated persons for whom they are responsible. Although state law expressly requires the issuance of guardianship letters to *standby* guardians (who serve if original guardians cannot), the same requirement is not expressly set forth for guardians generally. This appears to be an oversight in statutory drafting. Most Washington courts—but not all—direct court clerks to issue guardianship letters.

4. Scope of guardianship

Guardianships must be no broader than necessary to meet the needs resulting from incapacity. A guardian may be appointed for a person, a person's estate, or both. A guardianship "of the person" is required when a person is at significant risk of personal harm due to inability to adequately provide nutrition, health, housing, or physical safety. A guardianship "of the estate" is required when a person is at significant risk of financial harm due to inability to manage property or financial affairs adequately. When a person is capable of managing some, but not all, personal or financial affairs, a court may appoint a limited guardian to handle discrete areas of responsibility.

5. Duties of guardians

Consistent with their assigned responsibilities, guardians must make sure that the needs of incapacitated persons are met. Incapacitated persons may not be able to prepare meals, contact doctors, understand paperwork, make banking decisions, or handle other typical decisions and tasks. Depending on whether a guardianship is of the person, the estate, or both, a guardian may be required to make health care decisions, monitor bank accounts, or ensure that bills are paid on time.

In addition to direct responsibility for the needs of incapacitated persons, guardians have administrative obligations to courts, including the filing of initial, periodic, and final reports within specified timeframes. Depending on the scope of guardianship, guardians may be required to file inventories of incapacitated persons' estates, personal care plans for particular health needs, or reports on the guardians' spending.

6. Types of guardians

A. Professional guardians

As defined by Washington law, a professional guardian is a guardian who charges fees for providing services to three or more incapacitated persons who are not the guardian's family members. Guardianship fees are generally paid from the funds of the incapacitated person under guardianship, subject to court approval.

Professional guardians must be certified by the Washington State Certified Professional Guardian Board (CPG Board).[10] Professional guardians may work independently or with a professional guardianship agency that has also been certified by the CPG Board.[11]

Among other certification requirements, mandatory training is required for professional guardians. The initial training program covers fiduciary responsibilities, navigation of social and health services, legal and regulatory requirements, ethical standards, and constructive problem solving.[12] To maintain certification, professional guardians must meet continuing education requirements.

B. Lay guardians

Lay guardians (also known as nonprofessional guardians) are typically family members or friends who serve without pay. Under state law, lay guardians are not required to receive training. However, a few counties have instituted training requirements for lay guardians in local court rules.

Many lay guardians adapt well to their responsibilities. However, according to comments from judicial officers and experienced guardianship attorneys, it is not uncommon for lay guardians to sometimes feel lost in the guardianship process. Guardians have a broad range of responsibilities that are set forth in complicated statutes and, for some counties, in local rules. Without a statewide training requirement for lay guardians, there is no assurance that lay guardians know or understand their responsibilities.

---

[10] Appointed by the State Supreme Court, the CPG Board adopts regulations and practice standards, sponsors trainings, issues advisory opinions, and reviews grievances against professional guardians. More information about the CPG Board is available at http://www.courts.wa.gov/programs_orgs/Guardian/?fa=guardian.CPGBoard.

[11] Certain financial institutions regulated under separate state or federal laws may serve as professional guardians without obtaining certification from the CPG Board.

[12] *See* University of Washington Professional & Continuing Education, Certificate in Guardianship, http://outreach.washington.edu/ext/certificates/gr2/gr2_gen.asp.

7. Court oversight

Courts are responsible for overseeing guardians to ensure they discharge their duties to incapacitated persons. Much of the information needed for court oversight should be provided in the periodic reports that guardians are statutorily obligated to file. Although state law *permits* guardians to seek court orders approving such reports, there is no statutory requirement that guardians do so. Without a requirement of court approval, there is no practicable way to know the extent to which guardians' reports are timely, complete, and accurate. Nor is there a way to determine the extent to which courts actually review the information submitted by guardians or the level of scrutiny courts apply.[13]

In certain counties, however, approval of reports and accounts is required either in practice or by local rule. During one court's approval process, a judge discovered that a lay guardian was taking out "loans" from an incapacitated person's account. Because of this discovery, the court was able to put certain protections in place before the person's assets were wholly lost.

Court approval of reports provides benefits beyond opportunities to catch negligence or intentional wrongdoing. As part of the approval process, courts can assist well-meaning but inexperienced guardians who need guidance in fulfilling their duties.

8. Complaints and requests

Any person, including an incapacitated person, may communicate with a court to make a complaint, ask for replacement of a guardian, or request modification or termination of a guardianship. In response, courts may hold hearings, appoint GALs to investigate, or take emergency action. Unless courts direct otherwise, clerks must schedule hearings within thirty days of receiving complaints and requests.

If a person with a guardianship complaint or request is represented by an attorney, a formal motion is required. An attorney who files a guardianship-related motion generally takes responsibility to ensure that the issues presented in the motion are addressed by the court. A person without an attorney is permitted to submit an informal written complaint or request about a guardianship. This informal procedure is designed to make it easy to bring guardianship problems to a court's attention. Although clerks must forward complaints from unrepresented persons to judicial officers within one day of receipt, it is not clear whether this happens uniformly in practice.

---

[13] The CPG Board recently adopted regulations authorizing random reviews of professional guardians' cases to determine whether reports are being timely filed. Apart from these reviews, the Board does not ordinarily monitor the activities or court filings of professional guardians unless a grievance has been filed. The CPG Board's grievance procedure is discussed on page 9.

An individual with a complaint against a certified professional guardian has an additional option of filing a grievance with the CPG Board. Although the Board has authority to investigate, take disciplinary action, and impose sanctions, the Board is not a substitute for individual courts. The Board will ordinarily defer to individual courts' decisions concerning allegations of statutory violations or other misconduct.

9. The Office of Public Guardianship

For incapacitated persons with little income and few resources, the options for obtaining guardianship services are quite limited. Some guardians voluntarily waive their fees and provide services on a pro bono basis. A small number of incapacitated persons receive services through the Office of Public Guardianship (OPG), which was created by the Legislature in 2007 as a program of the Administrative Office of the Courts (AOC).

The Legislature funded guardianship services on a pilot basis for individuals who are alone (without family members or friends to serve as volunteers) and poor (without the means to pay for needed services). In 2008, the OPG began to contract with certified professional guardians to provide services in several counties. Expansion of the program continued into the first part of 2009.

Despite broad legislative and public support, the public guardianship program was dramatically curtailed in response to a significant reduction in AOC funding in the 2009-11 biennial budget. While the AOC continues to fund existing OPG cases (approximately 50 cases statewide), it has announced that it will not authorize additional cases in the next biennium. As a result, thousands of Washington residents who are incapacitated, impoverished, and alone continue to lack guardianship services.[14]

The statute that created the OPG requires a study of the costs and off-setting savings to the state from the delivery of public guardianship services. One issue the study will analyze is whether public guardianship services saves money by reducing the number or type of hospital admissions of incapacitated persons. The study is expected to go forward, but in light of the small number of OPG cases, it will be difficult to ascertain the level of savings the state might obtain through the public guardianship program.

---

[14] This estimate is based on the Elder Law Section's 2005 Public Guardianship Task Force Report. Additional information about the Office of Public Guardianship is available at www.courts.wa.gov/committee/?fa=committee.home&committee_id=136.

SURVEY FINDINGS

The Guardianship Task Force administered the guardianship survey by email and postal mail in early 2008. The response rate was 85%, with surveys returned from thirty-three of thirty-nine counties. Information was provided by clerks, administrators, commissioners, and judges. In areas where particular clarification was needed, follow-up interviews were conducted by phone. Significant findings are described below.

1. Mostly passive court oversight

Survey responses revealed that in most counties, virtually no active monitoring of guardianships occurs. Fifteen counties reported that they lacked procedures for monitoring compliance with guardianship responsibilities. Among the counties that reported some form of monitoring, approaches were quite varied. Reported practices included periodic file review and varying degrees of judicial oversight of reporting deadlines.

2. Active monitoring in some counties

Five counties reported a range of more active approaches, such as reminding guardians of upcoming deadlines, notifying guardians of noncompliance, and verifying reported information through calls or in-person visits with incapacitated persons. In a small number of counties, guardianship-specific software is used to track activity in guardianship cases.

Among the counties that engage in some form of monitoring, the activities are performed by individuals with various levels of legal, financial, and other types of expertise and training. Counties reported that monitoring activities are conducted by lawyers, lay volunteers, court clerks, court commissioners, and judges.

In one county, a guardianship monitoring program discovered that a man who was guardian of his 98-year-old stepmother had failed to file court-required financial plans. Further investigation showed that he was $30,000 behind in payments to her nursing home. A subsequent criminal investigation resulted in the guardian's conviction for stealing more than $200,000 from the guardianship estate.[15] This example illustrates how guardianship monitoring programs can uncover problems that might otherwise go unnoticed.

---

[15] Gregg Herrington, *Old and Exploited*, Columbian (Clark Co.), Nov. 16, 2003, at A6.

3. Lack of definitive complaint procedures

Very few counties provided detailed information about procedures for investigating, processing, or tracking complaints. Several counties identified referral of written complaints to judicial officers as the sole means of investigation. A few counties indicated that guardians ad litem might be appointed for further investigation. One county indicated that complaints are simply investigated by the parties. Although clerks are required to forward complaints from unrepresented persons to judicial officers within one day of receipt, the Task Force could not determine the extent to which this occurs in practice.

Almost two-thirds of the counties responding to the survey indicated that they have no means of tracking the outcomes of complaints, although one of these counties reported plans to develop a tracking system in the near future. A few counties indicated that tracking complaint outcomes would require manual file review.

In contrast to most counties, one county utilizes a written complaint protocol that includes procedures for receiving complaints, deadlines for processing them, and mandatory reporting of their resolution to a volunteer monitoring committee. With the exception of that county, no county reported procedures for handling complaints within specified timeframes.

Examples of complaints include accusations of misuse of finances, nonpayment of rent and utility bills, and failure to pay for prescription medications and other health needs. Other complaints involved incapacitated persons objecting to the need for guardianship or the actions of particular guardians. Financial disputes with assisted living facilities were also mentioned.

4. Lack of basic information

The survey revealed that most Washington counties do not collect, maintain, or analyze statistical guardianship data. The lack of basic guardianship information makes it difficult to determine the extent to which the needs of vulnerable incapacitated persons are being met.

A majority of Washington counties reported the total number of existing guardianships, but several did so based on estimates. Most counties could not readily determine how many active guardianships were full or limited, how many were of the estate, of the person, or both, or how many involved professional or lay guardians.

Very few counties provided guardianship data specifically related to complaints. For five counties, responders to the survey were unaware of how many complaints had been filed during the four-year period covered by the survey or had no basis on which to provide an estimate. Fifteen counties reported a range of zero to three guardianship complaints, whereas one county reported that twenty-two complaints had been filed. The county reporting twenty-two complaints also provided detailed information such as type of guardian involved, outcome of the complaints, and whether the court held hearings, appointed GALs, or entered written factual findings. The lack of similar data collection in other counties leaves many questions unanswered.

Several counties reported that compilation of statistical data would require time-intensive manual searches through paper files. Others reported that current case management systems are incapable of managing detailed guardianship data.

RECOMMENDATIONS

Washington's guardianship practices and procedures vary in ways not necessitated by any distinctively local needs. Existing practices and procedures are often not adequate to promote the protection of the vulnerable individuals served by the guardianship system. To allow for ongoing evaluation and improvement of the current system, the Task Force offers the following recommendations.

1. Courts should actively monitor guardianship cases through use of the following essential practices:

A. *Use of expiring guardianship letters combined with mandatory approval of annual filings*

i. Letters of guardianship should be prepared by court clerks and issued for all guardianships. Guardianship letters should expire 120 days after the annual deadlines for filing accounts and reports.

ii. Guardians 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 should amend the model order appointing guardians (WPF GDN 04.0100) to allow inclusion of expiration dates for guardianship letters.

iii. Guardians should be required to seek court approval of the statutorily required financial accounts and personal status reports that must be filed on an annual basis.[16]

iv. Orders approving annual accounts and reports should direct issuance of new guardianship letters and prominently identify new expiration dates. The AOC should amend the model order approving reports, accountings, and budgets (WPF GDN 05.0400) accordingly.

B. *Tracking deadlines and expiration dates* – Based on information identified in guardianship orders, clerk's office staff should enter all filing deadlines and expiration dates into a uniform, statewide data management system. The system should produce automated reminders to notify court staff of overdue accounts and reports and impending expiration of guardianship letters. (See Recommendation 2 for related recommendations.)

---

[16] This report refers to annual filing deadlines for accounts and reports. In certain cases, courts have discretion to allow filing intervals of up to 36 months.

C. *Enforcing compliance* – In response to overdue accounts and reports, courts should schedule compliance hearings, which could be cancelled if guardians file the overdue accounts and reports and obtain court approval in advance of the hearings. In response to failures to fulfill guardianship duties, courts should employ a graduated range of remedies, including training, sanctions, or removal.

D. *Conducting guardianship audits* – Adequately trained court staff should audit guardianships on a random basis and in response to complaints. Audits should include file reviews and in-person visits to incapacitated persons preceded by short-term notice. Guardianship audits should be explicitly authorized by statute or statewide court rule. Uniform requirements should govern the appointment and training of individuals who conduct in-person visits with incapacitated persons.

E. *Maintaining adequate staffing* – In light of the vulnerability of individuals served by guardians and the confidential nature of guardianship-related information, it is essential that persons who participate in guardianship monitoring be adequately trained and held to a high level of accountability. These ends are most likely to be served when guardianship monitoring is conducted by paid staff that are closely supervised by courts. When volunteers participate in guardianship monitoring, it is essential that adequate resources be dedicated to volunteer recruitment, screening, training, supervision, and retention.

F. *Avoiding burdens on incapacitated persons* – Monitoring requirements and procedures can impose unnecessary burdens and costs on incapacitated persons and their families. When designing monitoring systems, careful consideration should be given to the burdens they may impose on incapacitated persons.

G. *Following uniform procedures for complaints, concerns, and requests* – The procedures set forth in RCW 11.88.120 should be followed on a uniform, statewide basis for all motions and other written communications that convey guardianship-related complaints, concerns, and requests.

   i. In addition to the options currently provided in RCW 11.88.120 (filing motions and delivering written requests), unrepresented persons should have the option of using a pattern form to convey concerns, complaints, and requests to courts. The AOC should develop and provide such a form in accordance with Recommendation 2.

   ii. The AOC should develop a model order for courts to use in response to motions and other written communications that convey guardianship-related complaints, concerns, and requests. The model order should be designed in accordance with Recommendation 2.

2. Reliable guardianship data should be available on a uniform, statewide basis.

A. *Data management system* – The AOC should provide and courts should be required to use an appropriate database management system to collect, store, and retrieve guardianship data.

B. *Data categories* – Courts should collect data in at least the following areas: guardianship status (active, closed); guardian type (lay, private, public); scope of authority (person, estate; full, limited); reasons for guardianship;[17] guardianship complaints and concerns;[18] and active monitoring measures.[19]

C. *Pattern forms and model orders* – The AOC should provide and encourage the use of a variety of pattern forms and model orders, which should be designed to facilitate the efficient collection of uniform, statewide guardianship data.

3. Training should be required for lay guardians and made readily available to judicial officers and other court personnel.

A. *Requirements for lay guardians* – At a minimum, lay guardians should be required to review a guardianship reference manual or an instructional video and submit a declaration of proposed guardian in which they certify to courts that they have completed the minimum training requirements. Courts should be encouraged to provide in-person training. Courts should exercise discretion to waive training requirements for individual guardians.

---

[17] Reasons for guardianships might be delineated by dementia, developmental disabilities, injuries, age of minority, medical conditions, and mental illness.

[18] This category of data might be delineated by complainant type (family member, friend, incapacitated person, service provider); guardian type (lay, professional, public); form of communication (motion, written request, pattern form); timing of clerk's delivery to court (by next business day, by other time); action requested (modification, termination, guardian replacement, court instruction); issue addressed (abuse, neglect, mismanagement); court response (hearing scheduled, application denied without hearing, guardian ad litem appointed); and remedy ordered (modification, termination, guardian replacement, restoration of rights, training, sanctions).

[19] This category might include data for key case events such as deadlines for filing accounts and reports; expiration dates for guardianship letters; and audit dates, activities, and outcomes.

B. *Training Materials* – In consultation with judicial officers, bar associations, advocacy organizations, and human services agencies, the AOC should develop and provide a reference manual and an instructional video for lay guardians, and other training materials for judicial officers and court personnel.[20]

C. *Accessibility* – 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 and, when needed, in hardcopy.

4. The Office of Public Guardianship should be supported and expanded.

A guardianship system that lacks the capacity to provide adequate services to residents who are alone and poor is unacceptable. An adequate and dedicated appropriation to the Office of Public Guardianship is needed.

5. Adequate public funding should be allocated to the guardianship system.

A. *Increased funding* – Funding for the guardianship system should be increased and allocated to the AOC directly from the State's general fund and specifically designated for guardianship purposes.

B. *Short-term alternatives* – Given the current fiscal climate, the State should increase funding for the guardianship system through temporary allocations from dedicated revenue sources, such as supplemental fees for court filings and monitoring fees assessed against guardianship estates.

August 11, 2009

[20] Training content for lay guardians might include an introduction to guardianship, the statutory requirements for all guardians, and an overview of other issues such as abuse and neglect of vulnerable adults, government and community services and resources, identification of residential placement options, rights of incapacitated persons, and standards for substitute decision-making.

Training topics for judicial officers might include an overview of factors underlying the need for guardianships, the use of limited guardianships and guardianship alternatives, the rights of incapacitated persons, and active guardianship monitoring.

Training for court personnel, including administrators and clerks, might include guardianship case management, active guardianship monitoring, and uniform procedures for data management.

Guardianship Task Force Members *

Eileen S. Peterson
Partner, Gordon Thomas Honeywell; Chair, Guardianship Task Force;
Trustee/Past Chair, WSBA Elder Law Section

Barbara J. Byram
Managing Attorney, Dussault Law Group; Past Chair, WSBA Elder Law Section

Amy Freeman
Staff Attorney, Columbia Legal Services; Secretary-Elect, WSBA Elder Law Section

Richard L. Furman Jr.
Principal, Aiken St. Louis & Siljeg, P.S.

Peter Greenfield
Staff Attorney, Columbia Legal Services; Secretary, WSBA Elder Law Section

Deborah Jameson
Guardianship Investigator, Administrative Office of the Courts

Margaret M. Kennedy
Assistant Attorney General, Attorney General of Washington

Michael J. Longyear
Member, Reed Longyear Malnati & Ahrens, PLLC

David Lord
Director of Public Policy, Disability Rights Washington

Robert B. Nettleton
Partner, Neil, Nettleton & Neil, P.S.; Chair-Elect, WSBA Elder Law Section

Kimberly Prochnau
Judge, King County Superior Court

Richard L. Sayre
Principal, Sayre & Sayre PS

Julie R. Sommer
Associate Attorney, Reed Longyear Malnati & Ahrens, PLLC

Timothy E. Williams
Attorney at Law

Winsor C. Schmidt
Endowed Chair in Urban Health Policy, University of Louisville School of Medicine;
Chair and Professor of Health Policy and Administration, Washington State University (former)

** The recommendations in this report reflect the individual positions of task force members and do not necessarily reflect the policies or opinions of the members' offices, courts, or agencies.*