

Guarding the Guardians: Promising Practices for Court Monitoring

This *In Brief* summarizes the findings of the AARP Public Policy Institute report, *Guarding the Guardians: Promising Practices for Court Monitoring* by Naomi Karp of the Public Policy Institute and Erica Wood of the American Bar Association (ABA) Commission on Law and Aging.*

This research report identifies methods for helping courts effectively monitor adult guardianships that protect some of the most vulnerable people in our society. Court-appointed guardians step into the shoes of at-risk adults with cognitive impairments, making judgments about medical care, property, living arrangements, lifestyle and potentially all personal and financial decisions. But, guardianship also removes fundamental rights, which may increase opportunities for abuse of those we strive to protect.

Court monitoring of guardians is essential to ensure the welfare of incapacitated persons, identify abuses, and sanction guardians who demonstrate malfeasance. Despite a dramatic strengthening of guardianship statutory standards in recent years, judicial monitoring practices vary substantially by jurisdiction. Bolstering oversight will become increasingly important with demographic trends sharply boosting the number of guardianships in the coming years.

Promising Practices

Through site visits and intensive interviews, AARP and the ABA have identified approaches for effective monitoring that can be adapted and replicated by courts around the country. These include:

- *Reports, Accounts and Plans.* Noteworthy practices include: requiring early first reports to ensure the guardian is on track; providing clear and web-accessible forms; and requiring prospective plans for personal decisions and estate management.
- *Court Actions to Facilitate Reporting.* Courts should provide ample support for guardians while rigorously enforcing reporting responsibilities. E-filing, personal instruction by judges and staff, automated reminder notices, and scheduling compliance conferences all can help.
- *Practices to Protect Assets.* To ensure that guardians properly manage finances and to prevent financial abuse, courts can require a financial management plan, require supporting documentation with accountings, and use bonding and restricted accounts.

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- *Court Review of Reports and Accounts.* Reports and accounts are of little use if courts don't review them and respond to irregularities. Courts can use staff auditors and state administrative agencies to conduct a baseline review, and could perform more in-depth review in a random sample of cases.
- *Investigation, Verification and Sanctions.* Someone needs to visit the incapacitated person, and it can be a trained staff investigator, trained volunteer monitor or a court-appointed attorney or investigator. Sanctions such as fines, removal and calling in bonds address malfeasance.
- *Database and Other Technology.* Use of technology, such as an e-filing system with automatic capacity to flag problems, may be the most important trend for monitoring in an age when funds for staff are scarce.
- *Court Links with Community Groups and Government Agencies.* Working with community resources and agencies like adult protective services and long-term care ombudsmen can leverage training resources, enhance volunteer monitoring, and extend the court's reach.
- *Guardian Training and Assistance.* Court handbooks, videos and other resources for guardians, as well as required training for professional fiduciaries are promising tools.
- *Funding for Monitoring.* Ideas for bolstering resources include: dedicating filing and investigation fees to monitoring, using volunteers well, raising the awareness of county councils, and doing "things that don't cost a dime."

Courts Getting It Right

The report includes up-close snapshots of the way visionary judges and court administrators approach particular problems, and tips from experienced public officials, such as "How to Spot a Guardianship Going Bad." A few examples of exemplary courts:

- *Maricopa County, Arizona,* seeks creatively to maximize staff and technological resources in the face of a growing caseload. Highlights include rigorous case management, staff investigators and accountants, trained volunteer monitors, use of bonding and restricted accounts to secure assets, and a database to track and flag key case events.
- *Tarrant County, Texas,* has two probate courts with distinct forward-thinking approaches to oversight. One court relies heavily on legal staff and experienced volunteer visitors, while the other combines the skills of social workers (and social work students) with legal staff for detailed training and monitoring of every case each year.
- In *Suffolk County, New York,* the state's Chief Judge supported the implementation of a "model guardianship court" that uses a "problem-solving restorative jurisprudence approach," including mediation, a resource coordinator, volunteer advocates and the ability to integrate all pending cases involving the incapacitated person. The court uses compliance conferences to ensure that guardians are performing their duties.
- *Ada County, Idaho's* vibrant volunteer monitoring program has 45 volunteers serving as records researchers, visitors and auditors; and an experienced, resourceful coordinator responsible for oversight and training.
- *Ramsey County, Minnesota* and the *17th Judicial Circuit, Florida* are beginning to use e-filing systems for accountings by guardians. Strong data management systems will help flag anomalies and respond efficiently to possible problems in individual cases.