

Keilitz, Ingo

wmbb

KFA
2506
29
K45
1992

Institute on Mental Disability and the Law

Item ID
18014-1001

**An Evaluation of the
Guardianship Review Board Project
of the Superior Court of Arizona
for Maricopa County**

December 15, 1992



State
Justice
Institute



**National Center for State Courts
300 Newport Avenue
Williamsburg, VA 23187-8798**

**An Evaluation of the
Guardianship Review Board Project
of the Superior Court of Arizona
for Maricopa County**

Project Staff

Ingo Keilitz
Project Director
(Evaluator)

Brenda Jones
Administrative Assistant

**Institute on Mental Disability and the Law
National Center for State Courts
300 Newport Avenue
Williamsburg, Virginia 23187-8798
(804) 253-2000
(804) 220-0449 FAX**

This report and the evaluation upon which it is based are supported by a grant (SJI-91-12L-A-078) from the State Justice Institute. The points of view expressed are those of the author and do not necessarily represent the official position or policies of the State Justice Institute.

**An Evaluation of the
Guardianship Review Board Project
of the Superior Court of Arizona
for Maricopa County**

Table of Contents

I.	Evaluation Methods	1
A.	Overview.....	1
B.	Review of Documents (Task 1).....	2
C.	On-Site Research (Task 2).....	3
D.	Interim Reports (Task 3).....	4
E.	Presentation of Tentative Conclusions and Recommendations to the Court (Task 4).....	4
F.	Preparation and Submission of Final Evaluation Report (Task 5).....	5
II.	Observations and Findings.....	5
A.	Project Implementation.....	5
1.	Overview.....	5
2.	Guardianship Proceedings in General.....	7
3.	Integration of Project With Court.....	11
4.	Volume and Composition of Probate Caseload.....	12
5.	Guardianship Review and Monitoring by Volunteers.....	13
B.	Project Outcomes.....	16
1.	Effectiveness.....	16
2.	Reduction of Guardianship Abuses.....	17
3.	Project Replicability.....	18
4.	Public Trust and Confidence.....	18
5.	Compliance With National Guidelines and Standards.....	19
6.	Summary.....	20
III.	Conclusions and Recommendations	20
A.	General Conclusions	20
B.	Recommendations	22
1.	Integration Project with Court Investigation Function.....	22
2.	Organization and Consolidation of Overall Court Volunteer Effort.....	23
3.	Effective Participation, Streamlining and Screening	25
4.	Volunteer Assistance for Pro Per Litigants.....	26

III. **Conclusions and Recommendations** (continued)

5.	Clarification of Temporary Guardianship Procedures	26
6.	Annual Reports Ordered by the Court	27
7.	Ensuring Effective Results of Volunteer Monitoring	28
8.	Reform Effort Guided by National Standards.....	28

**An Evaluation of the
Guardianship Review Board Project
of the Superior Court of Arizona
for Maricopa County**

On October 1, 1991, with the support of the State Justice Institute (SJI), the Superior Court of Arizona for Maricopa County (Court) and the Sun Cities Area Community Council jointly initiated a 15-month project to establish a mechanism for the monitoring and regular review of guardianship and conservatorship cases by retired community volunteers in the medical, social services and legal professions. The aim of the project is to increase the Court's ability to gather information about the condition of a ward's person and estate once a guardianship has been established.

The Court engaged the National Center for State Courts' Institute on Mental Disability and the Law (IMDL) in July 1992 to conduct an independent evaluation of the effectiveness, usefulness, public satisfaction with, and replicability of the Guardianship Review Board Project (Project) in other jurisdictions. This is the final report of the results of that evaluation. It describes the evaluation methods (Section I); summarizes observations and findings regarding the Project's implementation (process evaluation) and the Project's results and outcomes (outcome evaluation) in terms of effectiveness, usefulness, public satisfaction with, and replicability (Section II); and offers conclusions and recommendations to the Court, SJI and other interested individuals and groups (Section III).¹

I. Evaluation Methods

A. Overview

To assess the actual implementation of the Project as designed (process evaluation) and the effectiveness, usefulness, public satisfaction with, and replicability of the Project (outcome evaluation), the IMDL completed the following five tasks in August through December 1992:

- (1) a review of reports and documents related to the Project;
- (2) a five-day, on-site inspection and review of the structures, programs, activities and accomplishments of the Project;
- (3) the preparation of two "interim" reports of findings and conclusions based on the first two tasks;

¹This report incorporates the contents and supersedes Interim Report No. 1 and Interim Report No. 2 which were submitted to the SJI and the Court on September 3, 1992 and November 2, 1992, respectively.

- (4) a two-day, on-site visit to the Project to convey and to discuss with the Court and Project personnel tentative conclusions and recommendations; and,
- (5) the preparation and submission of the final evaluation report to the Court and the SJI.

The evaluation is based solely on the descriptive and impressionistic data gathered as a result of these tasks.

B. Review of Documents (Task 1)

To complete the first task, in the period beginning August 24 and ending September 2, 1992), the IMDL reviewed the following reports, documents and reference materials:

- The May 1991 grant application submitted to the SJI by the Court seeking support for the Guardianship Review Project (formerly the Adult Review Board Project).
- Quarterly Progress Report No. 1 for the period beginning October 1, 1991 and ending December 31, 1991.
- Quarterly Progress Report No. 2 for the period beginning January 1, 1992 and ending March 31, 1992.
- Quarterly Progress Report No. 3 for the period beginning April 1, 1992 and ending June 30, 1992.
- A June 1992 report of a management analysis of the Probate Department of the Court prepared by Ms. Sarah Shew, Judicial Services Administrator.
- The August 1992 continuation grant application submitted to SJI by the Court, and miscellaneous correspondence supporting the application.
- An August 28, 1992 memorandum from Ms. Barbara Valdez, Project Coordinator, including supplemental information for the interim evaluation (Task 1) enclosed with the memorandum.
- Miscellaneous correspondence (including letters, memoranda and reference materials related to the project) dated August 7, 1991 through July 27, 1992.

Other sources of information relied upon by the IMDL--in addition to the reports, documents and reference materials noted above--include telephone conversations with Mr. Hugh Gallagher, Deputy Court Administrator, and Ms. Sarah R. Shew, Judicial Services Administrator, as well as face-to-face discussions and telephone conversations between Mr. Gallagher and Dr. Ingo Keilitz related to the National Probate Court Standards Project (for which Mr. Gallagher serves on a 15-member advisory group, the Commission on National Probate Court Standards, and Dr. Keilitz served as project director from October 1991 until September 1992).

C. On-Site Research (Task 2)

The IMDL spent the week of October 5-9, 1992, inspecting and reviewing the structures, programs, activities and accomplishments of the Project. On-site research included personal interviews with 23 individuals (five Project personnel, including two volunteers; nine staff members of the Probate Department, and nine Court personnel in other divisions); observations of guardianship and conservatorship hearings presided over by two Court Commissioners; observations of other Court and Project procedures and practices (e.g., Project data entry); and participation in several meetings including a regularly scheduled meeting of the Guardianship Advisory Council (in which the Hon. Robert D. Myers also participated). In addition, while on-site, the IMDL reviewed numerous documents and forms including: (1) Arizona Senate Bill 1033 and House Bill 3370 pertaining to guardianships and conservatorships; (2) a newspaper article on the Project in the September 16-22, 1992 *Sun Cities Independent*; (3) the *Handbook for Guardians and Conservators of Adults* published by the Probate Division and edited by Ms. Patricia A. Pelfrey and Commissioner Kenneth W. Reeves, III; (4) an August 18, 1992 memorandum to Presiding Judge C. Kimball Rose from Deputy Court Administrator Hugh Gallagher regarding the Probate Presiding Judge's Administrative duties; (5) an August 17, 1992 letter from Ms. Sarah Shew and Barbara Valdez to the Robert Wood Johnson Foundation seeking support for the Project; (6) a data template used for data entry by the Project; (7) various organizational charts describing the structure of the Court, the Office of the Court Administrator, the court visitors, the flow of investigative reports, and the Probate/Mental Health/Tax Division of the Court (Probate Division); and, finally, (8) various forms and checklists pertaining to the Project including:

- the Guardianship Review Panel Project Summary Report to the Court;
- the Guardianship Review Panel Project Report of Visit;
- the Guardianship Review Panel Project File Checklist;

- a checklist for paperwork required for guardianship/conservator for adult;
- Petitioner's Information Sheet to Court Visitors;
- Guidelines for Physicians Regarding the Guardianship/Conservatorship Process;
- a memorandum to Commissioner Joel Glynn from Ms. Barbara Valdez dated June 4, 1992 regarding recommendations for judicial action in a particular case; and
- an October 2, 1992 memorandum to the Maricopa County Professional Fiduciaries from Mr. Tim Dix, Judicial Administrator, regarding guidelines for appointment of professional fiduciaries.

Several weeks after the week-long site visit, IMDL received and reviewed two additional documents: (1) Quarterly Progress Report No. 4 for the period beginning July 1, 1992 and ending September 30, 1992; and (2) an October 16, 1992 letter to the State Justice Institute responding to questions about the Court's application for continued support of the Project by SJI. Information gleaned from the interviews, observations, meetings and other sources of information contributed to the observations and findings, and tentative conclusions and recommendations.

D. Interim Reports (Task 3)

The IMDL prepared two interim reports. Interim Report No. 1, submitted to the Court and SJI on September 3, 1992, was based on the results of Task 1, a review of reports and documents related to the Project. Interim Report No. 2, submitted to the Court and SJI on November 2, 1992, included the results of Task 2, the five-day, on-site inspection and review of the structures, programs, activities and accomplishments of the Project. This report incorporates the contents and supersedes these interim reports.

E. Presentation of Tentative Conclusions and Recommendations to the Court (Task 4)

On December 10-11, 1992, IMDL staff made oral presentations of tentative conclusions and recommendations to Court personnel during several meetings including the Presiding Judge, court commissioners, court administrators, Project personnel, and other court staff. Generally, the tentative conclusions and recommendations presented were those set forth in Interim Report No. 2. Discussions of tentative conclusions and recommendations are reflected in this final report.

F. Preparation and Submission of Final Evaluation Report (Task 5)

This final report, and the preceding interim reports upon which it is based, was written by Ingo Keilitz, Ph.D., the former director of the National Center for State Court's Institute on Mental Disability and the Law (IMDL), currently the Vice-President, Institute for Court Management (ICM), National Center for State Courts. He also conducted all research tasks described in this report. Ms. Brenda Jones, Administrative Assistant, provided administrative support.

This final report is meant to assist the court and its Probate Department in improving guardianship review and monitoring and to inform the State Justice Institute (SJI) regarding the effectiveness, usefulness, public satisfaction with, and replicability of the Project in other jurisdictions. Although most of the observations, findings, conclusions and recommendations in the next two sections of this report focus on the Project's review and monitoring of guardianship and conservatorship cases, some are directed at the Probate Department and the Court as a whole, i.e., the larger context in which the Project must operate.

This report and the evaluation upon which it is based were supported by a grant (SJI-91-12L-A-078) from the State Justice Institute (SJI). The points of view expressed in this report are those of the author and do not necessarily represent the official position or policy of the SJI.

II. Observations and Findings

A. Project Implementation

1. Overview

Generally, all program evaluations--regardless of the nature and scope of the program--should address the threshold question, "Has the program been established in ways that match the specifications and elements of the program design?" This question should be answered before the evaluation proceeds to assess the program's merit (i.e., effectiveness, efficiency, utility and public satisfaction). Many programs may have been adjudged failures simply because they were not established or implemented. Would one want to evaluate the efficiency and effectiveness of a computer system if the computers have not been installed and the system is not up and running? Simply put, to judge a program's worth, it must first be established. *Has the Guardianship Review Project been implemented as designed?*

The goal of the Project is the creation of a mechanism utilizing retired community volunteers who are Sun Cities area residents for the regular review of guardianship and conservatorship cases. **By all accounts and sources of**

information noted in the previous section, a mechanism of regular review of guardianship and conservatorship cases by volunteers has been established and implemented by the Project.

The Project has a physical presence in the community where it is positioned to serve both the Court and the community. The Project operates an office in an apartment complex in Sun City. The office is manned by a Project Coordinator and a secretary/data entry technician. During IMDL's visit to the Project office on October 7, 1992, a notice in the window of the office indicated that the office was open Tuesday, Wednesday, and Thursday. Two volunteers were in the Project office reviewing case files.

As further described below, the Project recruited 48 volunteers in February 1992. Thirty-six volunteers completed a two-day training program February 27-28, 1992, conducted at the Sun Cities' Area Community Council. Volunteers began the review of cases shortly thereafter. According to Project records and accounts by interviewees, the number of volunteers engaged by the Project ranged from a low of five to a high of 32.

Reportedly, many Sun City residents leave the Phoenix area during the summer months and return during October and early November. Consequently, the number of volunteers available to the Project is at its lowest during the summer months. Difficulties of recruitment, training, retraining and attrition of experienced volunteers--which probably are not unique to the Project--continue to plague the Project. The following paragraph in the Project's progress report for the period ending September 30, 1992 describes the difficulties.

While the project had planned to gather all returning volunteers for an in-house training session to refresh their skills during the past quarter, the volunteers had not returned from lengthy absences over the summer. Because volunteers have been lost to illness and other volunteers have still not returned, the project is assessing whether and when to train new volunteers. The project is holding ten completed volunteer applications, with a promise from the local volunteer bureau to assist in recruiting additional volunteers if necessary. The project coordinator is polling the volunteers as to what they think is the most crucial element of the training process and what can be learned on the job. Experienced volunteers may also participate in training new and returning volunteers.

The Project's structure and organization have been developed to review and monitor guardianship cases. Volunteers researched cases, visited guardians and wards and, to a lesser extent, audited financial returns. The number of case reviews and visits of wards and guardians conducted by volunteers exceeds SJI grant projections.

Some parts of the implementation of the Project lag behind schedule and fall short of expectations while others are ahead of schedule and beyond expectations expressed in the grant application. Still other parts of the implementation of the Project depart from design (e.g., the idea of "boards" or teams of three volunteers appears to have been abandoned in favor of individual volunteer reviewers). **However, the Project clearly has successfully demonstrated that a mechanism of regular review of guardianship and conservatorship cases by volunteers *can* be established and *can* be implemented by a court working in cooperation with a coalition of community groups. This finding supports those of the SJI-supported Guardianship Monitoring Program in Denver, Houston and Atlanta organized and conducted by the American Association of Retired Persons (AARP) in cooperation with the probate courts in Denver, Houston and Atlanta.**

2. Guardianship Proceedings in General²

Individuals in Maricopa County interested in establishing a guardianship and identifying a guardian of another person (presumably, individuals rarely seek guardianships or conservatorships for themselves) do so either (a) by employing a private attorney to file a petition and other related forms and certifications, or (b) by seeking the assistance of the Probate Department and proceeding *in propria persona*, i.e., on their own behalf without legal representation.³ According to Court personnel, approximately 15-25 percent of the petitions for adult guardianships are filed by *pro per* litigants.

Pre-Petition Process

Pro per litigants who contact administrative personnel of the Probate Department (usually after having made several calls throughout the Court) are instructed to purchase the necessary forms to file a petition from a local book or stationery store. During the IMDL's on-site research in October, Court staff successfully purchased appropriate forms for *adult* guardianship, but only after first purchasing (for approximately \$20) a poorly labeled "legal kit" for minors and only after discovering that the store to which she initially was referred by a representative of the Probate Department did not have the appropriate guardianship forms. One interviewee indicated that guardianship forms are

²These proceedings are described as they appeared in October 1992. Changes have occurred and continue to occur at this writing. For example, effective January 4, 1993, individuals seeking appointments as either guardians or conservators will be required to file, in compliance with A.R.S. §14-5106, an Affidavit of Proposed Appointee with a petition for appointment. New orders to guardians have also been developed by the Court that require guardians to report annually, in writing, with respect to a ward's residence, physical and mental health, whether there is still a need for a guardian, and (if there is no conservator) a ward's financial situation.

³Referred to by the Court as *pro per* litigants.

available (presumably at no charge or at the cost of photocopying) from the local Department on Aging.

Pro per litigants also are instructed by Probate Department personnel that they can receive from the Court, either by contacting the Court in person or by sending the Court a preaddressed, stamped envelope, three additional forms: (1) Paperwork Required for Guardianship/Conservator for Adult, (2) Petitioner's Information Sheet to Court Visitors, and (3) Guidelines for Physicians Regarding the Guardianship/ Conservatorship Process. They are told that they either will need or find these forms helpful during the guardianship petitioning process. The instructions contained in these forms appear written for the well-initiated lawyer, not *pro per* litigants. The latter are likely to be confused, if not totally overwhelmed, by these forms and the instructions contained in them.

The Probate Department staff member responsible for responding to requests does not provide any further assistance to the *pro per* litigants at this stage in part, reportedly, due to fear or uncertainty about dispensing unauthorized legal advice. **By making the required paperwork for filing guardianship petitions particularly onerous and by providing little assistance to *pro per* litigants, whether intended or not, the pre-petition process may discourage *pro per* litigants and encourage individuals to seek legal representation.**

Filing of Petitions

Representatives ("runners") of private attorneys and *pro per* litigants file guardianship petitions and related forms with the Probate Registrar who, in turn, files the petition, assigns the petition a case number and accepts fees from the petitioner or the representative of the private attorney. *Pro per* litigants are instructed by the Probate Registrar to proceed directly to the Probate Department for setting of a trial date and further instructions. Attorneys typically contact the Probate Department for a trial date by telephone and, on occasions, reportedly attempt "forum shopping" for a hearing by a preferred commissioner or the Presiding Judge of the Probate Department.

Processing of Petitions

Upon the filing of a petition, a number of actions are taken, proceedings initiated, and events scheduled. **Again, for the uninitiated petitioner, especially a *pro se* petitioner, the responsibility imposed by these actions, proceedings, and events may be daunting.** For example, a "file stamped" copy of the original petition must be submitted to the Court, as does one "file stamped" copy of petition for appointment of a court visitor, physician and attorney. The original court visitor information must be filled out entirely except for the court appointed attorney and hearing date sections. Further instructions read as follows:

After your documents have been received by the Court, we will appoint an attorney for the ward. The Court does not select a physician, you must nominate the ward's doctor, if the ward doesn't have one then it is counsel's responsibility (usually through the petitioner), to get the ward examined by a MEDICAL doctor. Psychiatric evaluations only, do not meet statutory requirements of a medical doctor. A minute entry will be generated stating the name of the Commissioner, Court-appointed Attorney, and date and time of hearing.

It is counsel's responsibility to contact the court-appointed attorney and the appointed physician and to make certain that their reports are filed with the court at least FIVE JUDICIAL DAYS prior to the hearing. Counsel usually has them mail their reports to them so they can lodge the reports with their ORDER FOR APPOINTMENT OF G/C. The reports and your Order must contain the PB number and the hearing date.

We notify the Court Visitor by sending them their Visitor's Information Sheet with your file stamped copy of the Petition to Appoint Guardian/Conservator.⁴

Temporary Guardianship

Petitioners may seek temporary guardianships at the time of the original petition, if they are aware that such an option exists. Reportedly, counsel typically will seek an expedited hearing before a Court Commissioner. On the other hand, for *pro se* litigants, the existence of an emergency and the need for a temporary guardianship usually comes to the attention of the representative of the Probate Department at the time of the setting of a trial date. That is, unless *pro per* litigants have appeared before the Court before, they are unlikely to be familiar with the option for filing a petition for appointment of a temporary guardian (i.e., for a period of six months, if an emergency exists, pending appointment of a permanent guardian). If in the judgment of the court personnel an emergency exists and there appears to be a genuine need for temporary guardianship, the *pro se* litigants are instructed to seek an immediate hearing before the Presiding Judge. Court personnel perform what is in effect a screening function, expediting the guardianship process for petitioners who they deem are presenting emergency situations.

Hearing Procedures

Hearings on petitions for guardianship are set within six weeks of the filing of the petition. Before the hearing, an attorney is appointed to represent the ward (if he or she is not already represented by private counsel), a court

⁴Paperwork required for Guardian/Conservator for Adult (Form 11/15/91).

visitor/investigator visits the ward and the proposed guardian and files a report with the court, and a physician corroborating the need for guardianship files his or her report.

Initial hearings on guardianship petitions are heard by court commissioners. Typically, hearing participants include the ward's attorney, the petitioner's attorney, witnesses, and the proposed ward (if he or she is willing and able to participate in the hearing). As noted earlier, at the time of the filing of a petition, the Probate Registrar requires that a "face sheet" be completed which is sent to court investigators with copies of the other documents filed. Investigators visit proposed wards, and in some instances the proposed guardians, and report their findings and recommendations to the Court in writing prior to hearings. Copies are distributed to counsel, and the Court files the original report in the case file.

Reportedly, because of increasing caseloads and mounting paperwork, the reports of visitors' investigations and physicians' are often not made available to the Court until the day of the hearing. In one of the two adult guardianship hearings observed by the IMDL, the visitor's report was distributed to the litigants at the time of the hearing; the physician's certification was not available at the hearing.

Typically, uncontested guardianship petitions are granted by the Court. Contested matters are scheduled for trial before the Presiding Judge or one of the court commissioners.

Annual Report

Pursuant to A.R.S. §14-5315 appointed guardians for adult wards are required to file an annual report with the court describing the ward's whereabouts and residence, physical and mental health, whether there is still a need for a guardian, and (if there is no conservator) the ward's financial status. Guardians are required to mail copies of the report to the ward, the ward's conservatorship, the ward's spouse (or parents if the ward is unmarried), the court-appointed attorney, and any interested party who has filed a demand for notice with the court. These statutory requirements for annual reporting by guardians are reflected in new written orders developed by the Court in December 1992.

Local rule (Rule 5.10, "Review of Pending Cases") requires the Probate Department to review and to report on all probate and guardianship proceedings pending for more than two years and, if appropriate, take action. Reportedly, prior to the start of the Project, few guardians filed reports.

In reviewing files for compliance, court investigators reportedly urge compliance via telephone calls and correspondence. Court investigators' reports

may or may not mention a guardian's failure to file an annual report on the ward's condition.

3. Integration of Project With Court

The Probate Department has not had the staff and resources (e.g., automated caseload information systems) to carry out all of the responsibilities entrusted to the Department. Although the Project has contributed to the solution to the problem (see below), very few of the estimated 27,357 "open" estate, trusts, guardianship, conservatorship and mental health cases currently are being monitored and overseen as desired by the Court and, in many ways, as directed by Arizona statute. Court officials freely admit that precise counts of the number of probate cases in the Court currently are not available to them.⁵ Although he is widely recognized by Court personnel as having moved the Probate Department towards modernization, the former Presiding Judge of the Probate Department, the Hon. Morris Rozar, quipped that the Probate Department's operations had not received the scrutiny needed since Kit Carson helped open the territory of Arizona to settlement in the Nineteenth Century.

Undoubtedly, guardianship monitoring by volunteers is unlikely to be successful if it is conducted in isolation from the overall operation of the Court. **Perhaps the single most significant development of the Project is the Court's commitment to focusing considerable attention and devoting significant resources to the improvement of the structure and operations of the Probate Department.** This commitment was, in part, stimulated by the Project and bodes well for the integration of the Project into the overall Court operations. In various communications, Court administrators have expressed their view that the Project affords the Court the opportunity to develop a national reputation for leadership in reform of probate practices comparable to the status and national recognition the Court has received in previous years for its excellence in civil and criminal caseload management. Evidence of the Court's commitment to such reform include:

(1) assignment of the Hon. Robert Myers, the former Presiding Judge of the Court's Civil Division, as the Presiding Judge of the Probate Department, upon the retirement of the Judge Morris Rozar (reportedly, Judge Myers is the youngest judge to have been appointed to the Probate Department);

(2) considerable attention paid to the Probate Department by the leadership of the Court reflected in various memoranda and reports addressing

⁵"At the present time, it is difficult to know with any degree of certainty the number of adult guardian and conservatorship cases in this court." Shew, S. Management Analysis, Probate Division, Probate Court Administration, Superior Court of Arizona in Maricopa County, June 1992, p. 19.

departmental staffing, resource and organization issues, automation, response to legislation, probate fees, bar and bench issues, *pro per* (litigants without representation) problems, education, standardization of procedures;

(3) comments made during interviews by the then present and future Presiding Judge of the Probate Department and court administrators reflecting strategic planning for the Probate Department including the development of a focused mission, problem identification, restructuring and team building; and,

(4) a "retreat" of the staff of the Probate/Mental Health Department scheduled December 17, 1992. The agenda of the retreat includes a discussion of expectations and goals; identifying organizational mandates; expectations of the Court's constituents; identifying the Department's mission; discussion of the strengths and weaknesses of the Department; trends in probate/mental health; and envisioning what Department staff expect to be accomplished in the next four years.

Probate proceedings--including the management of guardianship, conservatorship and mental health cases--have not received the attention they deserve. They are not today in the mainstream of modern court management.⁶ To the degree that the Project has served as the catalyst for reform of the Court's Probate Department to bring its operations on a par with that of the Court's Civil and Criminal Divisions, the Project's significance goes beyond the successful demonstration of a guardianship monitoring program.

4. Volume and Composition of Probate Caseload

As noted earlier, the Probate Department estimates its active caseload to be in excess of 25,000 cases. However, the Department is uncertain about the precise caseload and composition. Both the sheer volume of active cases and the need to review and monitor these cases demand that the caseload be automated.

As a prerequisite for the regular review and monitoring of guardianship and conservatorship cases by volunteers, the Project sought in its first phase to take an inventory of the Court's conservatorship and guardianship cases. Case variables entered into computer files by Project volunteers included: name of the ward, residence/location, investigator's name, the date a guardian was appointed, hearing date, investigator's priority for investigation, case type (guardianship, guardianship and conservatorship, conservatorship, male, minor) and others.

⁶ See *generally*, American Bar Association, COURT RELATED NEEDS OF THE ELDERLY AND PERSONS WITH DISABILITIES (1991).

Project staff optimistically projected a conversion of approximately 17,000 manual records to a new automated system. To date, this ambitious goal has not been met and is unlikely to be met by Project volunteers alone. As of June 30, 1992, only 5,389 cases (slight variations of this number are reported in various sources) have been entered into free-standing personal computer files by volunteers. This shortfall appears to be attributable to circumstances beyond the control of the Project including: (1) inadequate, incomplete information systems created by the Project that are incompatible and not integrated with the automated system of the Court and the Clerk's Office; (2) the overwhelming numbers of incomplete, outdated, and complex files far exceeding Project expectations and projections; and (3) an understandable reluctance of volunteers to perform relatively tedious data-entry functions that they were not prepared to perform. **In sum, updating of the guardianship and conservatorship case file system remains an important goal of the court, but it is not a realistic goal for the Project alone.**

The Project's success in converting more than 5,500 manual records--albeit in an incomplete and imperfect fashion (e.g., using stand-alone personal computers)--already has prompted the Court to make plans for the integration of the Probate Department files with the court's integrated case information system. The management analysis of the Probate Department completed earlier this year and presented to the judges and commissioners currently assigned to the Department suggest that such an integration is a real possibility. A goal for the management analysis was to thoroughly review the procedures currently followed by the Probate Department, analyze the efficiency and effectiveness of its day-to-day operation, and prepare for its integration with the Court's Automated Court System (ACS).

5. Guardianship Review and Monitoring by Volunteers

According to the Court's original grant application to the State Justice Institute (SJI), the Project would "establish five Adult Review Boards consisting of volunteers [three volunteers per "board"] who are retired professionals (attorneys, accountants, social workers, nurses and physicians) . . . to improve supervision and oversight of guardian and conservatorship cases filed in the Superior Court of Maricopa County." Volunteers would review records and visit the wards, if necessary, to evaluate the status of the ward and the quality of care received. Under the supervision of Project coordinator/volunteer coordinator, volunteers would then make suggestions and recommendations to the Court regarding the status of the wards and actions that may need to be taken by the Court. **With the exception of the abandonment of the "board" structure noted above, the planned mechanism of monitoring and review of guardianship and conservatorship cases by volunteers has, indeed, been established and implemented as designed.**

The Project recruited 48 volunteers in February, 1992. As noted earlier, the original grant application projected recruitment of a total of 15 volunteers, i.e., five "Boards" of three volunteers. Thirty-six volunteers completed a two-day training program February 27-28 at the Sun Cities Area Community Council. The volunteers began review of cases shortly thereafter.

Case Selection and Assignment

A guardianship or conservatorship case file of a Sun Cities' ward is assigned to a volunteer by the Project coordinator. Reportedly, assignments are, in most instances, without regard to case characteristics and the capacities or preferences of the volunteer. Reportedly, Sun Cities' cases were identified in several ways. First, the Chief Court Investigator culled available files and supplied the Project with 323 Sun Cities' cases on March 2, 1992. These cases were presumed to be "active" cases but, upon further inspection, in many of the cases the ward was deceased, the case was terminated, the ward's or the guardian's address was unknown, or the ward had moved out of state. Project personnel and volunteers struggled with the lack of definition of an "open" or "active" case. Second, volunteers culled from case files dated before 1987 a total of 277 cases of wards living in the Sun Cities, Glendale or Peoria areas. Finally, an unreported number of cases (presumably far below the number of cases obtained through the other two methods) were obtained directly from court investigators by various means. According to the Project's progress report for the period ending September 30, 1992, approximately 940 Sun Cities area cases are currently identified.

Volunteer File Review

Upon receipt of the file from the Project coordinator, a volunteer reviews the case for completeness using the "File Review Checklist" developed as a guide by the Project. The checklist elicits information about the ward, the guardian or conservator, the attorney, whether a guardian report has been submitted, whether an annual/bi-annual accounting is due, and so forth.

If an annual report has not been filed, the volunteer sends a letter and a "Guardian Report Form" to the guardian or the private fiduciary requesting that the form be completed and returned to the Probate Department. The one-page form states that the A.R.S. §14-5315 requires guardians to submit an annual report on the anniversary date of their appointment. It elicits the following information: (a) the type, name and address of the home or facility where the ward lives; (b) the name of the person in charge of the home or facility; (c) the number of times the guardian has "seen" the ward in the last twelve months; (d) the date the guardian last "saw" the ward; (e) the name and address of the ward's physician; (f) the date the ward was last "seen" by a physician; (g) a copy of the ward's physician's report to the guardian or, if none exists, a summary of the physician's observation of the ward's physical and mental condition, major

changes in the ward's physical and mental condition observed by the guardian in the last year, and the guardian's opinion as to whether the guardianship should be continued; and (h) a summary of the services provided to the ward by a governmental agency and the name of the individual responsible for the ward's affairs with that agency. The volunteer then contacts the ward or the ward's residence (e.g., nursing home or extended care facility) to determine the present location of the ward and the guardian.

Visiting the Ward

Reportedly, volunteers usually visit wards--with or without advance notice--to determine the ward's status. The volunteer may use a five-page report, "Report of Visit," to guide his or her inquiry. According to one volunteer who also serves as a member of the Guardianship Advisory Council, the wards he has visited generally expressed satisfaction that the Court was assuming oversight responsibility for their case. Visits are not made, and are instead referred to the court investigators, in cases that appear to present possibilities of risk to the volunteers, e.g., the ward has exhibited violent behaviors in the past, the ward's residence is in a "dangerous" neighborhood.

Typically, following a visit to the ward and/or the guardian, the volunteer will confer with the Project coordinator to discuss the volunteer's findings, actions that may need to be taken, and the contents of the report to the Court. According to the Project Coordinator, these conferences have proven to be the best method found to supervise the volunteers' work.

Summary Report to the Court

After the review of the case file and after a visit to the ward and/or guardian, the volunteer files a report on a standard form, "Summary Report to the Court." This report requires the volunteer, in cooperation with the Project Coordinator, to describe the review and monitoring activities performed (i.e., file reviewed, ward visit, interview of guardian, review of accountings and letter sent to guardian), the volunteer's findings (i.e., the ward's overall care is superior, adequate, marginal, or unacceptable), general observations of the ward and, finally recommended actions.

Staff Meeting

A staff meeting, including the Project Coordinator and the Deputy Court Administrator, is held to review and, if appropriate, take the action recommended by the volunteer including, but not limited to, an immediate visit to the ward by a court investigator, a review by the court investigator in a number of months, a request of a current accounting from the conservator, a request of an accounting by the court accountant, a care plan to address the ward's needs ordered by the

Court, some other action or no action recommended at the time. Reportedly, staff meetings have been held no more frequently than once a month.

A notice of a staff meeting on August 19, 1992, appended to the Project's progress report for the period ending September 30, 1992, identified 10 cases for review and noted that seven of the 10 were "purely administrative," suggesting that they did not warrant formal Court intervention. According to the progress report, Court investigators were "able to work out small problems through phone calls to guardians or caregivers. Through this procedure, issues related to the welfare of the ward are being addressed amicably and efficiently."⁷

B. Project Outcomes

In describing and thinking about the Project's outcomes and impacts, it is important to link outcomes and impacts to goals. As noted in the previous section, the overall goal of the Project is the creation of a mechanism utilizing retired community volunteers for the regular review of guardianship and conservatorship cases. By all accounts, this goal has been achieved, i.e., a mechanism of regular review of guardianship and conservatorship cases by volunteers has been established and implemented by the Project. **A much more fundamental question is whether the establishment of a mechanism of regular review of guardianship and conservatorship cases by volunteers by the Court has had a positive outcome or impact.**

Outcomes are activities, attitudes or behaviors the Project expects to affect. Evaluating outcomes and impacts invariably involves comparisons. Are the outcomes and impacts any different from what would have happened had the Project not been implemented? The factors, circumstances and situations described in this section are among the *possible* indications that the Project has had positive outcomes and impacts different from those one might have expected without the Project's implementation.

1. Effectiveness

Is the Project effective? If so, compared to what? Undoubtedly, all other things being equal, the Project allows for increased, more thorough and consistent review and monitoring of guardianship and conservatorship cases, thereby providing opportunities for more effective management of the Probate Department's entire guardianship and conservatorship caseload. **The Project demonstrates that a significant quantity and acceptable quality of work can be accomplished by retired community volunteers who are properly supervised by a professional coordinator.**

⁷Quarterly Progress Report No. 4 for the period beginning July 1, 1992 and ending September 30, 1992, p. 3.

Project volunteers have processed data relating to a significant portion of the Court's guardianship and conservatorship cases into a database that can be used in monitoring the cases in the target geographic area and beyond. The backlog of cases in the targeted geographic area has been brought down by a review of files and determinations of matters where the ward is deceased and the guardian/fiduciary simply neglected to terminate the proceedings. The Project has helped identify both active and inactive cases in the Sun Cities area and elsewhere.

Compared to no program of regular review and monitoring of guardianship cases, the Project can easily be considered effective. The Court's commitment to assume the cost of the Project when the financial support of the State Justice Institute (SJI) ceases⁸ further suggests that the Project's perceived effectiveness is not dependent upon external financial support of the Project.

2. Reduction of Guardianship Abuses

The initiation of the Project was premised on the "inability of the Probate [Department] to manage the growing number of guardianship cases committed to its care [which] has resulted in a growing incidence of financial and physical mistreatment of elderly wards."⁹ Has the Project reduced the potential or actual abuses of vulnerable wards and improved the care of wards? Because there are no comparative data available, this question cannot be addressed empirically.

The Project has uncovered few serious abuse problems. In one case, Project volunteers discovered a ward who needed emergency medical care but lived in an adult nursing home, a facility not licensed to provide such care. Actions were taken and the ward was subsequently moved to a more appropriate facility.

As noted earlier, during one period of time, Project volunteers identified ten cases for review and noted that seven of these were "purely administrative," suggesting that they did not warrant formal Court intervention. Although it is difficult to generalize from these accounts, they point in the general direction of preliminary findings of the National Guardianship Monitoring Program initiated in 1988 as a cooperative effort between the American Association of Retired Persons' (AARP) Legal Counsel for the Elderly and probate courts in Houston, Denver and Atlanta. These findings indicated that only three percent of the wards visited by volunteers were in situations rated as unacceptable; another six percent were in circumstances rated marginal. Volunteers in the three project sites also recommended action in cases where the care provided was not

⁸Letter of October 16, 1992 to Mr. David Tevelin, Executive Director, State Justice Institute from Presiding Judge C. Kimball Rose.

⁹Adult Review Board Project (Grant Application submitted to the State Justice Institute by the Court seeking support for the Project) (May 1991, p. 1).

necessarily substandard but required some attention. Overall, volunteers recommended some action in approximately one-third of the cases.¹⁰

According to anecdotal evidence, the mere presence of the Project, and the attention it has received may have served as a deterrent to abuse. For example, the efforts of Project volunteers may have motivated guardians to do more for their wards than they may have done in the past. Based on all accounts received by the IMDL, it is clear that Project participants and close observers of the Project believe, correctly or incorrectly, that the Project has reduced the potential and actual abuses of vulnerable wards.

3. Project Replicability

The Project is currently located in one of the nation's largest retirement communities, Sun City, Arizona. Volunteers were recruited and trained there, the Project is housed there, and only wards who reside in Sun City are subject to the Project's attentions. Of critical interest to the State Justice Institute is the question of whether the Project can be replicated in settings other than the Sun Cities area, Maricopa County, or Arizona. **No empirical evidence has been marshalled to address the issue of replicability. However, the apparent willingness of other communities in Maricopa County--Tempe, Mesa and Chandler--to initiate a volunteer guardianship program suggests that the Project is not unique to a retirement community and can be expanded to courts and communities in other settings.** The Tri-Cities Communities of Tempe, Mesa and Chandler are home to over a half million people, a diverse population including retired, the employed and unemployed, manufacturing laborers, agricultural workers, professionals and students at every educational level.

Replicability of the Project is limited by the Project's lack of specific documentation of its administrative structure, volunteer recruitment and training, review and monitoring, and details of the actions taken after the guardianship review. Reportedly, the preparation of a "how-to" manual is underway.

4. Public Trust and Confidence

In order to maintain (or regain) the public's trust and confidence, courts must dramatically alter their way of doing business. Positive visions of the courts in the future depict courts as full partners in coalitions seeking solutions to society's ailments. The courts in those visions enlist the support and assistance

¹⁰Twomey, Mary S. "Guardianship Monitoring." Presentation to the Fall Education Conference of the National College of Probate Judges. New Orleans, Louisiana, November 11-14, 1992, p. 4.

of other public and private institutions to demystify and explain what the courts can do to address problems.¹¹

In response to interview questions, Ms. Sylvia Cartsonis of the Sun Cities Area Community Council stated that even in the absence of specific documented cases in which the Project prevented or reduced guardianship abuses, the mere existence of the Project increased awareness, raised consciousness, and served as a symbol of the Court's concern about elder abuse and its commitment to join with the community to do something about the problem. **Although difficult to measure, by all accounts, the Project has created an effective forum for active problem solving by the Court, state agencies and the elder community in Maricopa County.** The Project stands as a successful example of "justice outreach" and "public in-reach."¹² At the very least, the Project has succeeded in establishing a working partnership between the Court and the Sun Cities Area Community Council. Expansion of the Project beyond the geographic area targeted by the original project is already being given serious consideration.

As anticipated by the Court in its original grant application, the public awareness of problems faced by elderly persons subject to guardianship and conservatorship cases in Maricopa County has been heightened by the publicity generated by the Project. Since its inception, the Project has evoked both local and national interest which bodes well for the Project's receptivity and replicability in other parts of the country. Beyond an increase in public awareness, a positive result of local press coverage is an increase in public contact with the Court that serves to identify actual or potential problems in guardianship and conservatorship cases.

5. Compliance With National Guidelines and Standards

The accomplishments of the Project are in keeping with national guidelines and standards for the monitoring and enforcement of guardianships and conservatorships. For example, a 1989 publication of the American Bar Association containing recommendations of the National Guardianship Symposium and the policy of the American Bar Association, *Guardianship: An Agenda for Reform* recommends that "[s]tate public and professional information campaigns should be waged to increase public knowledge of and involvement in the guardianship process" and that "[c]ourts should consider using volunteer programs and resources." Clearly, the Project has accomplished this.

¹¹Reinventing Justice. Report of the Chief Justices' Commission on the Future of the Courts in Massachusetts (1992, p. 23).

¹²*Id.*

In the volume, *Steps to Enhance Guardianship Monitoring* published by the American Bar Association in 1991, it is recommended that courts establish procedures to verify the personal status reports and accountings, and investigate guardianship problems by using volunteers to monitor wards' personal condition. Further, it is recommended that a "community-based board can review the ward's personal well being."

Finally, the most recent draft of the National Probate Court Standards, currently being developed by the Commission on National Probate Court Standards, indicates that a "guardianship be required to report periodically on a respondent's status."¹³ The draft standards further require that a probate court should have written policies and procedures to ensure the prompt review of reports filed by guardians. The mechanism for guardianship monitoring established and implemented by the Project complies with these guidelines.

6. Summary

Based on the review of documents and materials identified in this report, and upon the on-site research, are there indications that the Guardianship Review Board Project is successful in terms of effectiveness, usefulness, public satisfaction and replicability? While it is important to keep in mind the caveat that the various reports, documents, reference materials, and accounts upon which the findings and conclusions of this report are based were not provided by disinterested individuals, the indices of effectiveness, efficiency, usefulness, replicability, and public satisfaction with the Project identified in this section appear to be in evidence.

III. Conclusions and Recommendations

A. General Conclusions

There is little to suggest that the Project has failed, or is likely to fail, and much to suggest that the Project is and will be a success in the future. In partnership with the Sun Cities Area Community Council, the Superior Court of Arizona for Maricopa County has established and implemented in the community a mechanism for the monitoring and review of guardianship and conservatorship cases by volunteers. A cadre of volunteers--individuals retired from the medical, social services and legal professions--are today engaged in the monitoring of guardianship and conservatorship cases. Undoubtedly, the volunteers have increased the ability of the Court to gather information about the condition of the wards for whom the Court has established guardianships.

¹³Standard 3.3.9, Monitoring and Enforcement of Guardianship and Conservatorships. National Probate Court Standards: Discussion Draft (Briefing Paper No. 3, November, 1992), pp. 82-86.

The Project appears to allow for a broader, more thorough and consistent review and monitoring of guardianship and conservatorship cases, thereby providing opportunities for more effective management of the Probate Department's entire guardianship and conservatorship caseload. The Project has uncovered few serious abuse problems. Because there are few comparative data available, the question of whether the Project has reduced the potential or actual abuses of vulnerable wards and improved the care of wards cannot be addressed empirically. However, according to anecdotal evidence, the mere existence of the Project, and the attention it has received, has served as a deterrent to abuse. The Project has succeeded in establishing a working partnership between the Court and the Sun Cities Area Community Council. The public awareness of problems faced by elderly persons subject to guardianship and conservatorship cases in Maricopa County has been heightened by the publicity generated by the Project. Since its inception, the Project has evoked both local and national interests which bodes well for the Project's receptivity and replicability in other parts of the country. The Project increased awareness, raised consciousness, and served as a symbol of the Court's concern about elder abuse and its commitment to join with the community to do something about the problem.

The accomplishment of the Project are in keeping with national guidelines and standards for the monitoring and enforcement of guardianship and conservatorships. Even without more, given the need to demonstrate innovative approaches to monitoring guardianship and conservatorship cases, the establishment and implementation of the Guardianship Review Board Project by the Court are significant accomplishments. Again, although no empirical evidence has been marshalled to address the issue of replicability, the willingness of other communities in Maricopa County to initiate a volunteer guardianship program suggests that the Project's success may not be unique to a retirement community and can be expanded to jurisdictions elsewhere.

The Court's original grant application to the State Justice Institute (SJI) notes (p. 2) that the Project promises to explore "alternative means for using judicial and nonjudicial personnel in Court decisionmaking activities," an area identified as in need of research and demonstration in SJI's enabling legislation. Further, the application notes that the Project falls within the scope of SJI's "special interest" in projects related to the fair and effective handling of cases affecting elderly and physically or mentally disabled persons. The accomplishments and the progress of the Project appear to be consistent with the goals implicit in SJI's enabling legislation and current special interests.

Several of the recommendations, especially the first three, address management issues not unique to probate cases. To address these issues, the Court is encouraged to look for model solutions that it already has applied in its education and training programs and its management of civil, criminal and domestic relations cases, e.g., early and continuous court control of cases; forms

and procedures simplification; improved access to the Court, especially for litigants appearing without counsel; case screening, referral ("gatekeeping") and diversion; and differentiated case management. Analytical approaches also need not be created from whole cloth. In its recently completed "reverse telescope" study of domestic relations cases, for example, the Court set objectives that readily can be applied to a study of probate cases:

- (1) to discover at which procedural stages cases are being resolved;
- (2) to examine the elapsed time for cases to move from filing to disposition through trial, default, or stipulation;
- (3) to analyze the outcomes of cases, comparing the outcomes to the procedural stages at which cases are resolved;
- (4) to develop a profile of cases against which disposition events, times and types can be compared; and,
- (5) to take this information and use it to raise the awareness of key participants in the process to serve as a catalyst for change in operations, procedures and the local legal culture.¹⁴

B. Recommendations

The following recommendations are intended to assist the Court and the Probate Department in improving guardianship review and monitoring and to inform the State Justice Institute (SJI) regarding the current status of the Project. Although most of the recommendations focus on the Project's review and monitoring of guardianship and conservatorship cases, some are directed at the Probate Department and the Court as a whole, i.e., the larger context in which the Project operates.

Recommendation 1. Integration Project with Court Investigation Function

(a) The Court should make every effort to integrate the Project's volunteer guardianship review and monitoring with the regular operations of the Court.

(b) An existing Court function to which the Court should consider attaching the Project's volunteer guardianship review and monitoring is that of the court investigators.

¹⁴"Domestic Relations Reverse Telescope Study," Office of the Court Administrator, Department of Operations and Caseload, Superior Court of Arizona in Maricopa County, December 1992. p. 2.

Commentary

A.R.S. §14-5303 requires that, upon filing of a petition for court appointment of a guardian, the Court shall appoint a "visitor" to interview the alleged incapacitated person, interview the person seeking appointment as guardian, visit the current residence of the alleged incapacitated person and place where it is proposed he or she will reside if the appointment is made, and report to the Court in writing. These requirements of visitors are currently performed by court investigators and are compatible with the functions of the Project.

Currently, the Probate Department employs the services of five professional full-time court investigators. Reportedly, until about three years ago, the court investigators were a separate office of the Special Services Department, serving at the pleasure of the Presiding Judge. Under the direction of the Chief Court Investigator, the investigators are responsible for visiting and providing a written report to the Court on all initial guardianship and conservatorship appointments. Investigators are the Probate Department's "eyes and ears" to ensure that an appointment is in the "ward's best interest" and that the "least restrictive placement" is considered.

Although it is certainly advantageous to link the Project to the community, because the monitoring function is clearly the Court's responsibility, it should be conducted, and perceived to be conducted, by the Court. Consolidation or alignment of the functions of the Project with those of the court investigators promises to integrate a special project, which is receiving external funding, with the ongoing operations of the Court, thereby ensuring the Project's volunteer review and monitoring of guardianships once SJI support ceases.

Recommendation 2. Organization and Consolidation of Overall Court Volunteer Effort

The Court should assess and organize its overall volunteer effort to identify efficiencies and economies of scale.

Commentary

While volunteers may be unpaid employees of the Court, they are not free. At some level, volunteers need to be supervised and managed by paid Court staff. In the AARP demonstration project, volunteers contributed from three to five hours of service for every hour of paid Court staff time.¹⁵ The Court should weigh the advantages and disadvantages of using volunteers and design strategies for overcoming the actual and perceived disadvantages.

¹⁵Twomey, *supra* note 10.

It is important for the Court to recognize that there is a difference between developing a monitoring program and developing a *volunteer* program. As discovered by the AARP, by establishing a volunteer program, the Court may create more work for itself than it would otherwise face. First, increased monitoring of guardianship cases by volunteers predictably will identify corrective actions that may have to be taken by the Court. Second, the existence of a volunteer program creates management and supervision needs quite apart from the monitoring function. Third, Court staff may perceive a volunteer program as taking more time and creating more work than it is worth, thereby creating a potential personnel problem for the Court.¹⁶

In implementing Recommendation 2, the Court should assess and plan its overall present and future use of volunteers for functions other than guardianship monitoring and put the Project's volunteer efforts into such a plan. Quite apart from the administration and supervision of substantive volunteer work (e.g., guardianship monitoring), the recruitment, initial and continuing education, and supervision of volunteers to serve the Project appear to require at least a 0.5 FTE (full-time equivalent) volunteer coordinator. Economies of scale and other efficiencies may be able to be achieved if volunteer recruitment, education and supervision are viewed from a Court-wide perspective.

In response to the criticism that a volunteer monitoring program takes more time than its worth, the American Association of Retired Persons (AARP) made the following observation:

It is true that operating a volunteer program will require a specific commitment of time and resources from the court, and that the staff involved must be interested in the project. Volunteers are not free, and they need attention like any other members of your staff. However, if you have already made the commitment to increase your monitoring, volunteers are a cost-effective way to do it. In the AARP demonstration project, volunteers contributed three-five hours of service for every hour of staff time.¹⁷

¹⁶ *Id.*

¹⁷ *Id.*

Recommendation 3. Effective Participation, Streamlining and Screening

To ensure that all who appear before the Probate Department are given the opportunity to participate effectively without undue hardship or inconvenience, to provide alternatives for guardianship and conservatorship at the earliest possible time, and to streamline the petitioning process, the Probate Department should consider :

- (a) making guardianship and conservatorship petition forms readily available, at no cost, to pro per litigants;***
- (b) streamlining and shifting much of the paperwork burden from the litigants to the Probate Department; and,***
- (c) establishing a screening mechanism, which could involve volunteers, for receiving, screening, and diverting, if appropriate, prospective petitioners seeking the appointment of a guardian to less restrictive alternatives.***

Commentary

As described earlier, the guardianship petitioning process may be unnecessarily complex and onerous, especially for uninitiated *pro se* litigants. Required forms are difficult to obtain, seemingly difficult to understand and, except for the seasoned attorney, difficult to file. The requirements of the draft *National Probate Court Standards*, specifically, and the *Trial Court Performance Standards*, generally, require that petition forms be as simple as possible to obtain, to complete and to process. Paragraph (a) and (b) of Recommendation 3 suggest that the Probate Department streamline the petitioning process and shift as much of the paperwork burden as possible from the litigants to the Probate Department's administrative staff.

Paragraph (c) of Recommendation 3 mirrors Standard 3.3.2, "Screening for Guardians and Conservators," of the *National Probate Court Standards*.¹⁸ This standard requires that every probate court designate or establish a program or administrative unit charged with the responsibility for screening all guardianship and conservatorship cases and diverting inappropriate cases. The purpose of such a screening agency is to provide, at the earliest point in time, an organizational and administrative structure prompting equitable and uniform decisionmaking about the need for treatment or services associated with guardianship or conservatorship. Screening should be used to divert

¹⁸National Standards, *surpa* note 13, at 72-74.

inappropriate cases out of the guardianship/conservatorship system. Although initial contact with a screening agency may be an inquiry specific to guardianship proceedings, the aim of the screening is to give help to the individual referred and not necessarily to establish a guardianship. Trained volunteers could assist in the process of directing the individual to the most appropriate agency for assistance.

Decisions regarding less restrictive alternatives to guardianship and conservatorship, in general, should be made as early and as competently as possible. Reportedly, some prospective petitioners already are diverted from guardianship and conservatorship on a limited and very informal basis. Early intervention, screening and appropriate diversion from guardianship and conservatorship to alternative forms of care and social services are in the best interest of the potential ward, the family, the Court, and the community as a whole. Volunteers may very well play a role in these early stages of guardianship and conservatorship (see below).

Recommendation 4. Volunteer Assistance for *Pro Per* Litigants

The Probate Department should consider establishing, on a pilot basis, a program wherein volunteers provide assistance to pro per litigants to enable them to negotiate the guardianship and conservatorship proceedings.

Commentary

Although this recommendation may meet with some resistance from the probate bar in Maricopa County, and most certainly should be discussed with and implemented in cooperation with the probate bar, the recommended assistance program promises to expand the meaningful work available to volunteers. Such assistance programs are consistent with the *Trial Court Performance Standards* and other standards and guidelines for providing access and effective participation to litigants and others who use the services of trial courts.

Recommendation 5. Clarification of Temporary Guardianship Procedures

The Probate Department should clarify its procedures for temporary guardianships and should make those procedures, as much as possible, uniform for represented and pro se litigants.

Commentary

Currently, temporary guardianships appear to be more readily available through different procedures to petitioners represented by counsel than to *pro per* litigants. The determination of the circumstances that constitute an emergency and the basis for a temporary guardianship, for example, are made by Court personnel following a conversation with *pro per* litigants. No criteria or set of procedures appear to have been established for this determination. Represented litigants, on the other hand, make direct application for temporary guardianship for approval by the Court with no prior determination by Court personnel. Whether or not such procedures circumvent regular guardianship proceedings, they should be uniformly available for represented and *pro se* litigants.

Recommendation 6. Annual Reports Ordered by the Court

The Court order authorizing a guardianship should require the appointed guardian to file a report and inform the Court in advance of any intended absence of the ward from the Court's jurisdiction or any anticipated change in the ward's residence.

Commentary

Recommendation 5 encourages the Probate Department to maintain an added measure of control over the guardians it appoints. Compliance with reporting requirements by guardians is likely to be enhanced by court orders that specify a guardian's reporting requirements. This recommendation mirrors, in large part, Standard 3.3.8 of the *National Probate Court Standards*. As noted earlier, this recommendation already has been implemented. The Court has developed a standard court order in guardianship cases that requires guardians

... to report annually, in writing, with respect to your ward's residence, physical and mental health, whether there is still a need for a guardian, and (if there is no conservator) your ward's financial situation. Your report is due each year on the anniversary date of your appointment. In addition to sending copies to the other persons named in the statute, you are directed to lodge a copy of your annual report with the Presiding Judge of the Probate Department of this Court.

... Failure to obey the orders of this Court and the statutory provisions related to guardians, may result in your removal from office and other penalties. In some circumstances, you may be held in contempt of court, and your contempt may be punished by confinement in jail, fine, or both.¹⁹

¹⁹Draft court order developed by the Court. December 1992.

Recommendation 7. Ensuring Effective Results of Volunteer Monitoring

(a) The Probate Department should develop more effective ways to ensure that the informal and formal recommendations resulting from the volunteers' review and monitoring of guardianship cases are linked to Probate Department decisionmaking and actions.

(b) Volunteers should be given the expectation that their findings will not be ignored by the Court and will be acted upon in a timely and expeditious fashion.

Commentary

Most of the information obtained by volunteers in their review of case files and personal visits to the wards and guardians remains with the volunteers, the Project Coordinator and, to a much lesser degree, with those individuals who participate in monthly staff meetings to discuss volunteer recommendations. Undoubtedly, much good is done by the volunteers in their personal interactions with wards and guardians. However, much potentially useful information is lost because no efficient mechanism exists to convey meaningful information to those responsible for decisionmaking and actions in guardianship and conservatorship cases, i.e., the Presiding Judge of the Probate Department, Court Commissioners and court investigators. To organize and expedite its responses to volunteers' findings, the Court should consider identifying and communicating various levels of volunteer findings and Court responses ranging, for example, from those that a volunteer could, without more, simply address at the time of his or her visit, to findings and responses that require the involvement of the Project Coordinator, to findings that require the consultation with court investigators, and so forth.

Recommendation 8. Reform Effort Guided by National Standards.

In its ambitious and commendable reform efforts, the leadership of the Probate Department should use as its guide the most recent draft of the National Probate Court Standards .

The Probate Department has the makings of one of the Nation's leading probate courts. As noted earlier in this report, the Court has made a significant commitment to focusing and devoting significant resources to the improvement of the structure and operations of the Probate Department. The leadership retreat for Probate Department staff and other Court managers, tentatively scheduled in December 1992, is a mark of that commitment. Various court administrators have expressed a desire to develop a national reputation for the Court of leadership and reform of probate court practices comparable to the status and recognition the Court has received in previous years for its excellence in civil and criminal case management. The ongoing development of the

National Probate Court Standards by the Commission on National Probate Court Standards (of which Mr. Hugh Gallagher, the Deputy Court Administrator, is a member) affords the Court a unique opportunity to build the structure and practices of the Probate Department as a model for the nation. This recommendation encourages the Court and the Probate Department to use the *National Probate Court Standards* as its guide in its reform efforts.