

Improving Protective Probate Processes:

An Assessment of Guardianship and Conservatorship
Procedures in the Probate and Mental Health
Department of the Maricopa County Superior Court

August 2011

David C. Steelman, J.D.

Principal Court Management Consultant

Alicia K. Davis, J.D.

Principal Court Management Consultant

Daniel J. Hall

Vice President
Court Consulting Services
707 17th Street, Suite 2900
Denver, CO 80202

NCSC Est. 1971
National Center for State Courts

40 Years
Providing Trusted Leadership
and Proven Solutions to Courts

Acknowledgements

The project staff would like to extend its sincere appreciation to the following individuals who freely offered their time, expertise and insight into best practices in protective probate processes:

Hon. Guy Herman and Christy Nisbitt, Travis County, Texas

Hon. Steve King, Tarrant County, Texas

Mary Joy Quinn, San Francisco, California

Hon. C. Jean Stewart, Denver, Colorado

Referee Dean Maus, Hennepin County, Minnesota

Hon. Mel Grossman and Christin Gallardo, Broward County, Florida

Richard Van Duizend and Brenda Uekert, National Center for State Courts

The assessment team also thanks court administrators and staff of the Maricopa County Superior Court and Probate and Mental Health Division. Their dedication to ongoing improvement in the quest for excellence is impressive. Their graciousness shown during the Maricopa County site visits conducted in October 2010, April 2011 and June 2011 is greatly appreciated.

TABLE OF CONTENTS

1. Introduction.....	1
2. Background.....	3
3. Methodology	5
4. Performance Measurement.....	6
5. Best Practices and National Probate Court Standards	7
6. Caseload Management	9
6.1. Case Types and Time Standards.....	9
6.2. Differentiated Caseload Management: Triage, Court Control	14
7. Monitoring.....	20
7.1. Court Review and Automation of Reports and Accounts	22
7.2 Practices to Protect Assets	36
7.3. Staffing	40
7.4. Optimal Functioning	46
8. Partner with the Community to Develop Solutions to State and Local Guardianship Issues	47
8.1. Best Practice Models	48
8.2. National Landscape and Maricopa.....	50
8.3. Optimal Performance – Recommendations	52
9. Conclusion	53

1. INTRODUCTION

Individual cases involving wills, decedents' estates, trusts, guardianships, and conservatorships have garnered considerable national attention. The operation, performance and administration of courts exercising probate jurisdiction have been identified as areas in need of attention. A call for the study of probate court procedures has come from both within and outside the probate courts, including judicial leaders and organizations, bar associations, academicians, and the public.

This national attention is present in Arizona as well, and particularly within Arizona Superior Court's Department of Probate and Mental Health in Maricopa County (Probate Department). Over the last several years, the Probate Department has engaged in a number of efforts to provide increased attention to guardianship and conservatorship cases, including the use of professional staff, volunteers, and the court's case management system. In June 2010, the Probate Department commenced an internal assessment of guardianship and conservatorship processes and procedures to enhance accountability of estates, reduce costs, and improve services to the public. The Probate Department committed to taking a comprehensive look at all of the processes and procedures applicable to guardianship and conservatorship cases. The Probate Department commissioned the National Center for State Courts (NCSC) to conduct an in-depth study of adult guardianship and conservatorship cases handled by the Probate Court. Thus, this assessment compares current monitoring practices in the Maricopa Probate Department as they compare to National Probate Standards; assesses the Probate Department's new programs and procedures; surveys promising practices from other jurisdictions; and recommends promising practices which would be suitable for Maricopa's Probate Department.

Within the national court community, the Maricopa County Superior Court is known for excellence. The fifth largest trial court system in the nation, Maricopa has initiated measures to increase public access to courts or improving upon existing programs that enhance court performance, demonstrating creativity, foresight, and dedication to the judiciary that inspires other courts. Among its innovations, the Judicial Branch in Maricopa County has undergone a major court reorganization that merged a dozen stand-alone departments, established night court pilot projects

for juvenile and family courts, and expanded the use of video recording, teleconferencing, and electronic exhibit presentations in 170 courtrooms.

The Maricopa Probate Department similarly deserves commendation for innovation. The Probate Department has been nationally recognized for a number of its practices, including establishment of a volunteer guardianship program as well as its issuance of felony warrants where there is evidence of legal abuse by a guardian. Nevertheless, as the Court acknowledges, several cases within recent years have called for the study of probate court procedures. High functioning systems closely evaluate criticism, and decide where to improve. Such has been the case with Maricopa and even within the last year or two, the Probate Department has been proactive in innovating new practices intended to enhance accountability of estates, reduce costs, and improve services to the public. As part of its overall improvement effort, the Maricopa Probate Department requested this study, asking that the NCSC perform an independent and critical analysis of current processes to ensure that their Court was utilizing resources efficiently and effectively. The Probate Department has been clear that they do not seek empty accolades, but concrete suggestions for reform. Thus, the NCSC project team has engaged in a thorough and critical review of national standards, and has discussed potential 2011 amendments with the architects of those standards. The NCSC project team has reviewed the broad body of literature regarding the care of vulnerable populations generally and specifically within probate courts across the country. The NCSC project team has reviewed the reports and interviewed the judges and administrators of the most effective probate courts in the country. During several site visits, the NCSC project team has spent time on-site in Maricopa, interviewing staff, observing court proceedings and reviewing case files. The NCSC project team has also reviewed considerable documentation of Arizona's probate improvement efforts, including state legislation, other courts within Arizona, and Maricopa's strategic plan. As a result of this study, the NCSC project team is able to report that the Maricopa Probate Department has already put into place a number of policy and program improvements that are clearly established as national best practices. Recent statutory changes made by the Arizona legislature further point the way to enhanced accountability of estates, reduced costs, and improved services to the public. While there are certainly many challenges facing the system and room for improvement, overall the Maricopa Probate Department is generally following best practice recommendations and holding itself, parties before the court, and the broader community

accountable for protecting persons and estates. If Maricopa Probate Department continues its current trajectory, and considers and implements several of the recommendations within this report, it stands to be a probate court to which others turn in seeking to improve the monitoring of guardianship and conservatorship cases.

2. BACKGROUND

The term “Probate Court” is used generically to reference the court that hears not only estate probate and intestate matters, but also a variety of other cases traditionally handled by the court. Unlike other civil cases, after the initial rulings have been entered, these cases remain pending in the court for a number of years, until all annual accountings or future petitions are filed, the estate is fully administered, the protected minor reaches majority, the ward is no longer incapacitated or dies, or the protected adult is no longer in need of protection. The longevity of these cases requires continuing court oversight and resources until termination. The Presiding Judge and commissioners assigned to the Department of Probate and Mental Health handle decedent estates, guardianships, conservatorships, adult adoptions, mental health commitments, competency hearings, and certain probation proceedings in criminal cases involving seriously mentally ill defendants. The judicial officers are deployed in regional and central facilities and have blended caseloads.

Since 2002, the Department has provided a forum for both civil and criminal cases involving the mentally ill; however, the bulk of the Department caseload consists of estates, guardianship, and conservatorships. There are about 8,000 new filings per year, most of them decedent estates; the great majority of which are resolved informally with little or no involvement of a judicial officer. Guardianships and conservatorships constitute a minority of new filings but account for a high percentage of the pending caseload of the Department and much of its monitoring responsibility. The Department has about 39,000 active probate cases requiring some form of oversight. In a given year, the Department oversees more than \$333,000,000 in conservatorship assets. There have been some recent and highly publicized instances of fiduciaries and attorneys taking advantage of vulnerable persons.

The June 2011 report for the Department indicates the type and number of pending cases currently managed by the court:

PROBATE PETITIONS AND CASES					
	Pending 1st of month	Initial Petitions Filed	Terminations	Stat. Corr.	Pending End of Month
Estate & Trust Administration	8,818	288	686	(2)	8,418
Guardianship and Conservatorship	18,766	176	113	1	18,830
Adult Adoptions	10	2	4	0	8
TOTAL	27,594	466	803	(1)	27,256

MENTAL HEALTH CASES					
	Pending 1st of month	Initial Petitions Filed	Terminations	Stat. Corr.	Pending End of Month
Mental Health Cases	2,808	315	127	1	2,997
TOTAL	2,808	315	127	1	2,997

These statistics indicate that approximately 60% of the pending probate case load is comprised of guardianships and/or conservatorships, with 30% involving adult incapacitated or protected persons. Since 2007, the Probate Department has sustained a 33% cut in administrative positions and no additional judicial officers have been added until the recent establishment of a second probate judge calendar. The probate case load is unique to the court because new cases filed each year are added to cases filed in prior years that still require at least annual attention for a number of years to review annual accountings and other issues that come back to the court. This has had an adverse effect on the ability of the staff to conduct investigations, case monitoring reviews, and accounting reviews and eroded the level of protection for vulnerable persons. In times of serious

budgetary constraints, it is an increasing challenge to ensure all 30,000 probate cases receive the desired level of supervision. However, within the last year, the Probate Department was approved for six positions to assist with oversight of guardianship and conservatorship cases. As discussed below, adequate staffing is essential for providing oversight, especially in a court with such a high caseload.

On June 30, 2010, the Superior Court in Maricopa County issued a list of 11 enhancements to the probate courts system, stressing the court handling of guardianship and conservatorship cases. The first enhancement concerned differentiated case management and the need for separate tracks for cases with a high-conflict potential. Further, the Probate Department established the *Comprehensive Probate and Mental Health Department 2010-2015 Strategic Plan*, setting forth as goals: Goal #1 Protecting Vulnerable Adults; Goal #2 Improving Communication and Cooperation with Community and Stakeholders; Goal #3 Being Accountable; Goal #4 Providing Access to Swift, Fair Justice. The last goal is particularly germane to the caseload management role of the NCSC.

The Legislature convened in January and addressed a number of issues being described in the public media within SB 1499.

3. METHODOLOGY

In the period before the legislative session in January, the NCSC project team conducted an assessment of how the Court manages caseload for probate cases, differentiates among cases, provides pro se access, oversees the monitoring phase for conservatorships and guardianships, and makes the appropriate allocation and assignment of judges and commissioners. In the opening month of Phase I, the NCSC project team made a preliminary assessment of the adjudication process for probate cases to highlight the issues and establish the framework for the more detailed assessment. The resulting “Issues Paper” dated December 2010 is hereby incorporated and appended to this report.

Next, the NCSC project team gathered information on best practices from other states to provide the normative basis for analysis. The NCSC project team consulted with probate judges and administrators across the country for insights helpful in Maricopa County and elicited reactions on

proposed recommendations. The NCSC project team, based on its long association with the National College of Probate Judges, compiled a list of prominent probate judges and administrators, nationally recognized experts in probate case management, to interview in order to compile an informed source of comparative experience and best practices. Interview questions posed are appended to this report.

4. PERFORMANCE MEASUREMENT

The High Performance Court Framework establishes various elements that contribute to excellence within a court system. The Maricopa Superior Court is familiar with and has implemented a number of these factors. A foundational piece to high-functioning is the establishment of performance measures. A performance measure is an indicator, a specific piece of information that tells us something important about a court's products, services and the processes used to create them. Well-designed performance measures have characteristics susceptible to measurement and quantification. They can be reduced to steps for gathering data and the accumulation of multiple observations. They are intended to help a court see:

- If the court is meeting its stated goals or service levels.
- If those served by the court are satisfied.
- If the court exercises control over its business processes.
- If and where improvements are necessary.¹

The cycle of continued improvement and excellence is illustrated below using a family law case as an example. As discussed in the body of the report, traditional case management represents one of the two key functions of the probate court. Thus, caseflow management and its standards are presented. The other dimension is that of ongoing monitoring, and thus performance measurement factors are considered here along with recommendations for ongoing improvement in the pursuit of excellence.

¹ B. Ostrom & R. Hanson, *Achieving High Performance: A Framework for Courts*, National Center for State Courts, Williamsburg, VA (2010)

5. BEST PRACTICES AND NATIONAL PROBATE COURT STANDARDS

Maricopa Probate Department requested a review of procedures, primarily addressing caseload management and judicial oversight of cases. The report primarily addresses the monitoring of guardianship and conservatorship cases, and the staffing and resources necessary to accomplish quality monitoring of vulnerable populations. Thus, this report compares specific areas of interest to the Maricopa Probate Department according to the broad body of knowledge of nationally recognized best practices drawn from a number of sources. Principal among them are the National Probate Court Standards; the best practice recommendations formed by the CCJ/COSCA Joint Task Force on Elders and the Courts.²

The National College of Probate Judges, with membership from substantially all states, approved the National Probate Court Standards (hereinafter Standards) in 1993 to address the administration, operation, and performance of probate courts. The objective of the Standards is to “promote uniformity, consistency, and continued improvement in the operation of the nation's probate courts. The Standards seek to capture the philosophy and spirit of an effective probate court.”³ Demonstrating their continued utility and benefit to probate courts across the country, the Standards are currently under partial revision. This revision also contemplates including examples

² Brenda A. Uekert, *Adult Guardianship Court Data and Issues Results from an Online Survey*, available at: <http://www.eldersandcourts.org/docs/GuardianshipSurveyReport.pdf>. See also e.g., N. Karp & E. Wood, *Guarding the Guardians* (2007), AARP, Washington DC; N. Karp & E. Wood, *National Survey of Court Monitoring Practices* (2006), AARP, Washington DC; Wingspan – The Second National Guardianship Conference Consensus Recommendations (December 2, 2001) 31 *Stetson Law Review* 595 (2002); Commission on National Probate Court Standards, *National Probate Court Standards* (Williamsburg, VA: NCSC 1993); National Guardianship Association, *Standards of Practice* (Tucson, AZ: NGA, 2000); B.D. Sales, D. M. Powell; R. Van Duizend, & Associates, *Disabled Persons and the Law: State Legislative Issues* 453 (N.Y.: Plenum Press 1982); US Government Accountability Office, *Guardianships: Collaboration Needed to Protect Incapacitated Elderly People* GAO-04-655 (Washington, DC: GPO 2004); S.B. Hurme & E. Wood, “Guardian Accountability Then and Now: Tracing Tenets for an Active Court Role,” XXXI *Stetson Law Review* 867 (2002); R. Van Duizend, *Georgia Probate Court Volunteer Program – An Implementation Handbook* (Williamsburg, VA: NCSC 2005).

³ National Probate Court Standards available at: <http://www.eldersandcourts.org/guardianship/probate-standards.html>

of effective programs and practices being used by courts nationally to address several of the standards.

The Standards are extremely comprehensive, addressing every area of probate administration, thus full discussion of every standard and its application to the Maricopa Probate Department would overwhelm this report. The NCSC project team cross-references each of those recommendations with the National Probate Standards and assesses the Probate Department's current monitoring practices as well as proposed new programs and procedures against those sources.

Where appropriate, the analysis surveys promises practices from other jurisdictions and recommends practices that would be suitable for the Maricopa Probate Department. The report is separated into two sections, representing the two distinct functions performed by probate courts: (1) traditional caseflow management; and (2) ongoing oversight and monitoring responsibilities. Under traditional caseflow management, the NCSC project team discusses timeliness of activities, and innovations with caseflow management that the Maricopa Probate Department has applied in the probate context. These activities are generally more in keeping with pre-appointment processes, though not necessarily so. Under oversight and monitoring responsibilities, the establishment and management to additional measurements (such as reports and accountings) is considered, along with automation efforts, red flags, appointees, cost containment measures, and staffing.

For each element presented, this report considers (1) the standard for high performance; (2) best practices models; (3) Maricopa Probate Department's functioning, compared to the national environment; (4) recommendations for the Probate Department's optimal performance in this area.

6. CASEFLOW MANAGEMENT

Caseflow Management and Time Standards are a key component of high functioning courts. The standards in this category recognize that the court with probate jurisdiction, like almost all state courts, faces a heavy caseload that it must process expeditiously, yet fairly. These standards suggest several steps that the court can take to ensure that its caseload moves swiftly and meets

the needs of the court and the parties appearing before the court. It contemplates: active case management, an appropriate caseflow management system, timetables to govern all proceedings. Differentiated case management is an area of opportunity for probate courts nationwide. Even the most effective probate courts do not appear to apply case management techniques extensively.⁴ The most common practice appeared to be monitoring overall case timelines, with particular emphasis on monitoring the submission of reports, then issuing orders to show cause when those were not returned. Thus, it is helpful to review caseflow management in some detail here.

6.1. CASE TYPES AND TIME STANDARDS

An initial step in developing a functional caseflow management system is the creation of time standards governing case disposition for each case type. This section of the Probate Standards draws from the Trial Court Performance Standards in establishing the appropriate criteria for probate court performance. As CCJ/COSCA recommends, "Each state court system should collect and report the number of guardianship, conservatorship, and elder abuse cases that are filed, pending, and concluding each year."⁵ The next step is that the courts create time standards for each case type, for example, administration of decedents' estates where such estates are subject to court supervision.⁶ Intermediate timelines should be integrated with the overall standard for case disposition to create a consistent and functional organizational plan for caseflow management. Each time standard "should be monitored to assure compliance with the timelines, thereby ensuring orderly case development and prompt disposition." The court should closely supervise the progress of the cases to ensure that they follow the formulated plan using periodically generated case management reports that show whether prescribed deadlines have been met. In

⁴ For an early discussion of probate caseflow jurisprudence, see *Managing Probate Workload and Dockets* (D. Steelman, Washington, 1992) here, <http://contentdm.ncsconline.org/cgi-bin/showfile.exe?CISOROOT=/ctadmin&CISOPTR=14>

⁵ B. Uekert, *Adult Guardianship Court Data and Issues*, National Center for State Courts, Williamsburg, VA (2010)

⁶ Standard 1.2.1 Case Processing And Compliance With Schedules; Standard 2.2.3 Time Standards Governing Disposition

2009, CCJ and COSCA passed Resolution 14, “Encouraging Collection of Data on Adult Guardianship, Adult Conservatorship, and Elder Abuse Cases by All States.” Probate courts have been encouraged to make a concerted effort to track guardianship/conservatorship caseloads using the NCSC/COSCA State Court Guide to Statistical Reporting. This guide includes probate cases within civil measurement, and thus recommends the use of CourTools Measure 2: Clearance Rates; Measure 3: Time to Disposition; and Measure 4: Age of Active Pending Caseload. The NCSC/COSCA *State Court Guide to Statistical Reporting* provides the definitions of guardianships and conservatorships to ensure consistency in data collection across states.

6.1.1. BEST PRACTICE MODELS

Courts that are known to be effective in measuring timeliness of proceedings include Broward County, Florida; Colorado and Minnesota. While these courts consider time standards just one dimension of performance measurement, as set forth below, these courts easily track age of case by case type, such as number of guardianship, conservatorship, and elder abuse cases that are filed, pending, and concluding each year. Several reported that tracking on timelines took place within the clerk's office, such that office staff would automatically run age of case reports, sometimes along with other general jurisdiction cases, which would trigger delay prevention reports. Broward County, Florida, has 5000 guardianship accountings. As far as reporting on dispositions on case management timelines, the Florida statutes are very robust in terms of how long after that a hearing needs to be held, which the Clerk's Office monitors closely. The timelines are built into Odyssey to automatically send show cause notices when any case is behind. Tracking on other cases such as receipt of reports and accountings, is treated differently, as described under Monitoring below.

6.1.2. NATIONAL LANDSCAPE AND MARICOPA

In a survey and resulting report published by the NCSC in March 2010, it was reported that quality data on adult guardianship filings and caseloads is generally lacking. The absence of accurate caseload measures is widespread.⁷ Approximately one-third of all respondents provided data on both filings and caseloads and indicated that the figures were based on actual data. In addition, almost one-fourth of respondents could provide actual data for case filings but could provide only estimates of overall caseload composition. The inability to provide caseload data based on actual data demonstrates the challenges posed by tracking cases that may be open for years. In addition, the inclusion of minors in the adult guardianship data was noted by a number of respondents. This data substantiated findings of other recent reports highlighting a grave lack of hard data on adult guardianship, with a sizeable number of courts reporting a complete inability to provide data on guardianship cases other than in individual case files.⁸

Unlike felonies and general civil cases, there are few examples of time standards in this area. The time standards promulgated by the Conference of State Court Administrators in 1983 and the time standards developed by the National Conference of State Trial Judges and adopted by the American Bar Association in 1984 do not include provisions for guardianship and conservatorship cases. The current National Probate Court Standards call for early court control and expeditious case processing, with hearings set at the earliest date possible, but they do not offer specific time standards. See Commission on National Probate Court Standards, *National Probate Court Standards* (Williamsburg, VA: NCSC, 1993), Sections 3.3.3, 3.3.8, 3.4.3, and 3.4.8. The terms of the Uniform Guardianship and Protective Proceedings Act (UGPPA 1997) provide simply that the court should set a date and a time for a hearing. See National Conference of Commissioners on Uniform State Laws, Uniform Guardianship and Protective Proceedings Act (1997), Sections 305 and 406, <http://www.law.upenn.edu/bll/archives/ulc/fnact99/1990s/ugppa97.htm>. There appear to be only two state court systems with time standards specifically for guardianship and conservatorship

⁷ B. Uekert, *Adult Guardianship Court Data and Issues*, National Center for State Courts, Williamsburg, VA (2010)

⁸ 2004 GAO Report, 2005 Naomi Woods.

cases: Massachusetts calls for all such cases to be disposed within eight months after filing; and Michigan calls for 75% to be disposed within six months, 90% within nine months, and 100% within 12 months.⁹ Several states have a statutory requirement for how soon a court hearing should be held after the filing of a guardianship and conservatorship petition. Alaska statutes require that a hearing be held within 120 days after filing; and South Dakota and Washington provide that a hearing must be held within 60 days.¹⁰

Maricopa, unlike most probate courts, tracks guardianship/conservatorship caseloads using the NCSC/COSCA State Court Guide to Statistical Reporting. This guide includes probate cases within civil, and thus recommends the use of CourTools Measure 2: Clearance Rates; Measure 3: Time to Disposition; and Measure 4: Age of Active Pending Caseload. Maricopa's case management system is more advanced than most. As a court system, the Maricopa Superior Court has used CourTools for years, demonstrating itself to be a leader in the area. Further, CourTools has been programmed into iCIS, allowing for court staff to readily view case progress on an individual or aggregate basis. The Probate Department already collects and reports on the number of guardianship, conservatorship, and elder abuse cases that are filed, pending, and concluding each year and produces reports.

6.1.3. OPTIMAL PERFORMANCE IN MARICOPA

In the October 2010 Issues Paper, NCSC recommended another list of performance measures including timeliness of proceedings as relevant dimensions of court performance in guardianship and conservatorship cases.¹¹ As recommended in the Issues Paper, the Probate Department should not immediately limit itself to counting and reporting only what is easily available. Instead, it should decide what should be measured and how difficult or costly it would be to do such

⁹ See NCSC, Knowledge and Information Services, Database, "Case Processing Time Standards," <http://www.ncsconline.org/cpts/cptsType.asp>.

¹⁰ See American Bar Association, Commission on Law and Aging, "State Law Charts and Updates: Guardianship: Conduct and Findings of Guardianship Proceedings (as of Dec. 31, 2009)" (August 2010), http://new.abanet.org/aging/PublicDocuments/chart_conduct_08_10.pdf

¹¹ The Issues Paper, appended here, is incorporated into this report.

measurement, and then use the results of that determination as aids to setting priorities in terms of the development of staffing and information technology resources.

Thus, while data gathered by the Maricopa Probate Department is far superior to most other probate courts in the country, effective management of caseload and caseload actually calls for much more. The Maricopa Probate Department should go forward to gather the data and produce the reports that would be necessary to manage the guardian/conservator cases. The Maricopa Probate Department may be very good by comparison to other probate courts in the country, but they will need to do even better to be as effective in their world as the Court's Civil, Family and Criminal Departments are in terms of caseload management. In broad terms, this includes (a) age and status of cases pending fiduciary appointment; (b) risk assessment and documentation of estate characteristics to support differentiated compliance monitoring after fiduciary appointment; and (c) getting on top of post-appointment fiduciary reports promptly to catch any problems.

Standards for Measuring Timeliness. In keeping with principles of successful caseload management, it is desirable to measure the Department's management performance with G/C cases in terms of appropriate time standards. As part of the development of proposed model time standards under a grant from the State Justice Institute, the following draft time standards for guardian/conservator cases can serve as a point of reference for court officials in Maricopa County:

Time from filing of G/C petition to emergency appointment:	98% within 72 hours
--	---------------------

Time from filing of G/C petition to hearing on permanent appointment:	98% within 75 days
---	--------------------

Time from filing of G/C petition to permanent appointment:	98% within 90 days
--	--------------------

Maricopa should continue to use CourTools in probate cases to monitor guardianship and conservatorship cases.

6.2. DIFFERENTIATED CASEFLOW MANAGEMENT: TRIAGE, COURT CONTROL.

The following analyzes the Probate Department's innovations with case management, including using tracks and alternative dispute resolution.

Probate courts, especially within Maricopa County, have a heavy caseload with significant oversight responsibilities. Courts must provide oversight expeditiously, yet fairly. In order to meet those objectives, the Standards provide several elements discussed here in the aggregate.

Standard 2.2.1 states that the probate court should actively manage its cases by having in place written policies and procedures establishing and governing an appropriate caseflow management system. The caseflow system should provide for the early identification of these parties and cases, and the court should be prepared to give them appropriate attention and accommodation. Instances where special attention may be needed include cases in which the issues raised are particularly complex; parties or witnesses have a physical or mental disability; parties or witnesses require an interpreter; or parties or witnesses are ill, elderly, or near death. To achieve this standard, the court should establish time limits for intermediate events for each type of case. (See Standard 2.2.2., Court Supervision of Case Progress.) Standard 2.2.2 and Standard 2.2.3 provide that the probate court should establish timetables to govern all proceedings from filing to disposition and encourages a limited continuance policy. "In contested cases, an initial conference should ordinarily be held between the judge and the attorneys to establish appropriate deadlines, such as for pre-trial discovery and to identify special or complex cases. . . This initial conference will help the court monitor the progress of each case and anticipate and respond to special difficulties the case may pose. If the case is especially complex, or if circumstances change, additional conferences may be necessary." Within each case classification, there should be timelines governing each significant intermediate event from filing to disposition, including status conferences, arbitration hearings, or issue conferences. Each intermediate step should be monitored to assure compliance with the timelines, thereby ensuring orderly case development and prompt disposition. Standard 2.2.4 sets forth that the probate court should establish realistic trial and hearing dates based on the schedules established during the pretrial conferences.

Differentiated case management is an attempt to define case-specific features that distinguish among cases as to the level of case management required. Thus, the essence of differential case management is reorganization of the caseflow system to recognize explicitly that the speed and

method of case disposition should depend on cases' actual resource and management requirements (both court and attorney), *not* on the order in which they have been filed.¹²

6.2.1. BEST PRACTICE MODELS

The San Francisco Probate Court presents a compelling example of the effectiveness of case screening and triage at the outset. Under the provisions of the California Probate Code, when a petition for guardianship or conservatorship is presented, it is sent to the court's investigator. The investigator tells people what their legal rights are, and interviews all other parties. It is court-funded, but they charge a fee for temporary guardianship and file for general. A hearing date for general is set, six to eight weeks hence. What happens is that the investigator works against that date and has a written report ready for the bench officer, depending on the needs of the case. The investigator determines what other procedural safeguards need to be put in place, whether counsel will be appointed, and whether the case is likely to be contested or not. The investigator may recommend a number of parameters, such that the guardian cannot sell the home without court approval or further investigation. Anything the bench officer does is triggered by the investigation. The case is generally managed according to the structure recommended by the investigator at the outset of the case. This system was reported to work extremely well in defining the needs of the case at an early point in the proceedings.¹³

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. The court examiner specialist schedules regular compliance conferences 120 days after the hearing to ensure that the case is proceeding according to its case

¹² Holly Bakke and Maureen Solomon, "Case Differentiation: An Approach to Individualized Case Management," 73 *Judicature* (No. 1, June-July 1989) 17, at 18.

¹³ Interview with Probate Administrator Mary Joy Quinn, June 2011.

management plan that is established at the outset of the case. The date is tentative, and if all is in order, the conference is taken off the calendar. The court examiner specialist also performs regular compliance conferences when reports or accountings have not been received according to schedule. If a guardian repeatedly fails to follow the court's case management plan, the court examiner specialist may request that the case be heard before a Justice, and sanctions may be imposed.¹⁴

Tarrant County, Texas, has created a database for contested cases that is the primary document. There is one associate judge; staff works with the associate judge and another staff person to follow up when status has not happened. If contested, the court will hold a docket control conference. There is a three-page form that parties complete with which the staff attorney briefs the judge. The judge will consider the documentation in chambers and make a determination if the case will settle in 30 days. Based on the documentation and the needs of the case, the judge may order that the parties participate in alternative dispute resolution and will set a deadline for mediation to occur which the court tickles for follow-up. If it appears that the case will still be contested, the judge will determine if the amount information disparity warrants a need to do discovery. In that case, the judge will also set a pre-trial date. Prior to the pre-trial, both parties have to state what the contested issues or stipulations will be. All of this takes place before the jury is seated. The effect is that the judge hears jury trials per month, with a high degree of reliability that the trials will take place as scheduled.¹⁵

6.2.2. NATIONAL LANDSCAPE AND MARICOPA

Generally, caseload management is an area of opportunity for probate courts nationally, but this is an area where Maricopa has been extremely innovative. There is very little documentation on probate caseload in the national literature, compared to other case types. To some extent, experts explained during interviews, probate cases do not lend themselves to traditional caseload management compared to other civil cases because they require the tailoring of court-

¹⁴ See *Guarding the Guardians, Id.*; see also National Center for State Courts, Center for Elders and the Courts, Best Practices: <http://www.eldersandcourts.org/guardianship/index.html>

¹⁵ Interview with Hon. Steve King, Tarrant County, Texas, June 2011.

interventions to each specific case according to all the national guardianship. As one judge elaborated, a guardianship "may last a few days, it may last a few years... it may last a few decades. The objective is not to have that case terminate as quickly as possible."¹⁶ Further, several probate experts discussed that when a case is filed, whether a case is contested or not is no indication for the type of attention or judicial time that the case may eventually require. All parties may agree on an appointee, and that appointee may proceed to defraud the estate. A case can be hotly contested, but once the appointee is designated, that person may serve the ward faithfully for years, carefully guarding assets, and submit all necessary documentation to the courts. When the petition comes in, you have to make an initial determination of what is adequate, but it will never give you all the detail necessary to determine case outcome, especially if the case lasts for years.

That said, elements such as contested/uncontested, recognition of case types, and use of non-judicial staff and use of alternative dispute resolution are all elements that contribute to effective case management. Maricopa's caseload management protocol for probate integrates all of these elements, and several experts opined that it appeared to be one of the most structured in the country. Appended in its entirety, the significant elements of Maricopa's caseload management are: at the time when guardianship and conservatorship cases are filed, the department will triage and establish separate tracks for high-conflict cases involving large dollar estates, multiple issues in controversy and those that may be susceptible to protracted litigation. Additional judicial and support resources are being directed to preside over these matters. The Department has established Probate Alternative Dispute Resolution, conducting early settlement conferences to resolve disagreements and abbreviate litigation. The Probate Court Department has established a case monitoring reengineering workgroup. Members assess case monitoring practices and implement oversight enhancements. Like California's best practice of having an initial investigation to help inform case processing, the Maricopa Probate Department also has the Court Investigator visit the parties, perform an investigation, and provide a report to the Court 45 to 60 days from the date of the temporary or permanent hearing. Like Tarrant County, the Maricopa Probate Department also may set a telephonic comprehensive pretrial conference ("CPTC") to identify

¹⁶ Interview with Hon. C. Jean Stewart, Denver Probate Court, June 2011.

issues that have been settled, issues that still need to be resolved and a trial date. At the CPTC, the assigned judge discusses trial management issues. After the trial has concluded (including any issues related to the trial, such as attorney's fees for the hearing), the assigned judge sends the case back to the assigned commissioner for monitoring and handling. If other contested issues arise in the case, the assigned commissioner shall refer the issue back to the assigned trial judge for handling using the same procedures described above.

Further, the Maricopa Probate Department court also considers the following factors in deciding whether to refer a case to the Presiding Judge for re-assignment to a judge regardless of whether the case is contested or whether it is covered by the procedures outlined above.

- Dollar value of the estate exceeds \$500,000
- Feuding family members
- Private fiduciary is involved
- High profile or celebrity wards or protected persons
- Multiple attorneys representing feuding parties
- Civil cases which have been consolidated into a probate case
- Examples: ward has a claim for exploitation or neglect, claims against the fiduciary for malfeasance or by the fiduciary against other family members
- Probate cases that arise because of underlying criminal activity or cases that are in the media

Identification of these elements or to some degree "red flags" not only promises to assist with caseflow management, but may also prove useful in future data collection efforts, detailed below.

6.2.3. OPTIMAL EFFECTIVENESS

Along with other reform efforts, Maricopa's Probate Caseflow Team developed and implemented this plan swiftly and efficiently, and in reference to national best practices for caseflow management. Further, it appears that the Maricopa Probate Department may have one of the most comprehensive caseflow management plans in use in probate courts across the country. Finally, the articulation of the additional issues meriting close scrutiny is a first step in approximating "red flags," a concept discussed at length below. For all of these reasons, the Maricopa Probate Department has again demonstrated its inclination towards excellence.

To continue the quality cycle, it is recommended that the Maricopa Probate Department continue to test the caseflow management process designed as is recommended with any management plan. Such objective information will provide a different perspective from which to view the problems and "bottlenecks" in the court's current operation. Does the Court find that the efforts involved in providing these procedures and tools are rewarded by allowing judicial officers more time to focus attention on monitoring cases? Working with a committee of participants in the probate process, the court wants to undertake a more formal "caseflow management review," assessing the court's structure, resources, operations and environment, and focusing on the way these factors affect the court's capacity to manage its probate caseload, both pre-appointment and ongoing monitoring efforts. Further, and as considered in greater depth in the next section, to what degree can the red flags establish tracks?

Such a review would typically include the following elements: documentation of court structure, resources and operations; the gathering of statistical information on workloads and case-processing times; administration of a self-assessment questionnaire; interviews with practitioners; and onsite observation of court proceedings and other activities.¹⁷ While the court's review of probate matters need not be formal or detailed, such a procedure as this would help to further refine and develop the caseflow management plan, especially as the procedures and processes within the Maricopa Probate Department have undergone tremendous change within the recent past.

7. MONITORING

Guardianship monitoring is a tall order for any probate court. It requires the court to oversee the timely filing of reports and accountings, it requires investigation of complaints or problems, it requires a court to protect assets and to prevent mistreatment of protected individuals and their

¹⁷ See Barry Mahoney, et al., *How to Conduct a Caseflow Management Review: Guide for Practitioners* (Denver, CO: Institute for Court Management of the National Center for State Courts in cooperation with the State Justice Institute, 1992).

property. Courts rely on laypersons, family members, volunteers and professionals to serve as guardians and conservators. When there are no family members or friends available to take on responsibility, private professional guardians, for-profit or not-for-profit professional guardianship entities may fill these roles. Every state has some form of public guardianship program to serve incapacitated adults who do not have sufficient funds to cover all guardianship fees and expenses, or family members or friends willing and able to serve as their guardians. Professional guardians may be attorneys, accountants, bank and financial institution employees or other professionals. In recent years, an entire service industry has grown out of the increasing demand for guardians. The attorney and court fees associated with filing for guardianship, as well as the expenses incurred by a guardian in managing an incapacitated adult's affairs, typically are covered by the incapacitated adult.

"By and large," says one probate judge, "appointees want to do the right thing. Even the least sophisticated appointees will do their level best to submit reports and accountings to the court as required. For most of them, our role is to educate them in the courtroom, send them reminders about due dates and their responsibilities, correct minor errors and let them know that sloppy work will put them back in front of the court."¹⁸

While this may represent most guardianships and conservatorships before the court, monitoring practices in many state and local courts have gained the attention of the media. In June 2003, the *Washington Post* published several articles detailing massive neglect and exploitation by court-appointed attorney guardians in the District of Columbia. In 2004 and 2005, a series of articles in the *Dallas Morning News* spotlighted problems with guardianships in Texas, also detailing neglect. In November 2005, the *Los Angeles Times*, in a report following the examination of more than 2,400 conservatorship cases, found that "judges frequently overlooked incompetence, neglect and outright theft." In 2010, high-profile media stories led to the creation of Supreme Court task forces in both Nebraska and Arizona.¹⁹ A 2010 Survey conducted by the NCSC found that insufficient staff and resources limit the court's ability to monitor guardianships; that case management systems are used primarily to document compliance with reporting requirements and are inadequate to assist

¹⁸ Interview with Hon. C. Jean Stewart, Denver Probate Court, June 2011.

¹⁹ Center for Elders and the Courts

the court in monitoring guardianships; and that few courts had the ability to regularly monitor the health and well-being of the ward.²⁰

As provided by the Standards, the court should not assume a passive role, responding only upon the filing of a complaint. The court should actively monitor the guardian and any failures by the guardian to meet his or her duties.²¹ The primary method of court monitoring should be the review and evaluation of the initial and annual reports filed by a guardian. Where a guardian fails to submit a report, the court should be prepared to investigate, either through professional staff, court review, or some combination thereof. The court should be attentive to the possibility of abuse and be prepared to investigate complaints immediately. The court should have a system that permits it to know when reports are due and should promptly notify appointees when reports are not submitted timely. While most guardians will act appropriately, the court should take actions at the earliest time possible against those who are or who may be acting inappropriately.

Courts have innovated a number of methods for monitoring adult guardianships effectively. *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 sets forth a comprehensive list of elements, a number of which are discussed in application to the Maricopa Probate Department below.²²

7.1. COURT REVIEW AND AUTOMATION OF REPORTS AND ACCOUNTS

Courts are encouraged to monitor the performance of guardians and conservators through regular audits and reviews of accountings and reports. 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. Use of

²⁰ B. Uekert, 2010 Survey

²¹ Standard 3.4.15, Monitoring of the Guardian; Standard 3.4.16, Monitoring of the Conservator

²² N. Karp & E. Wood, AARP Public Policy Institute (2007). This report also praises the Maricopa Probate Department for its implementation of a number of effective practices.

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.

The probate court should have written policies and procedures to ensure the prompt review of reports and requests filed by guardians [or conservators].²³ For example, New York State requires court examiners to review reports within 30 days of filing.²⁴ In North Carolina, a designated agency certifies to the court clerk that it has reviewed the report.²⁵ Maryland has a volunteer multi-disciplinary committee to review each public guardianship case at a face to face meeting.²⁶ In Virginia, reports are filed with the Department of Social Services which must review them and inform the court when reports are more than 90 days late.²⁷ The standards discuss the importance of measuring timeliness within several standards and also provide examples of how guardianships and conservatorships are best monitored.

The highest-functioning courts in this area track a number of additional elements. Further, they do so using automated systems. Some emerging practices that have been reported are:

- Use of a unified guardianship case database, tailored for monitoring purposes. A court database can be built around case-monitoring events and used to track reports and accounts coming due.
- Use of e-filing. Described in more depth under Minnesota or Broward County, Florida, below, these systems are populated by electronically filed documents, and are highly searchable.
- Automated identification of "red flags." With this automatic function, case management systems can trigger further investigation and action by court staff.²⁸

²³ Standards 3.4.15; 3.4.16

²⁴ NY Hygiene Law 81.32(a)(1)-(2).

²⁵ N.C. Gen. Stat. 35A-1243(a), (b)(1), (3)-(4).

²⁶ MD Est. & Trusts Code Ann 14-404

²⁷ Va. Code Ann. 37.1-137.2(A)

²⁸ *Guarding the Guardians*

7.1.1. BEST PRACTICE MODELS

Minnesota and Broward County, Florida are well-established leaders in probate data collection and reporting capabilities. Minnesota's Conservator Account Monitoring Preparation and Electronic Reporting system (CAMPER) focuses on the online submission of financial reports. Originally developed and piloted by the Ramsey County Probate Court, CAMPER became mandatory statewide as of Jan. 1, 2011 as part of a Judicial Branch effort to improve conservatorship oversight and reduce administrative costs. Minnesota has reported a number of benefits to courts and conservators with the CAMPER system, including:

- The software is able to produce comparative reports on demand
- Analysis across all or a selected group of conservators/conservatorships can be completed quickly
- Audit abilities are greatly enhanced
- The increased capabilities, documentation and accountability have a deterrent effect
- Less staff time is required for reviewing and filing reports and associated activities²⁹

As the database becomes populated, experts are able to flag cases for follow up and investigation. For example, if there is a sudden increase or decrease in funds being expended, court staff can follow up.

Broward County, Florida, whom the Maricopa Probate Department visited to learn more about capabilities, is also at the forefront. Their guardianship reporting software includes inventory, plan and accounting forms. The software promises judges and court staff flexibility in searching particular items and running reports for their 5000+ guardianship accountings. If the case lags, they send parties a "ten day memo" to say that background investigation has not taken place, or a report has not been received. The timelines are built into the Odyssey to automatically send show cause notices when any case is behind.

²⁹ B. Uekert, T. Dibble, "Guardianship of the Elderly: Past Performance and Future Promises." *Court Manager* Volume 23 Issue 4 (2009)

San Francisco also created and established an electronic monitoring system. At the time of appointment, they set all case timelines into the future. With the conservatorship of an estate, they set for appraisal 180 days out. They use these tickler dates to determine, for example, if a certificate of completion has been filed on a conservatorship class. They require conservators to complete a general plan, available on their website, to tell the court how they will manage the estate.³⁰ The appointee must give an accounting every two years after the first year, which events are also tickled into the case management system.³¹

While Colorado is currently rewriting its case management system and is also developing statewide e-filing in-house, there are plans to automate the "red flags." Those identified in Colorado are:

- Value of Estate
- Complexity of Estate
- Number of Interested Person(s)
- Non-Professional Conservator and/or Guardian
- Parent is the Nominee
- Personal Injury Settlement for Minor
- Pro Se Nominee
- Experience of Counsel
- Fiduciary Unbondable
- Questionable Credit Report
- Low score, accounts in a past-due status or in collections, bankruptcy
- Criminal History report identifies questionable offense(s)
- Substantial funds not in a Restricted Account
- Previous Reports not Filed Timely
- Demeanor

Dr. Brenda Uekert of the NCSC has studied protective proceedings and elderly abuse issues extensively over the last decade, and created the Center for Elders and the Courts. While she

³⁰ <http://www.sfsuperiorcourt.org/index.aspx?page=38>

³¹ Interview with Mary Joy Quinn, San Francisco Superior Court, Probate Division, June 2011.

recognized the value of a layered approach in monitoring cases, she also cautioned that no red flag has yet been scientifically validated, and that no formal research has been conducted regarding the use of red flags as a tool by which courts may target monitoring efforts. Still, the potential to do so is extremely promising.³²

The following list represents a compilation of work over the past five years by a number of groups in an effort to distill red flags.

15 Red Flags of Fiduciary Abuse, Exploitation, Neglect, and Misappropriation³³

1. *Protected person has no relatives or active friendships*
2. *Large estates*
3. *Late or no accountings filed*
4. *Multiple ATM transactions*
5. *Health or personal problems of the fiduciary*
6. *Use of several attorneys by the fiduciary*
7. *Attorneys representing the fiduciary withdrawing from the fiduciary's cases*
8. *Singular control of information by the fiduciary*
9. *No automated record keeping by the fiduciary*
10. *Financial difficulty of the fiduciary (tax liens, judgments, bankruptcy, divorce)*
11. *Revocation or failure to renew fiduciary bonds*
12. *Large expenditures in the accounting not appropriate to the client's setting*
13. *The fiduciary has minimal experience*
14. *Pattern of letters and verbal complaints against the fiduciary*
15. *Lack of oversight on the case by Counsel assigned or Court staff*

Guardianship of Person: The following signs indicate that a change may be needed:

1. *The guardian wants to resign*

³² Interview with Brenda Uekert, Ph.D., National Center for State Courts, June 2011.

³³ Richard T. Vanderheiden. (2002). *How to Spot a Guardianship or Conservatorship Gone Bad: Effective Damage Control and Useful Remedies*, Paper presented at the National College of Probate Judges Fall Conference, Tucson, Arizona.

2. *The person in guardianship wants a different guardian or wants the guardianship terminated*
3. *The person in guardianship has requests which may or may not be reasonable or possible (e.g., give birthday gifts to family members, take a trip, move to another state to be closer to an adult child, make a new will, have different care givers, marry a person determined to be an abuser, or have unfettered access to alcohol)*
4. *There is a need for services such as counseling, work programs, day rehabilitation, medical, or transportation*
5. *There are concerns about the quality of care the person is receiving*
6. *There are complaints from family members, neighbors, friends, or the person in guardianship*
7. *A different living situation is needed, either more protected or less protected*
8. *The guardian is not visiting or actively overseeing the care the person in guardianship is receiving³⁴*

Flags used by the Arizona Supreme Court, Certification and Licensing Division

The intent of the following list is to identify those situations where more attention to a fiduciary and/or case may be prudent. The existence of one or more risk indicators is not meant to definitely imply there are problems; more scrutiny may be advisable. This list is not intended to be all inclusive; other risk factors may be evident in a case. The list has been grouped by similar features where applicable

1. *No family members*
2. *Dispute among the parties*
3. *Family members approach judge to spend money out of restricted accounts to pay for routine or extraordinary expenses.*
4. *Large estate*
5. *Unprotected assets – no restriction or bond*

³⁴ Source: Tarrant County Probate Court Number Two. (2002). *A Systems Approach To Guardianship Management*. Paper presented at the National College of Probate Judges Fall Conference, Tucson, Arizona.

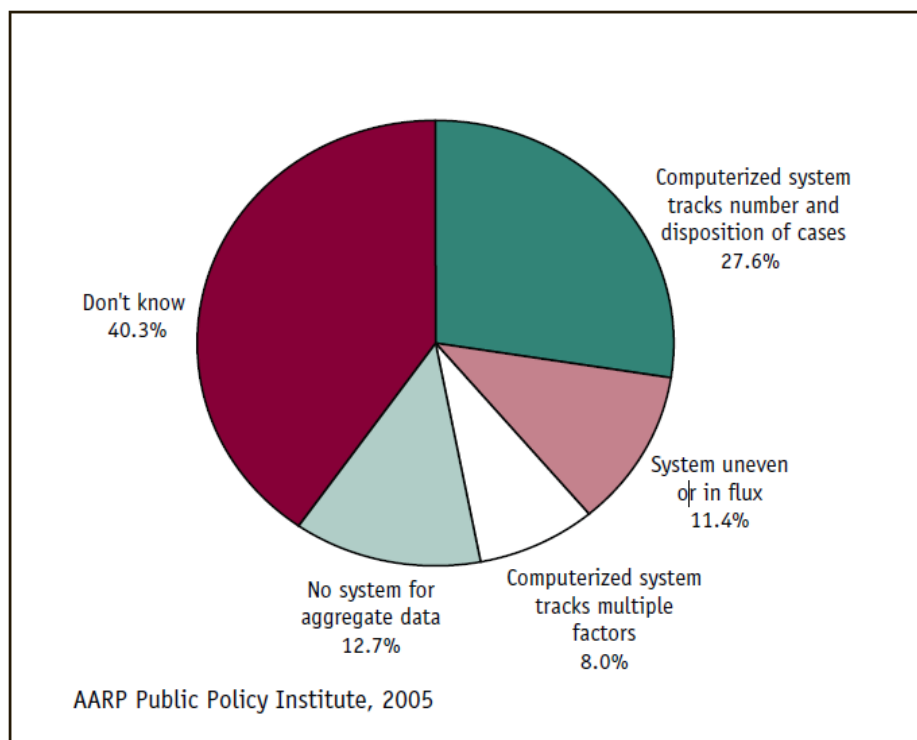
6. *Late or no inventory*
7. *Late or no guardian report, or report the same year to year*
8. *Guardianship only appointment with assets*
9. *Late or no accountings*
10. *Unauthorized gifts and loans*
11. *Use of gift cards*
12. *No notice to interested parties without documentation in the court file*
13. *Transfers between bank accounts, especially near accounting due date*
14. *Inaccurate record keeping, no automation*
15. *The type and amount of expenditures are not appropriate for client's level of care and market rate for services, including disproportionate or unusually large transactions*
16. *NSF checks, late fees, payment of interest or penalties, use of ATMs on accounting summaries filed by fiduciary*
17. *Unacceptable accounting practices*
18. *Fiduciary does not have required vendor W-9 forms on file*
19. *The fiduciary exclusively utilizes one vendor instead of a pool of vendors*
20. *Revocation of bond; failure to renew bond, to pay premium*
21. *Large fees*
22. *Fiduciary with limited experience*
23. *Pattern of written or verbal complaints against fiduciary*
24. *Health, financial or personal problems of fiduciary*
25. *Personal financial difficulty of fiduciary; e.g., tax lien or bankruptcy, credit reports*
26. *Frequent or prolonged office absences*
27. *Poor supervision of staff by principal fiduciary*
28. *Singular control of information by fiduciary*
29. *Fiduciary office does not have written procedures*
30. *High staff turnover*
31. *Failure to renew certification*
32. *Withdrawal from AFA or never engaged into a networking or professional system*

- 33. *Disciplinary action against other professional license(s) held by fiduciary*
- 34. *Disciplinary action against fiduciary by the Supreme Court*
- 35. *Subjective “smell test”*
- 36. *Questionable attorney or other professional(s)*
- 37. *Questionable fiduciary*
- 38. *Ignoring of court requests*
- 39. *Pattern of rebuffing requests for information*
- 40. *No court appointed attorney*
- 41. *Petition to withdraw by attorney*

7.1.2. NATIONAL AND MARICOPA

There is a marked division between the highest-functioning courts and courts nationally in this area. Only 8% stated that the court has a computerized system that tracks and aggregates not only the number of filings and dispositions, but additional data elements as well. One-fifth of respondents said the court maintains statistics on the timeliness of guardian reports, and close to one-fifth indicated maintenance of data on whether the incapacitated person was represented by counsel at the time of adjudication (18.9%) and on the age of the individual (18.3%). Responses for other data elements were lower: 14.5% of survey participants selected information on income, assets, and expenses of the individual; 14.2% selected the reason the case was initiated; 12.7% selected the individuals’ condition at the time of adjudication; and 6.2% selected information on social services provided to the person. Only 9.3% of survey respondents said that the court maintains data on whether the case involved elder abuse. These elements are extremely important. Without reliable statistical data concerning the size of the incapacitated population or how effectively it is being served, it will be difficult to determine precisely what kinds of efforts may

be appropriate to better protect incapacitated elderly people from exploitation, abuse and neglect.³⁵



The use of computer technology in performing monitoring functions was reportedly rare. Only very small proportions of respondents said such technology is used to e-mail the guardian about the reporting status (3.9%) or for any of the following: to enable the guardian to file an account on the court's website (0.3%), file an account by e-mail (1.6%), file a personal status report on the court's website (1.3%), file a personal status report by e-mail (2.1%), check the report status and due date on the court's website (4.1%), check the report status and due date by e-mail (0.8%), or ask questions about the case by e-mail (5.7%). A substantial number (22%) of respondents stated that computer technology is not available for guardianship monitoring.³⁶ With regards to "red flags," courts nationwide rely upon specialist judges and employees to sense when a case has gone awry. A number of courts may rely upon checklists such as those identified above to screen cases on an individual basis. Aside from the Best Practice models above, it appears that no court fully employs

³⁵ N. Karp, E. Wood: Guardianship Monitoring: A National Survey of Court Practices, AARP Public Policy Institute (2006)

³⁶ Id.

red flags as a triage method. Courts would be well-advised to review all accounts annually for basic statutory requirements but to take a more extensive look at a random sample of cases, and particularly those that include one or more of the red flags.³⁷

In this area, the Maricopa Probate Department appears to be significantly above the pack, tracking not only timeliness of events or reports, but detail of staff activity to monitor cases. Maricopa Probate Department personnel send notices to parties when cases are not in compliance.

Maricopa Probate Department produces monthly reports that track how many cases have been investigated, examined and/or audited. The Probate Department also tracks the number of cases going to court review as a result of court staff's review. These reports are unique because as described above, few courts have the capacity to track even basic caseload data. These reports effectively document the monitoring activities of court staff. They are currently entered by hand into Excel by professional staff that are monitoring the cases.

In an effort to determine how current monitoring practices are impacting fees approved, relative to size of estate and then capture those monitoring elements in the developing case management system, Maricopa now seeks to further differentiate number of cases and assets under the fiduciary's care. These efforts are extremely laudable, and will likely provide insight to other courts seeking to focus limited court resources on the cases of greatest monitoring need.

Maricopa's Probate Committee established these additional elements for review.

- Fiduciary
- Fiduciary fee rate
- Beginning estate value and estate value over the last three years (note dollar amount and percent change)
- Attorney fee rate
- Attorneys fees requested and granted for the last three years
- Whether the cases were contested and number of pleadings

³⁷ See e.g., *Guarding the Guardians*.

- Whether a post appointment investigation was ordered (abuse allegations)
- What other court monitoring activities took place: ADR, accountant exception, etc.

Further, even prior to NCSC's involvement, the Maricopa Probate Department has been working to identify cases by dollar by tiers of estate values as follows:

-- Adult conservatorships/guardianships

Under \$500,000

\$500,000- \$1.5 million

\$1.5 million-\$3 million

\$3 million plus

Courts with e-filing capabilities have reported they would be able to search according to estate value. A number of national experts reflected that high-value estates naturally present greater temptation to appointees and thus require a higher level of scrutiny. Experts asked to comment on the appropriateness of these values agreed that they appeared to be appropriate, but also questioned whether there would be significant difference in how the estate value tiers would impact treatment of the cases, i.e., whether a case of \$1.5 million should need to be treated substantially differently from a \$3 million plus case.

7.1.3. OPTIMAL FUNCTIONING

As is clear from a comparison to courts nationally, the Maricopa Probate Department is already gathering far superior information about overall case composition and monitoring efforts. As set forth by several recent national surveys, probate courts around the country are hugely behind the curve in terms of data and management reports on case status and risks associated with cases.

Although iCIS is currently being redesigned, even its current abilities to report on overall case timeliness and the CourTool factors are impressive. The format is visually attractive, and the

information is available on any case at any time, by any court employee or judicial officer. That in and of itself puts Maricopa far ahead of most courts nationally.

The next practice employed by highly functioning probate courts in California, Minnesota, and Florida is that of tracking monitoring events. As demonstrated above, the Maricopa Probate Department again excels in its reporting of its monthly monitoring activities.

That said, in the face of one of the largest probate caseloads in the country, truly effective caseflow management calls for more. There are a number of ways by which Maricopa can achieve better results in data related to case monitoring. In broad terms, this includes (a) age and status of cases pending fiduciary appointment; (b) risk assessment and documentation of estate characteristics to support differentiated compliance monitoring after fiduciary appointment; and (c) getting on top of post-appointment fiduciary reports promptly to catch any problems.

A first step to addressing these areas is to prioritize automation efforts to the greatest degree possible, and perhaps to pursue e-filing. Automating these elements will allow Maricopa to produce comparative reports on demand, analysis across all or a selected group of conservators/conservatorships can be completed quickly and will enhance audit capability. As has been the experience in e-filing courts, less staff time would be required for reviewing and filing reports and associated activities, and could be more focused on closer scrutiny of problematic cases. Thus, the increased reporting capabilities and review of those documents would likely have a deterrent effect on mis- or malfeasance.

Specifically, fiduciary, fiduciary fee rate, beginning estate value and estate value over the last three years noting dollar amount and percent change, attorney fee rate, attorneys fees requested and granted for the last three years, whether a post appointment investigation was ordered should be searchable fields that allow for reporting. Reports of such information should then be made on a regular basis for purposes of managing these cases.

But as discussed below, red flags are also factors that should be automated, and thus searchable and reportable within Maricopa's Probate Department. While discussion needs to be held regarding the specific values, this is an area of tremendous opportunity nationally, and it would be exciting for Maricopa to take the lead.

Also, the Maricopa Probate Department currently hand-enters the monitoring activities into an Excel spreadsheet. While the reports are tremendous for documenting case oversight activities, it would be far more efficient and may also reduce any potential data entry errors to have these activities automatically tabulated as a result of normal case activity. A corollary of this is that staff within the Maricopa Probate Department have developed a number of different processes and forms for their job functions. For example, the accountants, while all generally using the same criteria to review accountings enter the criteria on paper that is transferred to a spreadsheet, or directly into a spreadsheet. The same is true of the court examiners. What would likely assist staff in performance of their duties is to have this information entered into standardized e-forms by the guardians or conservators themselves. These forms should then populate the case management system, and would be searchable by staff.

Granted, both e-filing and development of case values into the developing case management system both represent hefty recommendations. Yet with the sizeable caseload held by Maricopa Probate Department, and given the fact that Maricopa excels in so many other areas, such as caseload management and staffing, it is hard to conceive of other recommendations that might stand to improve overall functioning as much as these two would.

While the data elements presented in the Issues Paper need to be considered and so do red-flags, here is a partial list of items that are recommended as priority elements for automation:

- Number, age and status of cases pending decision on Guardianship and Conservatorship appointment, as compared to relevant time standards.
- Percent of post-appointment cases in which Guardianship and Conservatorship failed to file report or accounting on date due.
- Median and longest elapsed time from filing of petition to Guardianship and Conservatorship appointment in uncontested cases, as compared to relevant time standards (see below).
- Median and longest elapsed time from filing of petition to Guardianship and Conservatorship appointment in contested cases, as compared to relevant time standards (see below).
- Median and longest elapsed time from date of court-ordered end of temporary Guardianship and Conservatorship appointment and entry of order terminating case or permanent Guardianship and Conservatorship appointment.

- Median and longest elapsed time from due date to actual filing of overdue report or accounting by Adult Guardianship and Conservatorship.
- Median and longest elapsed time from due date for overdue report or accounting by Adult Guardianship and Conservatorship and hearing on compliance calendar.
- Median and longest elapsed time between visits to wards by court representatives.
- Current costs and fees per case chargeable to the estates of Guardianship/Conservatorship wards.
- Median and highest per-hour fees chargeable to estates, as requested by professional Guardianship/Conservatorship fiduciaries and by their attorneys.
- Median and highest fee awards approved for Guardianship/Conservatorship fiduciaries and attorneys, both in absolute terms and as percentage of dollar value of ward's estate.
- Bonds.
- Comfort care or monthly expenses.

Additionally, while values would need to be further discussed prior to automation efforts, Maricopa Probate Department has already independently identified a number of values that serve as red flags, including dollar value if the estate exceeds \$500,000; feuding family members; involvement of a private fiduciary, or ward has a claim for exploitation or neglect; claims against the fiduciary for malfeasance or by the fiduciary against other family members.

In order to validate the red flags above, it is recommended that a Delphi Study take place among national experts. A facilitator would provide a summary of the red flags already established by various experts and would query the panel of experts as to the reasoning for each element to be established as a red flag. Experts would be encouraged to revise their earlier answers in light of the replies of other members of their panel. During this process the range of the red flags would decrease and the group will converge towards an agreed-upon list.³⁸ Implementing the steps above and conducting the Delphi Study would require no additional resources, and would place the Maricopa Probate Department far ahead of other courts dealing with these issues.

³⁸ Interview with Brenda Uekert, June 2011.

At this point, no one in the country has established an actuarial, evidence-based risk assessment based on red flags.³⁹ The value of such a tool is undeniable and exciting. Actuarial assessments are based on quantitative models of how other people, with salient characteristics similar to those of the subject, have behaved. An actuarial assessment would validate any link between the size of the estate and abuse. This approach could be used to specify “large estate”—for instance, estates over one million dollars, or 20% above the median local estate—based on empirical data. A research-based study would examine: *“What ‘red flags’ can be used to indicate the existence of abuse, neglect, and exploitation in guardianship cases?”* In this context, a number of specific items would be addressed:

1. What are the risk factors for physical abuse and neglect?
2. What are the risk factors for financial exploitation?
3. What are the risk factors for elder abuse at the time of guardianship appointment?
4. What factors impact risk levels in guardianship cases over time?

The use of any risk assessment tool has its limitations and is not meant as a replacement for personal expertise. Ideally, each guardianship case would be closely monitored by individuals trained in this area. The development and implementation of a risk assessment tool can be used to train staff and automatically “flag” cases that merit additional monitoring. Further, the risk assessment tool could be used to determine “layers” of review. Cases that were validated to demonstrate the greatest degree of risk could be subjected to more frequent review, or for more detailed audits.

7.2 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. As provided by Standard 3.1.5, Attorneys' and Fiduciaries'

³⁹ Ibid.

Compensation, "fee disputes can be particularly acrimonious and can involve litigation costs eventually borne by the estate or the parties far in excess of the amount in controversy. The court should identify, encourage and provide opportunities for early settlement or disposition of these disputes through settlement conferences and alternate dispute resolution procedures."

As the Standard provides, the court generally need not get involved in reviewing fees in unsupervised estates unless the matter is appropriately brought before the court. In extreme cases, however, even though the administration is unsupervised, the court may review compensation on its own motion. For example, the court may review fees to be awarded to the personal representative where the personal representative is the drafting attorney and the will contains an unusually generous fee provision. Similarly, the court may review fees if the court observes a pattern of fee abuse.

Nevertheless, the highest-functioning courts recommended forward thinking in containing costs. The single most recommended practice recommended by experts to contain costs was to require bonding and proof of bonding.

7.2.1 BEST PRACTICE MODELS: BONDS AND FEE SCHEDULES

Judge Herman in Austin, Texas has been creative and collaborative in establishing a number of mechanisms that have proven effective in containing costs. For one, the judge reviews an annual publication of prevailing hourly rates and a schedule of fees within the state. While some states or jurisdictions have statutorily based fee schedules to determine the compensation of fiduciaries and attorneys,⁴⁰ Texas provides for "reasonable" fees. The annual hourly rates are published in the Texas Journal for the benefit of the public. The Austin court also requires guardians and conservators to establish a plan of action prospectively. The judge, through guidelines, and with the assistance of highly-trained, experienced staff, engages in a high degree of case-specific scrutiny

⁴⁰ See, e.g., CAL. PROB. CODE §§ 10800-10805 (personal representative); §§ 10810-10814 (attorneys) (West 1991).

of fees. Austin has a lawyer on staff looking at the legal fees because they will know best about what is reasonable and necessary. Austin also has an Associate Judge that helps in the courtroom and scrutinizes fees. Further, the court publishes a list of fees that will and will not be compensated. For example, the Court refuses to approve payment for fee applications, for legal research, or travel. Finally, Judge Herman strongly recommended use of bonding, and absent extraordinary circumstances, will not waive bond. He will, however, allow people to put up cash for a smaller amount or will allow a corporate bond. The same is true in Tarrant County, Texas, another court known for high-functioning in this area. A training recently developed by Harris County is excerpted below and appended in its entirety.

Reasonable and necessary is our touchstone, and we're to apply this standard to every entry on every timesheet. Imagine how instructive it would be to put an attorney in the witness box and invite them to explain the reasonableness of an attorney spending \$150.00 of a ward's money to contest a \$23.95 claim.

Require EVERYONE submitting a fee application to leave blanks where amounts go in the Order. Requiring blanks will have two salutary effects. First, you will have to think about what you're awarding. Second, lawyers will get the idea that the Court is going to think about what is reasonable and necessary – and might not want to embarrass themselves with inflated or unreasonable or unnecessary entries.

-Excerpt from Harris County Fee Review Guidelines

Several judges interviewed recommended less restrictive alternatives to guardianship to limit the court's role in oversight. As one judge said: "don't be so heroic. Often, as judges, we feel compelled to assume entire responsibility. This responsibility is best shared by the other parties interested in the case." For example, when talking to a guardian or conservator about their responsibilities, the judge will ask family members and friends to bring to the Court's attention anything that they consider untoward. Often time, parties will report, in the case of malfeasance

that they had seen something amiss, but assumed that the Court knew about it and approved of it. The more eyes on the case, the greater the likelihood of right action by the appointed person.⁴¹

For a full listing of effective monitoring practices, including a profile of Maricopa's effective monitoring practices, see E. Wood & N. Karp, *Guarding the Guardians* (2006).

7.2.2. THE NATIONAL LANDSCAPE AND MARICOPA

Nationally, bond requirements are common as so many states have enacted the Uniform Guardianship and Protective Proceedings Act. That said, it is not uncommon to waive the bond requirement. Further, without consistent court review and response, guardian reports serve little purpose other than having a possible sentinel effect.

Arizona's 2011 Legislation puts in place an impressive number of remedies related to cost containment. Arizona's 2011 Legislation puts in place an impressive number of remedies related to cost containment. It provides that guardians, conservators, attorneys, and guardian ad litem seeking payment from the estate must give written notice of basis for compensation when they first appear in a case, and when they change their rates. Compensation sought must be reasonable and necessary considering the listed factors in the statute. It also allows the court to order a person who has engaged in unreasonable conduct or the person's attorney to pay for some or all of the fees and expenses.

These measures will go far in protecting vulnerable populations. Further, the Maricopa Probate Department is committed to enforce them through the case management processes set forth above. Doing so will surely provide increased protection to the vulnerable parties for whom the court provides oversight. Maricopa is encouraged to review its enforcement of these mechanisms within one year of their enactment to ensure that they are applied uniformly. Maricopa is also encouraged to consider establishing reasonable compensation for each case as is occurring effectively in a number of courts nationally.

⁴¹ Interview with Hon. C. Jean Stewart, Denver Probate Court, June 2011.

7.3. STAFFING

The Standards provide that the probate court should have sufficient financial resources and personnel to oversee cases. "The court should use available resources efficiently to address multiple and often conflicting demands. Information collected by the court should be used in the court's planning, monitoring, research, and assessment activities. Resource allocation to cases, categories of cases, and case processing is at the heart of court management. Assignment of personnel and allocation of other resources must be responsive to established case processing goals and priorities, implemented effectively, and evaluated continuously. Monitoring of staff and resources will provide information to evaluate whether needs are being met adequately and whether reallocation of resources is necessary."⁴² The Standards further exhort courts to seek funding for staff resources as necessary.

7.3.1. BEST PRACTICE MODELS

Every highly-functioning court interviewed stressed the importance of having skilled staff: administrative assistants and clerks, investigators, examiners, attorneys. They need to provide assistance to alerting judges to red flags, what sanctions will be applied, and where the money will have to come from to fund the monitoring.

California requires court investigators to visit incapacitated persons during the first year of a guardianship/conservatorship and then every other year. San Francisco County has examiners review accountings and more frequent investigations in troublesome cases. In looking for qualified, experienced examiners and investigators, San Francisco looks for probate paralegals with years of experience in large law firms because "they know what goes into an accounting, and how numbers can be distorted." Several of the examiners are attorneys but not all need be. It is good to have staff with diverse backgrounds because one profession cannot possibly capture all of the necessary

⁴² Standard 1.4.2 Accountability for Public Resources

expertise and experience. In an ideal staff, a composition of social work, nursing, gerontology, paralegal, and probate law is needed. This requires extensive legal training and social work training to balance staff knowledge overall.

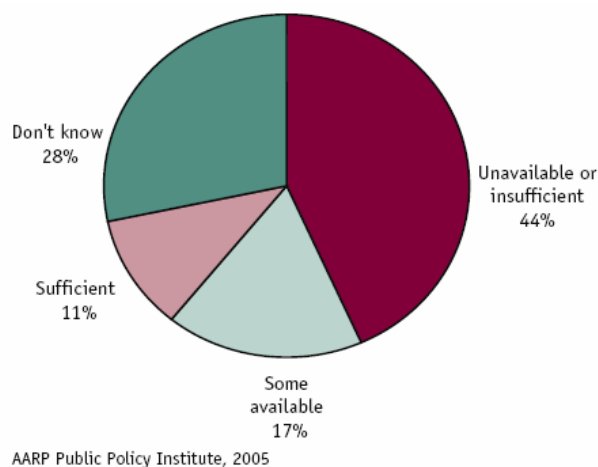
Florida requires Clerks of Court to audit guardian reports. Broward County, Florida requires reports to be submitted electronically and has a full-time court monitor on staff and part-time contractors to investigate possible abuse. Rockingham County, New Hampshire and DeKalb County, Georgia, among others, have Volunteer Court Visitor programs to review reports and check on wards. Fulton County, Georgia and Hennepin County, Minnesota use law firm volunteers to review annual accountings. Texas requires court visitor programs, annual reviews of guardianships, and mandates that judges consider and approve annual accounts. Tarrant County uses social work students as court visitors, has a database to track open cases, an auditor to review annual accounts, and a program manager to follow up on concerns in guardian and court visitor reports before the judge's review. They have one auditor and part-time assistant auditor that review accountings and help to run the compliance docket. Forty percent of the Associate Judge's time is looking at fee applications and hearings on attorneys' fees. The law clerk is a law graduate to make sure filings are ready to go. In guardianship cases they have a lawyer who is a court investigator. They also have a paralegal who works on compliance issues.

7.3.2. NATIONAL LANDSCAPE AND MARICOPA

Good monitoring requires good staffing. Unfortunately, most courts do not have sufficient resources to fund monitoring staff at an adequate level. A 2004 GAO study reported that "(m)ost courts surveyed said they did not have sufficient funds for guardianship oversight."⁴³ The 2005 survey continues to demonstrate serious funding gaps. More than 43% (43.4%) of respondents stated that funding for monitoring is unavailable or clearly insufficient, about 17% responded that some funding is available, and only 10.9% responded that sufficient funds are available to the court. A significant number of respondents (28.4%) did not know whether the court has sufficient monitoring funds.⁴⁴

⁴³ E Wood 2005.

⁴⁴ Ibid.



In September 2010, the American Bar Association Commission on Law and Aging surveyed the National College of Probate Judges on staff investigations and volunteer guardianship monitoring and assistance for *Building a Volunteer Guardianship Assistance Program: A Win for Courts and Families*, a project funded by the State Justice Institute and the Borchard Center on Law and Aging, a program of the Albert and Elaine Borchard Foundation.⁴⁵ The survey clearly set forth the type of responsibilities commonly held by professional and clerical staff, and discussed staffing needs. It also established staffing needs for each:

Court Investigative Resources

- A majority of the respondents stated while they have full and part-time staff responsible for reviewing filed documents or accounts in adult guardianship cases, they do not have staff who are responsible for personally visiting and interviewing individuals in adult guardianship cases.
- Most respondents estimated annual cost to the court for staff to review court documents and/or perform investigations exceed \$100,000 of the general court budget.
- Not surprising, the majority of respondents said their court needs additional investigative resources.

⁴⁵ Summary Results: National College of Probate Judges Inventory on Adult Guardianship Investigators/Volunteer Monitors.

- Of those who said their court needs additional investigative resources, the range of reviewer and investigator positions needed to adequately monitor guardianships was between one part-time employee and six full-time employees.

Use of Trained Volunteers in Guardianship Oversight

- Fourteen of the 49 respondents used trained volunteers to assist guardians and monitor guardianships. Of those that do not use trained volunteers, the majority would be interested in initiating a trained volunteer guardianship assistance and monitoring program if funding was available.
- Most of the volunteers are social work students, some are retired and a few are law students.
- Almost all of the respondents who use volunteers have a member of the court staff serve as program coordinator, and use an average of six and ten volunteers.
- All of the respondents that use volunteers have them visit persons under guardianship and report back to the court, and most volunteers provide assistance to guardians by "directing guardian's questions to court staff."
- Half of the respondents indicated volunteers identify problems and bring them to the attention of court staff at least "a few times a year." Problems identified by respondents included: inappropriate residential placement, need for additional community resources, guardian not performing duties, family conflict affecting care and/or finances, and possible neglect.
- All of the respondents indicated volunteers visit individuals with family guardians, and all but one visit individuals with agency guardians. Some respondents also reported that volunteers visit individuals with friends or individual professionals as guardians.
- All of the respondents who use volunteers perceive family members as needing more assistance than they currently receive in serving as guardian.
- Cost estimates for the program were varied but most respondents estimated the volunteer program costs between \$10,000 and \$30,000 annually, which comes from the general court budget.

Maricopa is a model with regards to its established positions. When their staffing resources were described to judges, administrators and other national experts, the Maricopa Probate Department was described as "light years ahead." Others expressed envy, especially as the downshift in the economy several years ago hit national probate courts hard, and many are still required to reduce staff, or operate at reduced staffing levels.

In the Maricopa Probate Department, however, with one of the highest probate caseloads in the country, having sufficient monitoring staff is an imperative. As reported in Probate Court System Enhancements (June 30, 2010), the Court has added staff resources to the Probate Department, including an additional investigator, accountant and supervisor. This demonstrates Maricopa's active work to locate needed resources to provide oversight in accordance with best practices and probate standards. Nevertheless, these positions are just now being filled, so the Maricopa Probate Department is still understaffed, and monitoring a tremendous caseload.

The Maricopa Probate Department uses the full panoply of staff monitoring functions established nationally to monitor cases. Probate staff set court dates and monitor cases for compliance once guardians and conservators are appointed. Probate staff work with judicial divisions to ensure that guardians and conservators are fulfilling their obligation in caring for the protected child or adult.

Monitoring By Probate Examiners

- Periodic File Reviews to Monitor Compliance
- Memos to Judicial Officers re: Case Concerns
- Issuance of Notices of Non-Compliance
- Referral to Court Investigations for Locates re: missing Guardians, Conservators or Wards
- Tracking Case Monitoring Events in Court Database
- Telephone calls or letters received by Probate Administration re: concerns about protected wards
- Review of Annual Guardian Reports for concerns

Monitoring By Court Investigations

- Initial Investigations Report re: New Adult Guardianship or Conservatorship sought
- Monitoring by Guardian Review Program Volunteers of existing adult guardian and conservator cases
- Special Investigations ordered by the Court
- Memos to Judicial Officers re: Case Concerns
- Annual reporting reminders sent to guardians
- Response to Court hotline calls

Monitoring by Court Accountants

- Report and Recommendation re: Annual Accountings
- Account balances verified by submission of most recent account statement from financial institution
- Fee Applications required by Local Rule if fiduciaries or attorneys seek compensation
- Review of Estate Management Plans

7.4. OPTIMAL FUNCTIONING

The Maricopa Probate Department asked the NCSC project team to pose considerations with regards to staffing. While the NCSC project team interviewed a host of national experts about staffing, time studies and workload assessments, it is difficult to compare given that most courts have lower caseloads than the Maricopa Probate Department, or that many courts utilize volunteer positions to a much higher degree. Any dispositive conclusions as to the adequacy of staffing could only be made after a formal workload assessment.

For discussion purposes, it is presented that one court estimated that investigators are able to investigate 21.7 new general conservatorships per year, and to review 57.7 others. An investigator may perform some 105 per investigator per year. It was estimated that examiners could review 1197 matters in a year. These numbers are presented as considerations only for the Maricopa Probate Department to keep in mind as they fill current vacancies and continue to evaluate overall functioning of the court. Continued assessment of court functioning should take place as described under data collection efforts, and under community outreach, as described below. The Maricopa Probate Department has and continues to implement a wealth of improvements that impact staff time, from caseflow management to new legislation that may impose additional requirements on court and staff time. These changes will take time to fully stabilize within the court. Thus, the court is encouraged to focus on performance measures set forth above to calibrate functioning and additional staff needs.

8. PARTNER WITH THE COMMUNITY TO DEVELOP SOLUTIONS TO STATE AND LOCAL GUARDIANSHIP ISSUES.

“Several different constituencies are served by the court exercising probate jurisdiction. All should have trust and confidence in the court.” The probate court serves the “general public”—the vast majority of citizens and taxpayers who seldom experience the court directly. The court also serves the community’s opinion leaders (e.g., the local newspaper editor, local and state executives and

legislators, researchers, and members of court watch committees). Another constituency includes those citizens who have appeared before the court as attorneys, litigants, jurors, or witnesses or who have attended proceedings as a representative or a friend of someone before the court. This group has direct knowledge of the routine activities of a court. A final constituency consists of judicial officers and other employees of the court system, court appointees, and lawyers—within and outside of the jurisdiction of the court—who may have an inside perspective on how well the court is performing. The trust and confidence of all these constituencies are essential to the court. "Compliance with the law is directly related to public respect for the court exercising probate jurisdiction. Ideally, public trust and confidence in the court stems from the contacts citizens have with the court. Unfortunately, there is no guarantee that public perceptions reflect actual court performance."

Sometimes courts are reluctant to engage in community outreach or promotion because they may not seem like traditional judicial functions. Yet, given the high degree of attention in probate matters, and shaken public trust, outreach activities are crucial.

As indicated by Standard 1.5, public perception is often not reflective of actual court performance. The Maricopa Probate Department has done much to improve caseflow management, case tracking and data collection, fee containment, monitoring, and attention to recent legislative changes, but the public at large may still not be fully aware of these reforms. Publicizing the reforms is likely to enhance public trust and confidence.

The Court, through a variety of methods, has reached out to the community to communicate the improvements made. Other courts that have been effective in working towards public trust and confidence are considered here.

8.1. BEST PRACTICE MODELS

In speaking to prominent judges and administrators known for excellence in probate, the NCSC project team was struck by persistent themes of working with the public at large. A number of judges talked about working actively with their state legislature on initiatives and reforms for

monitoring probate and conservatorship cases. Another theme was that of working with the broader national probate community, via informal network, or through the National College of Probate Judges. Other highly effective practices are detailed below.

In Hampshire County, Massachusetts, the Probate and Family Court has a Probate Community Outreach Program that makes court staff available to explain the function of the court and the ways in which families are served by the court. This functions much like a Speakers Bureau, where staff will give presentations to any school, senior citizen, veteran, social service, or civic organization that will have them. This sort of one-on-one contact with the public is reported to have significant impact.

Other courts have expanded on the Speakers Bureau concept by securing appearances on local television programs. Many local stations have noon news programs that allow for community-specific programming. They would have to have an interesting hook to get the local programs interested, but it can be done. As reported in the Colorado Profile, a local attorney regularly presents on the importance of establishing Living Wills and other documents. The news station regularly solicits his participation, indicating public interest in the topic.

In 2002, the Council for Court Excellence published a 30-page booklet titled "When Someone Dies: A Non-Lawyer's Guide to Probate in Washington, D.C." This resource contains everything that anyone could ever want to know about probate court, and includes a place for people to record the case diary and important deadlines and records of personal affairs, helpful contact information, and even a map of Judiciary Square. It is engaging, and written in plain language that anyone can understand.

Additionally, the Maricopa Probate Department has been lauded in national reports for its guardianship volunteer program. The Maricopa Probate Department is one of the first programs using volunteers to assist with case monitoring, and does so in a very organized fashion. It also engages the broader community in the community's responsibility to protect the vulnerable.

Further, the Probate Department recently created a training on "The Responsibilities of the Guardian." Flyers are handed out at the clerks' office, and the training is also available on the court website, allowing for ready access to all who serve.

Additionally, the National College of Probate Judges has established a list of the Top 10 Probate Websites. These are websites committed to using technology to improve efficiency and increase the level of service made available to customers. These sites generally contain online forms and information for the probate cases types. The Maricopa Probate Department's website, as it provides the plan, information on monitoring, forms, and guardianship training online, is equally on par with the quality and accessibility of these other examples.

8.2. NATIONAL LANDSCAPE AND MARICOPA

In Arizona, as nationally, there is significant public interest in vulnerable populations. National media outlets have extensively reported on conservatorship and guardianship cases, and courts' roles in overseeing those cases. Common themes nationally, as in Arizona, are: (1) the issue of attorneys' and fiduciaries' fees and (2) need for greater transparency and oversight. Press coverage regarding exploitation of protected persons, and the courts' oversight (or lack thereof) is abundant. In a major study conducted by the GAO in 2010, the GAO "could not determine whether allegations of abuse by guardians are widespread; however, GAO identified hundreds of allegations of physical abuse, neglect and financial exploitation by guardians in 45 states and the District of Columbia between 1990 and 2010. In 20 selected closed cases, GAO found that guardians stole or otherwise improperly obtained \$5.4 million in assets from 158 incapacitated victims, many of whom were seniors. In some instances, guardians also physically neglected and abused their victims. The guardians in these cases came from diverse professional backgrounds and were overseen by local courts in 15 states and the District of Columbia. GAO found several common themes. In six of 20 cases, the courts failed to adequately screen potential guardians, appointing individuals with criminal convictions or significant financial problems to manage high-dollar estates. In 12 of 20 cases, the courts failed to oversee guardians once they were appointed, allowing the abuse of vulnerable seniors and their assets to continue. Lastly, in 11 of 20 cases, courts and federal agencies did not communicate effectively or at all with each other about abusive guardians, allowing the guardian to continue the abuse of the victim and/or others."

To fulfill its mission, a high performing court seeks and receives adequate funding. Making a persuasive case for resources is supported by the presentation and circulation of performance results and what actions and plans a court has taken and intends to take to respond and adapt new practices. A high performing court works to achieve a positive reputation for itself by means of its own effective communication of performance related results.

The Probate Department is doing exactly this and actually was successful this Spring in receiving funding for an additional six positions needed to monitor and supervise cases. In addition to collecting and reporting on the data elements set forth above, the Probate Department is also working closely with state groups. The Probate Improvement Plan, a 55 page document posted on the Maricopa Probate Department website, is an excellent example of working with the broader community to set forth performance results and action plans, and communicating those plans with the public.

8.3. OPTIMAL PERFORMANCE - RECOMMENDATIONS

The Maricopa Probate Department has done tremendous work in implementing reforms. Given the high-level of interest and to some degree, shaken public confidence, the Maricopa Probate Department should emphasize community outreach to inform the national court community, the local legal community, the Legislature and the public at large about the innovations and best practices in place in Maricopa.

A significant step would be the Maricopa Probate Department's involvement to a greater degree with the broader national probate community, via informal network, or through the National College of Probate Judges. On its own initiative, the Maricopa Probate Department has reached out to a number of highly-functioning probate courts across the country to learn more about practices that work. Judges who participate with the National College talk about the ability to work with other judges that are equally committed and innovative in their handling of probate matters and protective proceedings. It would also give the Maricopa Probate Department the opportunity to share the promising practices they have developed with the national probate court community. As the next meeting takes place in Tucson next year, this may present the Maricopa Probate

Department an excellent opportunity to participate and review proposed amendments to the Standards.

Another recommendation would be for the Maricopa Probate Department to conduct open forums or focus groups. As the High Performance Framework sets forth, one of the most effective ways to test public understanding is to perform surveys. The Maricopa Superior Court has in fact used CourTools regarding public perception of Access and Fairness. However, surveys tailored specifically to probate and protective proceedings would probably provide greater input on protective proceedings. That said, surveys can be time-consuming and expensive to administer. Another way to gain understanding of public perception, as well as to share information, is through focus groups.⁴⁶ A focus group would allow court administrators to engage different sectors of their constituency, such as lawyers or legislators, to discuss procedures in place in the Maricopa Probate Department, to test some of the recent reforms, such as the case management plan, and to continue to improve and refine efforts. A less scientific approach to opening dialogue would be for the court to consider holding an open house, inviting the public to come into the court. Many of the trust issues people have with the legal system stems from not understanding what goes on in courts or being intimidated by them and especially by judges. An open house would allow the public face-time with staff and judges and a chance to see what the court looks like at a time when they are not there on official business.

Maricopa's Court Visitor Program is a significant strength, and reflects well on court functioning and court oversight. Additional attention should be placed on publicizing this effort, and/or on involving additional volunteers. Involving volunteers is one of the single most effective ways to increase public understanding of the court. Likewise, the Court could emphasize their Guardianship Review Program, which is also unique among probate courts.

A periodic re-evaluation of public content provided by the Probate Division webpage may prove useful to see if information can be presented any more clearly or plainly. While the webpage is clean and informative, having an elderly person or other member of the community review the page could provide helpful insights. A member of the community could be charged with finding a

⁴⁶ B. Ostrom & R. Hanson, *Achieving High Performance: A Framework for Courts* (2010)

particular document to see how easily a visitor can find the information for which he or she is looking.

9. CONCLUSION

In recent years, there has been a call for improvement of probate courts, coming both from within the probate court leadership and from those outside the courts hearing probate matters. The National Probate Court Standards and a number of courts across the country provide innovations that effectively protect the finances and well-being of vulnerable parties. In the comparison with best practice models and probate courts nationally, Maricopa has demonstrated itself to be a highly functioning probate court. In its use of caseflow management, use of data, and use of staffing, Maricopa was described by one expert as "light years ahead." By continued improvements in technology and by implementing recent statutory amendments, the Maricopa Probate Department is poised to be a court that others seek to emulate across the country.