

Brief No. 6

INNOVATIVE PROGRAMS THAT ADDRESS - FINANCIAL EXPLOITATION BY CONSERVATORS -

This is the sixth in a series of eight Background Briefs produced by the National Center for State Courts and its partners under a project funded by the U.S. Department of Justice Office for Victims of Crime to assess the scope of conservator exploitation and explore its impact on victims.

Innovative programs detect and address exploitation through the use of technology and auditing staff. However, the impact of these programs on victim outcomes is largely undocumented.

IDENTIFYING INNOVATIVE PROGRAMS

Nationally, there is a dire need for guardianship/conservatorship reform, as relatively few courts have the resources, staffing or expertise to actively monitor conservatorships. Despite these limitations, several programs and courts have engaged in promising reform. To identify such programs, the project team queried multiple guardianship-related email discussion lists, performed an internet search, and identified well-established programs mentioned in previous reports and articles. After compiling a list of programs, the project team interviewed program directors. The availability of data to document program activities and/or outcomes was a key factor in the final selection of innovative programs highlighted in this Background Brief. Once selected, program directors completed a standard set of interview questions. None of the programs had “evidence-based” results; their effectiveness in detecting and responding to conservator exploitation had not been measured. For this reason, the programs described below are referred to as innovative programs rather than national models.

PROFESSIONALLY STAFFED STATE-LEVEL AUDITING PROGRAMS

In nearly every state, conservators are appointed by a judge or judicial officer. The courts are then responsible for reviewing accountings and ensuring that the individual’s estate is managed properly. Practices vary from one locality to another, and even among judicial officers in the same court. Reform at the state level has the broadest impact, but state efforts are influenced by the organizational structure of the state court system, their authority over trial and probate courts, state court budgets, and leadership priorities. Three state courts have engaged in systemic reforms to modernize the conservatorship process and improve the auditing component: Minnesota, Texas, and Colorado.

Minnesota

The Minnesota Judicial Branch’s conservatorship program is highly regarded and has become the model for court reform in other states. The Minnesota program includes two separate but complementary tracks: (1) the mandatory statewide use of conservatorship software, and (2) professional auditing by a centralized team of auditors. The current version of software (MyMNConservator) was launched in 2014 and become mandatory for all conservators. The software requires conservators to enter individual transactions, which allows auditors to quickly determine changes in income and expenditures over time and analyze specific categories of transactions. In 2012, Minnesota became the first state to launch a centralized team of auditors to review accountings submitted statewide. Auditors use a scale of one to four to assign a value to each case and file an audit report with the court of jurisdiction summarizing audit findings and recommendations. The local court then has the discretion to call for a judicial hearing and take follow-up actions where appropriate.

Minnesota is one of the few states that can document the amount of assets under conservatorship—over \$900 million in 2015. The audit team found that almost 14 percent of the accountings audited have “concerns of loss” findings, which include things such as inappropriate loans or expenditures or comingling of funds.

Texas

Whereas Minnesota is a centralized court structure with a single case management system for all trial courts, Texas has a decentralized structure in which each judge acts as his/her own court operating independent of other courts. There are at least 14 different case management systems that operate throughout the state. Additionally, much of rural Texas relies on constitutional judges, who may or may not be law trained, to appoint and oversee conservators. In this context, the Texas Office of Court Administration (OCA), with significant legislative support, created a Guardianship Compliance Pilot Project. Guardianships include guardianships of the estate—conservatorships.

As of December 2016, the Compliance Specialists had gone from court to court in 11 counties to review paper files, starting with the oldest files. The Specialists identified cases that should be closed (due to emancipation, death, temporary status of conservatorship, transfer to another jurisdiction) and documented a variety of elements, such as whether background checks were carried out and accountings submitted on time. On average, they discovered that 48% of the cases reviewed in eight counties were non-compliant—missing and late accountings. The Compliance Specialists are working with each court to send out letters to conservators requesting the necessary information.

Additionally, the OCA is developing software, similar to Minnesota’s approach, that will require conservators and guardians to submit annual reports and accountings through a state guardianship reporting protocol.

Colorado

Colorado has a small program at the State Court Administrator’s Office consisting of two Protective Proceedings Auditors (PPAs). At the judicial district level, designated staff are responsible for monitoring

conservatorship filings to ensure that reports are timely and contain sufficient information. The district court staff and judicial officers can refer a case to the PPA team for audit, and the PPA team can work with courts to periodically select cases at random for audit. The number of cases audited remains limited by staff—between April 2013 and December 2016, the PPA program completed audits of approximately 100 conservatorship cases with a combined estate value of over \$90 million. Colorado is also considering a statewide software system to improve the submission of accountings.

Each of the programs noted above has made great strides in modernizing the system and improving the ability to detect financial exploitation on a statewide basis. However, a gap remains between audit findings and court responses. This gap is addressed in greater detail in another study component in which Minnesota “concern of loss” audits were tracked for court actions (see Exploitation in Minnesota Brief). These state-level programs have definitively improved the ability of the court to detect exploitation on a statewide basis. Their impact on case outcomes that prioritize justice and the restoration of assets is not yet known.

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LOCAL JUDICIAL AND COURT CLERK MONITORING EFFORTS

Locally, court clerks and judges can champion reform and create meaningful levels of oversight. Two examples model the impact of strong leadership and a commitment to protect assets. In Richland County, South Carolina, the probate court judge has developed practices that individualize the level of monitoring. In Palm Beach County, Florida, the Clerk of Court has a specialized Audit and Investigation Program.

Richland County Probate Court, South Carolina

Judicial leadership and a passion for guardianship/conservatorship cases can lead to practices that prevent,

identify, and address exploitation by conservators. The Richland County Probate Court in Columbia, South Carolina, is led by a judge who has taken measures that enhance conservator accountability. The Court oversees about 379 adult conservatorships. The oversight process begins at the time of petition. Proposed conservators are required to provide a credit report and submit to a criminal background check. If there are any issues, such as questionable credit scores, the judge may ask for supporting documentation and an explanation. The judge often requires the conservator to prepare a monthly needs budget for the individual, and may order that a restricted account (contract with bank, conservator, and court) be established. The restricted account may be based on the monthly budget and in some cases, may completely restrict the account so that no expenditures can be made without court approval. According to the judge, “this is very time intensive, but we discovered we spent more time chasing the money to get it back.” The first accounting is due six months following the appointment and then annually.

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Courts use a term called “differentiated case management,” in which certain cases are given more attention than others due to a number of factors. The Richland County Probate Court employs this concept to place additional restrictions on conservators who may have poor credit scores or need substantial assistance with financial management. For example, the court may require monthly bank statements, the establishment of automatic payments to directly pay the service provider, and proof that the money was spent appropriately. The judge may send a Special Visitor (trained law school student) to the residence to verify certain expenditures and may appoint a guardian ad litem to review transactions and explore the case further.

When an expenditure is considered inappropriate, the judge uses a number of tools to ensure a fair outcome. The judge may require a hearing to receive testimony

on the issue, may terminate or remove the conservator, may set up a repayment schedule for the conservator, and finally, can hold a conservator in contempt and incarcerate when appropriate. The court works in a variety of ways to recover assets. For instance, in cases where real estate is transferred without permission from the court and to the disadvantage of the individual, often to another family member, the judge may order the deed to be voided. Similarly, the judge may order the repayment of funds if a vehicle is transferred without receiving full market value. As a last resort, the case can be reported for criminal investigation.

Palm Beach County Clerk and Comptroller’s Office, Florida

The Palm Beach County Clerk and Comptroller’s Office in Florida is independent of the judiciary and has a specialized Audit and Investigation Program. The core components of the program are (1) independence; (2) unfettered access to records; (3) highly trained auditors and investigators; (4) use of professional standards; and (5) strong local relationships and community outreach. Trained court clerks are responsible for high-level reviews to ensure that reports are timely, complete and accurate. The initial review may identify “red flags,” which trigger a review by the Audit and Investigation Program. The Program also receives cases from the guardianship hotline, referrals from judges, and the Florida Department of Elder Affairs Office of Public and Professional Guardians. Depending on the number and severity of “red flags” that were identified, an audit may be carried out to focus on a specific set of issues or on the entire accounting. With court approval, third party verification may be required—this calls for in-person inspection of bank vaults and safe deposit boxes or physical verification of reported personal property. The Clerk’s office may also issue a subpoena to obtain records from a conservator or third parties. Investigators may also search public and commercially available information, including social media accounts (e.g., Facebook, Twitter), interview parties who may have relevant information, and in potentially criminal acts, carry out covert surveillance.

In Fiscal Year 2015-16, clerks carried out 311 reviews of accountings. The Program received 132 hotline calls and referred eight cases to law enforcement and other groups. They reported \$247,000 in unsubstantiated

expenditures and missing assets. The Program has been implemented in at least ten other counties in Florida and has become a statewide model. The amount recovered and any sanctions placed on conservators is unknown, as the Program does not collect data on judicial responses to audit reports.

Reforms to local court and clerk conservatorship practices require resources and leadership. A comprehensive package would include professional audits, such as those carried out in Palm Beach County, with a deliberate judicial response that prioritizes accountability and the restoration of assets, as modeled by the Richland County Probate Court.

VOLUNTEER MONITORING PROGRAMS

Volunteer monitoring programs can be instituted statewide and locally. In each case, a volunteer coordinator is responsible for training and monitoring volunteer monitors. Two states—New Jersey and Utah—have developed ambitious programs that currently serve a number of counties. An example of a local volunteer monitoring program is the Spokane County, Washington, Guardianship Monitoring Program.

Utah and New Jersey

The Utah Courts have a Guardianship Reporting and Monitoring Program (GRAMP) that assigns volunteers, called “court visitors,” to investigate guardianship and conservatorship cases. There is also a specific role for auditors—court visitors with accounting backgrounds—who document the submission of timely accountings and look for indications of financial exploitation. In 2018, the program secured ongoing funding through state appropriations. The New Jersey Courts have a similar Guardianship Monitoring Program (GMP), which includes the use of volunteers to examine inventories and annual accountings and make recommendations about follow-up action. The availability of trained and experienced volunteers is an ongoing challenge for both programs. Both programs are relatively new, and according to program managers, the lack of consistent judicial follow-up to audit reports remains problematic.

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Spokane County, Washington

In Spokane County, Washington, the Superior Court has a Guardianship Monitoring Program that originated in 2000. The Program relies on trained volunteers to review court files to ensure that the required documents are filed and to conduct audits to ensure that the estate is being managed effectively. They oversee about 2,000 active cases, including both guardians and conservators. The program has not been evaluated—the number of cases in which a conservator breached his or her financial duty and the outcomes of those cases is unknown.

The degree to which volunteer monitors have the sufficient education and experience to examine and audit cases varies considerably, and coordinator supervision is critical. Evaluations are necessary to determine the quality of audits and the impact of audit findings on court actions.

PROGRAMS OUTSIDE OF COURT

Guardianship/conservatorship is considered a “last resort” because it removes fundamental rights from individuals, and thus less restrictive options are preferred when possible (although such options may result in exploitation as well). For this reason, the project team carried out interviews with non-court programs to determine their role in identifying conservator exploitation and producing positive outcomes for victims. The project team contacted four programs for additional information: Cook County, Illinois’ Public Guardian Program; Eldercaring Coordination, Guardian Partners in Portland, Oregon; and British Columbia’s (Canada) Nidus Personal Planning and Resource Center.

- The Cook County Public Guardian Program has a Financial Recovery Unit (FRU) staffed by attorneys who investigate complex cases of financial exploitation, some of which involve former conservators. The Unit handles between 35 to 40 cases at a time and has recovered more than

- \$50 million from individual exploiters, insurance companies, and surety bonds.
- Guardian Partners, operating in four Oregon counties, assists the court in protecting seniors, adults with disabilities, and children under guardianship care through monitoring, training, and supporting guardians. Volunteer monitors investigate specific guardianship cases. When the monitors find abuse, Adult Protective Services, the court, and others are notified as appropriate.
- Eldercaring Coordination in Florida, Ohio, and other states is a dispute resolution option specifically for high conflict cases involving issues related to the care and needs of elders. A trained coordinator appointed by the court uses mediation, problem-solving skills, education, community resources, and the limited authority granted by the court to address aggravated situations, frequently in the context of family disputes. Some Eldercaring coordinators charge a fee for their services.
- Nidus, in British Columbia, Canada, encourages the use of Representation Agreements, which are legally enforceable and used in case of incapacity, for end-of-life, and other support needs. There are no specific criteria for capability—individuals who are diagnosed as mentally incompetent by a physician may still enter into a Representation Agreement. The Agreements use a team approach in which there is a designated monitor. The number of executed Representation Agreements is unknown.

Programs outside of court offer the potential for those who are able to access such services. Cook County’s program is impressive in terms of its ability to recover assets in general, but the small caseload limits its impact on a much larger conservatorship caseload. Eldercaring Coordination, Guardian Partners, and Nidus depend on voluntary participation and on court buy-in; and Nidus depends on voluntary participation, which is unlikely for someone who deliberately exploits. More research and data are needed to explore the programs’ impact on the identification of and response to exploitation by conservators.

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