



Transcript – Probate Court Staff Video Series

1. Monitoring Conservatorship and Guardianship Cases

Welcome to the National Center for State Courts' orientation for court staff who monitor guardianships and conservatorships.

We also have a separate set of videos for conservators to help them understand their role.

Individuals who are under conservatorship, or guardianship, rely upon the court to ensure that they and their assets are protected. Your job is vitally important.

A conservator is the person who has been given responsibility for the real and personal property of an individual. This person may also be referred to as the guardian of the estate, the guardian of the property, or the fiduciary.

It is your responsibility to ensure that the conservator or guardian fulfills his or her duties appropriately. This job is made much easier if the guardian or conservator submits good reports.

Help conservators by making expectations very clear. This includes letting them know what reports are due and when. Instructions should be provided in writing, in plain language. Have paper copies to hand to people in person and post them on your website. Consider translating the information into languages commonly spoken in your community. Make resources readily available.

Some courts use online reporting or provide standardized forms on the court's website. Here's an example of a form from the State of New Mexico's website. The video "[Responsibilities of a Conservator and Questions You Should Ask](#)" is helpful in explaining the conservator's responsibilities.

Of course, the first step in monitoring cases have ongoing guardianships or conservatorships. We recommend using the case status "set for review" to identify cases where the court has appointed a guardian or conservator, and the order remains active.

When the guardianship or conservatorship ceases, the case status should be set to "closed." If this is not possible in your case management system, your court needs another way to track cases.

The next step is making sure that required documents are filed on time. Know the deadlines for each case. Some courts have reports due on the anniversary date of the initial order. Others have a common deadline for all cases.

A case management system that tracks when reports and accountings are due, that sends reminders to guardians and conservators ahead of deadlines, and that provides an alert to court staff when required reports are overdue, is ideal. If you don't have a case management system with this capability, the court needs another way to track these reports.

If reports are missing, you need to act. Develop an action plan for common scenarios, so that you can seamlessly execute and escalate actions, when the situation arises. A common first response is to send a notice of delinquency. A court may also choose to enter an order to show cause.

Common reporting forms include the initial inventory and appraisal of the assets, and a plan for how resources will be allocated to meet the person's needs throughout their lifetime. An accounting is typically required annually, though courts may order them more or less frequently. A well-being report is also typically required annually.

Vaguely described expenses and shoeboxes overflowing with receipts are not helpful in effectively monitoring a person's finances. As you're reviewing reports, ask:

- Were these reports filed on time?
- Are they complete?
- Do they contain sufficient detail and documentation to know how the person is doing and how assets are being used?
- How do the current reports compare to previous ones?
- Providing conservators with standard accounting forms and telling them what supporting documentation is needed, will make your job easier.

Some courts are using a financial monitoring service for immediate alerts when suspicious charges occur. For more information on that, see our video, "[Preventing and Detecting Fraud.](#)"

For tips on what to look for in financial reports, see our video, "[Red Flags in Financial Reports.](#)"

2. Red Flags in Financial Reports

As someone charged with reviewing financial reports for conservatorships, it's helpful to know what to look for.

Some expenses deserve more investigation. Examples include:

- Significant charges for utilities when the person is not living in the home or the home is standing empty.
- Valuable items that appear in the inventory or accounting, but the person does not have them.
- Checks written for cash or use of an ATM without court authorization.
- Payments or reimbursements to the guardian or conservator without explanation.
- Purchase of an automobile when the person in conservatorship cannot drive or use the car.
- Or large expenditures in the accounting not appropriate to the person's lifestyle or setting.

Also, consider what might be missing from the report. This might include:

- Gaps and missing entries for expected income such as pensions, Social Security, VA benefits, or rental income.
- Missing entries for expected expenses such as rent, health insurance, or tax payments.
- Bills that aren't being paid or are being paid late or irregularly.
- Purchases of clothing, toiletries, or other necessities that aren't being made.

- Or missing tax filings.

There are additional red flags that also require follow-up. Examples include:

- Concerns about the quality of care the person is receiving.
- Repeated complaints from family members, neighbors, friends, or the person in conservatorship.
- A required bond is revoked or expired.
- The conservator does not arrange to apply for Medicaid when needed for skilled nursing facility payment.
- The conservator does not cooperate with health or social service providers and is reluctant to spend money on the person in conservatorship.
- The conservator is not forthcoming about the services the person in conservatorship can afford or says the person cannot afford services when that is not true.
- The court has been alerted that the conservator's lifestyle seems more affluent than before the conservatorship. Examples include suddenly having a new car, a new boat, or taking expensive vacations.
- The conservator is mixing the protected person's money with their own.
- Or court documents are not filed on time.

The first response to problems is usually to ask the guardian or conservator for more information.

For other actions court staff can take, see our video, "[Responses to Potential Fraud or Abuse.](#)"

3. Responses to Potential Fraud or Abuse

Sometimes you'll have concerns or discover problems in a guardianship or conservatorship case. When this happens, courts need procedures in place to efficiently respond.

The [Judicial Response Protocol](#) at [eldersandcourts.org](#) is an interactive tool to help courts respond to potential fraud or abuse.

A multidisciplinary team, or MDT, can help you identify and respond to cases of abuse and exploitation.

In addition to having court staff and Adult Protective Services on your MDT, you may also want forensic accountants, neuropsychologists, or geriatric psychiatrists. Other health care providers or professionals may also be appropriate.

The court may want to assign a court visitor or examiner to make in-person visits with the protected person, either routinely or in response to potential problems.

Courts may also appoint special fiduciaries to investigate issues and resolve problems within the estate. The court may schedule a hearing to consider evidence of findings from the investigation.

If there is evidence of fraud or abuse, the court may remove the guardian or conservator and appoint a new one. The court may also refer the case to the district attorney, order repayment, revoke the bond, or increase the frequency of monitoring.

Differential case monitoring is used in some jurisdictions to identify cases where more intensive monitoring is needed. [Idaho's example](#) is shown here. Additional monitoring is called for when there have been concerns about the guardianship or conservatorship.

More monitoring may also be necessary when:

- The person under conservatorship has no relatives or friends keeping an eye on things.
- There is family conflict.
- The conservator talks about being exhausted and overwhelmed, or even wants to resign.
- The estate is large and complicated with significant amounts of cash and securities.
- The conservator keeps changing attorneys or attorneys try to withdraw from representing the conservator.
- The conservator has little experience with financial matters.
- The conservator excessively controls all access to the person in the conservatorship and insists on being the sole provider of information to friends and family.
- The conservator does not permit the person in conservatorship to be interviewed alone.
- The conservator changes the person's providers to their own personal providers, such as accountants and bankers, or if
- the conservator has financial problems such as tax problems or bankruptcy, or personal problems such as illness or divorce.

Individuals under guardianship or conservatorship rely on us to ensure that they and their financial assets are cared for. Courts have an obligation to monitor these cases throughout the life of the case.

This means that courts need to clearly identify their "set for review" conservatorship cases, track report filing, promptly and thoroughly review all reports, and take action when problems are suspected.

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