

EXECUTIVE SUMMARY

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

National Challenges in Monitoring Guardianships and Conservatorships

Probate cases present a challenge to courts across the country. They require a high degree of oversight to protect and prevent mistreatment of protected individuals and their property. Unlike other civil cases, these can remain pending for years until the estate is fully administered, the protected minor reaches majority, the protected adult is no longer in need of protection or the ward dies.

In recent years, national newspapers reported massive neglect and exploitation by the very people appointed by the court to protect an incapacitated person and/or their assets. The U.S. Government Accountability Office (GAO) reported in 2010 that guardians had embezzled 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. In six of twenty cases studied, the courts did not screen potential guardians, appointing individuals with criminal convictions or significant financial problems to manage high-dollar estates. In twelve of the twenty cases studied, the courts failed to oversee guardians once they were appointed, thus allowing abuse to go undetected. A 2010 Survey conducted by the National Center for State Courts (NCSC) found that insufficient staff

and resources limit the court's ability to monitor guardianships; that case management systems are inadequate to assist the court in monitoring guardianships; and that few courts could regularly monitor the health and well-being of the ward.

Maricopa County and Efforts to Monitor Guardianships and Conservatorships

Within the national court community, the Maricopa County Superior Court is known for excellence. The fourth largest trial court system in the nation, Maricopa has initiated measures to increase public access to courts and enhance court performance. Among its recent innovations, Maricopa established night court pilot projects for juvenile and family courts, expanded the use of video recording, teleconferencing, and electronic exhibit presentations in 170 courtrooms and merged a dozen stand-alone departments.

The Maricopa Probate Department is one of the largest in the nation, managing approximately 39,000 active probate cases and some \$333 million in conservatorship assets each year. The Probate Department handles decedent estates, guardianships, conservatorships, adult adoptions, mental health commitments, competency hearings, and criminal case proceedings involving mentally ill defendants. Approximately 60 percent of the pending

probate case load is comprised of guardianships and/or conservatorships, with 31 percent involving adult incapacitated or protected persons.

Since 2007, the Probate Department has sustained a 33 percent personnel cut. This 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. While several of the positions that had been previously cut are now being re-filled to assist, it may take some time to fully re-stabilize. The Probate Department has been recognized for a number of its practices, like its volunteer guardianship program, or the issuance of felony warrants where there is evidence of legal abuse by a guardian. Nevertheless, the Court acknowledges that several cases within recent years have called for the study of probate court procedures.

High functioning courts evaluate criticism and decide where to improve. Such has been the case with Maricopa Probate Department and within the last year or two, has innovated a number of practices to enhance accountability of estates, reduce costs, and improve services to the public. As part of its overall improvement efforts, the Maricopa Probate Department asked the NCSC to perform an independent and critical analysis of current

processes to ensure that the Court is managing and overseeing guardianship and conservatorship cases in the most effective manner possible. The NCSC project team engaged in a thorough review of Maricopa's current monitoring practices compared to the National College of Probate Judges Standards. The team reviewed literature regarding the care of vulnerable populations and interviewed the judges and administrators of the most effective probate courts in the country for insights that could be helpful in Maricopa County and elicited reactions to Maricopa's proposed new practices.

As a result, the NCSC project team reports that the Maricopa Probate Department has put in place a number of policy and program improvements that are national best practices. Recent statutory changes made by the Arizona legislature further point the way. While there are challenges facing the system and room for improvement, the Maricopa Probate Department is generally holding itself, parties before the court, and the broader community accountable for protecting persons and estates. If the Maricopa Probate Department continues its current trajectory, and considers and implements several of the recommendations within the full report, it stands to be a probate court to which others turn in seeking to improve the monitoring of guardianship and conservatorship cases.

Below are national best practices in development in Maricopa along with considerations for ongoing improvement.

Timeliness of Proceedings

While quality data on adult guardianship filings and caseloads is lacking nationally, the Maricopa Probate Department effectively monitors the timeliness of events. When a case is out of compliance with timelines, the Court focuses additional attention on the case and schedules the case for review. Maricopa is encouraged to continue to monitor case compliance with time standards to further refine caseflow management techniques.

Efficient Case Management

While many probate courts across the country handle cases on a first-in, first-out basis, Maricopa triages new guardianship and conservatorship cases to set case direction. Staff reviews for large dollar estates and issues in controversy. National experts opined that this procedure sounded comprehensive indeed, and also noted that it complies with best practice recommendations for caseflow management. Gathering statistical information and interviewing attorneys regarding case efficiencies and delays will give the Court additional insight.

Use of Red Flags to Monitor Cases

National standards recommend that courts closely monitor cases according to their specific needs. While courts across the country rely on the expertise of their experienced judges and staff to identify cases requiring additional attention, highly effective courts have developed criteria to particularize inquiry. Through a pilot, Maricopa is testing the impact of “red flags” such as size of estate, change in estate value, fees approved, and various risk factors. This is an innovative technique for focusing court resources and will inform the court in its case management system design as well as other courts seeking to focus limited court resources on the cases of greatest monitoring need.

Use of Technology to Monitor Cases

Courts are encouraged to monitor the performance of guardians and conservators through regular audits and reviews of accountings and reports. Use of technology, such as an e-filing system with automatic capacity to flag problems, is rare nationally, but is a practice that effective probate courts use, and that Maricopa is pursuing through its case management system update. Increased reporting capabilities and review of those documents would likely deter errors or even wrong-doing.

Containing Case Fees

One of the most highly publicized areas of concern in probate has been excessive Fees leveraged against the protected persons' estates. The practices most recommended by experts to contain costs are to require an estimate of costs and proof of bonding. Arizona's 2011 Legislation requires that those seeking payment from the estate must give written notice of basis for compensation when they first appear in a case and that compensation be reasonable. It also allows the court to order a person who has engaged in unreasonable conduct to pay fees and expenses. The Maricopa Probate Department judges and staff are committed to enforcing these provisions in court as well as 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.

Effective Staffing

A 2004 GAO study revealed that most courts do not have sufficient resources to fund monitoring staff at an adequate level. In contrast, the Maricopa Probate Department staff monitoring functions were described by experts as "light years ahead." Not only does staff provide the full panoply of audit, investigation, and examination services, but

Maricopa has worked actively to establish staffing necessary for one of the largest probate caseloads in the country.

Developing Community Solutions

Members of the public need to know how to protect themselves and their family if incapacitated, and to be able to trust in the court. Maricopa, through its website, free classes on court proceedings and nationally acclaimed volunteer program assists the community and will continue to do so.

Moving Forward

In its use of caseflow management, data, and staffing, Maricopa was considered by a number of national experts to be far ahead of the pack. By continued improvements in case monitoring and oversight, technology and by implementing recent statutory amendments, the Maricopa Probate Department is poised to be a court that others emulate.