

Who is Guarding the Guardians? A Localized Call for Improved Guardianship Systems and Monitoring

Judge David Hardy, CELA¹
Second Judicial District Court, Washoe County, Nevada

Our independence cost too much to have our liberty and property wrested from us, and we put under guardianship without even the form of a trial. Should we sanction these proceedings, no one in the evening of life could dwell secure, but would tremble at the approach of any one that entered his door, lest he was then to be called to surrender all that would render life desirable. Shumway v. Shumway, 2 Vt. 339, 1829 WL 1106 (1829).²

1. Author's Note.

Self-examination is difficult and often risky. Nonetheless, it is essential for reasoned progress. A recent national survey commissioned by the American Bar Association (ABA) Commission on Law and Aging notes that basic guardianship data is unavailable, "offering courts, policymakers, and practitioners little guidance for improving the system."³ Policymakers are "unable to make informed policy and practice decisions without an adequate knowledge base of what exists and what trends are evident."⁴ This article is not intended to be a criticism of the author's judicial district; it is presented solely to identify areas in which institutional improvement may be warranted.

2. Introduction.

We may be judged by the way we treat our weaker and more vulnerable citizens.⁵ We therefore devote considerable resources to protect children who may be harmed by the intentional or neglectful conduct of others. Some of our elderly citizens are as weak and vulnerable as children, yet we may be judged harshly for our imperfect attempts to assist them in the last season of their lives. Indeed, it has been said that "the manner in which a society behaves with its old people unequivocally reveals the truth--often carefully masked--of its principles and its ends."⁶

Guardianship intervention is inevitable for some elderly citizens, and the number of local guardianships will proliferate as the elderly population increases and pro se access to the court is expanded.⁷ Guardianship is "a complicated, little-known corner of the law where courts can grant strangers tremendous power over vulnerable family members."⁸ Guardianship has been described as "a legal mechanism for substitute decision making which comes in the guise of benevolence, as it was originally intended to protect the disabled individual and his property from abuse, dissipation of resources, and the effects of designing persons. It is an exercise of the state's role as *parens patriae* for the mentally and physically disabled. Yet, guardianship, in reality, reduces the disabled person to the status of a child."⁹ Despite the severity of state intervention,

guardianship orders are issued by judges, "without full information, often interpreting statutes not examined by appellate courts, all without adequate staff to implement safeguards both before and after guardianship is established."¹⁰

Guardianship involves the inverse concepts of state intervention and personal liberty. In social science terms, any guardianship system will yield false negatives (failure to appoint a guardian when needed, otherwise known as a Type 1 error) or false positives (approval of guardianship when not necessary, otherwise known as a Type 2 error).¹¹ Judges control the means by which neither error subsumes the other and equilibrium is maintained. However, judicial control cannot be exercised in isolation; it must be predicated upon accurate pre-guardianship information and effective monitoring systems. Many guardianship studies have been published recently, but all analytical roads lead to one conclusion: guardianship is most efficacious through judicial oversight and structured monitoring. As stated more than a decade ago:

Guardianship law and practice, while varying from state to state, has generally been criticized as "procedurally inadequate, substantively archaic, demeaning to the elderly, and operating in a manner that permits widespread abuse." The practices following a guardian's initial appointment are of particular concern. A significant number of jurisdictions do not have an established system to monitor the guardianship, and most do little to provide any systematic oversight of the guardian's actions. A call for reform has gone out. Many states have responded with legislative action in the form of statutory reform of existing guardianship laws. However, court implementation of effective guardianship monitoring practices has been lacking.¹²

What is generally described above remains specifically accurate in Washoe County, Nevada. A statistical analysis of local guardianships demonstrates that Washoe County guardianships do not compare well to "exemplary" courts in which best practices exist. As but a few examples, 64% of all Washoe County guardianships begin as temporary guardianships in which an order is entered before the proposed ward is given notice of the action and an opportunity to respond. The judges granted 99% of the ex parte petitions for temporary guardianship. Few proposed wards are represented by counsel or guardians ad litem. Only 7% of the petitions sought limited authority in recognition of the proposed wards' situational capacity. Inventories, personal status reports, and financial accountings were late or missing in alarming numbers. There were also recurring substantive problems relating to the content of petitions and medical evidence, sufficiency of notice, consistency of orders and financial accountings, statutory noncompliance with inventory requirements, widely divergent administrative expenses, and post-death property disposition orders. Finally, judges have no county resources with which to investigate the propriety of guardianship or monitor the performance of their guardians. Washoe County can improve its guardianship systems and adopt best

practices by implementing several reforms, each of which is fully discussed in this article.

Most reform proposals are predicated upon adequate funding. In this era of financial constraints, the question of why the judiciary and its funding agency should devote scarce resources to guardianship systems and monitoring is relevant. The answer has best been stated as follows:

First, historically, courts have had a *parens patriae* duty to protect those unable to care for themselves. *Parens patriae* is the fundamental basis for guardianship and the primary justification for curtailing civil rights. The court appoints a guardian to carry out this duty and the guardian is a fiduciary bound to the highest standards. In reality, observed one judge, “the court is the guardian; an individual who is given that title is merely an agent or arm of that tribunal in carrying out its sacred responsibility.” Second, unlike with decedent’s estates, the incapacitated person is a living being whose needs may change over time. This argues for more active court oversight. Third, monitoring can be good for the guardian by offering guidance and support in the undertaking of a daunting role. Fourth, monitoring can be good for the court by providing a means of tracking guardianship cases and gauging the effect of court orders. Finally, monitoring will boost the court’s image and inspire public confidence.¹³

3. The Shifting Demographics of Age.

a. National Statistics. Individual Americans are living longer, and a greater proportion of Americans within the aggregate population are growing elderly.¹⁴ The age-related statistics are staggering. Seventy-eight million “baby boomers” were born between 1946 and 1964.¹⁵ Approximately 8,000 Americans reach their 60th birthday every day.¹⁶ The U.S. Department of Health and Human Services, Administration on Aging, reports there were 3.1 million Americans over the age of 65 in 1900, 33.2 million in 1994, and 36.3 million in 2004. The number of Americans over the age of 65 will almost double to 71.5 million by 2030.¹⁷

The average life expectancy for older Americans is also increasing. While there were 4.2 million Americans over the age of 85 in 2000, there will be 8.9 million Americans over the age of 85 in 2030. The real growth in this population will occur as the baby boomers age; the cumulative growth in this population is expected to exceed 400% between 1995 and 2050. Elderly Americans typically own a home and investment accounts, with an aggregate value in excess of 15 trillion dollars.¹⁸ It is estimated that people over the age of 50 control at least 70% of household net worth.¹⁹

An estimated 6% of Americans aged 65 or older have Alzheimer's disease, a degenerative condition that leads to dementia. Other causes of dementia include strokes, brain tumors, and a variety of endocrine, metabolic, and nutritional disorders.²⁰ The U.S. Census Bureau estimates that approximately 25% of people over the age of 85 suffer from Alzheimer's disease.²¹ Medical and social attempts to extend life have been successful, but our elderly citizens require a disproportionately larger share of services and public support.²² Accordingly, "[t]he number of people requiring a guardian is expected to increase considerably in the years ahead."²³

b. Washoe County Statistics. Washoe County identified challenges and aspirations associated with its aging population in its Strategic Plan For Washoe County Senior Citizens: 2006 – 2016.²⁴ As the second most populous county in Nevada, Washoe County is experiencing a migration of older adults to its communities. In 2003, almost 15% of the total population in Washoe County was over the age of 60. In 2006, there were an estimated 59,353 citizens aged 60 or older. Washoe County estimates its citizens over the age of 60 will increase more than 40% in the next ten years to approximately 84,619. An estimated 6,000 people with Alzheimer's disease or dementia were living in the Reno/Sparks area in 2006. This number is predicted to double in the next 20 years. Thus, Washoe County is not immune from the social and economic effects of aging.

4. Legal Consequences of Aging.

a. Incapacity. The law presumes all adults enjoy mental capacity, "meaning they are capable of making rational decisions and so are best situated to make decisions on their own behalf."²⁵ The law does not presume rational people will always make rational decisions.²⁶ However, some people, through no fault of their own, become incapable of managing their personal and financial affairs as they travel through the last season of their lives.²⁷ Incapacity is not a label with definite meaning as the elderly experience age-related effects differently. Each elderly person faces a unique set of challenges, "each maintaining a varying degree of ability to function that may fluctuate with time and circumstances."²⁸

b. Vulnerability. Aging has been described as the process of loss: "As we grow older, we lose acuteness of hearing, sight and memory. Our stature, vigor, agility and mobility are diminished. Our skin loses elasticity, our bones lose calcium and weaken, and our muscles lose size and strength. As we age, the incident of chronic illness and disabling conditions rises."²⁹ Aged citizens also lose their ability to defend themselves; they become vulnerable to the improper actions of others, to include abuse, neglect, exploitation, and isolation. The National Center on Elder Abuse estimates that between 1 and 2 million Americans age 65 or older have been injured, exploited, or otherwise mistreated by someone on whom they depended for care or protection.³⁰ Many caregivers are family members, and family dynamics are "almost impossible for the court to try to unravel."³¹ The frequency of elder abuse and neglect will undoubtedly increase as the population ages. Elder abuse and neglect exist within Washoe County in disturbing numbers. In fiscal year 2004-05 there were 1,624 complaints of elder abuse in Washoe County, which exceeds one-third of all complaints made statewide.³² The most

common complaint was for self neglect.³³ Nevada statutory law contemplates the vulnerability of elderly citizens in its civil and criminal codes.³⁴

5. Guardianship as the State's Response.

a. Guardianship Generally Defined. The western concept of guardianship can be traced to the Greek, Roman, and British Empires.³⁵ Guardianship also existed in Colonial America. The legal and philosophical basis is parens patriae, which “obligates the state to care for the vulnerable and less fortunate.”³⁶ Guardianship is the legal proceeding in which a person is divested of legal autonomy and subjugated to the control of another person or entity. It is critical for at-risk elderly citizens, but it is also a drastic intervention in which the guardian is given substantial and often complete authority over the lives of vulnerable wards.³⁷ Guardianship has been described as “the most inclusive method of substituted decision making for individuals for whom it has been judicially determined that they cannot act for themselves.”³⁸

b. Legal and Emotional Consequences of Guardianship Upon the Ward. Guardianship is “protective yet oppressive, an instrument of beneficence that can at the same time bring a dire loss of rights.”³⁹ A guardianship ward typically loses basic rights, such as the right to vote, sign contracts, buy or sell real estate, manage finances, marry or divorce, decide where to live, and make decisions about medical procedures.⁴⁰ As described by one court, “[a]lthough the determination of incompetency is in no way a criminal proceeding, the result in terms of the defendant’s liberty interests may be very similar. [The elderly ward] may be deprived of control over his residence, his associations, his property, his diet, and his ability to go where he wishes.”⁴¹ Guardianship can also have devastating personal and emotional effects upon wards, which when coupled with an intimidating legal environment, can affect confidence, well-being, and morale. The imposition of guardianship may also cause confusion, alienation, and loss of control.⁴² In sum, the guardianship process can exacerbate the very frailties that made guardianship necessary.

c. Guardians’ Responsibilities Generally Defined. A guardianship is a trust relationship in which the guardian acts in a fiduciary capacity and is charged with the duty of unbending loyalty.⁴³ Being a guardian is not easy, and a person should cautiously assume the responsibilities of guardianship without training or experience. Indeed, being a guardian is “one of society’s most serious and demanding roles.”⁴⁴ The duties of a guardian are broad, complex, and potentially confusing.⁴⁵ They have been described as follows:

[A] good guardian [must] be knowledgeable about housing and long-term care options, community resources, protection and preservation of the estate, accounting, medical and psychological treatment, public benefits and communication with elderly and disabled individuals. A guardian should develop advocacy skills; assume case management functions, monitor the ward’s living situation,

make decisions that are, to the greatest extent possible, in accord with the ward's values; avoid any conflict of interest; and regularly report to the court.⁴⁶

d. Guardian Process Generally Defined. There is no uniform guardianship act. Guardianship statutes are specific to each state and an examination of competing statutes exceeds the scope of this article. An example of Nevada's statutory scheme is attached as Appendix A. In general, the guardianship proceeding is susceptible to a two-part analysis. The "front end" of a guardianship involves the procedural and substantive requirements for establishing the guardianship, whereas the "back end" involves judicial oversight of the guardian's conduct and the ward's welfare through effective monitoring systems.⁴⁷ As noted by one scholar, guardianship is an ongoing process that lasts for the lifetime of the elderly ward.⁴⁸

The front-end requirements generally include an initial petition for guardianship, which is supported by medical or similar evidence demonstrating the proposed ward's incapacity. The guardianship petitioner may seek emergency, temporary authority or permanent authority. Temporary authority may be granted without notice, whereas permanent authority is predicated upon notice and the opportunity to be heard. Guardians may be appointed over the ward's person or the ward's estate. Many guardians are appointed over both the ward's person and estate. Individual statutes will establish who may petition to be guardian, the priority among competing petitioners, the nature of incapacity evidence, notice provisions, the appointment of investigators, attorneys, or ad litem advocates, and the relevant standards of proof. In many states the level of guardianship authority may be commensurate with the ward's functional needs. In other words, some guardians are given plenary authority whereas other guardians are given specifically- enumerated limited authority.

The back-end requirements generally include the posting of a financial bond, the filing of an initial inventory, periodic reports of person, and periodic financial accountings. Some states, such as Nevada, require the guardian to petition for instructions before performing certain acts on behalf of their wards. The procedures for guardianship termination may also be included within the back-end analysis. The technical back-end requirements are essentially tools to help the court monitor the ward's health and welfare after the guardianship order is entered.

6. Inadequacy of Guardianship Data.

The ABA and National Center on Elder Abuse recently published the results from their survey of adult guardianship data collected from state court administrators.⁴⁹ The survey found that state court administrators do not receive adequate information about trial court guardianships. Too few states collect information about guardians of person and estate as distinct case types, administrative offices do not receive guardianship information beyond the number of filings and dispositions, only five states report elder abuse as a distinct case type, and almost 50% of administrative offices would be interested in compiling additional data.⁵⁰ The survey authors concluded there is a

profound need for uniform, consistent guardianship data, which will become ever more important as demographic trends increase the number of guardianships in the future.⁵¹ The survey did reveal some promising developments. Individual researchers in California, Georgia, Illinois, Michigan, Ohio, Oregon, Vermont, and Virginia have made efforts to compile meaningful guardianship data. This article is a contribution toward those efforts.

7. Newspaper Criticisms.

In 1986 the Associated Press published a six-part investigative series entitled Guardians of the Elderly: An Ailing System. The series involved 57 reporters, 50 states, and more than 2,000 randomly selected guardianships. The series is oft-quoted for its conclusion that, “the nation’s guardianship system, a crucial last line of protection for the ailing elderly, is failing many of those it is designed to protect.”⁵² The series also denounced “a dangerously burdened and troubled system that regularly puts elderly lives in the hands of others with little or no evidence of necessity, then fails to guard against abuse, theft and neglect.”⁵³ The following recurring problems were identified in the Associated Press series:

- There was no unified system of guardianship laws. The differing laws led to procedures that were vague and incomprehensible.
- Guardianships were often granted without meaningful review. Due process was frequently violated in proceedings that divested elderly citizens of fundamental rights and relegated them to the status of a child.
- Guardianships were rarely terminated except upon the ward’s death.
- Courts were overburdened and lacked resources to monitor the guardians.
- Incapacity assessments were based upon ill-defined criteria.⁵⁴

Several other newspapers published critical stories about guardianships during the past few years.⁵⁵ In 2005, the Los Angeles Times published a three-part series entitled Guardians for Profit, with the subparts When a Family Matter Turns into a Business, Justice Sleeps While Seniors Suffer, and Missing Money, Unpaid Bills and Forgotten Clients. The L.A. Times reviewed more than 2,400 adult guardianships in Southern California, including every guardianship in which a private, for-profit guardian was appointed between 1997 and 2003. The reports are troubling, and may be summarized by one quoted attorney’s lament: “This is what we’ll have to look forward to – that we’ll be

disposable when we no longer have a voice.”⁵⁶ The L.A. Times identified the following recurring problems:

- Procedural safeguards were too often ignored in emergency guardianships.
- Guardians’ misuse of “their near-parental power over fragile adults, ignoring their needs and isolating them from loved ones.”
- Excessive guardian fees depleted the wards’ estates.
- Guardians misunderstood or overlooked their fiduciary duties to their wards.
- Guardianships were difficult to terminate.
- Guardians ignored their wards’ wishes, particularly for placements, communications, and social interactions.
- Guardians lacked certification and training.
- Guardianship judges abdicated their oversight responsibilities by failing to enforce reporting and accounting requirements. “Judges are supposed to monitor the guardians’ conduct, scrutinize their financial reports, and sanction those who misuse their authority. Yet courts have failed dismally in this vital role. Judges frequently overlooked incompetence, neglect and outright theft.”

The L.A. Times series illustrates that many of the problems identified during the past 20 years still exist today. The local survey results set forth in Section 11 of this article reveals the existence of these problems within the author's own jurisdiction. The suggested reforms in Section 12 are offered in response to the general problems above and the specifically-identified problems in Washoe County, Nevada.

8. Policymaker Interest, Legal Association Studies, and Reforms.

Public policy should not be driven by press accounts, which may be inspired by both legitimate concerns and commercial realities. As noted by one commentator, “[m]uch of the criticism of guardianship proceedings stems from a few highly publicized, notorious, and particularly heinous examples of guardians’ abuse and neglect of wards. Whether these examples constitute the exceptions or the rule of how guardianships actually function [is] unknown.”⁵⁷ Nonetheless, press accounts have led to policymaker interest, legal association studies, and substantial reforms.

a. Policymaker Interest. The U.S. Senate and House of Representatives have both expressed concerns about guardianships and considered versions of bills calling for an Elder Justice Act, which would establish an advisory board on elder abuse, neglect, and exploitation.⁵⁸ A few examples are included to demonstrate why local jurisdictions should be proactive now, as opposed to waiting until they are placed under the uncomfortable lens of a public microscope.

The U.S. House Subcommittee on Aging convened a hearing just five days after the first Associated Press article was published.⁵⁹ Chairman Claude Pepper summarized his concerns as follows:

The typical ward has fewer rights than the typical felon . . .
By appointing a guardian, the court entrusts to someone else the power to choose where they will live, what medical treatment they will get and, in rare cases, when they will die. It is, in one short sentence, the most punitive civil penalty that can be levied against an American citizen, with the exception, of course, of the death penalty. . . .
Guardianship proceedings are often highly adversarial, pitting children against parents, spouses against stepchildren, and siblings against each other. Guardianship proceedings are often commenced for the convenience of state case workers or long-term care facilities, or to relieve adult children of the ongoing need to worry about the risks run by an aging parent attempting to remain independent. . . .
. The issues at stake in an adult guardianship often pose difficult conflicts among highly personal values and priorities, without a clear or objective “right” answer.⁶⁰

The U.S. Senate Special Committee on Aging conducted a hearing in 2003, partly because of the high profile guardianship of an elderly, federal retiree in the Washington, DC area.⁶¹ The hearing was entitled Guardianship over the Elderly: Security Provided or Freedom Denied. Chairman Larry E. Craig noted, “When used correctly in very extreme cases, guardianships can be an important tool in securing the physical and financial safety of an incapacitated elderly person. At the same time, guardianship can divest an elderly person of all the rights and freedoms we consider important as citizens.”⁶² The Senate Special Committee concluded its hearing by directing the U.S. General Accounting Office (GAO) to study problems associated with guardianships.

As noted later in this article, the L.A. Times series led directly to legislative interest and the enactment of the 2006 California Omnibus Conservatorship and Guardianship Reform Act. The U.S. Senate Special Committee on Aging conducted a hearing in September, 2007, entitled Exploitation of Seniors: America’s Ailing Guardianship System.⁶³ The hearing was conducted partly in response to a high-profile family dispute in New York City involving philanthropist Brooke Astor.⁶⁴

b. Government Accounting Office Reports. As noted above, the U.S. Senate Special Committee on Aging directed the GAO to study guardianships and prepare a report of its findings. The GAO was specifically instructed to examine: 1) what state courts do to ensure that guardians fulfill their responsibilities, 2) what guardianship programs recognized as exemplary do to ensure guardians fulfill their responsibilities, and 3) how state courts and federal agencies work together to protect incapacitated elderly people.⁶⁵ The report, entitled Guardianships: Collaboration Needed to Protect Incapacitated Elderly People, was delivered on July 13, 2004. The GAO identified several problems with guardianships. For example, court procedures for implementing guardianships were inconsistent among the states. Some states did not recognize guardianships established in other states, and few states had adopted procedures for accepting transfer of guardianships from other states. Most states did not track the number of active guardianships, and only a few could provide the number of guardianships involving elderly wards.⁶⁶ The GAO noted an inherent problem in guardianships and then recognized four “exemplary” courts as follows:

Guardians . . . do not always act in the best interest of the people they are appointed to protect. Some have conflicts of interest that pose risks to incapacitated people. While many people appointed as guardians . . . serve compassionately, often without any compensation, some will act in their own interest rather than in the interest of the incapacitated person. Oversight of . . . guardians . . . is intended to prevent abuse by the people designated to protect the incapacitated people.⁶⁷

. . . .

Judges for four courts widely recognized as having exemplary guardianship programs devote staff to the management of guardianships, allowing the courts to specialize and develop programs for guardianship training and oversight. For example, the court we visited in Florida provided comprehensive reference materials for guardians to supplement training. The other three courts offered training to guardians even though state law does not require it. Three of the exemplary courts have programs in which volunteers or student interns visit people under guardianship and report on their condition to the court. For example, the court in New Hampshire recruits volunteers, primarily retired senior citizens, to visit incapacitated people, their guardians, and care providers at least annually, and submit a report of their findings to court officials. Exemplary courts in Florida and California also have permanent staff to investigate allegations of fraud,

abuse, or exploitation or cases in which guardians have failed to submit required reports.⁶⁸

The Senate Special Committee on Aging directed the GAO to re-visit its 2004 report. The GAO delivered its second report, Guardianships: Little Progress in Ensuring Protection for Incapacitated Elderly People, on September 7, 2006. The GAO noted little progress had been made, and oversight remained a crucial component “to prevent abuse by the people designated to protect the incapacitated people.”⁶⁹

c. Legal Association Response. The ABA Commission on the Mentally Disabled and Legal Problems of the Elderly convened a national guardianship symposium in July, 1988, partly in response to the Associated Press series. The conference is now known as Wingspread. The attendees were hand-picked experts representing a variety of disciplines.⁷⁰ The symposium resulted in several recommendations, which were set forth in Guardianship: An Agenda for Reform.⁷¹ Among other substantive areas, the conference attendees noted the need for improved judicial practices and monitoring. With respect to monitoring, the attendees made six recommendations that were later endorsed by the ABA House of Delegates.⁷² As part of their conclusions, the attendees noted, “[g]iven the serious loss of liberty and vulnerability of the incapacitated ward, it is essential that the court regularly receives and reviews basic information about the ward’s well-being, utilization of funds, and guardians’ actions.” The attendees also recognized the burden on court resources and suggested that “volunteers, review boards and investigators [be used] to verify the contents of the report and the circumstances of the ward.”⁷³

Wingspread led to an ABA national survey of monitoring practices, which was supported by the State Justice Institute and completed in 1991.⁷⁴ The survey identified ten recommended “monitoring steps.” At about this same time, the State Justice Institute also funded an AARP monitoring project featuring trained volunteers to serve as court visitors, auditors, and records researchers.⁷⁵ In 1993, the National Probate Court Standards recommended procedures for guardianship monitoring, and in 1997, the Uniform Guardianship and Protective Proceedings Act was revised to include a section on guardianship monitoring.⁷⁶

In November, 2001, more than 80 national experts convened to re-visit the issues first raised at Wingspread. This second conference is now known as Wingspan.⁷⁷ The conference resulted in 68 recommendations, some of which are summarized as follows.⁷⁸

- There should be mandatory education for all judges hearing guardianship cases.
- There should be adequate funding for investigations at the inception of the guardianship and for oversight for the duration of the guardianship.
- Reports and accountings should be frequently audited.

- Effective monitoring requires: (a) a functional assessment of the abilities and limitations of the person with diminished capacity; (b) an order appropriate to meet the needs of the person with diminished capacity (with preference given to as limited a guardianship as possible); (c) an annual plan based on the assessment and an annual report, appropriately updated, based on the plan; and (d) inclusion of any other mandated reports which are the guardian's responsibility, such as reports to the Social Security Administration or the Department of Veterans Affairs.
- Courts should maintain adequate data systems to assure that required plans and reports are timely filed.
- Courts should be primarily responsible for monitoring.
- Monitoring should be enforced regardless of who is serving as guardian.
- Guardianship cases should be delegated to judges who have special training and experience in guardianship matters.⁷⁹

In November, 2004, the National Academy of Elder Law Attorneys, National Guardianship Association, and National College of Probate Judges convened a Wingspan Implementation Session at their joint conference.⁸⁰ The participants identified specific action steps for 19 of the 68 Wingspan recommendations, which are referred to in Action Steps on Adult Guardianship Progress.⁸¹ Relevant action steps are identified as follows:

- Action Step 56-1: States should consider the creation of specialized courts to handle guardianship matters.
- Action Step 56-2: The Supreme Court in each state should mandate training of judges to achieve core competency in guardianship matters prior to judges assuming responsibility for those cases.
- Action Step 56-3: The Supreme Court in each state should mandate training of court staff to achieve core competency in guardianship matters prior to the court/support staff assuming responsibility for those cases.
- Action Step 56-4: The funding entity of the court should allocate funds for the initial and continuing education of court staff in guardianship matters.

- Action Step 56-5: The National College of Probate Judges and/or the National Judicial College should develop and promote a judicial education module for judges and court staff in guardianship matters.

Reformation of judicial processes can be slow and indiscernible, and constant reform can be counterproductive.⁸² But improving guardianship monitoring systems now is essential, particularly as age-related demographics shift and existing problems have been identified. The Wingspread recommendations and subsequent action steps suggest the need for judicial education and leadership. With such education and leadership, incremental improvements can be made. Judges will require greater accountability and demand increased or creative funding solutions once they become acquainted with the systematic and social problems identified by national commentators. The likelihood of success will be stagnated until judges lead the reform efforts.

d. Recent Reforms. More than 30 states, including Nevada, have substantially reformed their guardianship statutes in the last 20 years.⁸³ Examples of reform legislation include the right to counsel, the right to effective notice, standardized forms and petition requirements, the right to be present at hearings, the right to cross-examination, the development of least restrictive alternatives, and the requirement of proof by clear and convincing evidence.⁸⁴ The trend in guardianship reform is greater autonomy for the ward.⁸⁵ Some legislation is traceable to press criticisms. For example, in response to the L.A. Times series, California recently enacted the 2006 California Omnibus Conservatorship and Guardianship Reform Act, which requires increased court investigations, licensing, and oversight of guardian sale transactions.⁸⁶ Guardianship reform remains an ongoing effort across the country. The GAO identified several states that had recently modified their guardianship statutes. As other examples, Nevada amended its statute to require additional certification and training for private professional guardians in 2005. The Wisconsin legislature passed a major guardianship reform bill in 2006, after 12 years of study and consideration.⁸⁷ Vermont also made changes during its 2005-06 legislative session.⁸⁸ The Texas legislature recently created a Guardianship Certification Board, which is comprised of 15 members appointed by the judicial and executive branches.⁸⁹

A good example of reform legislation is the emphasis upon limited guardianships, which in Nevada are referred to as special guardianships.⁹⁰ The limited guardianship is touted as the most significant of all reforms.⁹¹ Historically, guardianship authority was evenly imposed upon all wards, even though incapacity is situational. The contemporary view is that general guardianships are overused because “the abilities of mentally disabled persons to manage their personal and financial affairs are diverse and amenable to growth and development.”⁹² Therefore, in limited guardianships, the court fashions the order “to meet the particular needs of the incapacitated person. The ward is relieved of specified decision making authority, and the guardian is assigned only those duties and powers the ward is incapable of exercising.”⁹³ Limited guardianships remain an important ideal that has been integrated into many state statutes, but actual use of limited guardianships remains rare.⁹⁴ One appellate court was so concerned about the

impropriety of a “one-size-fits-all” approach to guardianship, and the potential underuse of limited guardianships, that it directed all trial courts within its jurisdiction to “make a determination in all cases . . . whether limited guardianship . . . is appropriate.”⁹⁵

Not all commentators agree that continuing reforms are necessary. For example, one leading scholar contends the best way to effectuate the goals of reformation is through judicial education and embracement.⁹⁶ Legislative reform is only as good as the judges who preside over guardianship cases: “Only when judges become acculturated to the existing reforms, and only when they internalize the values embedded in those reforms, will guardianship truly change.”⁹⁷ An example of judicial leadership is found in New York Court of Appeals Chief Judge Judith Kaye. Judge Kaye announced in her 2005 State of the Judiciary address the establishment of a model guardianship program in Suffolk County, New York. The model program employed a holistic approach to guardianships that included judicial specialization, training for family members, mediation, judicial promptness in responding to problems, the use of volunteers to monitor the wards’ status after a guardian was appointed, and the creation of a court examiner specialist who would oversee volunteers and ensure guardian compliance with report and accounting requirements.⁹⁸ In so doing, the New York court hoped to “provide a more humane, empathetic, and cohesive treatment of its elderly citizens.”⁹⁹

9. The Call for Effective Monitoring Systems.

The call for “more consistent, effective monitoring and accountability relating to the duties and fiduciary responsibilities of guardians” is not new.¹⁰⁰ Guardianship wards are not in a position to “effect personal preferences, oversee the guardian's activities or assert changed conditions.”¹⁰¹ Guardianship reports and accountings are typically self-reported and “[m]istakes, conflicts of interest, and abuses of power may go unnoticed unless the guardian or a person interested in the welfare of the ward brings it to the court’s attention.”¹⁰² Monitoring of individual guardianships provides the best mechanism for balancing state intervention with personal autonomy, and active judicial oversight is necessary to ensure protection is available and autonomy is preserved. As stated by a court in Maryland:

[Unlike] an ordinary type of lawsuit in which the court's role is merely that of fact-finder and adjudicator . . . [the court] has a much deeper involvement--a much more significant function--in a guardianship proceeding. "Lest sight be lost of the fact, we remind all concerned that a court of equity assumes jurisdiction in guardianship matters to protect those who, because of illness or other disability, are unable to care for themselves. In reality the court is the guardian; an individual who is given that title is merely an agent or arm of that tribunal in carrying out its sacred responsibility."¹⁰³

Another commentator aptly described the need for guardianship monitoring as follows:

Legal intervention, to properly protect the elderly person experiencing functional incapacity, must take into account the particular characteristics of the individual and must play an ongoing role. Because the circumstances of each guardianship ward are unique and subject to change, the court, in each case, must consider the personal assistance and treatment options being made available, implement appropriate strategies for treatment and recovery, and monitor outcomes for functional change and revision of interventive measures.¹⁰⁴

For these reasons, a court should “scrupulously oversee the handling of the affairs of incompetent persons under their jurisdiction and err on the side of over-supervising rather than indifference.”¹⁰⁵ Unfortunately, the recurring calls for improved monitoring systems has not been followed by actual implementation of such systems in many states.

a. Monitoring Best Practices. Two leading guardianship scholars published an article in 2002 in which they identified eight elements of guardianship accountability and monitoring.¹⁰⁶ These elements are summarized as follows:

- Orientation and Training. “[T]he issue is not whether guardians need training, but rather, whether the training should be mandatory or voluntary,” and “how the training should be developed[, delivered,] and financed.”¹⁰⁷ Leading states have developed handbooks, videos, and flowcharts to assist guardians understand their responsibilities. Other states require that guardians attend training seminars within a certain amount of time after their appointments.
- Standards, Licensing, and Certification. Many states, including Nevada, now require that professional guardians be licensed and certified. The National Guardianship Association has developed uniform standards of practice. Other states require that guardians be registered.
- Guardianship Plans. The concept of a forward-looking guardianship plan has been included in every set of guardianship recommendations since 1979.¹⁰⁸ The concept is best summarized by the National Guardianship Association’s standards of practice: “The guardian should develop and monitor a written plan setting forth short and long-term goals for the ward’s personal care, including residential and all medical and psychiatric concerns. Short-term goals should reflect the first year of guardianship and

long-term goals should be beyond the first year. The guardianship plan should be updated no less often than annually.”¹⁰⁹

- Guardian Reports. Many states, including Nevada, require guardians to file personal status reports and financial accountings.
- Court Review. The reports and accountings may be superfluous if they are not reviewed or used to monitor the case. Thus, “[i]f an annual guardian report is merely going to be placed in a file, unread or at most given a cursory review, it is nothing but a palliative that squanders the guardian’s time and energy.”¹¹⁰ The Wingspread attendees found review “lacking, qualitatively as well as quantitatively.”¹¹¹ A former President of the National Academy of Elder Law Attorneys wrote, “[m]ost states provide little or no oversight of the guardians’ actions, reviewing only accountings and reacting to petitions or other accusations. Most states offer no proactive oversight that determines whether the quality of the lives of wards or conservatees are maintained, let alone enhanced.”¹¹²
- Role of Judges. “The key to the quality of the guardianship monitoring is the judge.”¹¹³ The 1991 ABA monitoring study recommended that courts “designate certain judges to be responsible for guardianship hearing and review procedures.” The “continuity in the monitoring process can be gained by . . . having specific judges and other personnel responsible for monitoring activities.”
- Funding. Good monitoring requires sufficient resources. Courts must have funds available for staff, computers, software, training, and materials. “If the rights of wards are going to be adequately protected, financing is going to be a key component of any successful effort.”¹¹⁴

b. National Monitoring Data. The AARP Public Policy Institute and ABA Commission on Law and Aging have examined national monitoring practices in some detail. In June, 2006, they published the first phase of their study, which is entitled Guardianship Monitoring: A National Survey of Court Practices.¹¹⁵ The data was collected through a national internet-based survey in which 43 states participated. The findings are summarized as follows:¹¹⁶

Guardian Reporting and Accounting Requirements

74% of respondents stated their court requires annual personal status reports.

83% of respondents reported their court requires annual accountings of the ward's finances.

More than 34% of respondents reported their court requires guardians to file forward-looking plans, although only 10 state statutes require such plans.

Court Assistance to Guardians

The most common available resource for guardians is court-provided written instructions or manuals. More than 20% of respondents reported that no guardian training resources are available in their jurisdiction.

20% of respondents reported the court routinely sends reporting and accounting forms to guardians.

40% of respondents reported that no samples of prepared reports and accountings were available to guardians.

Enforcing Reporting Requirements

64% of respondents reported the court has an effective notification system in place to alert guardians of report due dates, while 27% reported there was no such system.

The most common sanction for failure to file reports and accountings is sending the guardian a notice of delinquency, followed by entering show cause orders.

Procedures for Review

51% of respondents reported that financial accountings are reviewed by a court auditor or other court staff for whom this is a primary responsibility, 27% reported the judge who entered the order performs the review, and 14% reported a judge is assigned to review the accountings, 20% of respondents reported that other court staff conducts the review, and 9% reported that no one has such responsibility on a regular basis.

37% of respondents reported that a court investigator or other court staff has the primary task of regularly reviewing personal status reports, while 31% of the judges who entered the order performed the review.

Verification, Investigation, and Sanctions

Over 33% of respondents reported no one is designated to verify the information in reports and accountings, whereas 16% reported that someone verifies every report.

Over 40% of respondents reported no one is assigned to visit individuals under guardianship, whereas 25% reported that someone visits the ward regularly.

The most common sanction for guardian malfeasance, used by over 67% of respondents, is removing the guardian and appointing a successor guardian.

Funding for Monitoring

43% of respondents reported that funding for monitoring is unavailable or insufficient.

30% of respondents reported their court has no specific funding for monitoring.

Role of Attorneys

19% of respondents reported that their state bar has clear and complete ethical guidelines for attorneys representing the petitioner, guardian, ward, or proposed ward.

The role of the attorney for the incapacitated individual in monitoring the person's well-being after a guardian is appointed varies greatly. 30% of respondents reported the court dismisses the attorney after the appointment and has no further role. Only 8% reported the attorney remains the attorney of record and routinely stays actively involved throughout the case.

Court-Community Interaction

11% of respondents reported the court collaborates with community groups on training.

Over 20% of respondents reported no guardian training resources are available.

Use of Technology

22% of respondents reported their court does not use computer technology in monitoring.

4% of respondents reported their court e-mails guardians about reporting status.

28% of respondents reported the court has a computerized data system to track the adult guardianship filings and dispositions.

c. Identification of Monitoring Practices by Exemplary Courts. In December, 2007, the AARP Public Policy Institute and ABA Commission on Law and Aging released the second phase of their study, entitled Guarding the Guardians: Promising Practices for Court Monitoring.¹¹⁷ The survey authors developed information from site visits, interviews, document reviews, and an invitational symposium with interdisciplinary experts.¹¹⁸ The courts in Maricopa County, Arizona, Ada County, Idaho, Suffolk County, New York, and Tarrant County, Texas were identified for implementing exemplary monitoring practices. The more promising practices were divided into monitoring categories such as "reports, accounts, and plans," "court actions to facilitate reporting," "practices to protect assets," "court review of reports and accounts," "investigation, verification, and sanctions," "computerized database and other technology," "court links with community groups and other entities," "guardian training and assistance," and "funding for monitoring." The compilation of these promising practices can be invaluable to jurisdictions seeking to improve their guardianship systems. Judges must assert leadership in this regard as the common thread throughout most promising practices is judicial awareness and activism.

10. Washoe County Guardianships.

a. Comparison Between National Monitoring Data and Washoe County Guardianships. Washoe County adult guardianships are randomly assigned to four different district judges. The guardianship cases represent a small part of the judge's adjudicatory responsibilities. The judges each read their files and prepare for hearings with their own patterns and perspectives. In general, however, like most courts surveyed by the GAO, Washoe County judges "spend little of their time on guardianship cases [and] tend to focus on each case as it comes up on their calendar and find it difficult to devote the time and resources needed to develop an effective guardianship program."¹¹⁹ The court does not have the benefit of common guardianship staff or any staff member who is specially trained or dedicated to guardianship cases. The court does not have the benefit of front-end investigators or back-end compliance officers. Specific comparisons are as follows:

- Guardian Reporting and Accounting Requirements. Nevada does require annual reports of person and financial accountings. The Nevada statute does not require forward-looking guardianship plans, nor have such plans been required by the Washoe County courts.

- Court Assistance to Guardians. Washoe County does not provide any guardian training, instructions, or manuals. Washoe County does not send reporting and accounting forms to guardians. Washoe County does have guardianship forms available through the internet and self-help center, but it does not offer any legal advice regarding these forms. Washoe County does not provide samples of appropriately-prepared reports and accountings to guardians.
- Enforcing Reporting Requirements. Guardians must be accountable for the welfare of their wards and their stewardship over their ward's property. The only way to ensure guardian accountability is by enforcing reporting requirements. Washoe County does not have an effective notification system to alert guardians of required due dates for reports and accountings. Some judicial department clerks review guardianship files for missing or late reports and accountings. Some judges issues orders directing guardians to file late or missing reports and accountings.
- Procedures for Review. Washoe County does not have a formal mechanism for judicial review of personal status reports. The reports are filed with the clerk of court and not transmitted to judicial chambers for review. Any review of the reports is performed by the judge to whom the guardianship is assigned or that judge's clerk staff immediately before any next-scheduled hearing, if any. If no such hearing is scheduled the reports are not reviewed. Financial accountings must be set for hearing. There is no court staff with the primary responsibility for ensuring reports and accountings are filed, nor is there any staff to audit or verify financial accountings. Accountings are reviewed by the judge or clerk staff immediately before the hearing on the accounting.
- Verification, Investigation, and Sanctions. Washoe County, unlike some other jurisdictions, has no requirement that an independent party or court personnel determine the accuracy of personal status reports and accountings.¹²⁰ Washoe County does not have any judicial staff resources to verify the information contained in the reports and accountings. Washoe County does not have any judicial staff resources to investigate the contents of the appointment petition or other papers filed within the case.
- Funding for Monitoring. The Second Judicial District Court does not have any funding for monitoring efforts, nor does it have any judicial staff resources to visit the wards.

- Role of Attorneys. Nevada does not have clear and complete ethical guidelines for attorneys appearing in guardianship cases. Legal aid attorneys are available for appointment on a case-by-case basis through the Washoe County Senior Law Project. The duration of attorney involvement depends on the facts of each case.
- Court-Community Interaction. Washoe County does not have any collaborative relationships with community groups to provide training for guardians.
- Use of Technology. Washoe County does not use computer technology for monitoring purposes. Washoe County does not communicate through e-mail regarding reports and accountings. Washoe County does not use guardianship case management software.

b. Special Advocates For Elders (SAFE). Washoe County does benefit from a non-county organization entitled Special Advocates for Elders (SAFE). SAFE was identified as one of twelve promising practice ideas by the State Court Partnerships with the Aging Network.¹²¹ SAFE is patterned after the Court Appointed Special Advocate (CASA) model in which volunteer visitors provide reports to the court. SAFE was conceptualized in 1998 by several local guardianship stakeholders, including a judge, a legal services attorney, a professor who oversaw age-related studies at the local university, the Nevada Chief of Elder Rights, the County CASA Director, private professional guardians, and private guardianship attorneys.

SAFE was initially funded by two small grants. The first cadre of SAFE volunteers graduated from their training program in 2000. SAFE hired its first Director in May, 2001. SAFE is presently funded by the Nevada Division for Aging Services and a private charitable foundation. SAFE did receive a \$5,000.00 grant from Washoe County in 2006 and is located within the court complex at no expense to the program. Nonetheless, funding is nominal and the program lacks financial stability because it has no permanent funding source.

SAFE volunteers are involved with 75-80 cases at any time, and they have participated in over 200 cases since its inception. SAFE volunteers are typically appointed when the court perceives the ward's need for an advocate because of apparent conflicts between guardianship petitioners. SAFE has therefore grown from a visitor role into an advocacy role because most Washoe County wards are not represented by counsel or guardians ad litem.

Similar programs have been used in other jurisdictions, but with lesser emphasis upon advocacy. For example, the AARP Legal Counsel for the Elderly initiated a monitoring project featuring the use of trained volunteers to be the "eyes and ears" of the court and serving as court visitors, auditors, and records researchers. Volunteers can assist the court verify information in reports and accountings, and identify problems or

other concerns. “To be successful, a volunteer program needs program organization and development; procedures for volunteer recruiting, screening, and doing background checks; written mission skills, and knowledge about the subject matter; and support and commitment to the program by the supervising agency.”¹²² As noted later in this report, SAFE should be an integral part of the Washoe County guardianship system.

c. Previously-Identified Problems with Washoe County Guardianships.

Washoe County commissioned a report on public guardianships in 2006. The Report on the Washoe County Guardianship System and Community Satisfaction Regarding the Washoe County Public Guardian’s Office was prepared by private attorney Terry Hammond, who is also the Executive Director of the National Guardianship Association. Mr. Hammond offered the following conclusions regarding all guardianships in Washoe County:

- [L]ocal judges have turned to SAFE and the Senior Law Project because the Nevada statutory scheme does not mandate the appointment of a guardian ad litem on every guardianship case (as in many jurisdictions around the country), nor does the statutory scheme mandate a court monitoring system to ensure that guardians are being properly managed. The guardianship community clearly would welcome a formal system which would mandate legal representation in every guardianship case as well as a refined court monitoring system.
- The Nevada statute should be modified to require a formal court monitoring system for jurisdictions in metropolitan areas.
- The Nevada statute should be modified to require an attorney ad litem in every guardianship case.
- The use of temporary guardianships should be monitored and minimized.¹²³

d. Local Stakeholder Concerns and Recommendations. In April, 2007,

Washoe County convened a two-day guardianship conference entitled A Bridge to the Future. The conference began with introductory remarks from the Chief Justice of the Nevada Supreme Court and the Washoe County Manager. More than 100 local stakeholders, such as judges, private and public guardians, private and public attorneys, private and public social workers, physicians, geriatric care managers, academicians, and care facility representatives, attended the conference. The attendees prioritized several specific recommendations for change, which were separated into categories of "courts, community, and rights of wards." Most of the recommendations follow Wingspan recommendations and action steps, and are generally set forth in Section 13 of this article. The conference ended with the creation of fourteen committee working groups to continue the momentum for change.

11. Survey of Washoe County Guardianships.¹²⁴

a. Survey Trends. There is no system-wide information about Washoe County guardianships, other than the number of cases opened and closed. Between January 1, 2000 and June 30, 2006, there were 1,404 adult guardianships filed in Washoe County. As of January 6, 2007, there were 1,039 open adult guardianships in Washoe County. The author collected data from 351 randomly-selected guardianship files, which constitute 25% of the guardianships filed between January 1, 2000 and June 30, 2006. The only method to selecting guardianship files for review was that an equal number of files were reviewed for each of the representative years. The preliminary findings are summarized as follows:

- 75% of the wards were between the ages of 60 and 99, and the average age within this group was 75.
- 12% of the wards were between the ages of 40 and 59.
- 13% of the wards were between the ages of 18 and 39.
- 64% of the guardianships began with the appointment of a temporary guardian.
- 30% of the petitions sought a permanent guardian only.
- 3% of the petitions sought temporary authority only.
- 2% of the files were “empty,” meaning there was nothing filed after the initial petition.
- 1% of the petitions were withdrawn before an order was entered.
- 1% of the petitions for temporary guardianship were either set for hearing or denied. The balance of petitions for temporary guardianship was granted.
- 85% of the petitions sought authority over the person and estate.
- 8% of the petitions sought authority over the person only.
- 3% of the petitions sought authority over the estate only.
- 4% of the petitions did not state the authority sought.
- 88% of the petitions sought general authority.
- 7% of the petitions sought special authority.

- 5% of the petitions did not state whether general or special authority was sought.
 - 76% of the petitions seeking special authority by caption requested specific, limited authority, whereas 24% of the petitions seeking special authority by caption actually requested general, non-specified authority.
 - 1% of the petitions seeking special authority included a functional assessment.
- 5% of all guardianship files contained misfiled documents from other guardianship files.
- 52% of the appointment orders were not compliant because they were missing residency statements or the names and addresses of relatives within the second degree of consanguinity.
- 42% of the files were missing notices of entry of order.
- 12% of the guardians did not have letters of guardianship issued.
- A guardian ad litem was appointed in 1% of the cases.
- 12% of the wards were represented by attorneys.
- An investigator was appointed in 1 case.
- A SAFE volunteer was appointed in 10% of the cases.
- 39% of the wards attended the first hearing.
- 28% of the estate cases were granted summary administration status.
- 48% of the files were missing inventories.
 - Of the inventories filed, 44% were filed late.
- 30% of the files were missing reports of person.
 - 62% of the reports of person were filed late.
- 18% of the files were missing financial accountings.

- 59% of the financial accountings were filed late.
- The average length of time between the ward's death and the petition to terminate the guardianship was 9.4 months.

b. Additional Problems Identified. The survey focused on procedural requirements to the exclusion of substantive content. Substantial, recurring problems were noted regarding petition contents, notice procedures, sale procedures, and procedures by which the ward's property was distributed when the guardianship was terminated. Additional problems identified were that several files had no activity since the letters of guardianship were issued, some financial accountings were never heard by the court, and some temporary guardianships were terminated without an accounting. There was no continuity of orders and papers. For example, accountings ranged from mere copies of bank statements (sometimes inches thick), through copies of check registers without explanations, to comprehensive reports prepared by certified public accountants. There were few summary statements associated with the accountings. There were no orders referencing or requesting invoices or receipts. Inventories were also inconsistently prepared, and post-2003 inventories were almost always noncompliant. Clerk staff minutes were inconsistent and often unhelpful in understanding what occurred at hearings. A significant percentage of medical evidence appeared rote and unrelated to the ward's functionality. The costs of guardianship are troubling, particularly when such costs impair the ward's ability to subsist in the least restrictive environment. There was no consistency in the imposition of bonds and bond amounts. Finally, Washoe County judges may approve too many temporary guardianship petitions, which are frequently entered without notice, appearance, or representation.

12. Suggested Reforms.

Washoe County is committed to its elderly population, as demonstrated by its written plan to develop a "human services strategy to aid its growing senior population."¹²⁵ The County included guardianships within its plan: "The need for guardianships for older adults is anticipated to increase with growing population. . . . Once guardianships have been established, volunteers, such as SAFE advocates, can be important in providing case oversight and contact with the elder." The goals of local reform should be substantive compliance, consistency, predictability, and judicial efficiency. Consistent with these themes, the following reforms are suggested for further review, discussion, and implementation.

a. Judicial Specialization. Washoe County has a dedicated probate department with a full-time commissioner, specialized probate assistant, and support staff. A similar model exists for probates and guardianships in Clark County, Nevada (Las Vegas). There are no comparable resources for the administration of guardianship cases in Washoe County. According to one commentator, the distinction between a vibrant living person and the administration of that person's affairs upon death is important to make:

The wrapping up of a decedent's affairs, the collection of assets and the distribution of property are basically administrative functions. Probate estate administration deals primarily with the orderly movement of property. Continuous close court oversight may be neither necessary nor desirable. Guardianship, on the other hand, is about people, not property. It's about removing or limiting a person's right of self-determination. The court uses its power to give one person the ability and the responsibility to make complex life-choice decisions concerning the personal, social and legal rights of another person.¹²⁶

As noted earlier, the key to guardianship monitoring is the judge. Judicial specialization is beneficial because “of the specialized nature of cases involving incapacitated persons,” and the judge’s “need to be familiar with the complexities of case management and surrogate decision-making for individuals with complicated mental and medical problems.”¹²⁷ As described by two commentators:

The judge often has wide latitude in shaping court practices in guardian oversight. The judge may determine how frequently reports are filed in jurisdictions that allow discretion, what the reports should look like, what assistance guardians will have in preparation of the report, how the reports will be tracked and reviewed, whether investigators will follow up on “red flag” items, whether sanctions will be imposed, how the complaint process will be handled, and whether funds will be sought for resources monitoring.¹²⁸

The family division within the Second Judicial District Court already recognizes judicial specialization in many subject areas. For the reasons stated herein, it is suggested that a single judge in Washoe County be given responsibility for the administration of adult guardianships.

b. Staff Specialization. As noted, there are four district judges currently adjudicating adult guardianships. There are also eight different court clerks who assist the judges during guardianship hearings. The level of staff assistance varies among judicial departments, yet there is no staff member with primary responsibility for adult guardianships. There is no specific guardianship training available to the clerk staff. Judicial specialization should also include judicial staff specialization and training.

c. Creation of a Para-Professional Guardianship Specialist Position. While overall administration of guardianships is a judicial function, the specific management of guardianships may be delegated to a highly trained and experienced guardianship specialist. It is therefore suggested that a single staff position be created to assist with the administration of guardianships. The guardianship specialist can assist with the reforms

set forth in this report. The guardianship specialist can assist in both front- and back-end matters in collaboration with the guardianship judge. The guardian specialist can be particularly helpful in training guardians and coordinating with the SAFE program.

d. Front-End Investigations; Pre-Review of Petitions and Orders; Dissemination of Pre-Hearing Status. The sequential methodology for determining capacity is set forth in the book Judicial Determination of Capacity of Older Adults in Guardianship Proceedings.¹²⁹ In sum, the judge must screen the case, gather additional information as available, and conduct a hearing to determine capacity. As part of the process, the court should examine the proposed ward's medical condition, cognition, functionality, values and preferences, risks and level of supervision, and means to enhance capacity. The court should also develop a plan for overseeing the guardian. These tasks simply cannot be performed within the existing system in which judges review their case files the day before or the day of the initial hearing and proposed orders are given to the judge at the hearing in open court. Additionally, it is difficult for judges to meaningfully analyze the adequacy of notice requirements. The AARP recommends that an investigator be appointed in every temporary guardianship, either before the hearing or within 48 hours after the appointment of a temporary guardian.¹³⁰ Investigators can also inform wards of the impending action, the right to oppose the action, the right to attend the hearing, and the right to be represented by counsel. Investigators can make recommendations to the judge regarding the propriety or impropriety of guardianship intervention. Much of this work can be done by a guardianship specialist in collaboration with SAFE volunteers. Judges have used SAFE volunteers as investigators with great success.

The Washoe County Probate Commissioner and the Clark County Probate and Guardianship Commissioners preview all petitions, papers, and proposed orders to determine statutory compliance. The Commissioners have developed a notice system to petitioners through the internet of approved and deficient matters. It is suggested that a similar model be developed for Washoe County guardianships. By so doing, judicial resources will be made more efficient, while consistency and compliance are enhanced.

e. Development of Training and Reference Materials. Guardians must understand what is expected of them before they can be accountable to the court. For example, guardians should know how to access and possess the ward's financial accounts, segregate the ward's financial accounts from the guardian's accounts, perfect control of real property, and protect personal property. Guardians should also know their back-end reporting, accounting, and petitioning responsibilities, and have an information source when post-appointment issues arise. As but one example of many, the parties at the hearing could be immediately referred to a compliance conference with the guardianship specialist or a SAFE volunteer. For these reasons, Washoe County should develop specific training and reference materials for guardians.

f. Development of Model Orders, Inventories, Reports, and Accountings. As noted elsewhere in this report, there is virtually no consistency with inventories, reports, and accountings. The inconsistencies create judicial inefficiencies and increase

the risks of error. A model appointment order could include the dates by which the inventory, reports, and accountings are due. The order could also include the date for the hearing on the next annual accounting.

g. Development of Forward-Looking Plans. As noted elsewhere in this report, the use of forward-looking plans is helpful when monitoring the adequacy of guardianship intervention. These plans are essential for wards with limited capacity because capacity is situational. These plans also help guardians understand the important nature of their work and the standards by which they will be reviewed.

h. Back-End Monitoring. "To adequately protect the ward, the court must conduct more than just a paper review of the guardian's report of the circumstances. [The court] must investigate the validity of the report and determine whether activities of the guardian reflect the purposes of the guardianship. The only sure way to accomplish this is for a non-involved person, such as a court-appointed visitor, to get out of the courthouse and into 'the field' to investigate. Such a visitor could talk to the ward, interview caregivers, inspect living arrangements and prepare a report to the court."¹³¹ Accountings should be "accurate, complete, and verifiable," yet Washoe County does not have a satisfactory system for reviewing reports or accountings.¹³² The court should develop a protocol for auditing select financial accountings, to include periodically requesting invoices and receipts. The SAFE program could be a remarkable, cost-efficient resource for these monitoring tasks.

i. Respond to the Potential Overuse of Temporary Guardianships. Temporary guardianships should be the exception rather than the rule, and as noted, temporary guardianship should not become an "automatic doorway" to permanent guardianship that bypasses procedural safeguards.¹³³ A collaborative system-wide analysis of temporary guardianships appears warranted.

j. Develop Standards for Identifying, Appointing, and Supporting Special Guardianships. There appears to be a heightened reliance upon standard medical labels to the detriment of accurate functionality assessments. As a result, the special guardianship mechanism appears to be underused in Washoe County. A collaborative system-wide analysis of special guardianships appears warranted.

k. Development of Mediation Alternatives. Washoe County judges who preside over family disputes are statutorily required to pursue nontraditional methods of dispute resolution.¹³⁴ Guardianships implicate complex family dynamics. Unfortunately, the ward bears much of the expenses associated with familial disputes. Washoe County provides mediation for dissolution actions and state-initiated terminations of parental rights. It is suggested that a mediation model for conflicted guardianship participants is appropriate.

l. Identify Additional Funding Sources. The specialist judge should be tasked with the responsibility of identifying nontraditional and creative revenue sources to assist with the substantial reforms suggested in this report.

m. Development of Computerized Guardianship Case Management. Washoe County could improve its monitoring efforts through specialized technology. Washoe County could also track the details of its guardianships through specialized technology.

n. Analysis of Guardianship Costs Borne by the Ward, and Development of Cost-Efficient Models using Public Guardians, Private Guardians, Public Attorneys, and Private Attorneys. The aggregate costs of guardianship are generally paid from the ward's estate. Some wards suffer total depletion of their resources during the guardianship, which alters the ways in which they live the last season of their lives. Resource protection should be an important, but not dispositive consideration in every guardianship. A collaborative system-wide analysis of administrative expenses appears warranted.

o. Development and Strengthening of SAFE Program. The benefits of a well-trained cadre of volunteers are recommended by virtually all national guardianship experts. The Washoe County judges and guardianship community should be commended for their foresight and leadership in working with the SAFE program. SAFE is an essential component of a successful Washoe County guardianship system. While adjustments to the current program may be necessary, SAFE provides trained, compassionate volunteers who are willing to help the judges assist elderly guardianship wards. This valuable resource should not be compromised or ignored. It is suggested that the SAFE Director and necessary staff be assimilated into Washoe County as a permanent feature of guardianship administration.

13. Conclusion.

The Latin question Quis Custodiet Ipsos Custodies? has been translated to mean Who shall oversee the overseer; Who is guarding the guardian; and Who will watch the watcher?¹³⁵ Regardless of the question's ancient origins, its contemporary meaning remains clear: those with responsibilities for others must themselves be responsible. Judges abdicate their responsibilities when they fail to monitor guardians and fail to demand guardianship accountability. Guardianship wards suffer the necessary indignity of state intervention. Judges may ameliorate that indignity by ensuring guardians are appointed only when necessary, impose limitations when possible, and appropriately sanction guardian malfeasance. These actions cannot occur without an improved guardianship system and effective monitoring of guardians. There is a tsunami of Americans approaching their "golden years." Courts must do better now, and prepare better for the future as the wave of elderly citizens is observable on the horizon.

¹ Certified as an Elder Law Attorney by the National Elder Law Foundation, approved by the American Bar and Nevada State Bar Associations. This article is in partial fulfillment of the requirements for the Master of Judicial Studies degree program at the University of Nevada, Reno.

² See also Joseph A. Reinert, Esq., *Guardianship Reform in Vermont*, 32-SUM Vt. B.J. 40, 40 (2006).

³ Erica F. Wood, *State-Level Adult Guardianship Data: An Exploratory Survey*, NCEA, 5 (Washington, D.C. Aug. 2006).

⁴ *Id.* at 8.

⁵ Hon. H. Patrick Leis, III, *Judicial Perspectives 2004, Guardianship Practice in New York State* s-xxix (Robert Abrams, ed. 2004), *reprinted in* H. Patrick Leis, III, *The Model Guardianship Part: A Novel Approach*, 78 N.Y. St. B.J. 10 (2006) (writing, “It is after all, the way a society treats its weakest and most vulnerable members that it ultimately will be judged.”).

⁶ Norman Fell, *Guardianship and the Elderly: Oversight Not Overlooked*, 25 U. Tol. L. Rev. 189, 213 (1994).

⁷ On December 22, 2006, the Nevada Supreme Court adopted standardized guardianship forms for pro se litigants. See *In the Matter of Adoption of Standardized Guardianship Forms*, ADKT No. 402 (Nev. 2007).

⁸ Cheryl Phillips, et al., *Secrecy Hides Cozy Ties In Guardianship Cases*, Seattle Times, Mar. 15, 2007, at 1.

⁹ *In the Matter of the Guardianship of Hedin v. Gonzales*, 528 N.W.2d 567, 572 (Iowa 1995) (citing Sheryl Dicker, *Guardianship: Overcoming the Last Hurdle to Civil Rights For mentally Disabled*, 4 U. Ark. Little Rock L. Rev. 485, 485-86 (1981)).

¹⁰ Mary Joy Quinn, *Guardianships of Adults: Achieving Justice, Autonomy, and Safety 3* (Helvi Gold & Brian Black eds., 2005).

¹¹ Lawrence A. Frolik, *Guardianship Reform: When the Best is the Enemy of the Good*, 9 Stan. L. & Pol’y Rev. 347, 350 (1998). See also John Monahan & Laurens Walker, *Social Science in Law* 89-90 (6th ed. 2006).

¹² Fell, *supra* note 6, at 189.

¹³ Quinn, *supra* note 10, at 163.

¹⁴ Dep’t of Health and Human Servs., *A Profile of Older Americans: 2005*, Admin. on Aging (AOA), May 8, 2006, at 1, available at <http://www.aoa.gov/PROF/Statistics/profile/2005/4.asp?pf=true>.

¹⁵ Lenita Powers, *Baby Boomers Changing the Way We Look at Growing Old*, Reno Gazette-Journal, Apr. 4, 2006, at 1.

¹⁶ *Id.*

¹⁷ Wood, *supra* note 3, at 10. See also Dep’t of Health and Human Servs., *supra* note 14.

¹⁸ Quinn, *supra* note 10, at 9; see also *Briefing: Finances*, Time, July 23, 2007, at 18.

¹⁹ *Id.*; See also Dep’t of Health and Human Servs., *Snapshot: A Statistical Profile of Older Americans Aged 65+*, Admin. on Aging (AOA), March 1, 2006, at 1, available at <http://www.aoa.gov>.

²⁰ *Guardianships: Collaboration Needed to Protect Incapacitated Elderly People*, Report from GAO to the Chairman of the Special Comm. on Aging, U.S. Senate (July 13, 2004), in 04-655 GAO Highlights, July 2006, at 4 n.3.

²¹ *Guardianships: Collaboration Needed to Protect Incapacitated Elderly People*, *supra* note 20, at 1.

²² Dep’t of Health and Human Servs., *Statistics: Aging into the 21st Century*, Admin. on Aging (AOA), December 7, 2006, at 1, available at http://www.aoa.gov/prof/Statistics/future_growth/aging21/summary.asp.

²³ GAO Highlights, *supra* note 20, at 1.

²⁴ Strategic Plan For Washoe County Senior Citizens Steering Committee; *Strategic Plan For Washoe County Senior Citizens: 2006-2016* (March 31, 2006) (unpublished report, on file with the author).

²⁵ Lawrence A. Frolik, *Legal Implications of Mental Incapacity: Guardianship & Conservatorship*, (ALI-ABA Course of Study, Elder Law Issues, Answers and Opportunities, Scottsdale, Ariz.), Feb. 23-24, 2006.

²⁶ *Id.*

²⁷ GAO Highlights, *supra* note 20, at 1.

²⁸ Fell, *supra* note 6, at 192.

²⁹ *Id.* at 191 (citations omitted).

³⁰ Wood, *supra* note 3, at 11.

³¹ Quinn, *supra* note 10, at 29 (citing S. Butterwick & P. Hommel, *Mediation: A Tool for Resolution of Adult Guardianship Cases*, NAELA Quarterly (Fall, 2001)).

³² Washoe County represents approximately 15% of Nevada’s population. U.S. Census Bureau, *State and County QuickFacts*, available at <http://quickfacts.census.gov/qfd/states/32/32031.html>.

³³ Strategic Plan For Washoe County Senior Citizens Steering Committee, *supra* note 24, at 4.

³⁴ See, e.g., NRS 41.1395; NRS 200.5091 et seq.

³⁵ Quinn, *supra* note 10, at 18 (citing A. Frank Johns, *Ten Years After: Where is the Constitutional Crisis with Procedural Safeguards and Due Process in Guardianship Adjudication?*, 7 Elder L.J. 33 (1999)).

³⁶ *Guardianship of Hedin*, 528 N.W.2d at 571.

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- ³⁷ Wood, *supra* note 3, at 5.
- ³⁸ Guardianship of Hedin, 528 N.W.2d at 572.
- ³⁹ Quinn, *supra* note 10, at 17.
- ⁴⁰ Wood, *supra* note 3, at 9; Fell, *supra* note 6, at 190.
- ⁴¹ Guardianship of Hedin, 528 N.W.2d 567, at 573.
- ⁴² Linda S. Ershow-Levenberg, *Guardianship Actions Against Individuals Who Have Selected an Agent as Power of Attorney: When Should the Courts Say No?*, 7 Marq. Elder's Advisor 83 (2005). See also Estate of Bechtold, 376 A.2d 211, 213 (Ch. Div. 1977); Lommason v. Washington Trust Co., 53 A.2d 175 (N.J. 1947).
- ⁴³ In re Barnes, 317 B.R. 187, 191 (Bankr. M.D. Ga., 2004) (citing In re Armfield, 439 S.E.2d 216, 220 (N.C. 1994); Doe v. Harbor Schools, Inc., 826 N.E.2d 228 (Mass. Ct. App. 2005)).
- ⁴⁴ Sally Balch Hurme & Erica Wood, *Guardian Accountability Then and Now: Tracing Tenets for an Active Court Role*, 31 Stetson L. Rev. 867, 872 (2002).
- ⁴⁵ Fell, *supra* note 6, at 205.
- ⁴⁶ Hurme & Wood, *supra* note 44, at 872 (citing American Bar Association Comm'n on the Mentally Disabled & Comm'n on Legal Problems of the Elderly, *Guardianship: An Agenda for Reform—Recommendations of the National Guardianship Symposium and Policy of the American Bar Association* (1989)).
- ⁴⁷ *Id.* at 867.
- ⁴⁸ Fell, *supra* note 6, at 196.
- ⁴⁹ Wood, *supra* note 3, at 5.
- ⁵⁰ *Id.* at 6.
- ⁵¹ *Id.* at 10.
- ⁵² Erica F. Wood, *Guardianship Reform at the Crossroads*, 15 WTR Experience 12, 13 (2005).
- ⁵³ *Id.*
- ⁵⁴ Wood, *supra* note 3, at 11.
- ⁵⁵ Phillips, *supra* note 8, at 1. See also Wendy Wendland-Bowyer, *Who's Watching the Guardians*, Detroit Free Press, May 24-26, 2000 ("Too often, there's evidence that guardians . . . aren't caring for anyone's interests but their own. Some professional guardians oversee more than 500 people whom they rarely visit or never meet." Guardianship is "a growth business with no safeguards."); Quinn, *supra* note 10, at 42 (citing Wendland-Bowyer, 2000); Paul Rubin, *Checks and Imbalances: How the States Leading Fiduciary Helped Herself to the Fund of the Helpless*, Phoenix New Times, June 7, 2000; Quinn, *supra* note 10, at 42 (citing Rubin, 2000); Lou Kilzer & Sue Lindsay, *The Probate Pit*, Rocky Mountain News, April 7, 2001 (series) (conflicts of interest abound as judges appoint members of a close-knit, for-profit industry to control the lives and bank accounts of vulnerable Coloradans with scant government oversight); Quinn, *supra* note 10, at 42 (citing Kilzer & Lindsay, 2001); Diane G. Armstrong, Ph.D., *The Retirement Nightmare: How to Save Yourself from your Heirs and Protectors*, (Prometheus Books 2000) (future guardianship will be driven by transfer of wealth, some 11 trillion dollars. This transfer "will surely inspire a rising tide of involuntary conservatorship/guardianship litigation as alienated or envious heir-petitioners seek to direct this massive flow of accumulated wealth to themselves before it vanishes"); Carol D. Leonnig, et al., *Under Court, Vulnerable Became Victims*, Washington Post, June 15, 2003, at A01 and Leonnig, *Rights and Funds Can Evaporate Quickly* (the Washington Post published two front-page stories, the same day); Barry Yeoman, *Stolen Lives*, AARP Magazine, Nov. 19, 2003.
- ⁵⁶ Robin Fields, et al., *When a Family Matter Turns Into a Business*, L.A. Times, Nov. 13, 2005, at 2.
- ⁵⁷ Wood, *supra* note 3, at 9 (citing Paula L. Hannaford & Thomas L. Hafemeister, *The National Probate Court Standards: The Role of the Courts in Guardianship and Conservatorship Proceedings*, 2 Elder L.J. 147, 150 (1994); See also Frolik, *supra* note 11, at 350-352.
- ⁵⁸ Barbara D. Bovbjerg, *Guardianships: Little Progress in Ensuring Protection for Incapacitated Elderly People, Testimony Before the S. Special Comm. on Aging*, (Sept. 7, 2006), in 06-1086T GAO Highlights, Sept. 2006 at 11.
- ⁵⁹ Wood, *supra* note 52, at 13.
- ⁶⁰ Jennifer L. Wright, *Protecting Who From What, and Why, and How?: A Proposal For an Integrative Approach to Adult Protective Proceedings*, 12 Elder L.J. 53, 60 (2004).
- ⁶¹ In re Millie Orshansky, 804 A.2d 1077 (D.C. App. 2002).

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- ⁶² *Guardianship Over the Elderly: Security Provided or Freedom Denied: Hearing Before S. Special Comm. on Aging* (Wash. 2003) (statement of Chairman Larry E. Craig).
- ⁶³ *Legislation Update 2006: Signed into Law*, Current Long-Term Care Legis., California Advocates for Nursing Home Reform, 2 (San Francisco, Cal. Nov. 6, 2006).
- ⁶⁴ *Senate Special Comm. on Aging Hearing Examines Guardianship Abuses*, 8 Nat'l. Ctr. on Elder Abuse Newsl., Sept. 2006, at 1.
- ⁶⁵ GAO Highlights, *supra* note 20, at 2.
- ⁶⁶ *Id.* at 3.
- ⁶⁷ *Id.* at 8.
- ⁶⁸ *Id.* at 3.
- ⁶⁹ Bovbjerg, *supra* note 58, at 5.
- ⁷⁰ John Parry, *Selected Recommendations from the National Guardianship Symposium at Wingspread*, 12 Mental & Physical Disability L. Rep. 398, 398 (1988). See also Hurme & Wood, *supra* note 44, at 869.
- ⁷¹ American Bar Association Comm'n on the Mentally Disabled & Comm'n on Legal Problems of the Elderly, *Guardianship: An Agenda for Reform- Recommendations of the National Guardianship Symposium and Policy of the American Bar Association* (1989).
- ⁷² Hurme & Wood, *supra* note 44, at 869.
- ⁷³ American Bar Association, *supra* note 71. See also Fell, *supra* note 6, at 203-211 (discussion of Wingspread monitoring recommendations).
- ⁷⁴ Hurme & Wood, *supra* note 44, at 869.
- ⁷⁵ *Id.* at 869-870.
- ⁷⁶ *Id.* at 870.
- ⁷⁷ Symposium, *Wingspan – The Second National Guardianship Conference, Recommendations*, 31 Stetson L. Rev. 595 (Sponsored by National Academy of Elder Law Attorneys, the Borchard Foundation Center on Law and Aging, the Stetson University College of Law, the American Bar Association Comm'n on Law and Aging, the American Bar Association Section on Real Property, Probate and Trust Law, the American College of Trust and Estate Counsel, the National College of Probate Judges, the National Guardianship Association, and others).
- ⁷⁸ *Id.* (Six papers with accompanying issue briefs). See also Quinn, *supra* note 10, at 30.
- ⁷⁹ *Id.* at 597, 603, 605-606. (At recommendations 10, 40, 51, 52, 53, 55, and 56).
- ⁸⁰ National Guardianship Network Members: NAELA, NGA & NCPJ, *Action Steps on Adult Guardianship Progress*, Natl. Wingspan Implementation Session at 1 (2004). (Members of these three organizations were joined by representatives designated by state Chief Justices, and individuals from the American Bar Association Comm'n on Law and Aging, the American Bar Association Section on Real Property, Probate and Trust Law, and the American College of Trust and Estate Counsel). See also Bovbjerg, *supra* note 58, at 10 n.9 (Regarding other representatives who attended).
- ⁸¹ Bovbjerg, *supra* note 58, at 10. See also National Guardianship Assoc., *Standards of Practice* 9 (3d ed. 2007).
- ⁸² See generally Frolik, *supra* note 11.
- ⁸³ See generally A. Frank Johns, *Ten Years After: Where is the Constitutional Crisis with Procedural Safeguards and Due Process in Guardianship Adjudication?*, 7 Elder L.J. 33 (1999). See also Erica F. Wood, *Guardianship Reform at the Crossroad*, 15-WTR Experience 12 at 14; Quinn, *supra* note 10, at 31.
- ⁸⁴ Wright, *supra* note 60, at 61.
- ⁸⁵ Patricia C. McManus, *A Therapeutic Jurisprudential Approach to Guardianship of Persons with Mild Cognitive Impairment*, 36 Seton Hall L. Rev. 591, 604 (2006) (comment by McManus).
- ⁸⁶ *Governor Sign Bills on Handling of Conservatorship Cases*, In the News (Nat'l Guardianship Found.: The Guardian Gazette, Harrisburg, PA), Winter 2007, at 6. See also *Governor Signs Legislation to Improve Probate Conservatorship Cases*, News Release, Jud. Council of Cal., 1 (San Francisco, Cal., Sept. 27, 2006).
- ⁸⁷ Betsy Abramson, *Wisconsin Legislature Passes Major Guardianship Reform Bill*, Bifocal, Aug. 2006, at 80.
- ⁸⁸ Reinert, *supra* note 2, at 40.
- ⁸⁹ Don D. Ford, *The Guardianship Certification Board: A Legislative Attempt to Protect the Elderly*, 43-JUN Hous. Law. 69, 69 (2006).
- ⁹⁰ McManus, *supra* note 85, at 604.

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- ⁹¹ Frolik, *supra* note 11, at 354.
- ⁹² Guardianship of Hedin, 528 N.W.2d at 573 (citing Sheryl Dicker, *Guardianship, Overcoming the Last Hurdle to Civil Rights For mentally Disabled*, 4 U. Ark. Little Rock L. Rev. 485, 485-86 (1981)).
- ⁹³ Guardianship of Hedin, 528 N.W.2d at 572.
- ⁹⁴ Frolik, *supra* note 11, at 354
- ⁹⁵ Guardianship of Hedin, 528 N.W.2d at 582.
- ⁹⁶ Frolik, *supra* note 11, at 354
- ⁹⁷ *Id.* at 355.
- ⁹⁸ H. Patrick Leis, III, *The Model Guardianship Part: A Novel Approach*, 78 N.Y. St. B.J. 10 (2006).
- ⁹⁹ Chief Judge Judith S. Kaye, State of the Judiciary Address (Feb. 26, 2007). *See also* Leis, *supra* note 98, at 11.
- ¹⁰⁰ Johns, *supra* note 83, at 36. *See also* Erica Wood, Guardianship at the Crossroads, National Aging and Law Conference (April, 2006) (noting that monitoring reform has been discussed for 20 years; acknowledging John Regan).
- ¹⁰¹ Fell, *supra* note 6, at 196.
- ¹⁰² Reinert, *supra* note 2, at 43.
- ¹⁰³ Fell, *supra* note 6, at 197 (citing Law v. John Hanson Sav. & Loan, 400 A.2d 1154, 1158 (Md. 1979)).
- ¹⁰⁴ Fell, *supra* note 6, at 192.
- ¹⁰⁵ Sun Bank & Trust Co. v. Jones, 645 So.2d 1008, 1017 (Fla. Dist. Ct. App. 1994).
- ¹⁰⁶ Hurme & Wood, *supra* note 44, at 872.
- ¹⁰⁷ *Id.* at 877 (citing Sally Balch Hurme, *Steps to Enhance Guardianship Monitoring*, ABA, 27-28 (1991)).
- ¹⁰⁸ Hurme & Wood, *supra* note 44, at 893.
- ¹⁰⁹ National Guardianship Assoc., Standards of Practice 9 (3d ed. 2007). *See also* Fell, *supra* note 6, at 206.
- ¹¹⁰ Hurme & Wood, *supra* note 44, at 901-902 (citing ABA Comm'n on the Mentally Disabled & Comm'n on Leg. Problems of the Elderly, *Guardianship: An Agenda for Reform--Recommendations of the National Guardianship Symposium and Policy of the American Bar Association*, ABA (1989) (recommendation V-B Commentary)).
- ¹¹¹ Hurme & Wood, *supra* note 44, at 904.
- ¹¹² Johns, *supra* note 83, at 93 n.477. *See also* Hurme & Wood, *supra* note 44, at 904-905.
- ¹¹³ Hurme & Wood, *supra* note 44, at 914-915.
- ¹¹⁴ *Id.* at 922.
- ¹¹⁵ Naomi Karp & Erica Wood, *Guardianship Monitoring: A National Survey of Court Practices* (2006-14 AARP Pub. Pol'y Inst., Washington, D.C.) June, 2006 at v. Also cited as PPI Report #2006-14 at <http://www.aarp.org/research/legal/guardianships/2006-14-guardianship.html>.
- ¹¹⁶ Naomi Karp & Erica Wood, *National Survey of Guardianship Monitoring Practices Shows Courts Lack Verification of Appropriate Care*, Bifocal, Aug. 2006, at 77.
- ¹¹⁷ Naomi Karp & Erica Wood, *Guarding the Guardians: Promising Practices for Court Monitoring*, AARP Public Policy Institute (December, 2007).
- ¹¹⁸ *Id.*
- ¹¹⁹ GAO Highlights, *supra* note 20, at 16.
- ¹²⁰ *Id.* at 11.
- ¹²¹ State Court Partnerships with the Aging Networks, *Good Guardianship: Promising Practice Ideas on Court Links for Agencies on Aging, Adult Protective Services, and Long-term Care Ombudsman* (unpublished report, on file with the author).
- ¹²² Hurme & Wood, *supra* note 44, at 908 (quoting Spokane County Superior Court, *Volunteer Guardianship Monitoring Program: Feasibility Study* 8 (2000)).
- ¹²³ Terry W. Hammond, Report on the Washoe County Guardianship System and Community Satisfaction Regarding the Washoe County Public Guardian's Office 8, 10 (2006) (unpublished report, on file with the author).
- ¹²⁴ The author intended to present a descriptive study of guardianships in Washoe County. Unfortunately, some of the results set forth in this article are not yet statistically verifiable. The author discovered several problems that must be corrected before any declarative statement can be made about Washoe County guardianships. For example, the data collection instrument was too narrowly drawn. The data does not capture the timeliness of reports and accountings for cases involving multiple years. The data is limited to the first time a report or accounting was due. The data does not capture the continuum of punctuality.

Thus, reports that were only days late are classified in the same manner as reports that were late by several years. Additionally, there was no mechanism to account for some 2005 and all 2006 guardianships for which the reporting and accounting requirements had not yet matured. Another deficiency within the survey involves property inventories. There were many cases in which the ward was divested of all resources in the appointment order for Medicaid eligibility purposes. The guardianship statute is silent as to whether an inventory is required in this circumstance. The missing inventories in these types of cases were counted, even though the guardian may have been compliant. As another example, the data collected does not distinguish cases in which summary guardianship was warranted but not ordered. Thus, a number of guardianships in which the estate had a value less than \$5,000.00 were counted as deficient for having no accounting, even though the accounting requirement should have been eliminated by court order. The absence of intercoder reliability, such as within- or between-observer reliability checks, must be noted. Finally, this survey would be more meaningful if the present information were statistically extrapolated into projected trends consistent with future growth of the elderly population in Washoe County. In the final analysis, however, the survey results are included to demonstrate preliminary trends that may remain accurate if the survey is refined.

¹²⁵ Strategic Plan For Washoe County Senior Citizens Steering Committee, *supra* note 24, at 1.

¹²⁶ Fell, *supra* note 6, at 196.

¹²⁷ Hurme & Wood, *supra* note 44, at 917.

¹²⁸ McManus, *supra* note 85, at 619 (citing Hurme & Wood, *supra* note 44).

¹²⁹ American Bar Association Comm'n on Law and Aging-American Psychological Association, *Judicial Determination of Capacity of Older Adults in Guardianship Proceedings* (2006). *See also* American Bar Association Comm'n on Law and Aging, *Assessment of Older Adults with Diminished Capacity: A Handbook for Lawyers* (2005).

¹³⁰ Testimony of Naomi Karp, AARP Public Policy Institute, *Judicial Council of California Probate Conservatorship Task Force* (Mar. 24, 2006) (noting the important distinction between temporary guardianships and emergency guardianships).

¹³¹ Fell, *supra* note 6, at 206.

¹³² *In Re Guardianship of Saylor*, 121 P.3d 532 (Mt. 2005). *See also* *Matter of Estate of Clark*, 772 P.2d 299, 302 (Mont. 1989).

¹³³ American Bar Association Comm'n on Law and Aging-American Psychological Association, *supra* note 129, at Section 1C. *See also* *Judicial Council of California Probate Conservatorship Task Force*, *supra* note 130.

¹³⁴ NRS 3.225 (2005).

¹³⁵ Plato, *The Republic* (Benjamin Jowett trans., 360 B.C.E). *See also* Juvenal, *Satire VI: Death is Better Than Marriage*, in *Satires Book 2*, 6.346-348 (n.d.); E.O. Winstedt, *A Bodleian MS of Juvenal*, *Classical Review* 13:201-205 (1899).