

***Volunteer Guardianship
Monitoring and Assistance:
Serving the Court and the Community***

- ***Introduction***
- ***Program Coordinator's Handbook***
- ***Trainer's Handbook***
- ***Volunteer's Handbook***

**ABA Commission on Law and Aging, 2011
Adapted with Permission from *Trainee's Manual*,
AARP Legal Counsel for the Elderly, 1992**

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The ABA encourages the use of the handbook, its forms, and appendices in the development of volunteer guardianship monitoring and assistance programs in any interested court, with attribution to the ABA Commission on Law and Aging.

Erica Wood and Ellen Klem
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“A court that decides to monitor its cases systematically is making an important new commitment, which deserves recognition, since it is accepting in a more visible way its responsibility for guaranteeing that wards will be safe from abuse and exploitation”—and will be afforded as much self-determination and quality of life as possible.

Adapted from AARP, *National Guardianship Monitoring Program* (1991).

A. Why Monitor Guardians?

Guardianship¹ monitoring helps courts to manage risks, prevent abuse, and increase public confidence in the judicial system. Monitoring stems directly from the historic role of the court in protecting people who cannot protect themselves.

Monitoring encompasses all actions that a court takes after the appointment of a guardian. Contrary to a perception by some courts that the case is “closed” once the guardian is appointed, the court’s oversight role is just beginning. Unlike with decedents’ estates, the needs of an incapacitated person under the aegis of the court may change over time and the guardian may need to make complex decisions about health care, placement, and property that often are tough trade-offs between autonomy and beneficence. The quality of care, quality of life, and accountability for funds of a vulnerable individual are at stake.

The need for effective court oversight is accentuated by the demographics:

- The older population age 65+ will be increasing rapidly from 35 million in 2000 to 40 million in 2010 (a 15 percent increase) and then to 55 million in 2020 (a 36 percent increase for that decade); and the 85+ population of “old old” is increasing even more steeply. (U.S. Administration on Aging, *A Profile of Older Americans: 2009*, at http://www.aoa.gov/AoARoot/Aging_Statistics/Profile/2009/2.aspx.)

Effective guardianship monitoring is part of making courts “elder ready.”

- Additionally, guardianship also serves a growing population of younger adults with intellectual disabilities or mental illness, as well as people who sustain traumatic brain injury.

- For an overview of effective guardianship monitoring practices, see AARP Public Policy Institute and ABA Commission on Law and Aging. (2007). *Guarding the*

¹ Guardianship terminology differs by state. In this handbook, the generic term “guardianship” refers to guardians of the person, as well as guardians of the property, frequently called “conservators” unless otherwise specifically indicated.

http://assets.aarp.org/rgcenter/il/2007_21_guardians.pdf.

- For a state-by-state statutory review of monitoring requirements, see the ABA Commission on Law and Aging Web site at:
http://new.abanet.org/aging/PublicDocuments/chart_monitoring_08_10.pdf.

A 2005 AARP Public Policy Institute survey on guardianship monitoring found that over 40 percent of courts and guardianship experts surveyed reported that no one is assigned to visit individuals under guardianship and more than one-third said no one is designated to verify information in reports and accountings (<http://cc.bingj.com/cache.aspx?q=guardianship+monitoring+a+national+survey+AARP+public+policy+institute&d=5043949600243744&mkt=en-US&setlang=en-US&w=3d29fc4c,ea4d5b11>). And while there are few statistics, evidence of guardianship abuse and lack of effective oversight continues to surface. See, for example, the 2010 report by the Government Accountability Office, *Guardianships: Cases of Financial Exploitation, Neglect, and Abuse of Seniors*, GOA-10-1046, <http://www.gao.gov/products/GAO-10-1046?source=ra>.

B. Why Provide Assistance for Guardians?

Guardians need help, as well as oversight. Serving as guardian is one of society's most demanding roles. "Living the life of another" or "stepping into the shoes" of the at-risk individual is no easy task. Many guardians are family members with little experience with the judicial or legal system. Other guardians are professionals or agencies, sometimes with a large caseload. In either case, guardians can benefit from help.

While some guardians might bristle at the thought that they need help, they often are glad to receive contacts with community resources. A monitoring program will be more readily accepted—and even welcomed—by guardians if it has the dual mission of oversight and assistance, such as the following:

- Making available information on—and links to—community resources, such as the area agency on aging information and referral line, home delivered meals, in-home care, adult day health care, legal services, respite care, transportation, mental health services, and burial planning.
- Helping family and other non-professional guardians to understand reporting responsibilities and fill out reports. For instance, in the D.C. Superior Court's Guardianship Assistance Program:

in some cases, guardians demonstrated a lack of knowledge about how to complete the report of guardian form accurately, or were unsure of correct due dates for the report. [Assistance included] reviewing the report due date, reviewing the questions on the report form to assure the guardian's understanding of the information being sought,

providing the guardian with the Probate Division's schedule of mandatory filing deadlines, and reviewing the accuracy of information provided on previous reports (D.C. Superior Court's Guardianship Assistance Program, *Guardian Assistance Program: End-of-Year Report 2009 - 2010*).

- Identifying resources for navigating Social Security, Medicare, Medicaid, and SSI.
- Assisting family and other non-professional guardians who have questions to connect with court staff.

A family guardian wanted more information about how to be a better guardian. I directed her to the court's Web site. She was overwhelmed with her caregiving role and I gave her information about a local day program. She had trouble filling out the guardian report and I talked to her about how to fill it out.

—Volunteer social work student in the D.C. Superior Court Guardianship Assistance Program.

Guardian technical assistance, information, and training is integral to good guardianship monitoring. Courts that offer ready resources for their guardians will be less likely to encounter problems that require costly intervention and more likely to operate a smooth and effective oversight process.

C. Why Use Volunteers for Guardianship Monitoring and Assistance?

Using trained and supervised volunteers extends the monitoring capacity of the court. Few courts have the resources to oversee guardians to the fullest extent needed. Volunteers, while not free, are a cost-effective way to help address the court's oversight responsibility. In the groundbreaking AARP volunteer monitoring project, described below, volunteers provided three to five hours of service for every hour of staff time. Moreover, volunteers involve the community in the judicial system, which aids in greater public understanding of the courts—a goal encouraged by the *Trial Court Performance Standards*. Volunteers can assist in:

- Assuring that incapacitated persons under guardianship are receiving the care and protection they need;
- Facilitating the filing and review of guardian reports and accounts;
- Helping guardians to connect with community and court resources; and
- Making sure court records are accurate and up to date.

Volunteer programs open wide the doors of the courts to the community. Through volunteer service programs, communities and courts can come together in partnership to improve how courts respond to the needs and interests of the people they serve.

—State Bar of Wisconsin, *Court-Related Volunteer Programs in Wisconsin* (1997)
(quoting Hon. Shirley S. Abrahamson, Chief Justice, Wisconsin Supreme Court)

D. Volunteer Monitoring and Assistance Programs: History and Background

In 1988 Legal Counsel for the Elderly, Inc., of AARP initiated an historic National Guardianship Monitoring Program. Many judges had reported that there were no staff resources to follow up on guardianships, yet there were concerns about the well-being of all incapacitated persons under the court aegis. The State Justice Institute and AARP supported a two-year demonstration program to test whether trained volunteers could serve effectively as monitors, acting as the “eyes and ears of the court.”

The AARP project selected three courts as pilot sites, based on interest from judges—Judge Field Benton in Denver, Colo.; Judge Pat Gregory in Houston, Texas; and Judge Floyd Propst in Atlanta, Ga. All three made a commitment to test the use of volunteers to visit individuals under guardianship and report back to court. The Atlanta court also aimed to use volunteer auditors for reviewing financial reports submitted by guardians of the property. In these demonstration sites, the project developed three volunteer jobs:

- Court Visitors went out into the community to ensure individuals under guardianship were receiving proper care. They interviewed the person, the guardian, and the caregiver, and prepared a report to the court with recommendations for any changes.
- Court Auditors assisted court staff with reviewing annual financial returns from guardians.
- Records Researchers worked with court records to prepare cases for assignment to volunteer visitors. This job aimed to assist court staff in culling out old records and seeking current addresses and phone numbers.

The pilot sites selected cases randomly for visits. Court staff reviewed the volunteer reports to determine whether any remedial action was necessary—and, if so, the courts took steps ranging from a simple letter or phone call to the guardians to a full court hearing with possible removal of the guardian. Overall, the volunteers recommended action in 31 percent of the cases. Courts agreed with many of the recommendations and followed them to the extent of available resources. Judges, court staff, and an evaluation team found that the project created a much stronger capability for cost-effective monitoring.

In 1990 Legal Counsel for the Elderly of AARP received an additional grant from the State Justice Institute to develop materials for other courts wishing to establish volunteer guardianship monitoring programs. This project produced a *Program Coordinator's Manual*, a *Trainer's Manual*, and a *Trainee's Manual*. In 1991 the project expanded to provide technical assistance to courts throughout the nation in establishing volunteer monitoring programs.

A total of 53 courts initiated such programs, generally using AARP volunteers. In each of these programs volunteers reviewed hundreds of files, visited hundreds of incapacitated individuals, and handled large numbers of accountings from guardians of the property. Although AARP no longer offered technical assistance after 1997, many of the programs continued. In addition, the National Center for State Courts in 2005 produced a *Probate Court Volunteer Visitors Program Implementation Handbook* for the Administrative Office of the Courts of Georgia (see <http://contentdm.ncsconline.org/cgi-bin/showfile.exe?CISOROOT=/famct&CISOPTR=302>).

In 2007 the ABA Commission on Law and Aging surveyed these programs and determined that 28 were still functioning—and some of the original volunteers remained. See Klem, E. (2007) *Volunteer Guardianship Monitoring Programs: A Win-Win Solution*, at http://www.abanet.org/aging/publications/docs/Volunteer_Gdhip_rpt.pdf. A 2010 inventory of members of the National College of Probate Judges found 18 probate courts that operated volunteer guardianship monitoring programs.

In 2010, more than two decades after the earlier AARP efforts led the way, the ABA Commission on Law and Aging—in collaboration with the National College of Probate Judges, and using a copyright license to revise the AARP manuals—received support from the State Justice Institute and the Center on Law and Aging, a program of the Albert and Elaine Borchard Foundation, to survey probate courts on volunteer monitoring and to update the AARP materials, test them in two pilot sites, and disseminate them in electronic form to courts nationally.

E. Overview of Handbooks

Volunteer Guardianship Monitoring and Assistance: Serving the Court and the Community is a practical hands-on guide to help courts establish volunteer programs. It is based on the extensive experience of AARP, as well as the D.C. Superior Court and the two 2011 pilot courts—the Maricopa County Superior Court in Arizona and the Charleston County Probate Court in South Carolina. The guide includes three related handbooks:

Program Coordinator's Handbook

The coordinator's manual includes basic steps for planning a program, as well as recruiting and managing volunteers. A judge or court administrator considering or initiating a volunteer program should review the manual—particularly the sections on adapting the program to a specific court, key planning factors, and other aspects of guardian assistance to supplement the volunteer component. The person who will be

coordinating the program should review the entire manual and use it as a guide to tailor the program for the court.

Trainer's Handbook

The trainer's handbook includes the materials needed to plan a comprehensive training for volunteers, including training tips, a model training agenda, and a complete outline of lectures and exercises for a two-day training for volunteer court visitors and a one-day training for volunteer auditors.

Volunteer's Handbook

The volunteer's handbook is a separate free-standing text that includes background information, local resources, fact sheets, forms, and other materials that volunteers need to function effectively in the program. The handbook should be adapted to the state guardianship statute and other relevant state laws, local court procedures, and community resources.