

Guardianship Monitoring Protocols

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With thanks to

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The Need

- Ongoing duty of the court
- Purposes
 - Identify struggling guardians
 - Guide guardians who need assistance
 - Stop a guardian from using authority to abuse, neglect, or exploit an individual

National Probate Court Standard 3.3.17

- Ensure that plans, reports, inventories, and accountings are filed on time
- Review promptly the contents of all plans, reports, inventories, and accountings
- Independently investigate the well-being of the respondent and the status of the estate, as needed
- Assure the well-being of the respondent and the proper management of the estate by improving the performance of the guardian and enforcing the terms of the court order

The Protocols

Guardianship Review Protocol

Well-Being Report Protocol

Context

Understanding what's required and context for the guardianship

State or Court Requirements for Review	
Because each jurisdiction may have different laws, regulations, and processes for monitoring well-being reports, the first step is to get familiar with your jurisdiction's requirements.	
Questions	Action Steps
How often are well-being reports required to be submitted?	Well-being reports are required to be submitted every _____ (year?), and required to be reviewed by the court _____ (annually/as submitted/within 30 days/etc.).
What documents are required to be filed with the report?	Complete well-being reports require: <ul style="list-style-type: none"> • Standard form, with all required signatures • Supplemental documentation (medical reports, proof of housing, proof of service, etc.) • _____ • _____ • _____
Are reminders sent to the guardian? If so, how far in advance?	Send reminders _____ (one month/two weeks before due date, etc.) by _____ (mail/email/text).
After reviewing the report, what are your next steps?	When I finish reviewing the report, I do the following: _____
What type of guardianship is this?	<input type="checkbox"/> Full <input type="checkbox"/> Limited
Is there also a conservator/guardian of the estate?	<input type="checkbox"/> Yes <input type="checkbox"/> No

Compliance

- On-time reporting
- Required information
- Complete
- New information
- Covers required reporting
- Evidence of visits

Review: Well-Being Reports		
<p>One of the most important steps in monitoring guardianship cases is reviewing the report content to understand the status of the person subject to guardianship. You should be sure to check for compliance, completeness, and concerns. When reviewing reports, flag any indications that the person is (or is at risk of) experiencing abuse or exploitation. "Red flags" may be obvious, such as when the guardian reports concerns about the person's well-being. A careful review may catch "red flags" that the guardian missed or did not intend to raise.</p>		
Questions	Action Steps	Guidance
Was the report submitted on time?	If a report is missing, I should... _____ _____	Possible actions may include: <ul style="list-style-type: none"> • Sending reminders • Issuing a show cause notice • Referring case to the judge
Does the well-being report include all the required basic or preliminary information? Is the report completely filled out with no unanswered questions/blanks? Is the report identical to the previous year's report?	<p>The well-being report includes:</p> <ul style="list-style-type: none"> • _____ • _____ • _____ <p>The well-being report is missing:</p> <ul style="list-style-type: none"> • _____ • _____ <p>The report is identical: <input type="checkbox"/> Yes <input type="checkbox"/> No</p>	<p>Examples:</p> <ul style="list-style-type: none"> • Names and contact information • Case/docket number • Current address
Does the well-being report speak to the mental, physical, and social condition of the person subject to guardianship? Is there evidence that the guardian has visited face-to-face?	<p>Examples or indications:</p> <p>_____ _____ _____</p> <p>The guardian has visited: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown <input type="checkbox"/> Remotely (with good cause)</p>	<ul style="list-style-type: none"> • References to medical appointments • Examples of social activities • References to conversations with the person • References to conversations with facility staff (if appropriate) • Guardian has not had contact with person

Well-being

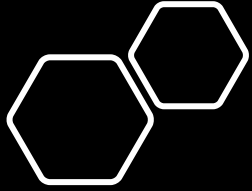
- Anticipated changes
- Concerns
- Appropriateness of guardianship

<p>Are any changes in housing, services, activities, or health care anticipated in the coming year?</p>	<p>Is it addressed? <input type="checkbox"/> Yes <input type="checkbox"/> No What changes are anticipated? _____ _____ _____</p>	<ul style="list-style-type: none"> • Discussion of coming year
<p>Are there any concerning points in the report about the guardianship?</p>	<p>Red flags seen:</p> <ul style="list-style-type: none"> • _____ • _____ • _____ 	<p>Examples of red flags requiring action:</p> <ul style="list-style-type: none"> • Evidence person has regained capacity and no longer needs guardianship • References to criminal convictions • Person is homeless • Missing/incomplete reports • Isolation • Abuse not reported to authorities • Not attending school or other expected activities • Guardian asks to be removed
<p>Is this guardianship still appropriate?</p>	<p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> The person may no longer need this level of guardianship - a judicial officer should review to consider modification or termination</p>	<p>Possible indications that a guardianship may not be needed or could be more limited:</p> <ul style="list-style-type: none"> • Increased ability to live independently • Increased ability to hold a job • Active participation in decisions • Managing own finances • Person asks for guardianship to be ended or reduced • Less restrictive alternatives are available

Summary

Next steps

Summary	
After reviewing the report, determine whether it is complete and does not require further review, or whether there are additional action steps that must be taken to address concerns about the person's safety and wellbeing.	
Questions	Action Steps
After reviewing the report, what are your next steps?	<input type="checkbox"/> I have an immediate concern for the safety or well-being of the person. _____
Do you mark the review as complete or pass it to another reviewer?	<input type="checkbox"/> I have a mild concern for the safety or well-being of the person. _____
Are there high-level concerns that require additional action?	<input type="checkbox"/> I have no concerns about the safety or well-being of the person.
What does the judge in your jurisdiction want to know?	<input type="checkbox"/> I have insufficient information.
	Next steps: _____ _____ _____



Multidisciplinary teams

- Court needs individuals from the community
 - Accountant
 - Medical professional (MD, RN, NP, PA)
 - Social worker
 - Adult Protective Services
 - Protection & Advocacy Organization (Disability Rights *state name*)
 - Law Enforcement

Well-being red flags

The person no longer needs a guardianship or needs a change to the type or scope of the guardianship

There are concerns about the person's safety or well-being

The guardian is struggling

The guardian does not cooperate with the court and/or not enough information has been provided to assess those items



Guardianship Review Protocol

Accounting Protocol

NATIONAL CENTER FOR STATE COURTS

ncsc.org



Context

Understanding what's required and context for the guardianship

Preparing for Review	
Review your state's statutes and court rules for the requirements of conservatorship monitoring. Also review the original petition and court orders/appointment for the case-specific reporting requirements and to identify areas that may need special focus.	
Questions	Action Steps
How often are the reports required to be submitted and based on which date?	Initial Inventories are due: (days?) _____ after the (event). Periodic accountings are due every (year?) _____ and are required to be reviewed by the court _____ (within X days).
What forms, schedules, or components are conservators required to submit for inventories and accountings?	Complete reports may include standard forms or schedules of assets, liabilities, income and expenses; supplemental documentation (receipts/bank statements, proof of bond); required signatures; proof of service Complete inventories require: • _____ Complete accountings require: • _____ • _____
Are reminders sent? How far in advance?	Send reminders _____ (one month before due date/two weeks before due date, etc.), by _____ (mail/email/text).
What type of conservatorship is this?	<input type="checkbox"/> Full <input type="checkbox"/> Limited
Is there also a guardianship of the person?	<input type="checkbox"/> Yes <input type="checkbox"/> No

Compliance

- Correct time period
- On-time reporting
- Required information
- Complete
- Backup documentation
- Balance
- New information

Review: Accounting

For open cases, review the accounting for compliance, completeness, and concerns. When reviewing reports, it is helpful to have the most recent prior accounting or inventory available for year-to-year comparisons.

Questions	Action Steps	Guidance
Compliance		
Does the accounting cover the correct time period? Is the accounting late?	The accounting should cover: ___/___/___ to ___/___/___ <input type="checkbox"/> Late?	Possible actions may include: <ul style="list-style-type: none"> • Return for correction • Look for habitually late reporting
Is the accounting complete, with correct forms, lists, or schedules of: <ul style="list-style-type: none"> • Assets • Income • Financial obligations/expenses • Bond, if applicable? 	The accounting includes the following: <ul style="list-style-type: none"> • _____ The accounting is missing: <ul style="list-style-type: none"> • _____ 	Possible actions may include: <ul style="list-style-type: none"> • Return for correction • Send notice of deficiency
Does the accounting contain backup documentation, if applicable?	The accounting includes the following documentation: <ul style="list-style-type: none"> • _____ The accounting is missing: <ul style="list-style-type: none"> • _____ 	Examples: <ul style="list-style-type: none"> • Bank statements • Receipts • Proof of bond • Proof of service
Does beginning balance match end of prior year balance? Is the report identical to the previous year's report?	Prior end balance \$ _____ Current start balance \$ _____ The accounting is identical Yes <input type="checkbox"/> No <input type="checkbox"/>	Possible actions may include: <ul style="list-style-type: none"> • Return for correction

Assets & Income

- Expected assets
- Expected income

Assets		
Verify all previously reported assets are still reported; or sufficient explanation/documentation is provided.	Review assets for: <ul style="list-style-type: none"> • Financial assets (bank accounts, investments) • Real property (land, houses) • Personal property (vehicles, furniture, jewelry) 	Possible Red Flags: <ul style="list-style-type: none"> • Unexpected changes in the reporting of assets • Assets solely in conservator's name • Transfer or sale of assets without court approval
Income		
Verify all previously reported sources of income are still reported; or sufficient explanation/documentation is provided.	Income sources may include: <ul style="list-style-type: none"> • Pension or retirement funds • Social Security • Public benefits • Rental income 	Possible red flags: <ul style="list-style-type: none"> • Unexpected changes in the reporting of income • Transferring funds to third party accounts without explanation

Obligations/ Expenses

- Expected
- Match person's conditions
- Fees & commissions

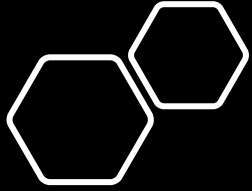
Obligations/Expenses		
Compare current expenses to past year(s), any unusual, unexpected, or missing expenses that are unexplained?	Unusual expenses: <ul style="list-style-type: none"> • _____ • _____ • _____ 	Possible red flags: <ul style="list-style-type: none"> • Lump sum transactions • Unexplained ATM use or checks made out to cash • Expenses not for the benefit of the person (e.g., meals for more than one person) • Large or unusual gifts • Lack of court approval for large expenses
Do the financial obligations match the person's physical and living conditions, including medical and residential arrangements?	Review for expected financial obligations given: <ul style="list-style-type: none"> • Physical condition • Residential arrangement • Medical arrangement 	Possible red flags: <ul style="list-style-type: none"> • Rent or utility expenses for residence where person does not live • Missing medical bills
Review attorney & conservator fees/fiduciary commissions for reasonableness	Review for expected fees: <ul style="list-style-type: none"> • Attorney • Conservator • Personal care • Services 	Possible red flags: <ul style="list-style-type: none"> • Large checks written directly to conservator • Unusually high fees or number of hours billed

Summary

Next steps

Summary		
Were there any issues identified in the previous accounting? Have they been corrected? Do they persist?	Ongoing issues: • _____ • _____	Possible red flags: • Incorrect balances • Missing assets, income, expenses
Ensure that current net estate value is listed and is correct. Based on the current net estate value, is the appropriate bond in place, if applicable?	Check calculation of balance <i>*Do not make changes to the accounting on your own.</i> <input type="checkbox"/> Bond is appropriate <input type="checkbox"/> Bond may need adjustment	If accounting does not balance or is mathematically inaccurate, return for amendment. If the bond is not appropriate based on the current estate value, refer for additional/higher level review.
Are there areas of concern? Are assets, income, and expenses being used to meet the needs of the person? Are assets and income sufficient to meet the person's needs going forward?	What red flags were identified during review? • _____ • _____	Serious concerns should be reviewed by additional court personnel or community partners (such as an accountant or auditor) depending on your court's process.
Is this conservatorship still appropriate?	<input type="checkbox"/> Yes <input type="checkbox"/> The person may no longer need this level of conservatorship.	• Are there less restrictive alternatives? • Are the only assets SSA or VA, covered by a rep payee or fiduciary?
Based on this report, what are the next steps needed?	<input type="checkbox"/> Review is complete <input type="checkbox"/> Needs correction by conservator <input type="checkbox"/> Needs additional/higher level review (such as by an accountant or auditor) <input type="checkbox"/> Needs judicial review	• Is conservator struggling or is there a larger concern? • Are the reporting requirements appropriate? • Does the order of conservatorship remain necessary, or does it need to be modified?

**In the event you are unable to accomplish any of the above review,
please consult an individual with more expertise for assistance.**



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Accounting red flags

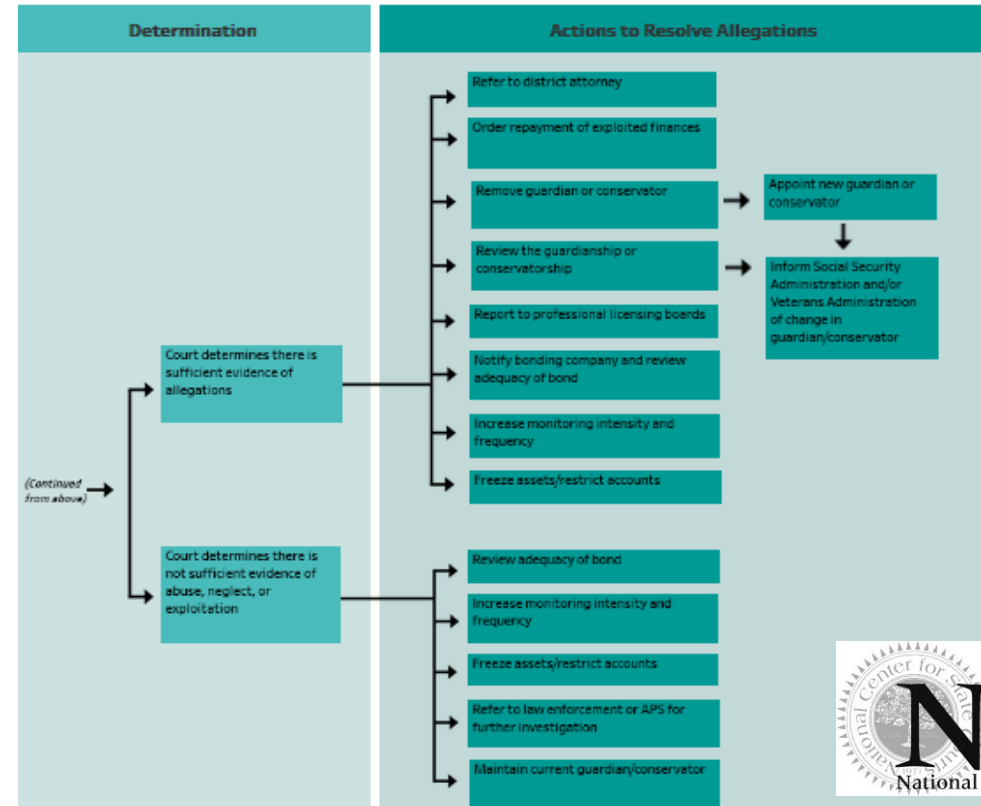
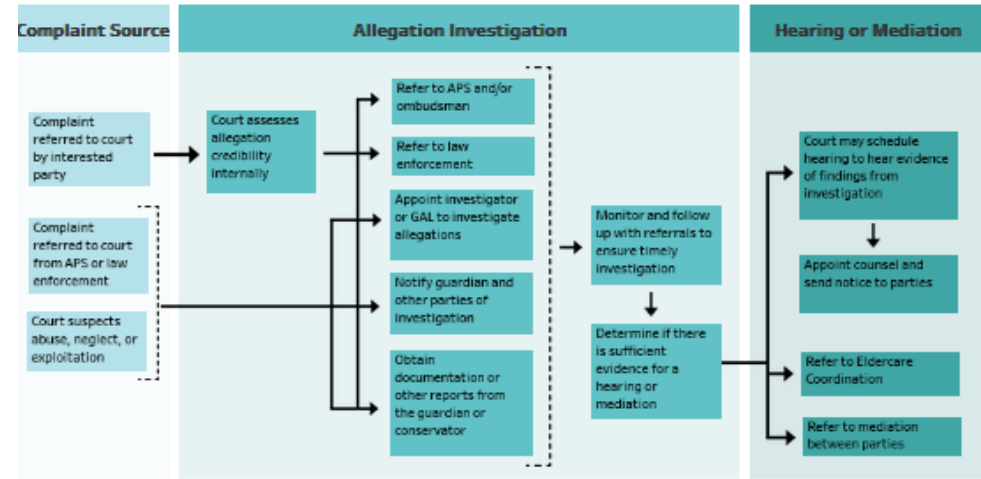
- Duties & Compliance
- Assets
- Income
- Financial obligations/expenses

Glossary



Term	Definition
Accommodation	A change that makes it possible for a person with a disability to do something they could not do before. For example, installing a ramp at the entrance of a building will allow people who use wheelchairs to enter when before they could not use the stairs.
Advance Directive	A written document that allows someone to plan for a time when they may not be able to say what they want for their health care or decisions about end of life treatment. Health care includes decisions about medicine, surgery, and other treatments. End of life treatment includes questions about whether someone does or does not want a feeding tube, resuscitation, or other possibly life saving measures.
Agent	The person appointed in a power of attorney to make decisions and manage the money, property, or healthcare of another person.
Alimony or Support	Any court ordered money paid to the person under guardianship by a former spouse or partner.
Annual Accounting	Report made periodically (as determined by the court or statute) to a court by a guardian of the estate containing a complete detail of all actions taken and occurring on all property and assets owned by a person under guardianship.
Annual Estimated Expenses	The total amount on money the person under guardianship spends in one year.
Annual Guardian Report	see Annual Well-Being Report.
	A report the guardian gives to the judge (or court) (usually annually) describing the well-being of the person. The report may include information about the

Guardianship/Conservatorship Response Protocol



What if there are problems?

Accessing the protocols

- www.eldersandcourts.org
- Want a training in your state? Have questions?

Email Diane Robinson: drobinson@ncsc.org