

JUDICIAL PROGRAMS AND SERVICES

NORTH DAKOTA STATE COURT GUARDIANSHIP MONITORING PROGRAM

The Guardianship Monitoring Program began as a pilot program in the South Central and Southwest Judicial Districts in 2015. It will be a statewide program beginning in 2018. Under the program, cases can be referred by judges or randomly selected by the program manager for financial reviewing or home visits.

Eighty adult guardianship cases were randomly selected from the pilot districts to establish a basic assessment of common court proceedings, guardianship reporting, and risk factors present in the annual reports.

Originally reviewed in 2016, more than half of the first 80 cases (44) had no activity recorded in the case file. These cases are automatically assumed to be high risk due to lack of court oversight.

The following was noted in the remaining 36 cases:

- 5 of the 80 cases should have had a status of terminated due to ward's deaths.
- 16 guardians were not providing regular, thorough annual and/or inventory reports, although the court does not always order any reporting.
- 7 cases had consistent and thorough reporting and no red flags; often the ward has a small estate and lives in a care center.
- Several cases had questionable items and missing information such as: the Social Security Representative Payee fees appear to exceed the maximum allowed; annual reports lack sufficient information and a wellbeing

check would be appropriate; parents charging ward for room/board without court approval; financial reports that do not total correctly; no inventory reports; no income from investments.

In 2017 some of the original 80 random cases were reviewed and the following was found:

- 9 cases were selected for continuation hearings, and the guardians were reappointed.
- Court action on some of the 44 cases with no activity:
- 15 were terminated due to majority or death of ward.
- 2 guardianships were continued after a continuation hearing.
- 24 were terminated by the court with no explanation noted in the case file.

A second review was conducted in 2017 on a state-wide list of cases that had court activity during 2013. This review was expected to include fewer cases that had no annual reporting. Results included more than 118 cases due to some cases fitting more than one category:

- 45 cases had consistent, thorough reporting. This percentage is likely higher than the random selection since these were generally newer cases.
- 6 cases have had no annual reports filed.
- 12 cases have families charging room/board without court approval.
- 39 cases have annual reporting with missing information such as no reporting on the ward's finances, or the exclusion of the wellbeing reports.
- 32 cases present questionable accounting practices or expenditures that require explanation or other troublesome issues such as utilities expenses when the ward is living in a nursing home, high guardianship fees, or investments with no income.

Notable cases:

- Two cases were terminated due to returned notices that were mailed to the guardian. Vulnerable Adult Protective Services was notified that these two incapacitated people no longer had court supervision.
- One case involves an immigrant whose family was mostly absent from the guardianship process. It is unknown if language barriers prevented the family from participation.
- In one case, the guardian reported that the ward has been well for years, but guardianship is needed in case of a relapse.

Judge Referrals

Seven cases were referred from the courts for monitoring during this period. Some results:

- Three cases were referred for wellbeing checks only. Primarily the judge was concerned that the guardians were not fulfilling their duties. One of these cases was declined because the ward had passed away and the guardian had no financial authority. One case was terminated because both the guardian and ward had moved out of state and we were unable to bring them to court or perform a review.
- One ward was deemed incompetent decades ago and lost two-thirds of her estate to legal and guardianship fees. She was deemed competent in 2016, after the court learned she has been managing her own funds and wellbeing for years.

Administrative Order 22 – Review of Guardianships update:

On August 1, 2015, state statute changed to require periodic reviews of all guardianship cases. In 2017, there were 2,802 active guardianship cases statewide. Supreme Court Administrative Order 22 requires that all guardianships established prior to August 1, 2015 be reviewed within 5 years. Between March 1, 2016, and March 31, 2017, 562 review hearings were held.