

# Office of the State Court Administrator

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May 6, 2015

Dianne E. Ray, CPA  
State Auditor  
Colorado Office of the State Auditor  
1525 Sherman St., 7<sup>th</sup> Floor  
Denver, CO 80203

Dear Ms. Ray:

In response to your request, we have prepared a status update regarding the implementation of audit recommendations contained in the 2011 *Oversight of Guardianships and Conservatorships Performance Audit* and the 2006 *Oversight of Probate Cases Performance Audit*. The attached update provides a brief explanation of the actions taken by the Judicial Department to implement the recommendations in the reports.

The Judicial Department takes its responsibility for the oversight of protective proceedings cases very seriously and believes that the system currently in place is much improved. The Department has dedicated staff and resources towards addressing the issues identified in the audit reports. As you will see in our response, these improvements are found in all stages of the protective proceedings cases, from the appointment of conservators and guardians to monitoring the reports submitted to the courts.

If you have any questions, please do not hesitate to contact me at 720-625-5000 or by email at [gerald.marroney@judicial.state.co.us](mailto:gerald.marroney@judicial.state.co.us).

Sincerely,

A handwritten signature in blue ink, appearing to read "Gerald A. Marroney", is written over a large, stylized blue circular flourish.

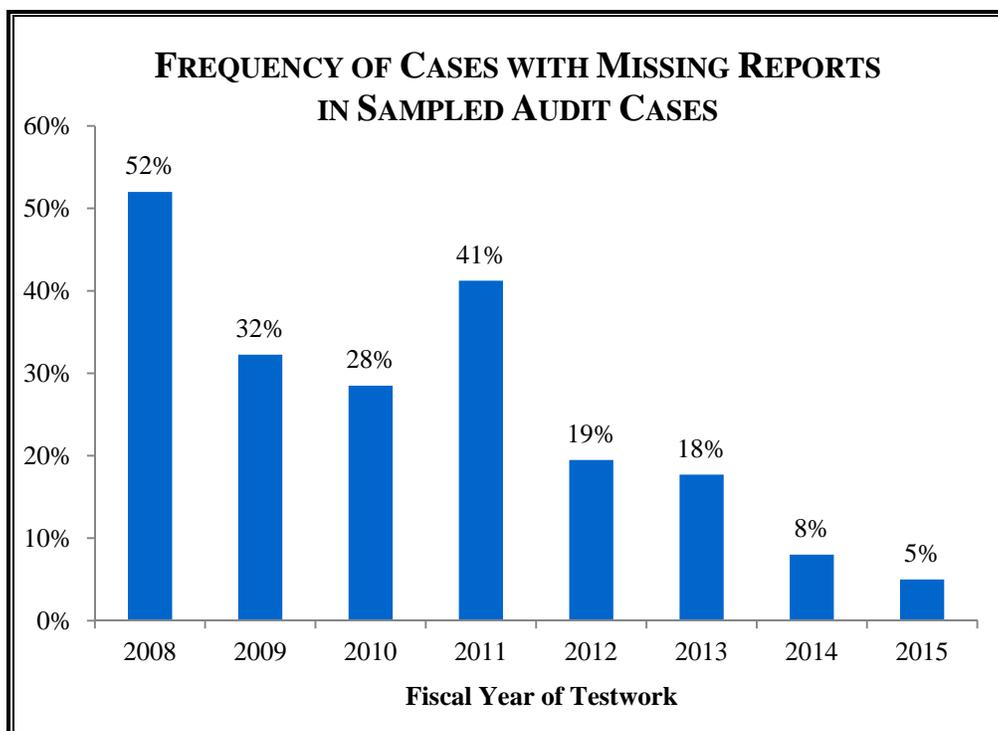
Gerald A. Marroney  
State Court Administrator

**1. What changes has the Judicial Department made to the probate system to address the issues raised in the audit reports and the recommendations? Has the Judicial Department been able to measure the impact of those changes? If so, what has been the impact?**

Overall, the Judicial Department has made significant improvements to the management and oversight of protective proceedings cases. These changes and improvements range from developing and conducting additional trainings for staff and appointees to dedicating new resources to effectively manage the cases throughout the system. We believe that these improvements have resulted in better and more complete information on the status of individual cases and total statewide activity. The overall effect of this work is demonstrated in the information highlighted below from the Department's Internal Audit Unit findings.

### **INTERNAL AUDIT FINDINGS**

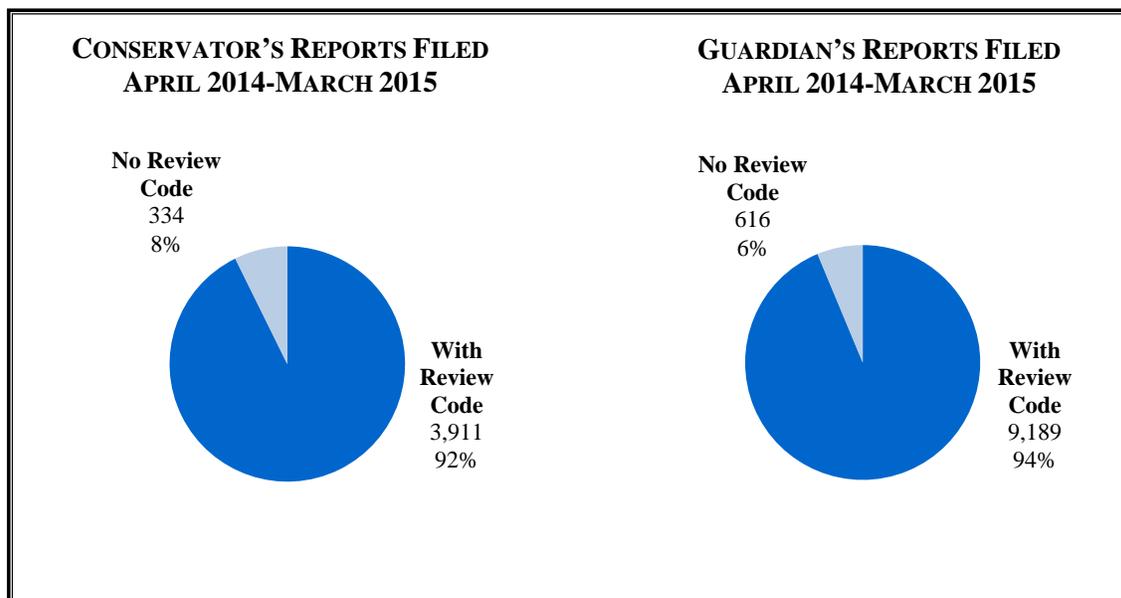
In Fiscal Year 2008, the Department's Internal Audit Unit incorporated a review of protective proceedings report monitoring into the Audit Program for Judicial Districts. Initially, this part of the Audit Program focused primarily on whether sampled cases were missing required annual reports. The results of that testwork since Fiscal Year 2008 are depicted below (by fiscal year of testwork). As shown, the findings of the Internal Audit Unit indicate a significant improvement in this area, due to the increased training statewide, standardized procedures for monitoring and tracking the submission of reports, and the addition of Protective Proceeding Monitors (PPMs) in each District to track reporting requirements of court appointed guardians and conservators.



Source: Compiled data from District audits.  
2015 data as of March 31, 2015.

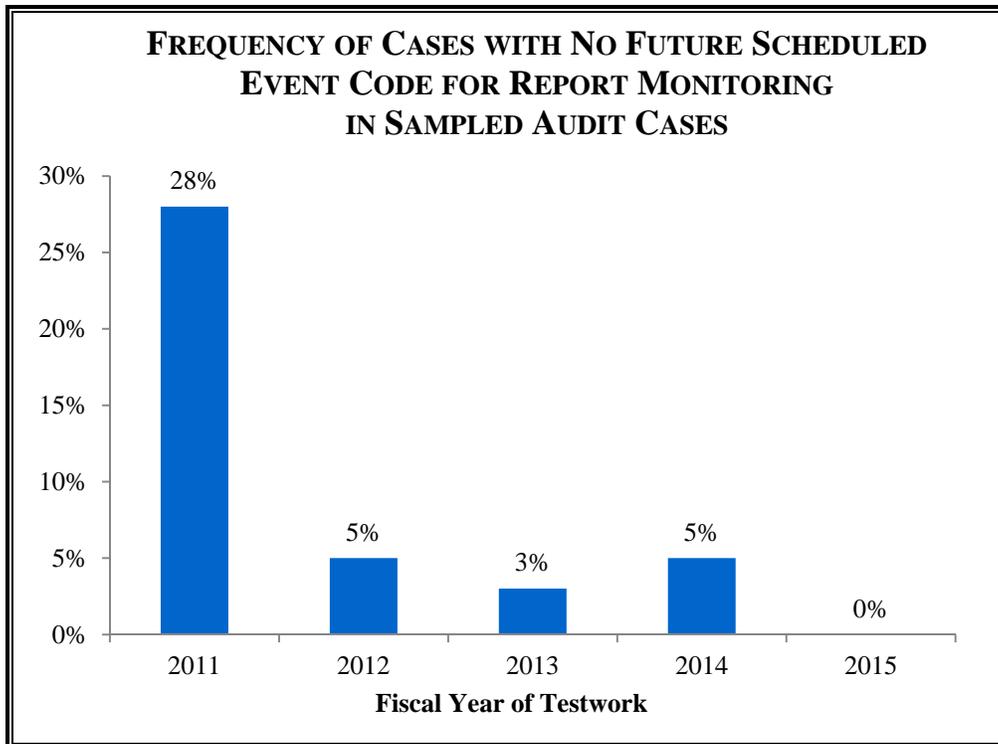
Over the past several years, the Internal Audit Program for protective proceedings cases has been expanded to include a more thorough evaluation of the Districts' compliance with the requirements related to protective proceedings cases in statute and the Judicial Resource Manual (JRM). In addition to a review of whether sampled cases are missing required reports, the Audit Unit reviews cases for required documents that must be filed, including a credit report, criminal background check, and Acceptance of Office; required court visitor reports; required Acknowledgment of Responsibilities form; the Districts' actions and processes for following up on missing reports; and, coding in ICON/Eclipse to indicate receipt and review of filed reports and future scheduling of report due (or review) dates.

As shown in the graphs below, in the last 12 months, 92 percent of cases with a Conservator's report filed have a code to indicate the report was reviewed. Similarly, 94 percent of cases with a Guardian's report filed in the last 12 months have a code to indicate the report was reviewed. Reasons that a review code may not have been entered include recently filed reports (about one-third of reports without a review code were filed in March 2015), as well as cases in which the review of the report is ongoing with scheduled hearings or requests for corrections, amendments or additional information before the court will enter the code to indicate the review is complete.



Source: Query of cases with a Conservator's Report (CRPT) or Guardian's Report (GRPT) filed between April 1, 2014 and March 31, 2015.

As shown below, the frequency of sampled audit cases with no scheduled event entered in ICON/Eclipse for monitoring the due date of a future report declined steeply after 2011, and to date in Fiscal Year 2015, no sampled audit cases were missing the scheduled event.



Source: Compiled data from District audits.  
2015 data as of March 31, 2015.

The audit process and findings help to raise awareness of requirements in statute and the JRM. In addition, audit findings are shared with Court Services staff at SCAO to help identify training needs.

### **CHANGES TO THE OVERSIGHT OF PROTECTIVE PROCEEDINGS CASES**

Below we highlight the efforts the Department has made related to the 2006 and 2011 audits and recommendations, including:

- Creating the Protective Proceedings Monitor and Protective Proceedings Auditor positions;
- Developing and implementing a Protective Proceedings Audit program;
- Delivering training to judicial officers and court personnel;
- Developing online informational modules to educate the public, court staff and court appointed professionals;
- Enhancing case processing and case management;
- Establishing a Probate Advisory Committee; and
- Updating the Judicial Resource Manual and mandating compliance.

### **PROTECTIVE PROCEEDINGS MONITORS**

As a part of its funding request for the 2012-2013 fiscal year, the Department requested, and received, an additional 21.5 FTE to address the recommendations in the 2011 Performance Audit

Report. These positions were allocated between Protective Proceedings Monitors (PPMs), distributed among all judicial districts; Protective Proceedings Auditors (PPAs), located at the SCAO; and one additional part time magistrate for the Denver Probate Court.

Of the 21.5 FTE provided in the decision item, 19 were allocated for PPMs in the districts. These 19 FTE created 26 full and part-time PPM positions throughout the state. Each District has at least one part-time PPM. These positions are primarily responsible for the management and initial review of Guardian's and Conservator's Reports filed with the courts. Duties of PPMs include:

- Monitoring the filing of Guardian and Conservator reports by tracking review dates.
- Ensuring review dates are entered timely and accurately.
- Identifying cases with insufficient review dates to ensure all requirements have been met.
- Referring non-responding guardians and conservators to the Court for further action.
- Preparing Delay Prevention Orders.
- Ensuring Guardian and Conservator reports are filed timely and contain required information in the appropriate format.
- Entering, maintaining and updating case information in computer and paper records, as required (including the use of accurate coding).
- Conducting research using various databases and tools to locate and contact guardians and conservators who have failed to submit required reports.
- Assisting the court in assessing the reasonableness and appropriateness of guardian and conservator expenditures.

## **PROTECTIVE PROCEEDINGS AUDITORS**

In addition to the PPMs, two Protective Proceedings Auditors (PPAs) were hired as full time employees at SCAO. While the PPMs are specific to a particular court or district, the PPAs serve as a resource to all Districts across the state. The primary responsibilities of the PPAs include:

- Serving as advisors to judicial officers and court personnel on issues or questions related to Guardian's and Conservator's Reports.
- Providing additional analysis on guardianship and conservatorship issues.
- Performing audits and reviews of Guardian's and Conservator's Reports filed with the court by obtaining supporting documentation (bank statements, receipts, invoices, tax returns) from the appointee.
- Communicating findings to judicial officers who retain authority over the case.

## **PROTECTIVE PROCEEDINGS AUDIT PROGRAM**

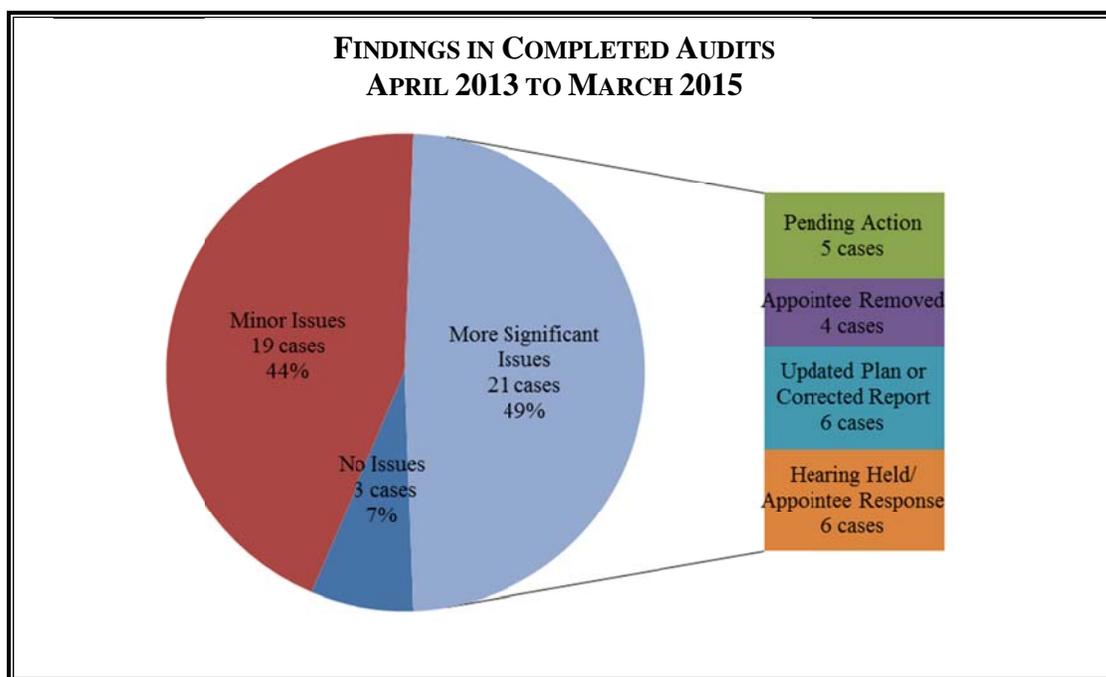
The PPA team invested a significant amount of time designing a program for performing audits of Conservator and Guardian reports. The audit procedures are tailored to each case, but generally include a combination of substantive procedures to verify amounts presented on the report as well as analytical procedures to identify risk areas or items requiring additional review.

Before adopting and implementing the PPA audit program, the PPAs sought input and guidance from SCAO Legal Counsel as well as the Probate Advisory Committee (PAC). The PAC voted unanimously to support the processes adopted by the PPA team.

Between April 2013 and March 2015, the PPAs completed audit reports for a total of 43 cases. The majority of cases (72 percent) were randomly sampled by the PPAs for audit, with the remaining 28 percent of cases referred by the courts.

General results for the 43 completed audits are depicted in the graph below. In about half of the cases (51 percent), no issues were identified or the findings of the PPAs were minor, such as understated assets, arithmetic errors, and minor omissions by the appointee. In the remaining cases (49 percent), the PPAs identified more significant issues for the courts to consider taking additional action. Overall, in 16 cases in which the PPAs identified more significant issues (76 percent), the courts have taken various actions depicted below, including:

- Removal of the appointee.
- Ordering the appointee to file an updated Financial Plan and/or corrected Report.
- Ordering the appointee to appear for a hearing to address the issues identified or file written responses to the issues.



Source: Compiled data from Protective Proceedings audits.

Examples of cases in which the auditors found more significant issues include:

- In one referred case, a family member living out of the country was appointed as the Conservator and Guardian. The audit identified several issues related to the oversight of the Protected Person's funds, including cash withdrawals totaling over \$13,000 with no record of how the funds were used, payments totaling over \$36,000 to multiple caregivers

that were friends of the Protected Person's daughter that could not be supported, and gifts totaling \$10,200 that were not approved on the Inventory and Financial Plan. The Court ultimately removed the family member as Conservator and Guardian.

- In two referred cases in which a professional Conservator was appointed, the audit identified unexplained cash withdrawals totaling \$10,500, general poor record keeping and reporting, and that the appointee was not able to provide the requested supporting documentation for about \$19,000 in expenses. The Conservator was removed from the cases. The District Attorney's Office conducted an investigation but elected not to file any charges as funds were returned to the Estates. The Conservator is no longer appointed to any cases.
- In one randomly selected case, the audit identified that the professional Conservator's fees exceeded the amount that was approved on the Inventory and Financial Plan. Specifically, the Plan approved fees in the amount of \$15,000 per year; however, the Conservator billed the Estate over \$75,000 over a three-year period, or 67 percent above the approved amount. In addition, the Conservator's billing methods did not appear to be cost-effective to the Estate, as the Conservator billed for multiple trips to the bank for matters that could have been handled over the phone or online, billed the Estate an average of \$20-\$30 to open each statement from financial institutions, and billed over \$7,500 for the preparation of the Conservator's Report. The Court held a hearing and subsequently issued an order that fees for the remainder of the current reporting year could not exceed \$500 per month. The Court further ordered the Conservator to file an amended Financial Plan if the current plan does not accurately reflect the anticipated fees for the management the Estate.

## **TRAINING OF JUDICIAL OFFICERS AND STAFF**

Training related to protective proceedings cases has been developed and delivered to Judicial Officers, PPMs, and other court personnel, as outlined below:

- At the 2012 Judicial Conference full-day training was dedicated to guardianships and conservatorships. This training included a discussion regarding the statutory requirement for appointing an attorney to represent the protected person and a court visitor in specific cases. Probate Judges continue to meet yearly at the Judicial Conference.
- In November 2012, SCAO coordinated an intensive two-day training academy for all PPMs, including sessions on reviewing reports and the use of Accurint, a tool available for locating missing parties and fiduciaries. This training also included the use of monitoring criteria and risk assessment in reviewing protective proceedings cases. SCAO continues to coordinate and facilitate meetings and trainings for PPMs to further develop these roles.
- In March 2013, PPMs and other court personnel were trained on the updated protective proceedings sections of the JRM and introduced to the PPA's roles and function.
- During the 2013 annual Colorado Court Employees Conference (CCEC), a keynote speaker discussed National Probate Court Standards with PPMs and Probate Registrars,

providing a better understanding and appreciation of what makes probate courts unique in America.

- In September 2013, SCAO staff prepared and presented a two hour training program on the review of Conservator's Reports. The purpose of the training program was to offer real world examples of issues that have been identified on Conservator's Reports and a process that would help identify those issues. A second training session was provided in December 2014 for new PPMs and as a refresher for existing PPMs.
- In June 2014, a Judge's Panel was assembled to address PPM and Probate Registrar questions. A Public Administrator also presented on the functions and responsibilities of that role.
- Training on the estate value code (ESTV) was provided to all PPMs and court staff working in the area of probate.

SCAO will continue to support the PPMs, Probate Registrars and court staff working in probate through on-going trainings and meetings consisting of:

- Guardian's Report Training (on-going as needed when new PPMs are hired).
- Conservator's Report Training (on-going as needed when new PPMs are hired).
- Instruction and direction when enhancements and changes are made regarding case processing and the JRM (on-going as updates are made).

## **ONLINE TRAINING MODULES**

Guardians and Conservators. Informational videos have been developed to provide an overview of protective proceedings, how these actions are initiated for minors and adults, and the timeline of the proceedings. The following informational modules were created for court staff and the public to help them gain a better understanding about protective proceedings. All three modules are available on the Judicial website [www.courts.state.co.us](http://www.courts.state.co.us).

- "You as a Conservator" - explains the duties of a newly appointed conservator. The Judicial Branch collaborated with the Colorado Bar Association (CBA) and Colorado Legal Services to develop this video for newly appointed conservators.
- Guardianship and Conservatorship Video for Minors.
- Guardianship and Conservatorship Video for Adults.

Court Visitors. Training modules were created, as prioritized by the Probate Advisory Committee (PAC), for new and existing court visitors. All court visitors are required to complete these trainings and provide Certificates of Completion to each judicial district they serve. The Department created the videos listed below with review and input from the CBA Court Visitor Committee and probate experts from the judicial districts.

- Protective Proceedings Overview
- Role of the Court Visitor

## **CASE PROCESSING AND CASE MANAGEMENT**

Enhancements to the Judicial Department's ICON/Eclipse system and staff procedures for managing cases include:

- In December 2013, the Judicial Department entered into a Memorandum of Understanding (MOU) with the Department of Public Health and Environment to obtain vital statistics information for the purpose of obtaining contact information for the guardian, conservator, ward, or protected person.
- Additional party type codes were created to capture the appointment of professional guardians and conservators.
- Specific termination codes were created for use when a guardianship and/or conservatorship is terminated in dual appointment cases, to reflect the current status of the appointment and action in the case.
- A final termination code was created to be used when the entire case is terminated.
- An estate value code was created to capture the value of an estate in both guardianship and conservatorship cases.

The SCAO developed a statewide monitoring system of all protective proceeding cases. Codes were created in ICON/Eclipse to identify whether reports have been filed and reviewed by the courts. The Department has reviewed all protective proceedings cases filed since the 1980s.

- From the 1980s through October 2014, approximately 77,000 cases were filed statewide.
- About 60,000 (78 percent) of these cases have been permanently closed as a result of this review.
- The remaining 17,000 cases (22 percent) require on-going monitoring.

## **PROBATE ADVISORY COMMITTEE**

In response to the 2011 Performance Audit Report, the Probate Advisory Committee (PAC) was established by order of the Chief Justice on February 16, 2012. The initial membership of the committee consisted of judicial officers and court personnel representing 14 different judicial districts. During 2014 an elder law attorney was also added to the committee to serve as a liaison to the Bar Association. The PAC was charged with:

- Making recommendations based on the findings of the 2011 OSA Performance Audit Report.
- Establishing training for judges and court staff on how to evaluate financial reports and statements.
- Clarifying roles of judicial officers, court personnel, and SCAO staff with respect to administration of probate cases.
- Reviewing, improving and updating the Judicial Department Forms (JDF).

The work of the PAC is on-going, as it serves to address a variety of issues specific to the court management of probate cases throughout the state.

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## UPDATING THE JRM AND MANDATING COMPLIANCE

The PAC established a subcommittee to review and update all sections under Protective Proceedings in the JRM. With respect to the on-going management of protective proceedings cases and reports, Chief Justice Directive 11-03 was implemented to **require** courts to follow a consistent set of procedures for administering Protective Proceedings cases statewide. Chief Justice Directive 11-03 mandates:

[E]ach court of record, including judicial officers and all Judicial Department personnel, shall comply with the section of the Judicial Resource Manual containing policies and procedures for Protective Proceeding Cases.

**2. Are there any recommendations still outstanding from the two audits? If so, please explain why they are still outstanding and when the Judicial Department plans to implement them.**

Regarding Recommendation Number 7 in the 2011 Report concerning the evaluation of professional guardians and conservators, the Department consulted with the State Auditor's Office in 2013 and determined that this recommendation was no longer applicable, as the concerns are being addressed through the enhanced monitoring and training of all appointees, as discussed above. Since that time, the Protective Proceedings Audits have identified issues that have resulted in the Department revisiting this recommendation. The Department is currently considering options for a system to objectively assess the performance of professional guardians and conservators.

**3. Are there any additional changes that the Judicial Department plans to make to improve the probate system?**

Over the next year, SCAO intends to continue its efforts in providing support and trainings to PPMs, probate registrars, court staff, court visitors and the public to include:

- 1) Case processing/management by reviewing each section under protective proceedings in the JRM.
- 2) A combined effort with probate registrars to update all sections under Estate Actions in the JRM.
- 3) Informational modules for testate and intestate cases, formal, and informal proceedings to be posted on the Judicial Website.
- 4) Court Visitor Training Modules – “Interviewing Skills” and “Report Writing”.

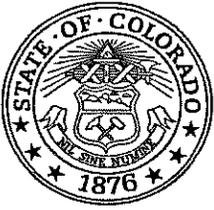
Collaborative efforts between the Probate Advisory Committee and the Colorado Bar Association Rules and Forms Committee will continue. Current changes under review are:

- 1) The Colorado Rules of Probate Procedure (CRPP).
- 2) Multiple JDF forms.

As discussed in response to question 2 above, the Department is considering a system to assess the performance of professional guardians and conservators.

# Office of the State Court Administrator

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*Probation Services*

March 5, 2007  
Senator Stephanie Takis  
Legislative Audit Committee  
C/O Office of the State Auditor  
200 East 14<sup>th</sup> Avenue,  
Denver CO 80203

Dear Senator Takis and Legislative Audit Committee members:

Please find enclosed the status report on the Recommendations from the Oversight of Probate Cases Performance Audit of September 2006. If you need me to answer any questions please contact me at 3033567726 or [gerald.marroney@judicial.state.co.us](mailto:gerald.marroney@judicial.state.co.us)

Sincerely,

Gerald A. Marroney  
State Court Administrator

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Rec 1	Improve the consistency and effectiveness of court review of conservator and guardian plans and reports by establishing minimum review procedures; requiring guardians and conservators to maintain detailed information on fees and expenditures; and developing a risk-based model for reviewing higher-risk guardian and conservator cases.	Judicial Branch	Agree	July 2007
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**Status of this recommendation is "in Progress" see the summary below:**

A report entitled "Oversight of Probate Cases – Colorado Judicial Branch Performance Audit – September 2006" prepared by Clifton Gunderson LLP has identified deficiencies in the supervision process of the Judicial Branch. The report focused upon guardians and conservators because the auditors recognized that courts have a higher level of responsibility for monitoring these appointees.

In November, 2006, Chief Justice Mullarkey established the Protective Proceedings Task Force charged with the task of establishing effective procedures and controls for administering and monitoring conservatorships, guardianships, disability and special needs trusts, protective arrangements and single transactions, restricted accounts and personal injury and insurance settlements to the extent deemed necessary.

The Task Force surveyed all Judicial Districts requesting information about its procedures for managing probate cases. Over 90% of the Districts responded to the survey. The Task Force met on January 19 and February 22, 2007 to review the audit recommendations, consider the results of the statewide survey of court practices, and to formulate suggestions for improving court management of guardian and conservator cases. Many of the suggestions contained in the report can be implemented by September 1, 2007. Others require further study, computer programming changes and/or legislation and may take several months before being finalized. The Task Force intends to extend its membership to bar members and advocate group representatives during the next two months. The Task force will also be arranging for public meetings where the public can voice concerns about the issues raised in the report and the Task Force members can hear the issues directly and try to address those concerns.

After reviewing the survey results, the Task Force recognizes that procedures for monitoring the filing of guardian and conservator reports and plans vary across the state. To help standardize procedures, the Task Force began developing a list of Best Business Practices. The initial list of Best Business Practices will be complete by September 1, 2007. A draft set of Best Business Practices was set forth in Appendix A to the report submitted. The Task Force anticipates a continuous review of court procedures to identify areas where Judicial Branch operations may be improved. Many of the items identified on the list will be implemented by that date. The list of Best Practices will be supplemented by instructions on their use, such as:

- a) Detailed instructions for clerks to follow when entering and monitoring review dates. (See Best Practices item # 1 and # 2)

- b) Procedures for clerks to follow when a guardian or conservator fails to file plans, reports, etc., by the due date. (See Best Practices item # 3 )
- c) Recommendations for court imposed sanctions when the guardian or conservator does not respond to the clerks' reminders. (See Best Practices item # 4)

To insure consistent implementation of the Best Practices, training for clerks and judges will be necessary. The Task Force anticipates that regional trainers will be able to assist with this however, additional funding may be necessary to adequately address the training component.

In addition to creating Best Practice standards for entering, monitoring, and following up on the guardian/conservator's reporting responsibilities, the Task Force is developing several forms and checklists for the clerks and judges use so that the process is as efficient as possible. The draft of these forms will be complete by July 1, 2007. Some of the forms may require Bar Association or Supreme Court approval, which may take additional time to obtain. The list of forms is found at Appendix B.

The Task Force recommends that the dates for filing various reports be standardized so that guardians and conservators have fewer deadlines to remember and clerks' review will be simplified. For example, the initial guardian report is due within 60 days after appointment, the inventory and financial plan is due within 90 days. The Task Force recommends a statutory change, requiring all three filings to become due 90 days after appointment. The court system will need to work with the bar groups and other protective proceeding advocates and the Legislative Audit Committee when the draft of this legislation is completed. In the mean time the task force felt that each court could implement the process by ordering the dates to coincide.

In the meantime, the Task Force recommends implementing this standard as a Best Practice.

Once reports are received, the Task Force recommends following a standard format for their review. To aid the reviewer, the Task Force is developing a Conservator Review Checklist (see Draft Appendix B, Form 10) and a Guardian Review Checklist to be completed during the review of each report. The checklists highlight areas of concern identified by experienced staff and judges throughout the state and was developed as a way of minimizing problems that "slip through the cracks".

Because staffing limitations do not permit each court to review every report and plan, the Task Force recommends identifying those cases that are more or less likely to become problems. The Task Force recommends that judges create a Risk Factor Rating for each case immediately after appointing a guardian or conservator. The Risk Factor Rating would be used by courts to establish review frequency standards, review detail criteria, and to run reports. For example, a case with a high Risk Factor Rating might be set for an in-depth review every year, whereas a case with a low Risk Factor Rating might be set for an in-depth review every 4 years or it may receive a quick review every year. The application of the Risk Factor Rating would be flexible and allow each court to modify the monitoring of these cases based on current staffing and budget allocations. Additionally, courts could adjust the Risk Factor Rating during the administration of a case as circumstances warranted.

The Task Force needs additional time to determine what categories should be considered in the analysis and what type of rating factor will be assigned to each case, e.g. Low, Medium or High Risk or a specific rating number. A Risk Factor Rating Checklist has been drafted by the Task Force (see Draft Appendix B, Form 11) to aid the on-going discussion. The Task Force recommends that the Risk Factor Rating be used to create management reports. The current Judicial Branch computer system does not provide for this feature, consequently computer programming changes are necessary. In addition, further study is necessary to determine whether the Risk Factor Rating should be kept confidential and, if so, how to keep it confidential while, at the same time, entering the Rating into the courts' computer system.

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Rec  
2

Consider a range of options for ensuring fees charged by guardians and conservators are reasonable and that policies for determining reasonableness are consistently applied by the courts.

Judicial  
Branch

Agree

July  
2007

**Status of this recommendation is "in Progress" see the summary below:**

While some districts indicated they would appreciate some guidance regarding fees, the committee believes it is improper for the courts to set fees for independent service providers. See Goldfarb v. Virginia State Bar, 421 U.S. 773 (1975) that found minimum fee schedules set by a county bar association constituted price-fixing and violated the Sherman Antitrust Act.

The Task Force believes it would be helpful to establish criteria to assist those who review conservator reports and petitions for approval of fees (if filed separately from the report). To that end, the Task Force developed a Conservator's Review Checklist (see Draft Appendix B, Form 10) that includes the following questions:

- Is the Conservator requesting fees?
- Did the Conservator indicate the hourly rate charged? (Fees that fall outside a range of what are usual and customary in the community may need to be scrutinized more closely.)
- Did the Conservator detail the services provided and dates upon which they were provided? (Without giving proper detail, neither interested persons nor the court can determine whether the services were reasonable and necessary.)
- If the Conservator is a family member, did he/she charge for things that are typically considered family obligations, such as dinner with the protected person, etc? (This is a red flag and should not ordinarily be approved.)
- Did the Conservator charge in the upper end of the range for tasks that could have been delegated to someone who would have charged less? (For example, a professional conservator should not charge his/her highest rate for performing tasks such as shoveling snow or running everyday errands.)

The Task Force also recommends the creation of a Guardian's and Conservator's User Manual to inform Guardian's and Conservator's about the standards related to fiduciary fees. (See Appendix C, Draft Table of Contents of the User Manual).

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3	28	Improve procedures for ensuring that professional and nonprofessional guardians and conservators are qualified to perform their duties toward protected persons.	Judicial Branch	Agree	July 2007
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**Status of this recommendation is "in Progress" see the summary below:**

The Task Force agrees that well-trained guardians and conservators are needed but does not believe it is appropriate for the Judicial Branch to establish a training program because this may be perceived as a conflict of interest. Furthermore, the Court has the authority to direct the fiduciary to obtain proper training from independent sources.

As an alternative to establishing a training program, the Task Force recommends developing User Manuals to assist the newly appointed guardian and conservator to understand their responsibilities. The manuals will include information specific to their case, such as filing due dates, and general information, such as definitions, duties and responsibilities, frequently asked questions, etc. They will also include helpful forms that can be copied and, where appropriate, filed with the court. A key component of the User Manuals is the Acknowledgment of Responsibilities form (See Draft Appendix B Form 1). The form lists in one place and in simple terms many of the guardian/conservator's duties, particularly those related to filing deadlines, and it requires the guardian/conservator to acknowledge that they have been given this information. Samples of completed forms will also be included in the Manual. A sub-committee will be formed to develop the User Manuals. The sub-committee will be comprised of Judicial Branch employees, members of the bar, and other interest groups. Within the User Manuals, the Task Force plans to provide an extensive resource guide that will include training information currently available from the Bar Association and other sources.

The Task Force recognizes that many newly appointed Conservators/Guardians would better understand their duties if they were able to spend a few minutes with a staff person trained in this area, such as a protective proceeding facilitator (similar to a family court facilitator for domestic relations cases). The Task Force recommends further study of how this service could be provided. The Task Force is currently considering three ways to provide this service: **1)** creating probate facilitator positions in each judicial district, **2)** expanding the probate registrar's duties, or **3)** creating an Office of Probate Services within the Office of the State Court Administrator to provide statewide assistance on probate matters.

The Task Force recommends further study on the topic of professional guardian/conservator licensing, training, and establishing a pool of qualified professionals.

A number of the deficiencies associated with selection of guardians and conservators may have been addressed by the recent statutory requirement that nominees submit a current credit report and/or submit to a background check. When the audit was performed, this requirement had been in effect for only one year and its positive impact may not have been measurable so soon after enactment.

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4	31	Improve communications used to inform interested parties of their rights and responsibilities related to oversight of trustees and personal representatives.	Judicial Branch	Agree	July 2007
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**Status of this recommendation is "in Progress" see the summary below:**

One of the purposes of the Uniform Probate Code is to shift the responsibility of protecting the rights of interested persons in trusts and decedents' estates from the courts to the persons themselves. The Task Force recognizes that interested persons often do not understand their role and rights. As a Best Business Practice, the Task Force plans to develop a document describing interested persons' roles, as well as the procedure for bringing concerns to the court's attention. A part of the Best Business Practice will be to determine the best manner for getting this document into the hands of interested persons and to recommend that all courts enter the name and address of each interested person into the computer system.

Although this recommendation is aimed at trusts and decedents' estates, the issue raised applies to all Guardianships and Conservatorships as well, and this Best Business Practice should be applicable to all probate cases.

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**Status of this recommendation is "in Progress" see the summary below:**

By consistently following the Best Practices discussed in earlier sections, critical data will be entered and monitored. In order to assist clerks with these tasks, the committee recommends the following programming enhancements be incorporated during the development of the new computer system called JPOD. Sub-committees will be assigned to specifically address programming issues in the area of Probate. Some of the issues identified by the Task Force are as follows:

- a) Automate the issuance of various notices and orders.
- b) Establish a "Maintenance" or "Administration" category for all Conservatorship and Guardianship cases upon the issuances of letters. This category will identify cases that require court review of annual reports. Cases will only be in closed status when the Guardianship/Conservatorship is terminated.
- c) Create Risk Factor Rating field.

Whether to create a system for electronic data input of guardian care plans, conservator financial plans and annual reports is an area the Task Force believes requires further study. The Task Force recognizes the potential value of such a system, but has concerns about its feasibility.

# APPENDIX A

## BEST PRACTICES

### DRAFT

(Sub-committees will determine completion and implementation dates.)

1. Develop standardized procedure for entering case information, filing deadlines, and judges' review of reports into the computer system. Provide case status BRIO query to Chief Judges and District Administrators.
2. Rigorously monitor filing deadlines.
3. Notify Guardians/Conservators who have missed filing deadlines.
4. Sanction Guardians/Conservators who refuse to comply with orders regarding filing deadlines.
5. Use **Restricted Account Log** to monitor requests for withdrawal in cases where the conservator files frequent Petitions for Authority to Withdraw Funds.
6. When appointing Guardians and Conservators, set the deadline for filing the initial guardian's report, the inventory, and the financial plan on the same date. The standard filing date should be 90 days from the date of appointment, unless there is good reason to select another date.
7. Indicate the actual date in the order, rather than relying on the term "within ninety (90) days".
8. Require annual guardian reports to be filed on the anniversary date of the initial guardian's report rather than the anniversary date of the appointment. By incorporating items 6, 7, and 8, the case will have one follow-up date for most purposes. If parties wish to file on a calendar year, then they can motion the court with their request.
9. Require the initial guardian report, and the conservator's inventory and financial plan to all be filed on the same date: 90 days from the date of appointment.
10. Enter driver's license number and identifying information of guardian/conservator in eclipse so, if necessary, a sheriff will have the information necessary to personally serve the person if we need to issue a show cause order.
11. Ensure that the Order Appointing Guardian and Order Appointing Conservator, names all persons who are required to receive various notices, reports, and plans. The names of all shall be entered to the

computer system to assist with the verification that such notices were properly given.

12. In appropriate cases, require the nominee to file a preliminary financial plan at or before the initial hearing.

# APPENDIX B

## PROPOSED CHECKLISTS AND FORMS

### ALL FORMS ARE DRAFT

1. Acknowledgment of Responsibilities (JDF 40)
2. Motion for Approval of Financial Plan (JDF 41)
3. Order Regarding Motion for Approval of Financial Plan (JDF 42)
4. Delay Prevention Order (JDF 45)
5. Order to Show Cause (JDF 46)
6. Motion for Authority to Withdraw Funds (JDF 47)
7. Order Regarding Motion for Authority to Withdraw Funds (JDF 48)
8. Restricted Account Log (JDF 49)
9. Order Approving Personal Injury Settlement (JDF 53)
10. Conservator's Report Review Checklist (JDF 54)
11. Risk Factor Checklist (JDF 55)
12. Guardian/Conservator Time Tracking Sheet - to be developed.
13. Guardian's Report Review Checklist – to be developed.
14. Advisement to Interested Persons Regarding their Role and Responsibilities - to be developed.

**APPENDIX C**  
**USERS' MANUAL**  
**TABLE OF CONTENTS**  
**DRAFT**

- 1. Acknowledgment Form (This is also a good place to place any Orders you receive from the Court.)**
- 2. Definitions**
- 3. General Information Regarding Your Appointment as a Conservator**
- 4. FAQ's and Helpful Tips**
- 5. Resources (Including training information currently available from the Bar Association and other sources).**
- 6. Blank Forms to get You Started**
- 7. Sample Forms Completed**
- 8. Your Personal Section (This may be a great place for you to maintain financial documentation, receipts, etc.)**

# Office of the State Court Administrator

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ATTACHMENT F

Gerald A. Marroney  
*State Court Administrator*

Carol M. Haller  
*Legal Counsel*

Troy C. Singleton  
*Administrative Assistant*

**DIRECTORS**

Mindy Masias  
*Human Services*

Mary Flanigan, CFO  
*Financial Services*

Robert T. Roper, CIO  
*Judicial Business Integrated  
With Technology Services*

Sherry Stwally  
*Planning & Analysis  
Legislative Liaison*

Thomas Quinn  
*Probation Services*

February 22, 2008  
Representative James Kerr  
Legislative Audit Committee  
C/O Office of the State Auditor  
200 East 14<sup>th</sup> Avenue,  
Denver CO 80203

Dear Representative James Kerr and Legislative Audit Committee members:

Please find enclosed a brief status report on the Recommendations from the Oversight of Probate Cases Performance Audit of September 2006. I have enclosed also a copy of the executive summary of the actions taken to date in a document entitled: **FINAL REPORT TO THE CHIEF JUSTICE AND STATE COURT ADMINISTRATOR** and have also sent to the state auditor a document of appendices of 141 pages or so of more detail on what we have done regarding this audit. If you need me to answer any questions please contact me at 3033567726 or [gerald.marroney@judicial.state.co.us](mailto:gerald.marroney@judicial.state.co.us)

Sincerely,

Gerald A. Marroney  
State Court Administrator

## **Brief Status report on responses to Specific Audit Recommendations**

### **Recommendation #1:**

*Improve the consistency and effectiveness of court review of conservator and guardian plans and reports by establishing minimum review procedures; requiring guardians and conservators to maintain detailed information on fees and expenditures; and developing a risk-based model for reviewing higher-risk guardian and conservator cases.*

**Judicial Branch Agreed to the Recommendation. Implementation date: July 2007  
Summary Status of Recommendation #1 Implemented and Ongoing**

### **Judicial Branch and its task force response:**

Review and reporting procedures have been established by creating new event codes that will automatically schedule matters for review by judges or judicial assistants. Review work has been added to the daily Order of Business (Rule 3 of the Colorado Probate Rules of Procedure) for Probate Judges and the State Court Administrator's Office has agreed to review and reevaluate the manner in which "review" time is accounted for in staffing models. Periodic report forms have been revised to require fiduciaries to report fees and expenditures in detailed categories so that problems and irregularities can more readily be identified by court staff, interested persons and judicial officer. An assessment tool (JDF 804 – Monitoring Criteria Checklist) has been developed for judges to use in evaluating risks and suggested levels of supervision in protective proceedings to the end that more regular and stringent review can be assigned to higher risk cases. The Task Force anticipates that this form will be available in March/April of 2008. The State Court Administrator has established internal audit procedures via its internal auditors to review randomly sampled probate cases for the proper documentation of required filings of guardianship and conservatorship reports and accountings.

### **Recommendation #2:**

*Consider a range of options for ensuring fees charged by guardians and conservators are reasonable and that policies for determining reasonableness are consistently applied by the courts.*

**Judicial Branch Agreed to the Recommendation. Implementation date: July 2007  
Summary Status of Recommendation #2 Implemented**

### **Judicial Branch and its task force response:**

Although concerned about the reasonableness and fairness of fiduciary fees, the Task Force concluded that under Goldfarb v. Virginia State Bar, 421 U.S. 773 (1975) a fee schedule as such would constitute price-fixing and thus would violate the Sherman Antitrust Act. The Task Force concluded that the best available approach to monitoring fees is for reviewing judges to require detailed accountings and justifications. This will require judicial education as to the factors constituting reasonableness of fees. In addition, more statewide training of judges will provide less experienced judges with opportunities to develop standards for reviews based on training materials and interaction with experienced judges. Training is ongoing and curriculum will be developed.

**Recommendation #3:**

*Improve procedures for ensuring that professional and nonprofessional guardians and conservators are qualified to perform their duties toward protected persons.*

**Judicial Branch Agreed to the Recommendation. Implementation date: July 2007  
Summary Status of Recommendation #3 Implemented**

**Judicial Branch and its task force response:**

The creation of user manuals for both guardians and conservators will help to educate and inform fiduciaries as to their duties and will provide forms and materials to improve compliance with court orders and with statutory reporting requirements. The Task Force generally is committed to the use of both lay and family fiduciaries. Numerous scenarios for the training of both have been considered by the Further Studies Subcommittee recognizing that in those states where guardians and conservators follow a state-prescribed training program, are certified, licensed, registered, regulated and disciplined by the states, significantly more financial resources at the state level are devoted to guardianship/conservatorship programs. While the Task Force recognizes that professional fiduciaries play a significant role in a system such as ours, the Task Force concluded that specific qualifications for those professional fiduciaries should only be established by legislation, if the legislature thinks that is appropriate.

**Recommendation #4:**

*Improve communications used to inform interested parties of their rights and responsibilities related to oversight of trustees and personal representatives.*

**Judicial Branch Agreed to the Recommendation. Implementation date: July 2007  
Summary Status of Recommendation #4 Implemented**

### **Judicial Branch and its task force response:**

Existing forms used to provide notice to interested persons have been revised to clarify and to highlight the rights and responsibilities of interested persons *vis-a-vis*, trustees and personal representatives. Although this recommendation is somewhat abroad from the matter of protective proceedings, in that courts seldom appoint trustees and because personal representatives are usually designated in wills, the Task Force concluded that the same general practices apply, and that the expanded notice provisions will serve all types of estates and fiduciaries. The Probate Forms Subcommittee has changed the form of notice to interested persons in decedent's estates to feature certain important notice requirements more prominently on the forms. With the encouragement of the Task Force, the Colorado Bar Association Probate and Trust Law Section's Statutory Revisions Committee has proposed a change in the procedure and the form of notice to trust beneficiaries to directly address the concern set out in the Probate Audit regarding notice to persons with interests in trusts.

### **Recommendation #5:**

*Strengthen controls over the management of probate cases by making improvements to the automated case management system.*

**Judicial Branch Agreed to the Recommendation. Implementation date: January 2008**

**Summary Status of Recommendation #5 Implemented as to phase 1 ICON  
Ongoing as to phase 2 jPOD**

### **Judicial Branch and its task force response:**

Two tasks are underway within the Judicial Branch to improve the electronic case management system. The first is the creation of new event codes and business practices which are an adjunct to the expanded program. These codes will enable protective proceedings to be better tracked. The second task is the creation of the jPOD (Judicial Paper on Demand) program, as the successor to the present ICON/Eclipse systems. The jPOD system will enable judges and judicial assistants to more easily access protective proceedings files and to set monitoring/supervision deadlines. The jPOD system is expected to be operational statewide in the next 3 – 4 years, with some sections being completed in phases.

# Colorado Judicial Branch



## PROTECTIVE PROCEEDINGS TASK FORCE

FINAL REPORT TO THE CHIEF JUSTICE AND STATE COURT  
ADMINISTRATOR

January 4, 2008

## Introduction

The Protective Proceedings Task Force was created by the Chief Justice in November 2006 in response to an audit completed in September 2006 that disclosed deficiencies in the supervision by the Judicial Branch of protective proceedings.

The initial report of the Protective Proceedings Task Force was provided to the State Court Administrator and Chief Justice dated February 28, 2007 and a follow-up report was prepared in September 2007 for the public hearing. A public hearing was held on September 28, 2007, to provide the opportunity for the public to present their issues and concerns in the area of protective proceedings. This report summarizes the issues presented by the public and identifies a response from the Task Force.

This final report sets forth the efforts undertaken to date and recommendations by the Judicial Branch to address the issues noted in the audit report. To enable the reader to consider these matters in context, the underlying audit, charge to the Task Force and other backgrounds documents are included in the appendices.

## Executive Summary

### Narrative Response

The Probate Performance Audit Report noted concerns or deficiencies in connection with protective proceedings by the Judicial Branch in (1) monitoring and supervising court-appointed fiduciaries, (2) appointee compensation, (3) appointee screening and selection, (4) notice and communications to interested parties, and (5) necessary system improvements. The audit made specific recommendations regarding each area. The Office of the State Court Administrator (SCAO) agrees with these recommendations. It is these recommendations, and related matters, that the Task Force worked to implement. Detailed responses are set forth below.

The overall response by the Task Force is summarized by its undertakings in the broad areas of communications, monitoring and enforcement, and policies and resources. These branch-wide objectives are being implemented by:

- ◆ Revisions to the guide book used by judicial assistants in determining the appropriate action to be taken upon the happening of specified events in protective proceedings cases. This guide book, better known as the Clerk's Manual, is the at-hand reference for judicial assistants throughout Colorado when they are presented with first-impression case processing issues in their courts. The creation and publication of a companion work for the use of lay fiduciaries is the User's Manual. It is geared to helping appointees understand their fiduciary capacities and what practical steps to take when assuming their positions. Training for fiduciaries, judges, and court visitors is an additional component of the communications response.
- ◆ Updating and revising the forms used by *pro se* litigants and attorneys and developing instructions to assist *pro se* litigants. This extensive overhaul of the forms and instructions available to the public on the Judicial Branch self-help center website has been labor intensive and is still in progress. The revised forms are shorter, clearer, more consistent and have better instructions. In addition, we are developing many new instructions to assist the *pro se* litigants. The process for future revisions and drafting of new forms and instructions has also been streamlined.
- ◆ Creating new, more specific case classifications, modifying and refining event codes and providing appropriate monitoring forms. These codes detailed in a later section of this report are the computer input shorthand keys that allow improved tracking and monitoring of protective proceedings cases. The entry of the code "CRPT" for example, will record the filing of a Conservator's Accounting Report by a fiduciary in the Register of Actions for the case, which is the chronological summary of all actions taken in that case. Court employees will set a date in the future when the next accounting is due and will enter event codes for tracking and statistical purposes to document the filing and review of required reports. Reminder notices, delinquency notices, show cause orders, or other kinds of reporting and monitoring documents will be entered as event codes to identify the court's role in monitoring the filing of the required reports. Prior to the efforts of the Task Force no such events codes existed;

now ten event codes have been approved for protective proceedings cases. These event codes will also allow the compilation of tracking data for specific courts, judges, case types, and actions. In addition, consistent business practices are being implemented to better monitor protective proceedings. (For details see the reports from the Best Practices and User's Manual subcommittees.)

- ◆ Systemic changes. The Task Force supports (1) the adoption of statutes to clarify and strengthen the role of the courts in overseeing the administration of protective proceedings, (2) the earmarking of resources within the Judicial Branch to assist in administering and training in probate matters, and (3) on going efforts to improve supervision of protective proceedings. (See the specific recommendations made by the Further Studies Subcommittee.)

## **Responses to Specific Audit Recommendations**

In summary, the recommendations made in the audit and the responses of the Task Force are as follows:

### **Recommendation #1:**

*Improve the consistency and effectiveness of court review of conservator and guardian plans and reports by establishing minimum review procedures; requiring guardians and conservators to maintain detailed information on fees and expenditures; and developing a risk-based model for reviewing higher-risk guardian and conservator cases.*

### **Task Force Response:**

Review and reporting procedures have been established by creating new event codes that will automatically schedule matters for review by judges or judicial assistants. Review work has been added to the daily Order of Business (Rule 3 of the Colorado Probate Rules of Procedure) for Probate Judges and the State Court Administrator's Office has agreed to review and reevaluate the manner in which "review" time is accounted for in staffing models. Periodic report forms have been revised to require fiduciaries to report fees and expenditures in detailed categories so that problems and irregularities can more readily be identified by court staff, interested persons and judicial officer. An assessment tool (JDF 804 – Monitoring Criteria Checklist) has been developed for judges to use in evaluating risks and suggested levels of supervision in protective proceedings to the end that more regular and stringent review can be assigned to higher risk cases. The Task Force anticipates that this form will be available in March/April of 2008.

### **Recommendation #2:**

*Consider a range of options for ensuring fees charged by guardians and conservators are reasonable and that policies for determining reasonableness are consistently applied by the courts.*

### **Task Force Response:**

Although concerned about the reasonableness and fairness of fiduciary fees, the Task Force concluded that under Goldfarb v. Virginia State Bar, 421 U.S. 773 (1975) a fee schedule as such would constitute price-fixing and thus would violate the Sherman Antitrust Act. The Task Force concluded that the best available approach to monitoring fees is for reviewing judges to require detailed accountings and justifications. This will require judicial education as to the factors constituting reasonableness of fees. In addition, more statewide training of judges will provide less experienced judges with opportunities to develop standards for reviews based on training materials and interaction with experienced judges.

### **Recommendation #3:**

*Improve procedures for ensuring that professional and nonprofessional guardians and conservators are qualified to perform their duties toward protected persons.*

### **Task Force Response:**

The creation of user manuals for both guardians and conservators will help to educate and inform fiduciaries as to their duties and will provide forms and materials to improve compliance with court orders and with statutory reporting requirements. The Task Force generally is committed to the use of both lay and family fiduciaries. Numerous scenarios for the training of both have been considered by the Further Studies Subcommittee recognizing that in those states where guardians and conservators follow a state-prescribed training program, are certified, licensed, registered, regulated and disciplined by the states, significantly more financial resources at the state level are devoted to guardianship/conservatorship programs. While the Task Force recognizes that professional fiduciaries play a significant role in a system such as ours, the Task Force concluded that specific qualifications for those professional fiduciaries should only be established by legislation.

### **Recommendation #4:**

*Improve communications used to inform interested parties of their rights and responsibilities related to oversight of trustees and personal representatives.*

### **Task Force Response:**

Existing forms used to provide notice to interested persons have been revised to clarify and to highlight the rights and responsibilities of interested persons *vis-a-vis*, trustees and personal representatives. Although this recommendation is somewhat abroad from the matter of protective proceedings, in that courts seldom appoint trustees and because personal representatives are usually designated in wills, the Task Force concluded that the same general practices apply, and that the expanded notice provisions will serve all types of estates and fiduciaries. The Probate Forms Subcommittee has changed the form of notice to interested persons in decedent's estates to feature certain important notice requirements more prominently on the forms. With the encouragement of the Task Force, the Colorado Bar Association Probate and Trust Law Section's Statutory Revisions Committee has proposed a change in the

procedure and the form of notice to trust beneficiaries to directly address the concern set out in the Probate Audit regarding notice to persons with interests in trusts.

**Recommendation #5:**

*Strengthen controls over the management of probate cases by making improvements to the automated case management system.*

**Task Force Response:**

Two tasks are underway within the Judicial Branch to improve the electronic case management system. The first is the creation of new event codes and business practices which are an adjunct to the expanded program. These codes will enable protective proceedings to be better tracked. The second task is the creation of the jPOD (Judicial Paper on Demand) program, as the successor to the present ICON/Eclipse systems. The jPOD system will enable judges and judicial assistants to more easily access protective proceedings files and to set monitoring/supervision deadlines. The jPOD system is expected to be operational statewide in the next 3 – 4 years, with some sections being completed in phases.