

# Office of the State Court Administrator



March 12, 2012

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Dianne Ray  
State Auditor  
Colorado Office of the State Auditor  
200 E. 14<sup>th</sup> Avenue, 2<sup>nd</sup> Floor  
Denver, CO 80203-2211

Dear Ms. Ray:

In response to your request, we have prepared an updated status report regarding implementation of the audit recommendations contained in the September 2011 *Judicial Branch Oversight of Guardianships and Conservatorships Performance Audit*. The attached report provides a brief explanation of the actions taken by both the State Court Administrator's Office and the Colorado courts to implement each recommendation.

If you have questions, please feel free to contact me at (303) 861-1111 or by e-mail 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 Marroney", with a long, sweeping flourish extending to the right.

Gerald Marroney  
State Court Administrator

## AUDIT RECOMMENDATION STATUS REPORT

**AUDIT NAME:** Judicial Branch Oversight of Guardianships and Conservatorships Performance Audit

**AUDIT NUMBER:** 2132

**DEPARTMENT/AGENCY/ENTITY:** Judicial Branch

**DATE:** September 2011

### SUMMARY INFORMATION

Please complete the table below with summary information for all audit recommendations. **For multi-part recommendations, list each part of the recommendation SEPARATELY.** (For example, if Recommendation 1 has three parts, list each part separately in the table.)

<b>Recommendation Number</b> <i>(e.g., 1a, 1b, 2, etc.)</i>	<b>Agency's Response</b> <i>(i.e., agree, partially agree, disagree)</i>	<b>Original Implementation Date</b> <i>(as listed in the audit report)</i>	<b>Implementation Status</b> <i>(Implemented, Implemented and Ongoing, Partially Implemented, Not Implemented, or No Longer Applicable)</i>	<b>Revised Implementation Date</b> <i>(Complete only if agency is revising the original implementation date.)</i>
			Please refer to the attached sheet for definitions of each implementation status option.	
1a	Agree	November 2011	Implemented and Ongoing	
1b	Agree	November 2011	Implemented and Ongoing	
2	Agree	November 2011	Implemented and Ongoing	
3a	Agree	November 2011	Implemented and Ongoing	
3b	Agree	November 2011	Implemented	
3c	Agree	July 2012	Partially Implemented	August 2012
4a	Agree	December 2012	Implemented and Ongoing	
4b	Agree	December 2012	Partially Implemented	
4c	Partially Agree	December 2012	Partially Implemented	
4d	Agree	December 2012	Implemented and Ongoing	
4e	Agree	December 2012	Partially Implemented	October 2012
5a	Agree	December 2011	Implemented and Ongoing	

<b>Recommendation Number</b> <i>(e.g., 1a, 1b, 2, etc.)</i>	<b>Agency's Response</b> <i>(i.e., agree, partially agree, disagree)</i>	<b>Original Implementation Date</b> <i>(as listed in the audit report)</i>	<b>Implementation Status</b> <i>(Implemented, Implemented and Ongoing, Partially Implemented, Not Implemented, or No Longer Applicable)</i>  Please refer to the attached sheet for definitions of each implementation status option.	<b>Revised Implementation Date</b> <i>(Complete only if agency is revising the original implementation date.)</i>
5b	Agree	December 2011	Implemented and Ongoing	
6a	Agree	December 2012	Partially Implemented	
6b	Agree	December 2013	Partially implemented	
6c	Agree	December 2012	Partially Implemented	
6d	Agree	December 2012	Partially Implemented	
6e	Agree	December 2012	Partially Implemented	
6f	Agree	December 2012	Partially Implemented	
7	Agree	June 2012	Not Implemented	
8a	Agree	December 2012	Implemented and Ongoing	
8b	Agree	December 2012	Implemented and Ongoing	
8c	Agree	December 2012	Partially Implemented	
9a	Agree	December 2011	Implemented and Ongoing	
9b	Agree	December 2011	Implemented and Ongoing	

## DETAIL OF IMPLEMENTATION STATUS

### Recommendation #: 1

Agency Addressed: Judicial Branch

### Recommendation Text in Audit Report:

The Judicial Branch should ensure that courts obtain statutorily required background information from individuals nominated to serve as a guardian or conservator to help protect the vulnerable wards served by these individuals. Specifically, the Judicial Branch should:

- a. Provide specific direction to the courts through a Chief Justice Directive or in the *Trial Court Resource Manual* on the statutory requirements related to the information nominees must provide prior to their appointment, including the requirements for public administrators and professional guardians and conservators. The Branch should provide periodic training to the courts on this information.
- b. Mandate that courts require guardians and conservators to use the appropriate Judicial Department Acceptance of Office form and discontinue the practice of accepting forms that do not comply with the approved format.

Agency's Response (i.e., Agree, Partially Agree, or Disagree): Agree

### Agency's Written Response in Audit Report:

- a. The Judicial Branch agrees that all statutory requirements must be met. The *Trial Court Resource Manual* has been revised to clarify the case types in which the Acceptance of Office form [Judicial Department Form (JDF) 805] must be accompanied by a name-based criminal history record check and a current credit report. Judges, clerks of court, and probate registrars were sent a training e-mail advising them of the requirements.
- b. The *Trial Court Resource Manual* has been revised to indicate that the Acceptance of Office form must be filed using the most current version of JDF 805. Judges, clerks of court, and probate registrars were sent a training e-mail advising them of the requirement.

The Judicial Branch will seek a mandate from the Chief Justice, by means of a Chief Justice Directive, requiring all judicial officers and personnel to comply with the section of the *Trial Court Resource Manual* containing policies and procedures for protective proceeding cases, which includes guardianship and conservatorship cases.

**Agency's Current Comments on Implementation Status of Recommendation:**

- a. Implemented and Ongoing. In September 2011, the protective proceedings section of the Judicial Resource Manual (JRM), formerly the Trial Court Resource Manual, was revised to clarify the case types in which the Acceptance of Office form must be accompanied by a name-based criminal history record check and a current credit report. In July 2011, judges, clerks of court, and probate registrars were informed of the requirements. Registrars will be further trained on this topic at the Spring Registrars' Conference in March 2012, and periodically thereafter. (See attached conference agenda.)

Chief Justice Directive 11-03 was issued in September 2011. The Directive requires judges and court personnel to comply with the policies and procedures contained in the protective proceedings section of the JRM. (See attached Chief Justice Directive.)

In addition to the Directive, the Chief Justice formed the Probate Advisory Committee in February 2012. The Advisory Committee will provide guidance and support for probate courts through establishment of best practices and the identification of training and educational needs. It will help develop evaluation tools to assist districts and the SCAO in assessing the effectiveness of probate courts, assist in the design and development of the probate component of the new case management system (jPOD), and clarify the roles of judges, district administrators, clerks of court, registrars and other staff.

- b. Implemented and Ongoing. Judges, clerks of court, and probate registrars were informed in July 2011, of the requirement that they accept for filing only the most current version of the Acceptance of Office form. In September 2011, the JRM was revised to include this requirement.

Registrars will be further trained on this topic at the Spring Registrars' Conference in March 2012, and periodically thereafter.

**Recommendation #: 2**

**Agency Addressed:** Judicial Branch

**Original Recommendation in Audit Report:**

The Judicial Branch should help ensure that the vulnerable individuals involved in guardianship and conservatorship cases are adequately protected by communicating to the courts the importance of appointing an attorney to represent a ward and providing additional direction to the courts in the *Trial Court Resource Manual* on the instances in which statute requires an attorney be appointed.

**Agency's Response** (i.e., agree, partially agree, disagree): Agree

**Agency's Written Response in Audit Report:**

The *Trial Court Resource Manual* will be revised to indicate the circumstances when appointment of an attorney to represent a ward is required. Judges, clerks of court, and probate registrars were sent a training e-mail advising them of the statutory requirements. The Court Visitor Report is being amended to highlight the visitor's recommendation to appoint an attorney, which creates a mandatory obligation on the court.

**Agency's Comments on Implementation Status of Recommendation:**

Implemented and Ongoing. Judges, clerks of court, and registrars were informed in July 2011, of the circumstances in which the court must appoint an attorney to represent a respondent. The protective proceedings section of the JRM was revised in September 2011, to include this same information.

Chief Justice Directive 11-03 was issued in September 2011. The Directive requires judges and court personnel to follow the directions contained in the protective proceedings section of the JRM.

Registrars will be further trained on this topic at the Spring Registrars' Conference in March 2012, and periodically thereafter.

**Recommendation #:** 3

**Agency Addressed:** Judicial Branch

**Original Recommendation in Audit Report:**

The Judicial Branch should help ensure that the rights of vulnerable wards are protected by:

- a. Providing training to the courts on the statutory requirement that a court visitor be appointed in every case involving an adult guardianship or conservatorship and that the court is responsible for ensuring that court visitors provide all of the statutorily required information to the court and to the ward prior to the appointment.
- b. Revising the Court Visitor's Report form to include all statutorily required information, including sections for a statement on the qualifications of the nominee and a recommendation regarding the appropriateness of the guardianship or conservatorship (including

whether “less restrictive means of intervention are available” and whether the court should limit the powers and duties of the guardian or conservator). The form should also include evidence that the petitioner was interviewed.

- c. Exploring and implementing low-cost, easily accessible options for regularly providing information and training to all court visitors regarding their statutory duties. This may include developing and implementing an online training program.

**Agency’s Response** (i.e., agree, partially agree, disagree): Agree

**Agency’s Written Response in Audit Report:**

- a. The *Trial Court Resource Manual* indicates the circumstances when appointment of a court visitor is required. It was revised to also indicate that the court visitor’s report must be filed using the most current version of the Court Visitor’s Report form (JDF 810) and that the court shall require all sections of the form to have been completed. Judges, clerks of court, and probate registrars were sent a training e-mail advising them of the statutory requirements for appointment of a court visitor and the requirement to accept only the most current and complete Court Visitor’s Report form.

The Judicial Branch will seek a mandate from the Chief Justice, by means of a Chief Justice Directive, requiring all judicial officers and personnel to comply with the section of the *Trial Court Resource Manual* containing policies and procedures for protective proceeding cases.

- b. The Judicial Branch agrees that the current Court Visitor’s Report form does not include all statutorily required information. A revised form has been drafted and sent to the Colorado Supreme Court for approval.
- c. The Judicial Branch agrees to explore ways to provide low-cost training to all court visitors regarding their statutory duties, such as creation of a training manual and online training videos, for example.

**Agency’s Comments on Implementation Status of Recommendation:**

- a. Implemented and Ongoing. In September 2011, the protective proceedings section of the JRM was revised to make clear the cases in which a visitor must be appointed. In August 2011, judges, clerks of court, and probate registrars were advised of the requirements.

Chief Justice Directive 11-03 was issued in September 2011. The Directive requires judges and court personnel to follow the directions contained in the protective proceedings section of the JRM.

Registrars will be further trained on this topic at the Spring Registrars' Conference in March 2012, and periodically thereafter.

- b. Implemented. In September 2011, the visitor's report form was revised to include all statutorily required information and statements. Judges, clerks of court, and registrars were advised to reject visitor's reports that are written on previous versions of the form or that are incomplete. The JRM was revised to include this instruction. (See attached Visitor's Report form.)

Registrars will be further trained on this topic at the Spring Registrars' Conference in March 2012, and periodically thereafter.

- c. Partially Implemented. SCAO staff is collaborating with the Colorado Bar Association to develop a visitor training program and manual. The committee meets monthly. We anticipate completing a training program or manual by the summer of 2012.

**Recommendation #: 4**

**Agency Addressed:** Judicial Branch

**Original Recommendation in Audit Report:**

The Judicial Branch should ensure that courts obtain all required reports from guardians and conservators to help protect the vulnerable wards served by these individuals. Specifically, the Branch should:

- a. Require that courts obtain a signed copy of the Acknowledgement of Responsibilities form from guardians and conservators at the time of appointment.
- b. Update the existing Eclipse system, or ensure that the new case management system is designed, to automate the entry of future reporting requirements (e.g. date of initial reports, date of annual reports, etc.) once an appointment is made, as well as having fail-safes that require court action on system alerts before the alert drops off the queue.
- c. Explore other sources of information that could be used to locate guardians and conservators who fail to submit required reports in the event that they do not inform the court of changes in their address. For example, the Branch could pursue the statutory authority to use addresses obtained from the Department of Revenue for jury pools for tracking down the most recent addresses of delinquent guardians or conservators and expand the type of contact information it obtains from guardians and conservators to include cell phone numbers.

- d. Require that courts follow up with and, as appropriate, take actions against guardians and conservators who fail to submit required reports. This may include sending reminder letters, issuing orders to appear before the court, or limiting or suspending the guardian's or conservator's authority until the reports are received.
- e. Evaluate whether to include expiration dates on guardian and conservator letters of authority to ensure that guardians or conservators who do not remain in contact with the court do not retain fiduciary authority over wards. Renewal letters could be issued when required reports are submitted.

**Agency's Response** (i.e., agree, partially agree, disagree): Agree (part a, b, d, and e); Partially Agree (part c)

**Agency's Written Response in Audit Report:**

We agree that the courts should obtain all required reports from guardians and conservators appointed to protect the vulnerable wards served by these individuals, and we will ensure such reports are obtained in the following ways:

- a. The Judicial Branch will seek a mandate from the Chief Justice, by means of a Chief Justice Directive, requiring that court-appointed guardians and conservators acknowledge their responsibilities in written form and file that signed acknowledgment with the court.
- b. We will increase training of court staff on both entering the necessary information and the ability to run reports to see which required reports are outstanding in the current case management system. We agree that the new case management system should require the user to set a report review date whenever there is a guardian or conservator appointed and the court orders the guardian or conservator to file a plan or report before the user can leave the screen.
- c. We will revise the forms to collect cell phone information. We will request the assistance of the Legislative Audit Committee to obtain a statutory provision allowing the Judicial Branch to use the database of the Department of Revenue for contact information for delinquent guardians and conservators. While we agree that tracking missing court-appointed guardians and conservators is an important task, this is not a function currently appropriated to the Judicial Branch. This additional responsibility will necessarily require additional Judicial Branch staff with the purpose of investigating the whereabouts of missing guardians and conservators.
- d. The courts currently have and utilize the authority listed in the recommendation. We will continue to provide training to both the courts and guardians and fiduciaries about their responsibilities and the possible ramifications of not following the statutes and court orders. Any action taken by the court is delicately balanced with the court's need to consider unintended harmful consequence of removing a guardian or conservator. As the audit report shows, improvements made by the courts in recent years have resulted in an increased

number of reports being submitted.

- e. We will analyze the recommendation, understanding that having letters expire after a year creates a burden on the court, on the guardians and conservators (which can increase costs to the protected party), and may not achieve the desired result if the court does not have a list of financial institutions to inform about the expiration of the guardian's or conservator's authority. Additionally, banks and financial institutions are already reluctant to serve guardians and conservators, and the notion that the financial institutions would have to research the authority for each transaction may be burdensome to these businesses.

**Agency's Comments on Implementation Status of Recommendation:**

- a. Implemented and Ongoing. In September 2011, the protective proceedings section of the JRM was revised to reflect that court-appointed guardians and conservators must complete and sign the Acknowledgment of Responsibilities form (JDF 800) and that Letters of Appointment should not be issued until this form is submitted to the court.

Chief Justice Directive 11-03 was issued in September 2011. The Directive requires judges and court personnel to follow the directions contained in the protective proceedings section of the JRM.

Registrars will be further trained on this topic at the Spring Registrars' Conference in March 2012, and periodically thereafter.

- b. Partially Implemented. A new case management system (jPod) is being developed. The probate component of jPod is projected for completion in December 2012. Preliminary meetings have been held regarding the need for automation capabilities, including automatic entry of report due dates and methods for preventing cases from dropping off the queue.

The opportunity to make changes to the existing case management system (Eclipse) is very limited. A manual review of active protective proceedings cases across the state is underway to help ensure that reporting requirements in cases are up to date and future report due dates are accurately noted. Each county will monitor their progress with the assistance of SCAO, and SCAO will offer technical support and training as needed.

Registrars and clerk of courts will be further trained on this topic at the Spring Registrars' Conference in March 2012, and periodically thereafter.

- c. Partially Implemented. In September 2011, the Judicial Branch began using a person-locating service (Accurint) to help locate guardians and conservators who fail to submit required reports and whose current addresses are not known to us.

Additionally, proposed legislation (HB 12-1074) authorizes probate courts to access data maintained by other state agencies in order to research the whereabouts of these missing guardians and conservators.

- d. Implemented and Ongoing. In September 2011, the JRM was revised to provide detailed steps for following-up with guardians and conservators who fail to file plans/reports as ordered by the court, including instructions for issuing delay prevention orders. Since March 2010, over 5,000 delay prevention orders have been issued by SCAO staff working with seven judicial districts that participated in a pilot program designed to explore best practices for monitoring these reports.

Any action taken by the court must be delicately balanced with unintended harmful consequences of removing a guardian or conservator. Addressing this issue is an agenda item for the newly created Probate Advisory Committee.

- e. Partially Implemented. The Denver Probate Court began using expiration dates on guardian and conservator letters in the summer of 2011—a preliminary assessment of this initiative will be conducted in the fall of 2012. Additionally, feedback was solicited from the Colorado Bar Association on the use expiration dates and will be considered by the Probate Advisory Committee in formulating any state wide policy.

**Recommendation #: 5**

**Agency Addressed:** Judicial Branch

**Original Recommendation in Audit Report:**

The Judicial Branch should ensure that guardians and conservators provide sufficient information in required reports for courts to assess whether the guardians and conservators are acting in the wards’ best interests by:

- a. Issuing a directive that the courts follow up with guardians and conservators who submit reports on forms other than the approved Judicial Department form or a form that conforms in substance, and require these individuals to resubmit the reports on the correct form. The courts should also consider taking action against guardians and conservators who repeatedly ignore the courts’ orders to that effect.
- b. Improving the guidance provided to guardians and conservators on required reports, including how to complete reports, what forms should be used, what information should be included in the reports and where to find it, and what constitutes sufficient supporting documentation.

**Agency's Response** (i.e., agree, partially agree, disagree): Agree

**Agency's Written Response in Audit Report:**

- a. The Judicial Branch agrees that use of the most current JDF report forms should be mandated and will seek a mandate from the Chief Justice, by means of a Chief Justice Directive, requiring their use as part of the requirement to follow the procedures and policies of the *Trial Court Resource Manual* for protective proceeding cases.

The *Trial Court Resource Manual* will be revised to indicate that reports on non-complying forms be accepted for filing, but that the guardian/conservator should be advised to immediately re-file the report on the most current form. Recommendations regarding possible sanctions against non-complying guardians and conservators were included in the revision. A form letter will be created to assist courts in meeting this recommendation. Judges, clerks of court, and probate registrars will be sent a training e-mail advising them of these changes.

- b. The Conservator's Manual, which is available on the state court website, contains instructions for developing a financial plan, maintaining records of financial transactions, and completing reports. Samples of a completed financial plan and annual conservator's reports are also included in the Manual. The Guardian's Manual contains similar instructions.

The Judicial Branch agrees with the recommendation to define the term "supporting documentation" and will do so by revising the Conservator's Manual and Guardian's Manual. Furthermore, we will review the manuals to determine what additional instruction would be helpful.

**Agency's Comments on Implementation Status of Recommendation:**

- a. Implemented and Ongoing. Judges, clerks of court, and registrars were advised in September 2011 to contact guardians and conservators who filed their reports on outdated forms and require them to re-file on the most current version. The JRM was revised to reflect this requirement. Instructions for issuing an Order to Show Cause to the non-complying guardians and conservators were included in the revision.

Chief Justice Directive 11-03 was issued in September 2011. The Directive requires judges and court personnel to follow the directions contained in the protective proceedings section of the JRM.

Registrars will be further trained on this topic at the Spring Registrars' Conference in March 2012, and periodically thereafter.

- b. Implemented and Ongoing. The online conservator's and guardian's instruction manuals were revised in September 2011, to more clearly define "supporting documentation". The Acknowledgment of Responsibilities form was also revised to include this information.

Since their creation, the Manuals have included instructions for developing a financial plan, maintaining records of financial transactions, and completing reports. Samples of a completed financial plan and annual conservator's reports are also included in the Conservator's Manual. The Guardian's Manual contains similar samples.

Revision and enhancement of the conservator's and guardian's instruction manuals is an ongoing process that we anticipate revisiting at least annually.

**Recommendation #: 6**

**Agency Addressed:** Judicial Branch

**Original Recommendation in Audit Report:**

The Judicial Branch should improve the monitoring required to protect vulnerable wards by strengthening the courts' review process for guardian and conservator reports by:

- a. Training court staff on using the Branch's risk assessment tool to determine priority for report review.
- b. Developing tools, including a standard automated report template for conservators to use to submit reports electronically, and automated reconciliation software for courts to use when reviewing reports.
- c. Evaluating the feasibility of having experts located within the State Court Administrator's Office conduct the reviews of more complex conservator reports.
- d. Providing training to court staff that continue to review reports to ensure they have the skills needed to review more complicated conservator reports. The Judicial Branch should also provide guidance to the courts on how to assess the reasonableness and appropriateness of expenditures when reviewing reports.

- e. Instructing the courts to appoint or contract with individuals with the appropriate level of technical expertise required to review more complex conservator reports when necessary.
- f. Conducting periodic audits, either at the courts or the State Court Administrator's Office, of the supporting documentation maintained by conservators to ensure that the submitted reports are accurate and that financial activity benefits the ward.

**Agency's Response** (*i.e., agree, partially agree, disagree*): Agree

**Agency's Written Response in Audit Report:**

- a. Implementation date: December 2012. The risk assessment checklist is a tool that may be used by the court when creating or reviewing protective proceeding cases. The list of red flags is not exhaustive and the items listed may not be present in the case before the judge. The Judicial Branch agrees to improve training on the use of the checklist and to encourage its use.
- b. Implementation date: December 2013. The development of monitoring tools is something we continue to research and to plan as capabilities in our new case management system.
- c. Implementation date: December 2012. The Judicial Branch agrees to evaluate the feasibility of having experts located within the State Court Administrator's Office conduct the reviews of more complex conservator reports in order to maximize the expertise and training necessary to perform this review and provide consistency in the review process. A committee has been formed to consider this recommendation, among other things, and to make a proposal by the end of September 2011.
- d. Implementation date: December 2012. We agree that there is a continuum of resources necessary to properly monitor the reports filed by conservators. We agree that continued training of both court staff and judicial officers is appropriate. This recommendation, when read in conjunction with the other sub-recommendations in this section advocate for a tiered approach to monitoring cases depending on the complexity of the estate and the vulnerability of the protected party. We agree that this approach is best and are committed to utilizing this method.
- e. Implementation date: December 2012. While this would be an additional cost to the ward's estate, we agree the appointment of outside experts or auditors is an appropriate tool to manage the monitoring of a complex estate. The Judicial Branch agrees to create procedures for appointing professionals to review complex conservatorship reports, when appropriate.
- f. Implementation date: December 2012. As the auditors found in this audit, the documentation provided by the conservators varies from case to case. We agree to increase awareness of the conservators in the obligation to keep records and to better define what

documentation is adequate to inform the court as to the reasonableness of the expenditure. Periodic audits should follow the efforts to define the documentation needed and educate the conservators on this. To implement this recommendation, additional staff will be necessary.

**Agency’s Comments on Implementation Status of Recommendation:**

- a. Partially Implemented. Analysis of the risk assessment checklist is a proposed agenda item for the newly created Probate Advisory Committee. Training court staff on using the Branch’s risk assessment tool will take place after any updates recommended by the committee have been incorporated into the checklist.
- b. Partially Implemented. Development meetings are ongoing at SCAO to create tools, including a standard automated report template for the electronic submission of conservator and guardian reports, and automated reconciliation software for court to use when reviewing reports. Budget constraints may impact our ability to fully integrate these tools into the initial jPOD release at the end of 2012.
- c. Partially Implemented. The Judicial Branch’s FY 2013 budget request includes of additional 21.5 new FTE for FY 2013. Of the FTE requested, 18 FTE are for probate support staff in the districts. Three FTE were requested for placement at SCAO, to provide additional report auditing capabilities and technical support to the districts. The final .5 FTE is additional magistrate support for the Denver Probate Court.

Colorado statutes give judges discretion to appoint or contract with individuals with the technical expertise required to review more complex conservator reports when necessary. Training on this topic is proposed for the fall judicial conference.

- d. Partially Implemented. In September 2011, the JRM was updated to include references to the Conservator’s report review checklist (JDF 776) and Inventory with Financial Plan Review Checklist (JDF 778). Registrars will be further trained on this topic at the Spring Registrars’ Conference in March 2012, and periodically thereafter. As we develop report audit guidelines, the checklists and training curricula will be revised.
- e. Partially Implemented. Procedures for appointing or contracting with individuals to review more complex conservator reports is a proposed topic for the annual judicial conference in September 2012. Additional training strategies will be discussed by the Probate Advisory Committee.

- f. Partially Implemented. One of the duties proposed for the additional FTE's requested in the FY 2013 budget, is to conduct periodic audits of supporting documentation maintained by conservators.  
Completion of additional audit guidelines is schedule for summer 2012.

**Recommendation #: 7**

**Agency Addressed:** Judicial Branch

**Original Recommendation in Audit Report:**

The Judicial Branch should ensure that each judicial district has a systematic process of evaluating the overall performance of professional guardians and conservators, including public administrators, routinely appointed in their districts. The State Court Administrator's Office should provide guidance on the standards for evaluating professionals and the process for reviewing those standards.

**Agency's Response** (*i.e., agree, partially agree, disagree*): Agree

**Agency's Written Response in Audit Report:**

The Judicial Branch agrees to prepare guidelines for evaluating the performance, education, training, and experience of professional guardians and conservators, including public administrators. In preparing the guidelines, reference will be made to the National Probate Court Standards, the National Guardianship Association (including its Model Code of Ethics for Guardians and its Standards of Practice), the U.S. Government Accountability Office's report on guardianships, and the recommendations made during the first and second National Guardianship Conferences (Wingspan).

**Agency's Comments on Implementation Status of Recommendation:**

Not implemented. Creating guidelines for evaluating the performance, education, training, and experience of professional guardians and conservators, including public administrators is a proposed agenda item for the newly created Probate Advisory Committee.

**Recommendation #: 8**

**Agency Addressed:** Judicial Branch

**Original Recommendation in Audit Report:**

The Judicial Branch should improve its data management and strengthen its oversight of guardianship and conservatorship cases by:

- a. Continuing the current effort to review all existing cases to ensure the case status is accurately reflected within the Eclipse system, or any new automated case management system that is implemented.
- b. Revising the *Trial Court Resource Manual* to ensure that it directs court staff to update the Eclipse system, or any new case management system that is implemented, to reflect new appointments made or status changes in existing cases, and to establish separate cases for each ward.
- c. Updating the Eclipse system, or ensuring that any new case management system is designed, to collect data for each judicial district on the names and number of wards, the names and professional status of all guardians and conservators, the number of wards each guardian or conservator oversees, and the size of the wards' estates.

**Agency's Response** (*i.e., agree, partially agree, disagree*): Agree

**Agency's Written Response in Audit Report:**

- a. The Judicial Branch will continue to review existing cases to ensure that appropriate case status is entered correctly. The new code will be used in the future case management system as well.
- b. The *Trial Court Resource Manual* will be revised to require case type be updated if there is a change. We agree that no case should provide for guardianship or conservatorship of more than one person. A training e-mail will be sent to judges, clerks of court, and probate registrars advising them to assign a separate case number for each ward and to clarify our policy regarding consolidation of cases.
- c. The Judicial Branch agrees that the new data system should be designed to collect data regarding the names and number of wards, the names and professional status of all guardians and conservators, the number of wards each guardian or conservator oversees, and the size of the wards' estates. The State Court Administrator's Office Probate Unit will work with Judicial Business Integrated with Technology Services (JBITS), the Branch's information technology support unit, to ensure these fields will be included in the new system.

Programming Eclipse to collect this information would not be cost-effective.

**Agency's Comments on Implementation Status of Recommendation:**

- a. Implemented and Ongoing. The judicial districts, with technical support from SCAO, continue to review all existing cases to ensure the case status is accurately reflected within the Eclipse system. In March 2012, the first statewide protective proceeding clean-up effort was begun after having the procedures tested by five pilot counties. This is a rigorous data clean-up effort of protective proceeding cases throughout the state. In the first phase, all protective proceeding cases filed 1999-2012 are being reviewed to ensure they meet data integrity standards. The second phase will include pre-1999 cases.

Registrars and clerk of courts will be further trained on this topic at the Spring Registrars' Conference in March 2012, and periodically thereafter.

- b. Implemented and Ongoing. In September 2011, the protective proceedings section of the JRM was revised to instruct court staff to properly update the Eclipse system and to reflect new appointments in separate cases. Clerks of court and probate registrars were advised of the requirements.

Chief Justice Directive 11-03 was issued in September 2011. The Directive requires judges and court personnel to follow the directions contained in the protective proceedings section of the JRM.

Registrars will be further trained on this topic at the Spring Registrars' Conference in March 2012, and periodically thereafter.

- c. Partially Implemented. Budget constraints make changes to the Eclipse system unlikely. Development of the protective proceedings module in the jPOD system is ongoing. Collection of data regarding the names and number of wards, the names and professional status of all guardians and conservators, the number of wards each guardian or conservator oversees, and the size of the wards' estates has been identified as a principal request.

**Recommendation #:** 9

**Agency Addressed:** Judicial Branch

**Original Recommendation in Audit Report:**

The Judicial Branch should ensure that the courts effectively administer guardianship and conservatorship cases and that the vulnerable individuals in these cases receive adequate protection. Specifically, the Judicial Branch should:

- a. Issue directives that clearly delineate which policies and procedures are mandated for every guardianship and conservatorship case.
- b. Strengthen the internal audit process by using the recommendations within internal audit reports to inform the policies and directives issued by the Branch and by requiring the judicial districts to provide detailed responses and implementation dates for the recommendations made by the Branch.

**Agency's Response** (i.e., agree, partially agree, disagree): Agree

**Agency's Written Response in Audit Report:**

- a. The Judicial Branch will seek a mandate from the Chief Justice, by means of a Chief Justice Directive, requiring all judicial officers and personnel to comply with the section of the *Trial Court Resource Manual* containing policies and procedures for protective proceeding cases.
- b. The State Court Administrator's Office (SCAO) will work to strengthen the connection between the district audits and the Probate Unit of SCAO. Beginning with the current cycle of audits, the districts are being required to submit specific responses for each recommendation. This will provide the SCAO with more information to measure compliance with the established procedures and to evaluate progress made in the districts based on prior audit recommendations. We agree that districts need to comply with recommendations and expect compliance will occur and that such compliance will be monitored.

**Agency's Comments on Implementation Status of Recommendation:**

- a. Implemented and Ongoing. In September 2011, Chief Justice Bender issued a directive (CJD 11-03) that requires judges and court personnel to follow the directions contained in the protective proceedings section of the Judicial Resource Manual.
- b. Implemented and Ongoing. Beginning in February 2011, district audits include a requirement that the district submit responses for each recommendation. Responses inform SCAO's program support and training efforts, including curriculum development for the registrars' conference, clerk of court conference, and the judicial conference.

SUPREME COURT OF COLORADO  
OFFICE OF THE CHIEF JUSTICE

**ORDER**

**Establishing the Probate Advisory  
Committee and Charge to the Committee**

Colorado probate courts are responsible for the processing and supervision of guardianships, conservatorships, single transactions, decedents' estates, and trust litigation.<sup>1</sup> Guardians, conservators, personal representatives and trustees have certain duties they are required to perform. Personal representatives and trustees normally perform their duties without court supervision. Guardians and conservators, however, are subject to statutorily mandated court oversight. Each judicial district has primary responsibility for providing this oversight. The State Court Administrator's Office provides guidance and support to the districts to help ensure that the cases are properly administered.

Because incapacitated and protected persons represent some of Colorado's most vulnerable citizens, and because appointment of a guardian and/or conservator for such persons substantially curtails their civil liberties, it is incumbent upon the judicial branch to have in place effective procedures for managing protective proceedings cases.

In September 2011, the Office of the State Auditor (OSA) issued a report entitled "Judicial Branch Oversight of Guardianships and Conservatorships – Performance Audit." The report identified four primary areas where improvements in the Branch's procedures should be made: statewide compliance with statutory requirements, education and training, improved use of technology, and judicial branch governance.

To help implement the auditors' recommendations and to improve management of probate cases generally, the Probate Advisory Committee is hereby established and charged with the task of helping to develop procedures and controls for administering probate cases throughout the Colorado court system.

To this end, the Probate Advisory Committee is assigned to:

- Consider the OSA report and make recommendations for best practices and educational programs that will further the objectives described therein.
- Help develop evaluation tools that will assist districts and the State Court Administrators' Office in assessing the effectiveness of probate courts in managing cases.
- Assist in the design and development of the probate component of JPOD.

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<sup>1</sup> The Denver Probate Court is also responsible for mental health cases, but that case type is not the subject of this order.

- Help clarify the roles of judges, district administrators, clerks of court, registrars, court judicial assistants, and SCAO staff as they relate to management and administration of probate court cases.

The committee shall prepare an interim report to the Chief Justice and the State Court Administrator by June 1, 2012. The interim report shall describe the branch's most immediate needs related to probate case management and a proposed plan for meeting those needs. It shall file an annual report by each December 31<sup>st</sup> describing the long-term plan and ongoing efforts for meeting the challenges described in the OSA report.

Done at Denver, Colorado this \_\_\_ day of \_\_\_\_\_, 2012.

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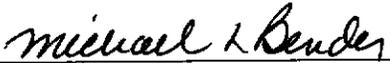
Michael L. Bender, Chief Justice

**SUPREME COURT OF COLORADO  
OFFICE OF THE CHIEF JUSTICE**

**PROTECTIVE PROCEEDINGS POLICIES AND PROCEDURES**

The State Court Administrator has issued a Judicial Resource Manual which includes direction concerning the court management of protective proceeding matters filed under Title 15. Each 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 as that manual exists on the date of this order and any additions or revisions to it as may be issued by the State Court Administrator or his/her designee.

Done at Denver, Colorado this 20<sup>th</sup> day of September, 2011.

  
Michael L. Bender, Chief Justice

<input type="checkbox"/> District Court <input type="checkbox"/> Denver Probate Court _____ County, Colorado Court Address: _____ <hr/> <b>In the Interest of:</b>  <b>Respondent</b>	
Court Visitor (Name and Address): _____  Phone Number: _____      E-mail: _____ FAX Number: _____      Atty. Reg. #: _____	<b>▲ COURT USE ONLY ▲</b> Case Number: _____  Division                      Courtroom
<b>VISITOR'S REPORT</b> <input type="checkbox"/> GUARDIANSHIP <input type="checkbox"/> CONSERVATORSHIP <input type="checkbox"/> COMBINED	

**Instruction to court visitor: Please complete every applicable section of this form. If a section is not applicable, please enter N/A.**

I, \_\_\_\_\_(name), submit the following report concerning the investigation that I conducted as the court-appointed visitor in this  guardianship pursuant to §15-14-305, C.R.S.  conservatorship pursuant to §15-14-406, C.R.S.

<b>Summary:</b>	<b>Yes</b>	<b>No</b>
<b>A. A lawyer</b> should be appointed to represent the respondent. Reason: <input type="checkbox"/> The respondent requested a lawyer. <input type="checkbox"/> Other: _____	<input type="checkbox"/>	<input type="checkbox"/>
<b>B. A guardian ad litem</b> should be appointed to represent the respondent's best interests. Reason: _____	<input type="checkbox"/>	<input type="checkbox"/>
<b>C. A professional evaluator</b> should be appointed to examine the respondent and prepare an evaluation. Reason: <input type="checkbox"/> The respondent has demanded an evaluation. <input type="checkbox"/> Other: _____	<input type="checkbox"/>	<input type="checkbox"/>
<b>D. I believe the proposed guardianship, including the type of guardianship, is appropriate and that less restrictive means of intervention are unavailable.</b> Suggested limitations on guardian's powers and duties: _____ _____ _____	<input type="checkbox"/>	<input type="checkbox"/>
<b>E. The nominated guardian should be appointed for the respondent.</b>	<input type="checkbox"/>	<input type="checkbox"/>
<b>F. I believe the proposed conservatorship, including the type of conservatorship, is appropriate and that less restrictive means of intervention are unavailable.</b> Suggested limitations on conservator's powers and duties, and assets over which the conservator should be granted authority: _____ _____ _____	<input type="checkbox"/>	<input type="checkbox"/>
<b>G. The nominated conservator should be appointed for the respondent.</b>	<input type="checkbox"/>	<input type="checkbox"/>

H. Significant concern(s):

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**I. Observations:**

A. The activities of daily living (daily functions) that the respondent can manage without assistance; could manage with the assistance of supportive services or benefits, including the use of appropriate technological assistance; and cannot manage are as follows:

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B. The financial functions that the respondent can or cannot effectively manage:

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**II. Interview of Respondent:**

I interviewed the respondent, in person, on \_\_\_\_\_ (date) at \_\_\_\_\_ (location). I provided the Notice of Rights to Respondent (JDF 797) and, to the extent the respondent was able to understand, explained the rights contained therein.

A. Other persons present at the interview:

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B. Respondent's physical appearance:

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C. Respondent was oriented to time and place  Yes  No

D. After I explained the substance of the petition, the nature, purpose, and effect of the proceeding, and the general powers and duties of a guardian, conservator, or both, as appropriate to this case, I asked the following questions and the respondent answered as follows:

1. Do you understand what I've explained to you?  Yes  No  Did not respond  
If No, please explain or comment. \_\_\_\_\_

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2. Do you understand the statement of rights (JDF 797)?  Yes  No  Did not respond
3. Do you have a lawyer?  Yes  No  Did not respond  
If **Yes**, please provide name: \_\_\_\_\_
4. Do you want a lawyer to be appointed for you?  Yes  No  Did not respond  
If **Yes**, please explain: \_\_\_\_\_  
\_\_\_\_\_
5. Do you have a doctor?  Yes  No  Did not respond  
If **Yes**, please provide name: \_\_\_\_\_
6. Is your doctor the same doctor who provided the letter attached to the petition filed in these proceedings?  Yes  No  Did not respond
7. Who are the family members or other people who are the most helpful to you?  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### Guardianship Only

1. Do you need any help with your daily living activities or daily functions?  Yes  No  Did not respond  
If **Yes**, in what areas? \_\_\_\_\_  
\_\_\_\_\_
2. Do you know the proposed guardian?  Yes  No  Did not respond  
Proposed guardian is \_\_\_\_\_.
3. Do you think that he or she should be appointed as your guardian?  Yes  No  Did not respond
4. How do you feel about the proposed guardianship? (Scope, powers, duties and duration.)  
 Did not respond  
 Responded as follows: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### Conservatorship Only

1. Do you need any help with your finances?  Yes  No  Did not respond  
Identify specific areas (check writing, bill paying, etc.) \_\_\_\_\_  
\_\_\_\_\_
2. Do you know the proposed conservator?  Yes  No  Did not respond  
Proposed conservator is \_\_\_\_\_.

3. Do you think that he or she should be appointed as your conservator?  Yes  No  Did not respond
4. How do you feel about the proposed conservatorship? (Scope, powers, duties and duration.)  
 Did not respond  
 Responded as follows: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**III. Interview of Person Nominated as Guardian:**

- A.** Date and place of interview:  
 \_\_\_\_\_  
 \_\_\_\_\_
- B.** Person seeking appointment was asked and responded as follows:
1. Name and address:  
 \_\_\_\_\_  
 \_\_\_\_\_
  2. Relationship (including non-family) to respondent:  
 \_\_\_\_\_  
 \_\_\_\_\_
  3. Occupation: \_\_\_\_\_
  4. Why was this petition initiated?  
 \_\_\_\_\_  
 \_\_\_\_\_
  5. Where has the respondent resided during the last three months?  
 \_\_\_\_\_  
 \_\_\_\_\_
- a. Who, if anyone, has been caring for the respondent during this period?  
 \_\_\_\_\_  
 \_\_\_\_\_
  - b. What type of care has been provided?  
 None  
 In-home care  
 Assisted living  
 Hospital or nursing home

c. What type of care will be provided if you are appointed as guardian?

- None
- In-home care
- Assisted living
- Hospital or nursing home

6. What changes in residence are contemplated?

- None
- Private home  Other facility. Please provide name and address:

7. What are your qualifications to be guardian for respondent? \_\_\_\_\_

\_\_\_\_\_

#### IV. Interview of Person Nominated as Conservator:

A. Date and place of interview:

\_\_\_\_\_

B. Person seeking appointment was asked and responded as follows:

1. Name and address:

\_\_\_\_\_

2. Relationship (including non-family) to respondent:

\_\_\_\_\_

3. Occupation: \_\_\_\_\_

4. Why was this petition initiated?

\_\_\_\_\_

5. Where has the respondent resided during the last three months?

\_\_\_\_\_

6. Who, if anyone, has been handling the respondent's financial affairs during this period?

\_\_\_\_\_

7. Does the respondent owe you (conservator nominee) any money or property?  Yes  No  
If **Yes**, please explain. \_\_\_\_\_

\_\_\_\_\_

8. Do you (conservator nominee) owe the respondent any money or property?  Yes  No  
If **Yes**, please explain. \_\_\_\_\_

\_\_\_\_\_

9. What are your qualifications to be conservator for respondent? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**V. Interview of Petitioner, if Different than the Nominated Guardian or Conservator:**

A. Name of person: \_\_\_\_\_

B. Date and place of interview: \_\_\_\_\_

\_\_\_\_\_

C. Petitioner was asked and responded as follows:

1. Occupation: \_\_\_\_\_

2. Have there been any significant changes since you filed the petition?  Yes  No

Comments: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**VI. Interview of Other Interested Persons:**

D. Name of person: \_\_\_\_\_ Relationship to respondent: \_\_\_\_\_

E. Date and place of interview: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

F. Other person asked and responded as follows:

1. Address: \_\_\_\_\_

2. Occupation: \_\_\_\_\_

3. Should a guardian or conservator be appointed?  Yes  No

Comments: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Note:** This section should be completed as many times as there are interested persons interviewed. Attach the additional interview notes to this report.

**VII. Report on Condition of Respondent's Current Residence:**

- A. Date visited: \_\_\_\_/\_\_\_\_/\_\_\_\_
- B. Address: \_\_\_\_\_  
\_\_\_\_\_
- C. Type of dwelling: \_\_\_\_\_
- D. Condition:
  - 1. Lawn and landscaping: \_\_\_\_\_
  - 2. Exterior: \_\_\_\_\_
  - 3. Interior: \_\_\_\_\_
    - a. Utilities working  Yes  No Additional comments \_\_\_\_\_
    - b. Clean  Yes  No Additional comments \_\_\_\_\_
    - c. Fire hazards  Yes  No Additional comments \_\_\_\_\_
    - d. Other (explain) \_\_\_\_\_
- E. I believe the respondent's current dwelling meets his or her needs.  Yes  No

**VII. Report on Condition of Respondent's Proposed Residence, if a change is contemplated:**

- A. Date visited: \_\_\_\_/\_\_\_\_/\_\_\_\_
- B. Address: \_\_\_\_\_  
\_\_\_\_\_
- C. Type of dwelling: \_\_\_\_\_
- D. Condition:
  - 1. Lawn and landscaping: \_\_\_\_\_
  - 2. Exterior: \_\_\_\_\_
  - 3. Interior: \_\_\_\_\_
    - a. Utilities working  Yes  No Additional comments \_\_\_\_\_
    - b. Clean  Yes  No Additional comments \_\_\_\_\_
    - c. Fire hazards  Yes  No Additional comments \_\_\_\_\_
    - d. Other (explain) \_\_\_\_\_
- E. I believe the respondent's proposed dwelling meets his or her needs.  Yes  No

**VIII. Physicians or Other Persons Who Are Known to Have Treated, Advised, or Assessed the Respondent's Relevant Physical or Mental Condition:**

Please identify the sources of the information: \_\_\_\_\_  
\_\_\_\_\_

- A. Physicians and psychiatrists: \_\_\_\_\_  
Comments: \_\_\_\_\_  
\_\_\_\_\_

- B.** Psychologists and psychotherapists: \_\_\_\_\_  
Comments: \_\_\_\_\_  
\_\_\_\_\_
  
- C.** Nurses and nurse aids: \_\_\_\_\_  
Comments: \_\_\_\_\_  
\_\_\_\_\_
  
- D.** Other compensated health care providers: \_\_\_\_\_  
Comments: \_\_\_\_\_  
\_\_\_\_\_
  
- E.** Family members, relatives, and friends: \_\_\_\_\_  
Comments: \_\_\_\_\_  
\_\_\_\_\_
  
- F.** Others: \_\_\_\_\_  
Comments: \_\_\_\_\_  
\_\_\_\_\_

**I represent that there is no conflict of interest between any party and me.**

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of Court Visitor

# Registrars' Conference Agenda

Monday, March 26, 2012	
9:00 am to 9:20 am	Welcome. Logistics. Introductions.
9:20 am to 10:10 am	Data Integrity and Coding Navigating the Judicial Resource Manual <b>Shannon Smerker, Court Services Analyst, SCAO</b>
10:10 am to 10:50 am	DECEDENTS' ESTATES TOPICS <ul style="list-style-type: none"> <li>• Registrar's Duties</li> <li>• Life of a Decedent's Estate (no pun intended)</li> </ul> <b>Sandie Franklin, Probate Coordinator, SCAO</b>
10:50 am to 11:00 am	Break
11:00 am to 12:30 am	ADVANCED DECEDENTS' ESTATES TOPICS <ul style="list-style-type: none"> <li>• Priority for Appointment</li> <li>• Heirship</li> <li>• Class Gifts and Antilapse</li> <li>• Holographic Wills, Copies of Wills</li> <li>• Codicils and Memorandum Disposition of Personal Property</li> <li>• Statutes of Limitations</li> </ul> <b>Sandie Franklin, Probate Coordinator, SCAO</b>
12:30 pm to 1:30 pm	Boxed lunch and informal discussions
1:30 pm to 3:30 pm	PROTECTIVE PROCEEDINGS TOPICS <ul style="list-style-type: none"> <li>• 2011 Probate Audit Selected Topics: Background checks, Acceptance of Office form, Acknowledgment of Responsibilities form, Court Visitor appointment and Visitor's Report form, Conservator Report form, Court Appointed Counsel</li> <li>• CJD 11-03</li> <li>• Data Clean-Up Project</li> <li>• HB 1074 and Accurint</li> <li>• Report Monitoring Guidelines and Follow-Up Procedures</li> <li>• Closing Procedures – Guardianship and Conservatorship</li> </ul> <b>Rene Cartier, Probate Examiner, SCAO</b>
3:30 pm to 4:00 pm	Questions and Wrap-Up

# Office of the State Court Administrator

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**Gerald A. Marroney**  
*State Court Administrator*

**Mindy Masias**  
*Chief of Staff*

**Terri Morrison**  
*Judicial Legal Counsel*

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## DIRECTORS

**Sherry Stwalley**  
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*Probation Services*

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.

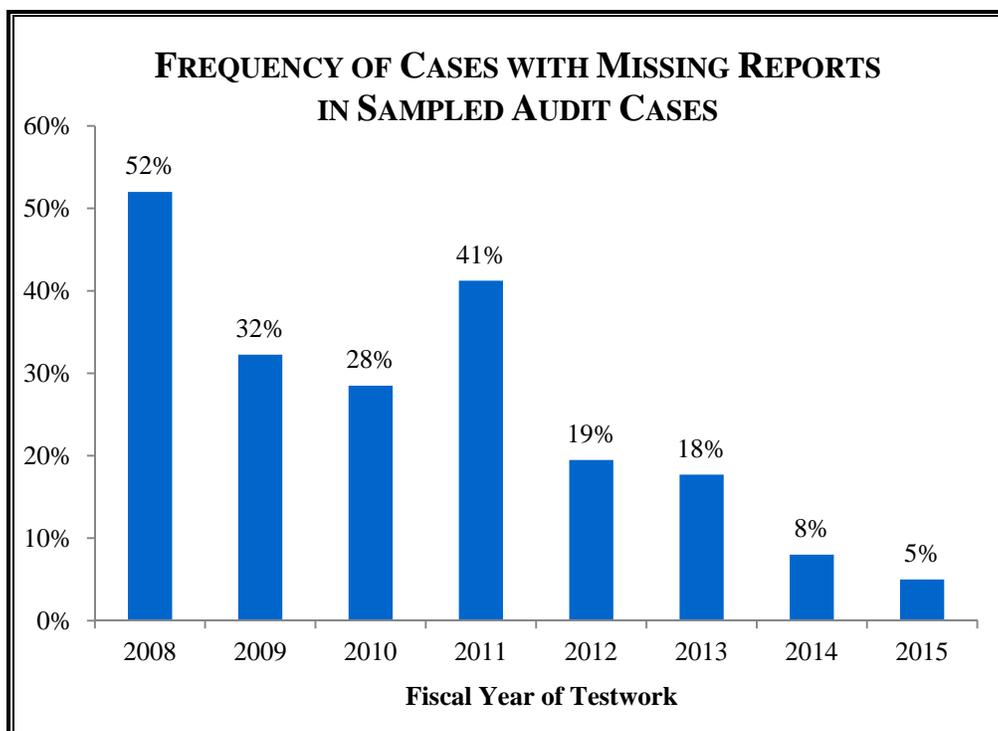
Gerald A. Marroney  
State Court Administrator

**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**

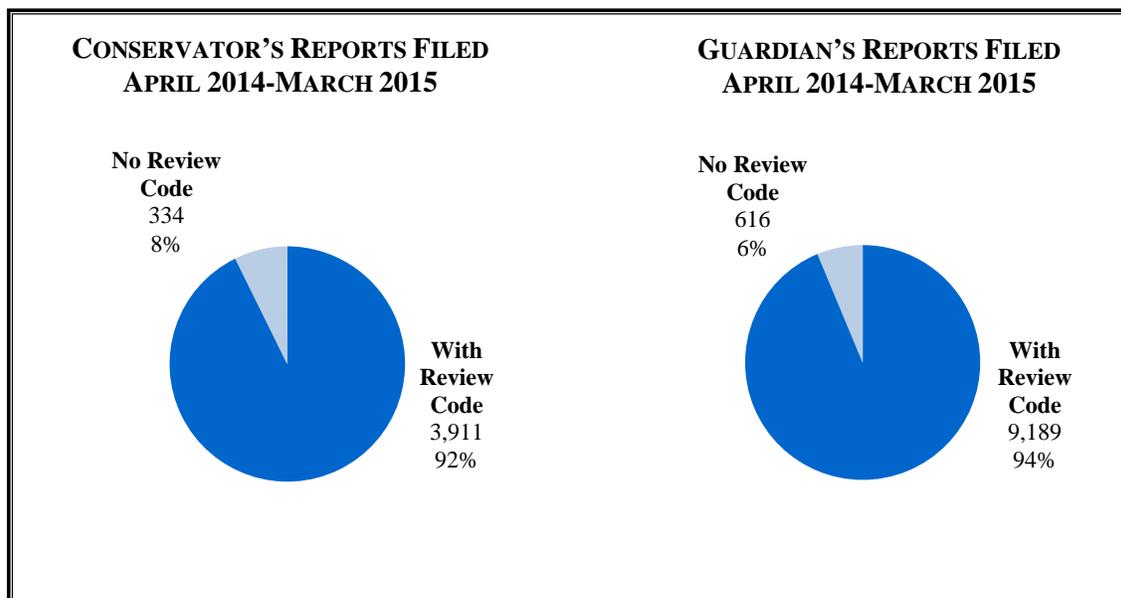
In Fiscal Year 2008, the Department's Internal Audit Unit incorporated a review of protective proceedings report monitoring into the Audit Program for Judicial Districts. Initially, this part of the Audit Program focused primarily on whether sampled cases were missing required annual reports. The results 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.

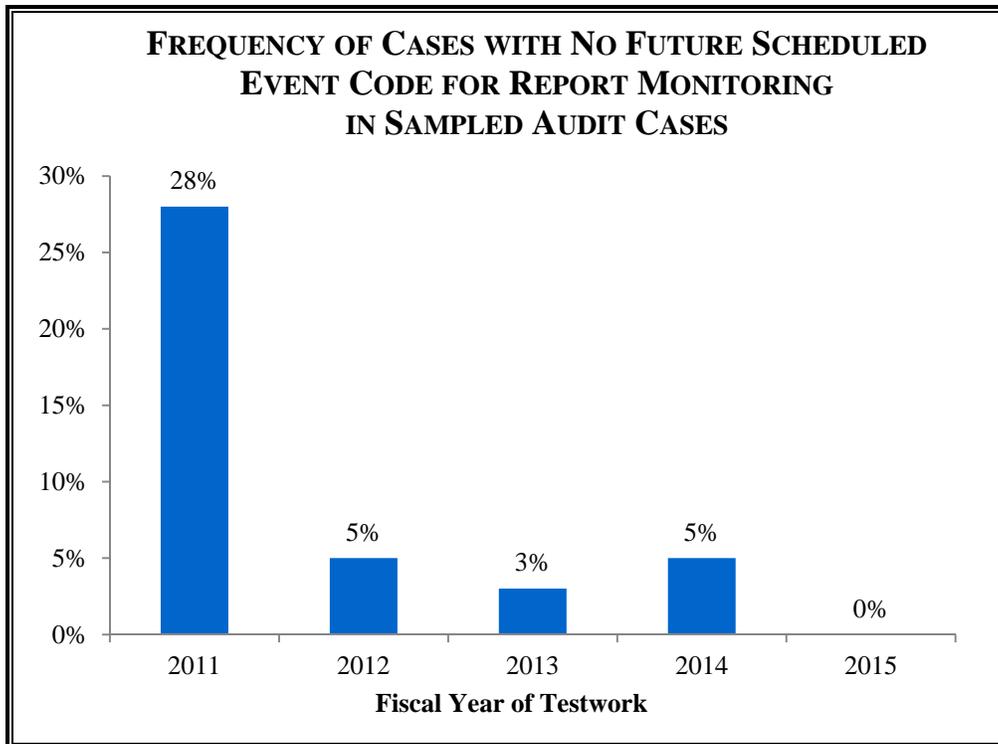
Over the past several years, the Internal Audit Program for protective proceedings cases has been expanded to include a more thorough evaluation of the Districts' compliance with the requirements related to protective proceedings cases in statute and the Judicial Resource Manual (JRM). In addition to 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**

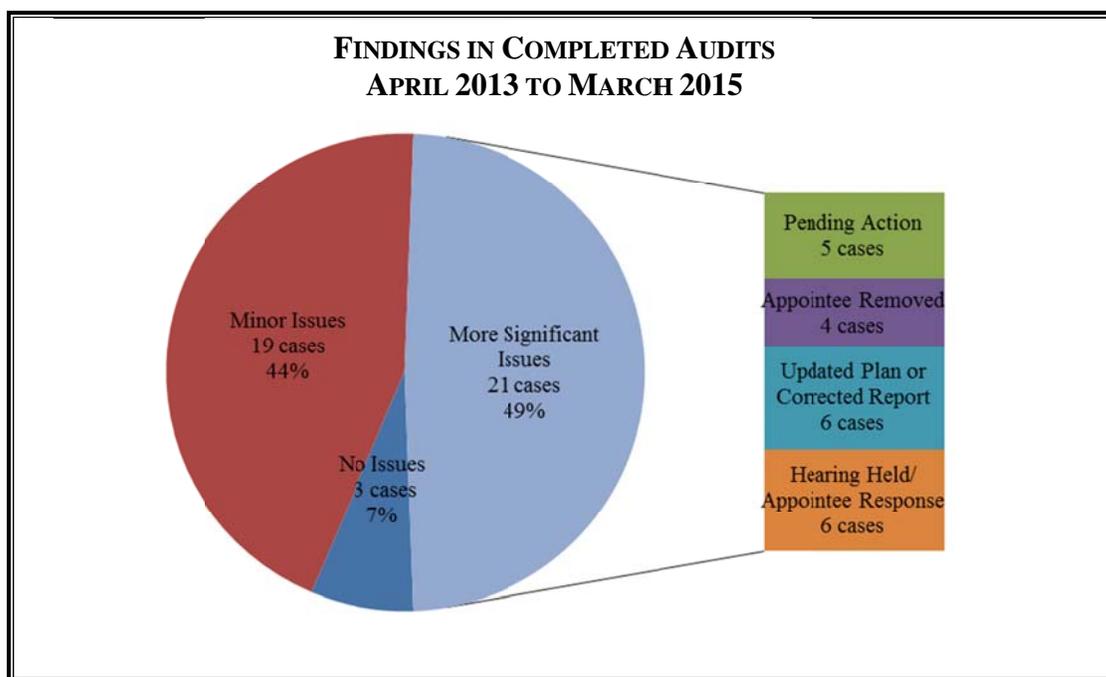
The PPA team invested a significant amount of time designing a program for performing audits of Conservator and Guardian reports. The audit procedures are tailored to each case, but generally include a combination of substantive procedures to verify amounts presented on the report as well as analytical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