Oversight of Probate Cases
Colorado Judicial Branch
Performance Audit
September 2006

Submitted by Clifton Gunderson LLP

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Members of the Legislative Audit Committee:

This report contains the results of a performance audit on the oversight of probate cases in Colorado. The audit was conducted pursuant to Section 2-3-103, C.R.S., which authorizes the State Auditor to conduct audits of all departments, institutions, and agencies of state government, including the Judicial Branch. The State Auditor contracted with Clifton Gunderson LLP to conduct this performance audit in accordance with Generally Accepted Government Auditing Standards. The report presents our observations, findings, recommendations, and the responses of the Judicial Branch.

Very truly yours,

Clifton Gunderson LLP

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Report Summary

Authority, Purpose, and Scope

This performance audit was conducted under the authority of Section 2-3-103, C.R.S., which authorizes the State Auditor to conduct performance audits of all departments, institutions, and agencies of state government, including the Judicial Branch. The State Auditor contracted with Clifton Gunderson, LLP to conduct this performance audit in accordance with Generally Accepted Government Auditing Standards. The audit work was conducted from May through September 2006. The audit evaluated the performance of Colorado's courts with respect to the appointment and monitoring of guardians, conservators, personal representatives, and trustees in probate cases.

Background

Probate cases involve the appointment of a fiduciary to handle the wills, estates, or affairs of decedents (handled by personal representative appointees); the affairs of trust agreements and trust beneficiaries (handled by trustee appointees); and the affairs of minors and missing, protected, and incapacitated persons who are incapable of caring for themselves or making their own decisions (handled by guardian and conservator appointees). Colorado courts oversee probate matters in accordance with the Probate Code, established in Title 15, Articles 10 through 17 of the Colorado Revised Statutes. The purpose of the Probate Code is to simplify and clarify the law concerning the affairs of decedents, missing persons, protected persons, minors, and incapacitated persons and to ensure that appointees handle the affairs, assets, estates, and trusts in accordance with the intent set forth in legal documents or in the best interests of protected persons.

Probate cases are handled by Colorado's Judicial Branch, which includes district and county courts located in 22 judicial districts (districts) throughout the State. District court judges or appointed magistrates hear probate cases in each district (the 2nd District is unique in that it has a separate Probate Court). The Chief Justice of the Colorado Supreme Court is the executive head of the Colorado Judicial Branch, and as such has exclusive jurisdiction to promulgate rules governing practice and procedure in civil and criminal actions, including probate. The Supreme Court appoints a State Court Administrator to assist the Chief Justice with her executive duties. The State Court Administrator heads the State Court Administrator's Office (SCAO), which provides administrative support and services to the courts. In Fiscal Year 2005 more than 183,500 cases were filed in Colorado's District Courts. Of this amount, about 11,700 were related to probate (6 percent).

Summary of Audit Findings

Monitoring and Supervision

According to the statute, courts are to provide a higher level of supervision for guardian and conservator appointees than for personal representative and trustee appointees. Generally, this is because in the case of an estate or trust, there is a legal document, such as a will or trust, which establishes how the assets of the estate or trust are to be handled. In addition to acting in the best interests of the persons they have been appointed to protect, guardians must file a personal care plan and conservators must file a financial care plan. Once the plans have been submitted, conservators and guardians must report to the court annually on their activities in relation to the plans. Conservators must also file a final report to be discharged of their duties as an appointee. We reviewed a total of 114 probate cases that had a guardian, conservator, or combined guardian/conservator appointment during Fiscal Year 2003 to determine whether the courts were complying with policies and monitoring procedures as required by the statute. Of these 114 cases, the appointees in 70 of the cases were required to file an initial and or annual report. We found: (1) the guardian or conservator did not file either an initial report or one or more required annual reports in 40 of the 70 cases (57 percent) reviewed; (2) five of the six courts in our sample did not systematically identify and follow up on outstanding financial and personal care plans or required annual reports; (3) some of the courts' current practices for reviewing reports were insufficient to identify errors and inappropriate expenses or to evaluate the appropriateness of care; and (4) guardian and conservator reports typically provide limited detail and supporting documentation for expenses and activities, and some of the courts do not follow up on expenditures or activities that may be questionable.

Appointee Compensation

The statute allows all conservators and guardians, whether professional or nonprofessional, to charge the estate of the protected person reasonable compensation for services they provide. We reviewed the fees charged and services provided by a sample of 114 guardians and conservators between 2003 and 2006. In the limited instances where information or documentation was available for review in the case file, we identified a number of concerns with fees charged, including: (1) substantially different fees charged by appointees performing the same service; (2) professional appointees charging the same professional fee for all types of services, regardless of whether a particular service required their expertise; and (3) excessive fees charged by professional appointees. For example, one professional guardian (who was a licensed clinical social worker) charged over $158 per hour for services. Licensed Clinical Social Workers are typically paid between $15 and $27 per hour.

Appointee Screening and Selection

Since courts rely on guardians and conservators to act in the best interests of the persons they have been appointed to protect, the courts must have procedures to ensure these appointees are qualified. The statute (Sections 15-14-304, 15-14-403, 15-12-301, 15-12-402, and 15-16-101, C.R.S.) sets forth general requirements for appointing all fiduciaries (guardians, conservators, personal representatives, and trustees) to probate cases. We reviewed court practices for

complying with statutory requirements for appointing guardians, conservators, personal representatives, and trustees. In general, we found that the courts we visited were complying with the broad requirements set forth in the statute for all of these types of appointments. However, we found that additional procedures describing minimum qualification and training requirements for professional and nonprofessional appointees could improve the courts' ability to review the qualifications of guardians and conservators and ensure that guardians and conservators receive sufficient training to carry out their duties.

Interested Parties

The Probate Code does not provide for ongoing court monitoring and supervision of personal representatives or trustees. The statute does allow for interested parties in personal representative or trustee cases to petition the court at any time to request: (1) appointment or removal of a trustee or personal representative; (2) review of the activities of a trustee or personal representative; (3) supervision of a personal representative; or (4) release of the registration of a trust. As a result, courts rely upon interested parties to notify the court when personal representatives or trustees are not performing their duties effectively. In the six districts we visited, we reviewed the practices used to notify interested parties of their role in monitoring the activities of personal representatives and trustees. We found that court documents and forms provided to trust beneficiaries did not inform the interested parties of their responsibilities to protect their own rights and interests as they relate to the trustee or the trust, and provided only limited instruction to interested parties in personal representative cases.

System Improvements

The Judicial Branch maintains probate case and appointee data in an automated information system, the Integrated Colorado On-Line Network (ICON). ICON is the official electronic repository for all county and district court records statewide (except for Denver County Court). Courts use ICON to manage their dockets, schedule proceedings, and track case progress. With regard to probate cases, we found that ICON lacked basic information in several areas needed to track probate cases and appointees effectively. Weaknesses in the automated case management system limit the ability of courts to monitor the probate caseload; report critical information on the well being of protected persons and the financial solvency of estate assets; or automate basic monitoring processes for probate cases, such as notifying appointees of missing initial plans or annual reports.

Our recommendations and the response of the Judicial Branch can be found in the Recommendation Locator and in the body of the report.

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Recommendation Locator

Rec. No.	Page No.	Recommendation Summary	Agency Addressed	Agency Response	Implementation Date
1	19	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
2	24	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
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
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
5	34	Strengthen controls over the management of probate cases by making improvements to the automated case management system.	Judicial Branch	Agree	January 2008

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Overview of Probate Cases in Colorado

Background

Probate cases deal with the wills, estates, or affairs of decedents; affairs related to trust agreements and trust beneficiaries; and the affairs of minors and missing, protected, and incapacitated persons who are incapable of caring for themselves or making their own decisions. Colorado courts handle probate matters in accordance with the Probate Code, established in Title 15, Articles 10 through 17 of the Colorado Revised Statutes. Section 15-10-102, C.R.S., states that "the Probate Code shall be liberally construed and applied to promote its underlying purposes and policies." The statute defines the purposes and policies as:

- To simplify and clarify the law concerning the affairs of decedents, missing persons, protected persons, minors, and incapacitated persons;
- To discover and make effective the intent of a decedent in distribution of his property;
- To promote a speedy and efficient system for settling the estate of the decedent and making distribution to his successors;
- To facilitate use and enforcement of certain trusts;
- To promote a speedy and efficient system for managing and protecting the estates of protected persons so that assets may be preserved for application to the needs of protected persons and their dependents;
- To provide a system of general and limited guardianships for minors and incapacitated persons and to coordinate guardianships and protective proceedings concerned with management and protection of the estates of incapacitated persons;
- To make uniform the law among the various jurisdictions.

Organization of the Probate Courts

The Colorado Judicial Branch includes district and county courts located in 22 judicial districts (districts) throughout the State. Probate cases are heard by the district court judges or appointed magistrates in each district. Judges are assisted by a probate registrar and other court personnel. The Second Judicial District (Denver) is unique in being the only district that has a separate Probate Court. In all other districts one or more district court judges or magistrates hear probate cases. The judge or magistrate presiding over a probate case is responsible for ensuring that each probate case adheres to statutory requirements. The probate registrar performs technical, administrative, and supervisory functions for probate

cases. In some districts, the judge presides over all probate cases; in other districts, the probate judge decides when a magistrate will preside over a probate case.

The Chief Justice of the Colorado Supreme Court is the executive head of the Colorado Judicial Branch. The Colorado Supreme Court has exclusive jurisdiction to promulgate rules governing practice and procedure in civil and criminal actions, including probate. The Supreme Court appoints a State Court Administrator to assist the Chief Justice with her executive duties. The State Court Administrator heads the State Court Administrator's Office (SCAO), which provides administrative support and services to the courts by:

- Providing centralized policy guidance.
- Developing and implementing standards and guidelines.
- Preparing and monitoring the budget for all the state courts.
- Managing the personnel system for all court employees.
- Developing and managing information systems for the Judicial Branch.
- Exploring and proposing ways to improve court operations.
- Serving as an advocate for the Judicial Branch in obtaining necessary resources from the Legislature.

In Fiscal Year 2005 more than 183,500 cases were filed in Colorado's district courts. Of this amount, about 11,700 were related to probate (6 percent). The majority of probate cases (about 67 percent) relate to trusts and settling estates. For the remainder of probate cases, about 19 percent relate to the affairs of protected persons and about 14 percent relate to other types of proceedings, such as determining heirship or personal injury settlements. Although probate cases comprise a relatively small portion of cases handled by district courts, they may involve family members, estate and trust beneficiaries, and people who require protection because they are minors or unable to handle their own affairs.

Probate Process

Probate proceedings are initiated when an interested person (individual with an interest in an estate or trust or in the well-being of a protected person) files a petition with the court. Petitions typically request the court to take action or address issues related to (1) an individual in need of protection, (2) a decedent's estate, or (3) a trust agreement. Petitions filed with the probate court include, but are not limited to:

- Request for appointment as a guardian, conservator, personal representative, or trustee.
- Request for the removal of an appointee.
- Request for a review of appointee activities including financial transactions and fees charged.

A district judge or magistrate handles petitions for appointments and ensures all statutory requirements have been met prior to making an appointment. (We discuss statutory provisions governing appointment later in this report.) In general, the type of probate case defines the type of appointment made. Types of appointments include, but are not limited to:

Conservator (Section 15-14-401, C.R.S.) **–** A person who is appointed by a court to manage the financial affairs, including both real and personal property, of a minor or a protected or incapacitated person (protected person). Before appointing a conservator, the court must determine that the individual is in need of protection and cannot handle some or all of his or her personal affairs. In most cases, a conservator is a relative or friend of the protected person. However, in circumstances where a family member or friend is unavailable or unwilling to serve, the court will appoint a professional conservator. As discussed later in the report, the statute does not identify any specific qualifications for professional conservators. According to district staff, professional conservators may be attorneys or Certified Public Accountants (CPAs), but can also be the Public Administrator appointed by the court. Public Administrators serve at the pleasure of the appointing judge and perform conservator, personal representative, and trustee duties when needed. Statutory provisions for Public Administrators are contained in Sections 15-12-619 to 15-12-623, C.R.S. Professional conservators typically charge a fee for performing conservator duties.

Guardian (Sections 15-14-207 and 15-14-314, C.R.S.) **–** A person appointed by a judge to make decisions regarding a protected person's support, care, education, health, and welfare. A guardian may be designated through a will or other legal document, or through court appointment. Court appointment is typically initiated when a person interested in the protected person's welfare petitions the court to determine that the person is incapacitated. Petitions are usually initiated by relatives or friends, but in some instances petitions may be initiated by a representative from the County Department of Social Services or an Adult Protective Services agency. Similar to conservators, individuals appointed as guardians are typically relatives or friends of the protected person. If there is no family member or friend available to serve as guardian, the court appoints a professional guardian. Professional guardians typically perform the guardianship duties for compensation.

Personal Representative (Sections 15-12-601 to 15-12-623, C.R.S.) – A person appointed by a decedent, via his or her will, to distribute the estate's assets in accordance with the provisions of the will. If the designated personal representative refuses to administer the estate of the decedent, the court may appoint the Public Administrator as the personal representative. Colorado statute is constructed to minimize the involvement of courts in settling estates. Therefore, once the court appoints a personal representative, the court provides no further oversight unless the court is petitioned by an

interested party. For example, the court may receive a petition requesting the appointment or removal of a personal representative, the review of a personal representative's fees or settlement of accounts, or the supervision of the decedent's estate by the court. When a court grants a petition for the supervised administration of an estate, the personal representative can no longer transfer, surrender, or release estate assets without prior order of the court.

Trustee (Sections 15-16-101 to 15-16-307, C.R.S) **–** A person appointed by a trust agreement to safeguard, invest, and distribute the trust's valuable assets according to the provisions of the trust agreement. In the absence of an identified trustee, the court can appoint its Public Administrator to fulfill the role of the trustee. Similar to estates, the statute minimizes the involvement of courts in overseeing trust agreements. Once a trustee is appointed, the court invokes jurisdiction over a trust only upon the petition of an interested party. Among others, the court may receive a petition regarding: appointment or removal of a trustee, review of a trustee's fees or settlement of accounts, ascertaining beneficiaries, or releasing the registration of a trust.

The Judicial Branch maintains statistics on probate cases by type of appointment. The number and percentage of probate filings for Fiscal Year 2005, by type of appointment, is displayed in the table below.

Probate Filings by Type
Fiscal Year 2005

Probate Case Type	Total Number of New Filings	Percent of Total
Conservator	541	4.6%
Guardian	1,308	11.2%
Conservator/Guardian	367	3.1%
Personal Representative	7,580	64.7%
Trustee	236	2.0%
Other (includes Determination of Heirship, Ancillary Proceedings, Personal Injury Settlements, etc.)	1,682	14.4%
TOTAL	**11,714**	**100%**

Source: Clifton Gunderson LLP's analysis of information contained in the ICON system.

The table shows the number of new probate cases filed during a one-year period (Fiscal Year 2005). According to the Judicial Branch, probate cases typically continue for several years, and therefore, the number of "active" probate cases could be much higher. A probate case is "active" if the appointee is currently carrying out his or her duties. The Judicial Branch cannot provide aggregate data on both the total number of "active" probate cases and the average amount of time that probate cases continue to be "active." We discuss this issue in more detail later in this report.

Court Oversight of Probate Cases

The statute requires courts to provide different levels of oversight on probate cases, depending on the type of appointment. As stated previously, the statute is constructed to provide limited court involvement in the settling of estates and administration of trusts. Generally, this is because in the case of an estate or trust, there is a legal document, such as a will or a trust agreement, which establishes how the assets of the estate or trust are to be handled. Therefore, courts do not monitor personal representatives or trustees once an appointment is made, unless an interested party identifies a problem and petitions the court for relief. In contrast, the statute requires courts to monitor guardians and conservators (except for the guardians of minors), on an ongoing basis after an appointment has been made. Courts have heightened monitoring responsibilities because these cases involve protected persons. Protected persons include those individuals incapable of caring for themselves or making decisions regarding their personal care or finances.

Audit Scope

The purpose of this audit was to review the performance of the courts with respect to the appointment and monitoring of guardians, conservators, personal representatives, and trustees in probate cases. As part of our audit work we visited six judicial districts including the 1st (Golden), 2nd (Denver), 4th (Colorado Springs), 18th (Castle Rock and Centennial), 19th (Greeley), and 21st (Grand Junction). We sampled 152 cases filed during Fiscal Year 2003, including 38 conservator, 53 guardian, 23 combined conservator/guardian, 30 personal representative, and 8 trustee cases. We sampled from Fiscal Year 2003 to ensure that sufficient activity occurred on the case to enable a meaningful review. Of the 114 guardian, conservator, or combined conservator/guardian cases reviewed, the appointees in 18 of the cases were professionals. Although conservator and guardian cases make up a smaller percentage of the overall probate caseload, we selected a larger volume of these cases to review because the courts have heightened responsibilities for overseeing these cases. These cases are deemed higher risk because they involve managing the assets and personal care decisions of a protected person. We also interviewed probate personnel including judges, magistrates, probate registrars, district administrators, and court clerks, and reviewed best practices as established by National Probate Court Standards and the Second National Guardianship Conference Consensus or "Wingspan." The National Probate Court Standards are the consensus of recommended best practices established by probate law experts. The Standards are not binding on any court or appointee. "Wingspan" is the name of the 2001 gathering of multi-disciplinary experts who collaborated to reform guardianship practices across the United States.

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Oversight of Probate Cases

Introduction

Probate courts play a key role in ensuring that the: (1) estates of deceased individuals are distributed and used in accordance with the decedent's wishes; (2) assets of trust beneficiaries are safeguarded and administered in accordance with trust agreements; and (3) interests of individuals who are unable to handle their own financial, personal, or medical affairs are protected. Courts oversee probate cases by appointing or approving the appointments of personal representatives, trustees, conservators, and guardians; providing direct supervision and review of the transactions and activities of conservators and guardians; and conducting court proceedings related to any petitions filed on the probate case. As discussed previously, interested persons may file petitions that request appointment, ask for removal of appointees, or request court review of appointee activities (including financial transactions, decision-making, and fees charged, among other items). The court must hold a proceeding for each petition and make any appropriate findings of fact or law.

Probate matters are distinguished from other judicial proceedings in that for all probate cases, there is an appointee entrusted with a fiduciary responsibility. Personal representative and trustee appointees are fiduciaries for an estate or trust created by a will or trust agreement. The will or trust agreement sets forth the wishes of the person or persons who own the assets of the estate or trust and created the document. Guardian and conservator appointees are fiduciaries for individuals who are minors or who are incapacitated and cannot make financial, personal, or medical decisions for themselves. Sometimes individuals identify a guardian or conservator through a legal document (such as a general, financial, or durable medical power of attorney, or in the case of a minor child, through a will). If no guardian or conservator is nominated through such a document, or if the nominated individual declines to be appointed, courts may appoint a guardian or conservator on behalf of the protected person.

We reviewed court practices for administering probate cases and appointing and monitoring probate appointees at 6 of Colorado's 22 judicial districts. We found that some courts lack effective systems for monitoring the services provided and fees charged by guardian and conservator appointees, placing some protected persons and their estates at risk. Additionally, we identified concerns with the qualifications of guardian and conservator appointees on probate cases. Finally, we found that the Judicial Branch lacks some data needed to monitor and track probate cases and appointees effectively. We discuss these issues in detail in the remainder of this report.

Monitoring and Supervision

In the 2000 Legislative Session, the General Assembly passed House Bill 00-1375 adopting the Uniform Guardianship and Protective Proceedings Act. By adopting this Act, the General Assembly intended to make Colorado's practices for handling probate cases more consistent with those of other states. Among other changes, the Act required monitoring guardian and conservator appointees and reviewing guardians' and conservators' annual reports. In addition, the Act made guardians and conservators liable for their actions as appointees until discharged by a court-issued decree.

Court practices for monitoring guardian and conservator appointees provide a critical safeguard for ensuring that fiduciaries carry out their duties in accordance with the law and in the best interests of protected persons and beneficiaries. In accordance with the statute, courts are to provide a higher level of supervision for guardian and conservator appointees than for personal representative and trustee appointees, as explained below.

Conservators and Guardians - The statute (Sections 15-14-317 and 15-14-420, C.R.S.) requires each of the 22 judicial districts to establish a system for monitoring conservators and guardians, including the filing and review of required guardian and conservator reports. Although the statute does not specify the monitoring system courts must employ, the statute does allow the courts to appoint an appropriate person to review the reports, interview the protected person, and make any other investigation as directed by the court. Additionally, courts have the authority to remove a guardian or conservator, or to modify or severely limit the powers granted to the guardian or conservator to safeguard the interests of the protected person and the estate.

Personal Representatives and Trustees – The statute (Sections 15-12-502 and 15-16-201(2), C.R.S.) limits the involvement of courts in the supervision of personal representatives and trustees. Since the provisions of a will or trust typically dictate the activities of personal representatives and trustees, the statute only requires courts to supervise personal representatives and trustees when petitioned to do so by an interested party. An interested party may petition the court to: (1) remove or replace a personal representative or trustee and (2) review a personal representative's or trustee's activities related to the estate or trust. Interested parties may also petition the court for the supervision of a decedent's estate. Under a supervised administration, a personal representative cannot transfer, surrender, or release estate or trust assets without prior order of the court.

Because courts have a higher level of responsibility for monitoring guardians and conservators, our audit focused on court practices for monitoring these appointees.

The statute sets forth certain duties for guardians and conservators. In addition to acting in the best interests of the persons they have been appointed to protect, guardians must file a personal care plan and conservators must file a financial care plan. Guardian care plans are due to the court within 60 days of appointment and conservator financial plans are due to the court within 90 days of appointment. The statute does not require the court to approve personal care plans submitted by guardians; however, the statute (Section 15-14-418(3), C.R.S.) requires the court to approve the financial plan submitted by conservators. Once the plans have been submitted, conservators and guardians must report to the court annually on their activities in relation to the plans. Typically, guardians provide information on the current mental, physical, and social condition of the protected person; the medical, educational, or other services provided; and a summary of the guardian's visits. Conservators provide information on the assets contained in the estate, a listing of the receipts and disbursements of the estate, and a determination of whether the estate is sufficient to provide for the future needs of the protected person, among other items. Additionally, conservators are required to file with the court a final report and petition for discharge of their duties and liability as a conservator. Once the judge has issued a decree of discharge, the conservator is no longer liable for his or her activities related to the conservatorship.

We reviewed a total of 114 probate cases that had a guardian, conservator, or combined guardian/conservator appointment during Fiscal Year 2003 to determine whether the courts were complying with monitoring procedures required by the statute. Overall, we found that some of the courts do not have sufficient controls to monitor the activities of conservators and guardians effectively. Furthermore, the Judicial Branch does not have any policies or directives establishing the standard monitoring practices courts must apply. Without sufficient monitoring, courts cannot be sure that guardians and conservators are carrying out their duties in the best interests of protected persons, and the well-being and estates of some protected persons may be at risk.

Of our sample of 114 cases, we identified 70 cases where the court required the guardian or conservator to file an initial or annual report. For the remaining 44 cases, the appointees were not required to file a report for a number of reasons, including that: (1) the protected person died prior to the report due date, (2) the guardian of a minor was a family member and the court did not require annual reports, or (3) the court had limited the duties of the guardian or conservator and provided direct oversight of the case itself. Our review focused on the 70 cases with reporting requirements because these cases should have received ongoing monitoring by the court. For these 70 cases, our audit identified problems with court monitoring practices in several areas. First, we found that five of the six courts in our sample did not systematically identify and follow up on outstanding financial and personal care plans or required annual reports. For 40 of the 70 guardian and conservator cases reviewed (57 percent), the guardian or conservator did not file either an initial report or one or more required annual reports. Furthermore, in 12 of the 70 cases (17 percent), the guardian or conservator did

not file any of the required initial or annual reports. As a result, the court has no information on any of the activities performed by these twelve guardians and conservators since the court appointed them about three years ago.

For those guardians and conservators that did file their required initial or annual reports, we noted that in 15 cases, one or more reports were filed late. Additionally, a small percentage of cases were filed more than three months late. Of 29 guardian cases, 3 (10 percent) filed at least one report more than 3 months late. Of 25 conservator cases, 2 (8 percent) filed at least one report more than 3 months late. In one case, a conservator report was more than 12 months late. For about three-quarters of the missing or late reports for our sample, there was no evidence in the case file that the courts had followed up with the guardian or conservator to request the missing report.

Second, we found that when the courts receive guardian and conservator reports, not all courts review them. Of the six districts visited, two districts review both conservator and guardian reports, three districts did not review any guardian reports, and one district did not review any conservator or guardian reports. Judges and magistrates at the districts that did not review any guardian reports expressed concerns that neither they nor their staff had the specialized expertise needed to review the appropriateness of guardian activities. For the five districts that indicated they reviewed reports, we identified 28 conservator and guardian cases that did not contain documented evidence of review for one or more of the reports submitted. Only one district had written procedures for reviewing reports documented in its procedures manual.

Third, we found that some of the courts' current report review practices were insufficient to identify errors and inappropriate expenses or to evaluate the appropriateness of care. Of the five districts that conduct some type of review of conservator reports, three conduct annual desk reviews, one conducts a desk review every other year, and one conducts desk reviews on some, but not all reports. The two districts that review guardian reports perform annual desk reviews of every guardian report. We found that practices for conducting desk reviews varied substantially among the courts, ranging from a cursory review to check for missing items, to a somewhat more detailed review comparing the initial financial and personal care plans with past and current reports and looking for obvious discrepancies. Only one district had developed a checklist to aid in the review of conservator reports.

Fourth, we found that guardian and conservator reports typically provide limited detail and supporting documentation for expenses and activities and that the courts do not always follow up on expenditures or activities that could be questionable. In the districts we visited that perform reviews of guardian and conservator reports, it is not generally the judge or magistrate that initially reviews the report, but rather a court clerk, registrar, or other staff member that conducts the review. According to court staff we spoke with, these reports are often reviewed in

isolation; that is, the staff member does not typically review the report in the context of other reports or information contained in the casefile. For example, one conservator report we reviewed showed "rent" expenditures that varied from about $1,800 per month to more than $2,000 per month over the course of a nine-month period. There was nothing in the conservator's report to indicate why the rent varied from month to month. In the same case, the conservator reported $1,400 in one-time expenditures for a big screen television and clothes. There was nothing in the conservator's report showing that the television or clothes were for the protected person. The court never reviewed the expenditures in this conservator's report. In both instances, we brought these examples to the attention of the Judicial Branch, which upon investigation determined that the expenditures were appropriate.

Although the courts require guardians and conservators to report activities and expenses on standardized forms, we found that the forms did not require sufficient detail to permit effective review or ensure that information was reported consistently. In general, the annual reports submitted by conservators and guardians reported only the total amount of compensation paid to the guardian or conservator and did not provide a detailed accounting of the appointee's services. Further, district review processes do not always include periodically requesting and reviewing supporting documentation for compensation paid to conservators or guardians. Both professional and nonprofessional guardians and conservators are authorized by law to charge fees for their services. According to information provided by the Colorado Bar Association, many family members who serve as guardians and conservators do not charge fees and only request reimbursement for out-of-pocket expenses, such as mileage, parking, and the like. However, professional conservators and guardians typically charge for their services. We did not see evidence in the case files that courts had requested supporting documentation from conservators or guardians, whether professional or nonprofessional, for fees charged for services.

As stated previously, the Judicial Branch does not have any statewide policies or directives to guide or direct courts in monitoring guardians and conservators. Furthermore, the Branch has not established any standard procedures for guardians and conservators that require these appointees to maintain receipts, provide detail on fees and expenses, or submit supporting documentation. Finally, the State Court Administrator's Office does not currently review court practices to determine whether the courts are monitoring guardians and conservators effectively or to provide technical assistance.

The Colorado Bar Association has published guidance for guardians and conservators. Although this guidance is not binding on either courts or appointees, the guidance is useful for providing a perspective on the duties of guardians and conservators as viewed by professional practicing attorneys. The guidance provides that a conservator "may not profit from [his or her] position as conservator, [or] use the protected person's assets for [his or her] benefit as

opposed to the best interests of the protected [person]. . . ." The guidance also provides that the guardian is responsible for "seeing that basic daily personal needs of [the protected person] are met, including food, clothing and shelter. . . ." Furthermore, the guidance suggests that conservators and guardians who are compensated for their services should keep a record of the time they spend performing their duties on behalf of the protected person, including a description for each time entry for the services performed. According to the guidance, conservators and guardians should not charge for time spent with the protected person for friendship or companionship.

Financial information and information on the care and the condition of protected individuals is self-reported by conservators and guardians to the courts. Review of conservator and guardian reports is the only internal control the courts have to monitor the activities of these appointees, or to determine whether the protected individual has an ongoing need for continued guardianship. Courts have indicated staff and funding are not available to conduct reviews of all conservator or guardian reports and that current staff available do not have the training or possess the skills needed to review conservator reports involving financial transactions or guardian reports involving complex medical or personal care issues. Additionally, courts report that current staff does not necessarily have the training or skills to determine whether a protected person has an ongoing need for guardian and conservator services.

Colorado's limited monitoring of guardians and conservators is consistent with practices in many other states. However, some experts in probate law have been concerned, on a national basis, about the lack of oversight of guardians and have identified best practices and recommended improvements. Some of these experts promulgated, by consensus, the National Probate Court Standards in 1993. Although these standards are not binding on courts, the standards provide helpful guidance to states that want to improve their probate court system. Similarly, the Second National Guardianship Conference Consensus (Wingspan), a multi-disciplinary group of experts from around the country who gathered in 2001 to collaborate on guardianship reform, promulgated a set of recommendations to improve court oversight of guardian services. Both the National Probate Court Standards and the Wingspan Conference recommended that probate courts improve oversight of guardians and conservators by actively monitoring their activities and conducting thorough reviews of mandated reports.

Some states have responded to the recommendations contained in the National Probate Court Standards and Wingspan by implementing more aggressive monitoring procedures for guardians and conservators. California and Florida use their full-time employees to review mandated reports. Virginia uses its social services department staff to conduct detailed reviews. Some jurisdictions (Tarrant County, Texas and the states of Maryland and Georgia) have implemented formal court visitor volunteer programs, using graduate students or community volunteers, to ensure that court appointees are properly performing their duties

and that the terms of the guardianship or conservatorship are still appropriate. These volunteers act as the eyes and ears of the probate court to make certain that protected persons receive necessary care and services. Of the districts we visited, the 2nd and 4th Districts each have one volunteer that assists with the review of conservator reports although neither district has a formal volunteer program.

The statute (Section 15-10-102(2)(e), C.R.S.) states that the purpose of the probate code is to make uniform the law among the various jurisdictions. Although Judicial Branch staff indicate that this provision is intended to ensure uniformity among the states, it would appear that individual courts in Colorado should also operate uniformly in order to afford equal treatment and protection to individuals served by all courts. The current statute is uniform with regards to: (1) when a court may make an appointment; (2) the information the court must obtain to determine who to appoint, and (3) the duties appointees must perform. However, the statute does not provide uniform procedures for monitoring conservators and guardians, except that it requires reports to be filed annually and for the courts to have a system for reviewing those reports. Additionally, the State Court Administrator's Office does not monitor the filing of reports or court practices for reviewing the reports that are filed. To ensure the best interests and financial stability of protected persons are safeguarded, the Judicial Branch should take steps to standardize reporting and review procedures for conservator and guardian cases. Establishing detailed reporting requirements and minimum standards for court review of financial and personal care plans and annual reports will greatly improve the courts' ability to effectively monitor the activities of conservators and guardians.

Recommendation No. 1:

The Judicial Branch should improve the consistency and effectiveness of court review of conservator and guardian plans and reports by establishing minimum review procedures and by requiring guardian and conservator appointees to maintain documentation and report detailed information on their fees and expenses. These procedures and reviews could include:

a. Establishing standard procedures for courts to identify and follow up on missing guardian and conservator plans and reports.

b. Requiring guardians and conservators to maintain supporting documentation for fees and expenses and improving guardian and conservator annual reporting forms to ensure that reports contain consistent and specific detail regarding the activities of guardians and conservators.

c. Developing a risk-based model for scheduling reviews of conservator and guardian reports to ensure that high-risk cases are reviewed more frequently, lower-risk cases receive less frequent review, and that all courts are reviewing reports in a systematic manner. The risk-based model

should incorporate a requirement that the courts periodically request and review supporting documentation related to professional guardian and conservator compensation and expenditures.

d. Developing standardized review forms for evaluating guardian and conservator reports. The review instructions should include a list of risk factors to assist in identifying unreasonable or questionable expenses that require further supporting documentation. Risk factors could include expenses over a certain threshold, expenditures or activities that deviate from the financial or personal care plan on file, or expenses inherently at risk for fraud and abuse (e.g., meals, travel, credit card reimbursements, or purchases of equipment that the protected person likely could not use). Individuals responsible for reviewing reports should be trained to conduct such reviews.

e. Exploring the implementation of formal volunteer and court visitor programs to provide assistance and or additional expertise to the courts in reviewing guardian and conservator reports. Volunteer programs should include procedures for the recruitment, training, and coordination of volunteers.

f. Establishing standard court practices for overseeing guardian and conservator appointees, making recommendations for improved procedures, and providing technical assistance as needed.

Judicial Branch Response:

Agree. Implementation Date: July 2007. The Judicial Branch takes seriously its responsibility to protect the interests of individuals who are unable to do so for themselves. As noted in the audit report, the lack of oversight of guardians and conservators is a national concern. The Judicial Branch agrees that the effectiveness of court reviews of guardian and conservator reports and plans could be improved. The Branch will consider the various options suggested by the auditor and will implement those it deems most appropriate to help ensure that the best interests and financial stability of protected persons are safeguarded.

As noted in the audit report, one of the purposes of the probate code in Section 15-10-102(2)(e), C.R.S., is "to make uniform the law among the various jurisdictions." It should be noted that this refers to uniformity *among the 50 states* (see also Section 15-14-121, C.R.S.). This is important because, as referenced in Section 15-10-301, C.R.S., probate matters may involve Colorado property owned by non-residents or property in other states that comes into the control of a fiduciary that is subject to the laws of Colorado.

Appointee Compensation

The statute allows all conservators and guardians, whether professional or nonprofessional, to charge the estate of the protected person reasonable compensation for services they provide (Section 15-14-417, C.R.S.). To determine whether compensation is reasonable, appointees must consider the following factors: (1) the skills necessary to perform the service properly, (2) the fee customarily charged in the area for similar services, and (3) the likelihood that the service provided will preclude the appointee from other employment. In general, nonprofessional guardians and conservators request no compensation or minimal compensation from the estate for their services, while professional guardians and conservators are paid a professional fee from the estate for their services. If the judge determines that the compensation is excessive or that expenses are inappropriate, the excessive or inappropriate amount must be repaid to the estate by the appointee.

We reviewed the fees charged and services provided by a sample of 114 guardians and conservators between 2003 and 2006. As discussed previously, guardian and conservator files often contain little or no documentation or explanation of fees charged. However, in the limited instances where information or documentation was available for review in the case file, we identified a number of concerns with fees charged, including:

- **Variations in fees charged for similar services.** Public Administrators in five of the six districts we visited charged fees ranging from $57 per hour (in Grand Junction) to $220 per hour (in Colorado Springs) to perform conservator services. The remaining district reported that it did not know what its Public Administrator charged for services. Although courts in each district appoint the Public Administrator and the Public Administrator performs duties set forth in the statute, the Public Administrator, not the appointing court, determines the hourly fees. We also identified an instance where substantially different fees were charged by appointees performing the same service. Specifically, a conservator charged about $13,100 for a six-month period. The court replaced the conservator with a successor conservator who charged about $6,200 (less than half) for the second six-month period, performing essentially the same services. When appointing the successor conservator, the judge stated: "This has been a phenomenally expensive procedure for the estate. And, simply, the law-related expenses over the course of the last couple of years have been somewhere between extreme and shocking." The successor conservator petitioned the court for a review of the prior conservator's fees. In response to this petition, the court appointed the Public Administrator as a "Special Master" to review the prior conservator's fees. The Public Administrator

concluded that the fees charged by the prior conservator fell within fee schedules that were consistent among other lawyers and their staff members. The Public Administrator also stated that he believed his own fees were fair to those he served, and likely the prior conservator believed his or her fees were fair as well. The current statute provides limited guidance to courts when determining reasonableness and the Judicial Branch has not provided additional guidance or criteria to assist courts with determining reasonableness. Thus, courts have limited criteria to question the reasonableness of fees charged.

- **Professional fees charged for nonprofessional services.** We found that professional appointees typically charge the same professional fee for all services regardless of whether the service they provide requires their expertise. In one case, a conservator, who was also an attorney, charged $145 per hour for non-legal activities such as purchasing a washer, dryer, and TV; talking with an electrician; visiting the protected person's home; and talking with the protected person's neighbors. Over a two-month period, the cost for these non-legal services totaled about $1,200. The same conservator charged the $145 per hour fee for tasks requiring very different levels of expertise, including: (1) preparing an inventory of the estate assets and (2) preparing a legal petition for a court proceeding.

- **Fees that appeared excessive.** In one case we identified a professional guardian that was a licensed clinical social worker who charged over $1,900 per month for services provided for a protected person. According to the plan of care, the protected person received 24-hour care in her home, including all personal and medical care, meal preparation, and housekeeping (the guardian did not provide these 24-hour services). The guardian's care plan stated that the guardian would be initially visiting the protected person two or three times per week and that eventually, visits would be reduced to once per week. The guardian indicated that her most recent visit lasted one hour. If the guardian provided 12 one-hour visits (3 visits per week) during the month for $1,900, the guardian earned about $158 per hour. In Colorado, licensed clinical social workers providing similar services typically earn between $15 and $27 per hour, depending on their education and experience. In another case, a guardian was paid $900 for approximately three to four hours of service during a one-month period, or about $225 to $300 per hour. On the basis of the documentation in the case file, the guardian's duties included visiting the protected person about every 10 days for one hour and keeping in contact with the assisted living facility where the individual resided. The assisted living facility performed the day-to-day personal care for the protected person.

- **Fees related to legal disputes that quickly depleted estate assets.** In one case we reviewed, disputes arose between a family member of the protected person and the appointed guardian and conservator. As a result

of these disputes, the conservator and guardian each obtained legal representation. During a one-year period, the conservator's attorney was paid $2,100 and the guardian's attorney was paid more than $11,600 to represent the appointees in this case. In total, the protected person's estate (valued at about $550,000) was charged more than $33,000 (6 percent) in a single year for professional guardian and conservator services and associated legal counsel.

Courts appoint professional guardians and conservators to provide services on behalf of a protected individual who is incapable of selecting someone to serve on his or her own behalf. As a result, courts should require some assurance that the fees charged by professional appointees are reasonable. The Americans with Disabilities Act Model Statute recommends that guardians and conservators provide a bill of accounting for their services by specifically listing the services rendered and the fee charged for each service.

The Judicial Branch has established fee schedules for other types of court appointments through Chief Justice Directives. For example, fees for state-funded legal counsel for indigent individuals involved in probate and other cases have a maximum hourly attorney rate of $57 per hour. Similarly, fees for Alternate Defense Counsel attorneys appointed to defend an indigent person in a death penalty case are limited to $85 per hour for the attorney's services and $39 per hour for the investigator's services, with a maximum total of $15,000 for the case. These court appointees are paid from state funds and subject to direct state oversight and budget limitations. In contrast, probate appointees are paid from the protected persons' estate or assets. However, when the court appoints a professional appointee to a probate case, the court is responsible for ensuring that the fees charged by the appointed individual are reasonable. Districts we visited expressed concerns over not having any guidance for determining whether fees or other costs are reasonable. Establishing guidance for appointee fees could assist courts with assessing the reasonableness of the fees and avoid fee challenges by interested parties, resulting in potentially unnecessary litigation.

The Judicial Branch should consider options for ensuring that fees charged by guardians and conservators in probate cases are reasonable. At a minimum, guardians and conservators should be required to provide a detailed accounting of their fees and services so that courts have information to evaluate the reasonableness of the appointees' fees. Additionally, the Judicial Branch should consider establishing guidance that could include a fee schedule, with a maximum fee amount, for typical types of guardian and conservator services. The schedule could establish higher fees for services that require professional expertise and lower fees for services that do not. Alternatively, the Judicial Branch could consider a blended fee that captures the range of professional and nonprofessional services that the guardian and conservator will provide. Establishing a fee schedule and requiring that conservators and guardians explain and provide support for fees above the suggested maximum rates will help courts perform

more effective reviews of expenditures, ensure guardian and conservator costs are appropriate, and safeguard the assets of protected persons.

Recommendation No. 2:

The Judicial Branch should consider a range of options that assist courts with monitoring and determining the reasonableness of fees charged by guardians and conservators. Options could include:

a. Establishing guidance for appropriate fees. This could include a total maximum fee amount for typical types of guardian and conservator services or different fees for services requiring different levels of expertise. Alternatively, the Judicial Branch could develop blended rates with established maximums to reflect the range of professional and nonprofessional services that the guardian and conservator will provide.

b. Requiring guardians and conservators to provide a detailed accounting of their fees and services, including explanations for any costs exceeding established fee guidelines, for review by the court.

Once feasible options have been identified, the Judicial Branch should implement policies for courts to consistently apply when establishing and approving fees and for appointees to use when charging and documenting fees. This can be accomplished either through Chief Justice Court Directive or by proposing statutory change, as appropriate.

Judicial Branch Response:

Agree. Implementation Date: July 2007. The Branch agrees that it has a statutory responsibility to review the reasonableness of the fees charged by guardians and conservators and that the Branch could improve processes for such reviews. The Branch will consider the options presented by the auditor and will implement those it deems most feasible to safeguard appropriately the assets and well-being of protected persons.

Appointee Screening and Selection

As we have discussed in the Overview Chapter, the statute charges courts, through the Probate Code, with a greater degree of responsibility for the review and oversight of guardian and conservator appointments than for personal representative or trustee appointments. Whether a protected person is served by a professional or nonprofessional guardian or conservator appointee, measures must be taken to ensure the protected individual is appropriately cared for. Since courts rely on guardians and conservators to act in the best interests of the persons they

have been appointed to protect, the courts must have procedures to ensure these appointees are qualified.

The statute (Sections 15-14-304, 15-14-403, 15-12-301, 15-12-402, and 15-16-101, C.R.S.) sets forth general requirements for appointing all fiduciaries (guardians, conservators, personal representatives, and trustees) to probate cases. For all appointments, the statute requires a petition requesting the appointment; information stating why the appointment is necessary; the names of other interested persons including family members, heirs, or beneficiaries; and evidence that interested parties received notice of the petition (notice allows interested persons to object to the petition or provide additional information). The statute sets forth additional requirements for appointing guardians and conservators. More specifically, courts must:

- Determine the capacity of the potential protected person prior to appointment. Procedures to determine capacity include an evaluation conducted by qualified individual (physician or psychologist) and interviews of parties by an assigned court visitor. (Section 15-14-305, 15-14-406, C.R.S.)

- Review a guardian's or conservator's required statement. Guardians and conservators (except for some individuals that typically serve as professional appointees) are required to issue a statement attesting to whether the prospective appointee has been convicted of a felony or misdemeanor, issued a restraining order, or relieved of any previous court-appointed responsibilities. (Section 15-14-110(1), C.R.S.)

- Review criminal history record checks and current credit reports for all conservator and guardian appointments. (Section 15-14-110(2), C.R.S.) Obtain parental consent for guardianship if the guardian is a minor. (Section 15-14-204, C.R.S.)

The statute also sets forth some restrictions limiting the individuals who may be appointed as conservators or guardians. More specifically:

- Professional individuals may not serve as both guardian and conservator for the same protected person unless good cause is shown. (Section 15-14-310(5), C.R.S.)

- An owner, operator, or employee of a long-term-care provider that provides care to a protected person cannot serve as a guardian unless related to the protected person by blood, marriage, or adoption. (Section 15-14-310(4), C.R.S.)

We reviewed court practices for complying with statutory requirements for appointing guardians, conservators, personal representatives, and trustees. In general, we found that the courts we visited are complying with the broad requirements set forth in the statute for all of these types of appointments. However, we found that additional procedures could improve the courts' ability to review the qualifications of all guardian and conservator appointees, whether professional or nonprofessional, and ensure that all guardians and conservators receive sufficient training to carry out their duties, as discussed below.

Qualifications for Guardians and Conservators

The statute provides courts with very limited guidance on the qualifications of probate appointees, including guardians and conservators. Section 15-14-110(3), C.R.S., requires courts to conduct a hearing to consider information provided by prospective guardians and conservators. Interested parties receive notice of the hearing and the proposed appointee is subject to questioning by the court. However, the statute does not require prospective guardians and conservators to submit specific information related to the skills or qualifications they possess that will enable them to perform their guardian or conservator duties. By not specifying qualifications for appointment, the statute allows for a broad pool of individuals, including family members and friends, to serve as guardians or conservators. In general, unless an interested party objects to the appointment of a guardian or conservator, the statute presumes that the person petitioning for appointment is qualified.

The statute requires even more limited information on the backgrounds and qualifications for certain types of professional appointees, including individuals appointed from the Public Administrator's office, trust companies, banks, and state or county agencies. Furthermore, the statute does not require these types of professional appointees to provide some of the information that the statute (Section 15-14-110(1) parts (a) through (d), C.R.S.) requires other appointees to report, such as information on previous performance problems including involvement in any civil judgments or prior removal from court-appointed duties. In other words, the statute does not presume that a professional guardian or conservator should be held to a higher standard of qualification than a nonprofessional appointee, or possess particular skills, certifications, or training. However, professional guardians and conservators, unlike nonprofessional guardians and conservators, receive professional fees and charge the estate or assets of the protected person for their professional services. Although the statute allows nonprofessional guardians and conservators to be compensated for their services, information from the Colorado Bar Association states that nonprofessional guardians and conservators do not typically charge for their services, other than reimbursement for out-of-pocket expenses.

Our sample of 114 probate cases included 18 cases with a total of 20 professional appointees. We reviewed these files to determine the qualifications of the professional appointees and to consider whether it appeared that the appointees had the skills to carry out their duties. We found that the files contained no documentation on the professional appointees' qualifications or skills. From our review of the nine professional conservator appointees, it appeared that one conservator was a CPA and three conservators were Public Administrators (licensed attorneys). We could not determine the professions of the remaining five conservators. From our review of the eleven professional guardian appointees, it appeared that one was a director of a local county department of social services, three were community volunteers, and one was employed by a not-for-profit human services agency. We could not determine the professions of the six remaining professional guardians. According to the Judicial Department, courts may question an appointee on his or her qualifications during the appointment hearing; however, these discussions would not be documented in the court case file.

Earlier in this chapter, we discussed problems with conservators and guardians filing required plans and annual reports. During our file review of appointee qualifications, we evaluated whether professional or nonprofessional guardians and conservators were more likely to fail to file required reports. We found that although nonprofessionals were responsible for the majority of missing reports, one professional guardian also failed to file the required personal care plan or any of the required annual reports. (The professional guardian was the director of a local county department of social services.) Furthermore, we found that three professional guardians did not file one or more of the required annual reports.

Training

Colorado's practices for reviewing the qualifications of guardians and conservators are in line with the practices in many other states. However, several states have taken additional steps to ensure that guardians and conservators understand their responsibilities and have the skills needed to carry out their financial, personal care, and administrative responsibilities. At least four states (Texas, Florida, Washington, and Arizona) require professional guardians and conservators to complete a minimum number of hours of training and register with the State before they can be appointed. Arizona requires professionals to pass an exam to be certified, and professionals must renew their certification every two years. San Francisco County requires professionals to complete a certificate program at a university or demonstrate equivalent experience before appointment. Other states, including Florida and New York, and local jurisdictions (San Francisco County, CA and Tarrant County, TX) also require nonprofessional guardians to receive training on their duties. Generally, training for nonprofessional appointments is intended to help these individuals: (1) understand their duties and how to fulfill them, (2) understand the reporting

requirements, and (3) identify the services available in their community to help them assist the individual they are assigned to protect. Such training has also been recommended by the National Probate Court Standards. Only one of the districts we visited required the nonprofessional conservator to view a training tape in 3 of the 11 conservator or guardian/conservator cases we reviewed.

One of Colorado's judicial districts, the 4th District, has attempted to ensure that professional conservators are qualified by establishing a pool of qualified conservators that courts draw upon when they need to make a professional appointment. This practice is similar to existing Judicial Branch practices requiring that courts appoint attorneys as Alternate Defense Counsel (to provide representation for indigent persons in certain criminal cases) and guardians ad litem (to provide representation for the child in dependency and neglect cases) from a pool of qualified and approved appointees.

The Judicial Branch should take steps to ensure that all individuals appointed as professional guardians and conservators are aware of their responsibilities and minimally qualified to carry out their duties under the law. Additionally, the Judicial Branch should establish higher qualification and training standards for professional appointees. One option would be to establish minimum training and continued professional education standards for professional guardians and conservators. This approach would likely require statutory change. When considering this option, the Judicial Branch should also consider whether registration or certification of professional appointees should be required. Furthermore, the Judicial Branch should establish minimum qualification and training requirements for nonprofessional guardians and conservators. Courts should obtain some assurance that nonprofessional appointees understand and are competent to carry out their duties on behalf of protected persons. Courts could contract with qualified and experienced professional guardians and conservators to provide training to nonprofessionals, focusing on ensuring that nonprofessional appointees understand their duties under the law and have information to access resources when needed to perform their responsibilities. To minimize the administrative burden of screening prospective professional appointees, the Judicial Branch could establish a pool of pre-qualified appointees meeting the above requirements that courts can choose from when a professional appointment is needed.

Recommendation No. 3:

The Judicial Branch should improve procedures for ensuring that professional and nonprofessional guardians and conservators are qualified to perform their duties toward protected persons effectively and in accordance with the law, proposing legislation as needed. More specifically, the Judicial Branch should consider:

a. Developing minimum training requirements, continued professional education, and registration or certification for professional guardians and conservators.

b. Developing minimum qualifications and training requirements for nonprofessional guardians and conservators to ensure these appointees are competent, understand their duties, and have the information necessary to access resources needed to carry out their responsibilities.

c. Establishing a pool of qualified professional conservator and guardian appointees that meet minimum qualifications. Individuals included in the pool should be reviewed periodically to ensure that they continue to meet these qualifications.

Judicial Branch Response:

Agree. Implementation Date: July 2007. The Branch takes seriously its responsibility to ensure that appropriate individuals are appointed as guardians and conservators. The Branch agrees to improve procedures for appointing guardians and conservators by considering minimum qualifications for professional appointees and training procedures for nonprofessional appointees.

As the audit notes, the courts are complying with the statutory requirements for appointing guardians and conservators. The Branch recognizes that elevated requirements for qualifications and training, beyond current statutory requirements, *may* inadvertently affect the eligibility and willingness of family members and friends to serve in this important capacity for their loved ones (and may have the unintended consequence of increasing costs to the estate). It is for this reason that statute provides the judge the authority, through a hearing, to determine and select the most qualified individual, whether professional or nonprofessional.

Interested Parties

As discussed previously, the Probate Code does not provide for ongoing court monitoring and supervision of trustees and personal representatives. The statute (Section 15-16-201(2), C.R.S.) states that "the administration of a trust shall proceed . . . free of judicial intervention and without order, approval, or other action of any court. . ." unless initiated by interested parties concerning the internal affairs of trusts. Similarly, the statute (Section 15-12-502(2)(b), C.R.S.) states that ". . . if the decedent's will directs unsupervised administration such provision shall control unless the personal representative petitions for supervised administration, in which case such petition shall be granted unless the court finds that supervised administration is unnecessary for protection of persons interested in the estate. . . ." The statute does allow for interested parties in personal

representative or trustee cases to petition the court at any time to request the appointment or removal of a trustee or personal representative, the review of the activities of a trustee or personal representative, supervision of a personal representative, or the release of the registration of a trust. As a result, courts rely upon interested parties to notify the court when personal representatives or trustees are not performing their duties effectively.

When interested parties identify problems with the performance of a trustee or personal representative appointee and bring these problems to the court's attention through a petition, judicial proceedings result. These proceedings involve litigation and typically, an attorney is hired to represent the appointee and the attorney's fees are paid by the estate or trust. If the litigation is extensive, the resources of the trust or estate may be diminished substantially. In one of the trustee cases reviewed during our audit, some of the beneficiaries in the case protested the original trustee appointed. The court then appointed a successor trustee. The appointment of the successor trustee spurred a number of additional protests by one or more of the beneficiaries. Although the initial trustee did not charge for his services, the successor trustee charged nearly $188,000 for trustee and bookkeeping services over a period of four years. Additionally, the successor trustee charged the estate an additional $95,500 in attorney's fees to represent the successor trustee against petitions filed by trust beneficiaries. The trust in this case was valued at about $1.1 million and legal fees, alone, reduced the value of the trust by almost 9 percent over the four-year period.

In the six districts we visited, we reviewed the practices used to notify interested parties of their role in monitoring the activities of personal representatives and trustees. We found that court documents and forms provided to trustee beneficiaries did not inform the interested parties of their responsibilities to protect their own rights and interests as they relate to the trustee or the trust. In contrast, court documents provided to estate beneficiaries provided the following information with regard to oversight of personal representatives:

> Interested persons have the responsibility to protect their own rights and interests within the time and in the manner provided by the Colorado Probate Code, including the appropriateness of claims paid, the compensation of personal representatives, attorneys and others, and the distribution of estate assets, since the court will not review or adjudicate these or other matters unless specifically requested to do so by an interested person.

Although these instructions inform interested parties of their responsibilities for overseeing the activities of personal representatives, the information does not provide instructions on the specific actions interested parties must take to address problems or obtain relief. By uniformly informing interested parties of their responsibilities for overseeing both personal representatives and trustees and providing instructions on the procedures and timelines to be followed if a problem

occurs, courts have better assurance that inappropriate actions of personal representatives and trustees will be identified and reported.

Recommendation No. 4:

The Judicial Branch should improve communications used to inform interested parties of their rights and responsibilities related to oversight of trustees and personal representatives. This could include establishing templates that instruct interested parties on the procedures and timelines they must follow to petition the court for review of the activities of a personal representative or trustee.

Judicial Branch Response:

Agree. Implementation Date: July 2007. The Branch agrees that the communications used to inform interested parties of their rights and responsibilities should be improved and will consider various options to instruct them on the procedures and timelines.

System Improvements

As discussed, one purpose of the Probate Code is to "make uniform the law among the various jurisdictions" (Section 15-10-102, C.R.S.). Management information at the statewide level, including aggregate data on active and inactive caseloads, types of appointees, and appointee reports and activities, is critical to ensuring that court practices consistently meet this statutory objective.

The Judicial Branch maintains probate case and appointee data in an automated information system, the Integrated Colorado On-Line Network (ICON). ICON is the official electronic repository for all county and district court records statewide (except for Denver County Court). Courts use ICON to manage their dockets, schedule proceedings, and track case progress. In addition to ICON, courts are using Lexis/Nexis to store scanned images of court documents, including initial and annual guardian and conservator reports. Our audit used ICON to extract and analyze probate case management data for Fiscal Years 2000 through 2005. We found that ICON lacked basic information in several areas needed to track probate cases and appointees effectively. Weaknesses in the automated case management system limit the ability of courts to monitor the probate caseload; supervise guardian, conservator, and supervised personal representative performance; and report critical information on the well being of protected persons and the financial solvency of estate assets.

First, we found that the case management system does not track or report aggregate information on the number of professional versus nonprofessional (typically a family member or friend) appointees. Additionally, the system does

not track or report on the types of professionals (public administrators, CPAs, attorneys, social workers) appointed to probate cases. Courts report that professional appointments represent a small portion of all probate cases, but the Judicial Branch cannot confirm this through the automated case management data. Court monitoring practices should vary depending on the risks associated with each type of appointment. Since courts cannot readily obtain or compile data to identify cases overseen by professional or nonprofessional appointees, courts do not have information necessary to structure an effective risk-based review of these cases.

Second, the case management system does not have a separate field that allows the Judicial Branch to track information on whether probate case appointees are "active," (i.e. the appointee is currently carrying out his or her duties related to a probate case) or "inactive" (i.e., the appointee has completed his or her duties and has no further responsibilities). Some districts have found ways to query ICON on dates (input manually) that indicate future action on the case is required. This allows the district to use ICON to approximate its number of active cases. However, such manual entries are subject to error. Furthermore, not all districts manually input their dates of future actions and not all districts know how to perform this query on ICON. As a result, the Judicial Branch and some individual courts cannot review aggregate data to determine their active probate caseloads, how long their probate caseloads have been active, or identify the active caseload of any Public Administrator or professional conservator or guardian. In one district we visited, the case management system listed one Public Administrator as an appointee on 46 different probate cases. Of the 46 cases shown in ICON, the Public Administrator reported that he was only currently working on 15 probate cases. The district had to contact this appointee directly to determine the number of active cases in the appointee's caseload. Without accessible information on the number of active and inactive cases maintained by professional appointees, the courts cannot easily determine whether an appointee is overloaded. Appointees carrying too many cases may not be managing the estate assets or monitoring the well being of the protected person effectively. Additionally, without accurate information on the size and composition of their active caseloads, it is difficult for the courts to develop efficient risk-based monitoring procedures on an ongoing basis.

Third, the case management system lacks system edits to ensure all courts enter some key information on probate cases consistently and accurately. For example, the case management system currently contains a field indicating whether a personal representative appointed to manage an estate is "supervised." Courts report that they do not necessarily complete this field. This information is critical for the court to oversee the case since, when an estate is supervised, the personal representative cannot act independently and must submit certain decisions to the court for approval. In addition, courts do not always update the type of appointment assigned to a probate case. Each court enters an initial appointment type into the system when a case is filed. However, the ultimate outcome of the

case and type of appointment may differ from the initially assigned case type. Courts do not update this case type after an appointment is made. For example, the case management system identified 23 of 152 cases (15 percent) in our sample as combination conservator/guardian appointments. However, when we reviewed the case files, we found that only 17 of the 23 cases were dual appointments. As a result of these inconsistencies in the recording and tracking of case information, courts do not have some basic aggregate data, such as the number of probate cases by type of appointment or by type of supervision. Since the court's duties vary with the type of appointment, court staffing procedures and review processes would benefit from having accurate caseload information.

Fourth, the case management system does not automate basic monitoring processes for probate cases. The statute requires guardians to prepare a care plan and conservators to prepare a financial plan; both guardians and conservators must annually report to the court their activities in regard to their approved plans. Conservators are also required to file a final report upon termination of a conservatorship. As discussed, these annual activity and final reports are the only controls courts currently have to determine whether guardians and conservators have effectively performed their duties under the law and in accordance with the approved plans. Currently, some courts do not have an efficient method for determining which guardians and conservators are required to file a report or when those reports are due. An automated report that routinely provides districts with a list of outstanding guardian or conservator reports would help districts to better monitor late or missing reports. Additionally, enhancing the system to automatically generate notices reminding the appointee to file an outstanding report could assist courts with following up on outstanding or missing reports more efficiently.

Finally, the districts cannot analyze required guardian and conservator reports electronically. One of the districts we visited requires attorneys who are acting as professional guardians or conservators to submit electronic copies of their written reports, which could include scanned images, Word files, or other file formats. Although these documents are submitted electronically, courts are unable to conduct any automated analysis of the information contained in these documents. Filing information electronically, where individual reporting elements are entered in a standardized, electronic format and evaluated through automation, would streamline monitoring activities and allow the system to automate some review processes, such as flagging reports that exceed the planned expenditure thresholds or lack one or more of the required reporting elements. Additionally, electronic data input of guardian and conservator reports would allow courts to compile data on estate assets and expenditures in order to better assess risk for monitoring purposes. Currently Colorado's court staff relies heavily on manual data input of information and queries to analyze probate case information. In contrast, Minnesota has implemented an electronic system for filing required report information. San Francisco is currently considering implementing a similar system.

According to the Judicial Branch, the ICON case management system was not designed to produce aggregate management information and data for monitoring and evaluating court practices. Rather, the case management system was designed as a scheduling system to aide courts in moving cases through the judicial process. Additionally, the Judicial Branch indicates that courts have limited resources available to enter data into the ICON system.

The Judicial Branch indicates that it is currently considering a number of improvements and upgrades to the ICON system to improve its effectiveness as both a docket management and court monitoring system. In considering these improvements, the Judicial Branch should incorporate the changes discussed in this report to improve overall management of probate cases. More specifically, fields should be added to track professional and nonprofessional appointments (including the expertise of professional appointees), and active and non-active cases and appointments. Additionally, the system should incorporate appropriate edits to ensure courts enter critical data into fields consistently and that data contained in fields are updated to reflect the current status of cases. Finally, the Judicial Branch should consider the costs and benefits of adding enhancements to the ICON system that would allow electronic data input of guardian care plans, conservator financial plans, annual activity reports, and the final reports related to those plans. If electronic data input of reports can be accomplished, system processes should also be capable of generating notices to guardians and conservators when annual reports are late, incomplete, or when activities appear to deviate significantly from plans. These improvements will help the courts to monitor the probate caseloads and address other concerns noted in this report.

Recommendation No. 5:

The Judicial Branch should strengthen controls over the management of probate cases by making improvements to its case management system. This should include:

a. Adding fields to track professional and nonprofessional appointees, type of professional appointee, and “active” and “inactive” cases.

b. Incorporating edits to ensure courts enter all critical data consistently and that data contained in fields are updated when needed to reflect the current status of cases.

c. Creating system flags to identify outstanding reports and notify appointees if reports are late.

d. Evaluating the costs and benefits of creating a system for electronic data input of guardian care plans, conservator financial plans, and annual and final reports. If developed, the system could include programming to

notify the court and appointees when the activities or expenditures vary significantly from approved plans and request that the appointee provide additional information.

Judicial Branch Response:

Agree. Implementation Date: January 2008. The Branch agrees that the controls over the management of probate cases could be improved. The Branch's case file management system is undergoing a three-year redevelopment. The auditor's recommendations for improvement will be incorporated into the development process.

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