

Instructions for Visitor's Report on Auditing Court Records

To prepare:

- (1) As you prepare to review the court records, remember that in most cases, everything is fine, but in others the person who is supposed to be protected is being harmed or is at risk of being harmed. Ultimately it may take in-person interviews and court hearings to reach a sound conclusion about whether there are problems. But the process can start with a volunteer court visitor reviewing the court records for warning signs.
- (2) Receive the certified copy of the order assigning you as visitor from the program coordinator. The guardian and interested parties will also receive a copy of the court order and notice of the audit.
- (3) Review the guardian's or conservator's responsibilities here: <http://www.utcourts.gov/howto/seniors/BasicGuidelines-2007.pdf> and the pre-appointment tests they are required to take here: http://www.utcourts.gov/howto/seniors/g_and_c.asp.
- (4) Review the court records for the essential documents and information:
 - protected person's name, age and location; case number
 - guardian's name and contact information
 - name and contact information of interested persons
 - the date the guardian was appointed and guardian's authority (found in the letters of guardianship)
 - petition for appointment
 - physician's or other clinical statement; note any medications being taken, any treatments ordered, and any assistive devices ordered
 - letters of guardianship and order of appointment
 - annual status reports
 - annual financial reports
- (5) You will have access to case records through Xchange, which is the courts' public database. If you need a document from a file that is not electronic, the program coordinator will retrieve and send it to you.
- (6) Be sure to protect your notes and copies of any court records. Do not leave them where someone else can see them or take them. After you have filed your report and attended the hearing, delete any electronic records from your computer and email, and if you have hard copies of anything related to the case, shred those

documents. If you do not have a shredder at home, you may return the hard copies to the program coordinator. Guardianship records are private so, other than the order assigning you as a visitor, do not show the documents to anyone else. Also, do not talk about the case with anyone other than court staff.

- (7) After reviewing the records, schedule a meeting with the Program Coordinator to discuss the case and your report plan. Ask the Program Coordinator what follow-up will need to occur.
 - (8) Print a blank report form: Visitor's Report on Auditing Court Records.
 - (9) Using these instructions for reviewing court records and completing the report, examine the records for the problem signs identified in the manual and these instructions. If there are no signs of problems in an area, enter "none." Complete the report form as soon as possible and submit it to the Program Coordinator. The coordinator will file it with the court that assigned you.
 - (10) Unless you are told otherwise, plan on attending the hearing if one is scheduled. You may be called upon to testify at the hearing. Although guardianship records are private, most guardianship hearings are public.
 - (11) If the judge decides that further investigation is necessary, the judge might assign a visitor to interview the protected person, the guardian and others. If you have volunteered for the role of interviewing people, that visitor might be you. The volunteer coordinator will consult with you in order to determine whether you or another volunteer will be assigned to complete the well-being report. Before conducting your interviews and other inquiries, review the manual on inquiring about the protected person's well-being.
- (1) Paragraph (1): The guardian's inventory and annual reports.**
- **Inventory.** The inventory describes the protected person's estate—financial assets and real and personal property—that the guardian will be responsible for. The inventory is due within 90 days after the appointment.
 - **Status Report and Financial Report.** The annual status report tells the court about the protected person's circumstances and well being. The annual financial report tells the court about changes occurring in the protected person's estate since the inventory or since the last annual report.
 - The reports are typically due within 60 days of the anniversary of the guardian's appointment. The guardian can ask the court to change that date to a more convenient date, often coinciding with federal and state income tax reporting.
 - Some guardians do not have to file an inventory or annual reports unless ordered by the court to do so:

- The guardian of an **adult** or **minor** does not have to file an inventory, a status report or a financial report if the guardian is the parent of the protected person.
- The guardian of a **minor** does not have to file an inventory or a financial report if the minor does not have an estate or if the minor's estate is deposited in an account which requires the court's approval for withdrawal. The guardian must still file an annual status report.
- The guardian of a **minor** does not have to file a status report if the purpose of the guardianship is so the minor can attend school in the guardian's school district. The guardian must still file an inventory and an annual financial report, unless the minor does not have an estate or the minor's estate is deposited in an account which requires the court's approval for withdrawal.
- The guardian of an **adult** or of a **minor** does not have to file the inventory or annual financial report if the court has appointed a separate conservator.
- See [Code of Judicial Administration Rule 6-501](#), [Section 75-5-312\(2\)\(e\)](#) and [Section 75-5-417\(5\)](#). The lack of reports does not mean that a volunteer court visitor cannot investigate the case, only that there will be fewer records to consider.
- **Paragraphs (1)(D) and (1)(G): Reaching the guardian.** If the guardian has not submitted reports for any given year, or there are problems with the reports, you will need to locate contact information for that guardian and call, email, or write a letter to them requesting that they submit the missing report(s) or submit any missing information in the reports. You may also need to explain that service of the reports is required on all interested parties.
 - Under Paragraph (1)(H), if you see a potential need for gathering financial or other records from the guardian or conservator to verify the information in the report(s), please discuss this with the Program Coordinator before contacting the guardian or conservator.
- **Service of the inventory and reports.** If an inventory and other reports have been filed, they must be served on all interested persons who have not waived service. Look for a "certificate of service" or "certificate of mailing" or similar statement by the guardian, stating to whom s/he has mailed or delivered the inventory and reports. The certificate is often the last page of the document that has been served. Compare that list to the list of interested persons served with the original petition and notice of hearing. Look for a written waiver of service from anyone not served. Look for any indication that the interested person has not been served, such as having moved without a forwarding address.

- Look for some **common problems** in the financial report:
 - the beginning balance does not agree with the ending balance from the inventory or from the previous year's report
 - the report shows money received or paid outside the dates of the reporting period
 - the balance on hand does not equal total receipts minus total payments
 - the account statements required in the report are not attached
 - property listed in the inventory or in the previous year's report is not accounted for
 - the name of the bank, credit union, or other financial institution or the account number are not stated
- **Paragraph (1)(H).** If it appears that the guardian needs additional training or education on how to fill out the reports, please recommend and describe an available training option for the guardian. Training options include:
 - Request a court visitor to assist in completing the reports
 - Use the Online Court Assistance Program (OCAP) to complete the forms
 - Access the online training or paper instructions on how to complete the reports (*forthcoming*: check with program coordinator on whether this is an option yet)

(2) Paragraph (2): Signs of issues affecting the stability of the protected person's living arrangements. Examples include:

- the facility is too restrictive, given the protected person's capacity
- the facility is not supporting enough, given the protected person's capacity
- the facility provides poor quality of care
- the protected person is homeless
- the protected person has been moved multiple times in a year

(3) Paragraph (3): Healthcare. When describing the healthcare services the protected person is receiving, you may need to clarify with the guardian the information they wrote in the status report. If you see potential red flags (see below), discuss with the Program Coordinator the need to request a well-being report. The following are signs of potential problems with healthcare of the protected person:

- Assistive devices or treatments are not provided;

- Medication is not properly managed and administered;
- Medication is not paid for;
- Protected person is not seeing medical providers regularly;
- There are numerous medical providers;
- There are numerous emergency room visits;
- There are numerous pharmacies;
- The protected person has current medical issues but has not been seen by a doctor for an extended period of time.

(4) Paragraph (4): Signs of conflict among family members. If there is any documentation in the file of family conflicts, or in conversations with the guardian you receive information to this effect, please note it in the report.

(5) Paragraph (5): Signs that the guardian has possibly changed the protected person's lifestyle or standard of living.

- There is a notable increase or decrease in the protected person's education, training, or social activities from the previous years;
- The protected person's living arrangements have been changed;
- The protected person's feelings about the living situation have changed from the previous years;
- The guardian spends too little (or too much) to support the standard of living to which the protected person is accustomed.

(6) Paragraph (6): Signs that the guardian may not be maximizing the protected person's capacity (if the guardian is maximizing the protected person's capacity, the opposite will likely be true):

- The guardian does not encourage and help the protected person to be as independent, engaged, and comfortable as possible in the circumstances. The following are sample questions for the guardian which will assist you in developing your response to this question:
 - o Does the guardian believe the protected person is reaching their potential?
 - o What does the guardian do to encourage the protected person's development and/or independence?
 - o Have any changes been made to ensure the protected person is comfortable with their current living situation? If so, what are they?

- The guardian has not worked with the staff of the protected person's residential facility to establish activities that would appropriately engage the protected person. The following are sample questions for the guardian which will assist you in developing your response to this question:
 - Has the guardian made contact with the staff where the protected person resides?
 - What activities does the protected person participate in at the facility where they reside?
 - Is the guardian comfortable with the activities the protected person engages in at the facility where they reside?
 - Has the guardian expressed any concerns to the residential staff regarding the activities provided to the protected person?
 - Has the facility staff made any changes to the activities offered to the protected person based on the guardian's input?
- The guardian has not helped the protected person to work through agitating circumstances. The following are sample questions for the guardian which will assist you in developing your response to this question:
 - What situations does the protected person find to be stressful?
 - Has the guardian been with the protected person during stressful situations?
 - Is the guardian aware of ways to support and encourage the protected person when they are faced with stressful situations?
- A current plan for the protected person's care, training, or treatment is not available in the court record. If the guardian has not submitted a care plan (this is not required) and it seems appropriate to have one based upon other information uncovered in the audit process, you may indicate this in your response. Guidance on developing a care plan is found here: http://www.utcourts.gov/howto/family/gc/docs/25F.Plan_Form.pdf.

(7) Paragraph (7): Signs that the guardian possibly needs help or wants to or needs to resign.

- The guardian does not seek help when needed;
- The guardian's health or capacity is declining;
- The guardian's life is too busy to devote time to the protected person;

- The guardian or someone else has raised the issue of needed help or a new guardian.

(8) Paragraph (8): Signs that the protected person's capacity has possibly changed.

- The protected person is doing more (or less) than previously:
 - There is a notable increase or decrease in the number of times the protected person has been treated or evaluated by (include physicians, dentists, psychiatrists, psychologists, social workers, etc.) from previous years;
 - There is a notable increase or decrease in utilization of treatment, therapy, or assistive devices for the protected person from previous years;
 - There is a notable increase or decrease in medications taken by the ward from previous years;
 - There is a notable change in the protected person's cognitive and emotional function from previous years;
 - There is a notable change in the protected person's every day functioning from previous years;
 - There is a notable change in the protected person's mental health from previous years;
 - There is a notable change in the protected person's physical health from previous years;
 - The protected person has been diagnosed with a terminal illness.
- Medical reports show signs of change.
- The protected person has asked for changes.

(9) Paragraph (9): Signs of possible financial exploitation.

- Large or frequent withdrawals of the protected person's money;
- Withdrawal for implausible reasons or with contradictory explanations;
- Withdrawals by a person accompanying the protected person;
- Withdrawals in spite of penalties;
- Increased activity on debit and credit cards;
- Unexplained disappearance of funds;

- Missing personal belongs, such as art, silverware, or jewelry;
- Co-mingling of funds: putting the protected person's money in the guardian's (or another's) bank account;
- Activity in bank accounts that is unusual for the protected person;
- Activity, events, and transactions unusual for the protected person or inconsistent with the protected person's ability;
- Change in account beneficiaries;
- New authorized signers on accounts;
- Transfer of the protected person's assets to someone else;
- Recent change of title in the protected person's house or car;
- New or refinanced loan;
- Paying for services that are not necessary;
- Unpaid or overdue bills;
- Lack of common amenities that the protected person can afford;
- Care or living arrangements not commensurate with what the protected person can afford;
- The protected person's signature being forged;
- A new person is involved in the protected person's life, with no logical reason for being there, such as:
 - a new boyfriend or girlfriend much younger than the protected person,
 - recent acquaintances expressing strong affection for the protected person,
 - previously uninvolved relatives claiming rights to the protected person's affairs and possessions,
 - abrupt change of the protected person's physician, lawyer, or accountant;
- Change in the protected person's will, power of attorney, trust, or other legal document;
- Promises of life-long care in exchange for all of protected person's money or property;
- Rents are not collected as income on rental property;
- Payments are to the guardian or third party, not to the service provider;
- Assets are not being used for the benefit of the protected person;

- Assets are being saved for potential heirs;
- Assets are being used to support others for whom the protected person is not responsible.

(10) Paragraph (10): Signs of other problems (guardian or others).

- The guardian isolates the protected person from friends and family;
- The guardian says the protected person is not willing or able to accept visits or calls;
- The guardian will not allow the protected person to participate in normal activities;
- The guardian seems overly concerned about the protected person's finances;
- The guardian is concerned that too much is spent on protected person's care;
- The guardian has no means of support other than the protected person's income;
- The guardian exhibits a lifestyle beyond his or her means;
- The guardian has been charged with or convicted of abuse, neglect or exploitation of someone other than the protected person;
- The guardian blames the protected person (for example, accusation that incontinence is a deliberate act);
- The guardian exhibits aggressive behavior (anger, threats, insults, harassment or indifference toward the protected person);
- The guardian is unwilling or reluctant to comply with service providers in planning and implementing care.

(11) Paragraph (11): Reasons to request a well-being report: For example, there are indications of physical, sexual, emotional, or psychological abuse (see instructions for well-being report at: http://www.utcourts.gov/visitor/resources/docs/03_Well_Being.pdf), or there are signs of conflict among family members (see paragraph (4)), or the guardian is not maximizing the protected person's capacity (see paragraph (6)).

(12) Paragraph (12): Contact Information. Indicate whether the court's contact information is correct. Provide the updated contact information, if applicable.

(13) Date and sign the form.

- Deliver the report to the program coordinator at least 2 days **before** the due date on the order. Make sure that the program coordinator **receives** the report at least

2 days before the due date. If you mail the report, send it at least 5 days before the due date.

- The program coordinator will file the report with the court, serve the report on the interested persons and complete and file the Certificate of Service.