



# Guardianship Monitoring

## **The Court Visitors' Program and other Mandates**

**Presenter: Myra Kirkland, J.D. (MSW student)  
Municipal Judge of Blue Ridge, Collin County**

# STATUTORY MANDATES

- Texas Probate Code 648
  - Court Visitor Program to monitor guardianships
- Texas Probate Code 683
  - Court Initiated Guardianships

# A Demographic Imperative

- Increasing Longevity of Americans = More potential wards
- Increasing incidence of Alzheimer's - greater than 5 million in U.S.
- Increasing use of agency guardianships
- Agency guardians with high caseloads
- Private Professional Guardians
- Lack of willing or qualified family members

The Texas Department of Aging and Disability Services estimates that the population of 60-plus citizens in Texas will be:

2010 – 3,730,67

2030– more than 7,000,000

Collin County (60-plus per NCTCOG)

2010- 91,417

2017- 163,523

“55 percent of those age 85 and older have chronic physical impairments that make it difficult to perform the fundamental tasks required to live independently, like cooking and bathing ...”

Collin Cty estimated 85 and over population:  
2010 – 5,498 ~ 55% = 3,024  
2017 – 8,725 ~ 55% = 4,799

- Caring for the Elderly: Who will pay for care of aging baby boomers? CQ Researcher, 16, 841-864 (October 2006).

- Recent newspaper/television series calling for increased vigilance in ensuring proper care and financial management
- Shortcomings not only endanger those under guardianship, but also weaken public confidence in the courts
- Monitoring of Guardianships must be done
- Each Probate Court is statutorily mandated to annually review every guardianship and determine whether it should be continued as presently ordered, modified or terminated
- Federal requirement to accurately report guardianships or the state can lose federal funding

# Guardianship

## Chapter 13 – Texas Probate Code

An incapacitated person is:

- a Minor
- an Adult
  - with a physical or mental condition
  - who is substantially unable to provide clothing or shelter or
  - manage the individual's own financial affairs

# Guardianship

- Legal Process
  - To protect vulnerable person from abuse, neglect (including self-neglect) and exploitation and provide necessary care
- Court created fiduciary duty
- Letters expire annually
- Monitoring by Court required per statute
- Currently 900 to 1,000 Wards at risk in Collin County

# Guardianship Monitoring aka Court Visitor Program

- Approximately \$10,000 to \$15,000 per year returned to Probate Judge for probate purposes
- Interns/Volunteers given access to all Ward's records via special order from the Probate Court
- Compliance with Legislative Mandate

# Mandated Monitoring

- Texas law
  - Ten most populous counties
  - Statutory Probate Courts
- Annual review
  - Affirmatively monitor
  - Status of Wards
- Partially unfunded mandate
- Unpaid interns and volunteers

# The Law

- Texas Probate Code § 648. Court Visitor Program
- “Each statutory probate court **shall** operate a court visitor program to assess the conditions of wards and proposed wards.”

# Fiduciary Duty of Court

- Liability on the Probate Judge's bond for loss of fiduciary assets through gross negligence
- Statutory Probate Judge must maintain a \$500,000 bond;
- Government Code § 25.00231
- Probate Code § 671 Judge's Duty
  - “The court shall use reasonable diligence to determine whether a guardian is performing all of the duties required of the guardian that pertain to the guardian's ward.”

# Court Visitor Program: Proposed Qualifications of Manager

- Texas Certified/Registered Guardian
- Licensed Master Social Worker
- At least 5 years in Social Services
- Knowledge of available social services (federal, state, and county)
- Administrative and managerial skills
- Experience in crisis, abuse, neglect, and exploitation interventions
- Recruitment, CV Program, Guardian Training, Statistics

# Court Visitor Program: Proposed Skills needed for Staff

- Administrative skills
- Telephone skills
- Organizational skills
- Dependable (Manager will often be out of the office)
- Computer skills
- Verbal and written communication skills

# Court Visitor Program: Volunteers

- Social Work Interns (bachelor and masters levels)
  - Texas A&M Commerce
  - UTA
  - Baylor
  - TWU
- Law Schools (community service)
- Nursing Schools
- Community

# Court Visitor Program: Budget

- Salaries
- Equipment/Telephone for field work
- Mileage Reimbursement
- Training
- Recognition for Service
- Office Overhead
- Professional Dues
- Approximately \$150,000 annually (additional costs for start-up)

# Court Visitor Responsibilities

- Conditions (face to face visits)
  - Environment
  - Well being
- Resources
  - Overcome roadblocks
  - Available resources
  - Future planning
- Report to the Court
  - Written assessments are statutory

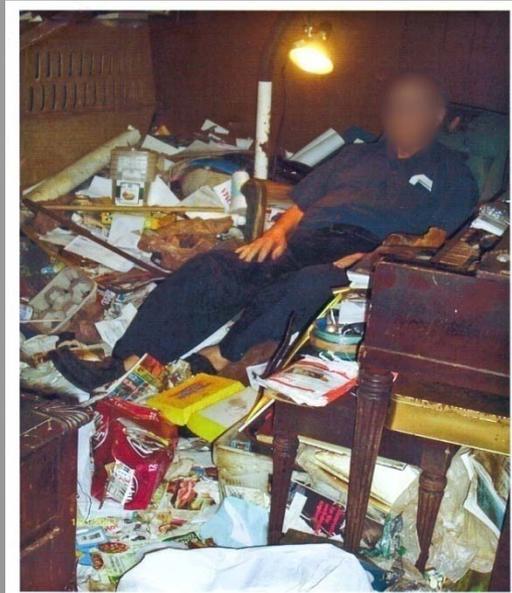
# Court Visitor's Report

- Location of Ward
- Verification of information on Annual Report
- Interaction with Guardian
- Nature and degree of incapacity
- Services Ward is receiving or may need
- Medical history & prognosis
  - On-going medical services
  - List of treating physicians
- Living conditions and circumstances
- Condition: social/intellectual/physical/  
educational
- Recommended modifications:
  - Powers: Altered/ decreased/ increased
  - Restoration of Ward
  - Removal of Guardian

# What can not be gleaned from an Annual Report



**Relationships**



**Health of Guardians**



**Living Conditions**



**Quality of Care**

# Guardianship Monitoring

- Currently 900 to 1,000 Wards at risk
- Approximately \$10,000 to \$15,000 per year returned to Probate Judge for probate purposes
- Court Visitors given access to all Ward's records via special order from the Probate Court
- Compliance with Legislative Mandate

# TEXAS PROBATE CODE 683

## Court Initiated Guardianships

### The Law

“If a court has probable cause to believe that a person domiciled or found in the county in which the court is located is an incapacitated person, and the person does not have a guardian in this state, the court **shall** appoint a guardian ad litem or court investigator to investigate the person’s conditions ....”

“If after the investigation the guardian ad litem or court investigator believes that the person is an incapacitated person and that a guardianship is necessary, the guardian ad litem or court investigator **shall** file an application for the appointment of a guardian of the person or estate, or both, for the person. ...”

# Court Initiated Guardianships

- Statutes
  - Mandated by Texas Probate Code 683
  - For persons with no estate - Special Funding authorized by
    - Local Govt Code 118.067 (~\$50,000 in GL account)
    - Tx Probate Code 670 (effective 9/1/2009)
- No family or friends
- Referred to Court by persons in the community
- Cases not suitable for Adult Protective Services
- Need for decisions to be made for the Ward
- No less restrictive alternatives in place
- State/County time and funds **not** expended for other services
- Guardianship Programs utilized as guardians require contracts with the County (see Special Funding statutes)
  - Senior Source
  - Private Professional Guardians
  - The Arc

# Parting Thoughts



APS had been to this residence just months prior to this visit.

“People do what you inspect, not what you expect.” Lou Gerstner, former Chairman and Chief Executive Office of RJR Nabisco and Chairman of the Board for IBM until 2002

None of us can tell the future. If one of us is unfortunate enough to need a guardianship, wouldn't you want the Court that removed all your rights to make sure your guardian was taking proper care of you?