



**Guardianship Work Group
Report and Recommendations
May 2016**

Hon. Karen Murphy Jensen, Chair

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GUARDIANSHIP WORK GROUP

Maryland Judicial Council - Domestic Law Committee

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Guardianship Work Group Report and Recommendations

Executive Summary

HISTORY

In January 2015, the Judicial Council adopted recommendations from the Domestic Law Committee chair, Judge Kathleen Gallogly Cox, regarding a Guardianship Work Group. As a result, the Guardianship Work Group was charged with “surveying existing guardianship practices throughout the State in order to make recommendations to ensure best practices are employed in guardianship matters to ensure the safety and well-being of those subject to guardianship, and the effective management and accounting for guardianship assets.” Specifically, the Work Group is to “review and make recommendations for training for guardianship attorneys and for guardians, and [] make recommendations concerning implementation of best practices to ensure proper care for the safety and well-being of those subject to guardianship, along with standards employed in overseeing management of guardianship assets.”

In response to this directive, the Guardianship Work Group was established, convened, and subsequently divided into three substantive subgroups that would each explore one area of guardianship law. The three subgroups respectively explored the following areas: 1) Court-Appointed Counsel for Alleged Disabled Persons, 2) Guardianship of the Person, and 3) Guardianship of the Property. Each subgroup met over the course of the summer 2015.

DESCRIPTION OF PROCESS

Each subgroup presented a report to the full Guardianship Work Group on October 6, 2015. While the reports were consistent in many ways, there were a few decision points in need of further discussion. Judge Karen Murphy Jensen, chair of the Guardianship Work Group, asked the subgroup chairs to hold conference calls to address these issues. The subgroups subsequently convened and revised their respective reports during October and early November 2015. On November 10, 2015, the subgroup reports were again reviewed and discussed by the full Work Group and it was decided that further revisions would be made and the subgroup reports would be synthesized into one final report. On December 7, 2015, the Work Group convened to review the final draft. On that date, the Work Group reached consensus and approved a final report that was presented to the Judicial Council on February 17, 2016. On that date, the Judicial Council

identified two problematic areas and was unable to adopt the Work Group's Recommendations. The problematic areas were:

- 1) The Judiciary being involved in the training of attorneys
- 2) The Judiciary being involved in the training of lay persons who serve as agents of the court.

Members of the Council also raised questions regarding:

- 1) The applicability of the recommendations to cases originating in the Orphans' Court and standby guardians
- 2) A requirement that bond be posted.

The Work Group determined that any recommendations would apply to cases originating in the Orphans' Court but not apply to standby guardians, as those cases follow a different set of rules and procedures.

Regarding bond, the Work group discussed bond at length in its deliberations leading up to the December 2015 report and determined that no recommendations were necessary as current law provides the courts latitude in this area. The Report and Recommendations were, however, revised to reflect the perspective of the Work Group on the bond issue.

On March 21, 2016, the Work Group's report was presented to the Conference of Circuit Judges, where it was received favorably.

Following the presentations of its report and in response to the areas of concern raised by the Judicial Council, the Work Group revised the report. On May 5, 2016 the Work Group reconvened and adopted revised recommendations, attached hereto.

RESOURCES/MATERIALS REVIEWED

Prior to meeting, each subgroup reviewed attorney appointment eligibility requirements from:

- Maryland's Guidelines for Practice for Court-Appointed Lawyers Representing Children in Cases Involving Child Custody or Child Access;
- Florida's statutory requirements for attorneys appointed to represent "alleged incapacitated person[s]" (F.S.A. § 744.331);
- The Thirteenth Judicial Circuit of Florida's Court-Appointed Counsel Registry;
- New York's Rules for Appointments by the Court (22 NYCRR 36.1);
- Utah's Guardianship Signature Program;
- Montgomery County, Maryland (for attorneys appointed as counsel for alleged disabled persons in guardianship proceedings and guardians of the property); and
- Prince George's County, Maryland (for attorneys appointed as counsel for alleged disabled persons).

The subgroups also reviewed guardianship curriculum and materials from:

- The Maryland Judiciary's Adult Guardianship Seminar for Attorneys (December 2013);

- The Maryland Institute for Continuing Professional Education of Lawyers, Inc.'s Practical Approaches to Adult Guardianship (February 2010);
- The Maryland State Bar Association's Practical Approaches to Guardianship in Maryland (April 2014);
- The Circuit Court for Anne Arundel County's Guardianship Fiduciary Training;
- The Circuit Court for Baltimore City's Guardian of the Property Training (June 2015);
- Baltimore County's Guardianship Orientation Session;
- Howard County's Guardianship Training;
- Howard County's Guardian of the Property Training (2011);
- Montgomery County's Guardianship Training (May and June 2015);
- Minnesota Judicial Branch's Conservatorship and Guardianship in Minnesota Training;
- Nebraska Supreme Court's Guardianship/Conservatorship in Nebraska Training;
- New Jersey Supreme Court's Guidelines for Court-Appointed Attorneys in Guardianship Matters (2005 Revised Edition);
- New York's Guide to Guardianship – For Lay Guardians Appointed Under Article 81 of the New York State Mental Hygiene Law Training (2011 4th Edition);
- Washington State's Lay/Family (Non-Professional) Guardian Training;
- Washington State's Certified Professional Guardian Training (2007);
- West Virginia's Guardianship and Conservatorship Training; and
- The National Center on Elder Abuse's An Introduction to Elder Abuse for Professionals: Overview (2013).

SUMMARY OF RECOMMENDATIONS

The following recommendations were unanimously adopted by the Work Group. Recommendations 1-12 address proposed requirements for court appointments of Counsel for Alleged Disabled Person, Guardians of the Person, and Guardians of the Property. Recommendations 13-25 address implementation of the recommendations. The Work Group advocates that these requirements be incorporated into an Administrative Order as an interim measure while rules are drafted and ultimately adopted.

1. Attorneys eligible for appointment as counsel for alleged disabled persons in guardianship proceedings must: be a member of the Maryland Bar in good standing; maintain professional liability insurance; and unless waived by the court, successfully complete training that meets the standards set in Recommendation 3.
2. Courts should seek to appoint attorneys to represent alleged disabled persons who have at least three years of experience in guardianship law, elder law, family law, or other relevant experience, and who are willing to accept at least one (1) pro bono appointment each year.
3. Court-appointed counsel for alleged disabled persons must successfully complete training that includes the following basic elements: overview of guardianship; understanding disabilities and diminished capacity; role of court-appointed counsel; ethics; and fees.
4. Persons appointed as guardians of the person must: complete a brief pre-appointment orientation and informational program that provides an overview of their expected role and responsibilities; if not the petitioner, certify under oath that they have not been convicted of a disqualifying offense listed in Estates and Trusts Art. § 11-114 or demonstrate good cause as to why the appointment should be made despite such a conviction; and within 120 days of appointment, successfully complete a post-appointment educational program that meets the standards set in Recommendation 7. When determining whether to appoint a proposed guardian who has been convicted of a disqualifying offense, courts should weigh: the seriousness of the offense; its relevance to the responsibilities of a guardian; how recently the offense occurred; the proposed guardian's record since the offense occurred; and the vulnerability of the alleged disabled person.
5. Unless waived by the court, active Maryland attorneys with no prior relationship to the ward who are appointed as guardians or co-guardians of the person must: meet the requirements set in Recommendation 4; maintain professional liability insurance that includes coverage for services as a guardian; and receive training on navigating their role as guardian commensurate with their obligations under the Maryland Rules of Professional Conduct.
6. Recommendations 4 and 5 should not apply to temporary guardians.
7. Any individual appointed as guardian of the person must successfully complete within 120 days of appointment an educational program that includes the following basic elements: overview of guardianship; requirements for filing forms and reports with the court; identifying and reporting neglect, abuse, and exploitation; post-appointment court proceedings; the relationship between guardians and others involved in the care of the ward; ethical considerations and standards; ensuring proper care of the ward;

resignation/removal of the guardian; termination of the guardianship; and accessing community resources.

8. Persons appointed as guardians of the property must: complete a brief pre-appointment orientation and informational program that provides an overview of their expected role and responsibilities; if not the petitioner, certify under oath that they have not been convicted of a disqualifying offense listed in Estates and Trusts Art. § 11-114 or demonstrate good cause as to why the appointment should be made despite such a conviction; unless waived by the court, submit a credit report prior to appointment; and after appointment but before the initial inventory is due, complete post-appointment educational program that meets the standards set in Recommendation 12. When determining whether to appoint a proposed guardian who has been convicted of a disqualifying offense, courts should weigh: the seriousness of the offense; its relevance to the responsibilities of a guardian; how recently the offense occurred; the proposed guardian's record since the offense occurred; and the vulnerability of the alleged disabled person.
9. Active Maryland attorneys with no prior relationship to the ward who are appointed as guardians or co-guardians of the property must: meet the requirements set in Work Group Recommendation 8; maintain professional liability insurance, that includes coverage for services as guardian of the property; and be willing to accept at least one (1) pro bono appointment each year.
10. Recommendations 8 and 9 should not apply to temporary guardians.
11. When determining whether to require newly-appointed guardians of the property to post a bond, courts should consider: the value and liquidity of the estate and annual gross income and other receipts; whether a restricted account can be established pursuant to Estates and Trusts Art. §13-209.1 and Md. Rule 10-705 ; the extent to which the income or receipts are payable to a facility responsible for the ward's care and custody; information about the guardian's criminal background, if any; the financial responsibility of the proposed guardian; the potential burden on the estate; and any impediments to securing bond.
12. Shortly after appointment, but before the initial inventory is due (unless waived by the court), any individual appointed as guardian of the property must successfully complete an in-person educational program that includes the following basic elements: overview of guardianship; requirements for filing forms and reports with the court; identifying and reporting neglect, abuse, and exploitation; post-appointment court proceedings; the relationship between guardians and others involved in the maintenance of the estate; fiduciary obligations and issues; resignation/removal of the guardian; termination of the guardianship; and accessing community resources.
13. The recommended appointment criteria, attorney training, pre-appointment orientation and informational program, and post-appointment educational program requirements should first be implemented through an administrative order while efforts to incorporate the requirements into the Maryland Rules of Procedure begin.
14. The Maryland Judiciary should establish mechanisms to improve the screening of guardians. The Maryland Judiciary should also explore ways for courts to run national criminal background checks on all potential guardians and allocate resources to help guardians obtain credit reports pursuant to Recommendation 8.

15. The Maryland Judiciary should actively collaborate with state and local bar associations and other organizations to develop a training that meets the standards set in Recommendation 3 for court-appointed counsel for alleged disabled persons.
16. The Maryland Judiciary should develop and make available in each jurisdiction a publically-available pre-appointment, online orientation and informational program for potential guardians of the person and property pursuant to Recommendations 4 and 8; and curricula that meets the educational program standards set in Recommendations 7 (for guardians of the person) and 12 (for guardians of the property).
17. The Maryland Judiciary, in collaboration with state and local bar associations and other organizations, should support the development of an attorney-specific ethics training for attorneys appointed as guardians of the person, pursuant to Recommendation 5.
18. The Maryland Judiciary should maintain and make available to all courts, master lists of attorneys eligible for appointment as court-appointed counsel for alleged disabled persons, guardians of the person, and guardians of the property.
19. The Maryland Judiciary should encourage state and local bar associations and other organizations to provide information and support to attorneys representing alleged disabled persons through mechanisms including: a continuing education program to help attorneys maintain their knowledge of current guardianship law and practice; a mentoring program that links attorneys with little guardianship experience with more seasoned attorneys; and web-based or live opportunities for attorneys to ask questions and share resources.
20. The Maryland Judiciary should develop and host a guardianship webpage that includes: general information about guardianship law and procedure in Maryland; guardianship forms and instructions for completing the forms; and resources for individuals serving as guardians.
21. The Maryland Judiciary should create standardized forms for physician certificates, answers, waiver of presence and jury trial, jury instructions, certification that a proposed guardian has not been convicted of a disqualifying offense, and voir dire questions.
22. Each jurisdiction should have dedicated guardianship staff whose responsibilities may include: reviewing guardianship petitions, certificates, and notices for compliance with the Maryland Rules of Procedure, and identifying less restrictive alternatives to guardianship; screening proposed guardians for eligibility; providing or managing an educational program for guardians of the person and property; managing the lists of attorneys eligible for appointment as counsel for alleged disabled persons and guardians of the person and property; providing support to potential and appointed guardians; reviewing and verifying the contents of reports, conducting follow-up or investigation as needed, and reporting on the status of guardianships to the court; managing a Guardianship Special Assistant Program; and establishing and maintaining a process to receive and respond to complaints or concerns about the status of guardianships.
23. The Maryland Judiciary should develop guardianship training and resources for new judges and set continuing education standards for judges handling guardianship cases. New judges should receive training on guardianship within 120 days of appointment.
24. Each jurisdiction should have dedicated, specially-trained guardianship judges.
25. Courts should utilize mediation and other forms of alternative dispute resolution, as appropriate, in contested guardianship cases as a means of expediting resolution and conserving limited judicial resources.

COMPOSITION OF SUBGROUPS

The structure, scope, and composition of the subgroups were as follows:

Court-Appointed Counsel for Alleged Disabled Persons Subgroup

- Chair:** Hon. Alison Asti, *Circuit Court for Anne Arundel County*
- Meeting:** August 31, 2015
Judicial Education and Conference Center
Annapolis, Maryland
- Members:** Valarie Colmore, *Department of Human Resources, Social Services Administration, Office of Adult Services*
Audre Davis, Esq., *Department of Human Resources, Maryland Legal Services Program*
Angela Grau, Esq., *Davis Agnor Rapaport Skalny*
Lili Khozeimeh, Esq., *Montgomery County Circuit Court, Family Services Division*
Andrea Parks, *Circuit Court for Anne Arundel County, Trust and Adoption Department*
Ria Rochvarg, Esq., *Ria Rochvarg, P.A.*
- Staff:** Connie Kratovil-Lavelle, Esq., *Department of Family Administration*
Nisa C. Subasinghe, Esq., *Department of Family Administration*
- Charge:** This subgroup was charged with proposing recommendations for:
1. Eligibility requirements for attorneys to be appointed as counsel for alleged disabled persons in guardianship proceedings;
 2. Components of requisite training attorneys must complete to become eligible for appointment as counsel for alleged disabled persons in guardianship proceedings;
 3. A strategy for implementing the subgroup's recommendations; and
 4. The Judiciary's role in the training.

Guardians of the Person Subgroup

- Chair:** Hon. Louis Becker, *Circuit Court for Howard County*
- Meeting:** August 26, 2015
Judicial Education and Conference Center
Annapolis, Maryland
- Members:** Valarie Colmore, *Department of Human Resources, Social Services Administration, Office of Adult Services*
Angela Grau Esq., *Davis Agnor Rapaport Skalny*
Deborah Riley, *Baltimore County Department of Aging, Adult Public Guardianship Program.*
Ofelia Ross-Ott, *Howard County Office on Aging, Home and Community Based Services*
Greg Seseck, *Department of Human Resources, Social Services Administration, Office of Adult Services*

Phoenix Woody, *Maryland Department of Aging, Guardianship and Legal Services*

Staff: Connie Kratovil-Lavelle, Esq., *Department of Family Administration*
Nisa C. Subasinghe, Esq., *Department of Family Administration*

Charge: This subgroup was charged with proposing recommendations for:

1. Eligibility requirements for attorneys to be appointed as guardians of the person;
2. Components of requisite training attorneys must complete to become eligible for appointment as guardians of the person;
3. Components of training lay persons appointed as guardian of the person must complete;
4. A strategy for implementing the subgroup's recommendations; and
5. The Judiciary's role in these trainings.

Guardians of the Property Subgroup

Chair: Hon. Patrick Woodward, *Court of Special Appeals*

Meeting: September 11, 2015
Judicial Education and Conference Center
Annapolis, Maryland

Members: Hon. Althea Handy, *Baltimore City Circuit Court*
Sharon Christmas-DeBerry, Esq., *Circuit Court for Prince George's County*
Robin Cummings, *Circuit Court for Anne Arundel County*
Angela Grau, Esq., *Davis Agnor Rapaport Skalny*
Brenda McSwain, *Circuit Court for Anne Arundel County*

Staff: Connie Kratovil-Lavelle, Esq., *Department of Family Administration*
Nisa C. Subasinghe, Esq., *Department of Family Administration*

Charge: This subgroup was charged with proposing recommendations for:

1. Eligibility requirements for attorneys to be appointed as guardians of the property;
2. Components of requisite training attorneys must complete to become eligible for appointment as guardians of the property;
3. Components of training lay persons appointed as guardian of the property must complete;
4. A strategy for implementing the subgroup's recommendations; and
5. The Judiciary's role in these trainings.

Final Report and Recommendations

The Work Group's Recommendations are organized into the following four Parts:

Part I – Recommendations for the Appointment and Training of Counsel for Alleged Disabled Persons

Part II – Recommendations for the Appointment and Training of Guardians of the Person

Part III – Recommendations for the Appointment and Training of Guardians of the Property

Part IV – Recommendations to the Maryland Judiciary for Implementation

I. Recommendations for the Appointment and Training of Counsel for Alleged Disabled Persons

Recommendation 1. Attorneys eligible for appointment as counsel for alleged disabled persons in guardianship proceedings must:

- A. Be a member of the Maryland Bar in good standing;**
- B. Maintain professional liability insurance; and**
- C. Unless waived by the court, successfully complete training that meets the standards set in Recommendation 3.**

COMMENTS

This Recommendation is modeled after the Maryland Guidelines for Practice for Court-Appointed Lawyers Representing Children in Cases Involving Child Custody or Child Access. It is also consistent with National Probate Standard 3.3.5 (Appointment of Counsel), which notes that “[r]espondents in guardianship and conservatorship proceedings are often vulnerable. They may have an incomplete or inadequate understanding of proceedings that may have a significant effect upon their lives and fundamental rights. The assistance of counsel provides a valuable safeguard of their rights and interests.” Given the significant loss of personal rights associated with guardianship, the Work Group was cognizant of the importance of competent representation.

Recommendations 1.A. and B. reflect the Work Group's belief that attorneys' professional standing and liability coverage are important appointment considerations.

Recommendation 1.C. ensures court-appointed counsel has the basic knowledge and skills needed to competently represent alleged disabled persons.

Recommendation 2. Courts should seek to appoint attorneys to represent alleged disabled persons who have at least three years of experience in guardianship law, elder law, family law, or other relevant experience, and who are willing to accept at least one (1) pro bono appointment each year.

COMMENTS

This Recommendation is modeled after the Maryland Guidelines for Practice for Court-Appointed Lawyers Representing Children in Cases Involving Child Custody or Child Access.

When evaluating an attorney's relevant experience, the court may consider the attorney's experience in litigation, social work, mental health, health care, elder care, disability issues, and other related fields. The pro bono requirement serves both access to justice interests and provides attorneys opportunities to gain valuable experience.

Recommendation 3. Court-appointed counsel for alleged disabled persons must successfully complete training that includes the following basic elements:

- A. Overview of guardianship;**
- B. Understanding disabilities and diminished capacity;**
- C. Role of court-appointed counsel;**
- D. Ethics; and**
- E. Fees.**

COMMENTS

The recommended training elements address the basic knowledge and skills the Work Group believes attorneys need to provide competent representation to alleged disabled persons. Below is an expanded outline for the training elements.

| Training Elements – Court-Appointed Counsel for Alleged Disabled Persons | |
|---|--|
| A. | Overview of guardianship <ul style="list-style-type: none">• What is guardianship and when it is necessary<ul style="list-style-type: none">○ Types of guardianship – public v. private guardianship, guardianship of the person, guardianship of the property○ General role, responsibilities, limitations, and basic competencies required of guardians○ Parties to a guardianship• Guardianship law and procedures• Alternatives to guardianship |
| B. | Understanding disabilities and diminished capacity <ul style="list-style-type: none">• Manifestation of mental health issues<ul style="list-style-type: none">○ Distinguishing between temporary v. permanent conditions• Assessing capacity• Interacting with people with disabilities or diminished capacity• Signs and risk factors of abuse, neglect, and exploitation<ul style="list-style-type: none">○ Types of abuse (financial, physical, emotional and sexual abuse, neglect, abandonment, etc.)○ How to report suspected abuse |
| C. | Role of court-appointed counsel <ul style="list-style-type: none">• Appointment of counsel• Role of counsel – Statutes, Rules, <i>In re: Sonny E. Lee</i> case• How to get into court |

| | |
|-----------|---|
| | <ul style="list-style-type: none"> ○ Meeting with the alleged disabled person and interested parties ○ Assessing physician certificates and reviewing records ○ Answer and motions ● What to do in court <ul style="list-style-type: none"> ○ Waivers ○ Considerations – appropriateness of the proposed guardian, identification of assets, less restrictive alternatives, etc. |
| D. | Ethics <ul style="list-style-type: none"> ● Applicable Rules of Professional Conduct regarding conflicts, confidentiality, consent, and competency |
| E. | Fees <ul style="list-style-type: none"> ● Billing practices ● Determining indigence ● Working with state agencies |

II. Recommendations for the Appointment and Training of Guardians of the Person

Recommendation 4. Persons appointed as guardians of the person must:

- A. Complete a brief pre-appointment orientation and informational program that provides an overview of their expected role and responsibilities;**
- B. If not the petitioner, certify under oath that they have not been convicted of a disqualifying offense listed in Estates and Trusts Art. § 11-114 or demonstrate good cause as to why the appointment should be made despite such a conviction; and**
- C. Within 120 days of appointment, successfully complete a post-appointment educational program that meets the standards set in Recommendation 7.**

When determining whether to appoint a proposed guardian who has been convicted of a disqualifying offense under Estates and Trusts Art. § 11-114, courts should weigh:

- A. The seriousness of the offense;**
- B. Its relevance to the responsibilities of a guardian;**
- C. How recently the offense occurred, the proposed guardian’s record since the offense occurred; and**
- D. The vulnerability of the alleged disabled person.**

COMMENTS

While charged with recommending requirements attorneys must meet to be eligible for appointment as guardians of the person, the Work Group opted to enhance the appointment requirements for anyone appointed as guardian. The Work Group felt that since attorneys and lay persons appointed as guardians would have the same responsibilities, they should be held to similar standards and would benefit from the same education and resources. To this end, the Work Group developed recommendations for improving the quality of information courts have when making appointment decisions and reviewing the performance of guardians.

Recommendation 4.A. reflects the Work Group’s belief that requiring potential guardians to complete a pre-appointment orientation and informational program that provides an overview of the role and responsibilities of a guardian is in the interest of the ward, the court, and the potential guardian. Although willing to serve, many potential guardians may not be aware of their expected obligations or how to fulfill those obligations. Without a clear understanding of what being a guardian entails, an individual may not realize they are unable to fulfill the responsibilities, be clear about the bounds of their authority, or know where to seek help. These deficits can compromise the quality of guardianships, necessitate the need for court intervention, and compromise the well-being of the ward.

This recommendation is consistent National Probate Standard 3.3.14 (Orientation, Education, and Assistance), which states: “Probate courts should develop and implement programs for the orientation, education, and assistance of guardians and conservators.” Pre-appointment training is also recommended in the National Association for Court Management’s 2013-2014 Adult Guardianship Guide – A Guide to Plan, Develop and

Sustain a Comprehensive Court Guardianship and Conservatorship Guide (NACM Guide) and is currently provided in Arizona, Idaho, Utah, and Washington.

Recommendation 4.B. is meant to help courts better screen potential guardians. In Maryland, the priorities of persons eligible for appointment as guardian of person or property are listed in Maryland Code Ann. Estates and Trusts §13-707. Those eligible include individuals the disabled person designated prior to becoming disabled, a health care agent appointed by the disabled person, the disabled person's spouse, parents, children, heirs, and individuals who care for or have an interest in the disabled person. Of those eligible, absent good cause, a court may not appoint an individual who has been convicted of a felony, crimes of violence (as defined in MD Code, Criminal Law, § 14-101), assault in the second degree, certain sexual offenses, and crimes reflecting adversely on honesty, trustworthiness, or fitness. Estates and Trusts Art. § 11-114.

If the proposed guardian is the petitioner, this requirement is fulfilled as s/he must certify that s/he has not been convicted a disqualifying offense in the petition pursuant to Maryland Rules of Procedure 10-111 and 10-112. This recommendation provides an avenue for courts to receive certifications from proposed guardians who are not petitioners (in such cases, the petitioner certifies that to the best of his or her knowledge the proposed guardian has not been convicted of a disqualifying offense). The Work Group envisions a new process for proposed, non-petitioning guardians to submit to the court a separate written certification, under penalty of perjury, prior to appointment. The process should also allow any of these proposed guardians who have convictions for disqualifying offenses to provide information to help the court determine whether good cause exists to still make the appointment.

The recommended guidance on how courts should weigh disqualifying information is derived from Probate Standard 3.3.12 (Background Checks). Estates and Trusts Art. § 11-114 does not create an absolute bar to appointment if a proposed guardian has conviction for a disqualifying offense and the Work Group is concerned otherwise qualified and appropriate individuals who are close to the ward will be deterred from seeking appointments even if their prior criminal history has no relevance or bearing on their ability to serve. If these individuals are deterred from seeking appointment or screened out inappropriately, an unnecessary burden will be placed on the public guardianship system and may not be in the best interest of the ward.

Recommendation 5. Unless waived by the court, active Maryland attorneys with no prior relationship to the ward who are appointed as guardians or co-guardians of the person must:

- A. Meet the requirements set in Recommendation 4;**
- B. Maintain professional liability insurance that includes coverage for services as a guardian; and**
- C. Receive training on navigating their role as guardian commensurate with their obligations under the Maryland Rules of Professional Conduct.**

COMMENTS

The Work Group believes that attorneys should meet additional eligibility requirements to be appointed as guardians of the person. These requirements may be waived at the discretion of court in certain cases such as those in which an attorney is seeking appointment as guardian for an immediate family member.

Courts should consider appointing attorneys with little or no experience handling guardianship matters only after they have taken the recommended pre-appointment and post-appointment programs and initially only appointing them to cases that appear uncontested and/or less complicated and then closely scrutinized by the court. This balances the need for wards to have competent guardians against the risk of limiting the pool of attorneys eligible for appointment. Further it allows less experienced attorneys to appropriately gain experience.

When considering whether to appoint an attorney, courts should consider any relevant experience the attorney has including prior experience as a guardian or fiduciary, experience in guardianship or elder law, and familiarity with health care decision-making, residential placements, and social benefit programs.

Recommendations 5.A. and B. reflects the Work Group's belief that an attorney's professional standing, reputation, and ability to obtain liability coverage are important factors for courts to consider when making appointment decisions.

Recommendation 5.C. reflects the Work Group's belief that attorneys need to understand the different functional obligations between being an attorney for a person of diminished capacity and serving as a guardian for such a person, and that their ethical obligations do not go away because they are serving as guardians. As such, attorneys should receive additional training on their unique professional obligations, particularly pursuant to Maryland Rule of Professional Conduct 1.14.

Recommendation 6. Recommendations 4 and 5 should not apply to temporary guardians.

COMMENTS

Recognizing some cases require the court to appoint a guardian under emergent or pressing circumstances, the Work Group does not expect temporary guardians to meet the aforementioned eligibility requirements. After the emergent or pressing circumstance is addressed, however, the temporary guardian or another individual must work to meet the eligibility requirements to be appointed as permanent guardian.

Recommendation 7. Any individual appointed as guardian of the person must successfully complete within 120 days of appointment an educational program that includes the following basic elements:

- A. Overview of guardianship;**
- B. Requirements for filing forms and reports with the court;**
- C. Identifying and reporting neglect, abuse, and exploitation;**
- D. Post-appointment court proceedings;**

- E. The relationship between guardians and others involved in the care of the ward;
- F. Ethical considerations and standards;
- G. Ensuring proper care of the ward;
- H. Resignation/removal of the guardian;
- I. Termination of the guardianship; and
- J. Accessing community resources.

COMMENTS

The recommended educational program elements adopted and expanded upon the basic training elements recommended in the NACM Guide. Below is an expanded outline for the training elements.

| Educational Program Elements – Guardians of the Person | |
|---|--|
| A. | <p>Overview of guardianship</p> <ul style="list-style-type: none"> • Purpose and goals of guardianship • Guardianship law and process • Types of guardianship – public vs. private guardianship, guardianship of the person, guardianship of the property • Parties to a guardianship – the disabled person, interested persons, guardians of the property, the court, etc. • Alternatives to guardianship • General role, responsibilities, limitations, and basic competencies required of guardians of the person, and conflicts of interest • Definitions – Guardians of the person should become familiar with and understand the significance of guardianship-related terms and concepts including “best interest,” “substituted judgment,” and language contained in court orders |
| B. | <p>Requirements for filing forms and reports with the court</p> <ul style="list-style-type: none"> • What forms and reports must be filed with the court and when |
| C. | <p>Identifying and reporting neglect, abuse, and exploitation</p> <ul style="list-style-type: none"> • Types of abuse (financial, physical, emotional, and sexual abuse, neglect, abandonment, etc.) • Risk factors and signs of abuse • How to report suspected abuse |
| D. | <p>Post-appointment court proceedings</p> <ul style="list-style-type: none"> • What court proceedings may be held after appointment and how to seek assistance from the court |
| E. | <p>The relationship between guardians and others involved in the care of the ward</p> <ul style="list-style-type: none"> • The court, the ward, family members and other interested parties, guardians of the property, health care providers, agencies, etc. |
| F. | <p>Ethical considerations and standards</p> <ul style="list-style-type: none"> • Considerations and standards that should be used when making decisions on behalf of the ward • Issues addressed should include promoting self-determination and communicating the desires of the ward |

| | |
|-----------|---|
| G. | Ensuring proper care of the ward <ul style="list-style-type: none"> • What steps to take to ensure the ward receives proper medical care and treatment • Issues addressed should include informed consent, withholding or withdrawing medical care, do-not-resuscitate orders, and making end-of-life care decisions |
| H. | Resignation/removal of the guardian |
| I. | Termination of the guardianship |
| J. | Accessing community resources <ul style="list-style-type: none"> • Local agencies that can be of assistance with Medicare, Medicaid, and other governmental entitlement and social service programs |

The court may only waive the time limit within which the educational program must be completed, not the education requirement. Courts should monitor when guardians take the educational program and take measures to ensure guardians take the training as soon after appointment as possible. Guardians are only expected to complete the program once and are not required to re-take the program if appointed to serve as guardian in another case. They should, however, receive and be prepared to present a certificate of completion for future appointments.

III. Recommendations for the Appointment and Training of Guardians of the Property

Recommendation 8. Persons appointed as guardians of the property must:

- A. Complete a brief pre-appointment orientation and informational program that provides an overview of their expected role and responsibilities;**
- B. If not the petitioner, certify under oath that they have not been convicted of a disqualifying offense listed in Estates and Trusts Art. § 11-114 or demonstrate good cause as to why the appointment should be made despite such a conviction;**
- C. Unless waived by the court, submit a credit report prior to appointment; and**
- D. After appointment but before the initial inventory is due, complete post-appointment educational program that meets the standards set in Recommendation 12.**

When determining whether to appoint a proposed guardian who has been convicted of a disqualifying offense under Estates and Trusts Art. § 11-114, courts should weigh:

- A. The seriousness of the offense;**
- B. Its relevance to the responsibilities of a guardian;**
- C. How recently the offense occurred, the proposed guardian's record since the offense occurred; and**
- D. The vulnerability of the alleged disabled person.**

COMMENTS

This Recommendation tracks the recommended appointment requirements for guardians of the person (see Recommendation 4), but includes an additional requirement: Recommendation 8.C., which is meant to furnish the court with information relevant when assessing an individual's fitness to serve in a fiduciary capacity. This requirement should not create an unreasonable burden on potential guardians as under the Fair Credit Reporting Act, individuals may request a free credit report every twelve months from each of the nationwide credit reporting companies (Equifax, Experian, and TransUnion).¹ This requirement may be waived at the court's discretion. Waivers would be appropriate for active Maryland attorneys who have no prior relationship with the person under guardianship, professional guardians, and lay guardians as the court sees fit.

Recommendation 9. Active Maryland attorneys with no prior relationship to the ward who are appointed as guardians or co-guardians of the property must:

- A. Meet the requirements set in Recommendation 8;**
- B. Maintain professional liability insurance, that includes coverage for services as guardian of the property; and**
- C. Be willing to accept at least one (1) pro bono appointment each year.**

¹ <http://www.consumer.ftc.gov/articles/0155-free-credit-reports>

COMMENTS

As with attorneys appointed as guardians of person, the Work Group believes that certain attorneys who are appointed as guardians of the property, should also be subject to additional eligibility requirements.

The Recommendation is meant to apply only to attorneys who have no prior relationship with the individual under guardianship, but who the court deems appropriate to appoint as guardian or co-guardian of the property. For example, if the ward's primary need is for someone to complete applications for medical assistance, the court may appoint an attorney to provide short-term services. If the court has concerns about a proposed guardian's ability to perform his or her duties alone, it may also opt to appoint an attorney to serve as co-guardian.

Recommendation 10. Recommendations 8 and 9 should not apply to temporary guardians.

COMMENTS

Recognizing some cases require the court to appoint a guardian under emergency or pressing circumstances, the Work Group does not expect temporary guardians to meet the aforementioned eligibility requirements. After the emergent or pressing circumstance is addressed, however, the temporary guardian or another individual must work to meet the eligibility requirements to be appointed as permanent guardian.

Recommendation 11. When determining whether to require newly-appointed guardians of the property to post a bond, courts should consider:

- A. The value and liquidity of the estate and annual gross income and other receipts;**
- B. Whether a restricted account can be established pursuant to Estates and Trusts Art. § 13-209.1 and Md. Rule 10-705;**
- C. The extent to which the income or receipts are payable to a facility responsible for the ward's care and custody;**
- D. The guardian's criminal background, if any;**
- E. The financial responsibility of the proposed guardian;**
- F. The potential burden on the estate; and**
- G. Any impediments to securing bond.**

COMMENTS

This Recommendation is derived from National Probate Court Standard 3.3.15 (Bonds for Conservators) and intended to provide courts guidance when making bond determinations. While Standard 3.3.15 requires bond for all conservators, the Work Group notes that Md. Rule 10-702 gives courts discretion to impose and change bond and that the court's overriding responsibility is to ensure adequate protections are in place to protect the guardianship estate. Adoption of this guidance, along with implementation of the Work Group's recommended screening of guardians and improvements in court monitoring should help reduce the risk of loss or mismanagement of the estate.

Recommendation 12. Shortly after appointment, but before the initial inventory is due (unless waived by the court), any individual appointed as guardian of the property must

successfully complete an in-person educational program that includes the following basic elements:

- A. Overview of guardianship;**
- B. Requirements for filing forms and reports with the court;**
- C. Identifying and reporting neglect, abuse, and exploitation;**
- D. Post-appointment court proceedings;**
- E. The relationship between guardians and others involved in the maintenance of the estate;**
- F. Fiduciary obligations and issues;**
- G. Resignation/removal of the guardian;**
- H. Termination of the guardianship; and**
- I. Accessing community resources.**

COMMENTS

The recommended educational program elements adopted and expanded upon the basic training elements recommended in the NACM Guide. Below is an expanded outline for the training elements.

| Educational Program Elements – Guardians of the Property | |
|---|--|
| A. | <p>Overview of guardianship</p> <ul style="list-style-type: none"> • Purpose and goals of guardianship • Guardianship law and process • Types of guardianship – public vs. private guardianship, guardianship of the person, guardianship of the property • Parties to a guardianship – interested persons, guardians of the person, the court, etc. • Alternatives to guardianship • General role, responsibilities, limitations, and basic competencies required of guardians of the property, and conflicts of interest • Definitions – Guardians of the property should become familiar with and understand the significance of guardianship-related terms and concepts including “best interest,” “substituted judgement,” and language contained in court orders |
| B. | <p>Requirements for filing forms and reports with the court</p> <ul style="list-style-type: none"> • What forms and reports must be filed with the court and when |
| C. | <p>Identifying and reporting neglect, abuse, and exploitation</p> <ul style="list-style-type: none"> • Types of abuse (financial, physical, emotional, and sexual abuse and exploitation, neglect, abandonment, etc.) • Risk factors and signs of abuse • How to report suspected abuse |
| D. | <p>Post-appointment court proceedings</p> <ul style="list-style-type: none"> • What court proceedings may be held after appointment and how to seek assistance from the court |
| E. | <p>The relationship between guardians and others involved in the maintenance of the estate</p> |

| | |
|-----------|--|
| | <ul style="list-style-type: none"> • The court, the ward, family members and other interested parties, guardians of the person, health care providers, agencies, etc. |
| F. | Fiduciary obligations <ul style="list-style-type: none"> • How to manage funds, determine that the person under guardianship is receiving all benefits for which s/he is eligible, and comply with the court's record keeping requirements for all financial transactions • Fiduciary concepts and obligations • Recordkeeping and completing inventories and reports • When the guardian can, must, and should consult with the court • Proper expenditures • Rules regarding compensation • Maintaining and titling separate accounts • Forms and processes – Social Security, Office of Personnel Management, Internal Revenue Service, Veterans Affairs, etc. |
| G. | Resignation/removal of the guardian |
| H. | Termination of the guardianship |
| I. | Accessing community resources |

The court may only waive the time limit within which the educational program must be completed (i.e., before the initial inventory is due), not the education requirement. Courts should monitor when guardians take the educational program and take measures to ensure guardians take the training as soon after appointment as possible. Guardians are only expected to complete the program once and are not required to re-take the program if appointed to serve as guardian in another case. They should, however, receive and be prepared to present a certificate of completion for future appointments.

IV. Recommendations to the Maryland Judiciary for Implementation

Recommendation 13. The recommended appointment criteria, attorney training, pre-appointment orientation and informational program, and post-appointment educational program requirements should first be implemented through an administrative order while efforts to incorporate the requirements into the Maryland Rules of Procedure begin.

COMMENTS

While a rule is the most effective way to establish statewide standards for appointment of court-appointed counsel and guardians of the person and property, the Work Group recognizes that an administrative order would be beneficial to have in place until a rule can be adopted.

Recommendation 14. The Maryland Judiciary should establish mechanisms to improve the screening of guardians. The Maryland Judiciary should also explore ways for courts to run national criminal background checks on all potential guardians and allocate resources to help guardians obtain credit reports pursuant to Recommendation 8.C.

COMMENTS

National Probate Court Standard 3.3.12 (Background Checks) states: “Probate courts should request a national background check on all prospective guardians and conservators . . . before an appointment is made, to determine whether the individual has been convicted on a relevant crime; determined to have committed abuse, abandonment, neglect, or financial or sexual exploitation of a child, spouse, or other adult; has been suspended or disbarred from law, accounting, or other professional licensing or misconduct involving financial or other fiduciary matters; or has a poor credit history.”

Background checks can provide courts valuable information to base a decision whether to appoint a proposed guardian. Without independent verification, courts rely solely upon information provided by petitioners or proposed guardians, which presents risks to the guardianship and the reputation of the court. The Work Group is not aware of any existing mechanisms to verify that proposed guardians have not be convicted of disqualifying offenses.

While the Work Group believes all guardians should be subject to national criminal background checks, it also recognizes that the desire to improve screening practices needs to be balanced against the risk of deterring family members from serving as guardians. The Work Group also recognizes there may be restrictions and costs associated with obtaining national background checks that need further exploration. In the meantime, at a minimum, courts should check Case Search to verify each proposed guardian’s eligibility for appointment.

Although anyone can obtain a free credit report, some potential guardians may need support accessing this information. Courts should have staff and other resources (e.g., courthouse computers) available to assist guardians in meeting this requirement.

Recommendation 15. The Maryland Judiciary should actively collaborate with state and local bar associations and other organizations to develop a training that meets the standards set in Recommendation 3 for court-appointed counsel for alleged disabled persons.

COMMENTS

This Work Group believes that the Maryland Judiciary has an interest in establishing standards to ensure alleged disabled persons have quality representation. To this end the integrity of the recommended training would be maintained if the Maryland Judiciary is involved in developing the training for court-appointed counsel.

Recommendation 16. The Maryland Judiciary should develop and make available in each jurisdiction a publically-available pre-appointment, online orientation and informational program for potential guardians of the person and property, pursuant to Recommendations 4.A. and 8.A.; and curricula that meets the educational program standards set in Recommendations 7 (for guardians of the person) and 12 (for guardians of the property).

COMMENTS

This Recommendation reflects the Work Group's belief that an online, standardized pre-appointment orientation and informational program is the most efficient way to inform potential guardians of the person and property of their expected role and responsibilities. The program should be publically available and courts should be equipped to make the program available to potential guardians at the courthouse. Court staff should be prepared to direct potential guardians to courthouse or other public computers and provide assistance to those who need help navigating technology. Making the program publically available provides an opportunity for future guardians and others with general interest to learn more about guardianship on their own time.

The program should be hosted through an online system that allows individuals to register for the program and auto-generates a record or certificate of completion that can be submitted to the court as proof of compliance with the recommended appointment requirements. Individual courts can, and should be encouraged to, supplement the program with additional information and resources.

This Recommendation also envisions that the Maryland Judiciary develop curricula for guardians of the person and property that meets the recommended educational program standards and focuses on guardians' basic responsibilities to the court and address vocabulary, specific duties, potential challenges, and resources. Individual jurisdictions can, and should be encouraged to, supplement the curricula with additional information and resources.

The guardian of the property curriculum should be packaged and made available to each jurisdiction to provide in-person programs. Jurisdictions should provide regular in-person educational programs at convenient hours and locations, ideally with judges and court staff present as is currently conducted in Baltimore and Howard counties. The Maryland

Judiciary should sponsor and host the programs in jurisdictions that are unable to meet that requirement due to lack of resources or staffing. Participants should receive a certificate of completion that can be submitted to the court as proof of compliance with the education requirement.

While the Work Group's preference is for the guardians of the person program be held in-person, it also recommends the curriculum also be developed into a publically-available interactive online format that allow guardians to register and take self-paced interactive modules (e.g., one module for each of the program elements in Recommendations 7).² The online system should generate certificates of completion guardians can submit to the court as proof of compliance with the requirements. The Maryland Judiciary should ensure each jurisdiction is equipped to provide guardians access to a computer to participate in the program and be prepared to provide assistance to those who need help navigating the technology.

Recommendation 17. The Maryland Judiciary, in collaboration with state and local bar associations and other organizations should support the development of an attorney-specific ethics training for attorneys appointed as guardians of the person, pursuant to Recommendation 5.C.

Recommendation 18. The Maryland Judiciary should maintain and make available to all courts, master lists of attorneys eligible for appointment as court-appointed counsel for alleged disabled persons, guardians of the person, and guardians of the property.

COMMENTS

Appointments are ultimately made at the discretion of each court, but a list maintained by the Maryland Judiciary will help courts who are unable to find an attorney from their existing appointment rosters.

Recommendation 19. The Maryland Judiciary should encourage the state and local bar associations and other organizations to provide information and support to attorneys representing alleged disabled persons through mechanisms including:

- A. A continuing education program to help attorneys maintain their knowledge of current guardianship law and practice;**
- B. A mentoring program that links attorneys with little guardianship experience with more seasoned attorneys; and**
- C. Web-based or live opportunities for attorneys to ask questions and share resources.**

COMMENTS

Recommendation 19.A. envisions a continuing education program with on-going mechanisms to maintain and improve the quality of attorneys representing alleged disabled persons. The program could develop and disseminate periodic updates about local, state, and national guardianship law and policy changes, upcoming training

² Washington State's Lay/Family (Non-Professional) Guardian Training can serve as a model. See: http://www.courts.wa.gov/programs_orgs/guardian/?fa=guardian.layGuardianship&type=training.

opportunities, and resources. It could also seek to address complex and evolving issues few attorneys may encounter but that still warrant attention such as working with and accessing interpreters, addressing immigration issues, and working with adult protective services. The Maryland Judiciary should explore partnerships with state and local bar associations and other organizations to support and promote training opportunities as needed.

Recommendation 19.B. is proposed in recognition of the fact that guardianship cases are complex and attorneys new to guardianship can benefit from the support and expertise of more seasoned attorneys. The Maryland Judiciary should encourage state and local bar associations and other organizations to identify mentors and create a process to link attorneys with mentors. A mentoring model similar to that used by Utah's Guardianship Signature Program (<https://www.utcourts.gov/howto/family/gc/signature/>), which gives participating attorneys the option to request a mentor through the Court's Access to Justice Program, should be considered.

Recommendation 19.C. is meant to provide networking and learning opportunities for guardianship attorneys. The Maryland Judiciary should encourage state and local bar associations and other organizations to should host online message boards or periodic in-person meetings in a central location to provide opportunities for attorneys to get technical assistance and other support.

Recommendation 20. The Maryland Judiciary should develop and host a guardianship webpage that includes:

- A. General information about guardianship law and procedure in Maryland;**
- B. Guardianship forms and instructions for completing the forms; and**
- C. Resources for individuals serving as guardians.**

COMMENTS

A dedicated guardianship webpage can serve as a comprehensive resource for current and future guardians and the general public. In developing this webpage, the Maryland Judiciary should consider formats used by other state courts including:

1. Minnesota; <http://www.mncourts.gov/Help-Topics/Guardianship-and-Conservatorship.aspx>;
2. Nebraska : <https://supremecourt.nebraska.gov/guardians-and-conservatorship>;
3. New York: <http://www.nycourts.gov/courthelp/guardianship/index.shtml>; and
4. Utah: <https://www.utcourts.gov/howto/family/gc/>.

Recommendation 21. The Maryland Judiciary should create standardized forms for physician certificates, answers, waiver of presence and jury trial, jury instructions, certification that a proposed guardian has not been convicted of a disqualifying offense, and voir dire questions.

COMMENTS

Work Group Members noted variations in the type and quality of information presented by attorneys and pro se petitioners. The availability of standardized materials can help

guide them and give the court the information it needs to make informed decisions. The forms should be made available on the Maryland Judiciary’s website.

Recommendation 22. Each jurisdiction should have dedicated guardianship staff whose responsibilities may include:

- A. Reviewing guardianship petitions, certificates, and notices for compliance with the Maryland Rules of Procedure, and identifying less restrictive alternatives to guardianship;**
- B. Screening proposed guardians for eligibility;**
- C. Providing or managing an educational program for guardians of the person and property;**
- D. Managing the lists of attorneys eligible for appointment as counsel for alleged disabled persons and guardians of the person and property;**
- E. Providing support to potential and appointed guardians;**
- F. Reviewing and verifying the contents of reports, conducting follow-up or investigation as needed, and reporting on the status of guardianships to the court;**
- G. Managing a Guardianship Special Assistant Program; and**
- H. Establishing and maintaining a process to receive and respond to complaints or concerns about the status of guardianships.**

COMMENTS

Dedicated, specially-trained, court-based guardianship staff can be an invaluable resource to wards, guardians, and the court. Pre-appointment, guardianship staff can help courts assess whether guardianship is appropriate and the fitness of a proposed guardian. Post-appointment, staff can provide training and on-going support, information, and referrals to community resources. Courts will benefit from guardians’ improved performance and have more information to better monitor cases and allocate resources accordingly.

Recommendations 22.A.-D. are geared toward improving court processes and helping courts make better informed decisions in guardianship cases.

Recommendations 22.E.-G. are consistent with National Probate Court Standard 3.3.17 (Monitoring), which states: “Probate courts should monitor the well-being of the respondent and the status of the estate on an on-going basis, including . . . [a]ssuring the well-being of the respondent and the proper management of the estate, improving the performance of the guardian/conservator, and enforcing the terms of the guardianship/conservatorship order.”

Guardianship staff can improve the performance of guardians by helping them meet reporting requirements and providing additional information and referrals to community resources guardians may not realize are available. To provide guardians with additional support and the court with better information about the status of guardianships, staff could also manage a Guardianship Special Assistant Program to recruit and train volunteers to review guardianship reports, conduct visits with guardians and wards, connect guardians with community resources, and report to the court. A Guardianship

Special Assistant Program is currently in place in Montgomery County and has been well-received by guardians, the court, and volunteers.

Recommendation 22.H. is consistent with National Probate Court Standard 3.3.18 (Complaint Process), which states: “Probate courts should establish a clear and easy-to-use process for communicating concerns about guardianships and conservatorships and the performance of guardians/conservators. The process should outline circumstances under which a court can receive *ex parte* communications. Following the appointment of a guardian or conservator, probate courts should provide a description of the process to the respondent, the guardian/conservator, and to all persons notified of the original petition.” Establishment of a process for receiving and handling complaints is also a key recommendation in the NACM Guide.

While it may not be realistic for courts to conduct a thorough investigation of each guardianship annually, courts should not have passive role. Having an established mechanism for interested parties and the public to notify the court about potential issues concerning the ward, the ward’s estate, or performance of a guardian will help courts identify potential problems and allocate investigative resources.

Recommendation 23. The Maryland Judiciary should develop guardianship training and resources for new judges and set continuing education standards for judges handling guardianship cases. New judges should receive training on guardianship within 120 days of appointment.

COMMENTS

Guardianship cases are inherently complex and the Work Group recommends that judges, like guardians, should also be subject to training requirements. At a minimum, a short block on guardianship should be included in New Judges Orientation Training courses. Those in one-judge jurisdictions or those with judges having primary or secondary duties presiding over guardianship cases, should also be required to attend a more extensive training prior to or shortly after appointment (as are juvenile court judges who deal with disabled minors).

The Maryland Judiciary through a grant or other mechanism, should also update “The Guardianship Bench Book: The Judiciary’s Guide to Adult Guardianships and Guardianship Alternatives in Maryland” (available online at: <http://archive.hshsl.umaryland.edu/handle/10713/1409>).

Recommendation 24. Each jurisdiction should have dedicated, specially-trained guardianship judges.

COMMENTS

Each jurisdiction should have judges who can ensure guardianship policies are carried out, address issues proactively, and liaise with guardianship staff and other court personnel. The judges should receive training on handling guardianship cases and on

special issues including elder abuse. Resources should be allocated to provide training to judges out of state, if needed.

Recommendation 25. Courts should utilize mediation and other forms of alternative dispute resolution, as appropriate, in contested guardianship cases as a means of expediting resolution and conserving limited judicial resources.

COMMENTS

Maryland courts are experiencing an increase in the number of contested guardianship cases, including at the appellate level, and the increased utilization of mediation and other forms of alternative dispute resolution would provide opportunity for parties to resolve their conflict without protracted litigation and provide opportunity for expedited resolution thus saving limited judicial and party resources.