



Guardianship of Adults

2025 Evaluation Report

Program Evaluation Division
Office of the Legislative Auditor
State of Minnesota

Program Evaluation Division

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April 2025

Members of the Legislative Audit Commission:

When an adult cannot make certain decisions for themselves, the court may appoint a guardian to make decisions on their behalf. Guardianship can provide necessary support for an adult to meet their personal needs; it also limits the adult's independence and rights. Because guardians often have broad powers, the appointment of a guardian is a serious matter.

We found there is inadequate oversight of adult guardianship in Minnesota. The state does not adequately ensure that guardians are appointed only when appropriate, nor does it sufficiently monitor the safety and well-being of adults subject to guardianship. Further, guardians in the cases we reviewed faced few consequences when they did not fulfill their responsibilities. We make a number of recommendations, including that the Legislature create a centralized entity to administer and oversee adult guardianship in Minnesota.

Our evaluation was conducted by Caitlin Badger (project manager), Adri Lobitz, and Kaitlyn Schmaltz. Judicial Branch staff cooperated fully with our evaluation, and we thank them for their assistance.

Sincerely,



Judy Randall
Legislative Auditor



Jodi Munson Rodríguez
Deputy Legislative Auditor



OLA



Guardianship of Adults

The state does not adequately ensure that guardians are appointed only when appropriate or monitor the safety and well-being of adults subject to guardianship.

Report Summary

Adult Guardianship Oversight

Statutes specify few requirements to oversee adult guardianship. The Judicial Branch's activities pertaining to adult guardianship are largely decentralized across Minnesota's ten judicial districts.

- The Judicial Branch takes a largely reactive approach to overseeing adult guardianship cases, relying heavily on outside individuals—including people subject to guardianship—to bring guardianship issues to its attention. Relying on individuals to contact the court to address guardianship issues can be problematic for several reasons. (p. 19)

Recommendation ► The Legislature should establish a centralized entity in statute to administer and oversee adult guardianship. (p. 31)

Recommendation ► The Legislature should establish specific duties for the oversight and enforcement of adult guardianship requirements. (p. 20)

- For the cases we reviewed, guardians often did not fulfill various reporting and notification requirements in a timely manner, as required; however, they faced few consequences when they did not fulfill their responsibilities. (pp. 60, 64)

Recommendation ► The Judicial Branch should establish a process for systematically reviewing adult guardianships. (p. 70)

- The state has established few performance standards indicating how guardians should fulfill their duties. (p. 21)

Recommendation ► The Legislature should amend statute to establish minimum guardian performance standards for key guardian activities. (p. 22)

Background

In the event an adult is incapable of making certain decisions for themselves, the court may appoint a guardian to make decisions on their behalf. The appointment of a guardian is a serious matter. Guardianship can provide necessary support for an adult to meet their personal needs; it also limits the adult's independence and rights. Guardians often have broad powers to decide where the adult lives, what medical care they receive, and more.

Anyone interested in an individual's well-being can request that the court appoint a guardian. The guardian may be someone that the adult knew previously or someone who is hired to provide guardianship services.

The courts—including judicial officers and court staff—manage day-to-day aspects of guardianship cases. For instance, judicial officers decide whether to appoint a guardian for an adult and what powers the guardian should have. Guardians must keep the court apprised of the condition of the person subject to guardianship by filing annual reports.

The State Court Administrator's Office in the Judicial Branch provides administrative support for the Branch's guardianship activities.

- The Judicial Branch does not have reliable statewide data on adult guardianship, including who in Minnesota is subject to guardianship or who is currently a guardian, which makes it difficult to monitor whether guardians are fulfilling their duties. (p. 23)

Recommendation ► The Judicial Branch should improve its data collection practices to ensure that guardianship data are sufficiently reliable to oversee adult guardianship statewide. (p. 24)

Guardianship Training and Resources

- Despite their significant responsibilities to make decisions on behalf of another adult, guardians are not required to participate in any training prior to or after becoming a guardian. (p. 74)

Recommendation ► The Legislature should require all guardians to complete training prior to their appointment as guardian. (p. 75)

- Some judicial officers told us they do not always know how to complete key tasks related to guardianship. Few courts in Minnesota have judicial officers who specialize in adult guardianship cases, and judicial officers do not consistently complete training on guardianship. (pp. 76, 78)

Recommendation ► The Judicial Branch should consolidate the number of judicial officers presiding over adult guardianship hearings and require judicial officers who preside over guardianship hearings to complete training on guardianship. (p. 78)

Guardianship Complaints

- Statutes do not establish a process for individuals to register complaints about guardian performance with the Judicial Branch. Although the Branch has recently established a complaint process, it is a grant-funded pilot project. (p. 83)

Recommendation ► The Legislature should establish a guardianship complaint process in law. (p. 91)

- The Judicial Branch currently has a backlog of open complaints and has been unable to investigate recent complaints in a timely manner. (p. 89)

Recommendation ► The Judicial Branch should ensure that it completes guardianship complaint investigations in a timely manner. (p. 91)

Summary of Judicial Branch Response

In a letter dated March 31, 2025, Chief Justice Natalie Hudson and State Court Administrator Jeffrey Shorba stated that the Judicial Branch remains “committed to ensuring that guardianship in Minnesota protects the rights and well-being of adults subject to guardianship while upholding judicial integrity and efficiency.” They commented that the Branch agrees with many of the report’s findings and recommendations, including recommendations to require guardian training and to establish a formal guardianship complaints process in law.

Chief Justice Hudson and Administrator Shorba further stated that the report raises “important questions about the role of the courts under the Minnesota Constitution and state law,” including whether certain guardianship-related activities are the responsibility of the court or the Legislature. They commented that, without additional direction in state law, certain guardianship-related activities are not the court’s responsibility, and that some recommendations would require additional funding to implement.

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Introduction

Each year, adults across Minnesota are involved in court cases to determine whether they are capable of making certain decisions for themselves or whether the court should put someone else—a “guardian”—in charge of making the adult’s decisions on their behalf. The outcomes of these court cases have serious repercussions. The appointment of a guardian can provide necessary support; it also limits the adult’s independence and rights.

Some members of the public and legislators have expressed concern about the guardianship of adults in Minnesota. In April 2024, the Legislative Audit Commission directed the Office of the Legislative Auditor to evaluate adult guardianship. We focused our evaluation on the following questions:

- **To what extent does the Judicial Branch effectively oversee the guardianship of adults in Minnesota?**
- **To what extent are there adequate minimum qualifications, screening procedures, and training requirements for guardians?**
- **To what extent are the procedures for processing and responding to complaints about guardians transparent and comprehensive?**

During our evaluation, we reviewed relevant statutes, court rules, and Judicial Branch procedures and interviewed Judicial Branch staff. We also reviewed guardianship best practices documents published by national and Minnesota-based organizations and entities, including organizations involved in court management and adult guardianship.¹

To better understand the perspectives of individuals involved in the guardianship system, we conducted site visits in four judicial districts during which we interviewed people subject to guardianship, guardians, court staff, and judges and judicial referees.² We also observed several guardianship hearings that took place in these districts. Further, we conducted two surveys: (1) a survey of court visitors and (2) a survey of judges and judicial referees who had presided over at least one guardianship hearing

Guardianship Best Practices



As part of our evaluation, we compared key characteristics of Minnesota’s adult guardianship system to guardianship best practices identified by various national organizations and entities. Throughout the report, we denote these best practices using the navy clipboard symbol in this box.

¹ We reviewed documents produced by the National Association for Court Management, National Center for State Courts, National Conference of Commissioners on Uniform State Laws, National Guardianship Association, Minnesota Association for Guardianship and Conservatorship, and others.

² We conducted site visits in four of Minnesota’s ten judicial districts in fall 2024. We conducted some interviews in person, while others were virtual.

since 2023.³ We also interviewed several other stakeholders and individuals involved in the guardianship system, including attorneys and staff at certain executive branch entities.

Additionally, we reviewed court documents for a sample of guardianship cases to assess the extent to which the courts and guardians complied with key guardianship laws.⁴ We also analyzed data pertaining to the State Court Administrator's Office's (SCAO's) guardianship complaint process and reviewed court documents for all substantiated complaints.⁵

Our evaluation focused solely on the private guardianship of adults. We did not evaluate guardianship of minors, public guardianship, or conservatorship.⁶ We also did not evaluate the decisions that individual guardians or judges made with respect to guardianship cases or whether guardianship was appropriate for individual adults currently subject to guardianship.

³ In September 2024, we surveyed people whom judicial districts indicated were court visitors and received a response from 37 individuals. In August 2024, we surveyed 219 judicial officers whom court data indicated had presided over at least one guardianship-related hearing between January 2023 and May 2024. We received responses from 133 judicial officers for a response rate of 61 percent.

⁴ We reviewed court files for a sample of 62 guardianship cases for which the court received a petition for guardianship between January 1, 2015, and May 2, 2023.

⁵ We analyzed data for all 245 guardianship complaints that SCAO received between July 1, 2022, and June 6, 2024.

⁶ In public guardianship, the state—rather than a private individual—is the guardian of the adult.

Chapter 1: Background

Guardianship is one of many options that exist to support adults who need regular assistance to meet their needs. Some supports may be community based, such as the Meals on Wheels nutrition program. Other supports—including guardianship and conservatorship—are established through formal legal processes.

In this chapter, we provide an overview of adult guardianship, including when a guardian may be appointed and the roles and responsibilities of individuals and entities involved in the guardianship of adults. We conclude the chapter with information about the Judicial Branch’s staffing and funding for guardianship.

Key Findings in This Chapter

- The court may appoint a guardian if an adult is “incapacitated” and their needs cannot be met with “less restrictive means” than guardianship.
- Judicial Branch activities pertaining to adult guardianship are largely decentralized.

Adult Guardianship Overview

Adult guardianship can be a valuable support for adults who struggle to make personal decisions for themselves. When guardianship is working well, guardians can help to support the well-being, health, and safety of vulnerable adults. People we spoke with who are currently, or were formerly, subject to guardianship told us that guardians help to arrange for medical care, complete paperwork, and advocate for their needs. On the other hand, guardianship affects the rights and liberties of the person subject to guardianship by transferring significant authority to make certain decisions to a guardian. When guardianship does not work well, this can put vulnerable adults at increased risk of abuse, neglect, and exploitation. Some individuals we spoke with who are or were subject to guardianship described significant concerns about guardians not considering their wishes, impeding their medical care, or controlling their money inappropriately.

As we discuss later in this chapter, guardians can have broad powers to make decisions for an adult about personal matters, such as where they live and the medical and mental health care they receive. Guardians typically are not responsible for making decisions about an adult’s finances. In the case an adult needs assistance making financial decisions, the court would appoint a conservator. Although guardianship and conservatorship share similarities, this report focuses solely on adult guardianship.



Guardians vs. Conservators

In both guardianship and conservatorship cases, the court appoints someone to make decisions for an adult because the adult is unable to make decisions for themselves. The court appoints a conservator to make financial decisions, whereas the court appoints a guardian to make certain personal decisions, such as where the adult should live.

The court may appoint a guardian if an adult is “incapacitated” and their needs cannot be met with “less restrictive means” than guardianship.

State law establishes two conditions that must be met before the court can appoint an adult a guardian. First, the court needs to find, by “clear and convincing evidence” that the adult is “incapacitated,” as defined in the box to the right.¹ For example, the court may determine that an adult is incapacitated if the adult has a traumatic brain injury that has impacted their ability to make decisions about their medical care.



An **incapacitated person** is an adult who is “impaired to the extent of lacking sufficient understanding or capacity to make personal decisions, and who is unable to meet personal needs for medical care, nutrition, clothing, shelter, or safety, even with appropriate technological and supported decision-making assistance.”

— **Minnesota Statutes 2024, 524.5-102, subd. 6**

Second, before appointing a guardian, law requires the court to determine that the adult’s needs cannot be met with “less restrictive means” than guardianship.² Less restrictive means are various alternatives to guardianship, such as community-based or legal supports that allow the adult to retain personal autonomy and continue to make decisions for themselves.³ Less restrictive alternatives may postpone guardianship or eliminate the need for it altogether.

Examples of Less Restrictive Alternatives to Guardianship

The examples provided are considered less restrictive alternatives to guardianship because the adult retains personal autonomy to make decision for themselves.

Supported decision making: The use of trusted individuals to make decisions with the adult instead of for them. For example, the adult may select trusted family members or friends with whom to discuss medical decisions.

Health care directive: A legal document with information on the adult’s health care preferences for instances in which the adult cannot make or communicate their own choices. For example, the adult may sign an advance directive, such as a living will or do-not-resuscitate order.

Community or residential services: Services provided to an adult to assist them in meeting daily needs. For example, supported living services may provide the adult with help cooking, cleaning, and doing laundry at home.

¹ *Minnesota Statutes 2024, 524.5-310(a)(1)*. Per *Minnesota Statutes 2024, 524.5-311(c)*, the court may appoint an emergency guardian without determining the respondent is incapacitated. We discuss emergency guardians further below.

² *Minnesota Statutes 2024, 524.5-310(a)(2)*. “Less restrictive means” are also referred to as “less restrictive alternatives” or “less restrictive measures.” We typically use “less restrictive alternatives” throughout this report.

³ A community-based support, for example, could include programs or services to help an adult develop and maintain life skills, such as managing money, preparing meals, and other activities that maintain and improve the capacity of the adult to live as independently as possible.

Adults subject to guardianship have a wide range of abilities and needs.

The population of people subject to guardianship is diverse, both with regard to their backgrounds as well as their abilities and needs. Adults with serious mental illness, developmental or intellectual disabilities, traumatic brain injuries, or cognitive decline may need a guardian to make decisions for them. Some adults subject to guardianship may live independently, in a group home, or with their families. Some may maintain a job or be involved in their community in other ways, while others may be in a hospital or other care facility. Additionally, adults of all different ages may need the support of a guardian to meet their needs. Exhibit 1.1 shows examples of situations where adults became subject to guardianship.

Exhibit 1.1
Examples of Instances in Which Adults Became Subject to Guardianship

Case 1	Case 2	Case 3
The court appointed a guardian for a 78-year-old with memory loss because the adult was unable to make informed medical decisions on their own and needed assistance with daily care.	The court appointed a guardian for a 20-year-old with cerebral palsy because the adult was unable to communicate and required substantial assistance with daily living, including eating, dressing, and personal hygiene.	The court appointed a guardian for a 29-year-old with schizophrenia and multiple substance use disorders because the adult was experiencing mental instability and posed a risk to themselves.

Source: Office of the Legislative Auditor, review of guardianship case files.

Guardianships may change over time, depending on the needs of the adult subject to guardianship. Some guardianships may last for the rest of the adult’s life, others may end once the adult gains or recovers the skills necessary to make their own decisions. For example, an elderly person with dementia who continues to decline cognitively will likely remain subject to guardianship for the rest of their life, but a young adult with complex mental health concerns may regain the ability to make decisions for themselves and be able to end their guardianship after a few years.

Types of Guardianship

For adults who meet the minimum conditions in law for needing a guardian, there are several types of adult guardianship.

Private guardianship. In a private guardianship, the court appoints an individual—such as a family member, friend, or professional—to act as the guardian for the adult. Private guardianship is the most common form of adult guardianship in Minnesota. The Judicial Branch estimated that there were 30,400 adults subject to private guardianship and 41,400 private guardians in Minnesota as of August 2024.⁴

⁴ Some adults have multiple guardians. We were unable to determine the exact number of adults subject to guardianship in Minnesota. We discuss limitations of guardianship data in Chapter 2.

Public guardianship. In a public guardianship, the court appoints the government—specifically, the Department of Human Services—to act as the guardian of an adult.⁵ By law, public guardianship may be used only for adults with a developmental disability who cannot provide for their own needs and for whom no one else is willing or qualified to serve as their guardian.⁶ The Department of Human Services reported that, as of May 2024, about 850 adults were subject to public guardianship in Minnesota.

Emergency guardianship. In instances when an adult would likely face “substantial harm” without the immediate appointment of a guardian, the court may appoint the adult an emergency guardian.⁷ The appointment of an emergency guardian is an expedited process that bypasses some statutory requirements for establishing a nonemergency guardianship, such as notifying the adult prior to appointing a guardian for them. By law, emergency guardianships cannot last longer than 60 days, although the court may extend an emergency guardianship once with “good cause” for no more than an additional 60 days.⁸ An emergency guardian could be appointed to an adult who ultimately ends up under either private or public guardianship, or a judge may determine that a person under emergency guardianship ultimately does not need a guardian.

Roles and Responsibilities

Judicial Branch

Although there are multiple entities and individuals involved in adult guardianships, statutes assign the primary responsibilities of appointing and monitoring adult guardianships to the court. The box on the following page shows key duties assigned to the court in law.

Within the courts and Judicial Branch, several different individuals and entities play important roles in adult guardianship, which we discuss in greater detail on the following pages.

⁵ By law, public guardianship is overseen and administered by the Department of Human Services. *Minnesota Statutes* 2024, Chapter 252A. We did not evaluate public guardianship in this report.

⁶ *Minnesota Statutes* 2024, 252A.02, subd. 2; and 252A.03, subd. 3.

⁷ *Minnesota Statutes* 2024, 524.5-311(a).

⁸ If no other suitable person is available to act as emergency guardian for a vulnerable adult, the court may appoint a county employee as an emergency guardian. In these cases, the initial emergency guardian’s appointment may not exceed 90 days. *Minnesota Statutes* 2024, 524.5-311(a); and 626.557, subd. 10(g).

Statutes assign the court various duties pertaining to adult guardianship.**The court must:**

- Establish a system for monitoring guardianships, including the filing and review of annual guardian reports.
- Set a time and date for a hearing after receiving a petition to establish guardianship.
- Appoint counsel to the adult who may become subject to guardianship prior to the guardianship appointment hearing, unless the adult has their own counsel or waived their right to counsel.^a
- Require background checks before the appointment of the guardian and once every five years after the guardian's appointment.
- Establish a central registry of guardians.

The court may:

- Appoint a guardian.
- Appoint a person (court visitor) to visit the adult who may become subject to guardianship and report to the court.
- Modify a guardianship.
- Terminate a guardianship.
- Make any other order that is in the best interest of the adult subject to guardianship.

^a The court does not have to appoint counsel for someone voluntarily petitioning for their own guardianship.

Source: *Minnesota Statutes* 2024, 524.5-118, 524.5-119, 524.5-304, 524.5-310(a), 524.5-316, and 524.5-317.

Judicial Officers

Judicial officers preside over legal matters brought to the court, including guardianship cases. As of February 2025, the State Court Administrator's Office (SCAO) reported that 316 judicial officers serve in Minnesota's district courts.

Judicial officers decide whether an adult needs a guardian and make other key decisions on guardianship cases.

Judicial officers play a critical decision-making role in adult guardianship. They preside over guardianship hearings, weigh evidence presented to the court, and decide whether to appoint a guardian. Judicial officers also determine which powers and duties to grant to a guardian.

**Judicial Officers:
Judges and Referees**

Judicial officers are judges and referees who preside over legal proceedings.

Judges may issue court orders.

Referees may also issue court orders, but a judge must confirm the order.

For simplicity, we use the term "judicial officers" to refer to both judges and referees throughout this report.

Judicial officers continue to make decisions about guardianship cases, even after appointing the guardian, and can call hearings based on information provided to the court. If a guardian does not perform their duties, judicial officers can remove the guardian. Judicial officers also decide whether to end a guardianship and restore the rights of a person subject to guardianship. Between January 2023 and May 2024, 242 judicial officers across Minnesota presided over at least one hearing pertaining to adult guardianship.

District Court Staff

Judicial districts and district courts hire and train their own staff to help with the administrative aspects of guardianship proceedings. For guardianship cases, district court staff collect and manage files, schedule hearings, and may contact guardians. Each district has a specialized team of staff to process various guardianship-related documents. Often, adult guardianship is only one of the many case types on which district court staff work.



Centralized Guardianship Teams

In 2023, the Branch established centralized teams of staff in each judicial district to review guardian reports and manage various other guardianship-specific paperwork.

State Court Administrator's Office (SCAO)

SCAO provides central administrative services to the entire Branch. A limited number of SCAO staff work directly on guardianship-related activities. In recent years, SCAO staff have developed resources and offered trainings on guardianship topics to judicial officers and court staff. SCAO also created and maintains many guardianship forms and resources for guardians, individuals seeking guardianship for an adult, and others. For instance, SCAO has developed a guardianship manual that includes information about the guardian appointment process and guardian responsibilities.⁹ Additionally, SCAO has established standards for how district court staff should process guardianship filings, and SCAO oversees a federal grant funding a guardianship complaints process and other improvements to guardianship in Minnesota.



The Court vs. the Judicial Branch

While all of the individuals and entities described above are part of the Judicial Branch, for the purposes of this report:

"The court" refers to individuals working within individual judicial districts or district courts—such as judges, referees, and court staff—who are responsible for the day-to-day activities of court cases, including adult guardianship cases.

"The Judicial Branch" refers to centralized entities—primarily the State Court Administrator's Office (SCAO)—with responsibility for the broader administration and oversight of the Judicial Branch's activities as a whole, rather than on individual cases.

⁹ Minnesota Judicial Branch, State Court Administrator's Office, *Guardianship and Conservatorship in Minnesota*, revised April 2024, <https://www.mncourts.gov/mncourtsgov/media/CourtForms/GAC101.pdf?ext=.pdf>, accessed April 30, 2024.

Guardians

The guardian of an adult may be a member of the adult’s family, a professional hired to provide guardianship services, or others.

Most adults subject to guardianship have private guardians who may be someone they know or someone hired to provide guardianship services. In this report, guardians who are family members, friends, or other individuals who do not profit from acting as a guardian are referred to as “volunteer guardians.” Guardians who charge for their guardianship services and may be the guardian for multiple adults are referred to as “professional guardians.”¹⁰ Professional guardians may work for a nonprofit organization, such as Lutheran Social Service; may be employed by the government, such as a county social services office; or may have their own independent guardianship firm. People subject to guardianship often do not have a relationship with a professional guardian prior to the guardian’s appointment.



Private Guardians: Volunteer vs. Professional

For the purposes of our report:

Volunteer guardians are typically individuals known to the person subject to guardianship and not paid for their services.

Professional guardians are hired to provide guardianship services to the person subject to guardianship. They may be unknown to the person subject to guardianship before their appointment and may serve as guardian for multiple people.

Statutes describe several different powers and duties that the court may grant to a guardian.

As shown in the box on the following page, the court may grant a guardian various powers and duties to make decisions for the person subject to guardianship. By law, the court may grant a guardian only the powers and duties for which the person subject to guardianship has shown a “demonstrated need.”¹¹ As such, the court may grant a guardian all, or only a few, of the powers and duties listed on the following page.

¹⁰ Professional guardians may be paid from the estate of the person subject to guardianship or, if the person subject to guardianship cannot afford to pay the guardian, a county may pay the guardian for their services.

¹¹ *Minnesota Statutes* 2024, 524.5-313(b).

Key Guardian Powers and Duties

The court may grant the guardian the:

- Power to have custody of the person subject to guardianship and establish where the person lives.
- Power to give consent to enable the person subject to guardianship to receive necessary care.
- Power to establish an ABLE account for the person subject to guardianship.^a
- Power and duty to exercise supervisory authority in a manner that may limit the rights and restrict the freedom of the person subject to guardianship, only to the extent necessary.
- Duty to provide for the care, comfort, and maintenance needs of the person subject to guardianship.
- Duty to take reasonable care of the personal effects of the person subject to guardianship and seek the appointment of a conservator for the estate of the person subject to guardianship, if needed.
- Power to approve or deny contracts for the person subject to guardianship, except for necessities.^b
- Power to apply on behalf of the person subject to guardianship for any government assistance available to them.^b
- Duty and power to bring legal action and represent the person subject to guardianship in some court proceedings.^b

Notes: In addition to the powers and duties listed above, guardians must meet various reporting and notification requirements. For instance, guardians must annually report to the court on the condition of the person subject to guardianship and notify the person subject to guardianship of (1) their right to request to terminate or modify their guardianship and (2) their right to vote.

^a An Achieving a Better Life Experience (ABLE) account allows individuals with disabilities to save for disability-related expenses on a tax-deferred basis without limiting the person's ability to benefit from federal programs.

^b The court may grant a guardian these powers and duties when the person subject to guardianship does not have a conservator.

Source: *Minnesota Statutes 2024*, 524.5-310, and 524.5-313.

In addition to upholding the powers and duties granted to them, guardians must fulfill annual reporting requirements, including filing “personal well-being reports” with the court. These reports provide annual updates to the court on the condition of the person subject to guardianship. We discuss guardian reporting responsibilities in greater detail in Chapter 4.

People Subject to Guardianship

Upon the appointment of a guardian, a person subject to guardianship maintains their previous rights and responsibilities, except for the decision-making powers and duties that the court explicitly grants to the guardian.¹² For example, unless the court directs the guardian to care for the person subject to guardianship's belongings, the person retains their rights and responsibilities to care for their clothing, furniture, vehicles, and other personal effects. Likewise, unless the court revokes the authority of the person subject to guardianship to manage contracts, they retain their rights and responsibilities to do so on their own behalf.

¹² *Minnesota Statutes 2024*, 524.5-120.

Minnesota’s Bill of Rights for Persons Subject to Guardianship or Conservatorship outlines additional rights retained by people subject to guardianship.¹³ For example, the person subject to guardianship can participate in decision making about their medical care and petition the court to end or change the terms of their guardianship.

Court Visitors

Per state law, prior to appointing a guardian, the court may appoint a court visitor to meet with the adult who may become subject to guardianship, (otherwise referred to as the “respondent”).¹⁴ Court visitors may be employed on a full-time or part-time basis by various entities, including counties and district courts, or they may be independent contractors. Exhibit 1.2 outlines key court visitor duties.

Exhibit 1.2
Key Court Visitor Duties

Service of Notice and Petition	<p>The court visitor shall:</p> <ul style="list-style-type: none">• Personally notify the respondent about the petition for guardianship and related hearing.• Explain to the respondent:<ul style="list-style-type: none">○ The substance of the petition and the nature, purpose, and effect of the proceeding.○ The respondent's rights at the hearing.○ The general powers and duties of a guardian.• Inform the respondent of the right to employ and consult with an attorney and the right to request a court-appointed attorney.
Evaluations	<p>The court visitor shall:</p> <ul style="list-style-type: none">• Meet with the respondent one or more times.• Interview the respondent in person.• Observe the respondent's appearance, lucidity, and surroundings.• Determine the respondent's views about the proposed guardian, the proposed guardian's powers and duties, and the scope and duration of the proposed guardianship.
Reports	<p>The court visitor shall file a report in writing with the court, which must include:</p> <ul style="list-style-type: none">• Recommendations regarding:<ul style="list-style-type: none">○ The appropriateness of guardianship, including whether less restrictive alternatives to guardianship are available.○ The type of guardianship.○ The powers to be granted to the guardian.• A statement as to whether the respondent approves or disapproves of the proposed guardian, and the powers and duties proposed or the scope of the guardianship.
Guardianship Hearings	<p>The court visitor shall appear at a hearing to testify and submit to cross examination regarding their observations and recommendations, unless excused by the court.</p>

Source: *Minnesota Statutes* 2024, 524.5-304; and Minnesota General Rules of Practice for the District Courts, *Title V. Probate Rules*, Rule 416(b) (2024).

¹³ *Minnesota Statutes* 2024, 524.5-120. See the Appendix for the complete Bill of Rights for Persons Subject to Guardianship or Conservatorship.

¹⁴ *Minnesota Statutes* 2024, 524.5-304.

Court visitors are meant to provide a neutral, third-party check on the guardianship appointment process.

Court visitors play an important role in the guardianship appointment process for respondents. They help the respondent understand the implications of becoming subject to guardianship, including the decision-making powers that the respondent could lose to the guardian. They also help the respondent understand their rights, such as the right to an attorney.

Court visitors also provide to judicial officers a neutral third-party opinion on the need for guardianship. There can be many individuals involved in guardianship proceedings, some of whom may have an interest in achieving a specific case outcome. Court visitors, on the other hand, must be “disinterested in the guardianship... proceedings.”¹⁵ Court visitor reports can be an important resource through which the court receives unprejudiced input on whether guardianship is appropriate for an adult.

Additional Stakeholders

Entities with roles and responsibilities in the guardianship system extend far beyond the Judicial Branch and individuals who serve as guardians or are subject to guardianship. We discuss a selection of other key individuals and entities that play a role in the guardianship system below.

Court-Appointed Attorneys

Court-appointed attorneys act as a voice for the person who is, or may become, subject to guardianship and assist them in navigating the legal process of guardianship. According to statutes, a person subject to guardianship has the right to representation by an attorney in any court proceeding.¹⁶ State law requires the court to appoint an attorney for the adult for the initial guardian appointment hearing, unless the adult hires their own attorney or waives their right to counsel.¹⁷

Ombudsman Offices

Ombudsman offices are independent, investigatory state agencies that receive and review complaints against the government. The Office of Ombudsman for Mental Health and Developmental Disabilities and the Office of Ombudsman for Long-Term Care both receive complaints about guardians and work with other government entities to remedy the issues reported to them.

¹⁵ Minnesota General Rules of Practice for the District Courts, *Title V. Probate Rules*, Rule 416(b) (2024). If at any time the court determines that the court visitor has a conflict of interest, the court must appoint a new court visitor.

¹⁶ *Minnesota Statutes* 2024, 524.5-120(14).

¹⁷ *Minnesota Statutes* 2024, 524.5-304(b).

Minnesota Adult Abuse Reporting Center and Adult Protective Services

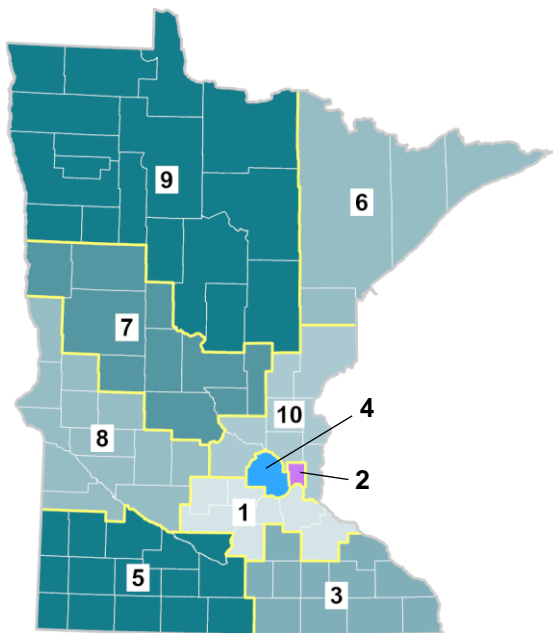
The Minnesota Adult Abuse Reporting Center (MAARC) receives reports of neglect, abuse, or other concerns about the health and safety of vulnerable adults, which includes adults subject to guardianship. When MAARC receives a report of maltreatment, it refers allegations to the appropriate investigative entity, such as a county adult protective services office, which is then responsible for investigating allegations.¹⁸

Physicians, Care Facilities, and Others

Other individuals and entities, including county social services workers, physicians, nursing home staff, and other care providers and facilities, may be involved in guardianships in various ways, such as by providing information to the court or petitioning for guardianship. A physician, for instance, may provide information to the court in the form of a physician's statement that explains why, in their opinion, an adult does or does not need a guardian. If a service provider believes that guardianship is necessary for an individual, they may file a petition with the court to initiate guardianship proceedings and testify in court about their experiences with the adult they believe needs guardianship. Once a guardian is appointed, physicians and care facilities may rely on guardians to make decisions for the person subject to guardianship.

Guardianship Staffing and Financials

Minnesota Judicial Districts



Source: Minnesota Judicial Branch.

To understand adult guardianship staffing and cost needs, it is helpful to understand the structure of the Judicial Branch's district court system. There are ten judicial districts in Minnesota, some made up of only one county and others of four or more. Each judicial district includes one or more district courts, each with its own judicial officers and district court staff who preside over or provide administrative support for various court proceedings, including adult guardianship cases.

Judicial Branch activities pertaining to adult guardianship are largely decentralized.

No single entity within the Judicial Branch is responsible for adult guardianship. Rather, most of the Branch's activities pertaining to guardianship are managed at the judicial district level.¹⁹ Each individual judicial district determines how to allocate judicial officers for guardianship cases and how to staff and fund

¹⁸ *Minnesota Statutes* 2024, 626.557, subd. 9a(a)(3).

¹⁹ Judicial Branch staff stated that Branch activities for most case types are managed at the judicial district level, rather than through a centralized approach.

guardianship-related activities for the district. For instance, one judicial district may decide to have a limited number of judicial officers specialize in probate cases, including guardianship, while another judicial district may decide to have all judicial officers hear guardianship cases. Similarly, district courts—rather than a central guardianship entity—are responsible for monitoring guardianship cases and enforcing guardianship requirements.



Probate Cases

Probate cases include guardianship and conservatorship cases and cases involving the execution of wills and the handling of estates.

Staffing

As we discussed above, judicial officers, district court staff, and SCAO staff all spend time working on adult guardianship. The total time that judicial officers devote to adult guardianship is unknown. In 2024, the Branch estimated that an average of 4.5 full-time-equivalent (FTE) judicial officers per year were needed in Minnesota to work on guardianship and conservatorship cases.²⁰ According to Branch estimates, the number of judicial officers needed for guardianship and conservatorship cases varied by district, with a low of 0.1 FTE per year for the Eighth Judicial District, to a high of 0.9 FTE per year for the Fourth Judicial District.

The total time that district court staff spend on guardianship cases is also unknown. The Branch estimated that an average of 58.7 FTE district court staff per year are needed for guardianship and conservatorship cases.²¹ According to Branch estimates, court staffing needs for guardianship and conservatorship cases varied by district, with a low of 1.7 FTE per year for the Eighth Judicial District, to a high of 11.5 FTE per year for the Fourth Judicial District.

In addition to guardianship work performed by judicial officers and court staff within the district courts, SCAO staff devote time to guardianship work as well. The Branch estimated that 1.9 FTE staff from SCAO worked on guardianship-related tasks in Fiscal Year 2024.

Finances

Most of the state funding for the Judicial Branch comes from the General Fund. Each biennium, the Legislature appropriates funds to each of the three levels of Minnesota's judiciary: the Minnesota Supreme Court, the Court of Appeals, and the district courts. The Legislature appropriated over \$470 million to the Judicial Branch for Fiscal Year 2024 and almost \$510 million for Fiscal Year 2025.

²⁰ The Branch reported there were a total of about 317 judicial officer FTEs in the Branch at that time. Estimates provided here reflect average weighted caseloads from July 1, 2021, through June 30, 2024, based on self-reported employee data. A “full-time-equivalent” (FTE) employee is an employee who works 40 hours per week. For example, one employee who works 30 hours each week is counted as 0.75 FTE. The Branch does not track guardianship and conservatorship staffing separately, so the estimated share of FTEs devoted to guardianship specifically is unknown.

²¹ The Branch reported that there were a total of about 1,775 district court staff FTEs in the Branch at that time. Estimates provided here reflect average weighted caseloads from July 1, 2021, through June 30, 2024.

Revenues

The Branch does not receive any direct appropriations to fund its activities pertaining to the guardianship of adults specifically. Branch staff said the Branch allocates a small portion of funding received by the district courts and by SCAO (through the Supreme Court’s legislative appropriation) to fund its guardianship work. The Branch does not budget for guardianship-related activities specifically, so the total state funding allocated to guardianship work is unknown.

In addition to state funding, in recent years, the Judicial Branch has received federal grant funding for activities pertaining to adult guardianship, including a guardianship complaints process and the creation of centralized guardianship review teams in the judicial districts. Federal contributions for the grant totaled nearly \$1.1 million. The state contributed about \$379,000 in matching funds, for a total of about \$1.45 million over the lifetime of the grant.²²

Guardianship Expenditures

SCAO does not track Branch expenditures by case type; as a result, expenditures on guardianship activities specifically are unknown. As such, we asked SCAO to estimate how much the Branch spent in Fiscal Year 2024 in three key areas related to adult guardianship: (1) federal grant oversight and management, (2) the guardianship complaint process, and (3) the centralized guardianship staff teams in each judicial district.

The Branch’s estimated expenditures on adult guardianship comprised a small share of total Branch funding in Fiscal Year 2024. Minnesota’s court system received over \$470 million total in state appropriations in Fiscal Year 2024. As shown in Exhibit 1.3, SCAO estimated that the Branch spent about \$2.7 million in Fiscal Year 2024 on guardianship grant oversight and management, the guardianship complaint process, and the centralized guardianship staff teams. Roughly 85 percent of these expenditures (\$2.3 million) was paid for with state funding. Slightly more than \$403,000 in expenditures were paid for with federal grant funds.

Exhibit 1.3
Estimated Adult Guardianship Expenditures, Fiscal Year 2024

Centralized guardianship teams	\$2,100,000
Grant oversight and management	498,200
Guardianship complaint process	131,800
Total	\$2,730,000

Note: This table does not include all expenditures on adult guardianship.

Source: State Court Administrator’s Office, estimate of select Fiscal Year 2024 adult guardianship expenditures.

Total estimated expenditures presented above do not include all expenditures on activities pertaining to adult guardianship. For example, it does not include the cost of judicial officer salaries and benefits for the time they spent presiding over guardianship cases, nor does it include the compensation of all staff who processed guardianship paperwork and conducted other administrative activities related to guardianship in the district courts.²³ Nonetheless, it provides a useful estimate of adult guardianship expenditures outside of the day-to-day district court activities that are not unique to guardianship, such as scheduling hearings, entering data, and processing documents.

²² This grant expired in August 2024. The Branch received a second federal grant totaling over \$475,000 for September 2024 through August 2027 to continue work on adult guardianship.

²³ Given the Branch’s approach to tracking guardianship expenditures, it is not possible to reliably estimate costs for all district court activities pertaining to adult guardianship.



OLA

Chapter 2: Adult Guardianship Oversight

A guardian can be a vital support for an adult who requires assistance making important life decisions. However, if the court appoints a guardian when they are not needed, or if the guardian does not adequately fulfill their duties, guardianship can unnecessarily restrict the adult's rights and independence and prevent them from receiving care and services. To ensure that only the individuals who truly need guardians receive them and that the needs of those subject to guardianship are met, sufficient monitoring and oversight of adult guardianship is critical.

In this chapter, we describe the current oversight of adult guardianship by the Judicial Branch. We then discuss several barriers to the effective oversight of adult guardianship and provide recommendations for improvement.

Key Findings in This Chapter

- There is inadequate oversight of adult guardianship in Minnesota.
- Statutes specify minimal requirements to oversee adult guardianship, and the Judicial Branch has established few oversight processes.
- The Judicial Branch takes a largely reactive approach to overseeing guardianship cases; it relies heavily on outside individuals—including people subject to guardianship—to bring guardianship issues to its attention.

Overview

Over the course of our research, we heard numerous concerns about adult guardianship in Minnesota. For instance, individuals shared concerns about guardians' qualifications and whether they were acting in the best interests of people subject to guardianship. Individuals also questioned whether guardians were fulfilling their duties within the limits of state statutes and the powers and duties granted to them by the court. Further, people questioned whether the courts appoint guardians to adults who genuinely need a guardian. Unfortunately, given the state's current oversight of adult guardianship, it is difficult to evaluate the extent to which many of these concerns are valid.

There is inadequate oversight of adult guardianship in Minnesota.

Despite its deep impact on the adults who are subject to guardianship, the state does not have an adequate approach to monitoring and overseeing adult guardianship. Below, we describe numerous issues that contribute to the state's insufficient oversight of adult guardianship. First, statutes assign few oversight responsibilities to the court or the Judicial Branch, and no oversight responsibilities to any other entity. In turn, the Branch has implemented few oversight mechanisms of its own. Second, performance standards for people in critical roles in the guardianship system—including guardians—

are lacking, which hinders the Branch’s ability to ensure that people subject to guardianship consistently receive adequate support. Third, statewide guardianship data are unreliable and limited, which impedes effective oversight. Finally, entities do not share information regarding their investigations of guardians, which can delay the court’s intervention when there are guardianship issues and place adults under guardianship at risk.

We discuss the state’s inadequate oversight of adult guardianship further below.

Current Oversight Approach

Statutes specify minimal requirements to oversee adult guardianship, and the Judicial Branch has established few oversight processes.

Duties in law to oversee adult guardianship—either for the Branch or the court—are minimal. Statutes task the court with establishing a system for monitoring guardianships—including reviewing annual guardian reports—and require the Supreme

Court to establish a guardian registry.² Statutes do not further describe how the court or the Branch should monitor guardianships. For example, statutes do not indicate if the Branch should monitor whether people subject to guardianship are receiving adequate medical care, or whether guardians’ actions fall within the scope of the powers and duties granted to them by the court.

In practice, the Branch’s primary approach to overseeing guardianship cases is to conduct a limited review of guardians’ annual personal well-being reports.³ When a guardian submits their report to the court, Branch processes direct district court staff to review the report for completeness and to see if the report contained any “areas of concern.”⁴ If court staff identify one or more areas of concern, Branch processes direct them to forward the report to a judicial officer for review. The Branch’s processes do not include an assessment of whether the needs of people subject to guardianship are being met or



Areas of Concern

Branch administrative processes require court staff to forward a guardian’s personal well-being report to a judicial officer for review if any of the following “areas of concern” are included in the guardian’s report:

- The guardian had contact with the person subject to guardianship less than once per month.
- The person subject to guardianship did not receive medical services in the last year.
- The guardian describes the person subject to guardianship’s living arrangement as “homeless.”
- The description of the person subject to guardianship’s condition indicates that they may be a danger to themselves or others.

Staff are also directed to consider how the guardian rated the mental, physical, and social health of the person subject to guardianship.

— Court Administration Process¹

¹ Minnesota Judicial Branch, Court Administration Process, *Probate/Mental Health Case Processing 630.35 Guardianship – Personal Well-Being Reports and Notices of Restriction*, revised May 31, 2024, 9.

² *Minnesota Statutes* 2024, 524.5-119(a); and 524.5-316(g).

³ In Chapter 4, we discuss in greater detail how personal well-being reports are the primary source of information for the court about guardianships.

⁴ Minnesota Judicial Branch, Court Administration Process, *Probate/Mental Health Case Processing 630.35 Guardianship – Personal Well-Being Reports and Notices of Restriction*, revised May 31, 2024, 8-9.

whether guardians are appropriately fulfilling the powers and duties granted to them by the court. And as we discuss in Chapter 4, guardians often included minimal information in their personal well-being reports, thereby limiting the usefulness of these reports in any Branch efforts to monitor guardianship cases.

The Judicial Branch takes a largely reactive approach to overseeing guardianship cases; it relies heavily on outside individuals—including people subject to guardianship—to bring guardianship issues to its attention.



I remain concerned about what I'm aware is a continuing lack of oversight of the program. During my tenure, I acted alone in the majority of decision-making situations, whether the decision related to property, health or family.... I felt I had too much discretion to manage the life of a stranger. I was surprised at the level of oversight of my work—it was very light and, I realized, over time, how easily I could manipulate my reporting, if I was so inclined.

— Former guardian and conservator

Without more specific oversight duties assigned in law, the Branch has adopted a primarily reactionary approach to monitoring adult guardianships. In other words, the Branch relies heavily on people subject to guardianship or other interested individuals to inform it of issues with guardians. For instance, the Branch may become aware of an issue with a guardian after someone files a complaint about the guardian through the State Court Administrator's Office's (SCAO's) complaint process.⁵ Additionally, someone might file a concern directly with the district court, or an individual might petition the court to reverse a guardian's decision, such as the decision to restrict with whom the person subject to guardianship can interact.



[Evaluating whether guardians are appropriately fulfilling their duties] is really driven by complaints of family members, friends, or the person under guardianship his or herself. Thus, adults with no family or friends or unable to speak are very vulnerable.

— Judicial officer

Several judicial officers explained how the Branch relies on outside individuals to notify the court of issues with guardianships. One judicial officer commented that they tell people in guardianship hearings that the court assumes “everything is fine” unless the court learns otherwise. The judicial officer explained that, once the court is made aware of an issue, then the court gets involved. Another judicial officer commented that most of the court's work pertaining to guardianship occurs when initially determining the necessity of guardianship, and that the court does not take an active approach to monitoring guardianship on an ongoing basis.



The system relies on the courts to either glean a problem from the well-being reports all on their own, or other mechanisms in society to catch problems, such as mandatory reporters and case workers fulfilling their duties.

— Judicial officer

⁵ We discuss SCAO's complaint process in Chapter 6.

RECOMMENDATION

The Legislature should establish specific duties for the oversight and enforcement of adult guardianship requirements.

The current approach of relying primarily on people outside of the court system—particularly people subject to guardianship—to report guardianship issues to the court is flawed for several reasons. First, by law, people subject to guardianship must be incapacitated to the extent that they are unable to meet their own personal needs; as a result, some people subject to guardianship may struggle to petition the court when issues arise. Additionally, expecting adults subject to guardianship to petition the court to address guardianship issues puts people subject to guardianship in a difficult situation of having to potentially take adversarial court action against their guardian, who often has significant decision-making authority over them and may be a family member or friend. And while some people subject to guardianship may have others in their life

who are able to report issues with a guardian on the adult’s behalf, that should not be the default assumption for all people subject to guardianship.



Adult Guardianship Oversight

“Guardianship arrangements can be a valuable means for ensuring the continued care and well-being of individuals whom a court has determined lacks capacity; however, such arrangements require appropriate oversight to prevent abuse.... Once a guardianship is imposed, and an individual’s rights are removed, the court must monitor the guardian and the arrangement in order to protect the individual from abuse, neglect, and exploitation by the guardian or others.”

— U.S. Senate
Special Committee on Aging⁶

Judicial Branch staff said that the Branch’s reactive approach to overseeing guardianship cases is typical for how the court operates. One Branch staff member, for instance, commented that “All court cases depend on issues being brought to the court; it is not the [Minnesota Judicial Branch’s] duty to go look for issues....”

Another staff member explained that it is important that the court remain neutral and not take an investigatory role in cases. While a reactionary approach to overseeing guardianships may not be atypical for the Branch, given that guardianship cases often involve vulnerable adults who may be deeply impacted by their

guardians’ decisions, we feel that the state needs to take a more proactive approach to overseeing guardianships.

Several national entities highlight the importance of actively monitoring adult guardianship cases. We recommend that the Legislature more explicitly outline oversight responsibilities for adult guardianship in law. For instance, the Legislature could require the Branch to track whether guardians are adhering to reporting requirements and establish additional expectations for enforcing requirements when guardians are noncompliant. The Legislature could also direct the Branch to monitor whether court staff and judicial officers are following guardianship laws, or direct the Branch to receive and review complaints about guardians.

⁶ U.S. Senate Special Committee on Aging, *Ensuring Trust: Strengthening State Efforts to Overhaul the Guardianship Process and Protect Older Americans* (November 2018), 14.

Additional Barriers to Effective Oversight

In addition to the issues discussed in the previous section, we identified several other factors that contribute to the state's insufficient oversight of adult guardianship. We discuss these issues below.

Guardianship Performance Standards

The state has established few performance standards for key entities in the guardianship system.

Additional factors contributing to the state's inadequate oversight of adult guardianship:

1. Lack of performance standards
2. Lack of quality guardianship data
3. Challenges pertaining to data classification
4. Lack of information sharing among state entities

The Legislature has established few performance standards for guardians. Statutes, for instance, outline various powers and duties that the court may grant guardians; however, they provide little guidance on how guardians should perform those responsibilities. Statutes do not indicate how frequently a guardian must speak with the person subject to guardianship, whether the guardian must meet with the person subject to guardianship in person, or how often a person subject to guardianship must receive medical care. Statutes merely direct guardians to submit annual personal well-being reports to the court describing the condition of the person subject to guardianship.⁷

There are also few standards in law about how court visitors should evaluate whether a respondent needs a guardian. For instance, statutes do not describe who, if anyone, the visitor should interview to learn more about the respondent's needs or what less restrictive alternatives to guardianship have already been attempted. Statutes also do not outline if there are certain documents that the court visitor should review, such as reports from physicians or caretakers, that could provide information about the respondent's physical or mental health.

The Judicial Branch has also established few performance standards for guardians or court visitors. The Judicial Branch's guardianship manual provides guardians with some guidance about how to perform their role, including how to advocate for or make decisions for the person subject to guardianship; however, these are not required performance standards.⁸ With regard to court visitors, court rules only state that the visitor must meet with the respondent "either once or more than once as the visitor deems necessary" without outside interference and observe the respondent's "appearance, lucidity and surroundings."⁹ And although the Branch has developed

⁷ *Minnesota Statutes* 2024, 524.5-316(a).

⁸ Minnesota Judicial Branch, State Court Administrator's Office, *Guardianship and Conservatorship in Minnesota*, revised April 15, 2024: 22-23 and 47, <https://www.mncourts.gov/mncourtsgov/media/CourtForms/GAC101.pdf?ext=.pdf>, accessed April 30, 2024.

⁹ Minnesota General Rules of Practice for the District Courts, *Title V. Probate Rules*, Rule 416(b) (2024).

various documents to guide court visitor work, they provide little direction about how to perform their duties beyond the information included in law.¹⁰

RECOMMENDATION

The Legislature should amend statute to establish minimum performance standards for guardians and court visitors.

A lack of clear performance standards for guardians and court visitors makes it more challenging to oversee their work and ensure that it is adequate. A Branch staff member said they have seen cases where guardians do not speak with the person subject to guardianship for months, but the judicial officer said nothing should be done in response because state law does not stipulate communication requirements for



Examples of Guardian Performance Standards

- Guardians shall visit the person subject to guardianship no less than once per month to assess the person's condition and the appropriateness of the person's current living situation and services the person receives.
- Guardians shall be available to the person and/or interested parties for routine and emergency communications and respond in a reasonable period to address the issues.
- Guardians shall participate in all care or planning meetings concerning the person's educational, residential, vocational, or rehabilitation program.

guardians. A couple of court staff members similarly commented that some judicial officers do not take seriously concerns about guardian performance that staff flag for them to review. A Branch staff member also said that they occasionally receive push-back from guardians when they ask guardians to address performance concerns not specified in law, such as when a guardian has not ensured the person subject to guardianship receives medical care.

As we discuss in subsequent chapters, we found that the quality of work performed by both guardians and court visitors varied across the guardianship cases we reviewed.¹¹ Establishing clearer performance standards will both help to clarify what guardians and court visitors must do to adequately fulfill their duties and help the Branch to more consistently monitor and address concerns

with guardian and court visitor performance. Most importantly, establishing performance standards in law will help ensure that guardians and court visitors provide people subject to guardianship and respondents with a minimum standard of service.

We recommend that the Legislature establish guardian performance standards that clarify minimum expectations for how guardians should fulfill their duties. For example, the Legislature could require guardians to communicate with the person subject to guardianship with a certain frequency or require that the person receives certain medical care, such as annual physicals or dental care. Multiple organizations have published performance standards to guide guardian actions.¹² As the Legislature works to establish performance standards in law, existing standards may provide a helpful framework.

¹⁰ For instance, the Branch has developed a best practices guide for court visitors.

¹¹ We reviewed court files for a sample of 62 guardianship cases for which the court received a petition for guardianship between January 1, 2015, and May 2, 2023.

¹² See for example, National Guardianship Association, *Standards of Practice* (5th ed., 2022), 15; and Minnesota Association for Guardianship and Conservatorship, *Standards of Practice* (2021), 21-22.



Examples of Court Visitor Performance Standards

Various national organizations recommend that court visitors undertake specific tasks as part of their visits, including:

- Interviewing the person who files a petition with the court requesting the appointment of a guardian (the "petitioner") and proposed guardian.
- Consulting with professionals who have worked with the respondent.
- Investigating the allegations in the petition and any other matter relating to the petition the court directs.

We also recommend that the Legislature establish performance standards for court visitors to better ensure the consistency and adequacy of court visitors' work. As they have for guardians, some national guardianship organizations have published performance standards for court visitors.¹³ These standards may also prove helpful for the Legislature as it develops minimum court visitor expectations.

Data Availability

The Judicial Branch does not have reliable statewide data on adult guardianship, including who in Minnesota is subject to guardianship or who is currently a guardian.

One barrier to effectively overseeing guardianship in Minnesota is the Branch's lack of reliable guardianship data. As part of our evaluation, we had intended to provide key information about individuals subject to guardianship and their guardians, including the number of guardians and people subject to guardianship in Minnesota, what share of guardians are professional guardians as opposed to volunteer guardians, and how frequently guardians are meeting reporting requirements in law. However, the Branch was unable to provide us with a reliable list of all people currently subject to guardianship in Minnesota or of all active guardians. While we provided Branch estimates in Chapter 1, the exact number of guardians and people subject to guardianship in Minnesota is unknown.

Further, key data that the Branch does collect is not useful for overseeing adult guardianship on a statewide basis. For example, although the Branch retains documents in individual case files about the scope of guardians' duties, issues identified in guardians' background checks, and whether guardians were removed from a case for cause, the Branch does not maintain this information in a manner that can be systematically reviewed on a statewide basis. The Branch also does not have reliable contact data for all guardians.¹⁴ When the Branch changed reporting requirements for guardians, Branch staff said they attempted to notify guardians of the change by mail, but they had incorrect addresses for hundreds of guardians who therefore did not receive the notice.

Branch staff described several reasons for issues with its guardianship data, including inconsistent data entry practices and challenges with transitioning between data management systems. Further, professional guardianship companies do not always indicate who is going to be an adult's guardian; rather than name a specific person,

¹³ See for example, Richard Van Duizend and K. Brenda Uekert, *National Probate Court Standards* (National Center for State Courts, 2013), 49-50; and National Conference of Commissioners on Uniform State Laws, *Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act* (San Diego, July 2017), 78-81.

¹⁴ Branch staff said that the quality of contact information for guardians depends on the extent which guardians provide the Branch with accurate, up-to-date information.

court documents simply list the guardianship company as the assigned guardian.¹⁵ This impedes the Branch’s ability to determine (1) who is assigned to be an adult’s guardian and (2) how many professional guardians are working in Minnesota.

RECOMMENDATION

The Judicial Branch should improve its data collection practices to ensure that guardianship data are sufficiently reliable to oversee adult guardianship statewide.

Judicial Branch staff told us that Branch data are sufficient to monitor guardianships on a case-by-case basis. We agree that court staff can generally identify key guardianship information in individual court files—including who is subject to guardianship or who is the guardian. However, without reliable statewide data, it is difficult to identify guardianship trends and opportunities to improve the state’s administration and oversight of adult guardianship. More importantly, without reliable data, it is difficult to systematically monitor whether guardians are fulfilling their duties. It is challenging, for instance, to determine the extent to which guardians have fulfilled their reporting duties if the Branch does not have an accurate and complete list of guardians in the state.



Courts cannot effectively manage their guardianship cases without collecting necessary data to track and monitor guardianships.

— National Association for Court Management¹⁶

According to a 2018 report by the U.S. Senate Special Committee on Aging, Minnesota is hardly alone in its lack of reliable guardianship data.¹⁷ Even so, several national entities acknowledge the important role that quality data play in overseeing adult guardianship. For instance, recommendations from the Fourth National Guardianship Summit include that courts “require ongoing collection of timely guardianship data.”¹⁸

We recommend that the Branch improve its guardianship data collection practices so that the data are sufficiently reliable to oversee adult guardianship on a statewide basis. The Branch should, at a minimum, be able to use data to reliably determine on a statewide basis: (1) who is subject to guardianship, (2) who is a guardian, and (3) whether guardians are fulfilling the reporting and background check requirements established in law. Data should also be sufficiently reliable to allow the Branch to contact guardians and people subject to guardianship, if needed.

¹⁵ In these cases, the court has no clear way of determining who—if anyone—the guardianship company assigned to be the adult’s guardian. Further, the guardianship company could change the assigned guardian without the Branch’s knowledge.

¹⁶ National Association for Court Management, *Adult Guardianship Guide: A Guide to Plan, Develop, and Sustain a Comprehensive Court Guardianship and Conservatorship Program* (2022), 19.

¹⁷ U.S. Senate Special Committee on Aging, *Ensuring Trust: Strengthening State Efforts to Overhaul the Guardianship Process and Protect Older Americans* (November 2018), 23.

¹⁸ *Fourth National Guardianship Summit: Maximizing Autonomy and Ensuring Accountability* (May 2021), 6.

Data Classification

Some individuals in the guardianship system told us that they are hesitant to include information in court documents because many guardianship documents are publicly available.

Most documents filed in guardianship cases—including petitions to establish guardianship and personal well-being reports—are available to the public and can be found through a simple online document search. These documents can include sensitive health, financial, and other personal information. For instance, many guardianship petitions we reviewed stated that the respondent was vulnerable to exploitation or provided detailed information about specific medical or mental health diagnoses.

Exhibit 2.1

Publicly available court documents sometimes contained sensitive information about vulnerable individuals.

Guardianship Petition Example: Medical Information	Guardianship Petition Example: Financial Information
<p>In April, the "...nurse at Respondent's home called 911 due to [respondent] slurring her words and she was transported to the...Medical Center. [In June,] police took Respondent to detox after she provided a sample that tested positive for alcohol at a level of 0.241. ... Respondent made a suicidal statement to her staff and police responded. ... [In September,] Respondent fell and suffered a Traumatic Brain Injury. Her alcohol level at that time was 0.09."</p>	<p>"Respondent was a victim of scams where she lost nearly all of her assets.... Respondent sent over 200 text messages in a 24 hour period to another sweepstake scammer whom she regularly sent \$500 gift cards to because she was 'in love with [redacted], who works for Clearinghouse.' Another stated he would marry her by the end of the year. She even bought a special wedding outfit to wear."</p>

Note: The examples above show excerpts from two different petitions to establish guardianship. We redacted identifying details to protect individuals' privacy.

Source: Office of the Legislative Auditor, review of guardianship petitions.

Individuals in the guardianship system expressed concern about the sensitive information provided in guardianship filings that are available to the public. An attorney, for instance, said that some petitioners hesitate to provide detailed information in guardianship petitions because the files are publicly available. Some guardians said that they limit the amount of information they provide in personal well-being reports because they are concerned that sensitive information about the person subject to guardianship would be widely available. Guardians commented that it would be helpful if part of the personal well-being reports could be classified as not public, especially so that they could provide additional information about the medical care that the person subject to guardianship received over the course of the year.



Statutes classify certain information pertaining to adult guardianship as confidential.

Documents or information disclosing the following must be filed as confidential documents:

- Health information
- Financial information
- The reason why guardianship is necessary, including a description of the respondent's alleged incapacity
- The less restrictive measures that were attempted and considered and certain other information about less restrictive measures
- Why limited guardianship is appropriate and the powers to be granted under a limited guardianship (when requested)
- Information about the respondent's property and its estimated value, as well as any other anticipated income
- The name and address of any health care agent

— *Minnesota Statutes 2024, 524.5-303(d)*

In 2020, the Legislature amended statutes to address the inclusion of sensitive information in guardianship documents.¹⁹ As shown in the box to the left, state law requires that certain information in guardianship cases be classified as confidential, including documents or information pertaining to the respondent's alleged incapacity and details about their health.²⁰

However, in 2021 the Minnesota Supreme Court amended the Rules of Public Access to the Records of the Judicial Branch, effectively prohibiting the enactment of the 2020 Legislature's changes to the classification of guardianship information.²¹ Among other reasons, the Supreme Court Advisory Committee on the Rules of Public Access to Records of the Judicial Branch commented that the change to law "would increase complexity, create confusion, and potentially deprive interested parties to probate cases of necessary information to determine whether they had concerns or objections to the court's actions in probate cases."²²

In other words, among other concerns, the Supreme Court determined that classifying these guardianship

data as not public could prevent interested individuals from being able to access information about individual guardianship cases.

RECOMMENDATION

The Judicial Branch should protect sensitive information about respondents and people subject to guardianship.

Including sensitive information in publicly available documents risks making individuals subject to guardianship—who are often already vulnerable individuals—even more vulnerable. When documents highlight that individuals are particularly susceptible to or have already been victims of financial or other exploitation, for instance, it identifies those individuals as easy targets for further exploitation.

Additionally, when petitioners or guardians refrain from including meaningful information in court documents because those documents are publicly available, it impedes the Branch's ability to effectively oversee guardianships. As we discuss in

¹⁹ *Laws of Minnesota 2020*, chapter 86, art. 1, sec. 17, codified as *Minnesota Statutes 2024, 524.5-303(d)*.

²⁰ *Minnesota Statutes 2024, 524.5-303(d)*.

²¹ Per *Minnesota Statutes 2024, 13.90*, subd. 2, "Access to data of the judiciary is governed by rules adopted by the supreme court."

²² Minnesota Supreme Court, Order Promulgating Amendments to the Rules of Public Access to Records of the Judicial Branch (ADM10-8050), April 7, 2021.

Chapters 3 and 4, we found that guardianship petitions and personal well-being reports often lacked important information. It is important that the court receives sufficiently detailed information in these documents to determine the extent to which a respondent is incapacitated, the extent to which less restrictive alternatives to guardianship could meet the respondent's needs, and whether a guardian is needed. Further, given that reviewing guardians' personal well-being reports is the primary method to monitor guardianships, it is important that those reports include sufficient information if the Branch is to monitor whether the needs of the person subject to guardianship are being met.



Guardianship Data Protections

"Probate courts should remain cognizant that sensitive and private matters may be contained in both automated case management systems and in physical case files. Probate courts should take special precautions...to ensure the confidentiality of Social Security and financial account numbers, medical, mental health, financial, and other personal information."

— National Probate Court Standards²³

We are sensitive to the need for government transparency and the desire of individuals who seek broad access to guardianship documentation in order to monitor government actions and to help ensure that the guardianship system is functioning appropriately. However, as it has gotten easier and easier to access court documents through a simple online search, it is increasingly important to protect the privacy and safety of respondents and adults subject to guardianship. We recommend that the Judicial Branch reconsider its decision to allow sensitive information about guardianships to be publicly available. There are multiple ways that the Branch could protect sensitive guardianship information; we describe three possible approaches below:

Limit remote access. At a minimum, we recommend that the Branch limit the extent to which sensitive guardianship information can be accessed remotely. The Branch already limits remote access to records for certain case types, such as domestic abuse, harassment, and child protection cases. Instead of being able to remotely review records for those case types online, an individual must visit a court facility or the State Law Library to review the documents.



Documents available upon petition. The Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act outlines an approach to data classification in which the existence of a guardianship or guardianship proceeding is generally public record, but certain individuals must petition the court for access to guardianship records.²⁴ Upon petition, the court may grant access to guardianship records if doing so (1) "is in the best interest of the respondent or adult subject to guardianship" or (2) "furthers the public interest and does not endanger the welfare or financial interests of the adult."²⁵

²³ Richard Van Duizend and K. Brenda Uekert, *National Probate Court Standards* (National Center for State Courts, 2013), 30.

²⁴ The act explicitly grants certain individuals—such as the person subject to guardianship and their attorney—access to court records, whereas others not granted access to records explicitly must petition the court. The Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act was developed by the National Conference of Commissioners on Uniform State Laws, a group including practicing lawyers, judges, and others appointed by state governments to "research, draft, and promote enactment of uniform state laws." National Conference of Commissioners on Uniform State Laws, *Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act* (San Diego, July 2017), 88-91.

²⁵ National Conference of Commissioners on Uniform State Laws, *Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act* (San Diego, July 2017), 89.

Confidential filings. The Branch could adopt the data classification approach as established in law in 2020 in which specific types of sensitive information are classified as confidential. Information classified as confidential would not be available to the public.

Information Sharing

As we discussed in Chapter 1, various public entities—including the Office of Ombudsman for Mental Health and Developmental Disabilities and the Office of Ombudsman for Long-Term Care—investigate complaints about guardians. Although the catalyst of an investigation—a complaint about a guardian—may be the same for each entity, the investigation approach and the focus of the investigation can differ between entities. For example, SCAO’s new pilot process for investigating guardianship complaints seeks to address alleged violations of law more broadly, including allegations of abuse or violations of the Bill of Rights for Persons Subject to Guardianship or Conservatorship. On the other hand, investigations completed by county adult protective services offices in response to complaints that were submitted to the Minnesota Adult Abuse Reporting Center (MAARC) focus more specifically on addressing allegations of abuse, neglect, or financial exploitation.

The extent to which public entities share information about guardian complaints is inadequate; however, statutes do not clearly permit entities to share information.

Although multiple entities conduct investigations into complaints about guardians, there is no formalized process for sharing complaint information between those entities and the Judicial Branch. Staff working for SCAO, the Office of Ombudsman for Mental Health and Developmental Disabilities, and the Office of Ombudsman for Long-Term Care all were aware that the others were investigating complaints about guardians, but staff agreed that they have not established processes for sharing relevant information between SCAO and the ombudsman offices. There is likewise no procedure for sharing information about guardianship complaints between SCAO’s complaint investigator and MAARC or the county adult protective services offices conducting investigations.²⁶

Even if the entities investigating complaints against guardians established processes for sharing complaint information, statutes do not allow all of the entities to do so. For instance, state law does not generally permit either the Office of Ombudsman for Mental Health and Developmental Disabilities or the Office of Ombudsman for Long-Term Care to share complaint information with SCAO.²⁷ Statutes are unclear regarding whether MAARC or county adult protective services offices may notify SCAO’s complaint investigator of complaints against guardians. For instance, statutes permit county adult protective services offices to “notify other affected parties and their authorized representative if [it] has reason to believe maltreatment has occurred and

²⁶ A MAARC staff member said that they do not always know when a complaint involves a guardian.

²⁷ *Minnesota Statutes* 2024, 256.9744; and 13.46, subds. 1-3.

determines the information will safeguard the well-being of the affected parties.”²⁸ However, statutes do not define “affected parties” or “authorized representatives,” and it is not clear that these terms would apply to SCAO.

Even though a MAARC staff member said that they do not provide complaint information to SCAO’s complaint investigator, they described ways in which the court could potentially learn about a substantiated complaint about a guardian. For instance, the court could learn about a substantiated complaint against a guardian if the county adult protective services office petitioned the court to appoint a new guardian as a result of their investigation.²⁹ MAARC staff also said that if county adult protective services staff substantiated an abuse allegation against a guardian, the court would learn about it indirectly the next time that the guardian renewed their background check.

RECOMMENDATION

The Legislature should amend statutes to require that the key state entities investigating guardianship complaints share information about complaints.

The various public entities investigating complaints about guardians provide different avenues to address guardianship issues. However, while multiple entities can investigate guardianship complaints, only judicial officers can remove a guardian or otherwise modify or terminate a guardianship. The lack of information sharing among entities that investigate guardians hinders communication to the judicial officers who ultimately have the authority to address substantiated allegations. This increases the chance that the person subject to guardianship will remain in a dangerous situation without timely court intervention. For instance, although the court may learn that a county’s adult protective services office substantiated an abuse allegation against a guardian when the guardian renews their background check, statutes only require guardians to renew their background checks every five years. In other words, it could be years before the court becomes aware of substantiated allegations of abuse against a guardian as a result of a background check.

Further, when the entities that investigate complaints about guardians do not share complaint information, there is no way for the state to have a full picture of the complaints lodged against a guardian. A guardian could be the subject of multiple complaints to multiple investigatory entities; some of those complaints may be the same, some may differ. Yet, given current data sharing practices, there is not an efficient way to see the full scope of allegations against a guardian.

We recommend that the Legislature amend statutes to clarify that the key entities investigating guardianship complaints can—and must—share complaint information with each other. At a minimum, the Legislature should require that the entities notify each other of instances in which they substantiated complaints pertaining to guardians.

²⁸ *Minnesota Statutes* 2024, 626.557, subd. 12b(i).

²⁹ *Minnesota Statutes* 2024, 626.557, subd. 10(g), states that “when necessary in order to protect a vulnerable adult from serious harm,” a county social services agency must intervene, potentially by seeking the replacement of a guardian suspected of maltreatment.

Discussion

Throughout this report, we discuss numerous problems with adult guardianship in Minnesota, from individuals not fulfilling requirements in law, to a lack of training for key people in the guardianship system, to a lack of sufficient information to ensure that the needs of people subject to guardianship are met—or even who the people subject to guardianship are. We believe that many of the problems we identified are exacerbated by the state’s lack of effective oversight of guardianship.

In Chapter 1, we discussed how the Branch’s administration of adult guardianship—including any efforts to oversee guardians and enforce guardianship requirements—are primarily managed at the district court level. For instance, the court staff responsible for monitoring whether guardians submit their required personal well-being reports are employed by and subject to the oversight of ten different judicial districts, rather than a single central entity.³⁰ This decentralized approach to administering and overseeing adult guardianship is, by its nature, more challenging than a centralized approach in which administration and oversight activities take place under the purview of only one entity.

That being said, the Judicial Branch’s decentralized approach to administering and overseeing adult guardianship is not inherently problematic as long as the individuals who administer and oversee the guardianships perform their work consistently and in accordance with requirements. However, as we discuss throughout this report, the courts’ approach to administering and overseeing guardianship is inconsistent, and is not always in accordance with state law or Branch processes, despite Branch efforts to ensure that the courts take a more consistent approach to guardianship.

Given the magnitude of issues we identify throughout this report, and the fact that these issues continue to persist despite Branch efforts to improve its administration and oversight of adult guardianship—we believe that it is time for the Legislature to take substantial steps to bolster the administration and oversight of adult guardianship in Minnesota.



Recent Efforts to Improve Adult Guardianship

Judicial Branch staff commented that, although statutes assign the Branch minimal requirements to oversee adult guardianship, the Branch has taken a number of steps to try to improve its administration and oversight of guardianship cases. For instance, the Branch:

- Reduced the total number of staff in each district who review guardians’ personal well-being reports with a goal of improving guardianship oversight.
- Updated court administrative processes pertaining to guardianship cases.
- Launched and continued to develop an online guardian reporting system.

³⁰ The Branch reported that 55 district court staff were assigned to spend at least some time reviewing guardian personal well-being reports as of August 2024.

RECOMMENDATION

The Legislature should establish a centralized entity in statute to administer and oversee adult guardianship.

We recommend that the Legislature establish a central entity in law with broad responsibility for the administration and oversight of adult guardianship. Moving the administration and oversight of adult guardianship under a single entity will help the state to consolidate the number of staff working on adult guardianship cases, unify the responsibility for ensuring the proper performance of court staff working on guardianship cases, and hopefully improve accountability and consistency within the adult guardianship system. It will also allow staff working on adult guardianship cases to develop greater expertise in adult guardianship, potentially resulting in improved oversight and efficiencies and better service for others involved in the system.



Overseeing Conservatorship

The Branch's approach to overseeing guardianship stands in contrast to its approach to overseeing conservatorship. While the administration and oversight of adult guardianships is still the purview of the individual judicial districts, the Branch has consolidated key oversight functions of adult conservatorships within a central unit in SCAO.

According to SCAO, there are 17 staff in this central unit (some working full-time, others part-time) who are responsible for roughly 6,600 conservator accounts annually. Staff work independently of the court process to periodically review and audit conservator accounts and submit reports outlining their findings to the court. These staff attend and testify at hearings as needed, although they are not responsible for scheduling hearings.

There are multiple approaches that the Legislature could take to consolidate adult guardianship responsibilities under a single entity. In centralizing adult guardianship administration and oversight, the Legislature could consider establishing a central unit in law within SCAO with various responsibilities for adult guardianship, similar to how SCAO has established a central unit for conservatorship.³¹ Alternatively, the Legislature could establish a board within the Judicial Branch that is exempt from the administrative control of the judiciary, similar to the Guardian Ad Litem Board. Depending on its authority in law, a separate board could develop its own standards, policies, and procedures for adult guardianship cases and propose statutory changes pertaining to guardianship directly to the Legislature. Additionally, an independent board could benefit from having its own designated funding and budget specifically for guardianship. However, the board may incur additional costs for administrative functions that would no longer be the responsibility of the Judicial Branch, such as those for

financial or IT services. Additionally, establishing a separate board would likely require reallocating staff who are currently employed by the Judicial Branch to a new board, whereas establishing an entity within SCAO would allow those staff to continue to work for the Branch.

The Legislature could also consider establishing a central guardianship entity outside of the Judicial Branch altogether. Several individuals we spoke with questioned whether certain responsibilities for administering and overseeing adult guardianship should be within the purview of the Judicial Branch at all. Some Branch staff, for instance, commented that it should not be the courts' role to proactively monitor guardianship cases or to establish standards for guardians or court visitors. Additionally, a couple of individuals we spoke with expressed concerns about the Branch providing training and

³¹ SCAO's centralized conservatorship unit is not established in law.

resources to guardians, as doing so could be perceived as the court not maintaining a neutral view of a guardianship case. The Legislature could consider creating a new entity in the Executive Branch with guardianship oversight responsibilities, akin to a licensing board, for example.

Throughout the rest of this report, we make additional recommendations to improve the administration and oversight of adult guardianship in Minnesota. In the event that the Legislature does not establish a central guardianship entity, we believe that implementing the recommendations throughout the remainder of this report are still critical to improving the adult guardianship system overall and protecting the well-being of people subject to guardianship. If the Legislature does establish a central entity to administer and oversee guardianship, as we recommend, the Legislature should consider whether to require the central entity to implement these recommendations, rather than the Branch generally.

Although the various approaches to centralizing adult guardianship will have pros and cons, we believe centralization is an important step to improving adult guardianship in Minnesota.

Chapter 3: Guardian Appointments and Screening

Appointing a guardian is a legal process involving multiple steps and multiple individuals, including judicial officers, potentially vulnerable adults, petitioners, proposed guardians, and others. In this chapter, we describe the process by which the court appoints guardians, including the extent to which individuals involved in the guardianship system are meeting legal requirements regarding guardian appointments. We also discuss the minimum qualifications to become a guardian and the process for screening guardians prior to their appointment.

Key Findings in This Chapter

- The state does not adequately ensure that guardians are only appointed when necessary and justified by law.
- Judicial officers' responses to our survey indicated that they do not consistently follow key guardian appointment requirements in statute when determining whether guardianship is necessary.
- Background checks were not completed in a timely manner as required by statutes for many of the guardians in the cases we reviewed.

Guardian Appointments

Appointment Process Overview



Key Roles in the Guardianship Appointment Process

The **petitioner** is the person who files a petition with the court requesting the appointment of a guardian for an adult.

The **respondent** is the adult who may become subject to guardianship.

Upon the appointment of a guardian, the respondent becomes a **person subject to guardianship**.

The guardian appointment process begins when a person (the petitioner) files a petition to establish guardianship with the court. The petition includes information about why the petitioner believes that the adult who may become subject to guardianship (the respondent) needs a guardian and what powers the guardian should have. The petitioner further nominates one or more people to serve as the guardian for the respondent. The petitioner may also provide additional documentation, including medical records or psychological reports, to support the need for a guardian.

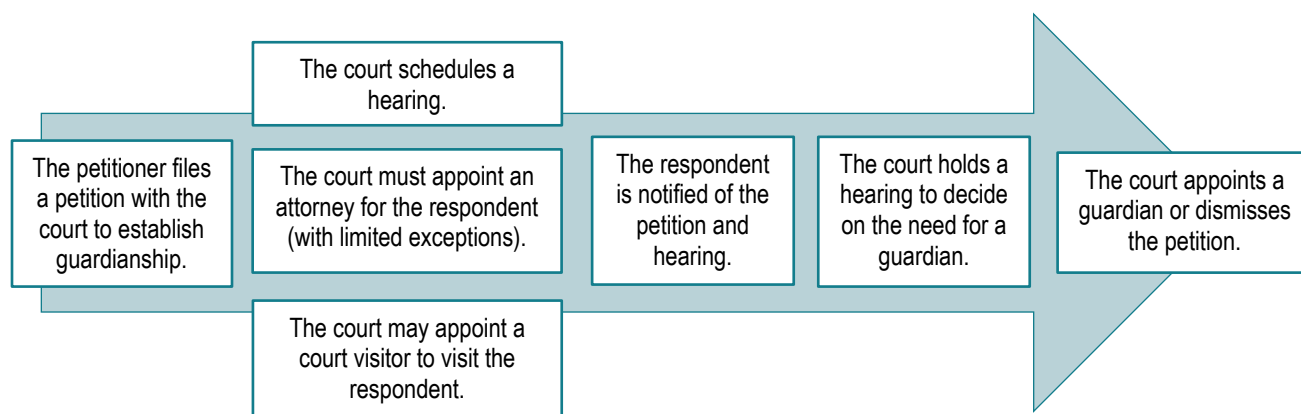
As shown in Exhibit 3.1, after the petitioner files the guardianship petition with the court, the court schedules a hearing to decide whether guardianship is needed and permissible by law. Prior to holding the hearing, the court may assign a court visitor to meet with the respondent, explain

the guardianship process, and ascertain the respondent's opinions about guardianship. After meeting with the respondent, the court visitor submits a report to the court describing what they learned and makes a recommendation on whether the adult needs a guardian. Statutes also require the court to appoint an attorney for the respondent.¹

¹ *Minnesota Statutes* 2024, 524.5-304(b). Statutes require the appointment of an attorney for the respondent unless the respondent waives their right to an attorney or hires an attorney.

Exhibit 3.1

Key Steps in the Guardian Appointment Process



Note: The process for appointing an emergency guardian differs from the appointment process outlined above.

Source: *Minnesota Statutes* 2024, 524.5-303, 524.5-304, 524.5-307, 524.5-308, 524.5-310, and 524.5-311.

At the guardian appointment hearing, both the petitioner and the respondent (or their attorneys) may present evidence to the court, subpoena and examine witnesses, and otherwise participate in the hearing. Unless otherwise excused by the court, the petitioner, proposed guardian, and respondent must all attend the hearing.²

During the hearing, the judicial officer considers the evidence provided through the petition, other documentation, and verbal testimony to determine whether guardianship is necessary and appropriate. The evidence provided to judicial officers to review may vary significantly from case to case. For example, when we surveyed judicial officers about adult guardianship, 86 percent said that a court visitor report was always or often provided to the court during the guardian appointment process as evidence to indicate whether a guardianship was needed.³ On the other hand, only 50 percent of judicial officers said that a statement or testimony from the proposed guardian was always or often provided to the court, and only 26 percent of judicial officers said that a statement or testimony from the respondent was always or often provided.

The respondent may agree with the need for a guardian, object to appointing a guardian entirely, or object to granting a guardian specific powers or duties requested in the petition. If the respondent objects, they or their attorney may present evidence as to why it is not necessary to appoint a guardian or grant a guardian specific powers or duties. If, after weighing the evidence presented to the court, the judicial officer determines that guardianship is appropriate, the judicial officer signs an order appointing a guardian. If the judicial officer does not agree with the need for a guardian, they may dismiss the petition.⁴

² *Minnesota Statutes* 2024, 524.5-307(a).

³ In August 2024, we surveyed 219 judicial officers whom court data indicated had presided over at least one guardianship-related hearing between January 2023 and May 2024. We received responses from 133 judicial officers for a response rate of 61 percent. Judicial officers who answered “Not applicable,” “Don’t know,” or who did not answer the question, were not included in our analysis.

⁴ A judicial officer could also determine that a respondent needs less assistance than was requested in the petition and grant the guardian fewer powers or duties than requested.

Many individuals involved in the guardianship system expressed concerns that people petition for the appointment of a guardian in instances when the need for a guardian is not supported by law.

A wide variety of individuals across the guardianship system—including judicial officers, court visitors, court-appointed attorneys, ombudsmen, guardians, and members of various advocacy groups—overwhelmingly told us of concerns about petitioners seeking to establish guardianship when the respondent does not meet the legal definition of someone who needs a guardian. As we described in Chapter 1, the court can only appoint a guardian if it determines that an adult is both “incapacitated” and that other less restrictive alternatives to guardianship will not meet the adult’s needs.⁵ However, many individuals we spoke with commented that, for various reasons, petitioners submit guardianship petitions that do not meet this legal threshold.



Guardianship petitions are brought for reasons other than the needs or interests of the adult subject to guardianship, for example to reduce liability of a medical provider when there is a question of the adult’s capacity to consent to treatment, in circumstances of family conflict, or in situations when the person’s needs are unmet often due to lack of necessary services and supports in the medical and human services systems, or the adult’s own lack of cooperation due to mental illness or chemical dependency or a neurocognitive disorder which is not resolved through the appointment.

— State agency employee

Judicial officers, ombudsmen, court-appointed attorneys, and others described how some hospitals, care facilities, and other service providers pressure people to petition for guardianship, even when guardianship is not called for by law. For example, a court-appointed attorney said that a case worker may tell someone that they cannot apply for benefits until they have a guardian. A judicial officer stated that some facilities will not admit individuals who do not have a guardian, even if that person does not meet the legal definition of someone who needs a guardian. Several individuals commented that they believe some hospitals push to place an adult under guardianship so that the hospital can move the adult to a different facility without the adult’s consent, or that care facilities push to place an adult under guardianship because the adult has not paid their bill.



There are too many guardianships filed where a less restrictive alternative may be available but not explored because another professional has told the family/petitioner that they have to get guardianship.

— Judicial officer

⁵ *Minnesota Statutes* 2024, 524.5-310(a). Per *Minnesota Statutes* 2024, 524.5-311(c), the court may appoint an emergency guardian without determining the respondent is incapacitated.

People we spoke with across the guardianship system commented that a widespread misunderstanding of the purpose of guardianship and the role of the guardian also contributes to people filing guardianship petitions when the need for a guardian is not supported by law. Several people we spoke with commented that some petitioners inappropriately try to use guardianship as a way to control the actions of their family member. For instance, a judicial officer described a case in which an adult child petitioned for guardianship for their mother because she had given her money away and the child wanted to control her decision-making.⁶ Several others described an ongoing assumption that once a child with a disability turns 18, they need a guardian regardless of the child's needs.



My sister wanted to put me under guardianship because she thought she would have 100% control of me, without giving me choices. An understanding of what a guardianship is needs to be understood.

— Stakeholder

Ensuring Proper Appointments

Because guardianship limits an individual's rights, it is important to use it only when appropriate. Some adults truly need and would benefit from guardianship; others may be better served with different approaches.

The Legislature has established several mechanisms to help ensure that the court only appoints a guardian when they are truly needed and in the best interest of the adult. For instance, if other less restrictive alternatives to guardianship can meet an adult's needs, statutes do not permit the court to appoint a guardian.⁷ Additionally, statutes generally require the court to appoint an attorney to represent the adult's interests.⁸ Statutes also permit the court to appoint a court visitor to provide a neutral assessment as to whether guardianship is truly needed.⁹ Several of these statutory requirements follow national organizations' recommended practices for adult guardianship.

The state does not adequately ensure that guardians are only appointed when necessary and justified by law.

Despite the Legislature's efforts to safeguard against the inappropriate use of adult guardianship, in practice, the implementation of these controls has not sufficiently ensured that the court appoints guardians only when permitted. Critically, we believe that the failure of individuals in the guardianship system to consistently adhere to statutory requirements has led to significant gaps in protections to prevent the misuse of adult guardianship.

⁶ The judicial officer said that the court determined that the mother did not need a guardian.

⁷ *Minnesota Statutes* 2024, 524.5-310(a).

⁸ *Minnesota Statutes* 2024, 524.5-304(b).

⁹ *Minnesota Statutes* 2024, 524.5-304(a).

In the sections that follow, we discuss issues that are impeding the effectiveness of three key aspects of the guardianship appointment process that should help to ensure that (1) adults who need guardians receive them and (2) adults who do not need guardians do not receive them. First, we discuss issues with judicial officers' approach to determining whether an adult needs a guardian. Next, we discuss important limitations to guardianship petitions submitted to the court in advance of appointment hearings. Finally, we discuss issues that are impeding the effectiveness of court visitors.

Required Court Determinations

Judicial officers' responses to our survey indicated that they do not consistently follow key guardian appointment requirements in statute when determining whether guardianship is necessary.

Although statutes state that before the court appoints a guardian, it must find "by clear and convincing evidence" that (1) the respondent is "incapacitated" and (2) less restrictive alternatives to guardianship will not meet the respondent's needs, judicial officers responding to our survey said they do not always do so.¹⁰ Only 77 percent of survey respondents said that they always determine whether the respondent is incapacitated prior to appointing a guardian, and only 64 percent said they always determine whether the respondent's needs could be met with less restrictive alternatives to guardianship.

Judicial officers described several scenarios in which they would not determine whether the respondent is incapacitated or whether the respondent's needs could be met with less restrictive alternatives to guardianship, even though such determinations are required by law. One judicial officer, for instance, stated that if the respondent agrees to guardianship, the judicial officer would not make a determination about either factor and would simply appoint a guardian. Another judicial officer commented that if attorneys do not present information about either factor to the court, then the judicial officer would not make a determination about either factor but would still appoint a guardian.

Several attorneys and others in the guardianship system expressed concerns about some judicial officers appointing guardians without having sufficient evidence that the minimum criteria in law were met. For instance, one attorney commented that they have worked on cases for which the petitioner said that the respondent could sign a health care directive, which is a less restrictive alternative to guardianship. Even though a less restrictive alternative to guardianship could have met the respondents' needs, the attorney said that the judge appointed guardians anyway. Another attorney told us that, if there is no objection to the guardianship, judicial officers generally appoint a guardian, even if the petitioner did not provide sufficient evidence that the guardianship was necessary.

In Chapter 5, we discuss the extent to which judicial officers receive training and resources on adult guardianship cases. We provide recommendations on improving training for judicial officers in that chapter.

¹⁰ *Minnesota Statutes* 2024, 524.5-310(a).

Guardianship Petitions

By law, any person interested in an adult’s welfare may “petition [the court] for a determination of incapacity...and for the appointment of a guardian...”¹¹ Although the Judicial Branch does not gather data on how the petitioner knows the respondent, in reviewing a sample of guardianship court files, we found that petitioners were frequently family members or county social services staff.¹² Sometimes the petitioner was the proposed guardian; other times, they were not.

Statutes outline various information that the petitioner must include in the guardianship petition. For instance, to the extent known, the petitioner must describe (1) the reason why the proposed guardian should be selected, (2) the “reason why guardianship is necessary, including a brief description of the nature and extent of the respondent’s alleged incapacity,” and (3) efforts to meet the respondent’s needs with alternatives to guardianship that are less restrictive than guardianship.¹³ While the Branch provides a guardianship petition form on its website, the Branch told us that district courts do not review petitions prior to the guardianship hearing to verify whether they are accurate or include all information required by law.

Petitioners in the cases we reviewed often did not provide information about efforts to meet the respondents’ needs with alternatives that are less restrictive than guardianship, as required by law.



As of 2020, statutes require petitioners to include information about efforts to meet the respondent’s needs with alternatives that are less restrictive than guardianship.

To the extent known, the petitioner must indicate:

1. What less restrictive alternatives to guardianship have been attempted and considered.
2. How long such less restrictive alternatives have been attempted.
3. A description of why such less restrictive alternatives are not sufficient to meet the respondent’s identified needs.

— *Laws of Minnesota 2020*¹⁴

State law requires petitioners to provide specific information to the court about efforts to address the respondent’s needs with alternatives that are less restrictive than guardianship, as described in the box on the left. However, we found that petitioners rarely provided all of the information statutes require in the cases we reviewed.¹⁵ Of the 32 guardianship cases we reviewed that were filed since the state began requiring petitioners to provide information about less restrictive alternatives to guardianship, only two petitions (6 percent) included all of the information required by law.¹⁶

¹¹ *Minnesota Statutes 2024*, 524.5-303(a).

¹² We reviewed court files for a sample of 62 guardianship cases for which the court received a petition for guardianship between January 1, 2015, and May 2, 2023.

¹³ *Minnesota Statutes 2024*, 524.5-303(b).

¹⁴ *Laws of Minnesota 2020*, chapter 86, art. 1, sec. 17, codified as *Minnesota Statutes 2024*, 524.5-303(b)(9).

¹⁵ Thirty-two of the 62 cases we reviewed were filed after January 1, 2021, after the state began requiring petitioners to provide information about less restrictive alternatives to guardianship.

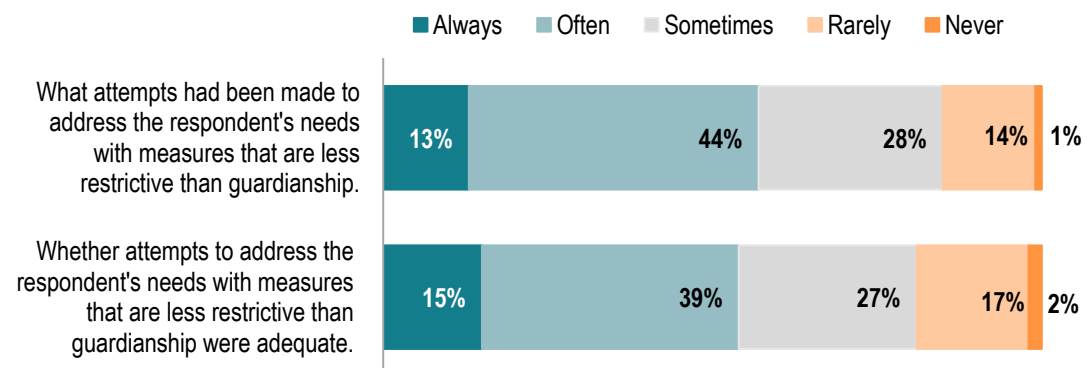
¹⁶ A judicial officer ultimately appointed a guardian for the respondent for each of the 32 cases.

The vast majority of petitions we reviewed included limited information regarding less restrictive alternatives to guardianship. Petitions sometimes addressed one or two, but not all, of the elements required by law. For instance, a petition might include which less restrictive alternatives to guardianship have been attempted, but not how long they have been attempted. Many petitions did not describe efforts to meet the respondent's needs with less restrictive alternatives at all. For example, the petitioner in one case merely stated, "It is difficult to provide for Respondent's demonstrated needs without a legal guardian." Another petition stated only that "[Respondent] is at the VA under their care for a minimum of 6 months." For 9 of the 32 petitions we reviewed, petitions only included generic form language about efforts to meet the needs of the respondent with less restrictive alternatives to guardianship, such as "no alternative less restrictive of civil rights and liberties exist, including the use of appropriate technological assistance."¹⁷

Many judicial officers responding to our survey said that petitions do not always provide them with sufficient information about efforts to address the respondent's needs with alternatives that are less restrictive than guardianship. For example, only 15 percent of judicial officers said that petitions always provided them with sufficient information to determine whether attempts to address the respondent's needs with less restrictive measures were adequate. Similarly, as shown in Exhibit 3.2, only 13 percent of judicial officers said that petitions always provided them with sufficient information to determine what attempts had been made to address the respondent's needs with measures that are less restrictive than guardianship.

Exhibit 3.2

Judicial officer survey results: *"The guardianship petition provided sufficient information for me to determine..."*



Note: Judicial officers who answered "Not applicable" or "Don't know," or who did not answer the question, are not represented above.

Source: Office of the Legislative Auditor, survey of judicial officers (N = 115-116).

¹⁷ Statutes require the court to "make specific findings particular to the respondent why less restrictive alternatives do not work." *Minnesota Statutes* 2024, 524.5-310(a)(2).

Several judicial officers and court visitors told us that petitioners lack an understanding of less restrictive alternatives to guardianship. For example, one judicial officer said that many petitioners do not know of the requirement to consider less restrictive alternatives and do not do a good job of exploring less restrictive alternatives before filing a guardianship petition. Similarly, a court visitor explained that they feel obligated to educate families on less restrictive alternatives, even though doing so is not part of the court visitor role, because many families they encounter do not understand less restrictive alternatives to guardianship.



Many guardianship petitions come in *pro se*—the proposed guardian is not represented by counsel. ... When they are asked about less restrictive options, they rarely know what those options may be....

— Judicial officer

RECOMMENDATION

The Legislature should require the court to notify petitioners when petitions do not include all information required by law.

Failing to include information required by law in guardianship petitions can create several issues. For instance, it could result in delays and confusion in the court process as the various parties try to provide the missing evidence as to whether guardianship is necessary. Worse, if the parties do not provide the missing information during the hearing, the judicial officer may not receive sufficient information to determine whether guardianship is necessary.¹⁸ This increases the likelihood that people are placed under guardianship when it is not legally permissible by law, or that a guardian is not appointed for people who need one.



Reviewing Guardianship Petitions

“By providing an early screening of petitions, probate courts can minimize the expense, inconvenience, and possible indignity incurred by respondents for whom a guardianship/conservatorship is inappropriate, or for whom less intrusive alternatives exist, and conserve court resources.... As part of this screening, the petition should initially be reviewed for compliance with filing requirements, the completeness of the information supplied, and consideration of less intrusive alternatives.”

— National Probate Court Standards¹⁹

In line with the recommendations of multiple national organizations, we believe that the state should establish a process to review guardianship petitions to ensure that they include all information required by law. Ensuring that petitions are complete would allow the court to most effectively and efficiently manage guardianship requests.

Although the Judicial Branch acknowledged that incomplete petitions are an issue, Branch staff expressed significant concerns about establishing a process to screen petitions. Staff advised us that court staff could not prevent incomplete petitions from moving forward to a hearing, in part because doing so would require staff to make legal determinations about the adequacy of the information provided, which they said is the role of the judicial officer.

¹⁸ Judicial officers could obtain information about efforts to meet a respondent’s needs with less restrictive measures through other sources, such as hearing testimony or a court visitor’s report. However, as we discuss further below, many of the court visitor reports we reviewed did not include any information about less restrictive alternatives to guardianship.

¹⁹ Richard Van Duizend and Brenda K. Uekert, *National Probate Court Standards* (National Center for State Courts, 2013), 46.

Ideally, the court would not hold a guardianship appointment hearing until the petitioner has provided in the petition all information required by law; however, we understand the Branch’s concern about court staff making legal decisions as part of a screening process. We recommend that—at a minimum—the Legislature should require the court to review each guardianship petition prior to the appointment hearing to determine whether it includes all information required by law. If it does not, the Legislature should direct the court to formally notify the



Notice of Deficiency

When court staff identify various issues with a document that has been submitted to the court, staff send a **notice of deficiency** to the individual who submitted the document.

The court already issues notices of deficiency in guardianship cases, such as when staff find that personal well-being reports contain missing information. In the notice, court staff ask the guardian to submit an amended version of the report with additional information.

petitioner that the petition is deficient and include the notice in the court file. Although this process would not prevent the court from holding a guardianship appointment hearing before the petitioner addresses the deficiencies, it could require court staff to ask the petitioner to provide an amended petition that contains the missing information. Additionally, by including the notice in the court file, judicial officers could use the information identified in a deficiency notice to ask the petitioner about missing information during the guardianship appointment hearing.



Screening for appropriate appointment of a guardian is as critical as screening guardians...a pre-appointment screening process is lacking to ensure that guardianship is the right remedy for the adult and that there are no alternatives....

— State agency employee

We also strongly encourage the Judicial Branch to consider alternative methods to ensure guardianship petitions include all required information before they proceed to the appointment hearing. National organizations that recommend establishing a process to review petitions outline multiple potential approaches—such as using volunteers or pro bono services—and state statutes already permit county social services agencies to establish screening committees for certain guardianship petitions.²⁰

Court Visitors

Court visitors can also have an important role in ensuring that the court appoints guardians only in cases when they are needed and appropriate. As we discussed in Chapter 1, court visitors play an important role in both providing information to the respondent about the ramifications of guardianship, as well as providing unbiased information to the court about whether they believe guardianship is needed.

Although judicial officers are not required by law to appoint a court visitor for each guardianship case, we found that they often do so. Judicial officers appointed a court visitor for at least 90 percent of the 62 guardianship cases we reviewed. Further, 84 percent of judicial officers responding to our survey said that they often or always appoint a court visitor prior to appointing a guardian. Yet, despite how frequently

²⁰ *Minnesota Statutes* 2024, 524.5-304(g) permits county social services agencies to “create a screening committee to review a [guardianship] petition involving an indigent person. The screening committee must consist of individuals selected by the agency with knowledge of alternatives that are less restrictive than guardianship. If the agency has created a screening committee, the court shall make its decision after the screening committee has reviewed the petition.”

judicial officers appointed them to guardianship cases, we identified several issues limiting the extent to which court visitors effectively guard against unnecessary and inappropriate guardianships.

Court visitors in the cases we reviewed did not take a consistent approach to their visits with respondents and did not always comply with requirements in law.

In the cases we reviewed, court visitors did not consistently follow statutory requirements about how to conduct their evaluations and provide information to the court.²¹ For instance, statutes require the court visitor to interview the respondent in person.²² Several of the court visitor reports we reviewed stated that the visitor did not meet with the respondent in person. Additionally, statutes require the visitor to include in their report to the court “recommendations regarding the appropriateness of guardianship, including whether less restrictive means of intervention are available.”²³ Many of the court visitor reports we reviewed, however, did not include any information about less restrictive alternatives to guardianship.

Court visitors we spoke with also differed in how they conducted their visits or how they determined whether guardianship was appropriate for the respondent. For instance, some court visitors told us that they relied heavily on the opinions of experts, such as physicians, when determining whether guardianship was appropriate, whereas one visitor told us that they may review medical documentation but that they determined whether guardianship was appropriate based mostly on their own observations. Court visitors we spoke with also varied in the extent to which they considered less restrictive alternatives to guardianship. Some visitors described considering whether less restrictive alternatives could meet the needs of the respondent, while others said they did not typically consider less restrictive alternatives.

The quality of court visitor reports varied widely across the cases we reviewed.

Some of the 57 court visitor reports we reviewed were very thorough; others included limited information. Almost all of the court visitor reports we reviewed supported the respondent being put under some form of guardianship, but it was not always clear why based on the evidence the court visitor provided. For example, one visitor report described a respondent who paid their own bills and had been living on their own for decades with the assistance of a part-time personal care assistant. The visitor did not note any recent changes to the respondent’s needs or abilities, yet, without explanation as to why guardianship had become necessary, the visitor recommended that the respondent be placed under full guardianship.

²¹ We reviewed 57 court visitor reports across the 62 total guardianship cases we reviewed.

²² *Minnesota Statutes* 2024, 524.5-304(d).

²³ *Minnesota Statutes* 2024, 524.5-304(f)(1).

Court visitors provided different reasons why the quality of information in their reports might vary. For example, several court visitors said that the form that the Branch provides to court visitors to guide their visits with respondents is unhelpful. Two court visitors commented that the form's questions are phrased in a way that are difficult for respondents to understand. Court visitors also commented that sometimes there are language barriers in speaking with the respondent, or that sometimes the respondent is nonverbal, both of which could make it hard to determine their wants and needs.

Oversight of court visitors is decentralized and has been inconsistent, at best.

No statewide entity hires and pays all court visitors. Instead, court visitors are typically hired by individual counties and judicial districts. For instance, a county may employ an individual in a social services role and ask the individual to periodically also conduct court visits for guardianship cases. Although some court visitors are employed by a county or the court, most indicated that they are not employees. Almost two-thirds of court visitors who responded to our survey reported that they were independent contractors.²⁴

Because of the decentralized nature of court visitor hiring, oversight of court visitors' work is likewise decentralized among local entities, such as judicial districts and county governments. Though the State Court Administrator's Office (SCAO) has developed guidance for court visitors—including a best practices document—Branch staff said they have limited ability to monitor or address issues with court visitor performance. SCAO staff reported that they do not even have reliable contact information for court visitors. Instead, it is up to the various entities that hire court visitors to ensure that they perform adequately.

Many court visitors we interviewed and those responding to our survey described how they have received limited guidance about or oversight of their work. For instance, one individual told us they have been a court visitor for almost two decades and have written hundreds of court visitor reports, but they could recall receiving feedback on their reports only once. The individual commented that they do not know the extent to which their court visitor reports are adequate or helpful. Another court visitor said, "If I was going to get feedback, I would have to ask for it; no one provides feedback to me voluntarily." Although some court visitors commented that they receive oversight of their work, almost half of the 37 court visitors who responded to our survey said they do not have a supervisor, and the majority said that they have never received feedback on their reports.



I have been a Court Appointed Visitor for approximately 30 + years. I have never received any formal training. I have never received any feedback regarding my reports.

— Court visitor

²⁴ In September 2024, we sent a survey to 70 people whom judicial districts indicated were court visitors. Some of the individuals we contacted told us they were not court visitors, while others whom the judicial districts did not identify as court visitors contacted us to indicate that they were. We received a response from 37 individuals. Totals do not include individuals who told us they were not court visitors.

RECOMMENDATION

The Legislature should establish a task force to devise a plan for administering and overseeing court visitors' work.



Court Visitors

Several national organizations comment on the importance of court visitors in guardianship cases. The National Center for State Courts, for example, states that court visitors act as the “eyes and ears of probate courts” and that their role stands in contrast to others involved in the process, such as a court-appointed attorney for the respondent who advocates for the respondent’s preferences, rather than providing the court with an independent assessment of the need for guardianship.²⁵

When court visitors fulfill their duties in accordance with law, they can be a vital resource to help ensure that the court appoints guardians only when necessary and appropriate. Several national organizations recommend appointing court visitors in guardianship cases, and over 80 percent of judicial officers who responded to our survey said the court visitor report is a “very helpful” type of evidence for determining whether a guardianship is necessary. Yet, despite the value that court visitors can bring to guardianship cases, we found that, in practice, the quality of court visitor work varies substantially and does not consistently adhere to requirements in law.

We believe there is value in centralizing the administration and oversight of court visitors. Minnesota’s decentralized approach to court visitors makes it substantially more difficult to ensure that court visitors receive adequate training, abide by the law, and provide services of consistent quality. We believe that centralizing the administration and oversight of court visitors’ work will better enable the state to hold court visitors to the same standards and ensure that they receive the necessary training, support, and oversight to conduct their work at the high level called for by their role.

We acknowledge that centralizing the administration and oversight of court visitors poses significant challenges. For instance, court visitors may conduct court visits as part of other employment responsibilities, either through the district courts or the counties. Others work on a part-time basis as independent contractors. Further, centralization would require a reallocation of financial resources, since some visitors are currently paid by counties and others by the Branch. Nevertheless, given the important role court visitors play in the guardian appointment process, we recommend that the Legislature convene a task force to determine how to consolidate court visitors, under what entity, and what resources would be necessary to do so. If the task force determines that centralization is infeasible, the task force should propose to the Legislature an alternative approach to ensure the effective administration and oversight of court visitor work.

Guardian Qualifications and Screening

When a judicial officer determines that guardianship is necessary, they must assign someone to be the respondent’s guardian. The judicial officer does not seek out or nominate an individual to act as guardian. Rather, the petitioner identifies who they believe should be the guardian in the guardianship petition, and the judicial officer chooses whether or not to appoint that individual as guardian.

²⁵ Richard Van Duizend and Brenda K. Uekert, *National Probate Court Standards* (National Center for State Courts, 2013), 49-50.

The qualifications outlined in law to become a guardian are minimal; most individuals must only complete background checks to be a guardian.

Statutes state that the court shall appoint as a guardian a person who is “qualified” and in the best interest of the person subject to guardianship.²⁶ Statutes do not further define what it means for an individual to be qualified, and—with the exception of background checks—statutes do not identify any other requirements for becoming a guardian.²⁷ For instance, there are no requirements that guardians have any certification or a specific educational or professional background. The Branch has also not established additional qualifications for guardians beyond what is in law.

The one requirement that most guardians must meet prior to their appointment is to complete background checks. With a few exceptions, the court must require background checks “before the appointment of a guardian or conservator, unless [background checks] have been done on the person...within the previous five years.”²⁸ The box below outlines background check requirements for guardians.

Statutes require most guardians to complete background checks.**Background Checks Requirements**

- “The court shall require maltreatment and state licensing agency checks and a criminal history check...before the appointment of a guardian.”^a
- After appointment, guardians must renew their background checks every five years.

Background Checks Exceptions

- Proposed guardians who have completed background checks within the previous five years are exempt from the initial background checks.
- Statutes waive background checks requirements entirely if:
 - The proposed guardian is a state agency or county.
 - The respondent has a developmental disability and the proposed guardian is the parent or guardian of the respondent and has raised the respondent in the family home until the time the guardianship petition was filed, unless counsel appointed for the respondent recommends one.

^a The court may appoint a guardian before the background checks are complete if it would be in the “best interests” of the respondent. However, the background checks must be completed “as soon as reasonably possible” after the guardian’s appointment.

Source: *Minnesota Statutes* 2024, 524.5-118, subd. 1.

²⁶ *Minnesota Statutes* 2024, 524.5-309(a).

²⁷ Statutes, however, prohibit a person from being an adult’s guardian if they provide services to the adult for a fee, unless they are related to the respondent. For example, an adult’s social worker cannot become their guardian and continue to receive compensation for their social work services. *Minnesota Statutes* 2024, 524.5-309(c).

²⁸ *Minnesota Statutes* 2024, 524.5-118, subd. 1(a)(1).

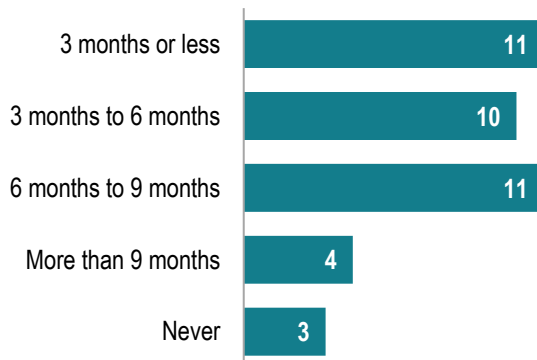
In practice, prior to their appointment, the Branch directs prospective guardians to sign and submit forms consenting to background checks. State agencies then complete the requested background checks and file them directly with the court.²⁹ If background checks are not filed with the court as required, Branch processes direct court staff to schedule a hearing and issue guardians a notice instructing them to complete the required background checks.³⁰

Background checks were not completed in a timely manner as required by statutes for many of the guardians in the cases we reviewed.

Judicial officers frequently appointed guardians before the court received their background checks in the guardianship cases we reviewed. More specifically, in the cases we reviewed, the court did not receive a background check prior to the guardian's appointment for 39 out of the 60 guardians (65 percent) who were required to have them.³¹

Exhibit 3.3

When guardians were appointed prior to completing background checks, the length of time between the guardian's appointment and the date the court ultimately received the background check varied.



Source: Office of the Legislative Auditor, review of guardianship case files (N = 39).

Although statutes require the completion of background checks prior to the guardian's appointment, statutes do permit judicial officers to appoint a guardian pending the completion of those checks if it is in the best interest of the respondent.³² In these cases, statutes require that the background checks be completed "as soon as reasonably possible" after the guardian's appointment.³³ While statutes do not further define "as soon as reasonably possible," the court did not receive guardians' background checks for months for many of the cases in which the judicial officer appointed guardians without background checks. Background checks for about 40 percent of the guardians in the cases we reviewed were submitted to the court more than six months after the guardian's appointment. Further, as Exhibit 3.3 shows, the court never received a background check for three guardians.

²⁹ Specifically, the Department of Human Services processes maltreatment and state licensing agency checks, and the Bureau of Criminal Apprehension processes criminal history checks.

³⁰ Minnesota Judicial Branch, Court Administration Process, *Probate/Mental Health Case Processing 630.34 Guardianship and/or Conservatorship – Background Checks and Affidavits of Service of Annual Notices*, revised December 7, 2023, 11.

³¹ The Judicial Branch did not always document which guardians were exempt from background check requirements. SCAO provided a list of guardians in our review who were exempt, but stated that documentation was "silent" on whether three guardians needed a background check. We did not include those three individuals in this analysis.

³² *Minnesota Statutes* 2024, 524.5-118, subd. 1(d).

³³ *Ibid.*

The court also frequently did not receive background check renewals within the timeframe required by law in the cases we reviewed.³⁴ Of the 26 guardians who needed to renew their background checks during the timeframe we reviewed, the court did not receive renewed background checks on time at least once for 17 guardians (65 percent).³⁵ For 8 guardians (31 percent), the court did not receive renewed background checks at all. Only 1 of the 26 guardians in our review who needed to renew their background checks met the renewal requirements in law in a timely manner.

Even if the court receives background checks with concerning findings, judicial officers have broad discretion to determine whether the background check results will affect a proposed guardian's appointment. Statutes do not indicate what issues identified during background checks would disqualify someone from becoming a guardian. For example, statutes do not indicate whether the court should prohibit a person with a history of assault or abuse from becoming a guardian. Even so, background checks provide the court with vital information to help ensure the safety and well-being of people subject to guardianship.

RECOMMENDATION

The Judicial Branch should enforce statutory background check requirements for guardians in a timely manner.



Background Checks

"Probate courts should request a national background check on all prospective guardians...before an appointment is made, to determine whether the individual has been convicted of a relevant crime; determined to have committed abuse, abandonment, neglect, or financial or sexual exploitation of a child, spouse, or other adult..."

— National Probate Court Standards³⁶

Court staff and judicial officers told us that the reason the court often appointed guardians prior to receiving background checks was because the Department of Human Services, which processes the maltreatment and state licensing agency background checks, was delayed in processing background checks between 2017 and 2022.³⁷ A staff person with the Branch said that the appointment of guardians prior to receiving background checks was an area of "huge" concern, because a lot could happen to a person subject to guardianship while the court waited for the background checks. However, the staff person commented that the Branch felt it could not leave someone without a guardian for a year while waiting for the background checks. Branch staff told us that the processing delays at the Department of Human Services have since improved.

³⁴ *Minnesota Statutes* 2024, 524.5-118, subd. 1(a)(2). Prior to January 1, 2021, statutes required guardians to renew their background checks every two years, rather than every five years. *Minnesota Statutes* 2019, 524.5-118, subd. 1(a)(2).

³⁵ Some guardians were required by law to renew their background check more than once during the timeframe we reviewed.

³⁶ Richard Van Duizend and Brenda K. Uekert, *National Probate Court Standards* (National Center for State Courts, 2013), 62.

³⁷ As of 2023, the Bureau of Criminal Apprehension was responsible for processing criminal history checks for guardians.

Background checks are the primary source of information to screen out guardians who could cause harm to the person subject to guardianship. As we discussed above, neither professional nor volunteer guardians are required to complete any other screening or certification prior to their appointment. As such, we believe it is important that the court receive background check information prior to a guardian's appointment. While statutes allow judicial officers to appoint guardians pending a background check, we urge judicial officers to do so only under exceptional circumstances. When the court appoints a guardian before the completion of their background checks, it risks appointing a person who could harm the person subject to guardianship.

If it is not possible to review a proposed guardian's background checks prior to their appointment, the Branch should ensure that guardians complete their background checks "as soon as reasonably possible," as required by law.³⁸ The Branch should also ensure that guardians renew their background checks as required by law.³⁹ If background checks are not provided in a timely manner, the court should order the guardian to complete the background checks or consider removing the guardian. If the Branch finds that the Department of Human Services is delayed in providing background checks in the future, the Branch should work with the Legislature to ensure the court's timely receipt of background checks.

³⁸ *Minnesota Statutes* 2024, 524.5-118, subd. 1(d).

³⁹ In 2024, the Branch implemented a system to notify volunteer guardians of upcoming background check renewal deadlines.

Chapter 4: Guardian Performance and Accountability

Once appointed, a guardian is responsible for performing the duties and powers granted to them by the court or required by law. In this chapter, we discuss how well guardians are fulfilling certain responsibilities, including requirements pertaining to their ability to place restrictions on people subject to guardianship and various reporting obligations. We also describe the extent to which guardians are held accountable when they do not adequately fulfill their duties, followed by a discussion about the process for terminating guardianships.

Key Findings in This Chapter

- Although personal well-being reports are the court's primary source of information about guardianships, their usefulness is limited.
- Guardians in the cases we reviewed faced few consequences when they did not fulfill their guardianship responsibilities in law.
- The Judicial Branch does not have an effective process for addressing issues with guardian performance.

Guardian Responsibilities

As we discussed in Chapter 1, statutes list several powers and duties that the court may grant a guardian.¹ For example, the court may grant a guardian the power to decide where a person subject to guardianship lives. The court may also assign the guardian the duty to provide for the person subject to guardianship's care, comfort, and ongoing needs, among other duties.

Restrictions on People Subject to Guardianship

One of the powers the court may grant to a guardian is the power to “exercise supervisory authority” over a person subject to guardianship.² As part of their supervisory authority, a guardian may impose certain restrictions on the person subject to guardianship. For example, a guardian may prohibit a person subject to guardianship from having contact with a family member if the guardian has reason to believe that the family member could cause significant harm to the well-being of the person subject to guardianship.

Although a guardian may place restrictions upon a person subject to guardianship, statutes limit the extent and nature of the restrictions. According to law, guardians may “restrict the ability of the person subject to guardianship to communicate, visit, or interact with others....”³ However, statutes do not permit a guardian to impose other

¹ *Minnesota Statutes* 2024, 524.5-313(c).

² *Minnesota Statutes* 2024, 524.5-313(c)(6).

³ *Ibid.*

types of restrictions, such as restricting what the person subject to guardianship can eat or drink, or prohibiting the person from using a computer. Additionally, the guardian may only restrict interactions with others if the guardian has “good cause to believe restriction is necessary because interaction with the person poses a risk of significant physical, psychological, or financial harm to the person subject to guardianship and there is no other means to avoid such significant harm.”⁴ A guardian cannot prevent a person subject to guardianship from interacting with a friend that the guardian simply does not like, for example.

People involved in the guardianship system expressed concern that guardians are restricting the rights of people subject to guardianship in ways that are not permitted by law.

Several people we spoke with articulated concerns that some guardians impose inappropriate restrictions on people subject to guardianship. For example, staff in the Office of Ombudsman for Mental Health and Developmental Disabilities said they have received complaints about guardians limiting what people can eat, such as prohibiting a person subject to guardianship from consuming a brand of soda, or not allowing the person to eat above a certain number of calories. An adult formerly subject to guardianship told us that their guardians restricted their ability to communicate with their doctors; the adult said they were unable to ask their medical providers questions, which was frustrating. A state agency employee described an instance they were made aware of in which a guardian restricted the person subject to guardianship’s travel plans, prohibiting them from taking a trip outside of the state.

The State Court Administrator’s Office (SCAO) also periodically receives complaints about restrictions that guardians impose on people subject to guardianship. Between July 2022 and June 2024, 11 percent of the complaints SCAO received about guardians pertained to restrictions.⁵ For example, one complaint alleged that a guardian restricted the right of the person subject to guardianship to marry, which is a right generally retained by people subject to guardianship according to state law.⁶ SCAO’s investigation found that the guardian had interfered with the rights of the individual subject to guardianship and had not sought a court order to prohibit the individual from marrying, as required by law.

⁴ *Minnesota Statutes* 2024, 524.5-313(c)(6).

⁵ We analyzed data for all 245 guardianship complaints that SCAO received between July 1, 2022, and June 6, 2024. We discuss SCAO’s complaint process in Chapter 6.

⁶ The Bill of Rights for Persons Subject to Guardianship or Conservatorship states that the person subject to guardianship retains the right to “marry and procreate, unless court approval is required....” *Minnesota Statutes* 2024, 524.5-120(11).

Oversight of Restrictions

When a guardian decides to restrict a person subject to guardianship's ability to interact with others, statutes require the guardian to provide written notice of the restriction to the court.⁷ Statutes further require the guardian to include "any restrictions placed on the right of the person subject to guardianship" in the guardian's annual personal well-being report.⁸

Although statutes require guardians to notify the court when they first place restrictions on the person subject to guardianship, it is unclear whether guardians consistently do so.

Court staff and others in the guardianship system said that guardians do not consistently notify the court about restrictions they have placed on people subject to guardianship, as required by law. For instance, a district court staff member who reviews personal well-being reports said that among guardians who noted on their personal well-being report that they had imposed a restriction, very few had previously notified the court of that restriction, as required by law. A professional guardian said that guardians do not always follow the law and submit the required paperwork when they impose restrictions.

If guardians do not properly notify the court when they initially instate restrictions, it is hard to know what restrictions have been imposed upon people subject to guardianship and if the restrictions are lawful. Though guardians must disclose on their personal well-being reports any restrictions they imposed on individuals subject to guardianship, the report form does not require guardians to provide information about the nature of those restrictions. Instead, the Judicial Branch relies on guardians to submit the initial written restrictions notice to know the details about any restrictions.

Neither statutes nor the Judicial Branch require the court to monitor the restrictions that guardians impose on people subject to guardianship.

Even if guardians did consistently notify the court about restrictions placed on people subject to guardianship, court staff and judicial officers are not required to review or approve those restrictions. The Branch has developed instructions for court staff describing how to process the restriction notices guardians file with the court, but court staff do not review whether the restrictions are appropriate.⁹ The Branch also does not provide instructions for court staff on when to refer restrictions to judicial officers for review.

⁷ Specifically, "the guardian shall provide written notice of the restrictions imposed to the court, to the person subject to guardianship, and to the person subject to restrictions. The person subject to guardianship or the person subject to restrictions may petition the court to remove or modify the restrictions...." *Minnesota Statutes* 2024, 524.5-313(c)(6).

⁸ *Minnesota Statutes* 2024, 524.5-316(a)(3).

⁹ Minnesota Judicial Branch, Court Administration Process, *Probate/Mental Health Case Processing* 630.35 *Guardianship – Personal Well-Being Reports and Notices of Restriction*, revised May 31, 2024, 13-14.

Further, there are no requirements that judicial officers review guardian decisions to place restrictions on people subject to guardianship, nor is there guidance on how to evaluate the appropriateness of restrictions. A Branch staff person said that court staff in some counties may forward restriction notices to judicial officers for review, but doing so is not required. Staff said that the Branch discussed having judicial officers review

all restrictions notices but decided that was not feasible. Instead, the court relies on the person subject to guardianship or others involved in the guardianship case—such as a family member or attorney—to petition the court to remove or modify a restriction.



I don't think I receive information on restrictions a guardian placed on someone usually.

— Judicial officer

Whether restrictions are lawful or not, they can have a profound effect on the day-to-day lives of people subject to guardianship. For instance, an attorney described working with a person subject to guardianship who was restricted from seeing her sister. Although the attorney petitioned the court to allow the person subject to guardianship to see her sister, the attorney explained that the sister died before the person subject to guardianship was able to see her again. Given the potential impact of restrictions on people subject to guardianship, we believe that these restrictions deserve greater scrutiny.

RECOMMENDATION

The Legislature should amend statute to require the court to review the restrictions placed on people subject to guardianship and determine if the restrictions are allowed by law.

Guardians currently have broad latitude to place restrictions on people subject to guardianship with little oversight. Instead of regularly reviewing guardian-imposed restrictions, oversight of restrictions generally relies on people subject to guardianship or others in their life to petition the court when they have concerns about restrictions. This approach is unreasonable for a number of reasons. People subject to guardianship may not be aware of the option to petition the court to remove restrictions, nor may they have the ability to do so. Likewise, people subject to guardianship may not have acquaintances who are aware of or capable of notifying the court about unlawful restrictions.

We recommend that the Legislature amend statutes to require the court to review the restrictions that guardians impose and evaluate whether the restrictions are reasonable and permitted by law. If the court determines that a restriction is unlawful, then a judicial officer should invalidate the restriction and notify the guardian, the person subject to guardianship, and the person restricted from interacting with the person subject to guardianship.

Guardian Reporting

As part of their guardianship responsibilities, by law, guardians must “report to the court in writing on the condition of the person subject to guardianship at least annually and whenever ordered by the court.”¹⁰ Guardians fulfill this requirement by submitting their annual personal well-being reports to the court.

Overview

Statutes require that guardians’ personal well-being reports include specific information about the person subject to guardianship.¹¹ As shown in the box below, guardians must describe the living arrangement of the person subject to guardianship; the person’s current mental, physical, and social condition; and more.

Information Guardians Must Provide to the Court in Personal Well-Being Reports

Guardians must submit annual reports containing information about the person subject to guardianship, including their:

- Current mental, physical, and social condition.
- Living arrangements and addresses during the reporting period.
- Restrictions and the factual bases for the restrictions.
- Medical, educational, vocational, and other services as well as the guardian’s opinion regarding the adequacy of the care the person subject to guardianship is receiving.

Guardian reports must also include:

- A recommendation on the need for continued guardianship and any recommended changes in the scope of the guardianship.
- An address or post office box and a telephone number where the guardian can be contacted.
- If applicable, the amount of payment the guardian received for services that were not paid by county contract, and the guardian’s current rates.

Source: *Minnesota Statutes* 2024, 524.5-316(a).

The Branch provides guardians with a personal well-being report form that prompts them to provide the required information to the court. The Branch also provides a training video and instructions about how to complete the personal well-being report form.¹²

¹⁰ *Minnesota Statutes* 2024, 524.5-316(a).

¹¹ *Ibid.*

¹² We discuss guardian training in Chapter 5.

Although personal well-being reports are the court’s primary source of information about guardianships, their usefulness is limited.

Over the course of a year, it is likely that the only information the court receives about a person subject to guardianship is what the guardian includes in the personal well-being report. A district court staff person, for example, told us that personal well-being reports are the court’s only source of information about how the person subject to guardianship is doing. Several Branch and court staff said that personal well-being reports provide key information about whether the guardian is fulfilling their duties and whether the person subject to guardianship is receiving adequate care.

Despite their importance, we identified several issues affecting the usefulness of personal well-being reports, as identified in the box to the right. We discuss these issues in greater detail below.

Report Requirements in Law

Statutes do not require guardians to report on how they have fulfilled their guardianship duties.

Statutes generally require guardians to report only on the “condition of the person subject to guardianship,” not on guardian activities.¹³ For instance, guardians are not required by law to report how often they communicated with the person subject to guardianship over the course of the year. Guardians also do not have to identify their efforts to ensure the person subject to guardianship received appropriate services to meet their needs, including timely medical care. As such, current personal well-being reports focus primarily on the status of the person subject to guardianship and include little information about the guardian’s activities to support the person subject to guardianship.

Limited Information

Guardians provided limited information about the status of the person subject to guardianship in many of the personal well-being reports we reviewed.

As mentioned above, state law requires guardians to report on the status of the person subject to guardianship, including their current mental, physical, and social condition.¹⁴ However, in reviewing personal well-being reports, we found that guardians regularly provided insufficient information to assess the condition of the person subject to

Several factors affect the usefulness of personal well-being reports.

1. Guardians are not required to provide information about how they fulfilled their duties and met the needs of the person subject to guardianship.
2. Guardians often provided minimal information in their reports about the status of the person subject to guardianship.
3. Guardians were sometimes uninformed or confused about how to complete reports.

¹³ *Minnesota Statutes* 2024, 524.5-316(a). As discussed earlier in this chapter, guardians must report to the court when they place restrictions on people subject to guardianship.

¹⁴ *Ibid.*

guardianship.¹⁵ For example, in describing the condition of the person subject to guardianship, guardians in some cases simply stated, “No changes” or that the person subject to guardianship is “happy.” Others failed to provide any description whatsoever of the person’s condition. Such limited information makes it difficult to evaluate the condition of the person subject to guardianship.

Statutes also require guardians to provide information about the services a person subject to guardianship received throughout the year; however, for many personal well-being reports we reviewed, guardians provided little to no detail about such services, as shown in Exhibit 4.1.¹⁶ For instance, sometimes guardians would only give the name of the service provider, say only that the person received an annual checkup or physical, or state that the person received no services at all. It is difficult to assess whether the person subject to guardianship received adequate services with such limited information.

Exhibit 4.1

Personal Well-Being Report Excerpt

Services
For questions #7 through #10, tell whether the Person Subject to Guardianship received any **medical, educational, vocational, or other services** in the last year. Then, you should:

- Describe the services;
- Tell whether you believe the services were adequate; and
- If services were not adequate, explain why not.

7. Did the person subject to guardianship receive any **medical services** in the past year?

☒ Yes ☐ No

If Yes:
Describe: **ROUTINE**
Were the medical services adequate?

☒ Yes ☐ No

8. Did the person subject to guardianship receive any **educational services** in the past year?

☐ Yes ☒ No

9. Did the person subject to guardianship receive any **vocational services** in the past year?

☐ Yes ☒ No

10. Did the person subject to guardianship receive any **other services** in the past year?

☐ Yes ☒ No

Source: Office of the Legislative Auditor, review of guardianship case files.

¹⁵ We reviewed court files for 62 guardianship cases, including 260 personal well-being reports. Our review included adult guardianship cases for which the court received a petition for guardianship between January 1, 2015, and May 2, 2023.

¹⁶ *Minnesota Statutes* 2024, 524.5-316(a)(4).

When we surveyed judicial officers, several commented on the limited information included in guardians' personal well-being reports.¹⁷ For instance, even though statutes require guardians to report on the medical services provided to the person subject to guardianship and "the guardian's opinion as to the adequacy" of those services, only 12 percent of judicial officers said that personal well-being reports always provided adequate information to determine if the person subject to guardianship was receiving adequate medical services. As shown in Exhibit 4.2, even fewer judicial officers said that personal well-being reports always provided adequate information about educational and vocational services provided to the person subject to guardianship.¹⁸ In describing the information provided in personal well-being reports, one judicial officer stated,

Sometimes a person goes above and beyond and puts a narrative, but it is rare. The biggest indicator of the [personal well-being report] is that the guardian actually had the wherewithal to even do it, not what is in it. That way you at least know people are still alive....

Several guardians also commented that they do not think that personal well-being reports provide sufficient information for the court to monitor guardianships. When we asked whether the information provided in the personal well-being reports would be sufficient to gauge whether the needs of the person subject to guardianship were being met and whether the guardian was fulfilling their duties, some guardians laughed; one commented that there is "no way" that one report per year would adequately convey that information. Some guardians commented that the quality of information provided in personal well-being reports varies from guardian to guardian, while others suggested that it would be helpful if the reporting forms more clearly specified what information guardians should include.

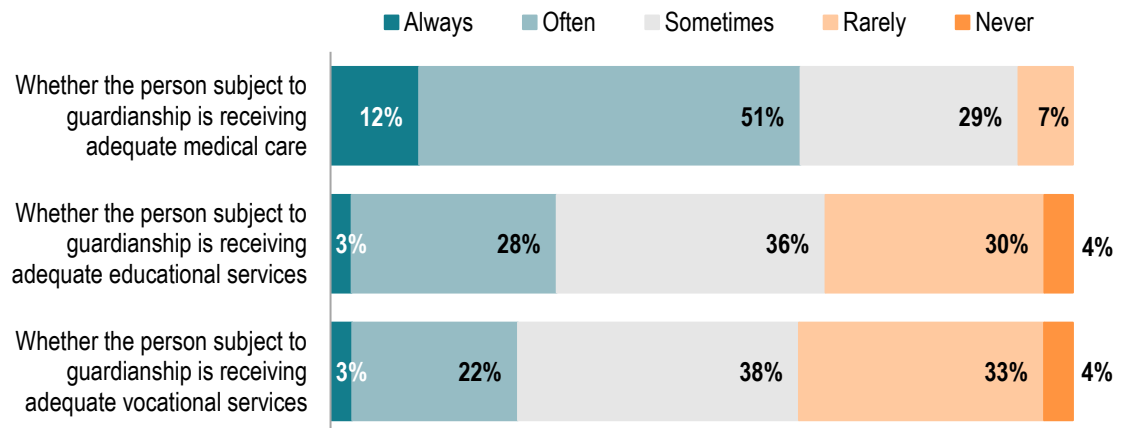
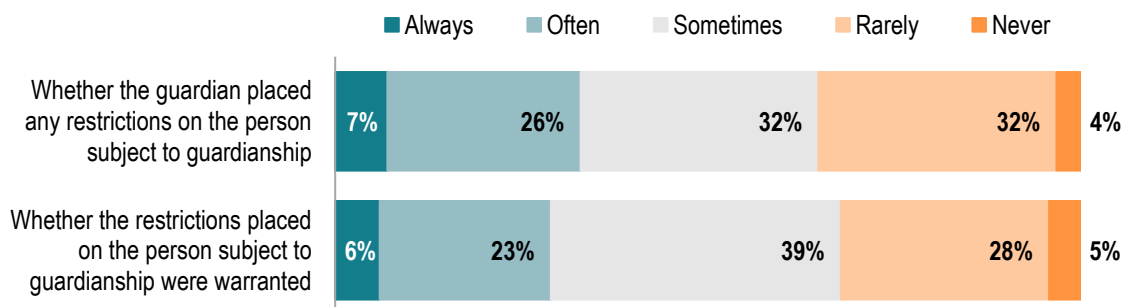
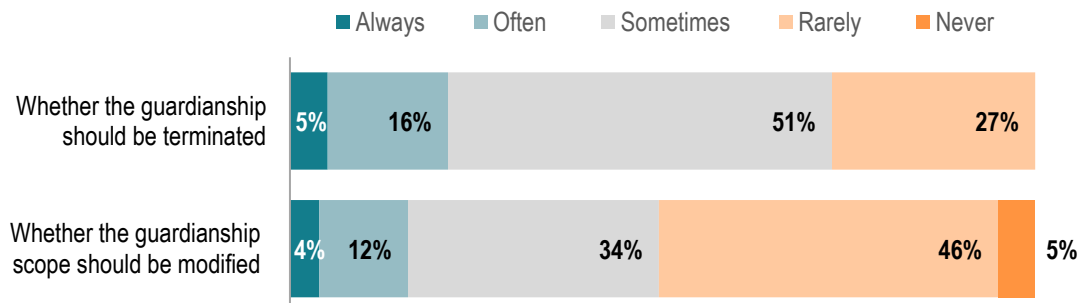
¹⁷ *Minnesota Statutes* 2024, 524.5-316(a)(4). In August 2024, we surveyed 219 judicial officers whom court data indicated had presided over at least one guardianship-related hearing between January 2023 and May 2024. We received responses from 133 judicial officers for a response rate of 61 percent.

¹⁸ Like medical services, statutes require guardians to report on the educational and vocational services received by people subject to guardianship and their adequacy. *Minnesota Statutes* 2024, 524.5-316(a)(4).

Exhibit 4.2

Judicial officers responding to our survey indicated that personal well-being reports do not always provide them with adequate information.

In your experience, how often do guardians' personal well-being reports provide you with adequate information to determine the following?

Adequacy of services for the person subject to guardianship**Restrictions placed on the person subject to guardianship****Need for modification or termination of the guardianship**

Notes: Judicial officers who answered "Not applicable," "Don't know," or who did not answer the question, are not represented above. Totals may not sum to 100 percent due to rounding.

Source: Office of the Legislative Auditor, judicial officer survey (N = 103-111).

Although many guardians in the cases we reviewed provided limited information in their personal well-being reports about the condition of the person subject to guardianship, some guardians provided the court with more detailed information, as shown in Exhibit 4.3.

Exhibit 4.3

Personal Well-Being Report Excerpt

3. I rate the Person Subject to Guardianship's current mental condition as:

☐ 1 ☐ 2 ☐ 3 ☒ 4 ☐ 5

The reason I give this rating: HE HAS INCREASED HIS ABILITY TO EAT FOOD, WHICH WAS EARLIER AFFECTED BY A TRACH THAT HE HAD PUT IN. HE HAS SENSED BEEN ABLE TO NOT HAVE THE TRACH, AND *NOW IS EATING FOOD SOME OF THE TIME. HE IS IN AN ASSISTED LIVING THAT HAS A COMMUNITY THAT IS DEEPLY ROOTED WITHIN HIS CULTURE, AND THEREFORE BRING SOME COMFORT. HE HAS MORE TOOLS AND RESOURCES AVAILABLE FOR HIM LIKE A WHEELCHAIR THAT IS MORE ACCESSIBLE AND A BETTER HOSPITAL BED WHICH HAS ALLOWED HIM TO ALSO BE LESS STRESSED AND MORE CONTENT. HE WAS HAVING ISSUES WITH BLADDER INFECTIONS BEFORE, AND THAT HAS SENSED LESSONS SIGNIFICANTLY. HAVING DIFFICULTIES WITH HIS HIGH BLOOD PRESSURE, WHICH HAS ALSO BEEN MORE REGULATED AS OF RECENT AND CAUSED HIM LESS DISCOMFORT..

4. I rate the Person Subject to Guardianship's current physical condition as:

☐ 1 ☐ 2 ☒ 3 ☐ 4 ☐ 5

The reason I give this rating: THE MORE HIS BODY IS IN THE CURRENT CONDITION THAT IT IS IN OR HE IS NOT MOVING AROUND. HE IS LOSING MORE MUSCLE MASS. I HAVE REQUESTED FOR PT AND OT AND STILL HAVE THE FACILITY THROUGH HIS DOCTOR, BUT THEY HAVE SINCE DENIED OUR REQUEST SAYING THAT HE HAS PLATEAUED AND THEY DO NOT THINK THAT PTOT WOULD BE HELPFUL. WHEN MY FATHER FIRST HAD THIS CONDITION HE WAS SPEAKING WITH ME OVER THE TELEPHONE. IT WAS DURING COVID, SO I WAS NOT ABLE TO SEE HIM. AND HAD BETTER BODY MOVEMENTS. SO I KNOW THE POTENTIAL IS THERE. HE IS MAINTAINING HIS WEIGHT FOR TUBE, FEEDING AND EATING SOME FOODS. I WOULD LIKE HIM TO INCREASE HIS ABILITY TO GET OUT INTO THE COMMUNITY. HOWEVER, IT HAS BEEN DIFFICULT TO FIND AN AGENCY IHS WORKER TO WORK WITH. I FEAR THAT THIS DOES AFFECT HIS STATE OF MIND, AND FEELING ISOLATED. LUCKILY THE FACILITY BRINGS HIM OUT INTO THE COMMON AREA FREQUENTLY SO THAT HE CAN HAVE THOSE INTERACTIONS AS WELL AS HE GETS LOTS OF VISITS FROM FAMILY.

Source: Office of the Legislative Auditor, review of guardianship case files.

Guardian Confusion

Individuals in the guardianship system—including guardians—commented that guardians were often uninformed or confused about filing personal well-being reports with the court.

Court staff we spoke with said that guardians are often unaware of reporting requirements and unsure of what information to provide in their personal well-being reports. Court staff said they spend significant time answering guardians' questions, including questions about guardian reporting responsibilities. One court staff person commented that they continually receive the same basic questions about reporting requirements from people who have served as guardians for years. Another court staff person said they have received calls from guardians who were unaware that they were required to submit personal well-being reports until after the guardian received notice from the court that their report was late.

Several guardians themselves commented that they were unclear about how to fill out the personal well-being report form and what information to include. For instance, the current personal well-being report form uses a five-point scale for guardians to assess the person subject to guardianship's current mental, physical, and social condition, as

shown in Exhibit 4.4. Multiple guardians told us they did not understand how to use the scale to accurately assess the condition of the person subject to guardianship. Guardians also told us that they receive questions from other guardians about reporting requirements or how to complete the personal well-being reports.

Exhibit 4.4

Personal Well-Being Report Excerpt

Current Conditions

For questions #3 through #5, rate the Person Subject to Guardianship's **current** mental, physical, and social conditions by choosing a number on a scale of 1 to 5 (1 = very poor, and 5= excellent). Then give a brief explanation of why you rated the way you did.

3. I rate the Person Subject to Guardianship's current mental condition as:

☐ 1 ☐ 2 ☐ 3 ☒ 4 ☐ 5

The reason I give this rating: **No changes**

4. I rate the Person Subject to Guardianship's current physical condition as:

☐ 1 ☐ 2 ☐ 3 ☒ 4 ☐ 5

The reason I gave this rating: **No changes**

5. I rate the Person Subject to Guardianship's current social condition as:

☐ 1 ☐ 2 ☒ 3 ☐ 4 ☐ 5

The reason I gave this rating: **No changes**

Source: Office of the Legislative Auditor, review of guardianship case files.

RECOMMENDATIONS

- **The Legislature should amend statutes to require guardians to report annually on the actions they took to meet the needs of the person subject to guardianship.**
- **The Judicial Branch should revise guardians' annual report template to make it more useful and user friendly.**

Requiring guardians to disclose information about the actions they took to support the person subject to guardianship during the prior year would help the Branch to monitor guardian performance. It would also help the Branch to more easily hold guardians accountable for meeting any guardian performance standards established in the future.¹⁹ As such, the Legislature should require guardians to provide information in their annual personal well-being reports about the actions they took to support the person subject to guardianship.²⁰

We further recommend that the Branch update the personal well-being report form to help ensure that guardians provide the court with accurate and adequate information to

¹⁹ We discussed guardian performance standards in Chapter 2.

²⁰ For instance, the Legislature could require the guardian to report on actions the guardian took to ensure the person subject to guardianship had adequate housing or received adequate educational services. The Legislature could also require the guardian to report the dates they met with the person subject to guardianship, whether in person or otherwise.

monitor guardianship cases. Although the Branch provides instructions about completing personal well-being reports, guardians told us they are still unclear about various aspects of submitting personal well-being reports, and district courts still receive reports with insufficient information. The Branch should provide further instructions or examples for guardians on how to rate the condition of the person subject to guardianship and complete the form generally. For instance, the Branch could include examples of the types of information the court expects guardians to provide in their reports.

Guardian Reporting Compliance

Both state law and Branch administrative processes outline timeliness requirements for guardian reports. Statutes require guardians to submit reports to the court annually.²²

According to Branch administrative processes, guardians must submit their personal well-being reports to the court by the anniversary of their appointment.²³

If a guardian fails to file a personal well-being report on time, Branch administrative processes direct court staff to take certain actions.

Exhibit 4.5 outlines the Branch's process for addressing missing personal well-being reports. Statutes also state that if a guardian does not file their report within 60 days of the report's due date, the "court shall issue an order to show cause."²⁴



Key Terms

Notice to file or appear. A document the court sends to a guardian listing which documents are overdue and notifying the guardian that they need to attend an administrative conference.

Administrative conference. An off-the-record, remote conference for court administrative staff to meet with the guardian to help them fill out and file their personal well-being report.

Order to show cause. A court order requiring the guardian to appear in front of a judge at a hearing. At the hearing, the guardian must explain why they did not file the personal well-being report on time.

Court Administration Process²¹

Guardians often did not fulfill various reporting and notification requirements in a timely manner, as required, for the cases we reviewed.

We found pervasive issues with guardians failing to submit their personal well-being reports to the court on time.²⁵ Guardians did not file a single report on time for half of the 62 guardianship cases we reviewed. In contrast, guardians submitted every report on time for only 8 cases (13 percent). Overall, guardians submitted only about 30 percent of their personal well-being reports on time (74 of the 260 reports we reviewed).

Guardians submitted only about

30%

of their personal well-being reports **on time** for the cases we reviewed.

²¹ Minnesota Judicial Branch, Court Administration Process, *Probate/Mental Health Case Processing 630.35 Guardianship – Personal Well-Being Reports and Notices of Restriction*, revised May 31, 2024.

²² *Minnesota Statutes* 2024, 524.5-316(a) and (g).

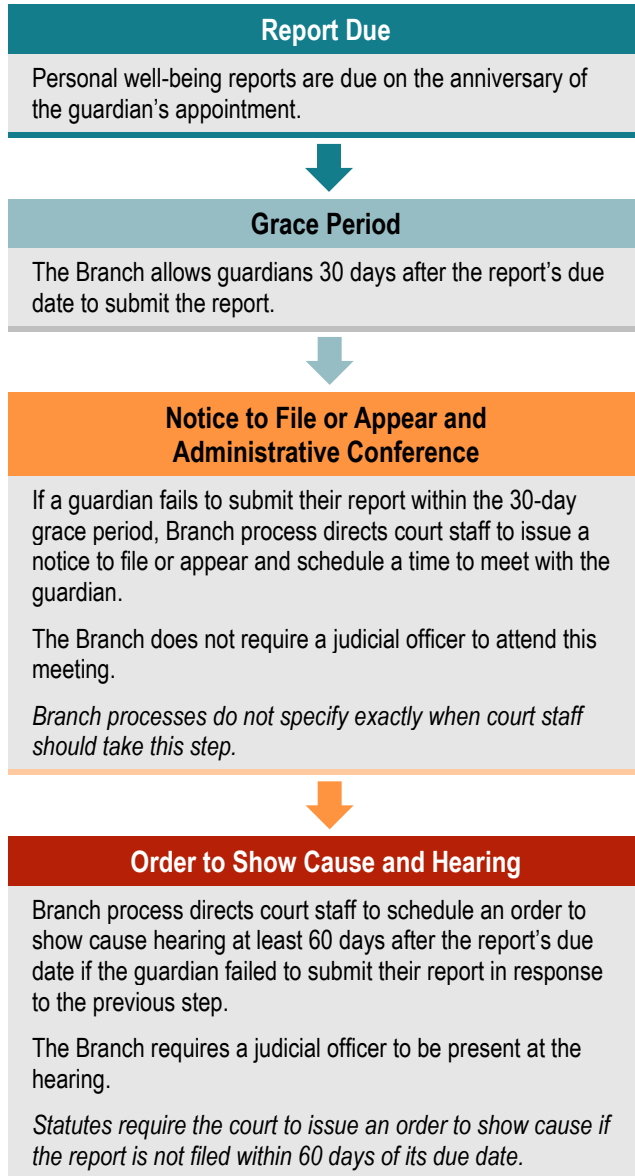
²³ The Branch gives guardians a 30-day grace period to file their personal well-being reports before contacting them about missing reports.

²⁴ *Minnesota Statutes* 2024, 524.5-316(g).

²⁵ For this report, we considered a personal well-being report to be "on time" if it was filed on its due date (the guardian's anniversary date) or earlier.

Exhibit 4.5

Judicial Branch administrative processes outline steps for court staff if a guardian does not submit their personal well-being report on time.



Sources: Minnesota Judicial Branch, Court Administration Process, *Probate/Mental Health Case Processing* 630.35 *Guardianship – Personal Well-Being Reports and Notices of Restriction*, revised May 31, 2024, 3, 10-11; and *Minnesota Statutes* 2024, 524.5-316(g).

The extent to which guardians' reports were late varied from one report to the next. As shown in Exhibit 4.6, of the reports that were submitted late, only 39 percent were filed within the Branch's 30-day grace period (69 reports). The median time guardians took to file personal well-being reports was 41 days after the due date, although reports ranged from 1 to 785 days late.

Guardians in the cases we reviewed also frequently failed to meet various notification requirements in a timely manner. As we discussed in Chapter 1, statutes require guardians to annually provide the person subject to guardianship with a copy of the Bill of Rights for Persons Subject to Guardianship or Conservatorship, and notify the person subject to guardianship of their right to request to terminate or modify their guardianship.²⁶ The Branch requires guardians to attest that they provided this information to the person subject to guardianship within 30 days of the anniversary of their appointment. However, guardians in the cases we reviewed often did not attest to providing the required notifications on time.²⁷

Court staff described following up with guardians multiple times over the course of many months to get guardians to submit their personal well-being reports and other required documents, sometimes to no avail. One court staff person commented that guardians are "horrible" at submitting their reports on time, while another said that staff are expected to do a lot of "babysitting" of guardians.

²⁶ *Minnesota Statutes* 2024, 524.5-310(i).

²⁷ For this report, we considered the guardian's attestation to be "on time" if it was filed within 30 days of the guardian's appointment anniversary date, per timeliness requirements in *Minnesota Statutes* 2024, 524.5-310(i).

Exhibit 4.6

The extent to which guardians' personal well-being reports were late varied.

Notes: This exhibit includes only reports submitted to the court after the report's due date. Totals do not sum to 100 percent due to rounding.

Source: Office of the Legislative Auditor, review of personal well-being reports ($N = 179$).

District court actions to address guardian noncompliance with reporting requirements varied substantially in the cases we reviewed and did not always comply with Judicial Branch requirements or state law.

We found that district court staff varied regarding (1) how quickly they contacted guardians to obtain late personal well-being reports and (2) what types of action they took to obtain late reports. In some instances, district court staff contacted guardians who had failed to submit their personal well-being report on time within a few days of the report's due date. In other instances, staff took almost a year (or more) to contact the guardian. When court staff reached out to guardians about missing reports, some district court staff first issued a reminder to the guardian to file their late report before issuing a notice to file or appear.²⁸ In other instances, staff issued multiple reminders or notices to file or appear before issuing an order to show cause. Exhibit 4.7 provides examples of the wide variety of actions that court staff took to obtain overdue personal well-being reports.

For several cases we reviewed, the court's actions to obtain missing guardian reports did not adhere to Branch requirements or state law. Although Branch administrative processes direct court staff to schedule an administrative conference with a guardian whose report is more than 30 days late, court staff did not take any action to contact guardians about missing reports for about one-quarter of the personal well-being reports we reviewed that were more than 30 days late (25 reports). Similarly, statutes require the court to issue an order to show cause if a guardian's report is not filed within 60 days of its due date, yet the court issued an order to show cause for less than 20 percent of the 50 reports guardians submitted over 60 days late (8 reports).²⁹

In recent years, the Judicial Branch has taken some steps to make the district courts' administration and oversight of adult guardianship more consistent statewide. In 2023, for example, the Branch established smaller teams of court staff in each district to review guardians' personal well-being reports, with the goal of improving guardianship monitoring. Nevertheless, court staff we spoke with described differences in how the judicial districts addressed guardian noncompliance. For example, staff in different districts described varying approaches to obtaining late personal well-being reports,

²⁸ Branch processes do not require court staff to send report reminders to guardians. For several cases we reviewed, the report due date included in the reminder did not align with the report due date required in Branch processes.

²⁹ *Minnesota Statutes* 2024, 524.5-316(g).

some of which deviated from the court's established processes. Districts varied in how long staff waited to contact guardians about overdue personal well-being reports and in the actions taken by court staff to obtain them.

Exhibit 4.7

Examples of Actions Taken by the Court to Obtain Late Personal Well-Being Reports

Example 1

March 21, 2023	Personal well-being report was due, but was not submitted on time.
March 24, 2023	The court sent a notice to file or appear , 3 days after the due date.
April 6, 2023	Report was submitted , within 1 month of the due date.

Example 2

January 23, 2023	Personal well-being report was due, but was not submitted on time.
May 19, 2023	The court sent a notice to file or appear , almost 4 months after the due date.
May 26, 2023	Report was submitted , over 4 months late.

Example 3

September 10, 2022	Personal well-being report was due, but was not submitted on time.
November 28, 2022	The court sent a reminder notice , over 2 months after the due date.
December 16, 2022	The court sent a notice to file or appear , over 3 months after the due date.
January 19, 2023	The court issued an order to show cause , over 4 months after the due date.
February 26, 2023	Report was submitted , over 5 months late.

Example 4

September 21, 2023	Personal well-being report was due, but was not submitted on time.
November 2, 2023	The court sent a notice to file or appear , over 1 month after the due date.
December 15, 2023	The court issued an order to show cause , almost 3 months after the due date.
February 2, 2024	The court issued an order to show cause , over 4 months after the due date.
March 20, 2024	The court issued a warrant for the guardian's arrest, over 6 months after the due date. ^a
February 2025	Report not yet submitted , 17 months late.

^a Branch administrative processes pertaining to guardians' personal well-being reports do not discuss issuing a warrant for the guardian's arrest.

Source: Office of the Legislative Auditor, review of guardianship case files.

RECOMMENDATION

The Judicial Branch should ensure that the courts act in a timely and consistent manner and in accordance with state law and Branch processes to obtain required guardian reports.

Even if the information a guardian provides in a personal well-being report is limited, the reports are often the only information the court receives about the person subject to guardianship. Currently, the court's review of personal well-being reports is its only systematic process for overseeing the services provided to, and ensuring the overall adequate treatment of, a vulnerable population.

Late or missing personal well-being reports hinder the Branch's ability to effectively monitor guardianships. For a couple of the cases we reviewed, the court did not receive updated information on the status of the person subject to guardianship for more than two years. If the court waits before it reaches out to a guardian about a late personal well-being report, it further delays the receipt of important information about the condition of the person subject to guardianship.

The Branch should ensure that court staff address late personal well-being reports in a timely and consistent manner that is in accordance with state law and Branch administrative processes. People subject to guardianship should be able to trust that the Branch is regularly monitoring their health and well-being and reviewing whether they received necessary services. Additionally, guardians across the state should be held to similar expectations and be able to expect similar consequences in the event that they do not follow reporting requirements.

Guardian Accountability

Guardians in the cases we reviewed faced few consequences when they did not fulfill their guardianship responsibilities in law.

Although we found pervasive issues with guardians failing to meet reporting and notification requirements in the cases we reviewed, there were limited to no consequences for the guardians who did not comply with the law. Per state law, if a guardian fails to comply with the reporting requirements in law, “the court may decline to appoint that person as a guardian or conservator, or may remove a person as a guardian or conservator.”³⁰ Yet, only one guardian in the 62 cases we reviewed was removed as a result of performance issues, despite many guardians failing to meet reporting requirements in a timely manner year after year. Individuals likewise continued to serve as guardians without up-to-date background checks, with some guardians submitting them years after their due date or not at all.³¹

Example 4 in Exhibit 4.7 demonstrates the lack of accountability for guardians who fail to fulfill their duties. As shown in the exhibit, the guardian's personal well-being report was due in September 2023. Six weeks after the report was due, the court sent the guardian a notice to file or appear; however, the guardian neither met with court staff to address the missing report nor submitted the report. After the guardian failed to respond to the notice to file or appear, the court sent the guardian an order to show cause, requiring the guardian to attend a hearing with a judicial officer to account for the missing report. Although the guardian attended the order to show cause hearing, the guardian still did not submit the personal well-being report. The court then scheduled another hearing, which the guardian did not attend. Next, the court sent the guardian a second order to show cause, and the guardian again failed to appear at the hearing or submit the report. The court issued a warrant for the guardian's arrest in March 2024. As of February 2025, the guardian still had not submitted the personal well-being report, which was approximately 17 months overdue. The guardian had yet to be

³⁰ *Minnesota Statutes* 2024, 524.5-316(h).

³¹ We discussed guardian background checks in Chapter 3.

arrested, and the court had not taken further action on the case since issuing the warrant.³² As of February 2025, this individual remained the sole guardian of the person subject to guardianship.

Several individuals in the guardianship system commented on the lack of accountability for guardians who do not fulfill their duties. A member of an organization representing guardians, for example, said that there are no viable enforcement mechanisms to address family-member guardians who are not doing the job correctly because of the difficulty of finding a professional guardian to replace them. A court staff person commented that it is very rare for judicial officers to remove guardians for not submitting their personal well-being reports; the staff person said that it is theoretically possible to remove a guardian, but that it would take a lot to do so.

The Judicial Branch does not have an effective process for addressing issues with guardian performance.

Branch and court staff commented that it is difficult for the court to hold guardians accountable for not meeting requirements in law. Both groups told us that although removing a guardian is an option, there may not be another person available to step in as guardian, leaving the court with few meaningful ways to hold guardians accountable for not performing their duties as required by law.



We are constantly chasing our tails to get guardians to file the proper reports in a timely manner.... The amount of work to get them to do so is untenable, yet there are often no alternative options.

— Judicial officer

Although SCAO's new guardianship complaint process could help the Branch to more effectively address guardian performance issues, there are limitations to solely relying on the complaint process to do so. The complaint process takes a reactive—rather than proactive—approach to addressing guardian performance. Unless someone reports a concern about guardian performance, the Branch does not have a systematic process to proactively identify and address performance issues.

The Branch also lacks proactive processes for reducing the likelihood that guardian performance issues reoccur across multiple cases.³³ Even if a judicial officer removes a guardian because of performance issues in one guardianship case, the court does not systematically review the guardian's other appointments to ensure the guardian is fulfilling their duties for the other people under their care. Additionally, there are limited mechanisms to prevent guardians with significant performance issues from being assigned to new cases. Judicial officers are not informed prior to appointing a guardian of relevant complaints that SCAO substantiated through its complaint process. Judicial officers also indicated that they often did not receive information about key aspects of a guardian's past performance during the appointment process. For example,

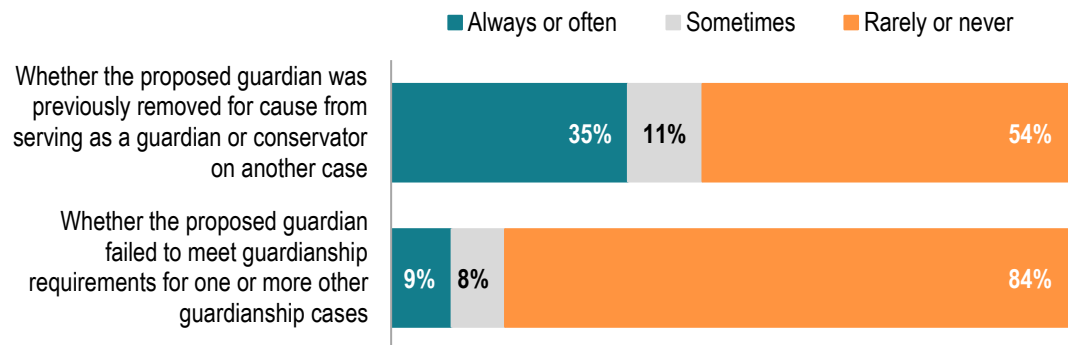
³² As of February 2025, the court had not received any information indicating that the guardian had died.

³³ As we discussed in Chapter 1, the court may appoint some guardians—particularly professional guardians—to be a guardian for multiple adults.

as shown in Exhibit 4.8, 54 percent of judicial officers said that they never or rarely received information before appointing a guardian about whether the proposed guardian was previously removed for cause from serving as a guardian or conservator on another case.³⁴

Exhibit 4.8

Judicial officer survey results: “Prior to appointing a guardian, how often were you provided information on the following?”



Notes: Judicial officers who answered “Not applicable,” “Don’t know,” or who did not answer the question, are not represented above. Totals may not sum to 100 percent due to rounding.

Source: Office of the Legislative Auditor, judicial officer survey (N = 111-116).

RECOMMENDATION

The Judicial Branch should develop systematic processes for notifying judicial officers of significant guardian performance issues.

Judicial officers ultimately have final authority to determine how to handle guardians who have performance issues. However, we think it is important that judicial officers at least be aware of a guardian’s performance issues prior to appointing that individual as a guardian for another adult. Because judicial officers are prohibited from independently conducting research on individual cases, we recommend that the Branch establish processes to better inform judicial officers of performance issues for guardians who have been—or are proposed to be—appointed to multiple guardianship cases.³⁵ For guardians with significant performance issues who may be assigned to new guardianship cases, the Branch should develop processes to notify the court of the proposed guardian’s performance issues prior to the appointment hearing.

Likewise, we think it is important for the Branch to develop processes to notify the court if a guardian’s performance issues are occurring across multiple cases so that judicial officers can intervene, if necessary. In the case of a guardian with significant performance issues who has already been appointed to multiple cases, the Branch

³⁴ Guardianship petitioners are directed to provide information in the guardianship petition about the proposed guardian’s criminal background and whether the guardian was removed for cause from a previous case, if known. However, petitioners may not have detailed knowledge of the guardian’s background.

³⁵ Minnesota Rules of Professional Conduct, Rule 2.9(C) (2022).

should develop a process for reviewing whether those performance issues are negatively affecting the other people subject to guardianship under the guardian's care and notify the court accordingly.

Guardian Availability

Even if the court strove to more frequently remove guardians with significant performance issues, individuals in the guardianship system indicated that it could be challenging to find replacement guardians.

Many individuals involved in the guardianship system expressed that it can be difficult to find a guardian when needed.

Judicial officers, court staff, and others involved in the guardianship system commented on a lack of guardian availability. A judicial officer, for instance, commented that people are not "standing in line" to become guardians and that it is sometimes a struggle to find people to serve as guardians. A staff person with a state ombudsman office said that there have been cases in which the initial guardian passed away and the court could not find another person to serve as a guardian. A court staff person described a case in which an individual's guardians had resigned, leaving the person subject to guardianship in limbo because there was not a replacement guardian available.

Individuals involved in the guardianship system described several reasons why it can be difficult to find a guardian. Several individuals commented that recent changes to state law regarding guardian liability have affected the availability of guardians. Prior to 2024, according to law, guardians faced "no personal or monetary liability" if they failed to satisfy their duty to "provide for the care, comfort, and maintenance needs of the person subject to guardianship."³⁶ In 2024, the Legislature amended state statutes, which now state:

the guardian shall not be held liable for acts or omissions made in the discharge of the guardian's duties *except for acts or omissions that result in harm to the person subject to guardianship and that constitute reckless or willful misconduct, or gross negligence* [emphasis added].³⁷

Although Minnesota's 2024 law takes a similar approach to guardian negligence as laws in several other states, guardians, members of advocacy organizations, and others commented that the new law has had a chilling effect on the desire of individuals to serve as guardians. One professional guardian, for example, said that they have stopped taking new cases in response to the legislation. Others expressed concerns about facing frivolous lawsuits and associated costs.

³⁶ *Minnesota Statutes* 2023, 524.5-313(c)(2).

³⁷ *Laws of Minnesota* 2024, chapter 123, art. 15, sec. 11, codified as *Minnesota Statutes* 2024, 524.5-315(e).

Others in the guardianship system emphasized challenges with guardian funding and pay.³⁸ For instance, a staff person with a state ombudsman office commented that professional guardians in Minnesota receive low pay and questioned whether guardians are a “financially stable resource.” A person subject to guardianship commented that they felt that guardians are underpaid for the work that they do.

We acknowledge that guardian availability can affect the extent to which the Branch can hold guardians accountable when they do not fulfill their duties. In some instances, judicial officers may face the difficult decision of whether to allow a poorly performing guardian to remain on a case, or remove the guardian, which could leave the person subject to guardianship with no guardian at all. At the same time, adults who are subject to guardianship deserve guardians who are fulfilling their needs and complying with legal requirements. If the Legislature establishes a centralized entity to administer and oversee adult guardianship, as we recommended in Chapter 2, it may be useful for that entity to further examine issues with guardian availability.



Funding is indeed a real concern: there is currently a severe lack of independent guardian availability due to funding (as well as general fears about liability resulting from 2024 legislative activities, and feelings of lack of respect and mistrust of guardians during this process).

— Advocacy organization member

Terminating Guardianship

There are various reasons why an adult may no longer need a guardian. For instance, a guardian may no longer be needed if there is a less restrictive alternative to guardianship that meets the needs of the person subject to guardianship. Alternatively, an adult may no longer need assistance in making decisions for themselves because they have recovered from an injury or because they have gained the necessary skills to care for themselves.

Although statutes permit individuals to petition the court to end a guardianship, several individuals told us that terminating guardianships is difficult.

When a person subject to guardianship no longer needs a guardian, statutes permit the court to end, or terminate, the guardianship.³⁹ By law, “On petition of any person interested in the welfare of the person subject to guardianship the court may terminate a guardianship if the person subject to guardianship no longer needs the assistance or protection of a guardian.”⁴⁰ In terminating a guardianship, the court returns decision-making rights to the person who had been subject to guardianship.

³⁸ The Branch does not maintain statewide data on who pays professional guardians or how much professional guardians are paid, although individual guardians may report how much they charged for their services in their personal well-being reports.

³⁹ *Minnesota Statutes* 2024, 524.5-317(b).

⁴⁰ *Ibid.* Per *Minnesota Statutes* 2024, 524.5-317(a), a guardianship also ends “upon the death of the person subject to guardianship, upon the expiration of the duration of guardianship established in the order appointing the guardian, or upon order of the court.”

The current process for terminating guardianships generally relies on people outside of the court—such as the guardian or person subject to guardianship—to identify when an individual no longer needs a guardian. For example, a guardian may indicate in their personal well-being report that they believe that the person subject to guardianship no longer requires their assistance. Neither the Branch nor the courts systematically review guardianships to determine if people subject to guardianship continue to need guardianship services.

Several individuals who work with people subject to guardianship or who have personal experience with the guardianship system told us that ending guardianships can be challenging. One person who was previously subject to guardianship told us that they had to jump through a lot of hoops to terminate their guardianship and that it was difficult to find someone who would take them seriously. Another individual who was previously subject to guardianship described the termination process as “extremely stressful” and described having to attend many meetings and work with multiple individuals to terminate their guardianship. A member of a guardianship advocacy organization commented that it can be difficult to find attorneys who are willing to take on guardianship cases, leaving people who want to terminate their guardianship without access to legal representation.

Individuals we spoke with and national organizations both emphasized a need to review guardianships to ensure they remain necessary. A few attorneys, for instance, expressed concerns that guardianship cases are not regularly reviewed and said it would be helpful to establish a periodic process to determine if the guardianship is still needed. Multiple national organizations state that regularly reviewing guardianships is necessary to protect the rights of the person subject to guardianship by ensuring no alternative options to guardianship exist and recommend that the court regularly assess whether guardianship is still necessary.

Discussion

Guardians currently have significant authority and latitude to act with little guidance or oversight. As we discussed in Chapter 2, neither the Legislature nor the Branch has established performance standards to guide how guardians should fulfill their duties. Additionally, guardians are not required to provide the court with information about how they are fulfilling their role, and the Branch does not have an effective process for proactively identifying or addressing issues with guardian performance.

In addition, the court currently relies primarily on guardians for information about the status of guardianships, which poses several challenges. First, the extent to which the court receives critical information about guardianships depends almost entirely on guardians submitting various documents to the court. If, for example, a guardian does not notify the court when they place a restriction on a person subject to guardianship, there is no established mechanism for the court to know of or evaluate the appropriateness of the restriction. Second, the extent to which the court can effectively monitor guardian performance depends on the guardian being sufficiently thorough and forthcoming with the information they provide to the court. One guardian commented

that if a guardian was “screwing up,” they would not tell the state about it in a personal well-being report. If the information that the guardian provides to the court is limited—or inaccurate—the court has few ways of knowing whether the guardian is performing their role adequately and whether the needs of the person subject to guardianship are being met.



Guardianship Reviews

“Following appointment of a guardian or conservator, probate courts have an on-going responsibility to make certain that the respondent is receiving the services and care required, the estate is being managed appropriately, and the terms of the order remain consistent with the respondent’s needs and condition....

Although probate courts cannot be expected to provide daily supervision of the guardian’s or conservator’s actions, they should not assume a passive role, responding only upon the filing of a complaint.”

— National Probate Court Standards⁴¹

The state’s current approach to overseeing guardians significantly inhibits the extent to which the court can monitor and ensure the safety and well-being of people subject to guardianship. Considering the issues and concerns about guardian performance discussed throughout this chapter, we think that the Branch needs to take a more active approach to (1) ensuring that guardians are fulfilling their roles appropriately and (2) holding guardians accountable when they do not. We recommended above that the Branch establish processes to ensure that significant guardian performance issues do not reoccur across guardianship cases. Below, we discuss how to better ensure that guardians are fulfilling their roles more generally.

RECOMMENDATION

The Judicial Branch should establish a process for systematically reviewing adult guardianships.

A system to review adult guardianships is an important mechanism through which the state can better protect the person subject to guardianship’s rights and well-being. It would help to ensure that the court receives accurate, objective, and sufficiently thorough information about the person subject to guardianship and the extent to which the guardian is fulfilling their duties. In response to our survey, several judicial officers commented that establishing a process to periodically review guardianships would help the court to monitor the condition of the person subject to guardianship and make the court aware of issues.



...having an objective visitor complete an update report every 3-5 years would also be helpful-- otherwise judges are simply relying on the [personal well-being report] information and we have no way to independently determine if it’s accurate.

— Judicial officer

⁴¹ Richard Van Duizend and Brenda K. Uekert, *National Probate Court Standards* (National Center for State Courts, 2013), 71 and 74.

As we discussed in Chapter 2, the Branch has already established a more proactive approach to overseeing conservatorships. To ensure that the needs of people subject to guardianship are adequately addressed, we recommend that the Branch create a more proactive system for reviewing guardianship cases as well. The Branch may choose to include additional aspects in its reviews; however, at minimum, they should examine the following:



...there ought to be a system akin to a fusion of the [conservatorship audit] system and [guardians ad litem] where there are periodic in person check ins with the respondent after so many years to ensure their safety and also periodic reviews of well-being reports to flag issues for the court.

— Judicial officer

- Whether guardians are adequately addressing the overall needs of the person subject to guardianship, including whether guardians are in compliance with any guardian performance standards the Legislature chooses to enact.⁴²
- Whether the guardian is acting within the scope of the powers and duties granted to them by the court and state law.
- Whether guardians have imposed restrictions on the person subject to guardianship and whether the restrictions are permissible by law.
- Whether guardians are meeting all reporting requirements.
- Whether guardianship is still necessary for the person subject to guardianship.



Guardianship Reviews

“...it is critical that probate courts implement procedures for conducting periodic reviews of the guardianship or conservatorship. ... These periodic reviews should examine compliance with the order and the well-being of the respondent and the estate, and determine whether the conditions still exist that underlay the original appointment of a guardian or conservator, whether the duties and authority of the guardian or conservator should be expanded or reduced, or particularly in instances in which the injury, illness, or condition that resulted in the guardianship may be temporary, whether the guardianship or conservatorship can be abolished.”

— National Probate Court Standards⁴³

After concluding the review, we recommend that staff file their assessment with the court for review by a judicial officer, similar to the process currently used for auditing conservatorships.⁴⁴

Given the number of people currently subject to guardianship, it is highly unlikely that the Branch will be able to review every guardianship case every year, or even every five years.

We recommend that the Branch consider methods to identify people subject to guardianship who are at greatest risk for abuse or neglect, or generally not having their needs met, and prioritize these high-risk cases for review before systematically reviewing less risky cases.

⁴² We recommended in Chapter 2 that the Legislature establish performance standards for guardians.

⁴³ Richard Van Duizend and Brenda K. Uekert, *National Probate Court Standards* (National Center for State Courts, 2013), 65.

⁴⁴ As we discussed in Chapter 2, SCAO employs staff who regularly review and audit conservatorships. After the conclusion of their work, staff file their reports with the court and testify at hearings regarding the results as needed.



OLA

Chapter 5: Guardianship Training

Judicial officers, guardians, attorneys, court staff, and others involved in the guardianship system described challenges stemming from a general lack of understanding about the guardian's role, the purpose of guardianship, or guardianship requirements. Individuals we spoke with commented that misunderstandings about adult guardianship are common among individuals who are involved in the guardianship system, including guardians themselves, judicial officers, case managers, service providers, doctors, police, and others. In this chapter, we discuss training requirements for three key players in the adult guardianship system—guardians, judicial officers, and court visitors.

Key Finding in This Chapter

- Training requirements for individuals holding key roles in the guardianship system are inadequate.

Overview

Guardians, judicial officers, and court visitors play critical roles in the guardianship system and make important decisions that affect the lives of vulnerable adults. Depending on the powers and duties granted to them by the court, guardians, for instance, can prohibit a vulnerable adult from interacting with certain family members or friends; decide to sell an adult's belongings; or determine what training or education the adult receives. Among other responsibilities, judicial officers determine whether an adult needs a guardian, what powers and duties to grant the guardian, and how to address guardian performance issues. Court visitors play a critical role as neutral, third party investigators who help to explain the implications of guardianship to vulnerable adults and make recommendations to the court about whether guardianship seems necessary.

Training requirements for individuals holding key roles in the guardianship system are inadequate.

Despite the deep impact that guardians, judicial officers, and court visitors can have on the lives of vulnerable adults, there are not adequate training requirements to ensure that these individuals understand their powers and duties pertaining to guardianship. We discuss the lack of adequate training requirements for guardians, judicial officers, and court visitors in the following pages.

Guardian Training

Guardians are not required to participate in any training prior to or after becoming a guardian.



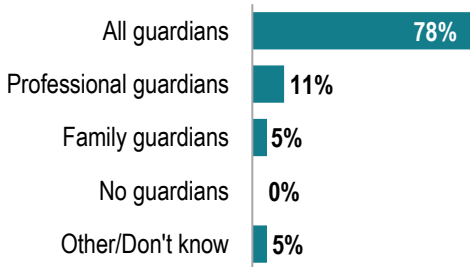
New Optional Guardian Training

In 2024, SCAO released an updated series of training videos for guardians, available on the Judicial Branch’s website. These videos cover various topics, including guardian reporting requirements, guardian roles and responsibilities, and less restrictive alternatives to guardianship.

Neither statutes nor the Judicial Branch requires guardians to complete training pertaining to adult guardianship. This means that guardians are not required to complete training on their powers and duties as a guardian, the Bill of Rights for Persons Subject to Guardianship or Conservatorship, or guardian reporting requirements in state law. While the State Court Administrator’s Office (SCAO) has developed guardianship training videos, guardians are not required to watch them. Instead, the Branch strongly encourages all guardians to watch the 23 minute-long training.

Although guardians are not required to complete any training, most judicial officers who responded to our survey said that guardians should be required to do so, as shown in Exhibit 5.1.¹ Judicial officers further told us that guardians should receive training on a number of areas prior to (or shortly after) being appointed as guardian. For example, 79 percent of judicial officers said guardians should receive training on the Bill of Rights for Persons Subject to Guardianship or Conservatorship and 80 percent said that guardians should receive training on guardian reporting duties. One judicial officer said, “[Guardians should have a] clear understanding of their responsibilities, it is not just filling out a form. They need to know how to complete forms accurately and file them.”

Exhibit 5.1
Judicial officer survey results: “In your opinion, which guardians—if any—should be required to complete training prior to (or shortly after) being appointed as a guardian?”



Note: Totals do not sum to 100 percent due to rounding.

Source: Office of the Legislative Auditor, survey of judicial officers (N = 114).

Others involved in the guardianship system also told us that guardians should complete at least some training. For example, several guardians told us that guardians should complete training on topics such as their rights and responsibilities as a guardian or best practices for guardians. Similarly, a person whose parents previously served as their guardian told us that they wished their parents had received training on how to be a guardian.

¹ In August 2024, we surveyed 219 judicial officers whom court data indicated had presided over at least one guardianship-related hearing between January 2023 and May 2024. We received responses from 133 judicial officers for a response rate of 61 percent.

RECOMMENDATION

The Legislature should require all guardians to complete training prior to their appointment as guardian.



Guardian Training

“Probate courts should develop and implement programs for the orientation, education, and assistance of guardians....”

— **National Probate Court Standards²**

Multiple national organizations highlight the importance of training for the guardians of adults. In line with these organizations, a Branch staff member told us that the Branch had tried to require all guardians to watch SCAO’s guardian training videos prior to appointment. However, a governing group of judicial officers and administrators determined that the Branch should not require guardians to complete this training because it is not required by law. Therefore, watching the training videos is optional.

Given the extent to which guardians in the cases we reviewed failed to meet reporting requirements in law, as we discussed in Chapter 4, we think guardian training is of significant importance and recommend that the Legislature require guardians to complete some minimum amount of training before they are appointed. Guardians play a key role in the lives of people subject to guardianship and it is important for guardians to understand their role and responsibilities. At a minimum, guardians should understand the responsibilities granted to them as guardian, the rights of the person subject to guardianship, and their reporting duties.

Some individuals in the guardianship system expressed concerns that requiring training for guardians may be burdensome and discourage otherwise willing volunteers from serving as guardians. The Legislature should weigh this concern when considering what type and how much training to require for guardians. For instance, the Legislature could consider whether professional and volunteer guardians should have different training requirements; the Legislature may choose to require professional guardians to complete training on more topics than volunteer guardians. The Legislature could also consider whether to require ongoing training after the guardian’s appointment and whether all or only certain types of guardians should be required to complete ongoing training.



Guardian Training

“At the most basic level, guardians, whether professional guardians, volunteers, or family members, need training to understand the role and responsibilities and where to seek help when needed. ...training for guardians needs to include training on the duties and responsibilities of guardians, the applicable law of that jurisdiction concerning guardianships, and the proper use of forms.”

— **National Association for Court Management³**

² Richard Van Duizend and Brenda K. Uekert., *National Probate Court Standards* (National Center for State Courts, 2013), 66.

³ National Association for Court Management, *Adult Guardianship Guide* (2022), 39-40.

Judicial Officer Training

Few courts in Minnesota have judicial officers who specialize in guardianship and other probate cases; for most judicial officers, guardianship cases comprise a small fraction of their total caseload.

Most judicial officers in Minnesota do not specialize in guardianship cases. According to SCAO, district courts for three Twin Cities Metropolitan area counties—Hennepin, Dakota, and Ramsey—have judicial officers who specialize in probate cases, which include guardianship. Judicial officers working in other counties hear a wide range of case types. For example, many judicial officers hear criminal and civil cases in addition to guardianship cases.

Guardianship cases comprise only a small portion of many judicial officers' caseloads. Nearly all judicial officers who responded to our survey said they spend most of their time hearing case types other than adult guardianship cases. Of the over 240 judicial officers that SCAO said presided over at least one guardianship hearing between January 2023 and May 2024, 71 judicial officers (29 percent) presided over five or fewer total guardianship hearings during that time.

94%

of judicial officers who responded to our survey said that guardianship cases comprise 25 percent or less of their caseload.



This is not an area of law that many judicial officers practiced in prior to taking the bench, and in most districts judicial officers don't hear these cases very often.

— Judicial officer

Multiple people involved in the guardianship system expressed concerns about the lack of judicial officer specialization in guardianship. For example, an attorney who represents guardians told us that judges who lack experience with guardianship contribute to issues with appointing guardians when they are not needed. A court-appointed attorney described how a judicial officer who lacked experience in guardianship relied on court-appointed attorneys to understand the guardianship process, which the attorney described as problematic. Guardianship cases are often complex and

differ significantly from criminal and civil cases that judicial officers hear more frequently. Judicial officers who do not have experience with guardianship cases may be less familiar with guardianship requirements.

Judicial officers who preside over guardianship hearings do not consistently complete training on adult guardianship.

There is no statewide requirement for judicial officers to complete training on adult guardianship. Although individual judicial districts may choose to have judicial officers complete training on guardianship, the Branch does not require all judicial officers to do so. Instead, various entities, including the Branch and advocacy groups, offer optional trainings on guardianship-related topics for judicial officers. For example, SCAO has offered optional training for judicial officers on supported decision making and less restrictive alternatives to guardianship. SCAO also led optional trainings on guardianship at conferences for judges.

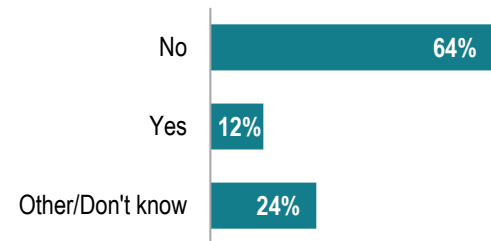
Although various entities have offered training on adult guardianship, most judicial officers who responded to our survey said they were not required by their judicial district to complete guardianship training prior to presiding over guardianship hearings, as shown in Exhibit 5.2. Further, about 70 percent of judicial officers reported that they were not required by their district to complete any ongoing training related to guardianship.

The extent to which judicial officers reported receiving training on key guardianship topics varied widely. As Exhibit 5.3 shows, a majority of judicial officers responding to our survey said they had received training or resources on guardianship statutes. However, only one-half of judicial officers

reported receiving training or resources on less restrictive alternatives to guardianship, despite state law requiring judicial officers to determine whether less restrictive alternatives could meet the respondent's needs.⁴ One in four judicial officers (26 percent) said they had not received training or resources on any of the topics we asked about, even though all judicial officers who responded to our survey had presided over at least one guardianship hearing in recent years.⁵

Exhibit 5.2

Judicial officer survey results: “Does the judicial district in which you primarily work require judicial officers to complete training regarding adult guardianship prior to first presiding over a guardianship hearing?”

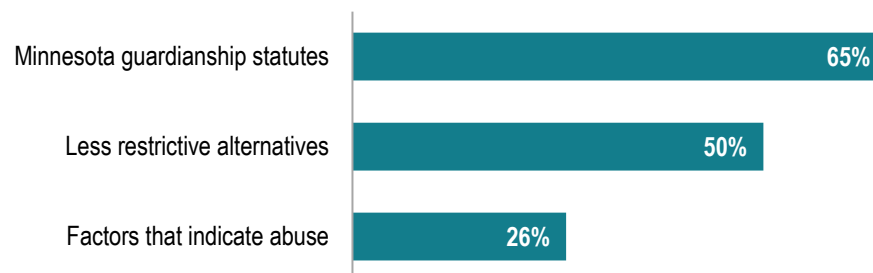


Note: Judicial officers who did not answer the question are not represented above.

Source: Office of the Legislative Auditor, survey of judicial officers (N = 116).

Exhibit 5.3

Judicial officer survey results: “Please indicate for which of the following topics, if any, you have received training and/or resources.”



Source: Office of the Legislative Auditor, survey of judicial officers (N = 113).

⁴ *Minnesota Statutes* 2024, 524.5-310(a).

⁵ In addition to the items listed in Exhibit 5.3, we asked judicial officers if they received training on supported decision making and person-centered decision making.

Some judicial officers told us they do not always know how to complete key tasks related to guardianship.

Some judicial officers who responded to our survey told us it was not clear to them how to determine whether the respondent was incapacitated or whether less restrictive alternatives to guardianship could meet the respondent's needs. As we discussed in previous chapters, statutes require judicial officers to make determinations on both of these matters prior to appointing a guardian.⁶ However, nearly one in four judicial officers (24 percent) who responded to our survey said it was not clear or only somewhat clear how to assess whether a respondent's needs could be met with less restrictive alternatives to guardianship. Additionally, one in ten judicial officers (11 percent) said it was not clear or only somewhat clear how to determine whether the respondent was incapacitated, and two judicial officers said that it is not their responsibility to determine whether the respondent is incapacitated.

Further, some judicial officers said it was not clear to them how to perform other important guardianship tasks. Fifty-eight percent of judicial officers who responded to our survey said it was not clear or only somewhat clear how to respond when SCAO substantiates a complaint against a guardian; only 35 percent said it was mostly clear or very clear.⁷ Forty-five percent of judicial officers said it was not clear or only somewhat clear how to evaluate whether restrictions guardians imposed on people subject to guardianship were appropriate.



If I hadn't practiced guardianship and estate planning law as an attorney, I'd be pretty lost now, especially if I didn't even know what lesser restrictive alternatives to guardianship existed.

— Judicial officer

RECOMMENDATIONS

The Judicial Branch should:

- **Require all judicial officers who preside over adult guardianship hearings to complete training on guardianship.**
 - **Consolidate the number of judicial officers who hear guardianship cases.**
-

⁶ *Minnesota Statutes* 2024, 524.5-310(a).

⁷ Seven percent of judicial officers who responded to our survey said it was not their responsibility to respond to complaints about a guardian that SCAO substantiated.

Guardianship cases are complex and different from other types of cases judicial officers hear, and it is important for judicial officers to be familiar with guardianship requirements so they can ensure due process. Individuals involved in the guardianship system, including judicial officers, attorneys, guardians, and court staff said that judicial officers should have additional training on guardianship. One judicial officer, for instance, told us that judicial officers should receive additional training on guardianship during judicial officer orientation and recommended that all judicial officers receive training on less restrictive alternatives to guardianship. A court-appointed attorney said that judicial officers need additional training because many judicial officers come from a criminal background and lack experience with guardianship law.



Judicial Officer Training

“Managing an adult guardianship caseload requires specialized training of judges, judicial officers, and court staff. The complexity of capacity hearings, the loss of rights for alleged incapacitated individuals, the potential for abuse, and the court’s obligation to provide active monitoring make guardianships unique....”

— National Association for Court Management⁸

Multiple national organizations also emphasize the need for judicial officers who work in this area of law to receive adequate training. We recommend that the Branch require judicial officers who preside over guardianship hearings to complete training on key guardianship-related topics, including less restrictive alternatives to guardianship and how to determine whether an adult is incapacitated. Judicial officers should also receive training on changes to guardianship laws, when applicable.

We also recommend that the Branch reduce the total number of judicial officers who preside over guardianship hearings. It may not be pragmatic for all judicial officers to complete training on adult guardianship when many judicial officers preside over only a handful of guardianship hearings every year. By consolidating the number of judicial officers who preside over guardianship hearings, only this consolidated cohort of judicial officers would need to complete training on guardianship. Additionally, these judicial officers would gain experience and expertise in the area as they preside over guardianship hearings more frequently.

It likely would not make sense for judicial officers in judicial districts that hold a lower volume of guardianship hearings to *only* preside over guardianship or probate hearings. Nevertheless, even in those districts, we recommend that a judicial officer or small team of judicial officers be designated to hear most guardianship cases. The Branch has determined that most guardianship hearings should be held remotely, so designated judicial officers could preside over most guardianship cases, even in larger outstate districts.

⁸ National Association for Court Management, *Adult Guardianship Guide* (2022), 38.

Court Visitor Training

The state has not established training requirements for court visitors, and court visitors we surveyed did not consistently complete training for their role.

Neither statutes nor the Judicial Branch have created any training requirements for court visitors. Some individual judicial districts or counties may choose to develop their own training expectations for the court visitors in their jurisdiction; however, no statewide training requirement exists.



[I received] not much training at all. An area that needs improvement.

— Court visitor

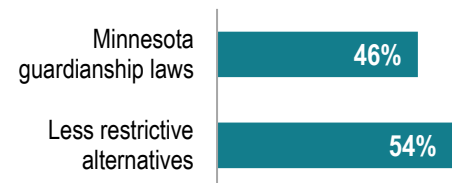
Many court visitors indicated they received little or no training for their roles as court visitors. About 40 percent of the court visitors who responded to our survey said they did not receive any training when they started their role as a court visitor.⁹ Several others commented that they received minimal training. For example, one court visitor said, “My only training was *Minnesota Statute*” about court visitors. Another court visitor said they received training only on how to complete forms after a visit. Among court visitors that received training, several said they either shadowed another court visitor or otherwise received training from other court visitors.

While some court visitors reported receiving training on key guardianship topics, others did not. For instance, only 46 percent of court visitors reported having received training on guardianship laws, as shown in Exhibit 5.4. Nearly one-third of the court visitors we surveyed said they had not received training on any of the key topics we asked about, including both Minnesota guardianship laws and less restrictive alternatives to guardianship.¹⁰

Several court visitors said that there should be more training for court visitors or that they wished they had received more training when they started in their role. One court visitor said that training was “hugely lacking” when they started. Another court visitor told us that if someone did not have prior experience working with the court, the person would need substantially more training than what is offered to adequately perform the job.

Exhibit 5.4

Court visitor survey results: “Please indicate for which of the following topics, if any, you have received training.”



Source: Office of the Legislative Auditor, survey of court visitors ($N = 37$).

⁹ In September 2024, we sent a survey to 70 people whom judicial districts indicated were court visitors. Some of the individuals we contacted told us they were not court visitors, while others whom the judicial districts did not identify as court visitors contacted us to indicate that they were. We received a response from 37 individuals. Totals do not include individuals who told us they were not court visitors.

¹⁰ In addition to the items in Exhibit 5.4, we asked court visitors if they received training on supported decision making and person-centered decision making.

RECOMMENDATION

The Legislature should require all court visitors to complete training prior to their involvement in guardianship cases.



Court Visitor Training

Court visitors should “have training and experience in the type of abilities, limitations, and needs alleged in the petition. This training and experience should be sufficient so that the visitor may serve as the ‘eyes and ears’ of the court. Thus, for example, a visitor appointed for a respondent alleged to have Alzheimer’s disease must have training or experience in assessing the needs of those with Alzheimer’s disease. As the appropriate disposition of the petition may well depend on what services are available to the respondent, the visitor should also be knowledgeable about less restrictive alternatives, including supportive services in the respondent’s community.”

— **Uniform Guardianship, Conservatorship, and Other Protection Arrangements Act**¹¹

Court visitors play an important role in the guardianship process as a neutral, third-party investigator. Yet, the value of a court visitor decreases significantly if the court visitor does not know how to perform their role effectively and appropriately.

We recommend that the Legislature require court visitors to complete a minimum amount of training when they begin their role. Whether developed and provided by the Branch, a nonprofit organization, or some other entity, court visitor training should include key guardianship topics, such as guardianship statutes and less restrictive alternatives to guardianship. The Legislature should also require visitors to complete training on any new standards for how court visitors should conduct their work.¹² The Legislature may also want to consider requiring ongoing training for court visitors.

¹¹ National Conference of Commissioners of Uniform State laws, *Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act* (2017), 80.

¹² We recommended that the Legislature adopt standards for court visitor performance in Chapter 2.



OLA

Chapter 6: Guardianship Complaint Process

As we discussed in Chapter 2, oversight of adult guardianship in Minnesota is inadequate. However, in recent years, the Judicial Branch has taken important steps toward addressing guardian performance issues through the creation of a complaint process. The complaint process allows individuals, including the person subject to guardianship, to submit complaints about a guardian to the Branch and provides a mechanism for the Branch to address problems with guardians' performance.

In this chapter, we discuss the guardianship complaint process, including the State Court Administrator's Office's (SCAO's) process for investigating complaints, the timeliness of complaint investigations, and the outcomes of investigations.

Key Findings in This Chapter

- Statutes do not establish a process for individuals to register complaints about guardian performance with the Judicial Branch; the Branch's new guardianship complaint process is a grant-funded pilot project.
- The State Court Administrator's Office currently has a backlog of open complaints and has been unable to investigate recent complaints in a timely manner.

Complaint Process Overview

As we discussed in Chapter 1, individuals can submit certain complaints about guardians to various entities, such as the Minnesota Adult Abuse Reporting Center or certain ombudsman offices. In July 2022, SCAO introduced a complaint process for individuals to submit complaints about guardians or conservators to the Judicial Branch.¹ In doing so, the Branch established a more formal mechanism by which individuals can make a complaint to the sole entity with authority to remove guardians—the courts.

It is not clear how individual district courts handled complaints about guardians prior to the creation of SCAO's complaint process. Individuals could submit concerns about guardians to district courts in an ad hoc manner by sending a letter or calling the court, but there was no formal process for them to submit complaints. Additionally, there was no standardized process specifically outlining how the courts should address guardian complaints.

Statutes do not establish a process for individuals to register complaints about guardian performance with the Judicial Branch; the Branch's new guardianship complaint process is a grant-funded pilot project.

Statutes do not establish any formal process for individuals to submit complaints about guardians to the Judicial Branch. There is no requirement for the Branch or any other

¹ Although SCAO accepts complaints about both guardians and conservators, this chapter focuses specifically on complaints about guardians.

entity to provide a mechanism for individuals to submit complaints when they have concerns about guardians. Statutes also do not require the Branch to review or address complaints that it receives about guardians.

Although the Branch established the new complaint process in 2022, an SCAO staff member explained that the complaint process is still a “pilot project.” SCAO has characterized this pilot as a way to assess the feasibility and impact of establishing a complaint process in the Branch. An SCAO staff member commented that SCAO has continued to adapt the pilot over time as needed.

Further, SCAO is currently reliant on limited-duration federal grants to operate the complaint process.² The initial grant SCAO received funded the complaint process through August 2024. SCAO received an additional grant in 2024 to continue the complaint process through August 2027. SCAO staff told us they were unsure that the Branch would be able to continue to run the complaint process without these grant funds.

Example Complaint About an Unresponsive Guardian

Complaint: In early 2023, SCAO received two complaints alleging that the person subject to guardianship had not heard from their guardian since summer 2021.

Outcome of Investigation: In a report dated March 1, 2023, SCAO stated that the guardian had not contacted or assisted the person subject to guardianship in more than a year.

Court Response: On March 27, 2023, a judicial officer suspended the current guardian and appointed a temporary substitute guardian.

Investigation Process

As part of establishing the complaint process, SCAO developed complaint investigation procedures, which are summarized in Exhibit 6.1. As part of the investigation, the complaint investigator reviews submitted complaints to determine if there is a “preponderance of evidence” that the guardian violated state law, including the Bill of Rights for Persons Subject to Guardianship or Conservatorship.³ If a complaint does not allege a potential violation of law, the complaint investigator dismisses the complaint without investigation. If the complaint does allege a violation of state law, SCAO’s complaint investigator investigates further.

An SCAO staff member told us SCAO generally investigates complaints in the order they receive them, but they may prioritize certain cases that they determine to be “emergent.”⁴ The staff member said that each complaint investigation takes about three to four weeks to complete, but that can vary depending on the case.

² We discussed SCAO’s guardianship-related grant funding in Chapter 1.

³ State Court Administrator’s Office, Conservator Account Auditing Program Complaint Procedure, 2.

⁴ SCAO’s complaint process procedures do not define what cases are “emergent,” but SCAO staff members said that examples of cases that would be higher priority would be if the person subject to guardianship is going to be evicted, is currently homeless, or is being abused.

Exhibit 6.1

Summary of SCAO Complaint Investigation Procedure

Complaint Submitted

↓ Complainant submits a complaint to the Judicial Branch through a complaint form found on the Judicial Branch's website.
 ↓ Individual complaints may contain multiple allegations against a guardian.

Staff Review

↓ SCAO staff review allegations and determine if the complaint alleges a violation of state law. As part of this process, SCAO staff review the case file associated with the complaint and interview the complainant.

No Alleged Violation

↓ SCAO's complaint investigator determines the complaint does not allege a violation of state law.

Case Dismissed and Closed

SCAO's complaint investigator dismisses the complaint without investigating and notifies the complainant that the complaint has been closed.

Alleged Violation

↓ SCAO's complaint investigator determines the complaint alleges a violation of state law.

Investigation

↓ SCAO's complaint investigator investigates the complaint. As part of the investigation, the complaint investigator may interview the complainant, the guardian, the person subject to guardianship, and others knowledgeable about the case. The complaint investigator also reviews any relevant documentation.

Determination

↓ SCAO's complaint investigator determines one of the following:

1. Complaint allegations are substantiated as true based on a "preponderance of evidence,"
2. Investigation is inconclusive as to whether the allegations are substantiated,
3. Complaint allegations are false, or
4. Conduct alleged in the complaint does not violate state law or does not otherwise fall within the scope of SCAO's complaint process.

Report Created

↓ SCAO's complaint investigator writes a letter or report describing the investigation process and the outcome of the investigation, including the criteria and information used to make a determination on the case.

Report Disseminated

↓ SCAO's complaint investigator shares a copy of the completed letter or report with the relevant district court, the guardian, the person subject to guardianship, and the complainant.

Case Closed

SCAO's complaint investigator notifies all parties that the investigation has been closed and closes the case.

Source: Office of the Legislative Auditor, based on State Court Administrator's Office, Conservator Account Auditing Program Complaint Procedure.

Complaint Process Outcomes

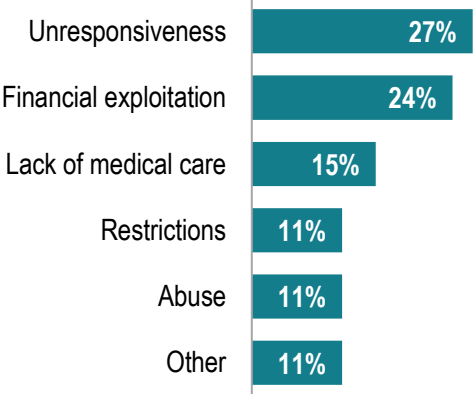
As of June 6, 2024, SCAO had received 260 complaints since it began the complaint process in 2022.⁵ Among these complaints, 245 involved guardians.⁶ Through June 6, 2024, SCAO had closed 125 of the 245 complaints it received about guardians.

SCAO received complaints about guardians from a variety of individuals. Individuals who provide care to the person subject to guardianship submitted about one-third of the complaints. People subject to guardianship themselves submitted about one-quarter of the complaints, and their family members submitted another quarter. The remaining complaints were submitted by others, such as social workers or adult protective services staff.

SCAO received complaints with various types of allegations. As shown in Exhibit 6.2, the most common type of complaint about guardians alleged that the guardian was unresponsive, while about one-quarter of the complaints SCAO received alleged that the guardian was financially exploiting the person subject to guardianship.⁷

As of June 6, 2024, SCAO’s complaint investigator had completed an investigation for 81 of 125 closed complaints received about guardians, as shown in Exhibit 6.3. The remaining 44 complaints were closed and dismissed without a full investigation. The complaint investigator dismissed complaints for a variety of reasons, including: (1) the complaint investigator determined the complaint did not allege that the guardian committed a violation of law, (2) the complaint allegations had already been addressed, (3) the complainant withdrew the complaint, and (4) a lack of responsiveness from the complainant.

Exhibit 6.2
Nature of Complaints SCAO Received About Guardians Through June 2024



Note: Totals do not sum to 100 percent due to rounding.
Source: Office of the Legislative Auditor, analysis of Judicial Branch complaints data (N = 245).

⁵ We analyzed data on all complaints SCAO received from July 1, 2022, to June 6, 2024. Most complaints were about guardians or conservators of adults, but SCAO received at least two complaints about guardians or conservators of minors.

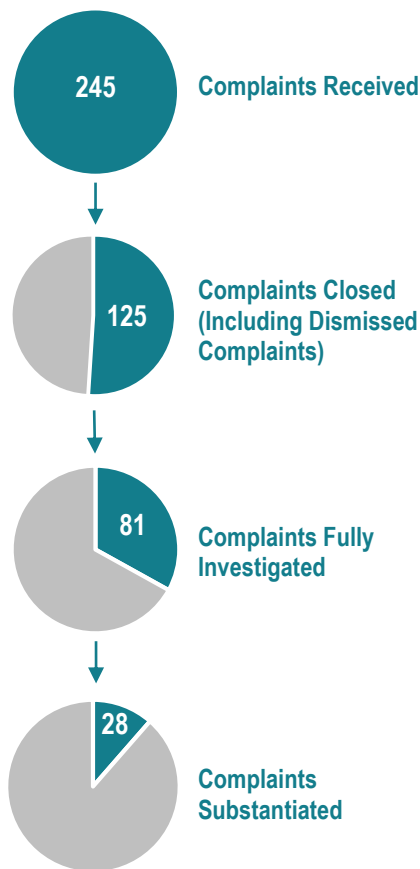
⁶ Some of the 245 complaints about guardians were about individuals who serve as both the guardian and conservator. Complaint totals also include complaints against individuals who served as emergency guardians and a few complaints about public guardians.

⁷ SCAO staff explained that, while guardianships often do not have a financial component, there are times when a guardian may have control of the person subject to guardianship’s money, such as if they serve as representative payee. Other times, the complainant may not understand the guardian’s role.

The State Court Administrator's Office substantiated at least one allegation for about one-third of the investigations it had completed, as of June 2024.

Exhibit 6.3

As of June 2024, SCAO had completed investigations for about one-third of the complaints it received since 2022.



Source: Office of the Legislative Auditor, analysis of Judicial Branch complaints data.

SCAO substantiated 28 complaints about guardians as of June 2024.⁸ Some of the 81 completed investigations involved multiple complaints from different people about the same guardian (for example, the person subject to guardianship, their caseworker, and their family member might each submit their own complaint about a guardian). In these cases, SCAO's complaint investigator conducted one investigation for all of the complaints against the same guardian. In total, SCAO substantiated complaints involving 16 different guardians of adults.⁹

SCAO's complaint investigator did not substantiate the complaints about guardians in the remaining 53 complaints they investigated. In those cases, the complaint investigator either could not conclusively determine whether the allegations in the complaint were substantiated or found the allegations to be false.

Court Responses to Complaint Investigations

After the completion of an investigation, SCAO's complaint investigator writes a letter or investigation report describing the investigation findings and includes it in the court file. The document specifies whether the complaint investigator determined that the complaint allegations were substantiated, false, inconclusive, or if the alleged conduct did not violate state law. After the investigator files the report, court processes direct court staff to forward the report to a judicial officer for further review.¹⁰

Judicial officers in each district, rather than SCAO, are then responsible for addressing the concerns identified in the complaint. SCAO staff said that they do not have the authority to remove, or otherwise penalize, guardians found not to be compliant with guardianship laws during investigations. Rather, only judicial officers have the authority to act in response to a complaint investigation.

⁸ Some complaints contained multiple allegations. The complaint investigator did not always substantiate every allegation contained in complaints classified as substantiated.

⁹ One of the 28 complaints SCAO substantiated was about a guardian of a child, which we do not include here.

¹⁰ Minnesota Judicial Branch, Court Administration Process, *Probate/Mental Health Case Processing 630.30 Guardianship and/or Conservatorship – Case Initiation, Modifications, Foreign Registrations, Complaint Process*, revised November 29, 2023.

There is no requirement for judicial officers to review adult guardianship complaint investigations reports, and no guidance for how judicial officers should respond to complaint reports.

Neither statutes nor the Judicial Branch require judicial officers to review completed complaint investigation reports or letters. Judicial officers are also not required to notify interested parties, such as the complainant, person subject to guardianship, or the guardian, how they decided to address a complaint.

We reviewed the court files for all guardianship cases for which SCAO substantiated at least one complaint against a guardian through June 2024 and found that judicial officers reviewed the complaint investigations reports for most—but not all—of the substantiated complaints. Based on that review, we determined that a judicial officer reviewed the investigation letter or report, or had addressed the complaint before the investigation concluded, for 13 of the 16 cases for which SCAO substantiated at least one allegation.¹¹ In three cases involving at least one substantiated allegation, there was no record that a judicial officer reviewed the complaint investigation letter or report.

Example Complaint About Medical Decision Making

Complaint: In early 2023, SCAO received a complaint alleging that a guardian was making medical decisions for the person subject to guardianship that were not in the person's best interest. For example, the guardian did not allow the person subject to guardianship to receive tests recommended by medical professionals.

Outcome of Investigation: In May 2023, SCAO substantiated that the guardian violated the person subject to guardianship's right to receive appropriate health care. SCAO found that the guardian did not allow the person subject to guardianship to receive medically necessary tests and the person subject to guardianship missed medical appointments.

Court Response: As of November 2024, there was no evidence that the court reviewed the complaint investigation report.

Neither the Legislature nor the Judicial Branch provide guidance for judicial officers about how they should respond to complaint investigation findings. Judicial officers have full discretion to decide how to respond to the findings and may take whatever action they think is appropriate, including calling a hearing, appointing a court visitor to visit the person subject to guardianship, removing the guardian, or taking no action.

Based on our review of the 16 guardianship cases for which SCAO substantiated at least one allegation against a guardian of an adult, judicial officers varied in how they addressed substantiated complaints. In four cases, the judicial officer took clear action, such as by removing the guardian, calling for a medical evaluation, or appointing an attorney to look into the matter. In another five cases, a judicial officer had already addressed the complaint before the complaint investigation concluded, such as by

¹¹ Although SCAO substantiated at least one allegation against a guardian for 28 complaints, several of those complaints were about the same guardian. In those cases, the complaint investigator wrote only one investigation report per guardian. One complaint was about the guardian of a child, which we did not include in this analysis. As a result, SCAO's complaint investigator produced only 16 investigation reports addressing the 27 substantiated complaints about guardians of adults for 16 total guardianship cases.

removing the guardian. In the remaining seven cases, the judicial officer either took no action or it was unclear if the judicial officer took action in response to the complaint investigator's report.

Example Complaint About an Unresponsive Guardian

Complaint: In early 2023, SCAO received five complaints from the person subject to guardianship and various members of that person's care team alleging that the guardian had not been responsive. For example, the person subject to guardianship said they could not remember the last time they heard from their guardian, which presented difficulties in receiving timely and appropriate care.

Outcome of Investigation: In November 2023, SCAO determined that the guardian had submitted a formal resignation for all of their cases. However, they remained appointed as the guardian for seven people, including the adult for whom the complaint had been submitted. SCAO also found that the guardian had pled guilty to financial exploitation of a vulnerable adult in 2021. SCAO recommended that the court hold a hearing to appoint a successor guardian for the person subject to guardianship.

Court Response: As of February 2025, the guardian had not been removed and SCAO told us that the judicial officer is still determining how to move forward with the case. The court attempted to order the guardian to attend hearings, but the guardian did not attend these hearings or respond. In e-mails from December 2023, the judicial officer and court staff discussed the possibility of removing the guardian, but the court did not take further action.

Complaint Process Timeliness

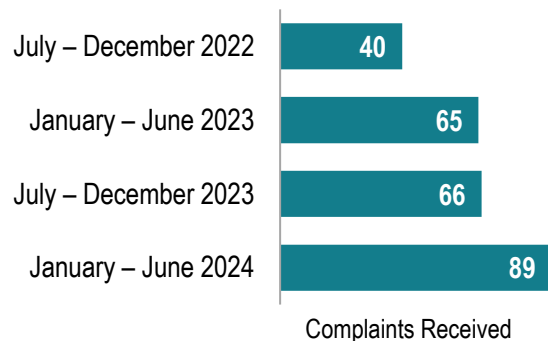
While several individuals in the guardianship system expressed support for the guardianship complaint process, there have been concerns about its timeliness.

The State Court Administrator's Office currently has a backlog of open complaints and has been unable to investigate recent complaints in a timely manner.

As we discussed above, through June 2024, SCAO had closed or dismissed only 125 of the 245 complaints against a guardian that it received. The number of complaints SCAO has received has continued to increase since the complaint process began, as shown in Exhibit 6.4. From January to June of 2024, SCAO received an average of three to four complaints per week.

Exhibit 6.4

The number of complaints the Judicial Branch has received has continued to increase since the complaint process began in July 2022.



Note: This exhibit includes all complaints, including complaints about conservators, that SCAO received through June 6, 2024.

Source: Office of the Legislative Auditor, analysis of Judicial Branch complaints data.

As the volume of complaints has increased, the amount of time each complaint has remained open has increased as well. SCAO took an average of about 67 days to close complaints about guardians in 2022, whereas complaints closed in the first half of 2024 took an average of 187 days to close.

In May 2024, an SCAO staff member told us that they were investigating complaints that were nearly a year old. The SCAO staff member said that they expected to “fall further and further behind” on investigating complaints.

Until recently, the Branch employed only one full-time complaint investigator who was responsible for most complaint investigation work. As of March 2025, SCAO employed two full-time investigators and a part-time administrative support person. SCAO staff said that the main goal of hiring additional staff is to tackle the backlog of complaints.

Recommendations

SCAO’s complaint process provides individuals with a mechanism to directly notify the Judicial Branch of concerns about guardians. While individuals could bring concerns about guardians to other entities, such as ombudsman offices, those entities do not have the authority to remove guardians or otherwise modify guardianships in response to concerns; that authority rests solely with judicial officers. Several individuals involved in the guardianship system told us they support the Judicial Branch having a guardianship complaint process. A guardian, for instance, told us they were happy there was a way to notify the Judicial Branch of “problem guardians.”



“Probate courts should establish a clear and easy-to-use process for communicating concerns about guardianships and conservatorships and the performance of guardians/conservators.”

— **National Probate Court Standards¹²**

Multiple national organizations support the establishment of a complaint process for adult guardianship. For instance, the National Association for Court Management and the National Probate Court Standards say that it is a best practice for states to establish a complaint process for individuals to notify the court of complaints about guardians.¹³ Additionally, the Uniform Laws Commission, which develops uniform laws for different states, includes language in its uniform laws establishing a complaint process.¹⁴

¹² Richard Van Duizend and Brenda K. Uekert, *National Probate Court Standards* (National Center for State Courts, 2013), 73.

¹³ *Ibid.*; and National Association for Court Management, *Adult Guardianship Guide: A Guide to Plan, Develop and Sustain a Comprehensive Court Guardianship and Conservatorship Program*, (2022), 33-36.

¹⁴ National Conference of Commissioners on Uniform State Laws, *Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act* (San Diego, July 2017), 39-41.

RECOMMENDATION

The Legislature should establish a guardianship complaint process in law.

We commend the Judicial Branch for establishing a pilot complaint process so that individuals in the guardianship system have a clear pathway to notify the court about concerns with guardian performance. The complaint process provides a mechanism for the Judicial Branch to better oversee adult guardianship and to identify and address guardians who are not complying with the law.

To ensure that individuals have a reliable method to raise complaints about guardians in the future, regardless of grant funding, we recommend that the Legislature amend statutes to establish a permanent complaint process in law. When establishing the complaint process in law, the Legislature should require judicial officers to review complaint investigation reports and to document what, if any, action they took to respond to the complaint. While judicial officers may determine that no action is necessary, they should formally document their decision in the case file. They should also notify interested parties, including the complainant and the person subject to guardianship, so they can see how the court responded to the complaint.

As part of establishing a complaint process in law, the Legislature should consider what resources may be needed to support a formal complaint process and ensure that the Branch has sufficient means to adequately address the complaints it receives. Given guardians' significant authority, we believe it is important that people subject to guardianship and others in the guardianship system have an opportunity to notify the court of concerns and have those concerns addressed in a timely manner.

RECOMMENDATION

The Judicial Branch should ensure that it completes guardianship complaint investigations in a timely manner.

Due to the backlog of complaints, some complainants may wait extended periods of time before SCAO investigates their concerns. For some complainants, this may mean waiting nearly one year before SCAO completes an investigation and forwards their findings to a judicial officer for review. As a result, some people subject to guardianship may go without important services or have their rights violated for extended periods of time.

We recommend that the Branch complete its investigations of guardians in a timely manner to ensure the court can address concerns about guardians within a reasonable timeframe. We are hopeful that the Branch hiring another investigator will help with the existing backlog of complaints. If needed, the Branch should consider making additional adjustments to ensure timely investigations, for instance, by altering how the Branch conducts its investigations, further increasing staffing levels, or requesting additional funds from the Legislature.



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List of Recommendations

- The Legislature should establish specific duties for the oversight and enforcement of adult guardianship requirements. (p. 20)
- The Legislature should amend statute to establish minimum performance standards for guardians and court visitors. (p. 22)
- The Judicial Branch should improve its data collection practices to ensure that guardianship data are sufficiently reliable to oversee adult guardianship statewide. (p. 24)
- The Judicial Branch should protect sensitive information about respondents and people subject to guardianship. (p. 26)
- The Legislature should amend statutes to require that the key state entities investigating guardianship complaints share information about complaints. (p. 29)
- The Legislature should establish a centralized entity in statute to administer and oversee adult guardianship. (p. 31)
- The Legislature should require the court to notify petitioners when petitions do not include all information required by law. (p. 40)
- The Legislature should establish a task force to devise a plan for administering and overseeing court visitors' work. (p. 44)
- The Judicial Branch should enforce statutory background check requirements for guardians in a timely manner. (p. 47)
- The Legislature should amend statute to require the court to review the restrictions placed on people subject to guardianship and determine if the restrictions are allowed by law. (p. 52)
- The Legislature should amend statutes to require guardians to report annually on the actions they took to meet the needs of the person subject to guardianship. (p. 59)
- The Judicial Branch should revise guardians' annual report template to make it more useful and user friendly. (p. 59)
- The Judicial Branch should ensure that the courts act in a timely and consistent manner and in accordance with state law and Branch processes to obtain required guardian reports. (p. 63)
- The Judicial Branch should develop systematic processes for notifying judicial officers of significant guardian performance issues. (p. 66)

- The Judicial Branch should establish a process for systematically reviewing adult guardianships. (p. 70)
- The Legislature should require all guardians to complete training prior to their appointment as guardian. (p. 75)
- The Judicial Branch should:
 - Require all judicial officers who preside over adult guardianship hearings to complete training on guardianship.
 - Consolidate the number of judicial officers who hear guardianship cases. (p. 78)
- The Legislature should require all court visitors to complete training prior to their involvement in guardianship cases. (p. 81)
- The Legislature should establish a guardianship complaint process in law. (p. 91)
- The Judicial Branch should ensure that it completes guardianship complaint investigations in a timely manner. (p. 91)

Appendix: Bill of Rights for Persons Subject to Guardianship or Conservatorship

People subject to guardianship retain the right to:

- Treatment with dignity and respect.
- Personal privacy.
- Due consideration of personal desires and preferences in decisions made by the guardian.
- Participate in decision making about and receive timely and appropriate health care and medical treatment that does not violate preferences or beliefs.
- Exercise control of all aspects of life, unless delegated specifically to the guardian by court order.
- Guardianship services individually suited to their conditions and needs.
- Petition the court to prevent or initiate a change in their living arrangement.
- Care, comfort, social and recreational needs, employment and employment supports, training, education, habilitation, and rehabilitation care and services, within available resources.
- Be consulted concerning, and to decide to the extent possible, the reasonable care and disposition of personal property and effects, to object to the disposition of personal property and effects, and to petition the court for a review of the guardian's proposed disposition.
- Communicate and visit with people whom the person subject to guardianship chooses.^a
- Marry and procreate, unless court approval is required.
- Elect or object to sterilization.
- At any time, petition the court for termination or modification of the guardianship and any decisions made by the guardian in relation to powers granted, or for other appropriate relief.
- Be represented by an attorney in any proceeding or for the purpose of petitioning the court.
- Vote, unless restricted by the court.
- Be consulted concerning, and make decisions to the extent possible, about personal image and name, unless restricted by the court.
- Execute a health care directive.^b

^a If the guardian decides that certain communication or visitation may result in harm to the health, safety, or well-being of the person subject to guardianship, they may restrict communication or visitation, but only to the extent necessary to prevent harm to the person subject to guardianship.

^b Health care directives include both health care instructions and the appointment of a health care agent, if the court has not granted a guardian any of the powers or duties under *Minnesota Statutes* 2024, 524.5-313(c)(1), (c)(2), or (c)(4).

Source: *Minnesota Statutes* 2024, 524.5-120.



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THE SUPREME COURT OF MINNESOTA
MINNESOTA JUDICIAL CENTER
25 REV. DR. MARTIN LUTHER KING JR. BLVD.
SAINT PAUL, MINNESOTA 55155

CHAMBERS OF
CHIEF JUSTICE NATALIE E. HUDSON

(651) 296-3380

March 31, 2025

Judy Randall
Office of the Legislative Auditor
Room 140 Centennial Bldg.
658 Cedar Street
Saint Paul, Minnesota 55155

Dear Ms. Randall,

Thank you for providing my office with your final report titled *Guardianship of Adults*. Throughout the evaluation, the Minnesota Judicial Branch provided data, procedural information, and insights to support the Office of the Legislative Auditor's (OLA) review. Judges, court staff, and the State Court Administrator's Office (SCAO) contributed to this effort by offering feedback on guardianship processes, sharing expertise on court procedures, and facilitating access to court records and case data. Judicial officers and court staff also participated in interviews and surveys to provide additional perspectives on the administration of adult guardianship cases across Minnesota.

The Judicial Branch remains committed to ensuring that guardianship in Minnesota protects the rights and well-being of adults subject to guardianship while upholding judicial integrity and efficiency. As requested, I am responding with this letter to provide the State Court Administrator's Office reaction to the report.

Minnesota's Leadership in Guardianship Reform

Minnesota is widely recognized as a national leader in guardianship oversight, with its innovative reforms, use of technology, and emphasis on accountability serving as a model for other states. The Minnesota Judicial Branch has taken a proactive, forward-thinking approach to modernizing guardianship processes, ensuring that individuals subject to guardianship receive appropriate protection, support, and oversight while upholding their rights and dignity.

In 2021, the Minnesota Judicial Branch was chosen to receive an Elder Justice Innovation Grant from the U.S. Department of Health and Human Services' Administration for Community Living. This competitive grant was awarded in recognition of Minnesota's proven track record in guardianship oversight, fraud detection, and the promotion of less restrictive alternatives. The funding supported the Advancement of Minnesota Vulnerable Adult Care Project, a multi-year initiative aimed at enhancing court oversight, improving fraud detection, and expanding education and training for stakeholders.

With this grant, the Minnesota Judicial Branch implemented significant advancements in guardianship oversight, strengthening transparency, fraud detection, and court efficiency. The Judicial Branch established a streamlined complaint and investigation process, ensuring greater accountability in guardianship cases. Enhanced fraud detection and auditing mechanisms improved the courts' ability to monitor compliance and detect financial mismanagement. The expansion of MyMNGuardian (MMG) and MyMNConservator (MMC) modernized case management, making reporting more accessible and efficient. Minnesota also set a national standard for guardianship training and education, developing online programs for guardians, conservators, judicial officers, attorneys, court visitors, and interested persons. Finally, the National Center for State Courts leveraged Minnesota's reforms to create best practices and model protocols for other states to follow, solidifying Minnesota's role as a leader in guardianship innovation.

The success of this grant-funded initiative has further cemented Minnesota's reputation as a national leader in guardianship oversight. The National Center for State Courts has published a 71-page report on the Advancement of Minnesota Vulnerable Adult Care Project, which was developed as a blueprint for other jurisdictions seeking to improve their guardianship systems.

Overall Response to Audit Findings

The Minnesota Judicial Branch appreciates the work of the OLA in bringing additional legislative and public attention to the important issue of protecting vulnerable adults under guardianship.

Areas of Agreement

We agree with many of the report's findings and recommendations and believe they provide a solid foundation for continued legislative and judicial improvements.

First, we agree that legislative action is needed to address the concerning practice of hospitals and other facilities pushing for guardianship when it is not legally necessary. This

practice can lead to unnecessary loss of individual rights and imposes strain on the work in guardianship cases. We also support efforts to ensure that guardianship is not required by service providers unless clearly authorized by law, reinforcing the principle that guardianship should be a last resort.

We also agree that the lack of information sharing among investigative entities significantly hampers the effectiveness of guardianship oversight. The Guardianship and Conservatorship Complaint Program has faced challenges accessing the information needed to conduct thorough investigations. Requiring agencies to share relevant data would be a critical step toward greater transparency, accountability, and responsiveness in the system. We further support the recommendation to establish the guardianship complaint process in statute, as doing so would formalize and stabilize this important oversight mechanism. However, sustainable funding must be secured to ensure its ongoing operation.

Improving the standards, qualifications, and training of those involved in guardianship is another area of strong alignment. We agree that performance expectations for guardians and court visitors should be more clearly defined in Minnesota law, and that guardians should be required to report not just what actions they took, but how they fulfilled their duties. We also support requiring mandatory training for guardians prior to appointment (with appropriate exceptions for emergencies) and training for court visitors, though we note the need to carefully consider funding and delivery models for volunteers.

Minnesota's current laws set only minimal qualifications to become a guardian, and we agree that this is an area that deserves attention. Requiring baseline training or certification would help ensure that guardians understand their roles and responsibilities. At the same time, we acknowledge a persistent challenge: even when removal of a guardian is warranted, there is often no alternative person available to step into the role. More broadly, we agree with the report's finding that it is often difficult to identify qualified individuals willing to serve as guardians, particularly in complex or underserved cases.

Finally, we agree that the court visitor program could be strengthened. Other states have adopted more centralized, guided approaches to the training and coordination of court visitors, and we believe Minnesota can learn from these models to enhance consistency and quality in this important function.

Areas of Concern

While the Judicial Branch supports many of the report's recommendations, there are several areas that raise important questions about the role of the courts under the Minnesota Constitution and state law.

- Judges must perform all duties of judicial office fairly and impartially. *See* Code of Judicial Conduct, Rule 2.2. Judges are not investigators and must remain neutral. They make rulings based on the court record, which includes pleadings and evidence filed by the parties. Judges are prohibited from investigating facts outside the court record. *See State v. Dorsey*, 701 N.W.2d 238 (Minn. 2005). In other case types there are designated roles to do investigatory work and present it to the court (attorneys, GALs, social workers, probation officers, etc.).
- Judges have a constitutional duty to follow the law. If a party disagrees with a judge's decision, they can file an appeal. The Judicial Branch does not have any separate body other than the Court of Appeals to review and confirm a judge is following the law.
- The report defines the "Judicial Branch" as the "centralized entities—primarily the State Court Administrator's Office—with responsibility for broader administration and oversight of the Judicial Branch's activities as a whole, rather than on individual cases." However, SCAO does not have oversight of the Judicial Branch's activities as a whole; that is the role of the Minnesota Supreme Court and the Minnesota Judicial Council. The Judicial Branch is more than just SCAO, it encompasses all three levels of court in Minnesota and the administrative structure that supports those courts.
- The report notes that Minnesota courts have not established performance standards for guardians and court visitors. Establishing guardian performance standards is the role of the legislature—not the role of the court. Court visitors serve as independent, neutral parties, providing the court with factual information and professional opinions about whether a guardianship is appropriate. Guardians are appointed by the court in response to a petition and are parties to the case. While the court has a responsibility to oversee compliance with legal duties, defining or evaluating performance—unless clearly established in statute—is outside the judicial role.
- The report recommends that the Legislature require court staff to notify the petitioners when a petition is missing information required by law. However, it is not the role of court staff to perform legal analysis or determine whether a petition

is legally sufficient. Court staff should not be expected to review filings for legal adequacy; that responsibility rests with the judge, who ultimately determines the sufficiency of a petition at the hearing. As the report itself notes, national organizations recommend petition review processes—but through external resources such as pro bono legal services, not through judicial branch staff.

- The report states that court rules provide little direction on how court visitors should determine whether a guardianship is appropriate. However, court rules cover process and procedures and are not meant to address substantive legal issues. The Judicial Branch does, in fact, maintain a court visitor template that court visitors can use to guide them through the process. In addition, the Judicial Branch provides a recorded training on its public website to educate court visitors on when guardianship may not be necessary. Statutory authority would be needed to provide any additional basis for whether a guardianship is appropriate.

Response to Individual Audit Recommendations

The OLA audit included several recommendations directed at the Judicial Branch. Below is the Judicial Branch's response to each of those recommendations.

The Judicial Branch should improve its data collection practices to ensure that the guardianship data is sufficiently reliable to oversee the audit guardianship system.

The Judicial Branch maintains sufficient data on all guardianship cases. Case information and documentation are stored in the statewide case management system (MNCIS), and guardians file their Personal Well-Being Reports through the MyMNGuardian (MMG) system. These two systems are integrated for filing purposes, and each guardianship case contains the necessary information to support judicial oversight.

The Branch has the ability to run reports in both systems for analysis and performance purposes. However, compiling all requested data into a single report can be difficult due to the long lifespan of many guardianship cases. Older cases may have originated in legacy case management systems and were later converted into MNCIS. In addition, business processes have evolved over time, which can affect the consistency of data entry across cases.

While a single comprehensive report may not be easily generated, courts continue to actively monitor whether guardians are fulfilling their duties. As part of the 2021 federal grant, the Judicial Branch has increased and improved its data collection efforts. Additionally, the 2024 federal grant includes a specific objective to enhance MNCIS data

fields so that accurate and meaningful information can be more easily accessed for internal oversight and future data dashboards.

The Judicial Branch should protect sensitive information about respondents and people subject to guardianship.

This has been addressed by a Minnesota Supreme Court Order. Guardianship cases, and all other court records, are governed by the Minnesota Judicial Branch Rules of Public Access. *See* ADM09-8009, Jul. 22, 2020; ADM10-8050, Apr. 7, 2021. While the OLA report provides feedback from parties that would like less public access to Guardianship cases, there are opposing policy reasons for keeping Guardianship cases records public.

The Judicial Branch should enforce statutory background check requirements for guardians in a timely manner.

The Judicial Branch agrees that background checks are an important safeguard. This issue has been resolved. There had been longstanding challenges with the timeliness of processing background studies. From 2017 until new statutory requirements went into effect in 2023, the Department of Human Services (DHS) often required 8 to 12 months to complete background checks. This delay left courts with a difficult decision: either appoint a guardian conditionally without a completed background study, or wait many months to make an appointment—potentially leaving a person subject to guardianship without needed support.

In practice, when a court made a conditional appointment, court administration staff would flag the case to ensure judicial review once the background study was received. The Judicial Branch has developed processes to support compliance, including the use of case flags and automated reminders. The BRCA (Background Record Check Application) system sends notifications to non-professional guardians about outstanding background check requirements, and court staff have tools to issue notices of deficiency or orders to show cause when appropriate.

While the Judicial Branch monitors for compliance and enforces statutory requirements, enforcement options are limited. Courts may consider removal of a guardian for failure to complete a background check, but this must be weighed against the risk of leaving a person subject to guardianship without a suitable replacement.

The Judicial Branch should revise guardians' annual report template to make it more useful and user friendly.

The personal well-being report is based on statutory requirements. If the legislature makes changes to the statute, the Judicial Branch will make necessary changes to the annual report. The personal well-being form is drafted to include what is required in statute. The Judicial Branch does not have authority to request additional information.

The Judicial Branch should ensure that the courts act in a timely and consistent manner and in accordance with law and Branch processes to obtain required guardian reports.

The Minnesota Judicial Branch agrees that timely and consistent collection of guardian reports is essential. To strengthen oversight in this area, the Branch established centralized guardianship teams within each judicial district, effective June 30, 2023. These teams were created in direct response to the types of inconsistencies noted in the audit and are intended to improve compliance, accountability, and consistency across the state.

It is important to note that the cases reviewed by the OLA largely predate the implementation of these centralized teams, meaning the findings reflect a period before this structural reform was in place. As of June 30, 2023, all districts are now required to address guardian reporting noncompliance using consistent processes, including the use of automated reminders, notices for late or insufficient filings, and judicial review of guardian compliance.

Regarding the report's reference to a 30-day "grace period," the Judicial Branch interprets the statutory requirements differently. Minn. Stat. § 524.5-316 provides, "A guardian shall report to the court in writing on the condition of the person subject to guardianship at least annually and whenever ordered by the court." Each year, within 30 days after the anniversary date of an appointment, a guardian shall send or deliver to the person subject to guardianship and to interested persons of record with the court. *See* Minn. Stat. § 524.5-310(i). The statutes do not require the personal well-being report to be filed by a specific date—only that the report be filed annually. Personal well-being reports and affidavits of service that are filed within 30 days of each anniversary of appointment are timely based on statutory requirements. This is not a "grace period". The court verifies the report and affidavit of service are filed after that 30-day window, at which point a notice to file or appear is issued if the guardian is not in compliance.

The report states that the public should be able to trust that courts are actively monitoring guardianship cases. Courts are doing so. Court staff send annual reminders to guardians,

issue notices when filings are late or insufficient, and notify judicial officers when new filings require review. Additionally, reports or concerns submitted by the public are reviewed and responded to as appropriate.

While options for enforcement are limited, courts can issue orders to show cause, hold guardians in contempt, or issue a warrant if a guardian fails to appear for a hearing.

State Court Administration will communicate the audit's recommendation regarding further statewide centralization of guardianship oversight to the Judicial Council for consideration.

The Judicial Branch should develop systematic processes for notifying judicial officers of significant guardian performance issues.

This recommendation would conflict with Minnesota Board on Judicial Standards ethics requirements. Judicial officers cannot do independent research. *See* Code of Judicial Conduct, Rule 2.2; *State v. Dorsey*, 701 N.W.2d 238 (Minn. 2005). That said, the Judicial Branch does have a process in place for tracking serious concerns. When a guardian is removed for cause, the court records a specific event on the case indicating the removal. In addition, guardians are informed of their statutory obligation to notify other courts in which they are appointed if they have been removed for cause.

The Judicial Branch should establish a process for systematically reviewing guardianships.

The Minnesota Judicial Branch currently has processes in place that comply with existing statutory requirements for reviewing guardianships. However, we recognize the potential value in exploring additional review mechanisms. The Branch could consider the development of a more structured, audit-based review process—similar to the Conservator Account Auditing Program (CAAP) or Conservator Account Review Program (CARP)—specifically for guardianships. Implementing such a program would require substantial additional funding and staffing resources.

We agree that conducting a more formal review every three to five years could be beneficial in ensuring ongoing appropriateness of guardianships. However, for this to be applied consistently across the state, it would need to be established in statute, as some other states have done. A statutory requirement would clarify expectations and give courts the authority to initiate periodic assessments. At the same time, it is important to acknowledge that such a mandate would generate increased workload and additional hearings, which would need to be supported with appropriate resources.

In addition to fulfilling statutory responsibilities, the Judicial Branch has also secured a federal grant to pilot a program for random audits of guardianship cases. These audits will assess whether individuals are experiencing abuse, neglect, or unmet needs. This effort goes beyond what is currently required by law and reflects the Branch's ongoing commitment to protecting vulnerable adults.

The Judicial Branch should require all judicial officers who preside over adult guardianship hearings to complete training on guardianships.

The Minnesota Judicial Branch recognizes training is important and held a plenary session at the annual Judge Conference in December 2024—Guardianship and Conservatorship: A National Perspective on Protection of Vulnerable Adults. The speaker was Professor Nina Kohn, Syracuse University College of Law.

The Judicial Branch is actively developing enhanced training opportunities for judicial officers who preside over guardianship and conservatorship cases. A comprehensive guardianship and conservatorship training session is currently in development and is expected to be available by fall 2025.

In addition, the Branch is creating a series of short, topic-specific training modules that judicial officers can access on demand. These modules will allow judges to review relevant laws, procedures, and best practices in advance of guardianship hearings, providing flexible and practical support for judicial decision-making in these complex cases.

The Judicial Branch should consolidate the number of judicial officer officers who hear guardianship cases.

State Court Administration will bring this recommendation to the Judicial Council for review and discussion.

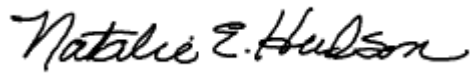
The Judicial Branch should ensure that it completes guardianship complaint investigations in a timely manner.

The Judicial Branch's current guardianship and conservatorship complaint investigation work is being conducted with limited federal grant funding. There is no statutory requirement for the Judicial Branch to carry out this work; rather, the Branch identified a gap in oversight, pursued grant funding, and launched an investigative process modeled after practices adopted in a few other states.

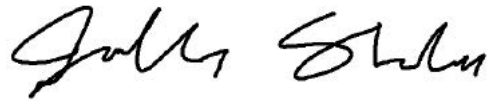
To strengthen this work, the Branch has added staff and refined the criteria used to determine which complaints are accepted for investigation—steps specifically intended to promote more timely resolution. However, the ability to fully implement and sustain a comprehensive complaint investigation process depends on ongoing funding and legislative support. Without additional resources, the Judicial Branch cannot fully meet the scope of this recommendation.

Thank you for the opportunity to review and respond to your audit report. The Minnesota Judicial Branch values the work of the Office of the Legislative Auditor and shares the commitment to strengthening the guardianship system for vulnerable adults.

Sincerely,

A handwritten signature in black ink that reads "Natalie E. Hudson". The script is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Natalie E. Hudson
Chief Justice

A handwritten signature in black ink that reads "Jeff Shorba". The script is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Jeff Shorba
State Court Administrator

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