



Judicial Branch Update on Guardianship Reforms

Legislative Finance Committee October 23, 2018

Overview of Changes to Court Process	1
Access to Court Hearings and Records	3
Bonds	4
Oversight & Audit	5
Chart of Rule Changes	6
Information Sheet (Form 4-992)	8
Notice of Hearing/Notice of Rights (Form 4-999)	11
Order - Persons Entitled to Notice & Access to Court Records (Form 4-993)	14
New Conservator's Report (Form 4-998)	16
New Guardian's Report (Form 4-996)	34
SOP: Processing Adult Conservatorship/Guardianship Cases	54
SOP: Conservatorship/Guardianship Case Review	68
Number of Guardianship/Conservatorship Cases (statewide)	85
Memo - Legislative Recommendations.....	86
Memo - Uniform Guardianship, Conservatorship and Other Protective Arrangements Act	90

Adult Guardianship and Conservatorship

State law authorizes the district court to appoint another person or company to handle personal, healthcare and financial matters for an *adult* (person over the age of 18 years old) that is found to lack the capacity to handle these matters themselves. A *guardianship* involves an adult who is unable to manage their healthcare, living arrangements or activities of daily living (feeding, bathing, toileting) without the assistance of someone else. A *conservatorship* involves an adult with assets who is unable to manage their financial affairs (paying bills, balancing checkbook, managing investment accounts) without the assistance of someone else.

The court can appoint an individual, such as a family member, or a company to serve as a guardian or conservator. Once an individual or a company is appointed, they have certain legal obligations to fulfill and the judge has an ongoing responsibility to monitor the case throughout the lifetime of the protected person or until the person no longer needs this type of assistance.

STATUTORY CHANGES

New changes to state law took effect July 1, 2018. Some of these changes include:

OPEN COURT HEARINGS

- Court hearings regarding the appointment of a guardian or conservator are now open to the public.
- Prior to July 1, 2018, these hearings were sequestered, or closed.

NEW REPORTING FORMS

- New revised initial and annual reports require detailed information about a protected person's assets and annual expenditures, living conditions, medical treatment and visitation with others.
- All court-appointed guardians and conservators, regardless of the date of appointment, are required to submit reports using the new forms starting July 1, 2018. New forms can be found at: <https://adultguardianship.nmcourts.gov>

NEW BONDING REQUIREMENTS FOR CONSERVATORS

- Bonds are now required for conservators to safeguard the assets of a protected person
- A judge may also require a conservator appointed prior to July 1, 2018 to post a bond.

NEW RECORDING KEEPING & ACCOUNTING REQUIREMENTS

- Guardians and conservators must keep the protected person's financial records for seven years.
- Conservators must maintain separate accounts for the protected person's financial affairs.

- Conservators are prohibited from co-mingling the protected person's funds with their own, or if a professional company is serving as a conservator from co-mingling client funds in one account.
- Guardians and conservators must cooperate with any audit or review.

GREATER ACCESS TO COURT RECORDS

- Greater access to court records for guardianship and conservatorship cases (Tiered access depending on relationship and stage of proceeding)
- Larger list of individuals that must be identified in the initial petition filed with the court (spouse, adult children/step-children, power of attorney, person responsible for the care of the person, etc).
- Individuals identified in initial petition entitled to receive notice and attend guardianship hearing.
- Records that include diagnostic, treatment and other medical or psychological information remain sealed and unavailable for inspection.
- After the court orders the appointment of a guardian or conservator for a protected person, the court may grant family members, or other interested individuals, access to annual reports filed by the court-appointed guardian and conservator if it is in the best interest of the protected person.

EXPANDED VISITATION

- Guardians shall not restrict the ability of the protected person to communicate, visit or interact (including receiving visitors and making or receiving telephone calls, personal mail or electronic communications), unless authorized in advance by a court order.
- If a guardian has good cause to believe a restriction is necessary because interaction with a specified person poses a risk of significant physical, psychological or financial harm, the restriction can only be for a period of 7 business days if preexisting family or social relationship exists, or up to 60 days if no family or preexisting social relationship exists.

Access to Court Hearings and Records

Is a court hearing to determine whether a person needs a guardian or conservator open to the public?

Recent changes to state law, effective July 1, 2018, state that a court hearing to determine whether a guardian or conservator should be appointed “shall be determined by the court at an open hearing unless, for good cause, the court determines otherwise”. Sections 45-5-303(N) and 45-5-407(Q), NMSA 1978. Prior to this change in state law, all hearings were required to be sequestered, or closed to the public. Any party may file a motion to close a hearing and if a judge finds good cause to grant the motion, the hearing will not be open to the public.

What records are open to the public in guardianship and conservatorship cases?

Recent changes to state law, effective July 1, 2018, create different levels of access to court records for guardianship and conservatorship cases. In general, the existence of a court case concerning the appointment of a guardian or conservator for an adult is “a matter of public record” unless the court seals the record. The court may seal a case only if (1) the petition is dismissed or (2) the guardianship or conservatorship is terminated and a motion to seal the case is filed.

Documents filed in the case: The register of actions and docket entries in guardianship and conservatorship cases are available to public but this does not include access to the actual documents filed with the court. State law prohibits the disclosure of any records that include diagnostic, treatment and other medical or psychological information. In addition, a report filed by a guardian ad litem is “confidential and shall be sealed on filing”.

Persons entitled to notice of court hearings and to access case documents: Individuals who are identified in the petition and are entitled to receive notice in the guardianship or conservatorship proceeding (such as a spouse, adult children, power of attorney, etc.) have a right to access court records up until the date a court order is issued appointing a guardian or conservator. After the court appoints a guardian or conservator, court records are only available to the protected person, the guardian or conservator, and any other individuals explicitly identified by the court.

A person not otherwise entitled to access court records for good cause may petition the court for access to court records of the guardianship. The court shall grant access if access is in the best interest of the alleged incapacitated person or protected person or furthers the public interest and does not endanger the welfare or financial interest of the alleged incapacitate person or the protected person.

Bonds

What is a surety bond?

A surety bond is similar to an insurance policy purchased by a conservator to protect the assets of an incapacitated person that is under conservatorship. A bonding company will issue a bond on behalf of the court-appointed conservator to insure that the conservator fulfills the legal responsibilities to manage the financial assets of the protected person appropriately. If a conservator misuses or steals the assets of the protected person, the bond company will pay actual losses, up to the value of the bond, to the protected person's estate.

What changes in state law now require the posting of a bond?

Section 45-5-411, NMSA 1978, which became effective July 1, 2018, requires the posting of a surety bond with the court for all newly appointed conservators, unless the court (1) approves another alternative asset-protection arrangement, or (2) waives the bonding requirement after a determination that a bond is unnecessary to safeguard the protected person's interests. Conservators appointed before July 1, 2018 may be required to obtain a surety bond if ordered by the judge assigned to the case.

Who pays the costs of a bond?

The judge will determine whether the estate of the protected person or the court-appointed conservator will pay the cost of a surety bond. The estate of the protected person may be required to pay the cost of a surety bond because the bond insures the protected person against loss or theft. The surety bond is similar to home or car insurance, purchased by the car or home owner.

How much do surety bonds typically cost?

A surety bond usually costs between 1-10% of the amount of coverage requested, depending on the conservator's overall credit rating.

What happens if the estate of the protected person does not have sufficient funds to pay for a surety bond?

If the protected person's estate is small or does not have sufficient funds to pay for a surety bond, the court can waive the bond requirement since there are limited assets that need protection.

What if the protected person only has a court-appointed guardian?

If the protected person does not have any significant assets, then the appointment of a conservator is not necessary. A surety bond is meant to provide the protected person with additional safeguards if misuse or theft of their assets occurs. State law does not require a surety bond for court-appointed guardians.

What companies issue surety bonds?

Most major insurance companies provide surety bonds.

Oversight & Audit

What type of oversight do judges have in guardianship and conservatorship case?

Any person who believes that a guardian or conservator is not fulfilling their legal duties and obligations may notify the judge assigned to the case by filing a letter with the court. In addition, effective July 1, 2018, new revised annual reports for guardians and conservators are required for all new and existing cases. These revised annual reports require the guardian and conservator to provide detailed information about a protected person's assets and annual expenditures, living conditions, medical treatment, and visitation with others. The annual report will provide essential information to the presiding judge regarding the personal, healthcare, and financial decisions made on behalf of the protected person. The judge will review all of the information submitted in the annual reports and may set a hearing to further question the guardian or conservator. If questions still remain after the judge holds this hearing, the judge may refer a case to the Office of the State Auditor for additional review.

How will a financial review and audit of a case occur?

The Office of the State Auditor and the Administrative Office of the Courts have entered into an MOU that allows the Office of the State Auditor to review certain cases involving a conservatorship. The MOU creates a pilot program with one-time funding from the legislature that is available to use through June 30, 2019. After holding a hearing, a judge may refer a case to the State Auditor for additional review. The State Auditor may conduct an initial financial review of a case to assess whether to conduct a full audit. If a full audit is warranted, the State Auditor has subpoena powers to obtain access to all of the protected person's financial records. If any possible criminal activity is detected, the State Auditor will contact local law enforcement for further investigation and will advise the presiding judge of the audit findings.

What types of cases can the State Auditor's Office review and audit?

Under the pilot project, only judges may refer conservatorship cases to the State Auditor's Office for a review and evaluation of a protected person's estate and financial affairs. The State Auditor already has the authority to randomly conduct financial and compliance audits for guardians assigned through the New Mexico Developmental Disabilities Planning Council/Office of Guardianship since these cases involve state funds.

Who can investigate other types of abuse?

If physical or sexual abuse is suspected, local law enforcement should be notified immediately for further investigation. The district attorney's office has the authority to charge individuals for physical abuse or neglect, sexual abuse and financial exploitation. Judges can remove a guardian or conservator from a case but they do not have the power to file criminal charges.

New Supreme Court Rules & Forms

The Supreme Court approved new Rules of Civil Procedure for the District Courts for adult guardianship and conservatorship cases filed after July 1, 2018. The following table outlines these changes:

Document	Form	Description
Information Sheet	4-992	Required for all new petitions filed pursuant to Supreme Court Rule of Civil Procedure for District Courts 1-003.2.
Order – Persons Entitled To Notice & Access to Court Records (Post Adjudication)	4-993	Required when a guardian and/or conservator is appointed pursuant to Supreme Court Rule of Civil Procedure for District Courts 1-141.
Notice of Hearing	4-999 Provisional approval by Supreme Court	Required to be provided to all individuals identified in the Petition and Information Sheet, including the alleged incapacitated person under Sections 45-5-309(C) and 45-5-405(C).
Notice of Rights	4-999– Provisional approval by Supreme Court	Required to be personally served on the alleged incapacitated person, along with a copy of the petition and notice of hearing, under Sections 45-5-309(B) and 45-5-405(B).
Order - Waive or Secure Bond	4-994	Required for all conservatorship cases under Section 45-5-411 NMSA 1978.
Notice of Bonding	4-995	Required when the court orders the conservator secure a bond. Should be filed at the same time that an inventory or report is filed, pursuant to Section 45-5-409 NMSA 1978.
Statement of Bond	4-995.1	Required when the court orders the conservator secure a bond. Should be attached to the Notice of Bonding.
Guardian Report	4-996	Required for filing a ninety (90)-day, annual, or final report under Section 45-5-314 NMSA 1978.
Conservator’s Inventory	4-997	Required for filing a ninety (90)-day inventory under Section 45-5-418 NMSA 1978.
Conservator’s Report	4-998	Required for filing an annual or final report under Section 45-5-409 NMSA 1978.

New Rules of Civil Procedure for the District Courts

1-003.2. Commencement of action; guardianship and conservatorship information sheet.

An information sheet identifying persons entitled to notice and access to court records in a proceeding under Chapter 45, Article 5, Parts 3 or 4 NMSA 1978 shall be submitted by the petitioner upon the filing of a petition to appoint a guardian or conservator. The information sheet shall be substantially in the form approved by the Supreme Court.

[Approved by Supreme Court Order No. 18-8300-005, effective for all cases filed, or pending but not adjudicated, on or after July 1, 2018.]

Committee commentary. — The information sheet required under this rule, Form 4-992 NMRA, is for administrative use only and is not made part of the record. The purpose of the information sheet is to assist court staff with identifying persons entitled to notice and access to court records under Rule 1-079.1(B)(2) and (C)(2) NMRA prior to the appointment of a guardian or conservator. See also NMSA 1978, §§ 45-5-303(K), 45-5-407(N) (providing that a person entitled to notice may access court records of the proceeding and resulting guardianship or conservatorship).

[Approved by Supreme Court Order No. 18-8300-005, effective for all cases filed, or pending but not adjudicated, on or after July 1, 2018.]

1-140. Guardianship and conservatorship proceedings; mandatory use of forms.

A. Order determining persons entitled to notice of proceedings and access to court records. When the court files an order appointing a guardian or conservator, the court shall file a separate order using Form 4-993 NMRA to identify all persons entitled to notice of the proceedings and access to court records following the appointment.

B. Order to secure or waive bond. When the court files an order appointing a conservator, the court shall file a separate order using Form 4-994 NMRA directing the conservator to secure bonding or an alternative asset-protection arrangement or waiving the bonding requirement, as provided in Section 45-5-411 NMSA 1978.

C. Notice of bonding and corporate surety statement. Unless waived by the court, a conservator shall file a separate notice of bonding using Form 4-995 NMRA. The notice of bonding shall be filed at the same time that an inventory or report is filed under Paragraphs E or F of this rule. A statement completed by the corporate surety using Form 4-995.1 NMRA shall be attached to a notice of bonding filed under this paragraph.

D. Guardian's report. A guardian filing a ninety (90)-day, annual, or final report under Section 45-5-314 NMSA 1978 shall use Form 4-996 NMRA.

E. Conservator's inventory. A conservator filing a ninety (90)-day inventory under Section 45-5-418 NMSA 1978 shall use Form 4-997 NMRA.

F. Conservator's report. A conservator filing an annual or final report under Section 45-5-409 NMSA 1978 shall use Form 4-998 NMRA.

G. Notice of hearing and rights. A person filing a petition to appoint a guardian or conservator shall use Form 4-999 NMRA to provide notice of the hearing on the petition and notice of the rights of the alleged incapacitated person as required under Sections 45-5-309 and 45-5-405 NMSA 1978.

[Approved by Supreme Court Order No. 18-8300-005, effective for all cases on or after July 1, 2018; provisionally amended by Supreme Court Order No. 18-8300-007, effective for all cases filed on or after October 15, 2018.]

4-992. Guardianship and conservatorship information sheet; petition.

[For use with Rule 1-003.2 NMRA]

**GUARDIANSHIP AND CONSERVATORSHIP INFORMATION SHEET
(Submit with Petition)**

*Type or print responses. To be submitted with a petition
for the appointment of a guardian or conservator
under Chapter 45, Article 5, Parts 3 and 4, NMSA 1978*

THIS SECTION FOR OFFICIAL USE ONLY

NOTE TO COURT CLERK:

DOCKET EVENT CODE _____, CRT: G/C Information Sheet (Petition).

Scan document, but will not become part of the official record.

Case number: _____ Assigned judge: _____

I. Persons entitled to notice and access to court records until the appointment of a guardian or conservator.

1. Full name, address, and date of birth of person to be protected:
2. Full name and address of petitioner:

For each relationship below, indicate whether the petitioner is aware of anyone with such a relationship to the person to be protected. For each relationship marked "Yes," provide the name and mailing address, if known, of the person with such a relationship to the person to be protected. Attach additional sheets if necessary.

3. Attorney representing the petitioner: Yes; No
4. Spouse of the person to be protected: Yes; No; Unknown

If no known spouse, an adult with whom the person is in a long-term relationship of indefinite duration in which the individual has demonstrated an actual commitment to the person to be protected similar to the commitment of a spouse and in which the individual and the person to be protected consider themselves to be responsible for each other's well-being: Yes; No; Unknown

5. Adult children of the person to be protected: Yes; No; Unknown

If no known adult children, each parent and adult sibling of the person to be protected: Yes; No; Unknown

If no known parent or adult sibling, at least one adult nearest in kinship to the person to be protected who can be found with reasonable diligence:

Yes; No; Unknown

6. Adult stepchildren of the person to be protected whom the person actively parented during the stepchildren's minor years and with whom the person had an ongoing relationship in the two-year period immediately preceding the filing of the petition: Yes; No; Unknown
7. A person responsible for the care or custody of the person to be protected: Yes; No; Unknown
8. Any attorney currently representing the person to be protected: Yes; No; Unknown
9. Any representative payee appointed by the federal social security administration for the person to be protected: Yes; No; Unknown
10. A guardian or conservator acting for the person to be protected in New Mexico or in another jurisdiction: Yes; No; Unknown
11. A trustee or custodian of a trust or custodianship of which the person to be protected is a beneficiary: Yes; No; Unknown
12. Any fiduciary for the person to be protected appointed by the federal department of veterans affairs: Yes; No; Unknown
13. An agent designated under a power of attorney for health care in which the person to be protected is identified as the principal: Yes; No; Unknown
14. An agent designated under a power of attorney for finances in which the person to be protected is identified as the principal: Yes; No; Unknown
15. A person nominated as guardian or conservator by the person to be protected: Yes; No; Unknown
16. A person nominated as guardian by the parent or spouse of the person to be protected in a will or other signed record: Yes; No; Unknown
17. A proposed guardian or conservator: Yes; No; Unknown

18. A person known to have routinely assisted the person to be protected with decision making during the six months immediately preceding the filing of the petition:
 Yes; No; Unknown
19. If the petition is for a guardianship, any person with whom the petitioner seeks to limit contact with the person to be protected: Yes; No; Unknown

II. Certification/Affirmation.

I [certify] [affirm under penalty of perjury under the laws of the State of New Mexico] that the information contained herein is complete and accurate to the best of my knowledge and belief. I acknowledge that under Sections 45-5-309(C) and/or 45-5-405(C) NMSA 1978, a copy of the petition and notice of a hearing on the petition must be served on the persons identified in this information sheet.

Signature of [Petitioner] [Petitioner's attorney]

Date of signature

[Approved by Supreme Court Order No. 18-8300-005, effective for all cases filed, or pending but not adjudicated, on or after July 1, 2018.]

- _____ (*alleged incapacitated person*)'s personal and/or financial affairs;
- (2) must use their decision-making authority only when necessary to promote and protect the well being and/or financial interests of _____ (*alleged incapacitated person*); and
 - (3) must use their decision-making authority in a manner that encourages the development of maximum self-reliance and independence of _____ (*alleged incapacitated person*).

If the Court appoints a guardian and/or conservator, _____ (*alleged incapacitated person*) retains all legal and civil rights except those which have been expressly limited by court order or have been specifically granted to the guardian and/or conservator by the Court.

NOTICE OF RIGHTS

_____ (*alleged incapacitated person*) has the following rights under Sections 45-5-309(B) and 45-5-303 and/or 45-5-405(B) and 45-5-407 NMSA 1978:

1. The right to obtain an attorney of _____ (*alleged incapacitated person*)'s choice;
2. The right to object to the individuals appointed as visitor, qualified health care professional, and guardian *ad litem*;
3. The right to attend the hearing. If _____ (*alleged incapacitated person*) is unable to be present in court, the Court upon request or its own motion may conduct hearings at _____ (*alleged incapacitated person*)'s location;
4. The right to respond to any statements made by any person at the hearing and to object to any part of this proceeding; and
5. The right to be personally served with a copy of this notice and of the petition filed in this proceeding.

THE COURT SHALL NOT GRANT THE PETITION IF THE PETITION AND THIS NOTICE OF HEARING AND RIGHTS IS NOT PERSONALLY SERVED ON _____ (ALLEGED INCAPACITATED PERSON).

BY: _____
TCAA for Judge

A copy of this Notice of Hearing and Rights is being provided as required under Sections 45-5-309(C) and/or 45-5-405(C) NMSA 1978 to the following interested persons who are identified in the information sheet submitted with the Petition under Rule 1-003.2 NMRA:

(list names and addresses of all persons identified on the information sheet)

USE NOTE

This Notice of Hearing and Rights must be used in cases filed on or after October 15, 2018. In a case filed after July 1, 2018 but before October 15, 2018, the alleged incapacitated person must receive notice that substantially complies with the notice-of-rights requirements set forth in NMSA 1978, §§ 45-5-309(B) and 45-5-405(B).

[Provisionally approved by Supreme Court Order No. 18-8300-007, effective for all cases filed on or after October 15, 2018.]

DISTRICT COURT JUDGE

Copies to:

[Approved by Supreme Court Order No. 18-8300-005, effective for all cases on or after July 1, 2018.]

Form 4-998. Conservator's report.

[For use with Rule 1-140 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____
_____ JUDICIAL DISTRICT

In the matter of _____,
a Protected Person.

No. _____

CONSERVATOR'S REPORT

Please note: Fill out this financial summary after you have completed this entire report. Use the information that you enter in Sections II through V of this report and the information from the reports that you filed last year and two years ago.

FINANCIAL SUMMARY		Current	Last Year	Two Years Ago
A.	Net Asset Value of Previous Year's Report (or Beginning Inventory if this is your first report)	\$		
B.	Plus Income (Total from Section II, below)	\$		
C.	Less Expenses (Total from Section III, below)	\$		
D.	Plus additions or (minus) deletions to inventory during the year	\$		
E.	(Minus) additions or plus deletions to debt during the year	\$		
F.	Net Asset Value (A + B - C +/- D +/- E)	\$		
	Assets (Sum Total from Section IV, below)	\$		
	Less Debts (Sum Total from Section V, below)	\$		
	Net Asset Value (Line F)	\$		

Instructions.

*If you were appointed conservator within the past ninety (90) days, do not use this form. The first report that you must file is a **Conservator's Inventory, Form 4-997 NMRA**. The **Conservator's Inventory** is due within ninety (90) days of your appointment.*

*You must use this form, Form 4-998 NMRA, when you file a **Conservator's Report**. The purpose of a **Conservator's Report** is to give the court as complete a picture as possible of the current financial situation for the person under conservatorship, also called the **Protected Person**.*

1. *This **Conservator's Report** is due as follows:*
 - a. *You must complete and file this **Conservator's Report** every year within thirty (30) days of the anniversary date of your appointment as conservator.*
 - b. *You must complete and file this **Conservator's Report** within sixty (60) days of your resignation, removal, or termination as conservator.*
2. *Please type or print clearly using ink.*
3. *Complete all sections of this report.*
4. *Attach additional pages if necessary.*
5. *After completing this report, you must sign it under penalty of perjury.*
6. *Copies of this report must be given to the **Protected Person**, the **Protected Person's** guardian if one has been appointed, and any other persons specified by the court.*
7. *Keep a copy of this report for your records.*
8. *You must keep a copy of **ALL** of the **Protected Person's** financial records for seven (7) years and make them available to the court upon request.*

REPORTING PERIOD.

This report covers the dates beginning _____ and ending _____.

Is this a Final Report? Yes No

If yes, please check the box that explains why you are filing a Final Report and fill in the requested information.

The Protected Person has died (*attach a copy of the death certificate if available*).

Date and place of death: _____

Name of personal representative, if appointed: _____

Address: _____

The court has appointed a new conservator.

Name of new conservator: _____

Address and phone number of new conservator: _____

The court has issued an order ending the conservatorship.

Other (*please explain*): _____

SECTION I - Information about the Protected Person.

A. Protected Person's name: _____

B. Protected Person's age: _____

C. Protected Person's physical address: _____

Mailing address (if different): _____

D. Protected Person's telephone number(s) and other contact information:

Home: _____ Cell: _____

Work: _____ Fax: _____

Email: _____

E. Has a guardian also been appointed for the Protected Person?

Yes No

If yes, name of guardian: _____

Address: _____

Phone: _____

F. Does the Protected Person have sole control over any money?

Yes No

If yes, explain: _____

G. Has the Protected Person's residence changed in the past 12 months?

Yes No

If yes, explain: _____

H. Describe any significant actions you have taken as conservator regarding the Protected Person's financial condition during the reporting period. _____

I. Describe any significant changes of circumstances for the Protected Person (financial, physical or mental health, living arrangements, etc.). _____

J. Is the Protected Person the beneficiary of a trust? Yes No

If yes, what is the name of the trust? _____

What is the current value of the trust? _____

Who is the trustee? _____

What is the trustee's contact information? _____

K. Are the Protected Person's funds kept in a separate account from the conservator's funds?

Yes No

If no, explain: _____

SECTION II - Income. (*Fill in only the boxes that apply to the Protected Person's income; leave the other boxes blank*)

Description of each Income Source (Report only the income received by the Protected Person, not your income)		Amount Received this Reporting Period	Amount Received last year	Amount Received two Years ago
Social Security Benefits				
	Social Security	\$		
	Social Security Disability Insurance (SSDI)	\$		
	Supplemental Security Income (SSI)	\$		
Veterans Financial Benefits		\$		
Trust Income		\$		
Wages		\$		
Worker's Compensation Benefits		\$		
Dividends Received		\$		
Interest Income		\$		

Description of each Income Source <i>(Report only the income received by the Protected Person, not your income)</i>		Amount Received this Reporting Period	Amount Received last Year	Amount Received two Years ago
Refunds				
	Tax Refunds	\$		
	Insurance Refunds	\$		
	Other Refunds <i>(explain)</i> _____	\$		

	Realized Gain/Loss on Sale of Asset	\$		
	Rental Income	\$		
	Royalty Income (oil, gas, etc.)	\$		
	Pension or 401(k) Distributions	\$		
	Annuity Income	\$		
	Alimony or Child Support	\$		
	Inheritance and Gifts Received	\$		
	Sale of Personal Property Not Listed on Inventory	\$		
	IRA Distributions	\$		
	Distribution from Tribal or Pueblo Government	\$		
	Life Insurance Proceeds	\$		
	Other <i>(reverse mortgage, etc.)</i> _____	\$		

SECTION II TOTAL		\$		

SECTION III - Expenses. (Fill in only the boxes that apply to the Protected Person's expenses; leave the other boxes blank)

Description of each Type of Expense (money paid to anyone on behalf of the Protected Person or on behalf of his/her legal dependents)		Expense this Reporting Period	Expense one Year ago	Expense two Years ago
Nursing/Assisted Living Home		\$		
In-Home Care		\$		
Rent Payment		\$		
Mortgage Payment				
	Mortgage Interest	\$		
	Mortgage Escrow	\$		
	Homeowner's Insurance if Not Paid by Escrow Account	\$		
	Property Tax if Not Paid by Escrow Account	\$		
Utilities (Gas, Electric, Water, and Sewer)		\$		
Cable/Satellite Television and/or Internet Service		\$		
Cell and other Phone Service		\$		
Transportation (including gasoline expenses)		\$		
Medical, Dental, and Vision Treatment Costs Not Paid by Insurance (including co-pays and deductibles)		\$		
Medical Supplies and Equipment		\$		
Medications Not Paid by Insurance (including co-pays and deductibles)		\$		
Credit Card Payments		\$		
Food, Groceries, Dining		\$		

Description of each Type of Expense <i>(money paid to anyone on behalf of the Protected Person or on behalf of his/her legal dependents)</i>		Expense this Reporting Period	Expense one Year ago	Expense two Years ago
Clothing		\$		
Recreation, Entertainment, Memberships		\$		
Travel (Vacation, Family Visits, etc.)		\$		
Household Goods and Electronics		\$		
Personal Grooming		\$		
Personal Spending Allowance		\$		
Pet Care (Food, Veterinary Care, Kennel, etc.)		\$		
Income Tax				
	Total Federal Payments	\$		
	Total State Payments	\$		
Home/Property Maintenance Costs (including housekeeping and yard service)		\$		
Insurance				
	Auto Insurance	\$		
	Medical Insurance	\$		
	Life Insurance	\$		
	Other Insurance (Long Term Care, Etc.)	\$		
Court Approved Gifts		\$		
Other Gifts or Charitable Donations		\$		
Child/Spousal Support		\$		

Description of each Type of Expense (<i>money paid to anyone on behalf of the Protected Person or on behalf of his/her legal dependents</i>)	Expense this Reporting Period	Expense one Year ago	Expense two Years ago
Legal Fees	\$		
Fees/Costs Paid to Conservator	\$		
Fees/Costs Paid to Guardian	\$		
Accounting Fees	\$		
Court Costs	\$		
Conservator's Bond	\$		
Case Management	\$		
Other Expenses (<i>describe</i>) _____	\$		
SECTION III TOTAL	\$		

SECTION IV – Assets. (Fill in only the boxes that apply to the Protected Person's assets; leave the other boxes blank)

A. Are you holding cash on hand on behalf of the Protected Person?

Yes No If yes, amount \$ _____

If yes, why is cash kept on hand? _____

B. Bank Accounts.

Name of Bank/Institution	Type of Account (Examples: checking, savings, certificates of deposit, etc.)	Value on last Day of Reporting Period
		\$

		\$
		\$
TOTAL		\$

C. Investment Accounts.

Name of Bank/Institution	Type of Account (Examples: brokerage, investment, money market, stocks, bonds, IRAs, 401(k) plan, etc.)	Value on last Day of Reporting Period
		\$
		\$
		\$
TOTAL		\$

D. Life Insurance Policies.

Name of Company	Type of Insurance (Examples: whole, term or universal, etc.)	Cash Value on last Day of Reporting Period
		\$
		\$
TOTAL		\$

E. Real Estate.

Address and Type of Property (Examples: residential, rental, commercial, agricultural, or mineral interests)	Method for Determining Value (Examples: appraisal, tax assessment, market value, etc.)	Current Market Value
		\$
		\$
TOTAL		\$

F. Vehicles.

Make, Model, and Year (List all cars, boats, ATVs, etc.)	Current Market Value	
	\$	
	\$	
	\$	
TOTAL		\$

G. Other Property Not Listed Above.

Detailed Description of Item or Collection (Only list items or collections that are worth more than \$500.00)	Method for Determining Value (Examples: appraisal, market value, etc.)	Current Market Value
		\$
		\$
		\$
		\$

		\$
TOTAL		\$

H. Total Value Of Assets Listed Above. *(The sum of all "TOTALS" reported in Section IV)*

SECTION IV SUM TOTAL

\$

SECTION V – Debts. *(Fill in only the boxes that apply to the Protected Person’s debts; leave the other boxes blank)*

A. Real Estate Debts.

Address of Property and Name of Lender	Type of Property (examples: residential, rental, commercial, or agricultural)	Amount Owed on last Date of Reporting Period
		\$
		\$
TOTAL		\$

B. Other Loans.

Lender/Creditor Name	Purpose of Loan (Examples: automobile loan or personal payday loan, etc.)	Amount Owed on last Date of Reporting Period
		\$
		\$
TOTAL		\$

C. Credit Cards.

Company Name and Address	Amount Owed on last Date of Reporting Period
	\$
	\$
	\$
TOTAL	\$

D. Judgments/Liens.

Judgment/Lien Description	Amount Owed on last Date of Reporting Period
	\$
	\$
TOTAL	\$

E. Other Liabilities/Debts. (*promissory notes, IOUs, personal loans, etc.*)

Description	Amount owed on Last Date of Reporting Period
	\$
	\$
	\$
TOTAL	\$

F. Total Amount Owed By Protected Person. (*The sum of all "TOTALS" reported in Section V.*)

SECTION V SUM TOTAL

\$

G. Explain any personal or professional relationship between the conservator and any lender/creditor listed in any section above: _____

H. Explain any personal or professional relationship between the Protected Person and any lender/creditor listed in any section above: _____

SECTION VI - Information about the Conservator.

For purposes of this section, "conservator" means an individual or a corporate entity appointed by the court, and includes any individual working for a corporate entity who is responsible for the Protected Person.

A. Does the conservator have any significant physical or mental health problems that would interfere with the ability to continue as conservator in the next year?

Yes No

If yes, please explain: _____

B. Does the conservator charge a fee or receive payment for acting as the Protected Person's conservator? Yes No

If yes, how much has the conservator received since the conservator's last report?

How is the conservator's fee or payment calculated? _____

C. Since the conservator's last report (or since the conservator's appointment if this is the conservator's first report), has the conservator,

1. Been arrested for, charged with, or convicted of any felony or misdemeanor?

Yes No

If yes, please explain: _____

2. Been investigated by the Children, Youth and Families Department (CYFD), Adult Protective Services (APS), Internal Revenue Service (IRS), or any other governmental agency?

Yes No

If yes, please explain: _____

3. Filed for bankruptcy or received protection from creditors?

Yes No

If yes, please explain: _____

4. Had any professional or occupational license revoked or suspended?

Yes No

If yes, please explain: _____

5. Had the conservator's driver's license suspended or revoked?

Yes No

If yes, please explain: _____

6. Delegated any powers over the Protected Person to another person?

Yes No

If yes, who were power(s) delegate to? _____

What power(s) were delegated? _____

For what period(s) of time? _____

7. Received any special training or certification as a conservator?

Yes No

If yes, please explain: _____

D. Is the conservator a court-appointed guardian or conservator for any other person?

Yes No

If yes, please list the court and case number(s) for each (*attach additional pages if necessary*): _____

E. If the conservator is required to have a conservator's bond, is the bond still in place?

Yes No

If no, please explain: _____

AFFIRMATION UNDER PENALTY OF PERJURY

I, _____, am the conservator of _____, and I affirm under penalty of perjury under the laws of the State of New Mexico that the information in this report is true and correct.

Date Submitted: _____

Conservator's Signature

Typed/Printed Name

Street or Post Office Address

City, State and Zip Code

Telephone Number(s)

Fax Number

Email

Is this a change in address from your previous report? Yes No

CERTIFICATE OF SERVICE

I certify that on *(date)* _____ I served a copy to the following individuals:

Protected Person

- By mail or other delivery service
- By fax (*number*) _____
- By hand delivery
- By e-mail

Person(s) designated by court order
(name and address):

- By mail or other delivery service
- By fax (*number*) _____
- By hand delivery
- By e-mail

- By mail or other delivery service
- By fax (*number*) _____
- By hand delivery
- By e-mail

- By mail or other delivery service
- By fax (*number*) _____
- By hand delivery
- By e-mail

- By mail or other delivery service
- By fax (*number*) _____
- By hand delivery
- By e-mail

Typed/Printed Name

Conservator's Signature

[Approved by Supreme Court Order No. 18-8300-005, effective for all cases on or after July 1, 2018.]

Form 4-996. Guardian's report.

[For use with Rule 1-140 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____
_____ JUDICIAL DISTRICT

In the matter of _____,
a Protected Person.

No. _____

GUARDIAN'S REPORT

Instructions.

*You must use this form, Form 4-996 NMRA, when you file a **Guardian's Report**. The purpose of this **Guardian's Report** is to give the court information about an adult for whom a guardian has been appointed.*

- 1. You must complete and file this **Guardian's Report**, as follows:
 - a. Within ninety (90) days of your appointment as guardian by the court;*
 - b. Every year within thirty (30) days of the anniversary date of your appointment as guardian;*
 - c. Within thirty (30) days of your resignation, removal, or termination as guardian; and*
 - d. As otherwise ordered by the court.**
- 2. Please type or print clearly using ink.*
- 3. Complete all sections of this report that apply, and answer all questions thoroughly.*
- 4. Attach additional pages if necessary.*
- 5. After completing this report, you must sign it under penalty of perjury.*
- 6. Copies of this report must be given to the Protected Person, the Protected Person's conservator if one has been appointed, and any other persons specified by the court.*
- 7. Keep a copy of this report for your records.*
- 8. If you give financial information in Section (IV)(D) of this report, you must keep a copy of **ALL** of the Protected Person's financial records for seven (7) years and make them available to the court upon request.*

TYPE OF REPORT: 90-day Annual Final

Date of your appointment as guardian: _____

*If this is a **Final Report**, please check the box below that explains why you are filing a **Final Report**, and fill in the requested information. If this is not a **Final Report**, skip to Section I.*

The Protected Person has died (*attach a copy of the death certificate if available*).

Date and place of death: _____

Name of personal representative, if appointed: _____

Address: _____

The court has appointed a new guardian.

Name of new guardian: _____

Address and phone number of new guardian: _____

The court has issued an order ending the guardianship.

Other (*please explain*): _____

SECTION I – Information about the Protected Person.

A. Protected Person's name: _____

B. Protected Person's age: _____

C. Protected Person's physical address: _____

Mailing address (if different): _____

D. Protected Person's telephone number(s) and other contact information:

Home: _____ Cell: _____

Work: _____ Fax: _____

Email: _____

E. Has the Protected Person's residence changed in the last 12 months?

Yes No

If yes, please explain why: _____

F. Will the Protected Person's residence change in the next 12 months?

Yes No Unknown

If yes, please explain why: _____

G. Does the Protected Person live in a facility?

Yes If yes, complete Part A, below (do not complete Part B).

No If no, complete Part B, below (do not complete Part A).

PART A

Complete Part A only if the Protected Person lives in a facility.

H. What type of facility does the Protected Person live in?

Assisted Living Facility

Group Home

Licensed Nursing Facility

Other (*please explain*) _____

I. Name of Facility: _____

Facility contact person's name: _____

Facility's physical address: _____

Facility's contact information:

Telephone: _____ Email: _____

J. How is the facility paid for? _____

K. Do you have any concerns about the quality of care that the Protected Person is receiving in the following areas?

Cleanliness Yes No

Nutrition/Meals Yes No

Personal Care Yes No

Privacy Yes No

Individualized Care Plans Yes No

Safety Yes No

Other: _____ Yes No

If you marked yes to any of the above, please explain: _____

L. Has the Protected Person been restricted from communicating, visiting, or interacting with others? Yes No

If yes, describe the restrictions: _____

What are the reasons for the restrictions? _____

Who imposed the restrictions? _____

When were the restrictions imposed? _____

Are the restrictions still in place? Yes No

M. Have others been restricted from communicating, visiting, or interacting with the Protected Person? Yes No

If yes, describe the restrictions: _____

What are the reasons for the restrictions? _____

Who imposed the restrictions? _____

When were the restrictions imposed? _____

Are the restrictions still in place? Yes No

N. Why was this facility chosen for the Protected Person? _____

O. How does the Protected Person feel about the placement? _____

P. Do you believe the Protected Person could live and function more independently in a different type of setting? Yes No

Please explain your answer: _____

Q. Have you tried to change the Protected Person's residence in the past year?

Yes No

If yes, what was the outcome? _____

How does the Protected Person feel about the change of residence? _____

END OF PART A – If you filled out Part A, skip to Section II.

PART B

Complete Part B only if the Protected Person does not live in a facility.

H. Describe the Protected Person's living arrangement: _____

I. Who takes care of the Protected Person? _____

Caregiver's physical address: _____

Caregiver's contact information:

Telephone: _____ Email: _____

J. Do you have any concerns about the quality of care that the Protected Person is receiving in the following areas?

- | | | |
|-----------------|------------------------------|-----------------------------|
| Cleanliness | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Nutrition/Meals | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Personal Care | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Privacy | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Safety | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Other: _____ | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

If you marked yes to any of the above, please explain: _____

K. List all people living with the Protected Person and their relationship to the Protected Person: _____

L. Has anyone moved into or out of the Protected Person's residence during the last 12 months? Yes No

If yes, please explain: _____

M. List any person who lives with the Protected Person and is paid to provide services for the Protected Person. (*attach additional pages if necessary*)

Name: _____

Relationship to Protected Person: _____

Types of Services: _____

Payment: _____ Source of Payment: _____

N. Do you have concerns about anyone who lives with the Protected Person?

Yes No

If yes, please explain: _____

O. Why was this living arrangement chosen for the Protected Person? _____

P. How does the Protected Person feel about the living arrangement? _____

Q. Do you believe the Protected Person could live and function more independently in a different type of setting? Yes No

Please explain your answer: _____

R. Have you tried to change the Protected Person's residence in the past year?

Yes No

If yes, what was the outcome? _____

How does the Protected Person feel about the change of residence? _____

- S. Has the Protected Person been restricted from communicating, visiting, or interacting with others? Yes No

If yes, describe the restrictions: _____

What are the reasons for the restrictions? _____

Who imposed the restrictions? _____

When were the restrictions imposed? _____

Are the restrictions still in place? Yes No

- T. Have others been restricted from communicating, visiting, or interacting with the Protected Person? Yes No

If yes, describe the restrictions: _____

What are the reasons for the restrictions? _____

Who imposed the restrictions? _____

When were the restrictions imposed? _____

Are the restrictions still in place? Yes No

END OF PART B – Continue to Section II.

SECTION II - Protected Person's Health.

A. Please describe the Protected Person's current physical health:

Poor Fair Good Excellent

Please explain: _____

Please describe any changes to the Protected Person's physical health in the last 12 months: _____

Please describe any medical treatment the Protected Person received in the last 12 months: _____

B. Please describe the Protected Person's current mental health:

Poor Fair Good Excellent

Please explain: _____

Please describe any changes to the Protected Person's mental health in the last 12 months: _____

Please describe any mental health treatment the Protected Person received in the last 12 months: _____

C. Is the Protected Person under a healthcare provider's regular care?

Yes No

If yes, please identify the Protected Person's healthcare providers:

Primary care provider: _____

Dentist: _____

Mental health professional: _____

Other: _____

D. How does the Protected Person feel about these healthcare providers? _____

E. Do you attend the Protected Person's medical and/or mental health appointments?

Yes No

If no, why not? _____

SECTION III - Protected Person's Services and Activities.

A. Is the Protected Person receiving support services, including public benefits?

Yes No

If yes, please list: _____

B. Are you in regular contact with the Protected Person's support-service providers?

Yes No

If yes, how often and in what manner? _____

If no, why not? _____

C. Is the Protected Person involved in selecting the Protected Person's services?

Yes No

If no, please explain: _____

D. Is the Protected Person involved in developing the Protected Person's care plan or service

plan? Yes No

If no, why not? _____

E. Does the Protected Person participate in social activities, such as family gatherings, local

events, worship services, or community groups? Yes No

If yes, please describe: _____

If no, why not? _____

SECTION IV - Protected Person's Financial Status.

A. Does the Protected Person have a conservator? Yes No

If yes, what is the conservator's name and contact information? _____

B. Are you responsible for the Protected Person's money in your role as guardian?

Yes No

If yes, are you keeping the Protected Person's money and your money in separate accounts? Yes No

If no, why not? _____

C. Are you responsible for the Protected Person's money in any other capacity or role (e.g., Representative Payee, VA Fiduciary, Power of Attorney, Trustee)?

Yes No

If yes, please describe: _____

D. If you are responsible for the Protected Person's money, please complete the following summary of financial activity **since your appointment or last report**:

Balance of Protected Person's bank accounts on date of your appointment or last report (savings, checking, CDs, money market, etc.)	\$	0.00
Plus (+) money received from any source on behalf of the Protected Person (Social Security, SSI, pension, disability, interest, etc.)	+	0.00
Less (-) total fees to care providers	-	0.00
Less (-) total monies paid to the Protected Person (personal needs, etc.)	-	0.00
Less (-) total fees paid to guardian	-	0.00
Less (-) any other expenses (housing, insurance, maintenance, etc.)	-	0.00
Ending balance of bank accounts	\$	0.00

If you are responsible for the Protected Person's money, you must keep a copy of ALL of the Protected Person's financial records for seven years and make them available to the court upon request.

E. Is the Protected Person employed? Yes No

If yes, identify the Protected Person's employer, job title, and wages: _____

Does the Protected Person have control of these wages? Yes No

If no, why not? _____

F. Describe efforts to allow the Protected Person to make financial decisions: _____

G. Have there been any significant changes in the Protected Person's ability to manage finances? Yes No

If yes, describe: _____

H. Have there been any significant changes in the Protected Person's financial situation, such as a settlement, inheritance, lottery winnings, reverse mortgage, etc.?

Yes No

If yes, describe: _____

SECTION V – Information about the Guardianship.

A. Describe significant decisions you have made for the Protected Person in the last 12 months (e.g., change in healthcare providers, enrollment in hospice, discontinuation of

treatment, surgery, etc.): _____

B. How often and in what way(s) are you in contact with the Protected Person? _____

C. When was the last time you were in contact with the Protected Person? _____

D. Describe any significant problems or unmet needs of the Protected Person not described

elsewhere: _____

E. Does the Protected Person believe that the guardianship should be changed or terminated? Yes No

If yes, please explain: _____

Have you informed the Protected Person that the Protected Person may contact the court

to request changing or terminating the guardianship? Yes No

If no, why not? _____

F. Do you believe that the guardianship should be changed or terminated?

Yes No

If yes, you have a duty to file a separate written request asking the court to schedule a status conference to review the guardianship.

G. How does the Protected Person feel about the guardianship? _____

H. Is there anything else you would like to tell the court about the guardianship? _____

SECTION VI – Information about the Guardian.

For purposes of this section, “guardian” means an individual or a corporate entity appointed by the court, and includes any individual working for a corporate entity who is responsible for the Protected Person.

A. Does the guardian have any significant physical or mental health problems that would interfere with the ability to continue as guardian in the next year? Yes No

If yes, please explain: _____

B. Does the guardian charge a fee or receive payment for acting as the Protected Person’s guardian? Yes No

If yes, how much have has the guardian received since the guardian’s last report (or since the guardian’s appointment if this is the guardian’s first report)? _____

How is the guardian’s fee or payment calculated? _____

Who pays the guardian’s fee? _____

C. Since the guardian's last report (or since the guardian's appointment if this is the guardian's first report), has the guardian,

1. Been arrested for, charged with, or convicted of any felony or misdemeanor?

Yes No

If yes, please explain: _____

2. Been investigated by the Children, Youth and Families Department (CYFD), Adult Protective Services (APS), Internal Revenue Service (IRS), or any other governmental agency?

Yes No

If yes, please explain: _____

3. Filed for bankruptcy or received protection from creditors?

Yes No

If yes, please explain: _____

4. Had any professional or occupational license revoked or suspended?

Yes No

If yes, please explain: _____

5. Had the guardian's driver's license suspended or revoked?

Yes No

If yes, please explain: _____

6. Delegated any powers over the Protected Person to another person?

Yes No

If yes, who were power(s) delegated to? _____

What power(s) were delegated? _____

For what period(s) of time? _____

7. Received any special training or certification as a guardian?

Yes No

If yes, please explain: _____

D. Is the guardian a court-appointed guardian or conservator for any other person?

Yes No

If yes, please list the court and case number(s) for each (*attach additional pages if necessary*): _____

AFFIRMATION UNDER PENALTY OF PERJURY

I, _____, am the guardian of _____, and I affirm under penalty of perjury under the laws of the State of New Mexico that the information in this report is true and correct.

Date Submitted: _____

Guardian's Signature

Typed/Printed Name

Street or Post Office Address

City, State and Zip Code

Telephone Number(s)

Fax Number

Email

Is this a change in address from your previous report? Yes No

CERTIFICATE OF SERVICE

I certify that on *(date)* _____ I served a copy to the following individuals:

Protected Person

By mail or other delivery service
 By fax *(number)* _____
 By hand delivery
 By e-mail

Person(s) designated by court order
(name and address):

By mail or other delivery service
 By fax *(number)* _____
 By hand delivery
 By e-mail

By mail or other delivery service
 By fax *(number)* _____
 By hand delivery
 By e-mail

By mail or other delivery service
 By fax *(number)* _____
 By hand delivery
 By e-mail

By mail or other delivery service
 By fax *(number)* _____
 By hand delivery
 By e-mail

Typed/Printed Name

Guardian's Signature

[Approved by Supreme Court Order No. 18-8300-005, effective for all cases on or after July 1, 2018.]

Administrative Office of the Courts

Supreme Court of New Mexico

Arthur W. Pepin, Director



237 Don Gaspar, Room 25
Santa Fe, NM 87501
(505) 827-4800
(505) 827-4824 (fax)

Judicial Information Division (JID)

Processing Adult Conservatorship/Guardianship Cases

Standard Operating Procedure

Version 1.3

Updated: (10/2018)

Processing Adult Conservatorship/Guardianship Cases

COURT / DEPARTMENT / DIVISION

District Court staff

USER

District Court clerks and in some courts TCAAs

PURPOSE

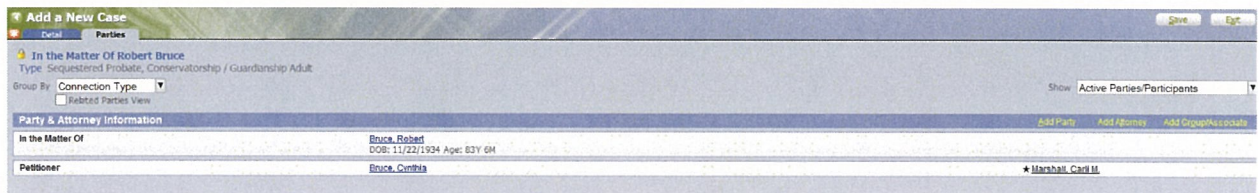
To process Adult Guardianship/Conservatorship cases

NAVIGATION

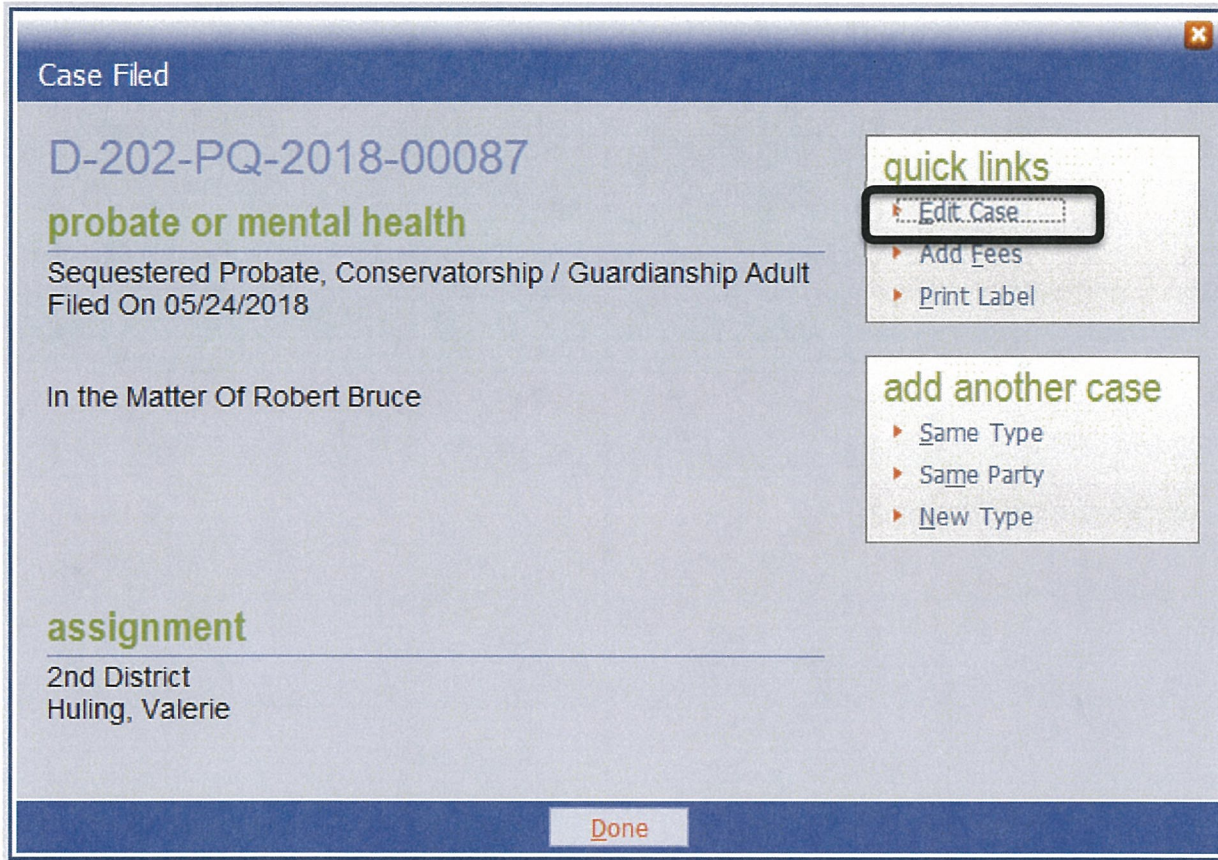
This procedure begins by clicking the Add a Case hyperlink

STEPS

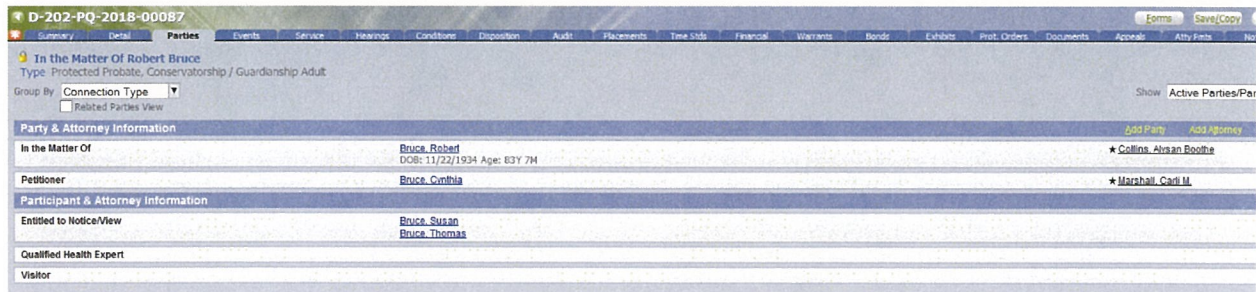
1. Case Initiation. Conservatorship/Guardianship cases are filed in the District Court Clerk's office and the case is initiated as follows:
 - a. The case is initiated with a Case Category of Probate or Mental Health.
 - b. One of the following Case Types is selected depending on the contents of the petition filed:
 - Protected Probate, Conservatorship/Guardianship of an Adult
 - Protected Probate, Conservatorship of an Adult
 - Protected Probate, Guardianship of an Adult
 - c. The Add a New Case dialog will display.
 - d. The data on the Detail tab will default.
 - e. Navigate to the Parties tab.



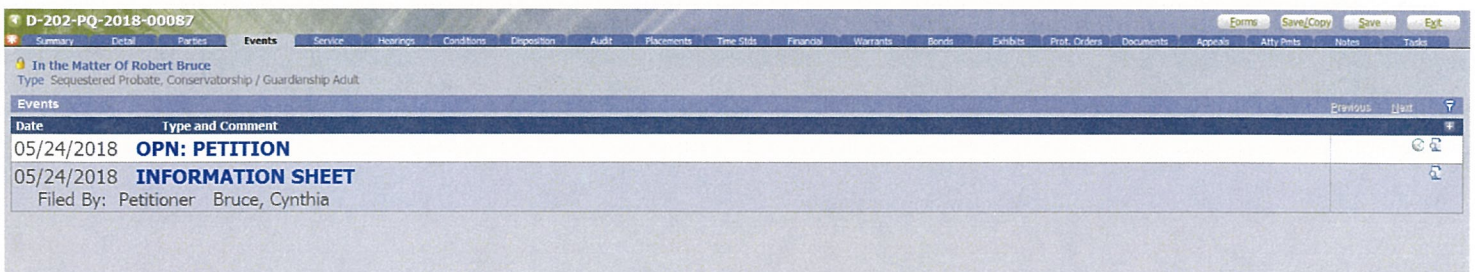
- f. Add the parties and attorneys and mark any parties pro se if you know they are self-represented litigants.
- g. Save the case.
- h. The Judge is assigned automatically and randomly by Odyssey upon case save.
- i. A Civil Case Filing Fee of \$132.00 is to be collected unless the Court has entered an Order For Free Process. If the filing fee is waived because the filing is by a State agency, credit the filing fee with the Credit Type of Exempt by Statute NMSA 1978, §34-6-40. If the filing fee is waived by free process, credit the fee using a Credit Type of Indigency.
- j. Receipt the case filing fee when the receipting dialog appears.



- k. Once the filing fee has been received or exited out of, the Case Filed dialog box will appear.
- l. Click the Edit Case quick link.



- m. The individuals listed in the Information Sheet should be entered onto the Parties tab as Entitled to Notice/View participants.



- n. The pleadings that are required to initiate the case are the Petition and the Information Sheet (the Information Sheet is a new requirement effective 7/1/2018). These events will default onto the case as part of case initiation. File stamp the petition and scan these pleadings onto the events.

NOTE: All pleadings are to be scanned onto the event after the event is docketed.

2. Once the pleadings are filed, route the case file to the assigned judge’s office for review and further processing if the court is still using paper files. If not, the Clerks’ Office shall let the Judge’s Office know the case has been initiated using their local process.
3. The Judge’s TCAA will be responsible for informing the assigned judge that the case has been filed and performing the duties necessary for scheduling the hearing, completing/preparing Notices of Hearing and distributing Notices to all persons identified on the Information Sheet as persons entitled to notice. (If the case has an attorney, the Notices of Hearing are usually provided to the court for completion and mailing. If the petitioner is a self-represented litigant, then the TCAA may need to create and mail the Notice of Hearing. At some courts the self-represented litigants are also required to provide the Notice of Hearing forms.)
4. In some cases, a temporary Guardian and/or a temporary Conservator is appointed. When this is the case an Order Appointing Temporary Guardian and/or an Order Appointing Temporary Conservator is created. The pleadings will be file stamped and docketed using event code 8386 ORD: Appointing Temporary Guardian and or 8387 ORD: Appointing Temporary Conservator. If both are appointed in one order both event codes shall be docketed and the order shall be scanned and/or related to both events.
5. An Order of Appointment will also be created appointing a Qualified Health Care Professional, a Visitor and a Guardian Ad Litem. This pleading will also be file stamped and docketed using event code 8277 ORD: Of Appointment.

The screenshot shows a web-based interface for a legal case. At the top, the case number is 'D-202-PQ-2018-00087'. Below this, there are tabs for 'Summary', 'Detail', and 'Parties', with 'Parties' currently selected. The case title is 'In the Matter Of Robert Bruce' and the type is 'Protected Probate, Conservatorship / Guardianship Adult'. There are options to 'Group By' (set to 'Connection Type') and 'Show Active Parties'. The main content area is divided into sections: 'Party & Attorney Information' and 'Participant & Attorney Information'. The 'Party & Attorney Information' section lists 'In the Matter Of' (Bruce, Robert, DOB: 11/22/1934, Age: 83Y 7M) with attorney 'Collins, Ailsan Boothe' and 'Petitioner' (Bruce, Cynthia) with attorney 'Marshall, Carli M.'. The 'Participant & Attorney Information' section lists 'Entitled to Notice/View' (Bruce, Susan and Bruce, Thomas), 'Qualified Health Expert' (LYNCH, JEROME J), and 'Visitor' (JONES, SARAH).

Party & Attorney Information	
In the Matter Of	Bruce, Robert DOB: 11/22/1934 Age: 83Y 7M
	★ Collins, Ailsan Boothe
Petitioner	Bruce, Cynthia
	★ Marshall, Carli M.
Participant & Attorney Information	
Entitled to Notice/View	Bruce, Susan Bruce, Thomas
Qualified Health Expert	LYNCH, JEROME J
Visitor	JONES, SARAH

6. The Qualified Health Care Professional, Visitor and Guardian Ad Litem will be added on the Parties tab. (Remember that the Guardian Ad Litem is an attorney type and is added as the attorney for the In the Matter of party.)
7. Reports from the Qualified Health Care Professional, Visitor and Guardian Ad Litem will be filed by those case participants. These reports will be docketed using event code 8692 Report. Use the Filed By field on the event to indicate who filed the report since the same event code is used for all the reports. Do not forget that the documents attached to these events should be sealed. Access to these documents is limited to: the In the Matter of party, the visitor, the Guardian Ad Litem, the attorneys of record, and an agent under a power of attorney unless the court orders otherwise. The court also has discretion to order that others may view these documents.
8. The Court will hold a hearing and appoint a permanent Guardian/Conservator or deny the petition. The Guardian/Conservator is appointed when the Judge signs the Order Appointing Guardian/Conservator. If the court does not appoint a Guardian/Conservator, then the case is dismissed. If the case is dismissed, skip to step 20 for instructions.
9. When issuing the order appointing the Guardian/Conservator, the judge will make a finding as to whether a full/plenary conservator/guardian or a limited conservator/guardian will be appointed. If a full/plenary Guardian/Conservator is appointed the protected person will be reported by JID to the Federal National Instant Criminal Background Check System (NICS) and will be prohibited from purchasing or possessing firearms or ammunition. Docket the notice using event code 6601 NTC: Notice of Firearms Restriction.
10. At this time the Judge shall also issue an 8385 Order Identifying Persons Entitled to Notice and Access to Court Records (form 4-993), an 8395 Order Regarding Conservator Bond, and if a full/plenary guardian/conservator is appointed a 6601 Notice of Firearms Restriction. After docketing event 8385 Order Identifying Persons Entitled to Notice and Access to Court Records, any participants that appeared in the

The screenshot shows a software interface for modifying case party details. A main window titled "Modify Case Party Details" is open, displaying information for a party named "Bruce, Thomas". A modal dialog box titled "Modify Party Connection" is overlaid on top. The dialog box contains the following fields and options:

- Radio buttons for "Configured Types" (unselected) and "All Types" (selected).
- A dropdown menu for "Connection" set to "Entitled to Notice/View".
- Radio buttons for "Party" (unselected) and "Participant" (selected).
- A label "Party" followed by the name "Bruce, Thomas".
- A date field for "Added" set to "5/29/2018".
- A date field for "Removed" set to "06/01/2018".
- A dropdown menu for "Reason" set to "Closed".
- A text field for "Comment" with a small icon and "ABC" next to it.
- A "Relationship" section with a plus sign icon.
- "Continue" and "Exit" buttons at the bottom.

The main window also has "Continue" and "Exit" buttons at the bottom.

Information Sheet but not in the order should be “removed” from the case. “Removing” a participant inactivates that participant but does not actually remove them from the record.

Note: If the Guardian/Conservator appointed is a self-represented litigant, the Court shall alert the appointed Guardian/Conservator of the bond and mandatory reports that must be filed in a timely manner. The reports are as follows:

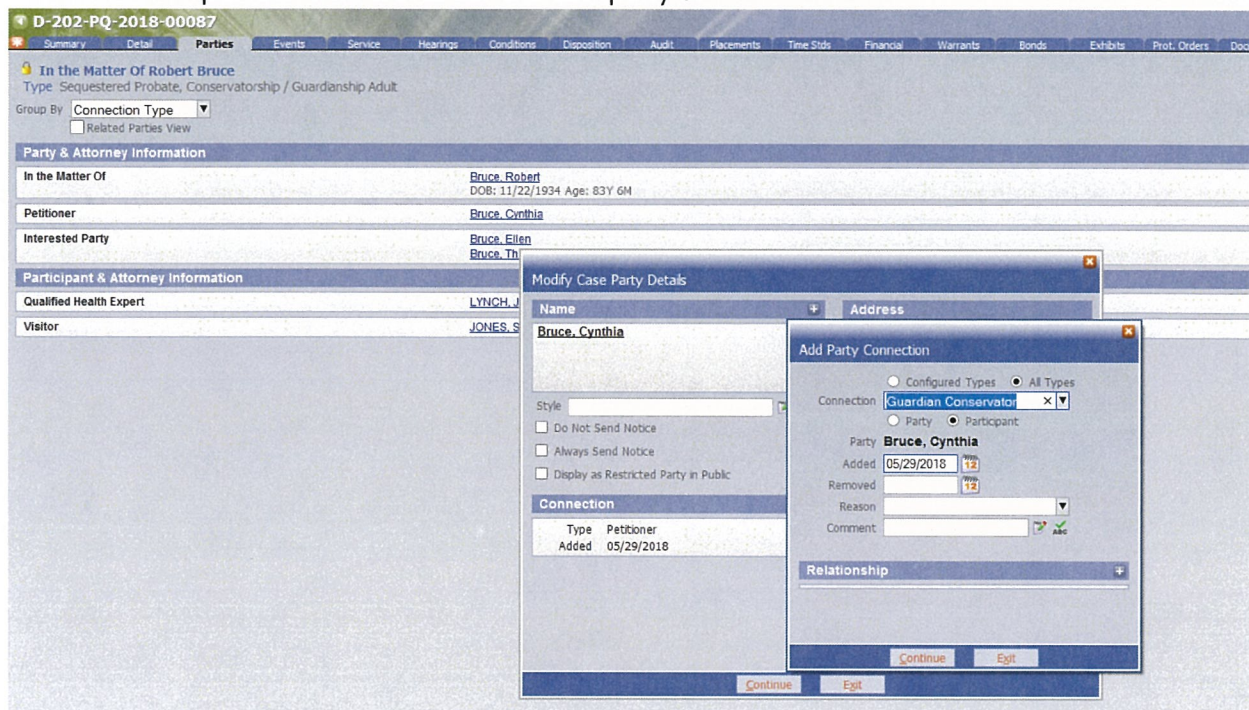
When an Order to Secure Probate Bond (form 4-994) is issued by the court at the time of the appointment of a Conservator, pursuant to NMSA 45-5-411 the Conservator must file the Conservator’s Notice of Bonding (form 4-995) with the Corporate Surety Statement (form 4-995.1) attached within 30 days of the appointment.

The Guardian’s Report (form 4-996) and/or the Conservator’s Inventory (form 4-997) shall be filed pursuant to NMSA 45-5-314 (A) within 90 days from the filing date of the Order of Appointment of Conservator/Guardian.

The Guardian Annual Report and/or Conservator’s Report (form 4-998) shall be filed pursuant to NMSA 45-5-314(A) within 30 days of the anniversary of the first order of appointment (one year plus 30 days).

The final Guardian’s Report and/or the final Conservator’s Inventory is due upon the death of the protected person. Ideally, a copy of the death certificate will accompany the report(s) but is not required by statute NMSA 1978, §45-5-306.

11. Upon receipt of the signed order in the clerks’ office, indicating a Guardian, Conservator or Guardian/Conservator has been appointed, the docket clerk will either:
 - a. Add the person or persons appointed Guardian/Conservator to the case as a Guardian, Conservator or Guardian Conservator type party. If the Guardian/Conservator is a business, enter the business as the Party not the person who works for the company or



- b. If the party already exists as part of the case record, add a connection type of Conservator, Guardian or Guardian Conservator to the party or parties who have been appointed as guardian/conservator in the order. (To add the connection, click on the party name, click the “+” by the heading “Connection.” Click on “All Types.” Choose Conservator, Guardian or Guardian Conservator from the pull-down menu. Enter the date of the order in the Added field. Click Continue twice.)
12. Then the clerk will enter the disposition/judgment and docket orders and/or notice by following these steps:
 - a. Enter the Disposition and/or judgment on the Disposition tab. The appropriate judgment types for this case type are:

- GCG - Guardianship/Conservatorship Granted or
 - GCD - Guardianship/Conservatorship Denied
- b. Navigate to the Events tab and docket the following events as appropriate (docket only what has been filed).
- 8388 NCJ: Order Appointing Full/Plenary Guardian
 - 8389 NCJ: Order Appointing Full/Plenary Conservator
 - 8390 NCJ: Order Appointing Limited Guardian
 - 8391 NCJ: Order Appointing Limited Conservator
- (All of these events require attachment of the guardian and or conservator party or parties which is why adding the Guardian/Conservator comes before docketing the event in this procedure.)
- c. The docketing of any of these event codes triggers a change in the case status to "Adjudicated Case - Report Review,"
- d. The clerk shall then docket the following event codes to facilitate tracking of reports and the setting of a review hearing:
- 8084 DUE: Conservator's Inventory (90 Day) (Filed within 90 days of appointment of a Conservator.)
 - 8085 DUE: Guardian's Report (90 Day) (if a Guardian has been appointed.)
 - 8086 DUE: Annual Guardianship Report
 - 8087 DUE: Annual Conservatorship Report
 - 8088 DUE: 10 Year Review
- When these events are docketed the due dates will be automatically calculated and may need to be adjusted if the docket date is not the same as the order date.

The screenshot shows a 'Modify Event' window. The event type is 'DUE: 90 Day Conservatorship Inventory R'. The original date is 05/24/2018, and the new due date is 08/22/2018. The time is 4:01 PM. There are checkboxes for 'Docketable' and 'Include on Appeal', and a dropdown menu for 'Does not affect case aging clock'. A 'quick links' panel on the right contains links for 'Add Next', 'Add Related', 'Add Hearing', 'Add Service', and 'Relationships'. At the bottom, there are buttons for 'Save/Print', 'Save', and 'Exit'.

Click into the Due Field and modify the due date to reflect the extension.

13. NMSA 45-5-314 (D) states that the court may not waive a report but the court may grant an extension of time not to exceed 60 days. When an Order Extending Time is filed, the clerk shall docket the order using event code 8207 ORD: Extending Time and then adjust the due date on the appropriate DUE: event by opening the event and entering the new due date in the due field.

The screenshot shows a 'Modify Event' form. The 'Type' field is set to 'DUE: Guardian's Report (90 Day)'. The 'Date' is '05/24/2018' and the 'Due' date is '08/22/2018'. The 'Completed' field is highlighted with a black box and contains the date '08/22/2018'. The 'Docketable' checkbox is checked. The 'quick links' box on the right lists: Add Next, Add Related, Add Hearing, Add Service, and Relationships. The bottom of the form has buttons for 'Save/Print', 'Save', and 'Exit'.

The date entered in the Completed field is the date the report was filed.

14. When the Conservator files the Conservator's Notice of Bonding (form 4-995) with the Corporate Surety Statement (form 4-995.1) attached, docket this pleading with event code 6547 NTC: Conservator's Notice of Securing Conservator Bond.

15. When the Initial or 90 day Conservator Inventory Report and/or the 90 day Guardianship Report are filed, the clerk will:
 - a. Navigate to the Events tab.
 - b. Docket the event code 9220 90-Day Conservator's Inventory and/or 8966 90-Day Guardian's Report.
 - c. Navigate to the Parties tab of the case.
 - d. Check the address and phone number of the In the Matter of party against page 2 of the Guardian's Report or Conservator's Inventory that have been docketed in b above. Update the address and phone number data in Odyssey when appropriate.
 - e. Check the address and phone number of the In the Conservator/Guardian against the Affirmation Under Penalty of Perjury page of the Guardian's Report or Conservator's Inventory that have been docketed in b above. Update the address and phone number data in Odyssey when appropriate.
 - f. Then click into the event 8085 DUE: Guardian's Report (90 Day) and/or 8084 DUE: Conservator's Inventory (90 Day) event, enter the docket date in the completed field and save the event.

Note: NMSA 45-5-314(A) requires judges to review these Reports.

16. When the Annual Report is filed, the clerk will:

- a. Navigate to the Events tab.
- b. Docket the event code 9219 Guardian Annual Report and/or 9221 Conservator Annual Report as appropriate.
- c. Navigate to the Parties tab of the case.
- d. Check the address and phone number of the In the Matter of party against page 2 of the Guardian's Report or Conservator's Report that have been docketed in b above. Update the address and phone number data in Odyssey when appropriate.
- e. Check the address and phone number of the In the Conservator/Guardian against the Affirmation Under Penalty of Perjury page of the Guardian's Report or Conservator's Inventory that have been docketed in b above. Update the address and phone number data in Odyssey when appropriate.
- c. Click on the appropriate event 8086 DUE: Guardian's Report (Annual) or event 8087 DUE: Conservator's Report (Annual) enter the docket date in the completed field and save the event.
- d. Click Continue (ALT + C).
- e. Docket a new event 8086 DUE: Annual Guardianship Report and/or a new event 8087 DUE: Annual Conservatorship Report to track next year's report(s).

Note: There is a checkbox on the Annual Report form labeled "Final Report." If this check box is checked then the report should be checked to see if the protected person has died. Refer to 18 below.

17. There are times when either a Guardian/Conservator is no longer needed because the protected party becomes capable of taking care of their own business. In these cases the event code 3483 CLS: Termination of Guardianship/ Conservatorship is docketed. The closing event is docketed from the Disposition tab using the Case Close button. The docketing of this code will update the case status to Final Closed.

18. Sometimes the Guardian/Conservator is no longer capable of serving in the capacity of Guardian/Conservator or someone files a motion to replace the guardian/conservator. When this is the case, docket event code 9223 RCT: Motion/Petition to Reactivate. In this scenario, the case is reactivated meaning the status reflects the need for further action by the judge. The judge may issue an order appointing a new Guardian/Conservator. When this happens one of the following non-closing judgment codes is docketed:

- 8388 NCJ: Order Appointing Full/Plenary Guardian
- 8389 NCJ: Order Appointing Full/Plenary Conservator
- 8390 NCJ: Order Appointing Limited Guardian
- 8391 NCJ: Order Appointing Limited Conservator.

If the Judge denies the motion then docket 8392 NCJ: Denying MTN/PET - Conservator/Guardian Appt. Continued.

19. After the Conservator and/or Guardian reports are filed and reviewed, someone may file a motion because they have concerns about the report(s) or if the judge has concerns, the

judge may set a hearing. When such a motion is filed or if the Judge sets the hearing on their own, docket event code 9223 RCT: Motion/Petition to Reactivate. A hearing will be held and the judge will make a finding. If the Judge finds the concerns justified, the judge will issue an Order of Referral, requesting a review and evaluation by the State Auditor of a protected person's estate and financial affairs. The district court shall also direct the conservator or guardian to provide the State Auditor with supporting documentation requested by the State Auditor. When an Order of Referral is filed, docket event code 8394 ORD: of Referral for Review/Audit. At this time, also docket the event 8072 DUE: Audit Review/Report. When the State Auditor's Office completes the review or audit a report will be filed. When the report is filed docket it using event code 9100 Report of Review/Audit.

20. Often the event that ends the need for a Guardian and/or Conservator is the death of the protected person. When that event occurs, the Court's duty to review annual reports ends. At this time, the event code 3484 CLS: Protected Person Deceased should be docketed. The docketing of this code will update the case status to Final Closed. The protected person's date of death is to be entered on the global party record as shown above.

The screenshot shows a 'Modify Party' window with a 'General' tab selected. The 'Name' field contains 'Bruce, Robert'. The 'Date of Death' field is highlighted with a red box and is currently empty. Other fields include 'Birth Date' (11/22/1934), 'Driver's License', 'Social Security', 'Current Known Addresses', 'Current Known Phones', 'Current Known E-mails', 'Other Links', 'Legacy IDs', and 'Party ID' (9966879). The 'Save' and 'Exit' buttons are visible at the bottom.

21. Another event that can occur is for the Protective Person to be moved to another Jurisdiction. This event can have 2 scenarios: the first being transfer to another court within the State of New Mexico; and the second being transfer out of the State of New Mexico. Please refer to the Standard Operating Procedures entitled Transferring Conservatorship/Guardianship Cases within the State of New Mexico or Transferring Conservatorship/Guardianship Cases to Another State.

22. To close the case due to dismissal, follow these steps:

- a. When the Clerks' Office receives the Order of Dismissal, the clerk shall navigate to the Disposition tab and click on the yellow hyperlink labeled Judgment.
- b. Enter the Judgment Type code of GCD Guardianship/Conservatorship Denied or if the party has withdrawn their petition the judgment type code DDDM Dismiss/Decided by Dispositive Motion/Dismissed by Judge/Party is used and adjust the Judgment Date if appropriate.
- c. Click on the Case Close Button.
- d. The Case Close dialog will display.

The screenshot shows two overlapping dialog boxes from a software application. The background dialog is titled "Case Close D-202-PQ-2018-00087". It has a date field set to "06/06/2018" and a time field set to "12:13 PM". There are several sections with checkboxes and input fields: "Today and Future Hearings" with "Cancel" and "Delete" radio buttons; "Hearing Type", "Hearing Reason", and "Setting Reason" dropdown menus; "Open Warrants" with "Status", "Location", and "Comment" fields; and "Add Events" which is checked. An "Events" list is visible at the bottom with a "+" sign. The foreground dialog is titled "Add Event". It has a "Type" dropdown menu set to "CLS: ORDER OF DISMISSAL", a date field set to "06/06/2018", and a time field set to "12:13 PM". It also has "Comment", "Party", and "Judicial Officer" fields. At the bottom of the "Add Event" dialog are "Continue" and "Exit" buttons. At the bottom of the "Case Close" dialog are "Save" and "Exit" buttons.

- e. Check to be sure the date in the upper, left-hand corner of the dialog box matches the date on the order. If not, change it to match.
- f. Click on the checkbox labeled Add Events in the lower, left-hand corner of the dialog box.
- g. Click the + sign to enter an event.
- h. Enter the appropriate event code. It may be 3548 CLS: Order of Dismissal or it may be another closing dismissal code depending on the order. (Additional options include: 3508 Dismissal by Party and 3553 Stipulated Dismissal.)

- i. Click the Continue button.
- j. Click the Save button.
- k. Scan the order to the event.

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Judicial Information Division (JID)

Conservatorship/Guardianship Case Review Standard Operating Procedure

Version 1.0

Updated: (10/2018)

Conservatorship/Guardianship Case Review

COURT / DEPARTMENT / DIVISION

This standard operating procedure (SOP) is to be used by District Courts in Fiscal Year 2019 (FY19) to review Adult Conservatorship/Guardianship cases to identify cases where the Protected Person is alive and annual reports should be filed.

USER

This procedure is to be used by District Court staff authorized to perform Adult Conservatorship/Guardianship Case Review.

PURPOSE

This procedure is to determine the correct case status for Adult Conservatorship/Guardianship cases, and if necessary correct the record in Odyssey.

NAVIGATION

This procedure begins in Find a Case.

INTRODUCTION

Definition of a Conservatorship/Guardianship Case

The term “*conservatorship/guardianship case*” is used for cases involving the court appointment of a guardian, a conservator, or both a guardian and conservator for an **adult** (a person over the age of 18 years old) that is found to lack the capacity to manage certain matters. A **guardianship** involves an adult that is unable to manage their healthcare, living arrangements or activities of daily living (feeding, bathing, toileting) without the assistance of someone else. A **conservatorship** involves an adult that is unable to manage their financial affairs (paying bills, balancing checkbook, managing investment accounts) without the assistance of someone else. The court can appoint an individual, such as a family member, or a company to serve as a guardian or conservator. Once an individual or a company is appointed, they have certain legal obligations to fulfill and the judge has an ongoing obligation to monitor the case throughout the lifetime of the Protected Person or until the person no longer needs this type of assistance.

Ongoing Judicial Monitoring

Once a hearing is held, where evidence is presented to the judge, the judge may find that the person does not have the capacity to manage certain matters. Once a conservator and/or guardian is appointed, the case is adjudicated (closed) for time to disposition purposes but remains “active” since the judge must continue to review annual reports and whether the person’s condition remains the same or improves. Some guardianship cases that are opened when the adult is in their early 20’s can remain “active” for 40 to 50 years while other cases involving an elderly person may only remain “active” for a couple of months. For these reasons, the case is put into the case status of, **Adjudicated Case Report Review**, which should be used for adult conservatorship/guardianship cases that require ongoing judicial monitoring. This case status alerts both court staff and the assigned judge

that the court-appointed guardian and/or conservator should be filing annual reports with the court to provide the judge with information about the Protected Person and/or their finances.

Why Do All Guardianship Cases Require a Review?

These cases must be reviewed in fiscal year 2019 because the New Mexico legislature gave the judicial branch a one-time appropriation to review all adult conservatorship/guardianship cases that were ever filed, to determine which cases are “active” and require ongoing judicial monitoring and review. It is important that the true status of each case be researched and updated in Odyssey so the assigned judge and the court staff are able to easily identify cases that require ongoing monitoring and review. The goal is to review each conservatorship/guardianship case once and update the Odyssey Case Status. Therefore, it is imperative that everyone follow all the steps in this SOP.

From 1996 till 2008, the courts used a case management program named FACTS. In FACTS cases had a case type of Probate Protective Proceedings and cause of action codes were used to indicate the subject matter of the case. Odyssey does not allow cause of action codes in the Probate or Mental Health case category. As part of the Odyssey roll out additional case types were created. When court data was converted from FACTS to Odyssey, the cause of action was converted as a comment on the opening event of the case. When reviewing cases that were converted from FACTS, the comment on the opening event will tell you what kind of a case it really is. Some examples include:

FACTS Cause of Actions (1996 - 2008)	
Example Event Comments	Case Type
“Cause Sequence: 1 Cause of Actions: Conservator Minor Petition For Appointment Of Conservator Of A Minor's Estate”	PCM - Sequestered Probate, Conservatorship Minor
“Cause Sequence: 1 Cause of Actions: Conservator & Guardian Petition For Appointment Of Guardians Of A Minor”	PBM - Sequestered Probate, Conservatorship / Guardianship Minor
“Cause Sequence: 1 Cause of Actions: Conservator & Guardian Petition For Appointment Of Co-Conservators And Co-Guardians Of A Minor Child”	PBM - Sequestered Probate, Conservatorship / Guardianship Minor
“Cause Sequence: 1 Cause of Actions: Conservator Minor”	PCM - Sequestered Probate, Conservatorship Minor
“Cause Sequence: 1 Cause of Actions: Guardian Minor”	PGM - Sequestered Probate, Guardianship of a Minor
“Cause Sequence: 1 Cause of Actions: Guardian Adult”	PGA - Sequestered Probate, Guardianship of an Adult

STEPS

I. Important Information

- A. **Use of Conservatorship/Guardianship Case Review Standard Operating Procedure (SOP).** This SOP should only be used for reviewing Adult

Conservatorship/Guardianship cases that were filed before June 30, 2018. For cases filed after July 1, 2018, refer to the SOP entitled, "Processing Adult Conservatorship/Guardianship Cases". You can find both SOPs at inside.nmcourts.gov under Judicial Information Division, Odyssey, Training, Standard Operating Procedures, and Cases/Parties.

- B. Judge Follow-up Information Sheet (JFIS).** The Judge Follow-up Information Sheet (JFIS) shall be used to communicate between the person performing the case review and the judge assigned to the case when further judicial review/action is required. When conducting case review, a judge may need to issue an order or send a letter to determine the status of a case. **This is not a decision that can be made by court staff.** When the person performing the case review completes the JFIS, any information that the judge may need to make a decision should be documented on the JFIS and supporting documents attached for the judge's review. Examples of documentation to attach to the JFIS include but are not limited to:
1. Petition and any orders from the case;
 2. Obituary, pictures of headstone, or death certificate;
 3. Case summary from probate case; and
 4. List of internet site(s) that were searched.

Note: A JFIS, along with supporting documentation, **MUST BE THOROUGHLY FILLED OUT** when event code 9538 CRT: Further Judicial Review/Action Required is docketed.

- C. Event Codes Indicating Case Has Been Reviewed.** One of the following event codes must be docketed to indicate the case review is complete:
1. **9538 CRT: Further Judicial Review/Action Required.** Anytime the JFIS is submitted and additional judicial review/action is required, this event code should be docketed. When docketing this event code, a comment indicating why additional judicial review/action is necessary should be entered. Specific comments are provided in this SOP depending on the specific circumstance requiring additional judicial review/action. Scan the JFIS and any attachments onto this event.

The screenshot shows the 'Add Event' form with the following details:

- Type: CRT: Case Researched/Reviewed
- Date: 08/16/2018
- Time: 2:00 PM
- Comment: Protected Person deceased
- Buttons: Save/Print, Save, Exit
- Quick Links: Add Next, Add Related, Add Hearing, Add Service, Relationships

2. **9547 CRT: Case Researched/Reviewed.** This event code is docketed in any case that has been reviewed but no additional judicial review/action is required. When docketing this event code, a comment indicating what was found during the case review should be entered. Specific comments are provided in this SOP depending on the result of the case review.

D. **Cases to Review.** It will be necessary to review **all** of the Adult Conservatorship/Guardianship cases under your court's jurisdiction. Not all the cases that need to be reviewed will be in Odyssey. Some may be contained in paper files, microfilm or court-specific document management systems. It may be necessary to print pleadings from sources other than Odyssey to facilitate judicial review. If the case **is** in Odyssey, scan the pleadings to the events in the case. If the case is not in Odyssey, print the pleadings out and attach them to the JFIS. Forward the JFIS with the pleadings attached to the Judge for a final decision. The cases that require ongoing report review should be entered into Odyssey and the pleadings scanned into the case. The cases that do not require ongoing report review, do not need to be entered into Odyssey.

E. **Missing Pleadings/Files.** If you discover a vital file or pleading missing from the case file, microfilm, Odyssey or court-specific document management system, you should:

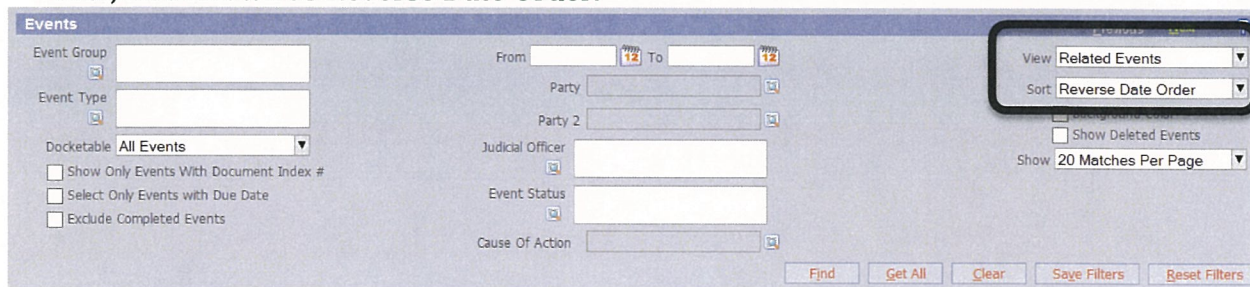
1. Fill out a JFIS and attach any pleadings that are available that may help the Judge decide if the case should be in Adjudicated Case Report Review status.
2. Docket event code 9538 CRT - Further Judicial Review/Action Required and scan the JFIS and any attachments to the event. Enter the comment, "file and/or pleading missing (list the pleading(s) that is missing)."
3. Forward the JFIS to the judge assigned to the case. This may involve figuring out which judicial division was assigned to the case when it was

opened and reassigning the case to the judge who is currently assigned that judicial division.

- F. **Reviewer Does Not Have Rights.** If the reviewer does not have rights to perform functions listed in this SOP, the court has two choices. The court can e-mail helpdesk@nmcourts.gov and request additional rights be granted to the reviewer or the reviewer can communicate the necessary changes to a court employee with the necessary rights.

II. Preparation

- A. **Obtain Master List.** Obtain a copy of the *Master List of Cases to Be Reviewed* for your court from the project manager. This list contains all the cases that your court must review in fiscal year 2019 under direct order of the Supreme Court.
- B. **Obtain Individual Reviewer's Assignment.** Each individual reviewer shall be provided one page at a time from the *Master List of Cases to Be Reviewed*.
- C. **Resources Needed for Review.** Items needed to complete the case review:
1. Conservatorship/Guardianship Case Review Standard Operating Procedure (SOP);
 2. Microfilm Job Aide;
 3. Judge Follow-up Information Sheet (JFIS);
 4. Original physical case file, microfilm of original case file, or other court-specific document management system software records; and
 5. Access to Odyssey.
- D. **Odyssey Event Tab Setup.** Prior to beginning the case review, confirm that your Event tab in Odyssey is set up to display events by the most recent event first, also known as Reverse Date Order.



III. Basic Case Review

- A. **Determine if case has already been reviewed.** Does the case already have an event 9547 CRT: Case Researched/Reviewed docketed with a docket date **after** your courts official review start date?
1. Verify that the case status is either in Final Closed status or Adjudicated Case – Report Review case status and that the current case status is correct.

2. Further case review is not required.

B. Determine if case involves a minor. The first thing to determine is whether the case involves a child or an adult. One clue is the verbiage on the opening event (OPN: Petition). If the case does involve a minor, rather than an adult, verify the case status is correct. For cases that were converted from FACTS, the converted cause of action (refer to chart in the Introduction section above) will appear in the comment on the opening event. If the comment includes a cause of action, it is best to look for additional clues in the case because data entry errors have been found and the correct cause of action may not have been entered in FACTS. Some additional things to look for:

- Orders appointing visitors and/or qualified health care professionals might indicate the *In the Matter of* party is an adult.
- The filing of reports by a visitor and/or qualified health care professional (reports are not required for cases involving minors, although there are some exceptions where the judge has ordered the filing of reports).
- Custody Orders will only be found in cases involving minors.
- Multiple *In the Matter of* parties usually indicate that there are siblings and the case involves minors. Be aware that there may also be Adult Conservatorship/Guardianship cases that have multiple adults so be careful with this criteria.
- References to insurance companies or settlements usually indicate minor settlement cases.

If the case is an old case and the court did not regularly add comments to the events, an examination of the file and/or docket book may be necessary to determine if the case is an adult conservatorship/guardianship case. The most important documents to examine are the petition and the order appointing guardian/conservator.

1. If the case does involve a minor, docket event code 9547 CRT: Case Researched/Reviewed and enter the comment, "Minor Case."
2. Further case review is not required.

C. Case Closed by Court Order. Does the case involve an adult, and is one of the following closing events docketed in the case:

- 3484 CLS: Protected Person Deceased
- 3504 CLS: Close Miscellaneous
- 3483 CLS: Termination of Guardianship/Conservatorship
- 3490 CLS: Transferred To Other Jurisdiction
- 3508 CLS: Dismissal by Party
- 3512 CLS: Final Decree/Order/Judgement
- 3526 CLS: Stipulated Judgment
- 3541 CLS: Order Changing Venue

- 3548 CLS: Order of Dismissal
 - 3549 CLS: Stipulated Order (confirm the stipulation is to dismiss the case, not a stipulation to a procedural issue)
 - 3550 CLS: Order To Close
 - 3553 CLS: Stipulated Dismissal
 - 3558 CLS: Petition/Motion Withdrawn
 - 3559 CLS: Order, Application, Petition or Motion Denied
 - 3560 CLS: Order, Application, Petition or Motion Granted
1. If the case has one of these closing events, **make sure you read** the closing order to verify that the correct closing event was docketed and the case should really be closed. It is important to read the entire order to confirm that the judge intended to dismiss/close the case. If the case involves both a guardian and a conservator, verify that both the guardianship and the conservatorship have been terminated. The judge have may dismissed one and not the other.

Note: If the case is in Final Closed case status and the event code 5688 Certificate/Obituary/Proof of Death has been entered in the case, the case should most likely stay in closed status; however, the reviewer should verify the event code 5688 Certificate/Obituary/Proof of Death has been docketed correctly.

2. If the case correctly has one of these closing events, the case should be in Final Closed case status. If the case is in final closed status docket event code 9547 CRT: Case Researched/Reviewed and enter "Case closed" in the comment field, and the date of the closing event.
3. Further case review is not required.

D. Documentation in the record that the Protected Person is deceased.

1. Examine the case pleadings to see if the protected person would be over 100 years old, there is a final report, correspondence informing the court that the protected person is dead, a death certificate, an obituary or other proof of death.
2. If documentation of the Protected Person's death is found in the file or the protected person would be over 100 years old, verify that the case is in Final Closed status.
3. Docket event code 9547 CRT: Case Researched/Reviewed and enter in the comment field, "Protected Person deceased." and the date of the closing event.

The screenshot shows the 'Modify Party' application window. The 'General' tab is selected. The 'Name' field contains 'Bruce, Robert'. The 'Birth Date' field contains '11/22/1934'. The 'Party ID' field contains '9966879'. A 'Date of Death' field is highlighted with a black box, and a calendar icon is visible next to it. Other fields include Gender, Ethnicity, Height, Weight, Hair, and Eyes. There are also sections for 'Current Known Addresses', 'Current Known Phones', 'Current Known E-mails', 'Other Links', and 'Legacy IDs'. At the bottom, there are 'Save' and 'Exit' buttons, and the text 'Party ID 9966879'.

4. If a date of death is provided, enter the date of death on the global party record.
 5. Further case review is not required.
- E. **Petition with no activity.** Is the case a Conservatorship/Guardianship Case where a petition for guardianship/conservatorship for an adult is filed and nothing else happened?
1. Fill out the JFIS, print out and attach the petition and forward it to the assigned judge for further review.
 2. Docket event code 9538 CRT - Further Judicial Review/Action Required and in the comment field enter "Petition with no activity."
 3. Scan the JFIS and petition to the event code 9538.
 4. Further case review is not required.
- F. **Termination of Conservatorship/Guardianship.** The appointment of the Guardian/Conservator has been terminated and the case is dismissed/closed.

Note: The Protected Person's physical and/or mental health has improved and there is no longer a need for a guardian/conservator.

1. Confirm that event code 3483 CLS: Termination of Guardianship/Conservatorship is docketed in the case. If not, docket it with the event date of the order terminating the appointment.
2. Docket event code 9547 CRT: Case Researched/Reviewed and in the comment field enter "Order terminating."
3. Further case review is not required.

G. Case Transferred. The case has been transferred to another jurisdiction.

1. Confirm that event code 3541 CLS: Order Changing Venue or 3490 CLS: Transferred to Other Jurisdiction has been docketed in the case. If not, docket event 3490 CLS: Transferred to Other Jurisdiction with the event date of the order transferring the case.
2. If the case has been transferred to another court within the state of New Mexico, search Odyssey to confirm that a new conservator/guardianship case has been opened.

Note: JIFFY recently approved a motion for clerks to be able to see sealed cases in other districts. If the court staff performing this review do not have rights to see Conservatorship/Guardianship cases in other courts, e-mail a help desk ticket to helpdesk@nmcourts.gov and request that their rights be modified.

3. If you find the case, docket event code 9547 CRT: Case Researched/Reviewed and in the comment field enter "Case transferred." (Include the case number of the case in the new jurisdiction.)
4. If you do not find a new conservator/guardianship case in the transferred jurisdiction, fill out the JFIS and forward it to the assigned judge for further review and attach a copy of the transfer order.
5. Docket event code 9538 CRT - Further Judicial Review/Action Required with a comment of "Could not find transferred case" and scan the JFIS and the attachment to the event.
6. If the case has been transferred to another court outside of New Mexico, fill out the JFIS and forward it to the assigned judge for further review and attach a copy of the transfer order.
7. Docket event code 9538 CRT - Further Judicial Review/Action Required with a comment of, "Case Transferred outside NM." (The judge will decide whether to follow up with the Jurisdiction the case was transferred to.)
8. Further case review is not required.

IV. Advanced Case Review.

Advanced case review will require the use of creativity in attempting to locate information to determine the true status of the case. The goal is to either confirm that the case should be closed or that the person is alive and the case should be in Adjudicated Case Report Review status.

A. Annual Reports Current. If an annual report has been filed within the last year and the report is not a final report due to the Protected Person's death, then the case should be in Adjudicated Case Report Review status. The case requires ongoing judicial review and should not be in Final Closed status.

1. If the case is in Adjudicated Case Report Review status and an annual report has been filed within the past year, further case review is not required. Docket event code 9547 CRT: Case Researched/Reviewed and in the comment field enter, "Active case, correct case status."

2. If the case is in Final Closed status, and an annual report has been filed within the past year, further action is required. Check to see if the report is a final report due to the death of the protected person. If it is not a final report, then update the case status to Adjudicated Case Report Review. Docket event code 9547 CRT: Case Researched/Reviewed and in the comment field enter, "Case status updated to Adjudicated Case Report Review." If the report is a final report, Docket event code 9547 CRT: Case Researched/Reviewed and in the comment field enter the comment, "Protected Person deceased."
 3. If the case is now correctly in Adjudicated Case Report Review status, follow the instruction in Section V. Case Management for Adult Conservator/Guardianship Cases in Adjudicated Case Report Review status of this SOP.
 5. Further case review is not required.
- B. Temporary Order/No Final Appointment.** Is the case an adult Conservatorship/ Guardianship Case with only a temporary order of appointment of conservator/guardian?

Note: In some cases, no guardian ad litem, qualified health care professional, or visitor are appointed and there is no request for a hearing filed so nothing happens in the case. In other cases an emergency petition/appointment may be requested but there is no final appointment or dismissal filed.

1. Fill out the JFIS and forward it to the assigned judge for further review. Print and attach the petition.
 2. Docket event code 9538 CRT - Further Judicial Review/Action Required and scan the JFIS and any attachments to the event. In the comment field enter, "No permanent order appointing."
 3. Further case review is not required.
- C. Annual Reports: Not Filed, Current, or Missing.** The case has an order appointing a permanent conservator/guardian (not a temporary appointment) but there is an issue with the filing of annual reports. Either no annual reports have ever been filed, an annual report has not been filed in over a year, or both an annual guardian and conservator report are due and only one has been filed.
1. **No reports have ever been filed.**
 - a. Complete the JFIS and attach the Order Appointing Conservator/Guardian.
 - b. Docket event code 9538 CRT - Further Judicial Review/Action Required, add a comment of "No reports filed." and scan the JFIS and any attachments to the event.
 - c. Forward the JFIS to the assigned judge for further review.
 - d. Further case review is not required.
 2. **Reports Not Current.**
 - a. Complete the JFIS and attach the Order Appointing Conservator/Guardian.

- b. Docket event code 9538 CRT - Further Judicial Review/Action Required, add a comment of "Reports not current." and scan the JFIS and any attachments to the event.
- c. Forward the JFIS to the assigned judge for further review.
- d. Further case review is not required.

3. Report Missing.

- a. If both a guardian and conservator have been appointed and one is filing reports and the other isn't, complete a JFIS and attach the Order Appointing Conservator/Guardian.
- b. Docket event code 9538 CRT - Further Judicial Review/Action Required, add a comment of "Report missing." and scan the JFIS and any attachments to the event.
- c. Forward the JFIS to the assigned judge for further review.
- d. Further case review is not required.

D. Deceased Party. The Protected Person or the guardian/conservator may be deceased. Perform the following steps to search to determine whether the Protected Person and/or guardian/conservator are deceased.

1. **Presumed Age of Protected Person over 100 years old.** Determine the current age of the Protected Person. If the protected person would be over 100 years old, it is likely they are deceased.
 - a. Fill out the JFIS and forward it to the assigned judge for further review and attach the document that lists the age or date of birth.
 - b. Docket event code 9538 CRT - Further Judicial Review/Action Required and add a comment of "Protected Person presumed over 100 years old." and scan JFIS and any attachments to the event.
 - c. Forward the JFIS to the assigned judge for further review.
 - d. Further case review is not required.

Note: The judge may issue an order closing the case with the event code 3484 CLS: Protected Person Deceased based on the presumption that the Protected Person is deceased since they would be over 100 years old.

2. **Locate Obituary.** Locate an obituary by searching the internet. These sites may be useful to your search:
 - <http://www.tributes.com/search/obituaries/>
 - <https://www.legacy.com/obituaries/abqjournal/>
 - a. Confirm the obituary is for the correct person by matching the full name, date of birth, and the geographic area where the person lived/died.
 - b. If the obituary confirms the death of the Protected Person, guardian and/or conservator, print a copy of the obituary and fill out the JFIS.
 - c. Docket event code 9538 CRT - Further Judicial Review/Action Required and in the comment field enter, "Obituary found for {Name of person}."

- d. Forward the JFIS to the assigned judge for further review.
 - e. Further case review is not required.
 - f. If an obituary is not found, continue with Advanced Case Review
3. **Probate Case Located.** If an obituary was not found, search for a probate case for the Protected Person in Odyssey and in the county probate court where the protected person lived.
- a. If a probate case is found, docket event code 9547 CRT: Case Researched/Reviewed and in the comment field enter, "Probate case found."
 - b. If the date of death has not already been entered, enter the date of death on the global party record.
 - c. Further case review is not required.
 - d. If a probate case is not found, continue with Advanced Case Review.
4. **No Obituary and Protected Person's Presumed Age Less than 100.** If there is no obituary and the Protected Person is not presumed deceased due to age, conduct an online search for the Protected Person, guardian and/or conservator. These sites may be useful to your search:
- Google
 - DexKnows
 - Whitepages
- a. **Search for Identifying Information.** Review the petition to find identifying information for the Protected Person, guardian and/or conservator. Identifiers include:
 - Full name, including middle name or initial, for Protected Person, guardian and/or conservator
 - Age or date of birth for Protected Person
 - Address for Protected Person, guardian and/or conservator
 - Phone numbers for Protected Person, guardian and/or conservator
 - Any other relevant information
 - b. **Extensive/Detailed Searches.** At this point in the Advanced Case Review, a more extensive and detailed search for information is necessary. Considerable more time may be required to complete this level of the SOP. Search for the protected person on the following web sites:
 - <https://www.fastpeoplesearch.com/>
 - <https://www.familysearch.org/>
 - <https://www.findagrave.com>
1. **Current Phone Number Located.** If you locate a phone number for the Protected Person, guardian and/or conservator, call the number to see if you are able to obtain any information on the Protected Person.
- a) If you find out the Protected Person is alive, obtain the following information to update the global party record in Odyssey: address, phone number, date of birth and e-mail

address for the Protected Person. Also confirm the address and phone number for the guardian and/or conservator and update in Odyssey, if appropriate.

- b) If the Protected Person is alive, update the case status to Adjudicated Case Report Review using today's date.
 - i. Docket event code 9538 CRT: Further Judicial Review/Action Required and in the comment field enter, "Updated contact information, case status and send letter." and scan JFIS and any attachments to the event.
 - ii. Further case review is not required.
- c) If you discover the Protected Person is deceased ask the individual to provide either a copy of the obituary or death certificate to the court.

Note: If the individual you are speaking with can provide the name of the funeral home or name of the paper where the obituary was printed, it may be easy to find a link for proof of death, pull up the web page and print it out. This way the court does not have to wait for proof of death to be sent to the court by the individual.

- i. Fill out the JFIS and forward it to the assigned judge for further review.
 - ii. Docket event code 9538 CRT: Further Judicial Review/Action Required and add a comment of "Awaiting proof Protected Person deceased." and scan JFIS and any attachments to the event.
 - iii. Further case review is not required.
- 2. **Updated Address for Protected Person/Conservator/Guardian Found.** If you find the name of the Protected Person/Guardian and/or Conservator with a different address, but cannot find a phone number.
 - a. Fill out the JFIS and forward it to the assigned judge for further review. Include all the information that has been found including address, etc.
 - b. Docket event code 9538 CRT: Further Judicial Review/Action Required and add a comment of, "Found address for G/C, send letter." And scan JFIS and any attachments to the event.
 - c. Further case review is not required.
- 3. **Contact Original Attorney of Record.** If the Advanced Case Review has not found information on whether the Protected Person is alive or any updated information for the Protected Person, guardian and/or conservator.
 - a. Look for the name of the attorney who filed the original petition or the name of any other attorney who represented a party in the case (this may include the Guardian ad Litem).

- b. Call the attorney's number and see if you are able to obtain any information on the Protected Person.
 - i. If the Protected Person is alive, update the case status to Adjudicated Case Report Review status using today's date.
 - ii. If the attorney can provide updated information (address, phone number, etc.) verify the information by calling the phone number and when verified, update this information in the global party record.
 - iii. Docket event code 9538 CRT: Further Judicial Review/Action Required with a comment, "Updated contact information, case status and send letter." Scan the JIFS and any attachment to the event.
 - iv. Further case review is not required.
4. **SOP Exhausted.** If the Advanced Case Review has not found information on whether the Protected Person is alive or any updated information for the Protected Person, guardian and/or conservator.
 - a. Docket event code 9538 CRT: Further Judicial Review/Action Required with a comment, "SOP exhausted."
 - b. Further case review is not required.

Note: When the reviewer has exhausted the SOP, it is often beneficial to hand the case to the TCAA or another reviewer and have him/her go through the advanced case review again. Past experience has proven that sometimes the second person is able to find the Protected Person and/or the guardian/conservator.

V. **Case Management for Adult Conservator/Guardianship Cases in Adjudicated Case Report Review status.**

Cases that are in Adjudicated Case Report Review status require annual reports and 10 year review hearings. If after conducting case review, the case is in Adjudicated Case Report Review status you must also verify that the follow Due Event codes are entered in every case.

Note: Due dates are based on the date of the last appointment of guardian/conservator.

A. **Annual Reports**

1. Determine docket date of the Order Appointing Guardian/Conservator.
2. Annual reports are due on the anniversary of the date of appointment. For example, the first annual report would be due 395 days after the judge appoints a person(s) to be a guardian/conservator.

3. Before you docket the Due Event codes, first figure out the next deadline for the filing of the annual report.
4. Navigate to the Events tab.
5. For Guardian's Report, docket 8086 DUE: Annual Guardianship Report and enter the date when the next annual report is due in the Due Field of the event.

The screenshot shows a list of court events on the left and an 'Add Event' form on the right. The list includes events such as 'ORD: ORDER', 'OATH/ AND ACCEPTANCE', 'REPORT', and 'HEARING'. The 'Add Event' form is open, showing 'DUE: Annual Conservatorship Report' as the event type, with a due date of 06/21/2019. The form also includes fields for Date, Time, Comment, and various checkboxes like 'Docketable' and 'Include on Appeal'.

6. For Conservator's Report, docket 8087 DUE: Annual Conservatorship Report and enter the date when the next annual report is due in the Due Field of the event.

The screenshot shows a list of court events on the left and an 'Add Event' form on the right. The list includes events such as 'NTC: NOTICE', 'ORD: ORDER', 'OATH/ AND ACCEPTANCE', 'REPORT', and 'HEARING'. The 'Add Event' form is open, showing 'DUE: Annual Guardianship Report' as the event type, with a due date of 06/21/2019. The form also includes fields for Date, Time, Comment, and various checkboxes like 'Docketable' and 'Include on Appeal'.

7. This process will allow the tracking of annual reports through the use of the Event Review Report, which can be run for upcoming report or overdue reports.

B. 10 Year Review

1. The statute requires that all conservatorship/guardianship cases must be reviewed at least once every 10 years.
2. Determine the docket date of the Order Appointing Guardian/Conservator.
3. Review the case to see if a review hearing has already been held. If no 10 year review hearing has been held, continue on to step 4.
4. Utilizing a date calculator, use the following formula to determine the date of the 10 year hearing:
 - a. Date of Order Appointing Guardian/Conservator + 3,650 days. There is no need to take leap years into consideration.

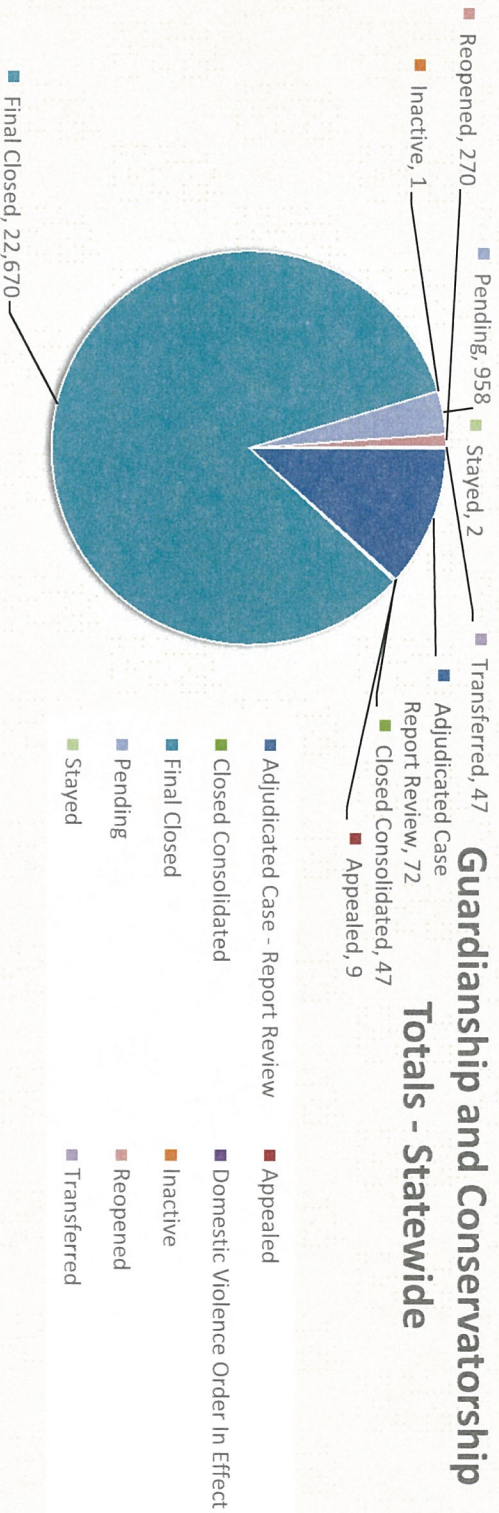
- b. This formula will provide you with an approximate date for the 10 year review hearing.
5. Docket 8088 DUE: 10 Year Review and enter the date provide by the date calculator in the prior step.

Date	Type and Comment
07/27/2015	Petition Granted
07/27/2015	CLS: ORDER APPOINTING GUARDIAN/CONSERVATOR Stipulated Order Of Appointment Of Permanent C
08/10	Guardian And Conservator
08/10	Guardian And Conservator
08/25	Co-Guardianship
08/25	Co-Guardianship
03/15	PRESENTATION, UNDUE INFLU
06/09	ir Case
06/09	Conservatorship
01/27/2017	REQUEST FOR HEARING/ SETTING Motion to Terminate Co-Guardianship and Conservatorship

6. This process will allow the tracking of 10 year review hearings through the use of the Event Review Report, which can be run to identify hearings that need to be set or hearings that are overdue.


Statewide District Courts Guardianship Conservatorship

District	Adjudicated Case -		Appealed	Closed Consolidated	Domestic Violence Order In Effect	Final	Inactive	Pending	Reopened	Stayed	Transferred	Grand Total
	Report Review	Stayed										
1	72		3	3		5,216		170	42	1		5,507
2	1,833			20		6,972		130	121	1	36	9,113
3	800		1	2		688		76	11		1	1,579
4	158		1	1		522		14	5		1	702
5	52		1	6		1,717		45	9			1,830
6	17			2		702		19	4			744
7	9		1			457		58	6			531
8	6			4	1	505	1	20	6		2	541
9	57		1			974		29	14		1	1,080
10	9					319		3	6			337
11	3					1,096		107	11		2	1,219
12	36		1	2		698		135	13			885
13	97			7		2,804		152	22		4	3,086
Grand Total	3,149		9	47	1	22,670	1	958	270	2	47	27,154



**GUARDIANSHIP REFORM IMPLEMENTATION
STEERING COMMITTEE**

MEMORANDUM

To: Legislative Finance Committee
From: Hon. C. Shannon Bacon, Chair 
Date: October 23, 2018
Re: Initial Legislative Recommendations of the Guardianship and Conservatorship Steering Committee

The Guardianship and Conservatorship Steering Committee has seven initial recommendations for additional changes to the Probate Code for consideration. These recommendations have been approved by both Senator White and Representative Ely, who would sponsor the legislation.

I. Licensure of corporate guardian and conservator companies.

Many companies and individuals hold themselves out to the courts as professional guardians and conservators and are remunerated for the work either by the estate of the Protected Person or the State. It is the recommendation of the Steering Committee that the Probate Code should be revised to require the professional guardian or conservator company to submit proof that the individual who has been assigned the duties of the guardian or conservator for the Protected Person is certified and in good standing with a national or state organization that provides professional certification for this work. The details of this new statutory requirement would then be delineated through Supreme Court Rule, which has been drafted by the Guardianship and Conservatorship Rules Committee and was submitted to the Supreme Court for its consideration on September 19, 2018.

II. Modify statutory language regarding 10-year review

The Probate Code currently provides: "At any time following the appointment of a guardian, but not later than ten years after the initial appointment of a guardian for a protected person and every ten years thereafter, the court shall hold a status hearing, after notice to the guardian, the protected person and appropriate interested persons, to review the status of the protected person's capacity and the continued need for a guardian." NMSA 1978, §45-5-307 (G) (2009). The Steering Committee recommends that this language be modified to allow the court to conduct the ten-year review either through a status hearing or through the appointment of a Special Master. Utilizing a Special Master allows for observation of the Protected Person's living conditions and daily activities as well as a review of the Protected Person's capacity.

III. Modify statutory language regarding fines for late filings

Pursuant to the Probate Code all guardians and conservators are required to file interim reports regarding their duties within 90 days of appointment and then annual reports thereafter. NMSA 1978, §§ 45-5-314 (2018), 45-5-409 (2018) and 45-5-18 (1975). The guardian and conservator can currently be fined five dollars per day for an overdue annual report. This fine then “shall be used to fund the costs of visitors, counsel and functional assessments utilized in conservatorship and guardianship proceedings pursuant to the Uniform Probate Code.” Sections 45-5-314(C) and 45-5-409(D). The Steering Committee recommends three changes to this statutory language. First, it is our recommendation that the fine be increased to \$25.00 per day. Second, we recommend that the fine be allowed, at the discretion of the court, for both interim and annual reports. Third, we recommend that the fines be paid to the General Fund as there is no segregated fund for the costs of visitors, counsel or functional assessments.

IV. Reconcile inconsistency in the Probate Code regarding professional reports

There is an inconsistency in the 2018 language added to the Probate Code by way of Senate Bill 19 providing for the protection of the Guardian ad Litem, Visitor and Qualified Healthcare Professional’s Reports. The guardianship portion of the statute protects these reports as they contain sensitive healthcare and financial information that should not be disseminated to the public. The same protection is not found in the conservatorship portion of the statute. While this inconsistency was reconciled through the recent guardianship and conservatorship rulemaking process, we recommend that the statute be revised as well.

V. Modify statutory language to better delineate the alleged incapacitated person’s rights when participating in the adjudicatory hearing

NMSA 1978, Sections 45-5-303(G) (2018) and 45-5-407(E) (2018) provide the procedure for the appointment of a guardian or conservator for an alleged incapacitated person. These statutory sections, however, do not explain what the alleged incapacitated person’s role is or rights are in the hearing. There are other portions of the Probate Code that suggest that those rights are more than just attendance at the hearing. For example, NMSA 1978, Section 45-5-303.1(A)(2) (1993) provides that the role of the Guardian ad Litem is to, in part, “present the alleged incapacitated person’s declared position to the court.” Section 45-5-303(O) provides a right to a jury trial to determine the necessity of a guardianship. NMSA 1978, Section 45-5-309(B) (2018) requires that the notice of hearing for guardianship proceedings “inform the alleged incapacitated person of the alleged incapacitated person’s rights at the hearing and the right to attend the hearing.” And, finally, Section 45-5-303(I) requires adherence to the Rules of Evidence and sets the standard of proof at clear and convincing. Given these statements that the alleged incapacitated person has rights in this process, which are to be fully considered at a hearing for the appointment of a guardian and/or conservator, the Steering Committee recommends a more clear statement regarding the alleged incapacitated person’s rights.

Specifically, the Steering Committee recommends, in underlined text below, the following revision to Section 45-5-303(G):

G. A person alleged to be incapacitated shall be present at the hearing on the issues raised by the petition and any response to the petition unless the court determines by evidence that it is not in the alleged incapacitated person's best interest to be present because of a threat to the health or safety of the alleged incapacitated person or to others as determined by the court. At a hearing conducted under this section, the person alleged to be incapacitated may:

- (1) Present evidence and subpoena witnesses and documents;
- (2) Examine witnesses, including any court-appointed guardian ad litem, qualified health care professional, and visitor; and
- (3) Otherwise participate in the hearing.

This language would be mirrored in the conservatorship portion of the statute.

VI. Moving language regarding waiver of liability

The Steering Committee also recommends moving and rewording the statutory language regarding waivers of liability. Currently, "waiver of liability" is found in NMSA 1978, Section 45-5-409.1 (2018). Rather than this provision standing alone, it appears that it is better suited to be found in NMSA 1978, Section 45-5-429 (1975), which addresses the individual liability of a conservator. This revision would read as follows, with the change in language underlined:

45-5-429. Individual liability of conservator.

A. Unless otherwise provided in the contract, a conservator is not individually liable on a contract properly entered into in his fiduciary capacity in the course of administration of the estate unless he fails to reveal his representative capacity and identify the estate in the contract.

B. The conservator is individually liable for obligations arising from ownership or control of property of the estate, or for torts committed in the course of administration of the estate, only if he is personally at fault.

C. Claims based on contracts entered into by a conservator in his fiduciary capacity on obligations arising from ownership or control of the estate, or on torts committed in the course of administration of the estate, may be asserted against the estate by proceeding against the conservator in his fiduciary capacity, whether or not the conservator is individually liable therefor.

D. Any question of liability, between the estate and the conservator individually, may be determined in a proceeding for accounting, surcharge or indemnification, or other appropriate proceeding or action.

E. No person shall request, procure or receive a release or waiver of liability, however denominated, of a conservator, an agent, an affiliate or a designee of a conservator or any other third party acting on behalf of a conservator

F. A release or waiver of liability that is requested, procured, or received contrary to the provisions of this section is void.

VII. Reconcile inconsistency in the Probate Code requiring the appointment of professionals in the termination of a Conservatorship

Under the Probate Code, the termination of a conservatorship for any reason other than the death of the Protect Person requires a hearing that is the same as that for the appointment of a conservator. See NMSA 1978, §45-5-415(D) (1993) (“Upon the filing of a petition to terminate a conservatorship for reasons other than termination of minority or the death of the person under conservatorship, the court, shall follow the same procedures as set forth in Section 45-5-407 NMSA 1978.”). This procedure requires the Court to appoint a qualified health care professional, a guardian ad litem and a visitor to investigate and make recommendations to the Court on the propriety of the petition to terminate. See NMSA 1978, §45-5-407 (2018). The Uniform Probate Code does not require the same process for the termination of a guardianship. See NMSA 1978, 45-5-307(D) (2018). Rather, the Code gives the Court the discretion to waive the appointment of the listed professionals. Id. (“Unless waived by the court upon the filing of a petition to terminate a guardianship for reasons other than the death of the incapacitated person, the court, shall follow the same procedures as set forth in Section 45-5-303 NMSA 1978.”). It is recommended that the mandatory language found in Section 45-5-415(D) should be revised to mirror the process for removal of a guardian.

In conservatorship cases there are many occasions to terminate the conservatorship that do not require the time or cost of the appointment and work of three professionals to advise the Court. For example, many conservators were appointed for Protected Persons who only receive Social Security Disability Income (\$721.00 or less per month). Under these facts, the Protected Person does not need a conservator and the conservatorship should be terminated. The need to appoint three professionals to inform the Court about the propriety of terminating the conservatorship is unwarranted and the Protected Person does not have the funds to pay these individuals.

This proposed change to make the language in Sections 45-5-307(D) and 45-5-415(D) mirror each other, will enable the Court to tailor the hearing on a petition to terminate a conservatorship to the facts before it and exercise its discretion in a way that efficiently uses the often limited resources of the Protected Person. Where there are questions about the Protected Person’s ability to care for themselves or their finances the Court may still require input from one or all of the professionals provided for in Sections 45-5-303(C)-(E) and 45-5-407.

MEMORANDUM

TO: Judge Bacon
FROM: Michele Morosin
DATE: August 21, 2018
RE: Uniform Guardianship, Conservatorship, & Other Protective Arrangements Act

The National Conference of Commissioners on Uniform State Laws issued the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act in July of 2017. The Commissioners' website reflects that, at this point, only Maine has adopted the Uniform Act and that it was introduced in New Mexico. I found no indication that any state aside from Maine has adopted the 2017 Uniform Act.

The Prefatory Note to the 2017 Uniform Act explains it replaces the Commission's Uniform Guardianship and Protective Proceedings Act (UGPPA), which it states was last comprehensively revised in 1997. The Prefatory Note, at 1, explains that the 2017 Uniform Act "covers guardianship and conservatorships for both minors and adults, as well as protective arrangements instead of guardianship for adults and protective arrangements instead of conservatorship for both adults and minors." It references a 1982 version of the UGPPA, and mentions an initial foundation on provisions of the UPC as originally approved in 1969, indicating a long history of development. I did not find, on the website or in the Prefatory Note to the 1997 UGPPA, an indication of how many jurisdictions had adopted 1982 UGPPA. However, the Commission website indicates that Alabama, Colorado, the District of Columbia, Hawaii, Massachusetts, Minnesota, and the Virgin Islands have adopted the 1997 UGPPA.

Returning to the 2017 Uniform Act, Maine's adoption was effective August 1, 2018. 2018 Me. Legis. Serv. Ch. 402 (H.P. 91) (L.D. 123). A comparison of the Uniform Act and Maine's law indicates that Maine largely incorporates the Uniform Act, with some stylistic or otherwise slight variation. *E.g., compare* Uniform Act, Section 503(f) (directing the court to consider the preference of the minor if the minor is at least twelve years old), *with* § 5-503(6) (directing the court to consider the preference of the minor if the minor is at least fourteen years old).

There are some differences, however. For example, Section 404 of the Uniform Act contains a short paragraph authorizing a court to issue an order to preserve and apply property as required for the support of the individual. § 5-404 of the Maine act contains a detailed process for petition for protective order. It appears that the Maine act did not adopt Section 432 of the Uniform Act (Transfer for benefit of minor without appointment of conservator) or Section 512 (appointment of a master).

Section 406, Appointment and role of attorney, in the Uniform Act sets out two alternatives: The first allows a court to appoint an attorney at the respondent's request, upon the visitor's recommendation, or if a court finds a need, while the second alternative provides "Unless the respondent in a proceeding for appointment of a conservator is represented by an attorney, *the court shall appoint an attorney* to represent the respondent, *regardless of the respondent's ability to pay.*"

Section 406(a) (Alternative B) (emphasis added). In § 5-406, Maine adopted Alternative A. Thus, Maine adopted the alternative that could be characterized as more fiscally conservative. A similar choice is made with regard to alternatives set out in Section 507 (appointment and role of attorney), with § 5-507 of the Maine act adopting the alternative that does not include the Uniform Act's Section 507(a) (Alternative B) (appointment "regardless of the respondent's ability to pay").

Section 115 of the Uniform Act authorizes the court to appoint a guardian ad litem, and requires the court to "state the duties of the guardian ad litem and the reasons for the appointment." The Maine act, § 5-115, further adds: "as well as responsibility for payment of the guardian ad litem fees."

Under "Compensation and Expenses; In General," the Uniform Act provides for an attorney for a respondent to "reasonable compensation . . . from the property of the respondent." Section 119. § 5-119(1) of the Maine act adopts this language. Both Section 119(b) of the Uniform Act and § 5-119(2) of the Maine Act state: "Unless otherwise compensated for services rendered, an attorney or other person whose services resulted in an order beneficial to an individual subject to guardianship or conservatorship or beneficial to an individual for whom a protective arrangement instead of guardianship or conservatorship was ordered is entitled to reasonable compensation and reimbursement of reasonable expenses from the property of the individual." The Maine act differs from the Uniform act in § 5-119(3) (Section 119(c) of the Uniform Act (requiring court approval of compensation and expenses): "After notice . . . the propriety of employment of any person by a conservator or guardian, including any attorney, accountant, investment advisor or other specialized agent or assistant, and the reasonableness of the compensation of any person so employed may be reviewed by the court. Any person who has received excessive compensation or reimbursement of inappropriate expenses for services rendered may be ordered to make appropriate refunds. The factors set forth in section 3-721, subsection 2 must be considered as guides in determining the reasonableness of compensation under this section."

Section 120 of the Uniform Act is entitled "Compensation of guardian or conservator." It authorizes "[s]ubject to court approval," payment of reasonable compensation to a conservator "from the property of the individual subject to conservatorship," and sets guidelines for reasonable compensation for a guardian or conservator. Section 120(b) & (c). The Maine act did not adopt this section of the Uniform Act.

I was unable to find any information as to appropriations to fund the requirements set out in the Maine Act. Please let me know if you wish anything further on this project or would like to discuss it.