Judicial Branch Oversight of Guardianships and Conservatorships

Performance Audit
September 2011

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Dianne E. Ray, CPA
State Auditor

September 1, 2011

Members of the Legislative Audit Committee:

This report contains the results of a performance audit of the Judicial Branch's oversight of guardianships and conservatorships. The audit was conducted pursuant to Section 2-3-103, C.R.S., which authorizes the State Auditor to conduct audits of all departments, institutions, and agencies of state government. The report presents our findings, conclusions, and recommendations, and the responses of the Judicial Branch.

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Glossary of Terms and Abbreviations

Act – Uniform Guardianship and Protective Proceedings Act

CBI – Colorado Bureau of Investigation

Conference – National Conference of Commissioners of Uniform State Laws

C.R.S. – Colorado Revised Statutes

Districts – Judicial Districts

Financial Plan – *Conservator's Inventory and Financial Plan*

GAO – U.S. Government Accountability Office

JBITS – Judicial Business Integrated with Technology Services

Judicial Branch – Colorado Judicial Branch

Manual – *Trial Court Resource Manual*

SCAO – State Court Administrator's Office

Supreme Court – Colorado Supreme Court

Task Force – Protective Proceedings Task Force

Visitor – Court Visitor

JUDICIAL BRANCH OVERSIGHT OF GUARDIANSHIPS AND CONSERVATORSHIPS

Performance Audit, September 2011
Report Highlights

Dianne E. Ray, CPA
State Auditor

Judicial Branch

PURPOSE

Review the performance of the Judicial Branch with respect to the appointment and monitoring of guardians and conservators.

BACKGROUND

- When the court appoints a guardian or conservator, the court removes the rights of individuals to make fundamental decisions about their own lives and places these rights in the hands of others.
- Statutes establish certain procedures courts must follow in establishing and monitoring guardianship and conservatorship cases.
- The Judicial Branch provides guidance to the courts on the administrative aspects of handling guardianship and conservatorship cases.
- Within each judicial district, the district court judge or magistrate responsible for hearing probate cases has primary responsibility for administering guardianship and conservatorship cases and ensuring that these cases comply with statutes and Judicial Branch policies.
- In Fiscal Year 2010, there were 2,025 new guardianship and conservatorship cases filed in Colorado.

OUR RECOMMENDATIONS

The Judicial Branch should:

- Ensure that courts obtain statutorily required background information from individuals nominated to serve as a guardian or conservator.
- Ensure that guardians and conservators provide sufficient information for the courts to assess whether the guardians and conservators are acting in the ward's best interests.
- Ensure that courts effectively administer guardianship and conservatorship cases.

The Judicial Branch agreed with most of these recommendations.

EVALUATION CONCERN

The courts' processes do not ensure that the rights, welfare, and assets of wards are adequately protected from the time the appointment of a guardian or conservator is sought until the appointment is terminated.

KEY FACTS AND FINDINGS

- The Judicial Branch has not ensured that the courts effectively administer guardianship and conservatorship cases.
- The Judicial Branch does not have sufficient controls in place to ensure that the courts:
  - Receive and consider all of the statutorily required background information from nominees prior to appointing them to serve as guardians and conservators.
  - Appoint attorneys to represent wards when required by statute.
  - Appoint and receive all information from court visitors, as required by statute, prior to making guardian and conservator appointments.
- The courts are deficient in obtaining required reports from guardians and conservators in the following three areas: (1) reports are not submitted by the guardian or conservator as statutorily required or as ordered by the court, (2) courts do not always follow up with guardians and conservators to obtain missing reports, and (3) guardians and conservators do not always respond to court follow-up measures.
- The courts are not always reviewing annual and final reports submitted by guardians and conservators. In addition, when the courts do review reports, their reviews may not be as thorough as needed to ensure that guardians and conservators are complying with court orders and acting in the best interest of the wards.
- Some professional guardians and conservators are not providing professional-level services.
- The Judicial Branch's case management system lacks basic information in several areas needed to track guardianship and conservatorship cases effectively.

For further information about this report, contact the Office of the State Auditor
303.869.2800 - www.state.co.us/auditor

RECOMMENDATION LOCATOR
Agency Addressed: Judicial Branch

Rec. No.	Page No.	Recommendation Summary	Agency Response	Implementation Date
1	21	Ensure that courts obtain statutorily required background information from individuals nominated to serve as a guardian or conservator by (a) providing specific direction to the courts through a Chief Justice Directive or in the *Trial Court Resource Manual* on the statutory requirements related to the information nominees must provide prior to their appointment, and (b) mandating that courts require guardians and conservators to use the appropriate form and discontinue the practice of accepting forms that do not comply with the approved format.	Agree	November 2011
2	24	Communicate to the courts the importance of appointing attorneys to represent wards in guardianship and conservatorship cases in accordance with statute.	Agree	November 2011
3	29	Ensure that courts appoint court visitors when required by statute and obtain statutorily required information from the court visitors by (a) providing training to the courts on the requirements surrounding court visitor appointments and reporting; (b) revising the Court Visitor's Report form to include all statutorily required information; and (c) implementing low-cost, easily accessible options for providing information and training to all court visitors.	Agree	a. November 2011 b. November 2011 c. July 2012
4	38	Ensure that courts obtain all required reports from guardians and conservators by (a) requiring that courts obtain a signed copy of the Acknowledgement of Responsibilities form at the time of appointment; (b) updating the Eclipse system or ensuring that the new case management system is designed to automatically capture all future reporting requirements once an appointment is made and having fail-safes that require court action on alert; (c) expanding the type of contact information obtained and pursuing the statutory authority to use addresses obtained from the Department of Revenue for jury pools for tracking down delinquent guardians and conservators; (d) requiring that courts follow up with and, as appropriate, take action against guardians and conservators who fail to submit required reports; and (e) evaluating whether to include expiration dates on guardian and conservator letters of authority.	a. Agree. b. Agree c. Partially Agree d. Agree e. Agree	December 2012

RECOMMENDATION LOCATOR
Agency Addressed: Judicial Branch

Rec. No.	Page No.	Recommendation Summary	Agency Response	Implementation Date
5	47	Ensure that guardians and conservators provide sufficient information in required reports for courts to assess whether the guardians and conservators are acting in the wards' best interests by (a) issuing a directive that the courts require guardians and conservators to resubmit any report not filed on the approved form and consider taking action against guardians and conservators who repeatedly ignore the courts' orders, and (b) improving guidance to guardians and conservators on how to complete required reports, what forms should be used, what information should be included and where to find it, and what constitutes sufficient documentation.	Agree	December 2011
6	48	Strengthen the courts' guardian and conservator report review process by (a) training court staff on the use of the Judicial Branch's risk assessment tool to determine priority for report review; (b) developing tools to automate report submissions and reviews; (c) evaluating the feasibility of having experts located in the State Court Administrator's Office review more complex reports; (d) providing training and guidance to court staff who continue to review reports to ensure they have the skills needed to review more complex reports; (e) instructing the court to, when necessary, appoint or contract with individuals with the appropriate technical expertise to review more complex reports; and (f) conducting periodic audits of the supporting documentation maintained by conservators.	Agree	a. December 2012 b. December 2013 c. December 2012 d. December 2012 e. December 2012 f. December 2012
7	54	Ensure that each judicial district has a systematic process of evaluating the overall performance of professional guardians and conservators routinely appointed in their districts.	Agree	June 2012

RECOMMENDATION LOCATOR
Agency Addressed: Judicial Branch

Rec. No.	Page No.	Recommendation Summary	Agency Response	Implementation Date
8	59	Improve the Judicial Branch's data management and strengthen its oversight of guardianship and conservatorship cases by (a) continuing to review all existing cases in Eclipse to determine their current status and properly coding all terminated cases; (b) revising the *Trial Court Resource Manual* to ensure it directs courts on how to enter data into Eclipse or a new system for all case types; and (c) updating Eclipse, or ensuring that any new systems are designed, to collect additional data for each judicial district on wards, guardians, and conservators.	Agree	December 2012
9	64	Ensure that the courts effectively administer guardianship and conservatorship cases by (a) issuing directives that clearly delineate which policies and procedures are mandated for every case, and (b) strengthening the internal audit process by using recommendations within internal audit reports to inform Judicial Branch policymaking and by requiring the judicial districts to provide detailed responses and implementation dates for recommendations.	Agree	December 2011

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Overview of Guardianships and Conservatorships

Chapter 1

Guardianship and conservatorship cases deal with protected persons such as minor children and individuals who have been deemed by the court to be incapable of caring for themselves or making their own decisions. Throughout this report we will refer to these individuals as "wards." In Colorado, guardianship and conservatorship cases fall within the purview of the State's probate system. Colorado courts handle probate matters in accordance with the Colorado Probate Code, established in Title 15, Articles 10 through 17 of the Colorado Revised Statutes (C.R.S.). Two of the underlying purposes of the Probate Code, as defined in statute, are:

- "To promote a speedy and efficient system for managing and protecting the estates of protected persons so that assets may be preserved for application to the needs of protected persons and their dependents" [Section 15-10-102(2)(d.1), C.R.S.].

- "To provide a system of general and limited guardianships for minors and incapacitated persons and to coordinate guardianships and protective proceedings concerned with management and protection of the estates of incapacitated persons" [Section 15-10-102(2)(d.2), C.R.S.].

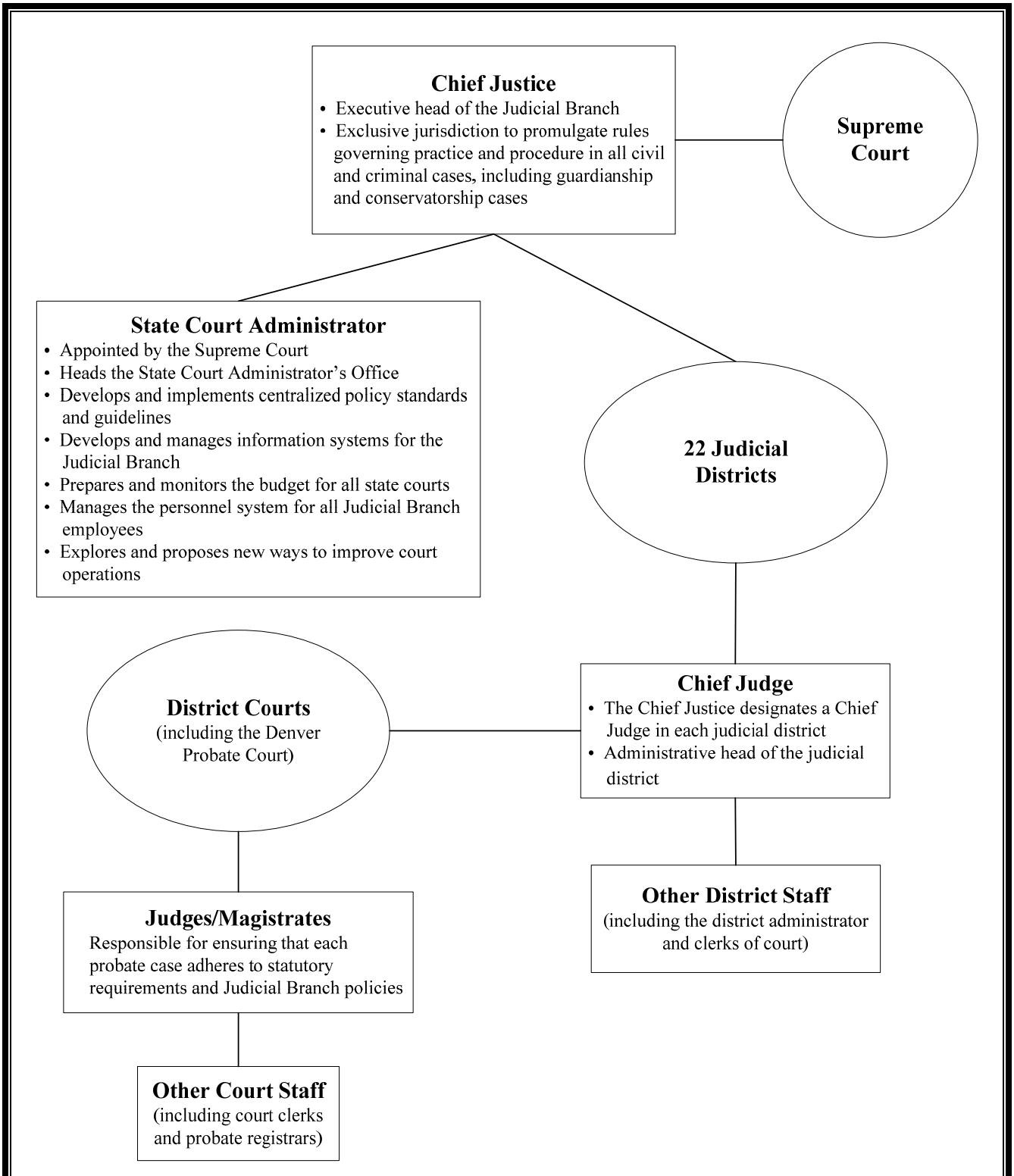
Organization of the Judicial Branch

The Colorado Judicial Branch (the Judicial Branch) includes the Colorado Supreme Court (the Supreme Court), which has exclusive jurisdiction to promulgate rules governing practice and procedure in all civil and criminal cases, including guardianship and conservatorship cases. The Chief Justice of the Colorado Supreme Court is the executive head of the Judicial Branch.

The Judicial Branch also includes the district courts located in 22 judicial districts throughout the state, as established in Article VI, Section 10 of the Colorado Constitution and Section 13-5-101, C.R.S. Of these 22 judicial districts, 21 districts have district courts that handle probate proceedings (Colorado Const., art. VI, sec. 9) as well as other types of civil and criminal cases. The remaining judicial district, located in Denver, does not handle probate cases. Instead, a separate Denver Probate Court was established by the Colorado Constitution to

handle probate proceedings (art. VI, sec. 1 and 9). For ease of understanding, throughout this report we collectively refer to the judicial districts plus the Denver Probate Court as the judicial districts. The Chief Justice designates a chief judge in each district, who is responsible for overseeing the administrative functions of that district. Probate cases, including guardianship and conservatorship cases, are heard by the district court judges or magistrates, who are responsible for ensuring that each probate case adheres to statutory requirements and Judicial Branch policies. Judges and magistrates are assisted by other court staff, including a district administrator, court clerk, and, in some districts, a probate registrar.

In addition, the Judicial Branch includes the State Court Administrator, whom the Supreme Court appoints to assist the Chief Justice with his executive duties. The State Court Administrator position, which was created in the Colorado Constitution (art. VI, sec. 5), heads the State Court Administrator's Office. The diagram below is a graphic representation of the divisions and individuals within the Judicial Branch and each of their duties.



Source: Office of the State Auditor-generated chart from statute, Colorado Constitution, and analysis of documents provided by the State Court Administrator's Office.

The Judicial Branch provides guidance to the courts for the administrative aspects of handling cases including guardianships and conservatorships. Specifically, it has developed the *Trial Court Resource Manual* to assist court staff in performing the administrative operations of the court. The *Trial Court Resource Manual* includes statutes, Chief Justice Directives, policies, and best practices related to the administration of all types of court cases, including guardianship and conservatorship cases. In addition, following the release of the *Oversight of Probate Cases Performance Audit* (September 2006) by the Office of the State Auditor, the Judicial Branch created the Protective Proceedings Task Force (the Task Force). Among other things, the Task Force was responsible for creating new Judicial Department forms that provide a uniform means of filing, reporting, and issuing orders for guardianship and conservatorship cases. These forms, which comply with statutory requirements and Colorado Rules of Probate Procedure (i.e., the rules promulgated by the Supreme Court that govern guardianship and conservatorship cases), have been approved by the Supreme Court. All parties involved in guardianship and conservatorship cases are required to use these forms or forms that substantially conform.

Guardians and Conservators

A guardianship or conservatorship case is generally initiated when the ward or an interested person (individual with an interest in the estate or well-being of a ward) files a petition with the court to appoint a guardian and/or conservator to the ward. Petitions are usually filed by the ward or a family member or friend of the ward; however, petitions can be filed by others, including county departments of social services or an adult protective services agency. In Colorado, the court may appoint a guardian, a conservator, or both a guardian and a conservator to a ward, depending on the person's needs. In some instances, the same individual may be appointed to serve as both the guardian and conservator. Descriptions of the selection process for and roles of guardians and conservators are included in the following table:

Court-Appointed Guardians and Conservators in Colorado		
	Guardians	**Conservators**
Responsibilities	Makes decisions about a ward's support, care, health, education, and welfare.	Manages the financial affairs, including both real and personal property, of a ward.
Determination of capacity	Court must determine that the ward is a minor child or incapacitated to the extent that he or she cannot make decisions about his or her well-being.	Court must determine that the ward is in need of protection and cannot handle his or her own financial affairs.
Priority of appointment	Statute requires that the court give priority to those individuals nominated by the ward, including those nominated by the ward in a power of attorney, certain relatives, or persons with whom the ward has recently resided over professional guardians or conservators.	
Professional appointees	Typically includes private individuals or companies in the nursing or social services fields or county departments of social services.	Typically includes attorneys, certified public accountants, or public administrators[1].
Compensation	Nonprofessional appointees (e.g., family members or friends) do not typically receive compensation for their services, but they can be reimbursed for some expenses from the ward's estate. Professional appointees are typically compensated for their services and their compensation is paid from the ward's estate.	
Level of authority	Statute requires that the court make the least restrictive appointment possible and limit the guardian's or conservator's level of authority based on the ward's limitations. The guardian or conservator shall encourage the ward to participate in decisions, act on his or her own behalf, and develop or regain the capacity to manage his or her own affairs.	
Length of appointment	Cases involving a minor child terminate when the ward turns 18 years old or upon the ward's death, adoption, or emancipation. Cases involving an incapacitated adult terminate upon the ward's death or when the court determines the guardianship is no longer needed—generally as the result of a petition from, or on behalf of, the ward.	Cases involving a minor child terminate when the ward turns 21 years old. Cases involving an incapacitated adult terminate upon the ward's death or when the court determines the conservatorship is no longer needed—generally as the result of a petition from, or on behalf of, the ward.

Source: Office of the State Auditor's analysis of Colorado Revised Statutes.

[1]Statute allows each judicial district to appoint a person to serve as the public administrator for that judicial district. Although this individual serves at the pleasure of the court, he or she is not an employee of the State, judicial district, city, or county, and is paid out of the ward's estate. Public administrators provide a variety of probate services for the court, including acting as a conservator. Currently, 15 of Colorado's 22 judicial districts have public administrators.

In 2000, Colorado adopted the Colorado Uniform Guardianship and Protective Proceedings Act (the Act) as part of the Colorado Probate Code (Parts 1 through 4 of Article 14 of Title 15, C.R.S.). The Act became effective January 1, 2001. This Act contains procedures a court should follow in establishing and monitoring a guardianship or conservatorship case. The Act is based on a similar act that was

recommended for enactment in all states by the National Conference of Commissioners of Uniform State Laws (the Conference) to reflect developments in the area of guardianships and conservatorships nationwide.

The Act requires that when making guardian and conservator appointments, the courts make the least restrictive appointment possible (Sections 15-14-311 and 409, C.R.S.). That is, the courts should encourage the development of the ward's maximum self-reliance and independence by granting the guardian and conservator with only those powers necessary to address the ward's limitations and demonstrated needs. This is a reflection of the Conference's efforts to emphasize that "guardianships and conservatorships should be viewed as a last resort, that limited guardianships or conservatorships should be used whenever possible, and that the guardian or conservator should always consult with the ward or protected person, to the extent feasible, when making decisions." For example, in some cases the court may limit the conservator's authority by ordering funds to be deposited into a restricted account and requiring the conservator to obtain court approval to withdraw or transfer those funds. After making an appointment, courts issue orders and letters that detail the powers and limitations of the appointed guardian or conservator. The letters are the device that the guardians or conservators use to convey their authority to caregivers, banks, or other establishments.

In addition, the Act requires the courts to monitor the performance of most of the guardians or conservators whom they appoint to ensure that the guardians or conservators perform their duties in the best interest of the ward and in accordance with statute and court orders [Sections 15-14-317(3) and 15-14-420(4), C.R.S.]. Unlike most other types of court cases, guardianships and conservatorships typically require long-term court involvement. We discuss guardian and conservator appointments and the courts' monitoring further in Chapter 2.

Caseload

Guardianship and conservatorship cases represent a small percentage of the Judicial Branch's overall caseload. In Fiscal Year 2010, the most recent data available from the Judicial Branch, there were 2,025 new guardianship and conservatorship cases filed in Colorado. These cases represented less than 1 percent of the approximately 237,000 total new civil and criminal cases filed during this period. The following table shows the number of new guardianship and conservatorship cases filed in Fiscal Years 2006 through 2010.

New Guardianship and Conservatorship Cases Filed Fiscal Years 2006 through 2010					
Case Type	**2006**	**2007**	**2008**	**2009**	**2010**
Guardian	1,235	1,251	1,216	1,180	1,228
Conservator	454	445	470	477	419
Guardian & Conservator	317	332	328	345	378
Total	2,006	2,028	2,014	2,002	2,025
Source: Annual Statistical Report—State Court Administrator's Office, Planning and Analysis Division.					

According to the Judicial Branch, guardianship and conservatorship cases typically continue for multiple years and, therefore, the number of active cases is much higher than the number of new cases filed. An active case is one in which the appointed guardian or conservator is still carrying out his or her duties. However, the Judicial Branch cannot provide aggregate data on the total number of active guardianship and conservatorship cases statewide or by judicial district. In addition, the Judicial Branch does not have data on the average length of time guardianship and conservatorship cases remain active. We discuss this issue in more detail in Chapter 2.

Audit Scope and Methodology

We conducted this performance audit pursuant to Section 2-3-103, C.R.S., which authorizes the State Auditor to conduct audits of all departments, institutions, and agencies of state government. Audit work was performed from August 2010 through May 2011. We acknowledge the cooperation and assistance provided by Judicial Branch staff.

The objective of this audit was to review the performance of the Judicial Branch with respect to the appointment and monitoring of guardians and conservators. Specifically, we evaluated whether the Judicial Branch has:

- Established controls to ensure that all guardians and conservators are qualified to carry out their duties.
- Instituted policies and practices that provide for timely and quality oversight of guardians and conservators and ensure these individuals fulfill their assigned responsibilities.
- Implemented measures to follow up on the filing of required reports by guardians and conservators.

- Implemented a case management system that contains accurate and useful information and appropriate safeguards to properly track and manage guardianship and conservatorship cases.

- Established mechanisms for evaluating the performance of professional guardians and conservators, including public administrators.

- Developed a mechanism to effectively and efficiently manage system-wide guardianship and conservatorship issues.

To accomplish our audit objectives, we visited six judicial districts. We considered a variety of criteria when choosing these judicial districts, including guardianship and conservatorship caseload, geographic location, how probate cases are handled in relation to other case types within the district, whether the Judicial Branch had conducted recent internal audits within the district, whether the district was visited during our *Oversight of Probate Cases Performance Audit* (September 2006), and whether the district has a public administrator. We also chose specific counties within those judicial districts that have multiple counties. In addition to the Denver Probate Court, the districts we selected are the 1st (Jefferson County), 4th (El Paso County), 5th (Eagle and Summit Counties), 15th (Baca and Prowers Counties), and 18th (Arapahoe and Douglas Counties). For those six districts, we interviewed district staff, including judges, and conducted an onsite review of the case files for a random, nonstatistical sample of 48 guardianship and conservatorship cases that were opened between Calendar Years 1999 and 2010 and for which an appointment was made. We reviewed these 48 cases to assess the courts' processes related to the appointment of guardians and conservators. We also reviewed these 48 cases as well as an additional seven cases to evaluate the court's monitoring processes. In total, we examined 55 cases for various aspects of the appointment and monitoring processes for guardians and conservators. In addition, for 28 conservators in our sample, we asked the courts to issue orders requiring those conservators to supply supporting documentation related to reports they recently filed with the court. We reviewed the supporting documentation for 10 of these 28 conservators. The results of our samples cannot be projected to the entire population. We selected our samples to provide sufficient coverage of those areas—such as the courts' processes for appointing guardians and conservators and monitoring the guardians and conservators after they were appointed—that were significant to the objectives of this audit.

Further, we interviewed staff at the State Court Administrator's Office to gain a better understanding of their role in overseeing the operations of the judicial district courts and their authority for issuing statewide policies. Finally, we reviewed best practices established by the:

- *National Probate Court Standards*—established by the Commission on National Probate Court Standards to provide standards for the establishment and monitoring of guardianships and conservatorships, which can be adopted by rule, policy, or practice.

- National College of Probate Judges—a national organization that provides continuing judicial education for probate judges and related personnel and promotes the efficient, fair, and just judicial administration of probate courts.

- National Center for State Courts—a national, nonprofit court improvement organization that provides research, information services, education, and consulting intended to help courts plan, make decisions, and implement improvements that save time and money, while ensuring judicial administration that supports fair and impartial decision making.

- Conference of State Court Administrators—an organization composed of state court administrators from all 50 states and U.S. territories, that assists states in developing policies and standards related to the administration of judicial systems.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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Appointment and Monitoring of Guardians and Conservators

Chapter 2

The legal appointment of a guardian or conservator for an individual occurs when the court determines that the individual is unable to make sound decisions about his or her own support, care, health, safety, or management of property. By appointing a guardian or conservator, the courts remove the rights of individuals to make fundamental decisions about their own lives—such as where they will live, what type of health care they will receive, their daily activities, and how they want to manage their finances—and place these rights in the hands of others. Individuals for whom a guardian or conservator is sought and appointed are vulnerable due to their incapacity to make decisions. As such, the courts have a responsibility to ensure that the appointment of a guardian or conservator is made based on the collection and consideration of relevant information about the individual's condition and the suitability of the person or entity nominated to serve as the guardian or conservator. In addition, the courts must ensure that they appropriately limit the rights transferred from the ward to the guardian or conservator, based on the ward's needs. Finally, the courts have a legal and ethical obligation to oversee the actions of the guardians and conservators they appoint to ensure that these appointees are acting in the best interest of the ward and are fulfilling their duties, but are not exceeding their authority.

Within each judicial district, the district court judge or magistrate responsible for hearing probate cases has primary responsibility for administering guardianship and conservatorship cases and ensuring that these cases comply with statutes and Judicial Branch policies. However, there are various other court staff, such as the court clerk, law clerks, or probate registrar, who are responsible for assisting the judge with the administration of these cases. It is up to the Chief Judge, a judicial district's administrative head, and the judge hearing probate cases to determine which staff within the district will be responsible for certain functions. For example, in some districts the court clerk or probate registrar is responsible for ensuring that parties file all of the required forms and for entering data into the Judicial Branch's case management system, Eclipse. In some districts, the court clerk or probate registrar may also be responsible for appointing a court visitor and for reviewing guardian and conservator annual reports. (We discuss court visitors and annual reports later in this chapter.) In other districts, however, the judge will make all decisions related to appointing a court visitor and will review all annual reports. Given the differences within each district, our references to "the court" throughout this report will include both the judges who hear probate cases and court staff within a district.

We reviewed court practices for administering guardianship and conservatorship cases in six judicial districts. Overall, we found that the courts' processes do not ensure that the rights, welfare, and assets of wards are adequately protected from the time the appointment of a guardian or conservator is sought until the appointment is terminated. With respect to the appointment process, we identified concerns with the information provided by the individuals nominated to be a guardian or conservator, the courts' appointment of attorney representation to the ward, and the appointment of court visitors and the information provided by court visitors. With respect to monitoring, we identified concerns with the initial, annual, and final reports submitted by guardians and conservators; the courts' review of these reports; the courts' oversight of professional guardians and conservators; and the availability of data needed to monitor and track guardianship and conservatorship cases effectively. Finally, we found that the Judicial Branch has not exercised appropriate governance over the courts to ensure that these cases are effectively managed statewide. Each of these issues is discussed further in this chapter.

Background Information From Nominees

According to statute, the ward, an individual interested in the ward's welfare or estate, or an individual who would be adversely impacted if the ward's estate was not effectively managed, can file a petition with the court to appoint a guardian or conservator [Sections 15-14-304(1) and 15-14-403(1), C.R.S.]. The person who files the petition is required to nominate someone to serve as the guardian or conservator. Often, though not always, the petitioner nominates himself or herself. Nominees for guardianships or conservatorships may include a nonprofessional family member or friend of the ward, or a professional guardian or conservator. Professional guardians and conservators generally receive fees (paid by the ward's estate) for the services they provide. A professional guardian may include a trained caregiver or social services worker, and a professional conservator may include a financial institution, attorney, accountant, or the public administrator within the judicial district. As discussed previously, the public administrator is a court-appointed fiduciary who, while not an employee of the State or the district, serves at the pleasure of the court and can be appointed by the court to act as a conservator. Prior to appointing the nominee as guardian or conservator, the court is required to gather certain information on the nominee's history in order to assess his or her fitness for managing the health, welfare, and finances of the ward.

What audit work was performed and what was the purpose?

We reviewed a sample of 48 guardianship and conservatorship cases to determine if the court had received and considered all of the statutorily required background information from the nominees *prior* to their appointment. For these 48 cases,

there were 19 nominees statutorily required to submit criminal and credit history information. Our review of these cases sought to determine whether the Judicial Branch has sufficient controls in place to ensure that, prior to making an appointment, the courts receive and consider all statutorily required background information from the nominees in order to assess their fitness to be a guardian or conservator.

How were the results of the audit work measured?

Since June 2005, statute has required most individuals nominated to serve as a guardian or conservator to submit a Colorado Bureau of Investigation (CBI) name-based criminal history record check and a current credit report to the court *prior* to each new appointment [Section 15-14-110(2), C.R.S.]. According to statute, parents residing with their children are *not* required to provide the criminal and credit history information. In addition, certain professional guardians and conservators, such as public administrators, financial institutions, and state or county agencies, are not required to submit this information, but other types of professionals are not statutorily exempt from the requirement. Finally, statute allows the court to waive the criminal and credit history information requirement for any nominee for "good cause shown."

What problem did the audit work identify?

Overall, we found that the Judicial Branch does not have sufficient controls in place to ensure that the courts receive and consider all of the statutorily required background information from nominees *prior* to appointing them to serve as guardians and conservators. Specifically, we found that three (16 percent) of the 19 nominees in three judicial districts who were required by statute to provide the court with criminal and credit history information did not provide either the criminal history, credit history, or both *prior* to their appointment. Two nominees were professional guardians and one was a family member of the ward. One of the professional nominees provided the information *after* her appointment by the court.

In addition, we found that one judicial district has implemented a policy that may preclude it from obtaining criminal and current credit history information from some of its nominees. Under this policy, the district requires professional guardians and conservators to submit criminal and credit history reports prior to their first appointment in the district. Thereafter, the district only requires professional nominees to submit an annual "letter of good standing" attesting that their criminal and credit histories have remained sound. Although this policy may help streamline the appointment process, for some professional guardians and conservators who receive numerous appointments each year, it means the court will not receive an updated CBI and credit report for years. For example, although statute (Section 15-14-110, C.R.S.) requires that nominees submit a current credit

report, a professional in one of the cases we reviewed in this district had not submitted a credit report to the court in at least six years. As of April 2010, this professional was an active conservator on 26 cases.

Why did the problem occur?

The issues identified occurred because of the following:

- **Lack of Awareness of Requirements for Professional Nominees.** The Judicial Branch has not provided sufficient direction and training to the courts on the statutory requirements related to the information nominees must provide prior to their appointment. Although the Judicial Branch has provided guidance to court staff in the *Trial Court Resource Manual* on how to document that they have received criminal and credit history information from nominees, the Judicial Branch has not provided specific direction to the courts regarding who must submit the information, who is exempt from the requirements, and the frequency with which professional nominees should submit criminal and credit history information. In three of the six judicial districts we visited, the courts were not aware of the requirements that professional nominees must follow. For example, one court told us that it often appoints professional guardians and conservators without receiving criminal and credit history information because statute does not require these types of nominees to submit the information. However, statute does not exempt professionals from having to submit the information [Section 15-14-110(9), C.R.S.].

- **Acceptance of Nonapproved Forms.** The courts do not always require that nominees submit the Colorado Supreme Court-approved Judicial Department Acceptance of Office form. This form outlines all of the information nominees are required by statute to submit. If nominees do not use or refer to this form, they may not be aware of all of the requirements. Since July 2009, the Judicial Branch has required courts to use this form or a form that substantially conforms with the form; however, some districts continue to accept nonapproved and nonconforming forms from nominees. As discussed previously, the Protective Proceedings Task Force developed the Colorado Supreme Court-approved Judicial Department forms to provide uniformity in filings and to help ensure compliance with statutory requirements and Colorado Rules of Probate Procedure. One of the nominees in our sample who failed to submit the required criminal and credit history information prior to her appointment did not use the approved Acceptance of Office form or a form that substantially complied.

Why does this problem matter?

When the court appoints a guardian or conservator, it is giving that guardian or conservator the authority to make critical health and financial decisions for an individual whom the court deems incapable of making those decisions for himself or herself. The General Assembly, recognizing the significance of placing this authority in someone's hands, established the requirement that, unless explicitly exempted by statute or upon a finding by the court, nominees for guardianships and conservatorships submit criminal and credit history information and that the courts consider this information prior to making an appointment. When the court makes an appointment before receiving this important background information, there is a risk that the court will appoint a guardian or conservator whose criminal or credit history makes him or her unsuitable to handle the responsibilities of the position.

A 2010 report issued by the U.S. Government Accountability Office (GAO) on *Cases of Financial Exploitation, Neglect, and Abuse of Seniors* reviewed a sample of 20 cases in which there were allegations of physical abuse, neglect, and financial exploitation of wards by guardians and conservators. The GAO found that the guardians and conservators in these cases stole or improperly obtained $5.4 million in assets from their wards and, in some cases, physically abused and neglected their wards. This included a case in Colorado in which a professional conservator stole more than $2 million from the ward's estate. In addition, the GAO found that in six of the 20 cases, the courts failed to adequately screen potential guardians and conservators and appointed individuals with criminal convictions or significant financial problems to manage high-dollar estates.

Recommendation No. 1:

The Judicial Branch should ensure that courts obtain statutorily required background information from individuals nominated to serve as a guardian or conservator to help protect the vulnerable wards served by these individuals. Specifically, the Judicial Branch should:

a. Provide specific direction to the courts through a Chief Justice Directive or in the *Trial Court Resource Manual* on the statutory requirements related to the information nominees must provide prior to their appointment, including the requirements for public administrators and professional guardians and conservators. The Judicial Branch should provide periodic training to the courts on this information.

b. Mandate that courts require guardians and conservators to use the appropriate Judicial Department Acceptance of Office form and

discontinue the practice of accepting forms that do not comply with the approved format.

Judicial Branch Response:

Agree. Implementation date: November 2011.

a. The Judicial Branch agrees that all statutory requirements must be met. The *Trial Court Resource Manual* is being revised to clarify the case types in which the Acceptance of Office form [Judicial Department Form (JDF) 805] must be accompanied by a name-based criminal history record check and a current credit report. Judges, clerks of court, and probate registrars were sent a training e-mail advising them of the requirements.

b. The *Trial Court Resource Manual* is being revised to indicate that the Acceptance of Office form must be filed using the most current version of JDF 805. Judges, clerks of court, and probate registrars were sent a training e-mail advising them of the requirement.

   The Judicial Branch will seek a mandate from the Chief Justice, by means of a Chief Justice Directive, requiring all judicial officers and personnel to comply with the section of the *Trial Court Resource Manual* containing policies and procedures for guardianship and conservatorship cases.

Attorney Representation for Wards

According to the National Center for State Courts, wards are often vulnerable during the appointment process because they may have an "incomplete or inadequate understanding" of the legal proceedings that could significantly impact their lives. One way courts can effectively safeguard the rights and interests of the ward during this process is to ensure the ward has the assistance of an attorney. The drafters of the Uniform Guardianship and Protective Proceedings Act, the national model law that Colorado adopted in 2000, recognized the importance of legal representation by stating a belief that courts should "err on the side of protecting the (ward's) rights and appoint counsel in most cases."

What audit work was performed and what was the purpose?

Of the 48 cases in our sample, there were 11 cases in which statute required the courts to appoint attorneys to represent the wards. We reviewed these 11 cases to determine if the Judicial Branch has sufficient controls in place to ensure that,

when required by statute, courts appoint attorneys to represent wards during the appointment of the guardian or conservator.

How were the results of the audit work measured?

Recognizing the importance of legal representation, the General Assembly adopted statutes that require the court to appoint an attorney to represent a ward in the following instances:

- **Appointment of an Emergency Guardian.** To protect the ward's rights, statute requires the court to appoint an attorney to advocate for the ward immediately after it appoints an emergency guardian [Section 15-14-312(1), C.R.S.]. Occasionally, courts may appoint an emergency guardian to make a quick medical decision or for immediate care of the ward while the procedures for a permanent appointment are occurring. Statute only allows the court to appoint an emergency guardian if the normal procedures for appointment "will likely result in substantial harm to the (ward's) health, safety, or welfare" [Sections 15-14-204(5) and 15-14-312(1), C.R.S.]. Due to the urgent need for a guardian in these cases, statute waives many of the protections afforded the ward under the normal appointment procedures.

- **Ward Request, Court Visitor Recommendation, or Court Determination.** The court must appoint an attorney if the ward requests one, the court visitor recommends one, or the court determines that the ward needs representation [Sections 15-14-305(2) and 15-14-406(2), C.R.S.].

What problem did the audit work identify?

We found that the Judicial Branch does not have sufficient controls in place to ensure that the courts appoint attorneys to represent wards when required by statute. We identified two (18 percent) of the 11 cases in two judicial districts in which the courts took away the fundamental rights of the wards without having appointed an attorney, as required by statute. Specifically, we found:

- **Appointment of an Emergency Guardian.** In one case, the court did not appoint an attorney to the ward after it appointed an emergency guardian.

- **Ward Request, Court Visitor Recommendation, or Court Determination.** In one case, the court did not appoint an attorney when recommended by the court visitor.

Why did the problem occur?

We found that although statute clearly states the two instances when the court must appoint an attorney to represent the ward in a guardianship or conservatorship case, some courts were not aware of the importance of appointing an attorney to represent a ward in the instances in which it is required by statute. For example, in the emergency guardianship case noted above, the court told us that it did not appoint an attorney because it concluded that the nature of the case did not warrant appointing an attorney. However, statute does not establish any exceptions to the two instances in which the court must appoint an attorney. Currently, the *Trial Court Resource Manual* provides limited direction to the courts on the instances in which statute requires that an attorney be appointed.

Why does this problem matter?

If a court fails to appoint an attorney when the ward requests one, the court visitor recommends one, or the court appoints an emergency guardian, the court also fails to ensure that the ward has a legal advocate and advisor throughout the appointment process. Without legal representation, there is the potential for a ward to be exploited in the legal proceedings associated with the appointment, which could result in less protection of the rights and interests of the ward. An attorney has the legal expertise regarding guardianships and conservatorships to help the ward determine if he or she wants to challenge the potential appointment, help wage the challenge if one is desired by the ward, or help the ward understand the outcome of a guardian or conservator appointment. For example, in the emergency guardianship case discussed above, the emergency guardianship was established to move the ward out of state. According to the court, because this was the sole purpose of the appointment, there was no need to appoint an attorney. However, if the ward did not want to be moved to another state, an attorney could have helped make this case to the court.

Recommendation No. 2:

The Judicial Branch should help ensure that the vulnerable individuals involved in guardianship and conservatorship cases are adequately protected by communicating to the courts the importance of appointing an attorney to represent a ward and providing additional direction to the courts in the *Trial Court Resource Manual* on the instances in which statute requires that an attorney be appointed.

Judicial Branch Response:

Agree. Implementation date: November 2011.

The *Trial Court Resource Manual* is being revised to indicate the circumstances when appointment of an attorney to represent a ward is required. Judges, clerks of court, and probate registrars were sent a training e-mail advising them of the statutory requirements. The Court Visitor Report is being amended to highlight the visitor's recommendation to appoint an attorney, which creates a mandatory obligation on the court.

Information From Court Visitors

Court visitors are individuals appointed by the court to collect and disseminate important information related to the ward, the proposed guardian or conservator, and the overall need for the guardianship or conservatorship. As discussed below, the court visitor is required to provide the information that he or she collects to the court for consideration prior to the court appointing a guardian or conservator. The drafters of the Uniform Guardianship and Protective Proceedings Act, the model law that Colorado adopted in 2000, describe court visitors as "the information gathering arm of the court" whom courts appoint to "investigate the appropriateness" of the requested guardianship or conservatorship and to comment on the appropriateness of the nominee. The Judicial Branch further describes court visitors as independent people who serve as the "eyes and ears of the Court." The costs of the court visitor are paid for out of the ward's estate, or by the State if the ward is indigent.

What audit work was performed and what was the purpose?

We reviewed the 22 cases in our sample of 48 in which statute required the courts to appoint a court visitor. Our review of these cases sought to determine whether the Judicial Branch has sufficient controls in place to ensure that the courts appoint and receive information from court visitors, as required by statute.

How were the results of the audit work measured?

Statutes (Sections 15-14-305 and 15-14-406, C.R.S.) require the courts to appoint a court visitor when they receive a petition for an adult guardianship or conservatorship appointment. According to statute, court visitors must carry out certain duties, including:

- **Collecting and Disseminating Information to the Ward.** Court visitors must interview the ward in person and visit the ward's present home and, if the ward will be moved, the ward's proposed future home. For example, in some cases a ward may be moved into a family member's home or to an assisted living facility after a guardian is appointed. In addition, when meeting with the ward, to the extent that the ward is able to understand, the court visitor should discuss: (1) the effect an appointment could have on the ward, (2) the general duties and powers of a guardian or conservator, (3) the ward's rights (including the right to have an attorney), (4) the fact that all of the costs and expenses associated with appointing a guardian or conservator will be paid from the ward's estate, and (5) the ward's opinion of the proposed guardian or conservator. In addition to interviewing the ward, court visitors must interview the person who submitted the petition and the proposed guardian or conservator, and investigate any other matters as directed by the court. In guardianship cases, the court visitor must also obtain information from medical professionals who have treated or assessed the ward's condition.

- **Evaluating Information and Making Recommendations to the Court.** Based on the information gathered through interviews with the ward and other interested parties, court visitors must evaluate the need for the guardianship or conservatorship and the appropriateness of the nominee and make recommendations to the court regarding:

  - Whether the court should appoint an attorney and/or a guardian ad litem to represent the ward and the ward's best interests. A guardian ad litem is an individual who is appointed by the court to represent the interests of minor children and incapacitated adults.

  - Whether a professional evaluation of the ward is necessary.

  - The level of assistance the ward requires for daily activities.

  - Whether the proposed home, should the ward be moved, meets the needs of the ward.

  - The "appropriateness" of the guardianship or conservatorship, including whether "less restrictive means of intervention are available." If a limited guardianship or conservatorship is determined to be appropriate, the court visitor should make a recommendation as to the powers and duties that should be granted and the assets over which the conservator should be granted authority.

- The qualifications of the nominee and whether the ward approves of the nominee and the scope of the proposed duties and powers of the nominee.

To help ensure that court visitors perform all of their statutory duties, the Judicial Branch began requiring the use of a Colorado Supreme Court-approved Court Visitor's Report form in July 2009. Rule 5 of the Colorado Rules of Probate Procedure require the use of this standardized form, or a form that substantially follows the format and content of the standardized form. The Court Visitor's Report form provides space for the court visitor to fill in the required recommendations and statements, and check boxes to verify that the court visitor held the required discussions with the ward and other persons.

What problem did the audit work identify?

Overall, we found that the Judicial Branch does not have sufficient controls in place to ensure that the courts appoint and receive all information from court visitors, as required by statute, prior to making guardian and conservator appointments. Specifically, we found that:

- In four (18 percent) of the 22 cases reviewed, the court did not appoint a court visitor, as required by statute. As a result, the courts did not obtain all of the information statute requires them to have from a court visitor prior to appointing a guardian or conservator.

- In five (28 percent) of the 18 cases in which a court visitor was appointed, the court did not obtain all of the required information from the court visitors prior to appointing a guardian or conservator. For example, in three of these five cases, the court visitors did not make a recommendation to the court regarding the qualifications of the nominee. In addition, there was no evidence in two cases that the court visitors had interviewed the nominees, and in one case, the court visitor did not make a recommendation regarding the appropriateness of the guardianship.

Why did the problem occur?

The issues identified occurred because of the following:

- **Lack of Awareness of Court Visitor Requirements.** The courts in three of the six judicial districts we visited did not understand or have an awareness of the requirements surrounding court visitor appointments. For example, staff in one district told us that, until recently, they were not aware that the court *must* appoint a court visitor in every adult guardianship and conservatorship case. In another district, the court reported that it was not aware that statute requires the court visitor to make

a recommendation on the qualifications of the proposed guardian or conservator in each adult case. According to the State Court Administrator's Office, it last provided training to the courts on the requirements surrounding guardianship and conservatorship cases, including court visitors, in 2008. The State Court Administrator's Office was not able to provide information on who had attended the training.

- **Deficient Judicial Department Forms.** The Colorado Supreme Court-approved Judicial Department Court Visitor's Report form does not include space for court visitors to report all of the statutorily required information. As shown in the following table, the form does not contain sections for court visitors to indicate they interviewed the petitioner or to make a recommendation about the appropriateness of the guardianship or conservatorship or the qualifications of the nominee.

Court Visitor Reporting Requirements	
Statutory Requirements	**Included on Court Visitor Report Form**
Interview the ward	Yes
Interview the nominee	Yes
Interview the petitioner	No
Make recommendations on:	
Whether the court should appoint an attorney	Yes
Whether professional evaluation of the ward is necessary	Yes
The level of assistance the ward requires	Yes
The appropriateness of the guardianship or conservatorship	No
The qualifications of the nominee	No

Source: Office of the State Auditor's analysis of statutes and the Colorado Supreme Court-approved Court Visitor Report form.

Deficiencies in the Court Visitor's Report form are especially concerning in light of the fact that one court told us that it now instructs court visitors to only ask the questions on the Court Visitor's Report form, because it has received complaints about court visitors asking questions outside of the scope of their duties.

- **Insufficient Court Visitor Training.** The Judicial Branch may not have provided court visitors with sufficient training on all of their required duties. As a result, some court visitors may not realize that they are required to perform all of their duties and that they do not have the discretion to decide what they will or will not do. For example, in one case, the court visitor stated in his report that he did not conduct the statutorily required interviews with the two nominated conservators because one was a close family friend of the ward, and the other, a

professional, had not met the ward. However, statute does not allow for any exemptions from the required interviews. Further, the court in this case did not direct the court visitor to go do the interviews when the court visitor submitted his report, but instead made an appointment without complete information. The Judicial Branch held training for court visitors in August 2010. The training was held in Denver, but the Judicial Branch did not require court visitors to attend the training due to the costs involved with their time and travel. As discussed previously, court visitor costs are typically charged to the ward's estate. However, some judicial districts required their court visitors to attend the training and paid for the costs from their own budgets. The Judicial Branch should explore other low-cost, easily accessible options for regularly providing information and training to court visitors. This may include developing and implementing an online training program.

Why does this problem matter?

As stated above, statute requires the court visitor to gather and file certain information with the court. The information collected and recommendations made by the court visitor are intended to help the court make a fully informed decision about whether to remove some or all of a ward's rights to self determination. The court visitor's responsibilities are also intended to help ensure that the ward is fully informed of his or her rights and other aspects of the case. When the court does not appoint a court visitor or a court visitor does not fulfill all of his or her duties, there is no assurance that the court receives the information it needs to make an informed decision about the appointment or that the wards receive important information about their rights and the impact the case could have on their lives before the courts hold the appointment hearings. When wards are not informed of their rights or the potential effect of a guardian or conservator appointment on their lives, they may not be fully prepared to advocate for themselves throughout the process, which may ultimately result in having their rights taken away. Further, when courts fail to receive required information from a court visitor, there is a risk that the court will appoint a guardian or conservator with more authority than is necessary, when one is not needed, or who is not suitable for the responsibilities of the role.

Recommendation No. 3:

The Judicial Branch should help ensure that the rights of vulnerable wards are protected by:

a. Providing training to the courts on the statutory requirement that a court visitor be appointed in every case involving an adult guardianship or conservatorship and that the court is responsible for ensuring that court

visitors provide all of the statutorily required information to the court and to the ward prior to the appointment.

b. Revising the Court Visitor's Report form to include all statutorily required information, including sections for a statement on the qualifications of the nominee and a recommendation regarding the appropriateness of the guardianship or conservatorship (including whether "less restrictive means of intervention are available" and whether the court should limit the powers and duties of the guardian or conservator). The form should also include evidence that the petitioner was interviewed.

c. Exploring and implementing low-cost, easily accessible options for regularly providing information and training to all court visitors regarding their statutory duties. This may include developing and implementing an online training program.

Judicial Branch Response:

a. Agree. Implementation date: November 2011.

The *Trial Court Resource Manual* indicates the circumstances when appointment of a court visitor is required. It is being revised to also indicate that the court visitor's report must be filed using the most current version of the Court Visitor's Report form (JDF 810) and that the court shall require all sections of the form to have been completed. Judges, clerks of court, and probate registrars were sent a training email advising them of the statutory requirements for appointment of a court visitor and the requirement to accept only the most current and complete Court Visitor's Report form.

The Judicial Branch will seek a mandate from the Chief Justice, by means of a Chief Justice Directive, requiring all judicial officers and personnel to comply with the section of the *Trial Court Resource Manual* containing policies and procedures for protective proceeding cases.

b. Agree. Implementation date: November 2011.

The Judicial Branch agrees that the current Court Visitor's Report form does not include all statutorily required information. A revised form has been drafted and sent to the Colorado Supreme Court for approval.

c. Agree. Implementation date: July 2012.

The Judicial Branch agrees to explore ways to provide low-cost training to all court visitors regarding their statutory duties, such as creation of a training manual and online training videos, for example.

Report Submission

The courts' primary mechanism for overseeing guardians' and conservators' performance is through reports the guardians and conservators are required to submit. These reports provide information on the location and condition of the ward and the ward's estate. Reports also provide the courts with information about the extent to which the guardian's or conservator's services are still needed and whether the guardian or conservator has acted in the best interest of the ward and in accordance with court orders. According to *National Probate Court Standards*, to ensure effective oversight, the court must have a process in place to maintain ongoing communication with guardians and conservators, track when reports are due, and investigate and take action when guardians and conservators fail to submit reports.

What audit work was performed and what was the purpose?

We reviewed the 32 cases from our sample for which reporting was required either by statute or court order. These 32 cases were in the six judicial districts we visited. For these cases, we evaluated whether the guardian or conservator submitted initial plans and annual and final reports to determine whether the Judicial Branch has processes in place to ensure that guardians and conservators file required reports in accordance with the schedule mandated by statute or the courts.

How were the results of the audit work measured?

Statute requires guardians and conservators to submit three types of reports to the court during the term of an appointment. We describe each of these reports in the table below.

Guardian and Conservator Reports		
	Guardians	**Conservators**
Initial Plans	Statute requires guardians of adults to submit, for court approval, a *Guardian's Initial Care Plan* to the court within 60 days of appointment. This plan must describe the condition of the ward, the guardian's proposed plan of care for the ward, and a summary of the ward's money and other assets in the guardian's possession or control (Section 15-14-317, C.R.S.).	Statute requires conservators of both adults and children to submit, for court approval, a *Conservator's Inventory and Financial Plan* within 90 days of appointment. This plan must include a detailed inventory of the ward's estate and the conservator's plan for protecting, managing, expending, and distributing the income and assets of the estate (Sections 15-14-418 and 419, C.R.S.).
Annual Reports	Statute requires guardians of adults to report at least annually to the court about the ward's welfare, including his or her mental and physical health and living conditions; the activities of the guardian in relation to the ward; any recommended changes in care; and the continued need for the guardianship (Section 15-14-317, C.R.S.). Statute does not require guardians of minors to report to the court on a routine basis [Section 15-14-207(e), C.R.S.]; however, the court has discretion to order reporting when it deems that reporting is necessary.	Statute requires all conservators to report to the court annually, unless otherwise directed by the court, on any receipts, disbursements, and distributions made to or from the ward's estate during the period; any services provided to the ward; and the continued need for the conservatorship (Section 15-14-420, C.R.S.). The report should include information on any fees the conservator charged the estate during the period.
Final Reports	Statute does not require guardians to submit a final report to the court at the termination of a guardianship.	Statute requires conservators to file a *Final Accounting* and a *Petition for Discharge* with the court within 60 days of a conservatorship's termination by the court or the death of the ward (Section 15-14-431, C.R.S.). The *Final Accounting* should include the same information as the annual report and the status of the ward's finances when the conservatorship ended. The *Petition for Discharge* serves as a formal request for the court to find that the conservator has sufficiently satisfied all fiduciary duties and to terminate the conservator's appointment and future liability for the ward's estate.

Source: Office of the State Auditor's analysis of Colorado Revised Statutes.

What problem did the audit work identify?

Overall, we found that the Judicial Branch does not have an adequate process in place to ensure that the courts obtain all required reports. Further, we found that

the courts do not always follow the processes that are in place. Specifically, we identified three areas where the courts are deficient in obtaining the required reports: (1) reports are not submitted by the guardian or conservator as statutorily required or as the court has ordered without follow up by the court, (2) courts do not always follow up with guardians and conservators to obtain missing reports, and (3) guardians and conservators do not always respond to court follow-up measures.

As shown in the table below, a total of 118 reports were required to be submitted for the testing period for the 32 cases we reviewed. This included 33 initial plans for Calendar Years 1999 through 2010 and 85 annual and final reports for Calendar Years 2008 through 2010. The courts only initially obtained 61 (52 percent) of the 118 required reports without having to spend court time and resources to follow up with the guardians and conservators who failed to initially submit their reports.

Guardian and Conservator Reports Submitted According to Statute or Court Order In Six Judicial Districts for Calendar Years 2008 through 2010

	Initial Plan[1]	Annual Report 2008	Annual Report 2009	Annual Report 2010	Final Report	Total Reports
Number of Required Reports[2]	33	21	29	32	3	118
Number of Reports Initially Submitted[3]	19	7	16	17	2	61
Number of Reports *Not* Initially Submitted	14	14	13	15	1	57
Percentage of Reports Received	58%	33%	55%	53%	67%	52%

Source: Office of the State Auditor's analysis of guardianship and conservatorship case data in six judicial districts.
[1] Initial plans were tested for the entire length of our testing period (Calendar Years 1999 through 2010).
[2] For purposes of this table, if both a guardian and conservator were appointed to a single case, each required report is counted separately.
[3] Initially submitted reports are reports that guardians or conservators submitted to the court without the court needing to take action (reminder letter, summons to appear) in order to attain them.

Additionally, we found that the courts were not always diligent in performing the necessary follow up to obtain those reports that were not initially submitted by guardians and conservators. As shown in the table above, in total, there were 57 reports not initially submitted by the guardians or conservators in accordance with statutory timeframes or as ordered by the court. The table below shows that the court took action (e.g. sent a reminder letter, Delay Prevention Order, or Show Cause Order) to obtain the missing reports in only 25 (44 percent) of the 57 instances.

Guardian and Conservator Reports Followed up on by the Courts In Six Judicial Districts for Calendar Years 2008 through 2010

	Initial Plan[1]	Annual Report 2008	Annual Report 2009	Annual Report 2010	Final Report	Total Reports
Number of Reports *Not* Initially Submitted[2]	14	14	13	15	1	57
Number of Reports Followed up on	5	7	5	8	0	25
Percentage of Reports Followed up on	36%	50%	38%	53%	0%	44%

Source: Office of the State Auditor's analysis of guardianship and conservatorship case data in six judicial districts.
[1]Initial plans were tested for the entire length of our testing period (Calendar Years 1999 through 2010).
[2]For purposes of this table, if both a guardian and conservator were appointed to a single case, each required report is counted separately.

Further, when the courts did conduct follow up, the guardians and conservators were not always responsive. As the table below shows, of the 25 reports followed up on by the courts, only 15 (60 percent) were subsequently submitted by the guardians and conservators.

Guardian and Conservator Reports Received After Follow up In Six Judicial Districts for Calendar Years 2008 through 2010

	Initial Plan[1]	Annual Report 2008	Annual Report 2009	Annual Report 2010	Final Report	Total Reports
Number of Reports Followed-up on	5	7	5	8	0	25
Number of Reports Received after Follow up	3	4	2	6	n/a	15
Percentage of Reports Received after Follow up	60%	57%	40%	75%	n/a	60%

Source: Office of the State Auditor's analysis of guardianship and conservatorship case data in six judicial districts.
[1]Initial plans were tested for the entire length of our testing period (Calendar Years 1999 through 2010).
[2]For purposes of this table, if both a guardian and conservator were appointed to a single case, each required report is counted separately.

In total, the court obtained only 64 percent of all the plans and reports that conservators and guardians were statutorily required to submit in our sample so that the courts could monitor their activities. Specifically, the courts obtained 22 (67 percent) of the 33 initial plans that were required by statute or court order and 54 (64 percent) of the 85 required annual and final plans.

We identified concerns with guardians' and conservators' report submission in our *Oversight of Probate Cases Performance Audit* (September 2006).

Why did the problem occur?

The issues identified occurred because of the following:

- **Lack of Awareness of Reporting Requirements.** Some guardians and conservators may not be aware of the reporting requirements. In addition to the order appointing the guardian or conservator, one way that the courts communicate reporting requirements to guardians and conservators is through the Colorado Supreme Court-approved Acknowledgment of Responsibilities form. The form clearly details the type of report required of the guardian or conservator, as well as the date the report is due each year. The form also includes a signature line for the appointee to acknowledge that he or she has read the form and understands his or her responsibilities. However, some courts do not require that guardians and conservators sign and submit this form. For example, six (55 percent) of the 11 guardians and conservators in our sample who were appointed after the Judicial Branch began using the Acknowledgment of Responsibilities form did not sign and submit the form.

- **Case Management System Limitations.** The courts' primary mechanism for tracking when required reports are due is the Judicial Branch's case management system, Eclipse. However, we identified two limitations of Eclipse that have contributed to the courts' lack of follow up on missing reports.

  - First, Eclipse does not currently have the ability to automatically populate fields with the due dates of required reports once an appointment has been entered into the system. Instead, court staff must manually enter reminders into Eclipse for future actions so that the system will alert them when a required report is due. If staff fail to enter the reminder, the system will not alert them when reports are due. There were cases in our sample in which the court staff did not enter report due date reminders into Eclipse and, thus, the system did not send an alert when reports were due.

  - Second, even when a reminder is entered, the Eclipse system will send only one alert. If staff do not take action when they receive the alert, there will be no further reminders. When this happens, staff can lose track of the case.

    According to the Judicial Branch, it is in the process of developing a new case management system. To help the courts better track when required reports are due, the Judicial Branch should ensure that its automated case management system has the ability to automatically populate fields with the dates of required reports once an appointment

is made and entered into the system. This may require reprogramming the existing Eclipse system, if feasible, or programming the new system with this capability. The system should also have fail-safes that require court action on alerts before the alert drops off of the queue.

- **Lack of Accurate Contact Information.** The effectiveness of courts' follow up is dependent upon the accuracy of the contact information they have on file for guardians and conservators. However, there are two problems with how the courts currently obtain and update contact information.

  - First, the courts do not collect mobile contact information, such as cell phone numbers, which can be used to locate a guardian or conservator if the home address or phone number is no longer valid. Collecting this type of information could help the courts maintain contact with guardians and conservators if they move and fail to provide an updated address.

  - Second, the courts rely solely on guardians and conservators to update their contact information. According to statute, all guardians and conservators appointed by the court are required to keep their current address and telephone number on file with the court and promptly notify the court of any changes [Section 15-10-505(2), C.R.S.]. However, for three guardians and conservators in our sample who failed to file one or more of the required reports, the courts sent out at least one reminder letter to each of them, only to have the letter returned as having been sent to a bad address. Currently, the Judicial Branch does not have access to or the authority to use information from other state entities to assist it in gathering the most recent contact information available for guardians and conservators. However, statute allows the Judicial Branch to obtain the most recent address used by individuals for income tax purposes from the Department of Revenue to update its jury pool. According to the Judicial Branch, obtaining the authority to use this same information to locate guardians and conservators would be an efficient and cost-effective means of gathering updated contact information for guardians and conservators.

- **Lack of Court Follow Up and Enforcement.** Statute gives the court the authority to take action against guardians and conservators who fail to comply with their duties, including meeting reporting requirements and updating contact information (Section 15-10-504, C.R.S.). Court actions can range from sending a reminder letter, to issuing an order to appear before the court, to limiting or removing the guardian's or conservator's authority. The courts in our sample cases did not consistently follow up with or take action against the guardians or conservators who failed to

submit required reports or update contact information. For example, one conservator in our sample was delinquent in sending in her reports for three consecutive years. However, the courts did nothing more than send reminder letters each year. For another case in which the court had not had contact with the guardian for 10 years, the court had never taken action to limit or remove the guardian's authority. Currently, when the courts lose contact with a guardian or conservator, they do not have a means of enforcing any restrictions or sanctions they might place on the guardian or conservator since the guardian or conservator holds the court-issued letters that authorize them to act on the ward's behalf. Thus, the guardian or conservator retains the initial authority granted to them by the court even though they have not reported and the courts have no assurance that the guardian or conservator is acting in the best interest of the ward. Therefore, the Judicial Branch may want to consider including expiration dates on the letters issued to guardians and conservators at the time of appointment that show their authority over the ward or the ward's estate. The Judicial Branch could then issue renewal letters when the guardian or conservator submits required reports. This could help prevent a guardian or conservator who fails to submit required reports from being able to take advantage of their ward without the court's knowledge.

Why does this problem matter?

When guardians and conservators do not submit all required reports, the court has no means of monitoring the well-being of the wards or ensuring that the guardians and conservators are acting in the best interest of the wards and fulfilling their duties. Further, without reports, the court has no way to determine if the guardian's or conservator's services are still needed or if the court should take measures to remedy inappropriate actions taken by the guardian or conservator.

In our sample, we identified two particular cases in which the courts responsible for overseeing a guardian or conservator had obtained no information about the guardian, the conservator, or the ward for at least the last eight years. In one case involving the guardianship of an adult, the court had not received any reports from and had not had any other contact with the guardian or the ward since the appointment was made in February 2001. At the time of our audit, the court did not know the condition or location of the ward or whether the guardianship was still necessary. In another case involving the conservatorship for an adult, the court was unaware that the ward had died in 2003. The conservator had not submitted any annual reports since that time and the court had not followed up with the conservator at any point between 2001 and 2010. The court only learned of the ward's death when we asked the conservator for documentation during our audit. Further, upon learning of the ward's death during the audit, the court did not indicate that it would follow up with the conservator to obtain the *Final Accounting* and terminate the case. Instead, the court's response was that it is the

conservator's responsibility to notify the court of any change in the ward's status. Because the court has not been active in monitoring this case, there is a risk that the conservator has continued making expenditures from the ward's estate during the eight years following the ward's death.

The 2010 report issued by the U.S. Government Accountability Office (GAO) on *Cases of Financial Exploitation, Neglect, and Abuse of Seniors* found similar problems with the courts' lack of follow up and monitoring of guardianship and conservatorship cases. For example, the GAO report discussed one Colorado conservatorship case in which the court had not received reports on fees charged by the conservator for three years. However, according to the GAO report, the courts did nothing to obtain the reports or investigate the conservator, informing the family members who inquired about the case that "they had neither the time nor the knowledge to deal with the case."

Recommendation No. 4:

The Judicial Branch should ensure that courts obtain all required reports from guardians and conservators to help protect the vulnerable wards served by these individuals. Specifically, the Branch should:

a. Require that courts obtain a signed copy of the Acknowledgement of Responsibilities form from guardians and conservators at the time of appointment.

b. Update the existing Eclipse system, or ensure that the new case management system is designed, to automate the entry of future reporting requirements (e.g. date of initial reports, date of annual reports, etc.) once an appointment is made, as well as have fail-safes that require court action on system alerts before the alert drops off the queue.

c. Explore other sources of information that could be used to locate guardians and conservators who fail to submit required reports in the event that they do not inform the court of changes in their address. For example, the Branch could pursue the statutory authority to use addresses obtained from the Department of Revenue for jury pools for tracking down the most recent addresses of delinquent guardians or conservators and expand the type of contact information it obtains from guardians and conservators to include cell phone numbers.

d. Require that courts follow up with and, as appropriate, take actions against guardians and conservators who fail to submit required reports. This may include sending reminder letters, issuing orders to appear before the court,

or limiting or suspending the guardian's or conservator's authority until the reports are received.

e. Evaluate whether to include expiration dates on guardian and conservator letters of authority to ensure that guardians or conservators who do not remain in contact with the court do not retain fiduciary authority over wards. Renewal letters could be issued when required reports are submitted.

Judicial Branch Response:

We agree that the courts should obtain all required reports from guardians and conservators appointed to protect the vulnerable wards served by these individuals, and we will ensure such reports are obtained in the following ways:

a. Agree. Implementation date: December 2012.

   The Judicial Branch will seek a mandate from the Chief Justice, by means of a Chief Justice Directive, requiring that court-appointed guardians and conservators acknowledge their responsibilities in written form and file that signed acknowledgment with the court.

b. Agree. Implementation date: December 2012.

   We will increase training of court staff on both entering the necessary information and running reports to see which required reports are outstanding in the current case management system. We agree that the new case management system should require the user to set a report review date whenever there is a guardian or conservator appointed and the court orders the guardian or conservator to file a plan or report before the user can leave the screen.

c. Partially agree. Implementation date: December 2012.

   We will revise the forms to collect cell phone information. We will request the assistance of the Legislative Audit Committee to obtain a statutory provision allowing the Judicial Branch to use the database of the Department of Revenue for contact information for delinquent guardians and conservators. While we agree that tracking missing court-appointed guardians and conservators is an important task, this is not a function currently appropriated to the Judicial Branch. This additional responsibility will necessarily require additional Judicial Branch staff with the purpose of investigating the whereabouts of missing guardians and conservators.

d. Agree. Implementation date: December 2012.

The courts currently have and utilize the authority listed in the recommendation. We will continue to provide training to both the courts and guardians and conservators about their responsibilities and the possible ramifications of not following the statutes and court orders. Any action taken by the court is delicately balanced with the court's need to consider unintended harmful consequence of removing a guardian or conservator. As the audit report shows, improvements made by the courts in recent years have resulted in an increased number of reports being submitted.

e. Agree. Implementation date: December 2012.

We will analyze the recommendation, understanding that having letters expire after a year creates a burden on the court and on the guardians and conservators (which can increase costs to the protected party), and may not achieve the desired result if the court does not have a list of financial institutions to inform about the expiration of the guardian's or conservator's authority. Additionally, banks and financial institutions are already reluctant to serve guardians and conservators, and the notion that the financial institutions would have to research the authority for each transaction may be burdensome to these businesses.

Report Review

Reports are the court's primary mechanism for monitoring the well-being of the ward, the status of the ward's estate, and what actions the guardian or conservator has taken on behalf of the ward. The reports can also help the court determine if the guardian's or conservator's appointment should continue. By comparing initial plans submitted at the time of appointment with the annual reports submitted throughout the term of the appointment, the courts can determine if the guardian or conservator is complying with the initial plan and acting in the best interest of the ward, as agreed upon by the guardian or conservator and the court. For the reports to be an effective monitoring tool, however, the court must review the reports in a timely manner and question the guardian or conservator when discrepancies or items of concern are identified. In addition, the court can request that the guardian or conservator provide supporting documentation to verify the information contained in the reports.

What audit work was performed and what was the purpose?

We reviewed 54 annual and final reports submitted by guardians and conservators during Calendar Years 2008 through 2010. We examined the reports, case files, and data contained in the Judicial Branch's Eclipse case management system to determine if there was either electronic or paper documentation to indicate that the court had reviewed the reports.

Additionally, we requested that the courts issue orders to conservators in 28 cases in six judicial districts to provide documentation to support the expenditures reported in their most recent annual report. The conservators in 18 (64 percent) of the 28 cases provided supporting documentation, while the conservators in the remaining 10 (36 percent) failed to provide the requested documentation. In one district, none of the conservators responded to the court's orders to provide the documentation. Of the 18 cases for which we received documentation, we selected a sample of 10 cases for further examination to determine whether the conservators in these cases were maintaining and could provide adequate documentation to the courts as evidence of how they were managing the wards' estates. When selecting the 10 cases for further review, we chose our sample to represent all five districts from which documentation was received and to represent different sizes of estates and case types. We compared the documentation the conservators submitted with the most recent annual reports filed by the conservators and with the *Conservator's Inventory and Financial Plans* (*Financial Plans*) submitted at the time of appointment to assess the accuracy of the reports and to determine if the conservators' actions were consistent with the *Financial Plans*. Specifically, for each of the 10 cases we examined, the information provided in the annual report related to the beginning and ending balances for assets in the ward's estate, expenditures, and fees. We compared this information with the initial *Financial Plan* and with the documentation submitted in support of the annual report to determine whether the conservator was managing the assets according to the agreed-upon *Financial Plan* and to the benefit of the ward.

The purpose of the audit work was to determine the frequency of the courts' review of annual and final reports submitted by guardians and conservators. The work was also intended to evaluate the extensiveness and thoroughness with which the courts review these reports and follow up on any concerns identified during the review to ensure that guardians and conservators are complying with court orders and acting in the best interest of the wards.

How were the results of the audit work measured?

According to *National Probate Court Standards*, courts should have written policies and procedures to ensure the prompt review of reports, and monitoring should be conducted in accordance with these standards. In addition, the General

Assembly recognized the importance of the courts' monitoring of guardians and conservators in 2000 when it passed legislation requiring that the courts establish a system of monitoring. Specifically, statutes (Sections 15-14-317 and 15-14-420, C.R.S.) require the courts to have a system of monitoring in place that includes reviewing reports submitted by guardians and conservators. Statutes also allow courts to use court visitors or appoint other suitable individuals to review conservator plans and reports. Further, the Judicial Branch's *Trial Court Resource Manual* reflects the requirements of statute by stating that each court should establish a system of monitoring. The *Trial Court Resource Manual* also provides guidelines on how courts should review reports and includes a report review checklist.

What problem did the audit work identify?

Overall, we found that the courts are not always reviewing annual and final reports submitted by guardians and conservators. In addition, we found that when the courts do review reports, their reviews may not be as thorough as needed to ensure that guardians and conservators are complying with court orders and acting in the best interest of the wards.

First, we found no evidence that the courts reviewed 13 (24 percent) of the 54 annual and final reports in our sample. There was no indication on the reports, in the case files, or in the Eclipse system that the reports had been reviewed. These 13 reports were associated with seven cases in three judicial districts.

Second, in seven (70 percent) of the 10 conservatorship cases in our sample for which we obtained supporting documentation, we identified two primary concerns: (1) errors or inconsistencies between the most recent annual report and the *Financial Plan* that were not identified by the court, and (2) expenditures that were not supported by sufficient documentation. For example:

- **Errors or Inconsistencies in Reports.** In four (40 percent) of the 10 conservatorship cases we found either errors in how information was reported or inconsistencies between the *Financial Plan* and the most recently submitted report.

    - In one case, the conservator overstated the ward's annual income in the annual report by more than $19,500, which was 116 percent more than the ward's actual income of $16,900. This overstatement made it difficult for the court to accurately determine the financial strength of the ward's estate. However, there was no evidence that the court identified this error or followed up with the conservator about it.

    - In three cases, the conservators reported expenses that were substantially higher than what they stated in their *Financial Plans.*

These three conservators spent $6,900, $21,100, and $44,200, or between 144 percent and 423 percent, of the amount they indicated they would spend in their approved *Financial Plans*. Though it appears that the reports were reviewed, there was no evidence that the court identified any of these discrepancies or followed up with the conservators about them.

- **Expenditures Unsupported by Documentation.** We found that the supporting documentation provided by conservators in five (50 percent) of the 10 cases we reviewed was not sufficient to verify the purpose of the expenses or who benefitted from the expenses. For instance, in one case the conservator spent nearly $1,000 at retail stores, and the only documentation provided was a line on a bank statement. The conservator did not provide documentation to show how the items purchased benefitted the ward. In another case, the only documentation supplied in support of the expenses was handwritten notes with the amounts spent and the purpose of the expenses. The conservator did not provide bank statements, receipts, or cleared checks to document the expenses or that they were incurred to benefit the ward.

We identified concerns with the courts' review of reports in our *Oversight of Probate Cases Performance Audit* (September 2006).

Why did the problem occur?

The issues we identified were due to deficiencies in the quality of the reports submitted by guardians and conservators and in the courts' review of these reports. With respect to the reports submitted by guardians and conservators, the issues identified were due to the following:

- **Improper Use of Report Forms.** The Colorado Rules of Probate Procedure recommend that all courts require conservators to use the Colorado Supreme Court-approved Judicial Department forms for their reports or formats that substantially comply with the forms. These forms require the conservators to present the asset, income, expenditure, and fee information in the same format each time, which makes it easier for the court to review the information and compare it with previous reports. However, the courts do not always enforce the requirement that conservators use the approved forms. Of the 54 reports that we reviewed, seven were not on the approved Judicial Department form, nor did they substantially comply with the form. Although internal audits conducted during the past three years by the State Court Administrator's Office in three of the six judicial districts we visited have recommended that the courts only accept reports filed on the approved forms, these

recommendations have not been implemented. According to some court staff, they have been instructed to accept whatever forms are filed.

- **Lack of Sufficient Guidance for Conservators.** The courts have not provided sufficient guidance to conservators on how to properly complete reports and what types of supporting documentation should be maintained. The only information provided to conservators on how to fill out the form is a sample report form with the blanks filled in. However, the sample form does not include information on where the conservator would find the information needed to fill out the form. As discussed previously, many conservators are family members or friends of the ward who have no prior financial experience and may not know where to find the information to complete the form. In addition, although the report forms notify conservators of the need to retain "all records," the form does not explain what those records might include (e.g., receipts, deposit slips, bank statements). The Judicial Branch should improve the guidance it provides to conservators, including informing conservators of how to complete required reports, what forms should be used, what information should be included in the reports and where to find it, and what constitutes sufficient documentation.

With respect to the courts' review of submitted reports, the issues identified were due to the following:

- **Courts Do Not Use Risk Assessment Tools.** In response to a recommendation in our *Oversight of Probate Cases Performance Audit* (September 2006), the Judicial Branch created a risk-based matrix for courts to use to assess each case to determine the level of review needed. The purpose of the matrix is to help courts determine how to best use their limited resources by assessing which cases and reports are higher risk and, therefore, should undergo a more stringent review and which cases and reports are lower risk and warrant a less stringent review. However, the Judicial Branch has provided limited direction to the courts on how to use the tool to determine priorities for report review. For example, four of the districts in our sample indicated that they are unaware of or do not use the matrix. Although another district had developed its own risk assessment tool, staff indicated they no longer use this tool nor do they use the matrix developed by the Judicial Branch.

- **Lack of Automated Reports and Report Review Tools.** Currently, the Judicial Branch does not have a means by which conservators can electronically submit their required reports; all reports are submitted in hard copy. In addition, although the Judicial Branch has developed a checklist for the courts to use when reviewing reports, it has not developed a standard, automated tool to assist the courts in their review efforts. The

checklist only provides the reviewer with a series of "yes or no" questions, cues as to what he or she should be looking for. The reviewer is still required to develop his or her own method for making comparisons and calculations (e.g., Excel spreadsheets). Further, only one of the judicial districts we visited reported that it knows about and uses the current checklist when reviewing reports. The Judicial Branch should consider developing a standard electronic report template that conservators could use to submit reports and a standard spreadsheet template that the districts could use to review reports. For example, the spreadsheet could be designed to import data on assets, income, and expenses from the conservators' annual reports and compare these data with the initial data submitted in the *Financial Plan* at the beginning of the appointment. The spreadsheet could include formulas to automatically calculate variances between the initial and actual planned assets, income, and expenses each year and provide guidelines as to what variances may be a concern and may warrant follow up with the conservator.

- **Lack of Financial Expertise.** Some court-appointed conservators oversee estates worth millions of dollars, which are distributed across many investment accounts or holdings. Reviewing the annual reports and reconciling the accounts for large, complex estates can be highly technical and require a high level of financial expertise. Many court staff, including judges, have indicated that they are not trained in financial matters and, therefore, are not equipped to review the more complicated reports submitted by conservators. Although statute allows the courts to appoint individuals with financial expertise, such as certified public accountants, to review reports, we did not find that courts are typically exercising this option. According to the courts in one of the judicial districts we visited, at times they have had individuals with financial expertise volunteer to review reports. However, of the 41 annual and final reports in our sample that were reviewed by the courts, all were reviewed by the judge or court staff. In no instance did the court appoint someone with financial expertise to review the reports.

  There are several ways the courts could address the lack of expertise needed to review conservator reports—especially those that are more complicated. One option would be to consider centralizing the report review function at the State Court Administrator's Office, which could employ highly trained staff dedicated to conducting conservatorship report reviews for all of the State's judicial districts. This option could increase the efficiency of the report review process and also require fewer staffing resources than if the reviews continue to be conducted at the district level. A second option would be to have the courts continue conducting report reviews and provide court staff with the financial training needed to review complicated bank statements, investment statements, and other

similar account statements. A third option would be for the courts to contract for the expertise needed to deal with those more complicated cases.

- **Courts Do Not Exercise Their Authority to Request and Review Supporting Documentation.** Prior to our audit, none of the courts responsible for reviewing the 54 reports in our sample had ordered the conservators to provide documentation to support the expenditures included in the reports. In fact, the courts reported that they have never requested supporting documentation for any of the conservatorship cases they have overseen. To help ensure that conservators are submitting accurate reports and that financial activity within estates benefits the wards, the Judicial Branch should clarify in the *Conservator's Manual*, which provides information on conservators' responsibilities, and in the orders issued to the conservators exactly what sort of documentation it expects the conservators to retain and submit when so ordered. Additionally, the Judicial Branch should consider instituting a policy for the judicial districts to conduct periodic audits of the supporting documentation maintained by conservators and provide the districts with the training needed to conduct the audit. Alternatively, the periodic audits could be conducted by experts located within the State Court Administrator's Office.

Why does this problem matter?

If the courts do not sufficiently review all required reports and periodically acquire and review documentation in support of those reports, the courts cannot ensure that guardians and conservators are complying with court orders and acting in the best interest of the wards. They will not identify instances in which the conservator is spending more than indicated on the *Financial Plan* or instances in which funds are spent on things that do not benefit the ward. For example, in one conservator case we reviewed, the conservator spent $11,780 on guardianship fees for seven months prior to the court's appointment of a guardian. There was no documentation to show why the conservator was paying for a guardian that had not yet been appointed by the court. Nor did the conservator indicate in the approved *Financial Plan* that guardian fees would be an expense for the estate. Further, in a case mentioned previously, the money spent by the conservator at a retail store may have been solely for the benefit of the conservator or some other person, not the ward. In some cases, the ward may not have any family members or other interested persons watching over them, which leaves the court as the only entity to ensure that the guardian's or conservator's actions are appropriate.

Further, all the information the courts receive about conservator and guardian activities is self-reported by the guardians and conservators themselves. Providing clear instruction to conservators on the documentation they are required to

maintain and periodically collecting and examining the documentation can provide assurance to the courts that the reported receipts and expenditures are accurate and for the benefit of the ward. Only through carefully reviewing the reports can the court determine whether the guardianship or conservatorship should continue and, when malfeasance or negligence is detected, determine whether or not to limit or remove the conservator's authority.

Recommendation No. 5:

The Judicial Branch should ensure that guardians and conservators provide sufficient information in required reports for courts to assess whether the guardians and conservators are acting in the wards' best interests by:

a. Issuing a directive that the courts follow up with guardians and conservators who submit reports on forms other than the approved Judicial Department form or a form that conforms in substance, and require these individuals to resubmit the reports on the correct form. The courts should also consider taking action against guardians and conservators who repeatedly ignore the courts' orders to that effect.

b. Improving the guidance provided to guardians and conservators on required reports, including how to complete reports, what forms should be used, what information should be included in the reports and where to find it, and what constitutes sufficient supporting documentation.

Judicial Branch Response:

Agree. Implementation date: December 2011.

a. The Judicial Branch agrees that use of the most current Judicial Department Form report forms should be mandated and will seek a mandate from the Chief Justice, by means of a Chief Justice Directive, requiring their use as part of the requirement to follow the procedures and policies of the *Trial Court Resource Manual* for guardianship and conservatorship cases.

   The *Trial Court Resource Manual* is being revised to indicate that reports on noncomplying forms be accepted for filing, but that the guardian/conservator should be advised to immediately refile the report on the most current form. Recommendations regarding possible sanctions against noncomplying guardians and conservators were included in the revision. A form letter will be created to assist courts in

meeting this recommendation. Judges, clerks of court, and probate registrars will be sent a training email advising them of these changes.

b. The *Conservator's Manual*, which is available on the state court website, contains instructions for developing a *Financial Plan*, maintaining records of financial transactions, and completing reports. Samples of a completed *Financial Plan* and annual conservator's reports are also included in the *Manual*. The *Guardian's Manual* contains similar instructions.

The Judicial Branch agrees with the recommendation to define the term "supporting documentation" and will do so by revising the *Conservator's Manual* and *Guardian's Manual*. Furthermore, we will review the manuals to determine what additional instruction would be helpful.

Recommendation No. 6:

The Judicial Branch should improve the monitoring required to protect vulnerable wards by strengthening the courts' review process for guardian and conservator reports by:

a. Training court staff on using the Judicial Branch's risk assessment tool to determine priority for report review.

b. Developing tools, including a standard automated report template for conservators to use to submit reports electronically, and automated reconciliation software for courts to use when reviewing reports.

c. Evaluating the feasibility of having experts located within the State Court Administrator's Office conduct the reviews of more complex conservator reports.

d. Providing training to court staff who continue to review reports to ensure they have the skills needed to review more complicated conservator reports. The Judicial Branch should also provide guidance to the courts on how to assess the reasonableness and appropriateness of expenditures when reviewing reports.

e. Instructing the courts to appoint or contract with individuals with the appropriate level of technical expertise required to review more complex conservator reports, when necessary.

f. Conducting periodic audits, either at the courts or the State Court Administrator's Office, of the supporting documentation maintained by conservators to ensure that the submitted reports are accurate and that financial activity benefits the ward.

Judicial Branch Response:

a. Agree. Implementation date: December 2012.

The risk assessment checklist is a tool that may be used by the court when creating or reviewing protective proceeding cases. The Judicial Branch agrees to improve training on the use of the checklist and to encourage its use.

b. Agree. Implementation date: December 2013.

The development of monitoring tools is something we continue to research and to plan as capabilities in our new case management system.

c. Agree. Implementation date: December 2012.

The Judicial Branch agrees to evaluate the feasibility of having experts located within the State Court Administrator's Office conduct the reviews of more complex conservator reports in order to maximize the expertise and training necessary to perform this review and provide consistency in the review process. A committee has been formed to consider this recommendation, among other things, and to make a proposal by the end of September 2011.

d. Agree. Implementation date: December 2012.

We agree that there is a continuum of resources necessary to properly monitor the reports filed by conservators. We agree that continued training of both court staff and judicial officers is appropriate. This recommendation, when read in conjunction with the other sub-recommendations in this section, advocates for a tiered approach to monitoring cases depending on the complexity of the estate and the vulnerability of the protected party. We agree that this approach is best and are committed to utilizing this method.

e. Agree. Implementation date: December 2012.

While this would be an additional cost to the ward's estate, we agree the appointment of outside experts or auditors is an appropriate tool to

manage the monitoring of a complex estate. The Judicial Branch agrees to create procedures for appointing professionals to review complex conservatorship reports, when appropriate.

f. Agree. Implementation date: December 2012.

As the auditors found in this audit, the documentation provided by the conservators varies from case to case. We agree to increase awareness of the conservators in the obligation to keep records and to better define what documentation is adequate to inform the court as to the reasonableness of the expenditure. Periodic audits should follow the efforts to define the documentation needed and educate the conservators on this. To implement this recommendation, additional staff will be necessary.

Evaluation of Professional Guardians and Conservators

National Probate Court Standards recommend that courts appoint an individual whom the ward knows or whom the ward has selected to serve as the guardian or conservator to enhance the possibility that the ward will trust and cooperate with the person appointed. However, it is sometimes necessary for the courts to appoint a professional guardian or conservator, who generally receives compensation from the ward's estate for his or her services. For example, if the ward has not nominated a guardian or conservator and no family member is willing and able to perform those duties, then a professional may be appointed. As discussed previously, professional guardians may include private individuals or companies in the nursing or social services fields or county departments of social services. Professional conservators may include attorneys, certified public accountants, financial institutions, or public administrators. Public administrators are not employees of the State, judicial district, city, or county. Rather, they serve at the pleasure of the courts that appointed them (Section 15-12-619, C.R.S.). Each of the six judicial districts we visited works with professional guardians and conservators. Four of the six districts have appointed a public administrator.

What audit work was performed and what was the purpose?

We reviewed the 17 cases in our sample of 55 cases in which 23 professionals had been appointed by the court to serve as the guardian or conservator. This review included:

- 10 cases in which a public administrator was appointed as a conservator.
- 5 cases in which the county department of social services was appointed as a guardian.
- 8 cases in which a professional guardian or conservator, other than the public administrator or county department of social services, was appointed.

Our review sought to determine whether the Judicial Branch has developed and implemented controls to ensure that professional guardians and conservators are providing professional-level services on behalf of the wards to whom they are appointed.

How were the results of the audit work measured?

According to *National Probate Court Standards*, courts should evaluate the education, training, and experience of individuals nominated to serve as a guardian or conservator to determine whether they can competently manage the ward's assets and personal well-being. Specifically, with guardianships, before making an appointment, the court should consider the guardian's familiarity with factors such as health care decision making, residential placements, and social service benefits. With conservatorships, before making an appointment, the court should consider the size and complexity of the ward's assets, as well as the conservator's level of financial competency.

Professionals in any field are held to a higher standard than nonprofessionals. This is because, to be considered a professional in any field, an individual typically has specific education, training, and experience. With respect to guardianships and conservatorships, professionals are further distinguished from nonprofessionals because they generally charge fees for their services while nonprofessionals typically do not. The fees charged vary by the type of professional appointed:

- **Public Administrators.** Statute mandates that public administrators only charge fees and costs that are reasonable and proper for similar services in the community and that they "minimize fees while providing quality fiduciary administrative and legal services" [Section 15-12-623(3), C.R.S.]. In addition, statute requires public administrators to maintain detailed time records for all charged services and file reports as directed by the court, but at least annually, regarding the administration of the cases to which they have been appointed. These annual reports are in addition to the annual reports a public administrator must file for each case to which he or she is appointed as a conservator.

  The amount that public administrators earn from serving as a conservator varies based on the number and type of cases to which they are appointed

as conservators. For example, the public administrators in the four districts we visited that had appointed a public administrator reported that their fees for serving specifically as a conservator ranged from $165 per hour to $240 per hour. The courts and the Judicial Branch do not have readily available information on the total amount of fees public administrators earn specifically for serving as conservators. This is because public administrators provide other probate-related services, such as settling decedents' estates, and they report their income from all such services in aggregate each year. Some districts also do not require public administrators to report earnings as conservators within their annual public administrator reports. As public administrators, some individuals manage multi-million dollar estates and earn hundreds of thousands of dollars in fees annually from all of their probate-related duties. However, neither the Judicial Branch nor the judicial districts have comprehensive information on the total value of the estates public administrators or other professionals manage as conservators or the total amount that these individuals charge to these estates for their services.

- **Professional Guardians and Conservators.** Statute allows professionals to receive reasonable compensation for their services (Sections 15-14-209, 316, and 417, C.R.S.). In the cases we reviewed, professional guardians charged up to $100 per hour, and professional conservators charged up to $300 per hour.

- **County Departments of Social Services.** Case workers do not receive a fee for their work as professional guardians.

What problem did the audit work identify?

We found that some professional guardians and conservators are not providing professional-level services. For example:

- **Untimely Submission of Reports**. In three cases, the professional guardian or conservator failed to submit required reports in accordance with statutory requirements and court orders. For example, in one case, the public administrator failed to submit the *Conservator's Inventory and Financial Plan* at the time of appointment as well as three consecutive annual reports. The court overseeing this case had to send reminder letters to the public administrator to submit the financial plan and the annual reports.

- **Excessive and Inaccurate Expenditures**. In one case, a public administrator reported that she spent 50 percent more than the amount approved by the court in the *Conservator's Inventory and Financial Plan* in the 2009 reporting period and 160 percent more in the 2010 reporting

period. In addition, our review of the expense and fee breakdowns submitted by this same public administrator for the 2009 and 2010 reporting periods showed that she had actually spent about $2,400 more than the amount she calculated in the 2010 annual report. Our review of the billing statements also showed that she overcharged the ward for her services by about $400.

- **Improper Use of Judicial Department Forms.** In four cases, the professional guardian or conservator either failed to submit the Colorado Supreme Court-approved Judicial Department forms or forms that substantially complied. As discussed previously, the Colorado Rules of Probate Procedure recommend that all courts require conservators to use the approved Judicial Department forms or formats that substantially comply with the forms. In two cases, the professional guardians or conservators failed to submit the approved Acceptance of Office form prior to their appointment, as required by statute (Section 15-14-110, C.R.S.). On this form, the appointees must state that they will perform the duties required of a guardian or conservator and submit to the jurisdiction of the court. In addition, in two cases the same public administrator failed to use the approved Annual Report form or a form that substantially conformed with it. As a result, neither we nor the court could confirm the total amount of fees that the public administrator charged in the 2010 reporting periods. As mentioned previously, when a conservator does not use the required reporting forms, which are designed to report actual expenses in a format that aligns with the initial financial plan, it is more difficult for court staff to conduct an efficient and meaningful review.

Why did the problem occur?

Statute does not provide guidance regarding the standards against which the Judicial Branch should hold professional guardians and conservators, including public administrators. In addition, none of the judicial districts we visited has a systematic method for reviewing the work of the public administrator or other professional guardians and conservators routinely appointed in their district. The State Court Administrator's Office has not provided guidance on this issue.

Why does this problem matter?

The resources of each judicial district and ward are limited. When the courts have to repeatedly follow up with professionals who do not turn in reports on schedule, they are using resources to send out reminders or take other action that could be better spent elsewhere. Additionally, professionals do not have a previous personal relationship with the ward and, therefore, no inherent investment in the ward's well-being. Further, as professionals, these individuals should be held to a higher standard than family members or friends when serving as a guardian or

conservator. As such, it is critical that the Judicial Branch have processes in place to ensure that each guardianship and conservatorship case is administered as efficiently as possible and that professional guardians and conservators perform at a level commensurate with their fees.

Recommendation No. 7:

The Judicial Branch should ensure that each judicial district has a systematic process of evaluating the overall performance of professional guardians and conservators, including public administrators, routinely appointed in their districts. The State Court Administrator's Office should provide guidance on the standards for evaluating professionals and the process for reviewing those standards.

Judicial Branch Response:

Agree. Implementation date: June 2012.

The Judicial Branch agrees to prepare guidelines for evaluating the performance, education, training, and experience of professional guardians and conservators, including public administrators. In preparing the guidelines, reference will be made to the National Probate Court Standards, the National Guardianship Association (including its Model Code of Ethics for Guardians and its Standards of Practice), the U.S. Government Accountability Office's report on guardianships, and the recommendations made during the first and second National Guardianship Conferences (Wingspan).

Data Management

The Judicial Branch's primary case management system is the Eclipse system, which it uses to manage court dockets; collect case-related data, such as litigant and attorney names and addresses; and record court actions. Through Eclipse, court staff receive reminders of court business for the day, including hearings to be held and reports that are due. The Judicial Branch also uses Eclipse to track the total number and type of cases (e.g., guardianship, conservatorship, criminal, juvenile, divorce) opened statewide. For guardianship and conservatorship cases, court staff also record in Eclipse whether the case involves a minor or adult, whether a conservator or guardian has been assigned to the case, and the case status. In general, the Judicial Branch classifies the status of guardianship and conservatorship cases as "open," "closed," or "terminated." "Open" cases are

those active cases for which a petition has been filed but the court has not yet appointed a guardian or conservator. "Closed" cases are those cases for which the court has either determined that no guardian or conservator is needed or has appointed a guardian or conservator. When a guardian or conservator has been appointed, however, the cases are still considered active because further action is required by the court to monitor the ward's condition, the status of the estate, and the continued need for the guardianship or conservatorship. "Terminated" cases are those inactive cases for which the guardianship or conservatorship has been terminated and no further action is required by the court.

What audit work was performed and what was the purpose?

We reviewed the Judicial Branch's data management by requesting information from the Judicial Branch, interviewing court staff, and examining Eclipse data. Specifically, for the 55 cases in our sample, we compared the type of appointment (e.g., guardianship of an adult, guardianship of a minor, conservatorship of an adult) that had occurred with the type of appointment indicated in Eclipse. In addition, we reviewed case files and worked with the courts to determine the current status of the 55 cases in our sample and compared the actual status of the cases with the status indicated in Eclipse. The purpose of our review was to determine if the Judicial Branch maintains the data needed to oversee guardianship and conservatorship cases.

How were the results of the audit work measured?

Management information at the statewide level, including aggregate data on active and inactive cases, types of appointees, and appointee reports and activities, is critical to ensuring that court practices are consistent statewide. In addition, in 2001, the Conference of State Court Administrators recommended that courts fully utilize technology and collect and make readily available data on filings, caseloads, and case processing standards and goals in order to be more accountable to court users, as well as taxpayers.

What problem did the audit work identify?

Overall, we found that the Eclipse system lacks basic information in several areas needed to track guardianship and conservatorship cases effectively. These areas include:

- **Case Status and Type.** The Judicial Branch does not have accurate and reliable aggregate data on the status and type of guardianship and conservatorship cases statewide and in each judicial district. When reporting numbers for guardianship and conservatorship cases, the Judicial Branch can determine the number of new cases opened, the number of petitions filed, and the number of hearings in a given year. However, the

Judicial Branch cannot determine in the aggregate how many conservatorship or guardianship cases are active and require monitoring by the courts statewide or in each judicial district at any given time. In addition, the Judicial Branch cannot determine in the aggregate the *types* of cases that are active. This means that the Judicial Branch cannot determine for certain, without studying the case file, whether a guardian or conservator has been appointed and remains active on the case. This distinction can be important because, as discussed previously, statutory requirements can differ for guardianship and conservatorship cases and cases involving minors and adults.

- **Appointee Information.** Neither the Judicial Branch nor the judicial districts have data on the number of individual guardians and conservators that have been appointed and are active in each district, whether the appointees are professionals or nonprofessionals (e.g., family member or friend), the number of wards for whom each guardian and conservator is responsible, or the amount of money or other assets each conservator oversees.

- **Ward Information.** Neither the Branch nor the districts have accurate data on the number of wards under the courts' purview statewide or in each district.

We identified concerns in these same areas in our *Oversight of Probate Cases Performance Audit* (September 2006).

Why did the problem occur?

The Judicial Branch has not taken sufficient steps to ensure that it has accurate and complete data on guardianship and conservatorship cases statewide. Specifically:

- **Case Codes Do Not Accurately Reflect Case Status.** Until 2010, guardianship and conservatorship cases were coded in Eclipse as "closed," both when the cases were still active and the court had oversight responsibility and when the guardianships or conservatorships had been terminated. As a result, the Judicial Branch had no way of determining how many guardianship and conservatorship cases were truly closed and how many cases had an active appointment that required monitoring. To address this deficiency in the Eclipse system, in 2010 the State Court Administrator's Office developed a "TERM" code that should be used for cases that are truly terminated, meaning the guardian's or conservator's duties are complete. However, the "TERM" code has only been in use for about a year and the State Court Administrator's Office has worked with the districts on updating the status of cases in the Eclipse system for only

seven of the 22 judicial districts. Of the seven cases we reviewed that were terminated, none had been updated in Eclipse to reflect the "TERM" code. The Judicial Branch has not established a deadline for the judicial districts to update the status of their cases.

- **Court Guidance Is Not Always Clear.** Although the *Trial Court Resource Manual* provides some guidance to the judicial districts on coding cases in the Eclipse system, it does not address all types of cases and, at times, seems to contradict statute. For example:

  - The *Trial Court Resource Manual* instructs court staff to indicate the case type (e.g., guardianship or conservatorship) when first entering a case into Eclipse. However, the *Trial Court Resource Manual* does not instruct staff to change codes to reflect the changes that occur in a case. For seven (13 percent) of the 55 cases we reviewed, the case types had not been changed in Eclipse to reflect changes that had been made in the cases. For example, in three of the seven cases a guardian had initially been appointed, and the case was coded to indicate such. However, subsequent to the guardians' appointment, the ward in each case was also appointed a conservator. The case type in the Eclipse system did not show that a conservator had also been appointed in these cases.

  - The *Trial Court Resource Manual* instructs court staff to open separate cases if requests for a guardian and a conservator are filed on different days. However, statute allows for the consolidation of cases when the ward is the same to help the courts better manage their cases (Section 15-14-109, C.R.S.). Because statute and the *Trial Court Resource Manual* are not consistent with one another, court staff are not entering cases into Eclipse consistently. For example, we identified an instance in our sample in which the court had opened and entered into Eclipse two separate cases for a ward who had been appointed both a guardian and a conservator. In another instance, however, the court had opened only one case in Eclipse for a ward who had been appointed both a guardian and a conservator.

- **Court Staff Are Not Aware of Coding Requirements.** The *Trial Court Resource Manual* instructs court staff to assign each ward his or her own case number. In one of the 55 cases in our sample, two children who were appointed the same guardian had been inappropriately filed under the same case number. When two wards are assigned to the same case, there is the potential for the court to lose track of the ward listed secondarily on the case.

- **Eclipse Was Not Designed to Maintain Complete Data Needed to Facilitate Monitoring of Guardianships and Conservatorships.** The Eclipse system was designed to keep track of the cases on each court's docket, the names of the parties in each case, the required court action for each case, and internal notes on case activity. However, the system was not designed to capture some of the key data needed to monitor guardianship and conservatorship cases. Specifically, Eclipse: (1) cannot support queries based upon the ward's name to determine the number of unique wards within the district; (2) does not have a field into which the guardian's or conservator's name for each case can be entered, which would allow the Judicial Branch to run queries against that name to determine the number of cases to which each guardian or conservator has been appointed; and (3) does not contain a field into which the amount of assets in an estate can be entered in order to determine the amount of assets over which a given conservator has been appointed.

Why does this problem matter?

Poor data limit the Judicial Branch's ability to properly oversee and manage guardianship and conservatorship cases. For example:

- **Allocation of Resources.** The Judicial Branch is responsible for allocating staff and resources to the judicial districts based on their caseloads. Because the Judicial Branch does not know how many cases are active (those requiring ongoing monitoring) in a given judicial district, it is impeded in making fully informed decisions about allocating resources.

- **Use of Professionals.** Because the courts do not have data on the number of cases a professional guardian or conservator is overseeing at any given time, when making appointment decisions, the courts are not able to determine if the person nominated to be the guardian or conservator is carrying too many cases to be able to effectively manage the estate assets or monitor the well-being of the ward in a new appointment. Some professional guardians and conservators are appointed to numerous cases at the same time. Therefore, it is important that the court be able to assess the individual's current workload and determine if the individual is able to take on another case.

- **Case Monitoring.** Because the case status and type listed in Eclipse are inaccurate for some guardianship and conservatorship cases, the courts' ability to monitor these cases is hindered. For example, when the incorrect code is entered for a case, court staff may not know what reports are due for a case or how often they should be submitted. As discussed previously, we found that the guardians and conservators in our sample cases failed to submit almost half of their required reports, and the courts did not follow

up with the guardians and conservators for more than half of the missing reports. The courts' lack of follow up on these reports may have been due to inaccurate coding, which resulted in the courts' not being aware that reports should have been submitted. In addition, when multiple wards are assigned the same case number, it is possible that the court could lose track of one of the wards.

Our *Oversight of Probate Cases Performance Audit* (September 2006) commented on the Judicial Branch's poor data management and recommended that the Judicial Branch improve its data collection system to track active and inactive cases and whether a guardian or conservator is a professional or nonprofessional appointee. The audit also recommended that the Judicial Branch consider including edits in its system to ensure that courts enter all critical data into the system consistently and that data are updated when needed to reflect the current status of the case. Finally, the audit recommended that the Judicial Branch create system flags to identify outstanding reports, notify appointees when reports are late, and evaluate the costs and benefits of creating a system for electronic input of guardian and conservator reports and automated report review. In response to these recommendations, the Judicial Branch indicated that its effort to improve its data management practices would be implemented as part of a larger data system by January 2008. However, the Judicial Branch has not deployed a new data system as planned. According to the Judicial Branch, it is in the process of developing a new statewide case tracking system that it estimates will be completed by December 2012. It is important that the Judicial Branch ensure that its automated system, whether Eclipse or the new system, addresses the data deficiencies described above.

Recommendation No. 8:

The Judicial Branch should improve its data management and strengthen its oversight of guardianship and conservatorship cases by:

a. Continuing the current effort to review all existing cases to ensure the case status is accurately reflected within the Eclipse system or any new automated case management system that is implemented.

b. Revising the *Trial Court Resource Manual* to ensure that it directs court staff to update the Eclipse system, or any new case management system that is implemented, to reflect new appointments made or status changes in existing cases, and to establish separate cases for each ward.

c. Updating the Eclipse system, or ensuring that any new case management system is designed, to collect data for each judicial district on the names and number of wards, the names and professional status of all guardians

and conservators, the number of wards each guardian or conservator oversees, and the size of the wards' estates.

Judicial Branch Response:

Agree. Implementation date: December 2012.

a. The Judicial Branch will continue to review existing cases to ensure that appropriate case status is entered correctly. The new code will be used in the future case management system as well.

b. The *Trial Court Resource Manual* is being revised to require that case type be updated if there is a change. We agree that no case should provide for guardianship or conservatorship of more than one person. A training email will be sent to judges, clerks of court, and probate registrars advising them to assign a separate case number for each ward and to clarify our policy regarding consolidation of cases.

c. The Judicial Branch agrees that the new data system should be designed to collect data regarding the names and number of wards, the names and professional status of all guardians and conservators, the number of wards each guardian or conservator oversees, and the size of the wards' estates. The State Court Administrator's Office Probate Unit will work with Judicial Business Integrated with Technology Services (JBITS), the Branch's information technology support unit, to ensure these fields will be included in the new system. Programming Eclipse to collect this information would not be cost-effective.

Governance of the Judicial Branch

According to the Conference of State Court Administrators, although courts are responsible for the policy decisions that guide the administration of justice, the other branches of government and the public have the right and the interest to "hold the judiciary accountable for effective management of court business." To attain effective governance, the Judicial Branch must "articulate a clear vision of what it must achieve to be fully accountable" to avoid the common problem of a judiciary that "speaks with multiple, and even contradictory voices." Specifically, the Judicial Branch should work to ensure that it can address systemwide issues "from the broad perspective of the judiciary as a whole." This means that the Judicial Branch must devise methods to help ensure that courts appropriately manage their caseloads, administrative and court records, and personnel.

What audit work was performed and what was the purpose?

We compared the findings in the current audit with those presented in our *Oversight of Probate Cases Performance Audit* (September 2006). We also reviewed the Judicial Branch's existing practices and policies, at least a portion of which were implemented following the 2006 audit, and interviewed court staff in the six judicial districts that we visited as well as individuals in the State Court Administrator's Office. In addition, we reviewed the internal audits conducted by the Judicial Branch from Calendar Years 2008 through 2010, which covered a total of 18 judicial districts. We compared the Judicial Branch's internal audit findings in these districts related to guardianship and conservatorship cases with our own findings. The purpose of these reviews and comparisons was to assess the effectiveness of the Judicial Branch's overall administration of guardianship and conservatorship cases.

How were the results of the audit work measured?

Article VI, Section 21 of the Colorado Constitution instructs the Supreme Court to "make and promulgate rules governing the administration of all courts and . . . rules governing practice and procedure in civil and criminal cases." In addition, the Chief Justice, as the executive head of the Judicial Branch, has the authority to issue directives, or policies, to the courts to address issues related to court administration and to designate chief judges in each judicial district. The Chief Justice, through Chief Justice Directive 95-01, has delegated much of the administrative oversight for all district personnel and operations to the chief judge of each district.

Article VI, Section 5 of the Colorado Constitution established the position of State Court Administrator to assist the Supreme Court in the administration of the courts. According to statute, the State Court Administrator "shall perform such duties as assigned to him by the Chief Justice and the Supreme Court" and he is authorized to employ other personnel needed to exercise the administration of the courts (Section 13-3-101, C.R.S.). As part of its duties, the State Court Administrator's Office has implemented an internal audit function that compares actual court practices with statute and established policies and makes recommendations for improving court operations. In Calendar Year 2008, the Judicial Branch added guardianship and conservatorship case monitoring to its internal audit program.

What problem did the audit work identify?

We found that the Judicial Branch has not effectively administered guardianship and conservatorship cases. For example:

- We found that many of the issues related to the Judicial Branch's administration of guardianship and conservatorship cases that we identified during our *Oversight of Probate Cases Performance Audit* (September 2006) continue to exist today. For example, we found in both the 2006 audit and during the current audit that courts do not consistently gather required information from nominees, receive and review reports as required by statutes and/or court order, or gather the data needed to manage and monitor conservatorship and guardianship cases. Following the 2006 audit, the Judicial Branch created the Protective Proceedings Task Force that was charged with addressing the audit recommendations. However, the task force has not addressed all of the 2006 audit recommendations. The primary action taken by the task force to address the prior audit recommendations was to develop the Colorado Supreme Court-approved Judicial Department forms to help ensure that parties provide all of the required information. The task force also implemented new coding requirements for documenting report review and terminating cases in Eclipse, as discussed in Recommendation No. 8. However, as discussed throughout this report, we found that the courts do not consistently enforce the requirement that guardians and conservators use the approved forms or ones that substantially conform, nor do the courts consistently use the appropriate codes.

- Our review of the internal audit reports issued over the past three years for 18 judicial districts showed that the Judicial Branch's internal auditors have found many of the same issues we identified in both our current audit and the 2006 audit. For example, in the past three years, internal audits conducted in five of the six judicial districts in our sample have found: (1) significant problems with guardians and conservators not submitting required reports in accordance with statute and court order and with the courts not reviewing the reports that are submitted, (2) that the courts do not consistently enforce the requirement that guardians and conservators use the Colorado Supreme Court-approved Judicial Department forms, and (3) that the courts enter incorrect case data into the Eclipse system. On the basis of our review, however, the courts in these five districts have not fully implemented the internal audit recommendations in these areas. The Judicial Branch's internal auditors also found many of these same issues in the other 13 districts in which internal audits were conducted during the last three years.

Why did the problem occur?

The Judicial Branch does not have sufficient controls in place to ensure that courts effectively administer guardianship and conservatorship cases. As the head of the Judicial Branch, the Chief Justice has the authority to implement requirements for courts to follow when administering guardianship and

conservatorship cases. However, the Chief Justice has not issued a directive informing the courts that they must comply with Judicial Branch policies, including the *Trial Court Resource Manual*, when administering guardianship and conservatorship cases. In addition, the Judicial Branch has not consistently used the internal audit process and audit recommendations to inform the policies and directives issued by the Judicial Branch in the area of guardianships and conservatorships. Further, the Judicial Branch has not required the judicial districts to provide detailed responses and implementation dates for the recommendations made by the Judicial Branch. If the Judicial Branch does not use the information obtained during the internal audits to improve court operations, the value of the internal audit function is limited.

Instead, the Colorado Supreme Court has delegated extensive authority to the individual judicial districts, creating a decentralized structure that gives the district courts broad discretion and minimal accountability when administering guardianship and conservatorship cases. The Judicial Branch operates under the principle that the State Court Administrator's Office merely provides administrative guidance to the State's courts, and that each judicial district has the authority to decide how to administer its own cases. During interviews with staff from the State Court Administrator's Office and the six districts we visited, some staff indicated a belief that certain mandatory provisions in statute, Chief Justice Directives, and the *Trial Court Resource Manual* are discretionary. For example, some staff indicated that it is within the court's discretion to waive the *Guardian's Initial Care Plan*, which statute requires be provided at the beginning of the appointment. However, statute does not include any language allowing such a waiver. Other staff stated that the *Trial Court Resource Manual* is just intended to be guidance; compliance with the *Trial Court Resource Manual* is not required. Finally, some staff indicated that they administer guardianship and conservatorship cases independently of Judicial Branch guidance and that they are not familiar with the *Trial Court Resource Manual* or the information it contains.

Why does this problem matter?

It is critical that the Judicial Branch provide effective governance and oversight of the courts and how they are administering guardianship and conservatorship cases statewide. As discussed throughout this report, when the court appoints a guardian or conservator, it takes away the rights of wards to make fundamental decisions about their own life and their personal and financial well-being is completely in the hands of the individual appointed to be their guardian or conservator. Therefore, it is crucial that the ward receive the full protections of the Judicial Branch throughout the entire process. This includes ensuring that the ward receives the full protections of due process during the appointment process, including: (1) ensuring the court obtains sufficient background information on the nominee to assess his or her fitness to be a guardian or conservator; (2) being appointed legal representation if requested by the ward, recommended by the

court visitor, or deemed necessary by the court; and (3) being notified by the court visitor of the vast implications to the ward if a guardian or conservator is appointed. All of these processes help ensure that a guardianship or conservatorship is needed and that the individuals appointed to these positions are going to act in the best interest of the ward.

It is also crucial that the court provide proper oversight once a guardianship or conservatorship is established to ensure that the individual appointed is acting in the ward's best interest. The primary way that the court can provide this oversight is by ensuring that guardians and conservators submit the required reports and by ensuring that the reports are adequately reviewed by someone with the requisite expertise. In addition, it is important that the Judicial Branch collect and maintain sufficient data and information to assess and oversee how the courts are administering guardianship and conservatorship cases statewide.

Recommendation No. 9:

The Judicial Branch should ensure that the courts effectively administer guardianship and conservatorship cases and that the vulnerable individuals in these cases receive adequate protection. Specifically, the Judicial Branch should:

a. Issue directives that clearly delineate which policies and procedures are mandated for every guardianship and conservatorship case.

b. Strengthen the internal audit process by using the recommendations within internal audit reports to inform the policies and directives issued by the Branch and by requiring the judicial districts to provide detailed responses and implementation dates for the recommendations made by the Judicial Branch.

Judicial Branch Response:

Agree. Implementation date: December 2011.

a. The Judicial Branch will seek a mandate from the Chief Justice, by means of a Chief Justice Directive, requiring all judicial officers and personnel to comply with the section of the *Trial Court Resource Manual* containing policies and procedures for protective proceeding cases.

b. The State Court Administrator's Office will work to strengthen the connection between the district audits and the Probate Unit of the State Court Administrator's Office. Beginning with the current cycle of audits, the districts are being required to submit specific responses for

each recommendation. This will provide the State Court Administrator's Office with more information to measure compliance with the established procedures and to evaluate progress made in the districts based on prior audit recommendations. We agree that districts need to comply with recommendations and expect that compliance will occur and that such compliance will be monitored.

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