

# Statewide Review of Guardianships: The California and Maryland Approaches

by Vicki Gottlich  
and Erica Wood

## I. Introduction

The California and Maryland legislatures have instituted statewide review systems to address critical shortcomings in their guardianship programs. These shortcomings are found nationwide and are well-documented.

In 1987, the Associated Press published the results of its comprehensive investigation of the nation's guardianship system. Its report charged that courts "regularly put elderly lives in the hands of others with little or no evidence of necessity, then fail to guard against abuse, theft and neglect."<sup>1</sup>

In 1988, an interdisciplinary National Guardianship Symposium, sponsored by the American Bar Association, found that "in many instances, the content, submission and court review of guardian reports is lacking, quantitatively as well as qualitatively."<sup>2</sup> The Symposium concluded that, given the loss of liberties involved in guardianship and the vulnerability of an elderly and disabled ward, it is essential that the court regularly receive and review basic information about the well-being of the ward, the ward's funds and property, and the actions that the guardian has taken.

Some form of guardianship review, then, is clearly needed. Such reviews should serve two basic objectives: (1) to assure that the least restrictive arrangement is being used to protect the ward's health, welfare, and safety; and (2) to assure that guardians are not abusing or neglecting the ward and/or the ward's assets.

Most state guardianship statutes mandate some form of continuing court supervision after a guardian is appointed. Forty-four states require guardians to file regular accountings of the ward's money.<sup>3</sup> Some states also require courts to check

regularly on the ward's personal status.

But despite these statutory mandates, evidence is mounting that accounting requirements often are not strictly enforced by probate courts and general jurisdiction courts handling guardianship cases. After a year-long study of 2,200 probate court files, the Associated Press found that only 16 percent contained reports on the condition of wards after guardianships were granted, 48 percent were missing annual financial accountings, and 13 percent contained no entries after the opening of the guardianship.<sup>4</sup> Meanwhile, a Dade County, Florida, grand jury examined randomly selected files and found that 87 percent lacked annual reports, 75 percent lacked financial reports, and 91 percent lacked physical examination reports.<sup>5</sup>

Even when accountings are regularly filed and examined, courts must go beyond a paper review to check on the ward's actual circumstances. They must investigate the validity of the guardian's report and determine whether the guardian's actions reflect the purpose for which he or she was appointed.

Unfortunately, most courts simply do not have the resources to review every guardianship adequately and regularly. Budget constraints limit the oversight that a court can provide. One solution is to turn to the community, and, thus, volunteers are playing an increasingly important role in guardianship monitoring. The Legal Counsel for the Elderly section of the American Association for Retired Persons (AARP) is piloting demonstration projects in Denver, Atlanta, and Houston. In these projects, AARP volunteers will review files, identify delinquent accountings, interview wards at their places of residence, and report to the court.<sup>6</sup> In Los Angeles, university students visit wards and report to the court through a Volunteer Visitation Alliance.<sup>7</sup>

Volunteer programs, however, are not panaceas. A more promising approach is state legislation that creates—and adequately funds—a statewide guardianship review system. Legislators considering such a system can learn much from two existing statutorily mandated systems—the California investiga-

1. ASSOCIATED PRESS, *GUARDIANS OF THE ELDERLY: AN AILING SYSTEM* 1 (1987).
2. COMMISSION ON LEGAL PROBLEMS OF THE ELDERLY AND COMMISSION ON THE MENTALLY DISABLED, ABA, *GUARDIANSHIP: AN AGENDA FOR REFORM* 24 (1989) [hereinafter *AGENDA*]. The *Agenda* reports the recommendations of the National Guardianship Symposium sponsored by the ABA Commissions in July 1988. The ABA House of Delegates endorsed the recommendations in February 1989.
3. ASSOCIATED PRESS, *supra* note 1, at 1. See also, Parry, *Incompetency, Guardianship and Restoration*, in BRAKLE, PARRY & WINER, *THE MENTALLY DISABLED AND THE LAW*, Table 7-4 (1988). Uniform Probate Code § 5-418, however, requires only that conservators of property account to the court upon their resignation or removal and does not require any review for a guardian of the person.

4. ASSOCIATED PRESS, *supra* note 1, at 14.

5. Schmidt, *The Evolution of a Public Guardianship Program*, J. OF PSYCHIATRY & L. 356 (Fall 1984).

6. For further information on this project, contact Legal Counsel for the Elderly, AARP, 1909 K St., NW, Washington, DC 20049; (202) 662-4933.

7. Muir, *Helping the Elderly: Volunteer Will Check Conservators*, Los Angeles Times, Nov. 27, 1987 (Metro).

tor program and the Maryland review board system. This article will describe the current California and Maryland programs and will compare their quite different approaches to protecting the rights and meeting the needs of elderly and disabled wards.<sup>8</sup>

## II. California Court Investigator System

### A. Appointment, Qualifications, and Funding

Since 1977, the California Probate Code has required each county probate court to appoint a court investigator for conservatorship proceedings.<sup>9</sup> The investigator "shall be an officer of the court or special appointee of the court with no personal or other beneficial interest in the proceeding."<sup>10</sup> The investigator must be able "to communicate with, assess, and deal with persons who are or may be the subject of [conservatorship] proceedings," and must have "a demonstrated sufficient knowledge of the law" so as to inform proposed conservators and conservatees of their rights and duties, and of the effect of a conservatorship.<sup>11</sup>

About 115 investigators are currently serving in 58 California counties. During FY 1984-85, they conducted some 22,665 investigations.<sup>12</sup> They include psychologists, social workers, gerontologists, nurses, probation officers, former conservators, and others.

The investigator system is funded by a mixture of estate assessments and court funds. California law provides that at the close of each fiscal year, the Controller must determine the statewide average cost per investigation. Each county then must assess the estate of each conservatee for any investigation or review conducted. The assessments, however, are not collected until after the death of the conservatee.<sup>13</sup>

In 1987, the fee was set at \$154 per investigation. If the estate has been exhausted, no fee is collected. While this users fee does not cover the full cost of the system, the contribution is significant.

### B. Duties of the Investigator

The Associated Press termed the investigators "the backbone of California's conservatorship system" and observed that their mere existence probably deterred many of the blatant abuses rampant in other states.<sup>14</sup> The investigators are the eyes and ears of the court, visiting conservatees and proposed conservatees, assessing their situations, and making recommendations to the judge to ensure that their needs are met and their rights protected.

Each county administers its own court investigator program. The programs vary widely in their interpretations of the law, in their practices, and in the resources available to them. Two representative programs, one from the large urban jurisdiction of San Francisco and the other from the smaller, more rural jurisdiction of Nevada County, will be compared.<sup>15</sup> The San Francisco probate court has a staff of three full-time and one part-time investigators, plus a half-time director of the investigative unit. The unit has an open caseload of about 2,100. The Nevada County court has one half-time investigator and an open caseload of 150.

Each investigator is responsible for both initial investigations (prior to the appointment of a conservator) and review investigations (following the appointment of a conservator). In San Francisco, each investigator handles approximately 25 to 30 investigations per month; about half are initial investigations and half are review investigations. In Nevada County, the investigator handles approximately 5 initial and up to 8 review investigations per month.

For the initial investigation, the investigator must personally visit and inform the proposed conservatee of his or her rights, unless the petition states that the conservatee will be present at the hearing.<sup>16</sup> During the course of the visit, the investigator must determine whether the proposed conservatee is willing and able to attend the hearing, wishes to contest, objects to the proposed conservator, and wishes to be represented by counsel. The investigator also determines whether appointment of counsel would help to protect the proposed conservatee's rights even if he or she has not requested or retained counsel. If the court so directs, the investigator must also interview a conservatee prior to appointment of a successor conservator, entry of an order relating to medical consent, and entry of an order authorizing a temporary conservator to change the conservatee's residence.<sup>17</sup>

8. A few other state statutes provide for some degree of guardianship monitoring. In Wisconsin, social workers or case managers from local Departments of Human Services annually review guardianships in which the ward is under protective placement or receiving protective services. WIS. STAT. ANN. §§ 55.05, 880.34. Oregon law provides that any time after the appointment of a guardian, the court may, on its own motion, appoint a visitor to interview the guardian, ward, and others. OR. REV. STAT. § 126.114. In 1988, Colorado law was revised to provide that the court may appoint a visitor or other person to review a guardianship and report to the court. COLO. REV. STAT. § 15-14-315(3), (4). The National Guardianship Symposium suggested the following: "Courts should increase the frequency and quality of reports and should use supplemental means such as volunteers, review boards, and investigators to verify the contents of the report and the circumstances of the ward." AGENDA, *supra* note 2, at 23.

9. CAL. PROB. CODE § 1454(a). Under the California Probate Code, the term "conservatorship" refers to the court appointment of a surrogate decisionmaker regarding an adult disabled ward's property and/or personal affairs.

10. *Id.*

11. *Id.* at § 1454(b).

12. *Id.* See also ASSOCIATED PRESS, *supra* note 1, at 14.

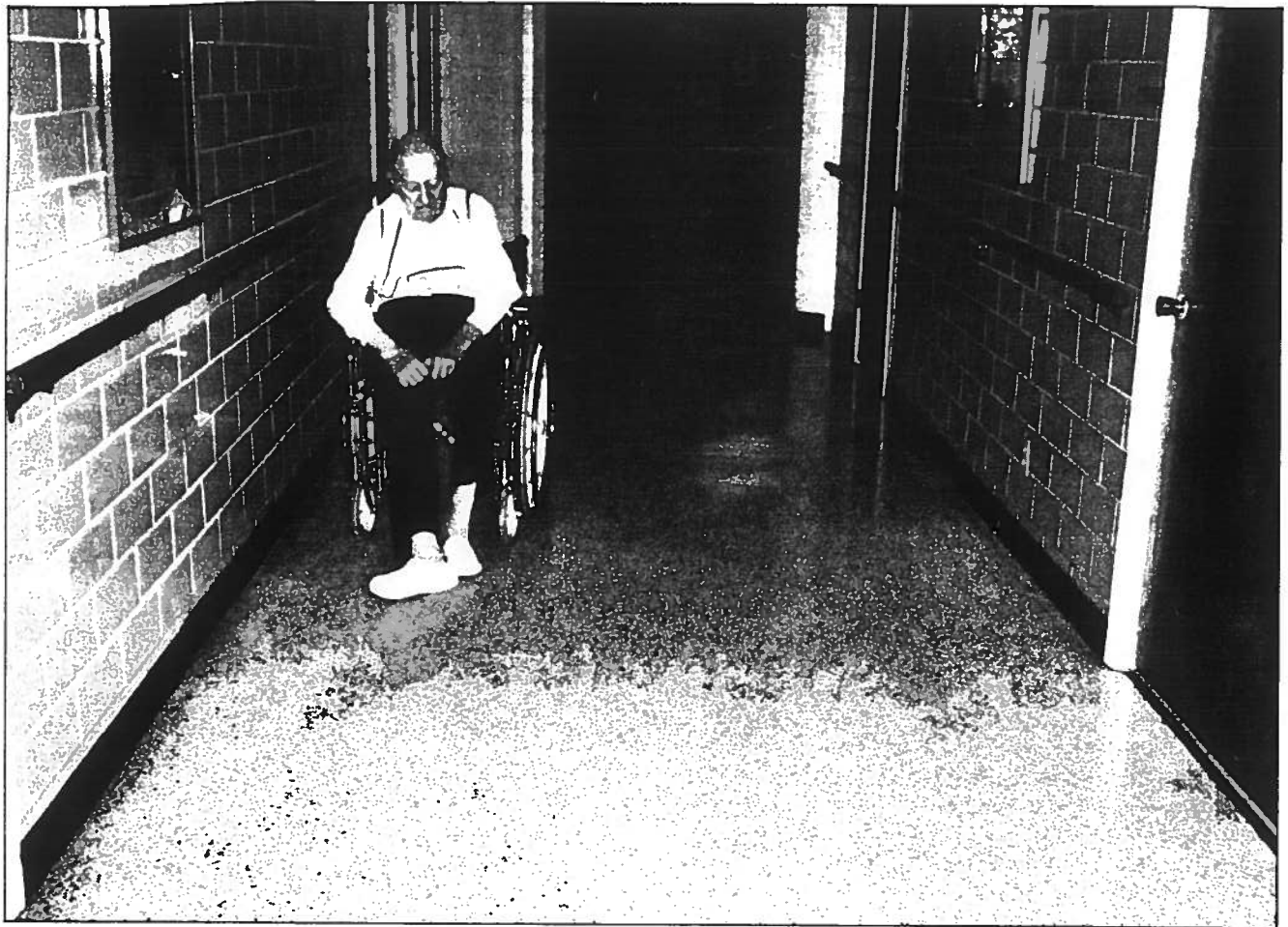
13. CAL. PROB. CODE § 1851.5.

14. ASSOCIATED PRESS, *supra* note 1, at 14.

15. To determine how the two programs operate, the authors extensively interviewed two investigators: Mary Joy Quinn, RN, PNN, MA, Director, Court Investigation Unit, Room 416, City Hall, San Francisco, CA 94102; and Sharyn Jones, Superior Court Investigator, P.O. Box 2761, Grass Valley, CA 95945. The interviews were conducted in March and April 1989.

16. CAL. PROB. CODE § 1454; WEST'S CAL. FORMS, Form GC-330. In San Francisco, the investigators visit each proposed conservatee, whether or not the conservatee will attend the hearing.

17. CAL. PROB. CODE §§ 2253, 2684; WEST'S CAL. FORMS, Form GC-330. At least in San Francisco, investigators also interview a conservatee upon a petition for termination.



Nursing home in Austin, Texas.

### C. The Investigator's Review Function

Investigators must conduct review visits with the conservatee one year after appointment of a conservator, and every two years thereafter. Following the visit, the investigator must certify a report to the court and mail a copy to the conservator, the attorneys for the conservator and conservatee, and any other persons ordered by the court.<sup>18</sup> In addition to scheduled review visits, the investigators also respond to complaints and to allegations of neglect, fraud, or abuse.

In San Francisco, the investigators do not review financial accounts; this is handled by court examiners. In Nevada County, however, the investigator is responsible for reviewing all accountings. He or she identifies questionable items for the judge and verifies significant expenditures. If accountings are past due, the investigator prepares an order to show cause for the judge.

For each scheduled review, the investigator visits the conservatee in the home, board and care home, or nursing home where he or she resides. The investigator talks with the conservatee, reviews any medical chart, meets with staff caring

for the conservatee, and, if there is any indication of a problem, may also talk with the conservator, relatives, and the doctor. For example, the Nevada County investigator responded to a conservatee's complaint that she had not had fruit in two years; after checking with the doctor and the conservator, the investigator arranged for a dietary change.

The investigator must personally inform the conservatee that he or she is under a conservatorship and give the name of the conservator.<sup>19</sup> The investigator must then determine whether the conservatee wishes to petition for termination and whether the conservatee is still in need of the conservatorship.<sup>20</sup> In San Francisco, for example, an alert woman in her 80s was intimidated by her conservator, whom she did not know and who caused her to spend funds from her scant allowance when her estate contained sufficient funds to pay for items important to her welfare. The investigator recommended that the court appoint an attorney to represent the conservatee. The attorney drafted a durable power of attorney and recommended the San Francisco Support Services for Elders program to serve as attorney-in-fact. The court held a hearing and terminated the conservatorship.

The heart of the investigator's review function is determining whether the conservator is acting in the best interest of

18. CAL. PROB. CODE § 1454; WEST'S CAL. FORMS, Form GC-330.

19. *Id.*

20. *Id.*

the conservatee.<sup>21</sup> Sometimes investigators uncover instances of clear abuse. In San Bernardino, for instance, an elderly woman's daughter, appointed as conservator, allegedly used most of the mother's funds to start her own business.<sup>22</sup> However, because much of the San Francisco investigation unit's time and energy goes into preventive work (correctly setting up the conservatorship and identifying honest and devoted conservators to begin with), some 80 percent of reviews are generally "innocuous," leaving only 20 percent in which the actions of the conservator may be questionable.

Finally, the investigator must determine whether the conservatee's condition is such that the court order should be modified or revoked, whether a limited conservatorship should be continued or terminated, and whether the conservatee still lacks capacity to give informed consent for medical treatment.<sup>23</sup>

The California Probate Code is silent on advance notice of review visits. The general practice of the San Francisco investigative unit is to call earlier the same day. In Nevada County, the investigator makes unannounced visits to nursing homes and other facilities, but must often schedule home visits in advance.

#### D. Intervention Options

After making a review visit, the investigator prepares a report for the judge. The report may consist of a checkoff form plus an addendum where necessary. Both the Nevada County investigator and the San Francisco Court Investigation Unit often prepare lengthy, detailed reports that the judges find helpful in fashioning orders. Based on this report, the investigator may recommend, and/or the judge may direct, a range of actions to ensure that the conservatee's needs are met and that his or her autonomy is respected to the extent possible.

- The investigator may recommend appointment of an attorney for the conservatee at any time. Some courts maintain a list of attorneys willing to be appointed, to be paid from the estate or by the county; others appoint public defenders.

- The investigator may recommend that the conservator be cited into court to explain his or her decisions and care of the conservatee or to clarify any financial discrepancies.

- The investigator may use a more cooperative approach; for example, assisting the conservator in locating appropriate resources.<sup>24</sup>

- The investigator may recommend terminating the conservatorship, identify a new conservator, or aid in arranging alternatives, such as a durable power of attorney, a representative payee, and/or supportive social services.

- The investigator may recommend a specific action, such as a change of residence. In Nevada County, for example, an elderly woman who lived in a nursing home wanted to live at home and had the means to pay for 24-hour nursing care.

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After making a full assessment, the investigator recommended appointment of an attorney to assist the woman with her request for a less restrictive placement.

- The investigator may serve as a mediator, to aid interested parties in resolving a dispute.

- If the investigator shows that a conservator has blatantly and consistently abused the conservatee, the court may even order a bench warrant.

- The investigator may recommend referral to the prosecutor's office, where a conservator has clearly violated the provisions of the penal code. While such referrals have been rare (at least in the two counties studied), interest is growing in increased investigator/prosecutor coordination.

### III. Maryland Adult Public Guardianship Review Board

#### A. Statutory Scheme

Maryland has long mandated review of its court-appointed public guardianships. The Maryland Adult Public Guardianship Review Board system was established under state law solely for this purpose.<sup>25</sup> In an era when public officials are calling for additional oversight of guardians and are considering state agency review boards to monitor them,<sup>26</sup> the Maryland review board system exemplifies effective protection of wards' rights and interests.

In 1977, Maryland substantially revised its guardianship laws by passing the Adult Protective Services Act.<sup>27</sup> Three of the revisions are pertinent here. First, the Act added due process protections in proceedings to appoint a guardian of the person for an alleged disabled adult. Prospective wards now have the right to notice, to be present at the hearing, to be represented by counsel who will be appointed by the court if the alleged disabled person has no other attorney, and to a determi-

21. *Id.*

22. ASSOCIATED PRESS, *supra* note 1, at 14.

23. CAL. PROB. CODE § 1454; WEST'S CAL. FORMS, Form GC-330.

24. The San Francisco Court Investigation Unit also plays an important role in educating conservators. The unit has produced a video, *Becoming a Conservator*, which must be viewed by all prospective conservators before the appointment is made, and a companion publication, HANDBOOK FOR CONSERVATORS.

25. The Review Board was called the "Disabled Persons Review Board" until its name was changed by the legislature in 1988. 1988 Cal. Stat. ch. 295. In certain sections of the social services and protective services networks, it is still known by that name.

26. SUBCOMM. ON HOUSING AND CONSUMER INTERESTS, HOUSE SELECT COMM. ON AGING, SURROGATE DECISIONMAKING FOR ADULTS: MODEL STANDARDS TO ENSURE QUALITY GUARDIANSHIP AND REPRESENTATIVE PAYEEHIP SERVICES, H.R. DOC. NO. 705, One-33, 100th Cong., 2d Sess. (1988).

27. 1977 Cal. Stat. ch. 768.

nation based on clear and convincing evidence.<sup>28</sup> Second, the Act authorized the state or local Office on Aging (OOA) and the local department of social services (DSS) to act as public guardians by including the agencies in the list of interested persons with priority to be appointed as guardian.<sup>29</sup> The state or local OOA is appointed as guardian for persons aged 65 and over; DSS serves as guardian for individuals under age 65. The Act also established local review boards to monitor the well-being of all people over the age of 18 placed under public guardianships and to ensure that public guardians were providing them with all necessary services and medical care.<sup>30</sup>

The Act provides for a review board in each political jurisdiction in which there is a public guardianship. Each board consists of nine members who are appointed by the governing body of the county or city in which the board sits. The nine members must include a professional representative from the local DSS; two physicians, one of whom is a psychiatrist from the local department of health; a representative of a local department or commission on aging; a professional representative of a local nonprofit social service organization; an attorney; two community members; and a public health nurse.<sup>31</sup> The terms, which are staggered, are generally for three years, or until the retiring member's successor is appointed and qualifies.<sup>32</sup>

## B. Review Board Proceedings

The review board is charged with reviewing each public guardianship in its jurisdiction at least once every six months. The reviews are conducted in two fashions. During the year following the appointment of the public guardian, and at least once a year thereafter, the review board conducts a full review of the guardianship. After the first year, one of the two annual reviews may be a file review—that is, limited to review of the guardian's written report. Even if a file review is scheduled, however, a full review may be requested by the guardian, the disabled individual and/or counsel, or the review board on its own motion.<sup>33</sup>

Several of the due process protections that apply to guardianship of the person proceedings also extend to review

board hearings. The Act requires the ward to attend the hearing if he or she is able.<sup>34</sup> The ward must be represented by counsel of his or her choice or by a court-appointed lawyer.<sup>35</sup> While the statute does not mention any notice requirement, notices of hearings are, in practice, routinely sent to the guardian, the disabled person and counsel, and, if appropriate, to the guardian of the property. All records are kept confidential, except for purposes of the judicial proceedings.<sup>36</sup>

The review hearings are informal; evidentiary rules do not apply. They vary in length, depending on the issues to be discussed and whether the ward is present at the hearing. The guardian must file a report with the review board, giving the background of the case, information about the ward's current living arrangements, a description of any changes since the last report, an evaluation of the ward's current condition and an assessment of his or her progress, and the prognosis.<sup>37</sup> The guardian presents this report at the hearing. Both the ward and counsel have the opportunity to speak. Board members then may question the guardian, the ward, and the ward's representative. After each review, the review board must recommend continuation, termination, or modification of the guardianship.<sup>38</sup>

The review board's authority is only advisory. The statute is clear that a court may terminate or modify a guardianship, notwithstanding the review board's recommendation that it continue.<sup>39</sup> The statute is silent, however, on how the court must treat a recommendation to terminate or modify the guardianship.

## C. Review Board Practice and Policy

The statute establishing the review boards is limited in scope and provides little direction to the boards regarding hearing procedures and bases for their recommendations. Representatives from the approximately 20 different review boards have therefore formed the Council of Disabled Person Review Boards of Maryland, a grass roots cooperative effort designed to establish uniform procedures throughout the state. Using funds provided by the Social Services Administration of the Department of Human Resources, the Council recently published a handbook that describes the role and function of the boards.<sup>40</sup>

28. Maryland law provides separately for guardians of the property and person. MD. EST. & TRUSTS CODE ANN. §§ 13-201, 13-704 (1984). Many of the due process protections contained in the Adult Protective Services Act, including the right to court-appointed counsel and the right to trial by jury, pertain only to petitions involving guardianship of the person. The standard of proof is also lower for guardianships over the property. If a petitioner seeks guardianship over both the person and property, the jury will determine whether the evidence warrants appointment over the person, and the judge will make the determination as to the property.

29. *Id.* § 13-707(a)(9). The law also precludes the director of the local DSS from contracting with any other person to act as guardian of the person of a disabled individual. MD. FAM. LAW CODE ANN. § 14-203(b) (1984).

30. MD. FAM. LAW CODE ANN. § 14-401 (1984, Supp. 1988).

31. *Id.* at § 14-402(a).

32. *Id.* at § 14-402(b). Board members in Charles County, however, serve four-year terms.

33. *Id.* at § 14-404(a).

34. *Id.* at § 14-404(c)(1).

35. *Id.* at § 14-404(c)(2). Despite the fact that these proceedings are quasi-judicial, the statute specifies that representation must be by a lawyer; a paralegal would not meet the statutory standard.

36. *Id.* at § 14-404(d).

37. The court may order the guardian of the person to file an annual report indicating the current residence and health status of the ward, the guardian's service plan, and a recommendation to continue, terminate, or modify the guardianship. MD. EST. & TRUSTS CODE ANN. § 13-708(b)(7). Public guardians are required to submit such a report to the review board. MD. FAM. LAW CODE ANN. § 14-404(a)(1)(iii). The Council of Review Boards recommends expanding the information included in the report. COUNCIL OF REVIEW BOARDS, HANDBOOK FOR DISABLED PERSONS REVIEW BOARDS OF MARYLAND 17 (1987) (revised edition forthcoming) [hereinafter HANDBOOK].

38. MD. FAM. LAW CODE ANN. § 14-404(b).

39. *Id.*

40. A copy of the HANDBOOK, *supra* note 37, may be obtained for a small fee from Harriet Suskin, Social Services Administration, Department of Human Resources, 311 W. Sarasota St., Baltimore, MD 21201.

The Council meets regularly to discuss policies and problems; it also assists in training new board members. The activism of the Council and its founding members has helped to make many of the review boards effective forums for advocacy on behalf of individuals under public guardianship.<sup>41</sup>

Review boards are only charged with reviewing the guardianship of the person.<sup>42</sup> Maryland law does not provide for a public guardian over property, and public agencies are precluded by state law from acting in that capacity.<sup>43</sup> Yet many review boards have taken it upon themselves to study the financial affairs of the ward. According to the Council handbook, "There may be some extenuating circumstances or conditions about the property which may be considered if they affect the guardianship of the person and the welfare and rights of the disabled person."<sup>44</sup> Thus, review boards have considered problems that arise when the guardian of the property does not pay nursing home and other bills in a timely manner, does not apply for Medicaid or manage the estate in a manner consistent with Medicaid eligibility, or no longer wishes to continue in that role or believes that another form of property management is more appropriate. In many instances, review boards have recommended to courts that the guardianship of the property be investigated, reviewed, terminated, or modified. As a result, courts have reviewed guardianships that otherwise might not have been reviewed,<sup>45</sup> removed guardians of the property who were not carrying out their duties, and terminated guardianships and substituted representative payeeships when appropriate.<sup>46</sup>

The interdisciplinary composition of the review boards gives them, collectively, greater expertise than is available to some of the state personnel who function as public guardians. So review boards often act as advisors to the guardianship specialists and assist in the management of guardianship cases. Physician board members point out problems stemming from inappropriate treatment or overmedication of patients. Boards routinely require the guardian to have the disabled person reevaluated or sent to special clinics for tests. Other board members may remind the guardians to apply for all benefits, including Veterans Benefits and Medicaid, for which the ward may be eligible.

Review boards also recommend less restrictive or more appropriate placements than those contemplated by the guardian. Because the guardian will have to report back to the review board in six months regarding the action, if any, that was taken

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on its recommendation, the guardian becomes accountable to the board as well as to the court.

Review board hearings provide an advocacy forum for attorneys who represent the disabled persons. An attorney who is planning to challenge the actions of the guardian may be able to resolve the issue at the review board hearing without going into court. Or the review board, through its recommendations to the court, may play a supporting role in advocating the removal of a guardian. Physician board members may provide the consultations or evaluations necessary for terminating the guardianship. In some instances, review boards may act as mediators; one review board recently mediated a dispute between a family member who wanted to take the ward out of the nursing home for visits and the guardian who refused to let her do so.

Because they monitor all public guardianships, review boards can sometimes effect broader changes in the guardianship system than can advocates for individual wards. Review boards have intervened when a particular worker has consistently failed to perform the duties of the guardian properly and to the benefit of the disabled persons. The Baltimore Review Board, concerned about extensive violations in some of the facilities in which the disabled persons under its jurisdiction live, plans to visit those facilities. Other review boards have also discovered and acted on major violations by different facilities based on their reviews of the living conditions of their wards.

#### **D. Recurrent Problems**

Not all review boards function smoothly. Maintaining a nine-member board is a recurring problem. In some counties, it is difficult to find doctors or lawyers to serve as volunteer board members<sup>47</sup> and, if they are willing to serve, to schedule hearings that do not conflict with their work obligations. The problem of scheduling hearings is exacerbated by the increasing number of public guardianships, especially in the larger urban areas, such as Baltimore City and Baltimore, Montgomery, and Prince George's Counties. The Review Boards must meet more frequently in order to have time to consider each guardianship twice each year.

Boards have also had problems filling vacancies on the expiration of a term or the resignation of a board member. In Prince George's County, the county executive took so long to

41. The following discussion is based on interviews with lawyers from the Maryland Legal Aid Bureau and Maryland Disability Law Center who represent wards at the hearings, an interview with Harriet Suskin, Community Project Specialist with the Department of Human Resources, and on the experiences of one of the authors in representing wards at review board hearings.

42. MD. FAM. LAW CODE ANN. § 14-404(a).

43. MD. EST. & TRUSTS CODE ANN. § 13-207(e).

44. COUNCIL OF REVIEW BOARDS, *supra* note 37, at 15.

45. Maryland law requires that all guardians of the property file an initial inventory within 60 days of their appointment and an annual accounting each year thereafter. MD. R. CIV. P. V74(b)(c). As in other jurisdictions, however, not all guardians comply with the law, and not all courts diligently seek compliance or review accountings that are filed.

46. Maryland, also through the auspices of the Social Services Administration of the Department of Human Resources, has established volunteer representative payee programs in several of its counties.

47. Board members are compensated only for their out-of-pocket expenses. The local DSS provides the office space and personnel needed by the review board to perform its duties. MD. FAM. LAW CODE ANN. § 14-403.

appoint new board members that the review board continually operated without a quorum.<sup>48</sup> The board's chairperson finally wrote the county executive that she was suspending all review board hearings until he completed the appointment process and there was a full nine-member Board.

Another problem is finding attorneys to represent disabled persons. Both the guardianship of the person and review board statutes mandate attorney representation for the disabled person. Despite the fact that the court retains jurisdiction in guardianship cases,<sup>49</sup> many private attorneys believe that their relationship with the disabled person terminates 30 days after the order appointing the guardian is entered.<sup>50</sup> Unless the court order specifically states that the attorney will continue to represent the ward, these attorneys contend that their obligation has been discharged and that they are not the attorney of record for review board hearings. Review boards must then petition the court to appoint a new attorney for the disabled person in order to comply with the law. Some review boards can rely on advocacy programs to accept appointment of all unrepresented disabled persons who meet specific criteria. For example, the Title IIIB component of the Maryland Legal Aid Bureau in Prince George's County will accept representation of individuals over 60 in that county;<sup>51</sup> the Maryland Disability Law Center is under contract with the Maryland Department of Human Resources to represent mentally ill and disabled individuals. Review boards can also seek the appointment of pro bono attorneys through the Maryland Volunteer Lawyer Service and other pro bono panels; the Maryland Legal Services Program will pay the attorneys their reasonable costs and a fee. Even with the pro bono panels, however, it is still difficult to find attorneys willing to accept these cases.

The final problem arises from the different guardianship philosophies of the various review boards and wards' representatives. In some jurisdictions, review boards are likely to terminate a guardianship once a person is in a protected environment and in a stable condition. In others, review boards will not terminate the guardianship unless the ward can demonstrate that he or she no longer meets the statutory definition of disabled

person.<sup>52</sup> Boards that terminate guardianships may be responding more to the financial pressures of maintaining guardianships than to a concern for the civil liberties of the individual wards. On the other hand, many boards that continue stable guardianships year after year may be taking a more paternalistic approach in the belief that once a guardianship is needed, it will almost always be needed. This area requires advocacy on behalf of each individual, based on the client's wishes and goals.

#### IV. Conclusion

The California and Maryland programs function well in large part because dedicated people participate in the reviews and because the programs have established their credibility in their respective court systems. Both are workable models for jurisdictions that want to incorporate monitoring into their guardianship procedures. A combination of the best features of both systems would provide the most protection to people under guardianships. Such a model might include the following:

- An investigator appointed and paid for by the court to conduct an initial investigation prior to the appointment of a guardian or conservator.
- Required periodic visits to the ward, either by an investigator or by the guardian who must then report on the visit to a review board. The visits would be held in conjunction with periodic reviews.
- Twice-yearly reviews of all guardianships, public and private, by either an investigator or a review board that receives compensation for its services.
- Authorizing the investigator or review board to consider and make recommendations concerning the financial well-being of the individual, as well as his or her physical and mental well-being.
- Prompt court hearings to consider the investigator's or review board's recommendation to terminate or modify the guardianship or to remove and replace the guardian.

These requirements would provide the minimal scrutiny needed to avoid the problems discovered by the Associated Press investigation. They would ensure that the wards and conservatees did not become lost in the system, but were regularly visited and checked on. Courts would be continually reminded of their obligation to scrutinize the welfare of individuals placed under their care. Each state can incorporate these requirements into a comprehensive review system consistent with its own needs.

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Vicki Gottlich is a staff attorney with the National Senior Citizens Law Center, 2025 M St., NW, Ste. 400, Washington, DC 20036, (202) 887-5280. Erica Wood is Associate Director of the American Bar Association's Commission on Legal Problems of the Elderly, 1800 M St., NW, Washington, DC 20036, (202) 331-2297.

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48. The Council recommends that review boards require a quorum of five at all hearings. They also suggest that boards adopting this policy proceed with the hearing, even though a quorum is not present, if the disabled person and/or counsel agree. HANDBOOK, *supra* note 37, at 15.

49. MD. EST. & TRUSTS CODE ANN. § 13-704. The Maryland Court of Appeals has stated: "In reality the court is the guardian; an individual who is given that title is merely an agent or arm of that tribunal in carrying out its sacred responsibility." *Kicherer v. Kicherer*, 400 A.2d 1097, 1100 (1979).

50. MD. R. CIV. P. 2-132(d), states that the appearance of an attorney is automatically terminated when the time to appeal has expired, unless the court orders otherwise. Rule 8-202(a) states that notice of appeal must be filed within 30 days after the order or judgment is entered.

51. The Prince George's County Senior Citizens Law Project of the Legal Aid Bureau has arranged with the court to represent all county residents over the age of 60 over whom a public guardianship is sought.

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52. A disabled person is one who

lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person, including provisions for health care, food, clothing, or shelter, because of any mental disability, senility, other mental weakness, disease, habitual drunkenness or addiction to drugs, and that no less restrictive form of intervention is available which is consistent with the person's welfare and safety.

MD. EST. & TRUSTS CODE ANN. § 13-705(b).