

PERFORMANCE AUDIT
OF
SELECTED PROBATE COURT CONSERVATORSHIP CASES

October 2003

“...The auditor general shall conduct post audits of financial transactions and accounts of the state and of all branches, departments, offices, boards, commissions, agencies, authorities and institutions of the state established by this constitution or by law, and performance post audits thereof.”

– Article IV, Section 53 of the Michigan Constitution

Audit report information may be accessed at:
<http://www.state.mi.us/audgen/>



Michigan
Office of the Auditor General
REPORT SUMMARY

Performance Audit
Selected Probate Court Conservatorship
Cases

Report Number:
05-605-01

Released:
October 2003

The Michigan Supreme Court is responsible for the general administrative supervision of all courts in the State. Also, the Supreme Court establishes rules for practice and procedure in all courts through the State Court Administrative Office (SCAO). The SCAO's mission is to provide leadership and to promote effective, efficient, equitable, uniform, and accessible court and justice system services to advance the highest quality of justice in Michigan. The SCAO performs its duties under the direction of the Supreme Court and is responsible for providing administrative oversight and management or technical assistance to the judges and staff of Michigan's 244 trial courts. A conservatorship is petitioned for on behalf of an individual who is unable to manage his or her property and financial affairs effectively because of certain reasons.

Audit Objectives:

1. To determine the accuracy and validity of assertions contained in conservators' annual accountings filed with probate courts.
2. To assess the effectiveness and efficiency of probate courts' procedures and controls for administering and monitoring conservatorship cases.

~ ~ ~ ~ ~

Audit Conclusions:

1. The assertions contained in conservators' annual accountings filed with probate courts were generally not accurate or valid.
2. Probate courts' procedures and controls for administering and

monitoring conservatorship cases were generally not effective.

~ ~ ~ ~ ~

Reportable Conditions:

Probate courts did not establish and implement processes to adequately review annual accountings for appropriateness and reasonableness (Finding 1).

Probate courts did not adequately inform and train conservators in their duties and responsibilities to properly account for and report estate assets and financial activities in the annual accountings submitted to the courts (Finding 2).

Probate courts did not ensure that conservators maintained sufficient documentation to support items reported in annual accountings and did not perform

investigations when discrepancies were identified in annual accountings (Finding 3).

Three probate courts did not have effective controls to ensure that conservatorship cases were appropriately administered and monitored (Finding 4).

Probate courts were not consistent in their enforcement of conservator reporting requirements of the *Michigan Compiled Laws* and the Michigan Court Rules (Finding 5).

The probate court data systems need to be expanded to capture additional information to improve conservator monitoring. Also, the SCAO needs to review the feasibility of providing probate courts with additional analytical reports with which to evaluate conservators. (Finding 6)

Probate courts need to close conservatorship cases when protected individuals die or reach the age of majority and to monitor the status of inactive cases and close them as appropriate (Finding 7).

Four probate courts did not ensure that conservators effectively managed estate assets and complied with the *Michigan Compiled Laws* (Finding 8).

Two probate courts did not ensure that conservators expended estate money exclusively for the support, education, care, and benefit of the protected individuals they represented in compliance with the *Michigan Compiled Laws* (Finding 9).

Probate court administrative controls in three counties did not prevent conservators from engaging in self-dealing (Finding 10).

~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~

Agency Response:

The agency's preliminary response indicated that the SCAO agrees with the findings.

A copy of the full report can be obtained by calling 517.334.8050 or by visiting our Web site at: www.state.mi.us/audgen/



Michigan Office of the Auditor General
201 N. Washington Square
Lansing, Michigan 48913

Thomas H. McTavish, C.P.A.
Auditor General

James S. Neubecker, C.P.A., C.I.A., D.P.A.
Executive Deputy Auditor General

Scott M. Strong, C.P.A., C.I.A.
Director of Audit Operations



STATE OF MICHIGAN
OFFICE OF THE AUDITOR GENERAL
201 N. WASHINGTON SQUARE
LANSING, MICHIGAN 48913
(517) 334-8050
FAX (517) 334-8079

THOMAS H. MCTAVISH, C.P.A.
AUDITOR GENERAL

October 23, 2003

The Honorable Maura D. Corrigan
Chief Justice of the Supreme Court of Michigan
and
Mr. John D. Ferry, Jr.
State Court Administrator
Supreme Court of Michigan
Michigan Hall of Justice
Lansing, Michigan

Dear Chief Justice Corrigan and Mr. Ferry:

This is our report on the performance audit of Selected Probate Court Conservatorship Cases.

This report contains our report summary; description; audit objectives, scope, and methodology and agency responses; comments, findings, recommendations, and agency preliminary responses; supplemental information; and a glossary of acronyms and terms.

Our comments, findings, and recommendations are organized by audit objective. The agency preliminary responses were taken from the Judiciary's responses subsequent to our audit fieldwork.

Certain findings included in this performance audit report specifically relate to activities occurring within the probate courts. Although the State Court Administrative Office (SCAO) may not be directly responsible for these functions, we have addressed these findings and related recommendations to the SCAO for corrective action, consistent with the Michigan Supreme Court's responsibility for the general administrative supervision of all courts in the State and the SCAO's role in carrying out this responsibility.

We appreciate the courtesy and cooperation extended to us during this audit.

AUDITOR GENERAL

This page left intentionally blank.

TABLE OF CONTENTS

SELECTED PROBATE COURT CONSERVATORSHIP CASES

	<u>Page</u>
INTRODUCTION	
Report Summary	1
Report Letter	3
Description	7
Audit Objectives, Scope, and Methodology and Agency Responses	9

COMMENTS, FINDINGS, RECOMMENDATIONS, AND AGENCY PRELIMINARY RESPONSES

Accuracy and Validity of Annual Accountings	12
1. Annual Accounting Reviews	13
2. Accounting for Financial Activities and Assets	15
3. Documentation of Estate Assets and Activities	18
Effectiveness and Efficiency of Administering and Monitoring Conservatorship Cases	20
4. Administration and Monitoring	20
5. Compliance With Laws	23
6. Data Collection	25
7. Open Caseloads	27
8. Management of Estate Assets	30
9. Disbursement of Estate Funds	34
10. Self-Dealing	37

SUPPLEMENTAL INFORMATION

Total Probate Court and Conservatorship Cases by County or District	40
---	----

GLOSSARY

Glossary of Acronyms and Terms

42

Description

In Michigan, conservatorships are governed by Sections 700.1101 - 700.1512 and Sections 700.5401 - 700.5433 of the *Michigan Compiled Laws*. A conservatorship is petitioned for on behalf of an individual who is unable to manage his or her property and financial affairs effectively because of certain reasons, and he or she has property that will be wasted or used up unless proper management is provided or funds are needed for the support, care, and welfare of the adult and any of his or her dependents. Some of the reasons that might prevent the individual from being able to manage his or her property and financial affairs are mental illness or deficiency, physical illness or disability, chronic use of alcohol or other intoxicants, confinement, detention by a foreign power, or disappearance or the individual is a minor. A conservator* is a person appointed by a probate court and given power and responsibility for the estate* of a protected individual*.

The Michigan Supreme Court is responsible for the general administrative supervision of all courts in the State. Also, the Supreme Court establishes rules for practice and procedure in all courts through the State Court Administrative Office (SCAO). The SCAO's mission* is to provide leadership and to promote effective, efficient, equitable, uniform, and accessible court and justice system services to advance the highest quality of justice in Michigan. The SCAO performs its duties under the direction of the Supreme Court and is responsible for providing administrative oversight and management or technical assistance to the judges and staff of Michigan's 244 trial courts.

There are probate courts in each Michigan county, with the exception of 10 counties that have consolidated to form 5 probate court districts. There are 38,301 conservatorship cases Statewide (see supplemental information, including notes, for total probate court and conservatorship cases by county or district). Each district has one judge, and each of the remaining counties have one or more judges, depending in large part on the population and caseload within the county. Probate courts have jurisdiction over cases pertaining to admission of wills, administration of estates and trusts, guardianships, conservatorships, and the treatment of mentally ill and developmentally disabled persons.

* See glossary at end of report for definition.

Each probate court has its own policies and procedures for conservatorship cases in relation to reviewing annual accountings* filed with the probate court, assigning guardians ad litem* for various events arising in cases, and setting hearings for such events.

* See glossary at end of report for definition.

Audit Objectives, Scope, and Methodology and Agency Responses

Audit Objectives

Our performance audit* of Selected Probate Court Conservatorship Cases had the following objectives:

1. To determine the accuracy and validity of assertions contained in conservators' annual accountings filed with probate courts.
2. To assess the effectiveness* and efficiency* of probate courts' procedures and controls for administering and monitoring conservatorship cases.

Audit Scope

Our audit scope was to examine the program and other records of probate courts and the records of the appointed conservators for conservatorship cases filed with probate courts. Our audit was conducted in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States and, accordingly, included such tests of the records and such other auditing procedures as we considered necessary in the circumstances.

Audit Methodology

Our audit procedures, conducted from April 2001 through February 2002, included examination of probate courts' and conservators' records and activities primarily for the period October 1, 1998 through December 31, 2001.

Our methodology included a preliminary review of probate courts' operations to gain an understanding of their activities. This included a review of applicable laws, regulations, policies and procedures, and other information to gain an understanding of the controls related to conservatorships.

* See glossary at end of report for definition.

The following is a table of the number of conservatorship cases and total probate court cases pending in the State and in each of the five courts (by county) reviewed during our audit as of December 31, 2001 (see supplemental information for total probate court and conservatorship cases by county or district):

	Statewide	Calhoun County	Huron County	Jackson County	Washtenaw County	Wayne County
Conservatorship cases	38,301	648	223	813	658	10,375
Total probate court cases	204,432	2,804	893	2,529	2,814	86,854
Conservatorship cases as a percentage of total probate court cases	18.8%	23.1%	25.0%	32.2%	23.4%	12.0%
Number of probate court judges	110	2	1	1	2	9
Use of a public guardian		No	Yes	Yes	No	No

Source: One Court of Justice, Michigan Supreme Court, Annual Report 2001, Probate Court Statistical Supplement.

The five courts chosen for site visits for the audit were based on factors such as urban versus rural populations in the counties in which they are located, the size of the county, use of a public guardian, and caseload size. The following table demonstrates the diversity of the counties selected to obtain a cross section of Michigan's demographics:

	Statewide	Calhoun County	Huron County	Jackson County	Washtenaw County	Wayne County
Population in 2000	9,952,006	138,065	36,037	158,688	324,123	2,058,550
Percentage of Statewide population	100%	1.4%	0.4%	1.6%	3.3%	20.7%
Non-farm personal income (in thousands of dollars)	\$ 289,332,170	\$ 3,527,651	\$ 870,577	\$ 3,863,281	\$ 11,882,676	\$ 57,693,224
Farm income (in thousand of dollars)	\$ 537,141	\$ 6,228	\$ 26,501	\$ 1,864	\$ 5,005	\$ 6,450
Per capita personal income	\$ 29,127	\$ 25,596	\$ 24,893	\$ 24,357	\$ 36,676	\$ 28,029

Source: U.S. Department of Commerce, Economic and Statistics Administration, Bureau of Economic Analysis, issued in May 2002.

To accomplish our first objective, we audited a sample of conservatorship cases during each site visit. We obtained probate court records of the annual reports and conservator records and performed independent checks on the items and amounts filed in the annual reports.

To accomplish our second objective, we conducted site visits to various county probate courts. We conducted interviews with court personnel and reviewed court policies and procedures used to administer and monitor conservatorship cases. We reviewed a

sample of conservatorship cases to determine whether controls were in place to properly administer and monitor conservatorship cases. We conducted reviews regarding complaints received, guardians ad litem, and medical and/or mental reviews. We also conducted analysis of case file data.

Agency Responses

Our audit report includes 10 findings and 11 corresponding recommendations. The agency's preliminary response indicated that the SCAO agrees with the findings.

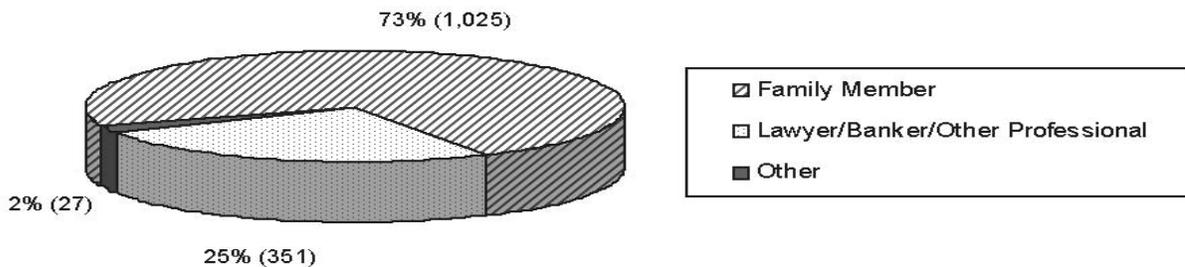
The agency preliminary response that follows each recommendation in our report was taken from the Judiciary's written comments and oral discussion subsequent to our audit fieldwork.

COMMENTS, FINDINGS, RECOMMENDATIONS, AND AGENCY PRELIMINARY RESPONSES

ACCURACY AND VALIDITY OF ANNUAL ACCOUNTINGS

COMMENT

Background: Most probate courts encourage and appoint family members to act as conservators for protected individuals' estates. Generally, family appointments save the estates extensive attorney or professional conservator fees. Also, courts generally believe that family members will be more vigilant in protecting the interests of estates. However, family members are not always versed in the laws governing conservatorships and courts do not have sufficient mechanisms in place to properly train the conservators in the accounting and reporting for the protected individuals' estates. Our review of conservatorship cases in the five courts visited showed the following relationship of the conservator to the protected individual:



Certain findings included in this performance audit report specifically relate to activities occurring within the probate courts. Although the State Court Administrative Office (SCAO) may not be directly responsible for these functions, we have addressed these findings and related recommendations to the SCAO for corrective action, consistent with the Michigan Supreme Court's responsibility for the general administrative supervision of all courts in the State and the SCAO's role in carrying out this responsibility.

Audit Objective: To determine the accuracy and validity of assertions contained in conservators' annual accountings filed with probate courts.

Conclusion: We determined that the assertions contained in conservators' annual accountings filed with probate courts were generally not accurate or valid. We noted reportable conditions* related to annual accounting reviews, accounting for financial activities and assets, and documentation of estate assets and activities (Findings 1 through 3).

FINDING

1. Annual Accounting Reviews

Probate courts did not establish and implement processes to adequately review annual accountings for appropriateness and reasonableness. The SCAO needs to provide direction and guidance to probate courts to adequately review annual accountings for appropriateness and reasonableness.

Probate courts appoint guardians ad litem (GALs) to monitor conservatorship proceedings and to act as advocates for protected individuals. GALs are attorneys who have experience in probate court proceedings. GALs meet with protected individuals when a petition for conservatorship is filed. Also, GALs review lawsuit settlements involving minors and conduct investigations when conflicts arise in a conservatorship. Further, GALs may review conservator-prepared annual accountings filed with probate courts and make recommendations to the courts regarding the allowability of the annual accountings.

We observed that the assignment of a GAL does not ensure that the annual accounting has received a proper review. Our review of 114 conservatorship cases in 1 court that extensively used GALs disclosed 44 instances in which annual accountings contained deficiencies significant enough to recommend that the court not approve the annual accountings. We noted that 24 of these 44 cases had a GAL appointed to review the annual accountings filed with the court. However, in 23 of 24 instances, GALs had reviewed and recommended approval of the annual accountings without discovering or disclosing to the court the significant deficiencies. For example, in 1 case, a conservator reported annual expenditures of \$37,198 but documented expenditures of only \$27,717. In another case, a

* See glossary at end of report for definition.

conservator reported nursing home expenditures of \$15,558, but provided documentation supporting only \$4,740 in expenditures. In only 1 of 24 instances did the GAL note deficiencies with the annual accounting and recommend denial of the annual accounting to the court.

In the other 4 courts in our review, GALs were used infrequently to review annual accountings. In 3 of those courts, there were no audits conducted of the annual accountings submitted before they were approved by the courts. In the fourth court, annual accountings were reviewed before they were submitted to the court for approval. However, our audit disclosed exceptions in the court's conservatorship cases and its process could be improved. Deficiencies in the annual accountings for these courts are reported in Findings 2 and 3.

RECOMMENDATION

We recommend that the SCAO provide direction and guidance to probate courts to adequately review annual accountings for appropriateness and reasonableness.

AGENCY PRELIMINARY RESPONSE

The SCAO agrees that probate courts must provide adequate reviews of conservators' annual accountings. To that end, the SCAO will not only intensify training and oversight of probate court judges and staff on annual accounting reviews (please see below), but will immediately initiate spot audits of all Michigan probate courts. These spot audits will target probate courts chosen at random and will continue until all courts have been audited. The audits will address the issues raised by the Auditor General. At the close of each spot audit, the SCAO will hold meetings with judges and staff to discuss the findings and any corrective measures, set goals and a timetable for implementing corrective measures, and set a date for a follow-up review by the SCAO. Where the audits reveal possible wrongdoing, the SCAO will refer those matters to authorities for investigation and/or possible prosecution.

The chief judges of the court reviewed in this audit have, at the SCAO's direction, presented their preliminary responses as to the cases from their courts cited in the Auditor General's report. After review of the preliminary responses, the SCAO will meet with the chief judges to discuss any corrective action. The SCAO is particularly concerned to identify and address any situations where protected individuals' estates may have lost money, either through negligence or wrongdoing.

Where appropriate, the SCAO will refer those matters to authorities for investigation and/or possible prosecution. In each case, the SCAO will work with the chief judge of the probate court to review the accounting and take appropriate action, such as removing a conservator.

On July 19, 2002, the SCAO issued Administrative Memorandum 2002-08, which provides guidelines for probate courts' administration of conservatorships. The SCAO will update these guidelines, distribute them to all probate courts, and continue to make the guidelines available on the Michigan Supreme Court Web site. The SCAO will also develop, publicize, and distribute guidelines for conservators to use in performing their duties. The Michigan Judicial Institute will develop and hold training, which will also be made available online, to cover the issues raised in this audit. The SCAO will provide training at a number of sites and in different formats to ensure full participation by all probate courts.

FINDING

2. Accounting for Financial Activities and Assets

Probate courts did not adequately inform and train conservators in their duties and responsibilities to properly account for and report estate assets and financial activities in the annual accountings submitted to the courts. The SCAO needs to provide sufficient direction and guidance to probate courts to help ensure that conservators are properly informed of their duties and responsibilities.

Section 700.5418 of the *Michigan Compiled Laws* requires that a conservator account to the court for administration of the trust not less than annually unless the court directs otherwise, upon resignation or removal, and at other times as the court directs. Annual accountings require the conservator to report the ending balance of the prior annual accounting or inventory, estate income, estate expenditures, changes in the value of assets, and the current ending balance of the estate.

Our review of 257 cases in 4 courts disclosed 37 (14.4%) cases that did not properly account for either estate assets or financial activities occurring in the

annual accounting period. Examples of improper accounting for estate assets and financial activities included:

- a. One instance in which the conservator did not record the income from a pension in the annual accounting. We could not verify whether the income was deposited into the estate's bank account or if the pension income was properly used for the benefit of the protected individual.
- b. Five instances in which the conservators did not properly record income, such as social security, and expense disbursements, including payments to conservators or other estate expenses, in the annual accounting. We determined that the income was deposited into the protected individuals' bank accounts.
- c. One instance in which the conservator erroneously reported that the protected individual's home had been foreclosed. Our review showed that the protected individual's estate still owned the home and that it was rented and the income was used to pay the monthly mortgage, although the conservator did not record the rental income and mortgage payments in the annual accountings.
- d. One instance in which the conservator did not include in the annual accountings a certificate of deposit worth \$5,800 and the related interest income. We determined that the certificate of deposit was in the protected individual's bank account earning interest.
- e. Two instances in which the conservators did not include in the annual accountings any interest income earned on certificates of deposit held by the estates. As a result, at the time of our review, the annual accountings understated the estate values by \$11,313. We determined that, in both instances, the interest income was properly reflected in the bank statements.
- f. One instance in which the conservator used estate funds to make mortgage payments and pay maintenance costs on a house in which the protected individuals had no recorded interest filed with the register of deeds. The conservator was the owner of record on the house.
- g. One instance in which the conservator purchased a prepaid funeral contract for \$1,376; however, the contract was never recorded as an asset in the

annual accountings. At the time of the protected individual's death, the estate paid an additional \$3,500 to the funeral home. Thus, the protected individual paid for her funeral twice. At the time of death, the value of the prepaid funeral contract was \$1,411.

Because probate courts do not have minimum standards or sufficient control procedures implemented to review and approve annual accountings, the annual accountings filed were not an accurate reflection of the activities taking place in the estates during the reporting period and did not accurately reflect the estates' value. Failure to properly account for estate assets increases the risk that estate assets could be improperly removed and their removal go undetected.

RECOMMENDATION

We recommend that the SCAO provide sufficient direction and guidance to probate courts to adequately inform and train conservators in their duties and responsibilities to properly account for and report estate assets and financial activities in the annual accountings submitted to the courts.

AGENCY PRELIMINARY RESPONSE

The SCAO agrees that probate courts need to train conservators to fulfill their responsibilities and that the SCAO needs to assist the probate courts to do so. The SCAO will review, with the chief judges of the affected courts, the 37 cases in which conservators failed to properly account for estate assets or financial activities. Where that review reveals possible wrongdoing, the SCAO will refer those matters to authorities for investigation and/or possible prosecution. Similarly, improper accountings discovered during the Statewide spot audits of probate courts (please see response to Finding 1) will also be reviewed for possible wrongdoing and will be referred to authorities for investigation and/or possible prosecution.

The SCAO will also intensify training and oversight of probate court judges and staff so that they can train conservators in their duties. The spot audit process will review the probate courts' training of conservators.

The SCAO has already produced an educational videotape for courts to show prospective guardians and will produce a similar videotape, CD-ROM, or Web-based program that courts can use to educate prospective conservators. The

SCAO will provide training at a number of sites and in different formats to ensure full participation by all probate courts.

FINDING

3. Documentation of Estate Assets and Activities

Probate courts did not ensure that conservators maintained sufficient documentation to support items reported in annual accountings and did not perform investigations when discrepancies were identified in annual accountings. The SCAO needs to provide probate courts with specific direction and guidance regarding the level of documentation needed to support items reported in annual accountings and to perform investigations when discrepancies are identified in annual accountings.

Section 700.5417(2) of the *Michigan Compiled Laws* states that "the conservator must keep suitable records of the administration and exhibit those records on the request of an interested person."

Although rules and procedures have not been established defining what are "suitable records," we believe that adhering to sound business practices would be very prudent and reasonable. For example, our review of 257 cases in 4 courts disclosed that 51 (19.8%) cases lacked documentation sufficient to support the activities occurring during the annual accounting period and the asset valuations contained in the annual accountings. We noted the following discrepancies:

- a. Forty-seven (18.3%) cases did not contain sufficient documentation to support items on the annual accountings. Some conservators did not maintain any documentation. Other conservators maintained only canceled checks for documentation. Without a corresponding invoice or receipt to support the expenditure, we could not readily determine whether the expenditure was for the benefit of the protected individual.
- b. Ten (3.9%) cases did not contain documentation to support the reported value of assets listed on the annual accountings. For example:
 - (1) One conservator gave away a car and assessed the estate a loss of \$7,200 when writing the asset off of the estate's records. However, there

was no documentation indicating who received the car and the conservator could not explain why the car was not sold.

- (2) One conservator reported in the annual accounting that the estate owned real estate valued at \$3,000. However, at the final accounting, the value of the real estate was written off at \$0, based on an evaluation by a realtor. However, the conservator could not supply us with the realtor's assessment or any other documentation concerning this real estate.
- (3) One conservator listed a bank balance on the annual accounting that was \$3,400 more than the amount shown on the estate's bank statement. The conservator could not explain where the funds were or why there was such a discrepancy.

Without adequate documentation, the disbursements and accounting of estate assets contained on an annual accounting cannot be substantiated. While we are not aware of any misappropriation of estate assets, we found no evidence that the courts identified and investigated the preceding discrepancies.

RECOMMENDATION

We recommend that the SCAO provide probate courts with specific direction and guidance regarding the level of documentation needed to support items reported in annual accountings and to perform investigations when discrepancies are identified in annual accountings.

AGENCY PRELIMINARY RESPONSE

The SCAO agrees that it needs to provide specific direction and guidance to probate courts regarding annual accounting documentation and that probate courts must investigate discrepancies discovered in annual accountings.

The Auditor General has identified 51 cases that lack sufficient documentation. The SCAO will review these cases with the chief judges of the affected courts to see if further action is needed. Where appropriate, the SCAO will refer those matters to authorities for investigation and/or possible prosecution. The SCAO will do the same with any cases of insufficient documentation that are discovered during spot audits of other probate courts (please see response to Finding 1).

The SCAO will update current guidelines to include information about the documentation needed to support income and expenses. The SCAO will provide training at a number of sites and in different formats to ensure full participation by all probate courts.

EFFECTIVENESS AND EFFICIENCY OF ADMINISTERING AND MONITORING CONSERVATORSHIP CASES

COMMENT

Background: Michigan probate courts operate independently and determine what controls, if any, will be put in place to administer and monitor conservatorship cases. Our visits to five courts disclosed a wide range of controls over the administration and monitoring of conservatorship cases. These controls ranged from no controls other than routine probate court procedures, an informal review of annual accountings as submitted, a standard three-year review of the past three annual accountings by a guardian ad litem (GAL), an audit of annual accountings coupled with assignments of GALs to review annual accountings, to a 100% review of receipts and canceled checks for all accountings.

Audit Objective: To assess the effectiveness and efficiency of probate courts' procedures and controls for administering and monitoring conservatorship cases.

Conclusion: **Probate courts' procedures and controls for administering and monitoring conservatorship cases were generally not effective.** We noted reportable conditions related to administration and monitoring, compliance with laws, data collection, open caseloads, management of estate assets, disbursements of estate funds, and self-dealing (Findings 4 through 10).

FINDING

4. Administration and Monitoring

Three probate courts did not have effective controls to ensure that conservatorship cases were appropriately administered and monitored. The SCAO needs to provide probate courts with specific direction and guidance to appropriately administer and monitor conservatorship cases.

Probate courts are responsible for hearing and settling conservatorship cases by judicial procedure and ensuring that the actions of conservators are in compliance with the *Michigan Compiled Laws*. Our review of case files at 5 probate courts disclosed items in the case files at 3 courts that these courts should have acted upon:

- a. One court did not require conservators of protected individuals who are minors to report current addresses or telephone numbers, unlike the other courts in our review. For example, we identified 21 (19.1%) of 110 cases in which conservator information was outdated and we could not communicate with the conservator. These 21 cases were all minor conservatorship cases. The minors are required to have their estate assets placed in restricted accounts, for which filings are not required until the minors reach the age of majority*, upon which final accountings* and receipts of funds* are required. As a result, we could not contact some conservators and could not determine the disposition of the estate at the time of our audit.
- b. In 2 courts, we identified 63 (7.5%) of 838 cases in which the courts suspended conservators who did not file annual accountings, but the courts did not then appoint a special fiduciary* to ensure that estate assets were safeguarded. In 1 of these 2 courts, we identified 58 (8.0%) of 722 cases in which conservators did not file annual accountings in over three years. During our site visit, the court was in the process of suspending these conservators. In the other court, we identified 5 (4.3%) of 116 cases in which the probate court suspended the conservator. When conservators were suspended, notices were sent to them stating that they had been suspended; however, financial institutions were not notified of the suspensions. As a result, conservators were allowed to continue conducting transactions involving estate assets. This increases the importance of and need for appointing special fiduciaries.
- c. In 2 courts, we identified 18 (13.3%) of 135 cases in which annual accountings contained items that should have prompted the courts to take action to ensure that the protected individuals' assets were not being wasted or dissipated. For example, items on annual accountings for 2 cases included a difference in estate assets of approximately \$45,000 and \$201,000 when the assets were

* See glossary at end of report for definition.

transferred between conservators. We later determined that the \$45,000 difference was a result of the conservator not knowing that the proceeds of a settlement were required to be put into the estate. However, there was no explanation for the \$201,000 difference. In another case, the annual accounting reported a minor's interest-bearing investment account that showed no increase for earned interest. We later determined that the court order required the initial deposit and any interest to be placed in a restricted account. However, contrary to the court order, the conservator disbursed \$18,800 in interest earned to the minor. In another case, the annual accountings showed a decrease in estate assets from one period to the next of approximately \$25,600 without explanation of or documentation for the decrease.

Effective controls related to administering and monitoring protected individuals' estates are necessary to help ensure that conservators are acting in the best interest of the protected individuals and that estate assets are not wasted or dissipated. Courts that implement effective controls over the proper administration and monitoring of conservatorship cases help instill public confidence in the conservatorship process.

RECOMMENDATION

We recommend that the SCAO provide probate courts with specific direction and guidance to appropriately administer and monitor conservatorship cases.

AGENCY PRELIMINARY RESPONSE

The SCAO agrees that it needs to train and direct probate courts so that conservatorship cases are appropriately administered and monitored. The SCAO will provide training at a number of sites and in different formats to ensure full participation by all probate courts.

The SCAO will review the 18 cases identified by the Auditor General to ensure that estate assets are not being wasted or dissipated. Where appropriate, the SCAO will refer those matters to authorities for investigation and/or possible prosecution.

The Auditor General identified 63 cases in which the two courts involved suspended conservators without appointing special fiduciaries. The SCAO has already followed up with the two courts involved. Those courts report that they

have corrected the problems with those cases. In addition, the two courts have changed their policies and procedures to guard against a recurrence.

The SCAO will also follow up on the 21 cases in which conservator information was outdated to ensure that the court involved obtains current information.

FINDING

5. Compliance With Laws

Probate courts were not consistent in their enforcement of conservator reporting requirements of the *Michigan Compiled Laws* and the Michigan Court Rules. As a result, many conservators did not file inventories*, annual accountings, and final accountings within the required time frames.

Section 700.5417 of the *Michigan Compiled Laws* requires that, within 56 days after appointment or within another time period specified by court rule, a conservator prepare and file with the appointing court a complete inventory of the estate subject to the conservatorship, together with an oath or affirmation that the inventory is believed to be complete and accurate, so far as information permits. Also, Section 700.5418 of the *Michigan Compiled Laws* requires that a conservator account to the court for administration of the trust not less than annually unless the court directs otherwise, upon resignation or removal, and at other times as the court directs.

Michigan Court Rule 5.409(F) states:

If an individual who is subject to a guardianship or conservatorship dies, the guardian or conservator must give written notification to the court within 14 days of the individual's date of death. If accounts are required to be filed with the court, a final account must be filed within 56 days of the date of death.

The 5 courts that we visited used varying methods to inform conservators of their reporting requirements. Some courts sent conservators an accounting form with a due date notice. Another court relied on its computer system to generate notices of accountings due for mailing; however, the notices were often not generated. Also,

* See glossary at end of report for definition.

follow-up of the annual accounting notices varied from court to court. These methods varied in the level of effectiveness.

Conservators at 2 of the 5 courts had not complied with the *Michigan Compiled Laws* and Michigan Court Rules regarding timing requirements for inventories, annual accountings, and final accountings:

- a. Our examination of all 722 open conservatorship cases in 1 court disclosed that required reporting was delinquent in 113 (15.7%) of the cases. For example, on average, the reports of annual accountings for these cases were delinquent over three years.
- b. Our examination of 116 of 13,475 open cases in the other court disclosed 25 (21.6%) cases in which conservators were delinquent in their reporting an average of nearly 10 months. For another 4 (3.4%) cases, the conservator did not file a required accounting with the court.

Timely annual accountings help the courts ensure that estate assets belonging to protected individuals are safeguarded from waste or dissipation.

RECOMMENDATION

We recommend that the SCAO communicate to probate courts the need to improve their enforcement of conservator reporting requirements of the *Michigan Compiled Laws* and the Michigan Court Rules.

AGENCY PRELIMINARY RESPONSE

The SCAO agrees that probate courts are responsible for enforcing the conservator reporting requirements of the *Michigan Compiled Laws* and the Michigan Court Rules, including timing requirements. The SCAO will review those cases cited by the Auditor General and direct the courts to take any appropriate corrective action.

The SCAO further agrees that it will train probate court judges and staff regarding conservatorship monitoring. In particular, the SCAO will emphasize that courts are expected to take corrective action when a conservator fails to comply. The SCAO will provide training at a number of sites and in different formats to ensure full participation by all probate courts.

FINDING

6. Data Collection

The probate court data systems need to be expanded to capture additional information to improve conservator monitoring. Also, the SCAO needs to review the feasibility of providing probate courts with additional analytical reports with which to evaluate conservators.

Data systems that contain sufficient information regarding conservatorship cases enable probate courts to perform review and analysis of case file data necessary to focus the probate courts' limited monitoring resource efforts toward higher risk or questionable practices.

Probate courts use different data systems to capture conservatorship case information, including the names of the protected individual, appointed conservator, and assigned judge and all case filings that have occurred. We noted that 59 of the 78 probate courts used the SCAO's Judicial Information System (JIS), 15 courts used their own systems, and 4 courts had no system and case findings were recorded manually. However, not all systems contained the data needed to make conservatorship case monitoring more effective. Case file data, such as initial estate value, beginning and ending estate value for each annual accounting period, the conservator's relationship to the protected individual, and conservator fees, could be analyzed for anomalies to focus monitoring efforts.

For example, we noted that one conservator's fees for an estate appeared excessive. A minor had received a net settlement of \$12,250 that was dissipated to \$735 in nine years. The estate primarily consisted of a checking account and several certificates of deposit. However, during the nine years, the conservator had charged the estate \$9,012 in administrative fees. Court collection and analysis of conservator fee data may identify conservatorship cases that require further review and examination.

The SCAO publishes yearly statistics regarding the number and type of cases filed, pending, and closed each year. However, there are a number of additional statistics that, if added, would be useful to courts, including:

- a. The number of adults and the number of minors who have conservatorships, guardianships, or both. (At this time, only the adult and minor guardianships

are identified separately.) This information would be useful for probate courts to evaluate the makeup of the conservatorship caseloads.

- b. The number of cases managed by and fees assessed by professional conservators, including attorneys, banks, and companies. This information would allow probate courts to analyze the ratio of fees to estate assets and compare fees charged among similar-sized estates.
- c. The number of times judges appoint a specific GAL, counsel, review attorney, and professional conservator. This information would allow probate courts to analyze the distribution of caseloads and appointments.
- d. The number of annual petitions filed for conservatorship and the number of petitions granted. This information would enable the formulation of trends over periods of time.

Fully utilizing the information in the data systems and ensuring that the data systems have all necessary data fields would improve the ability of the courts to effectively administer and monitor conservatorship cases.

RECOMMENDATIONS

We recommend that the SCAO communicate to probate courts the need to expand their data systems to capture additional information to improve conservator monitoring.

We also recommend that the SCAO review the feasibility of providing probate courts with additional analytical reports with which to evaluate conservators.

AGENCY PRELIMINARY RESPONSE

The SCAO agrees that probate court data systems need to be expanded to improve conservator monitoring. The SCAO and the JIS will investigate individual probate court data systems to identify elements that all probate court systems should include.

The SCAO will also investigate providing analytical reports for courts to use in evaluating conservators. In the past, the SCAO has received reports from the JIS, based on data submitted by probate courts, for comparative analysis of cases

involving fiduciaries. The SCAO will determine whether reports can be developed to assist in evaluating conservators.

FINDING

7. Open Caseloads

Probate courts need to close conservatorship cases when protected individuals die or reach the age of majority and to monitor the status of inactive cases and close them as appropriate.

The Michigan Supreme Court and the Legislature establish the number of judgeships to be assigned to a county or probate court district based on factors that include a weighted caseload formula applied to new case filings and an extended analysis. The weighted caseload formula is based upon a study of judicial time to process a caseload. However, judicial resource recommendations are made only after an extended analysis is also conducted. The factors considered in the extended analysis include case related, resource related, and environmental related issues. The SCAO uses the weighted caseload formula and extended analysis to allocate judicial resources and to periodically recommend to the Michigan Supreme Court and the Legislature changes in the number of judgeships. Having accurate caseload data is important to ensure relevant analysis of needed judicial resources.

The Judicial Resource Recommendations issued in August 2001 by the SCAO included docket backlog* and caseload variations/trends within its extended analysis factors. We noted that 2 of the 5 courts that we visited included inactive cases in their open caseloads, which overstated their docket backlogs, skewing the caseload variations/trends within the extended analysis. Our review of conservatorship cases at the 2 courts disclosed:

a. In 1 court, we noted the following in 35 (44%) of 80 cases we examined as of July 27, 2001:

- (1) Thirteen cases were listed as open for protected individuals who were deceased. Various circumstances may have caused the 13 cases to remain open. For example, the court did not allow the conservator's final

* See glossary at end of report for definition.

accounting and did not discharge the conservator. The date of death for the 13 protected individuals ranged from 1985 through 1999.

- (2) Nine cases were listed as open when the conservator had been suspended and a special fiduciary had not been appointed. Activity had not occurred for the 9 cases in over four years. The most recent activity for any of the 9 cases was October 24, 1996. Six of the 9 cases involved minors who had reached the age of majority at the time we examined the cases. We could not determine the disposition of the minors' estates after they reached the age of majority.
- (3) Six other cases involving minors who had reached the age of majority were listed as open. In 1 of the 6 cases, the minor signed the receipt of funds, the conservator filed final accountings, and the court discharged the conservator. In 2 cases, the conservator filed the final accounting and was discharged. In 1 case, the minor signed a receipt of funds, but the court did not discharge the conservator. In 2 cases, the conservator did not file required accountings and the minor had not signed the receipt of funds. We could not determine the disposition of these 2 minors' estates. All 6 minors reached the age of majority between 1988 and 1997.
- (4) One case was listed as open, even though the court terminated the conservatorship because the protected individual was no longer incapacitated.
- (5) Four cases were listed as open, even though the conservatorships should have been administratively closed. The conservatorships were set up on behalf of minors in anticipation of proceeds from lawsuits; however, the cases were denied and the minors received no funds.
- (6) Two cases were listed as open, even though the protected individuals died shortly after the conservatorships were established. One protected individual died after the inventory was filed, and the second individual died before the filing of the inventory. No final accounting or request for discharge was filed in either of the cases and the court took no action to close the cases.

Further analyses of the court's open case database disclosed another 782 open cases in which minors had reached the age of majority prior to September 1998 and another 178 open cases in which the protected individuals died prior to September 1998. In total, 995 (7.4%) of the court's 13,475 reported open case files should have received court action to resolve outstanding issues and/or close the cases.

- b. In the other court, no activity had occurred in 78 (10.8%) of the court's 722 open cases in over two years. Of the 78 cases, 22 cases had no activity in over five years. Generally, the court did not suspend a conservator until after the conservator failed to file three annual accountings. Also, the court had not appointed special fiduciaries to ensure that the estate assets were not wasted or dissipated. These conditions may explain why some inactive cases remained open. At the time of our site visit, the court's new probate register was in the process of reviewing and attempting to close some of the old case files.

Because judgeships are assigned to counties and probate court districts based on a weighted caseload formula and an extended analysis, overstated caseloads can adversely affect the Michigan Supreme Court's and the Legislature's decision processes regarding the number of judgeships.

RECOMMENDATION

We recommend that the SCAO direct probate courts to close conservatorship cases when protected individuals die or reach the age of majority and to monitor the status of inactive cases and close them as appropriate.

AGENCY PRELIMINARY RESPONSE

The SCAO agrees with the finding and offers a point of clarification. The SCAO agrees that courts must monitor inactive cases to ensure that cases are closed when it is appropriate. The Statewide spot audits will determine whether procedures are in place to ensure timely closure.

The weighted caseload formula on which judicial resource recommendations are based uses new case filings. Pending caseload is examined as part of the extended analysis. Pending caseload is not, however, the determining factor in making recommendations for judgeships. Accurate data regarding pending

caseload is important to ensure that courts have accurate case management information that will, in turn, allow them to manage their staff and resources effectively.

FINDING

8. Management of Estate Assets

Four probate courts did not ensure that conservators effectively managed estate assets and complied with the *Michigan Compiled Laws*. The SCAO needs to provide sufficient direction and guidance to probate courts to ensure effective management of estate assets in compliance with the *Michigan Compiled Laws*.

Sections 700.1501 - 700.1512 of the *Michigan Compiled Laws* require conservators to manage estates as a prudent investor would by diversifying the investments of fiduciary estates and managing the fiduciary assets solely in the interest of the beneficiaries. In addition to the prudent investor rules, Section 700.1212 of the *Michigan Compiled Laws* requires conservators to act with care and prudence in their management of estates and states that the conservators owe a fiduciary duty to the protected individuals.

Additionally, the Commission on National Probate Court Standards and the Advisory Committee on Interstate Guardianships have issued National Probate Court Standards. Although courts are not currently required to follow these standards, they provide guidance in administering and monitoring probate cases. Standard 3.4.18 states that when the protected individual's assets are endangered, the court should consider suspending the conservator and appointing a special fiduciary to immediately take control over the assets.

Conservators at 4 of the 5 courts that we visited did not consistently follow the provisions of the *Michigan Compiled Laws* in managing the estates of the protected individuals they represented:

- a. In 3 courts, we identified 7 (2.8%) of 252 cases in which the conservators were not timely in paying estate bills. As a result, estates incurred unnecessary late fees, estates faced the possibility of losing real estate, or the protected individual was subjected to the possibility of the nursing home filing involuntary transfer proceedings for nonpayment. One conservator did not pay property

taxes on real estate held by the estate for four years, resulting in unpaid taxes totaling \$8,015; during the same period, the conservator collected fiduciary fees of \$5,161. One conservator assigned to 2 cases let a protected individual's nursing home bill go unpaid for over four months, accruing a past due balance of \$5,660, and allowed another protected individual's nursing home bill to go unpaid for over a year, accruing a past due balance of \$16,737.

- b. In 1 court, we identified 2 (1.8%) of 114 cases reviewed in which the conservators did not actively manage the estate assets of the protected individuals they represented. As a result, some estate assets missed the opportunity to appreciate in value. We also noted 1 conservator with 62 (30.0%) of the probate court's 207 conservatorship cases that did not actively manage the estate assets of the protected individuals whom the conservator represented. This conservator held all protected individuals' funds in a non-interest bearing trust account having an average daily balance of over \$425,000. Also, this conservator frequently sold real estate below the implicit market value*. The following table shows that 11 of 16 real estate sales made

* See glossary at end of report for definition.

from October 1991 through September 2000 were for less than the implicit market value:

Estate	State Equalized Value	Implicit Market Value	Sale Price	Difference
A	\$ 13,000	\$ 26,000	\$ 29,200	\$ 3,200
B	\$ 28,700	\$ 57,400	\$ 66,500	\$ 9,100
C	\$ 15,500	\$ 31,000	\$ 21,000	\$ (10,000)
D	\$ 7,000	\$ 14,000	\$ 10,000	\$ (4,000)
E	\$ 18,250	\$ 36,500	\$ 22,500	\$ (14,000)
F	\$ 21,700	\$ 43,400	\$ 39,900	\$ (3,500)
G	\$ 13,550	\$ 27,100	\$ 17,000	\$ (10,100)
H	\$ 10,200	\$ 20,400	\$ 38,000	\$ 17,600
I	\$ 17,050	\$ 34,100	\$ 35,000	\$ 900
J	\$ 12,438	\$ 24,876	\$ 8,000	\$ (16,876)
K	\$ 12,100	\$ 24,200	\$ 15,000	\$ (9,200)
L	\$ 26,300	\$ 52,600	\$ 52,600	\$ 0
M	\$ 12,050	\$ 24,100	\$ 15,100	\$ (9,000)
N	\$ 32,050	\$ 64,100	\$ 61,000	\$ (3,100)
O	\$ 17,900	\$ 35,800	\$ 23,000	\$ (12,800)
P	\$ 8,500	\$ 17,000	\$ 11,000	\$ (6,000)
Average Value	\$ 16,643	\$ 33,286	\$ 29,050	\$ (4,236)

- c. In 3 courts, we identified 10 (4.0%) of 252 cases in which the conservators did not ensure that all the protected individuals' assets were properly taken into the custody of the estate and safeguarded. In 5 of the 10 cases, the conservators did not put the funds of minor protected individuals into restricted accounts as ordered by the courts. Also, these conservators made unauthorized withdrawals from the 5 estates totaling \$19,789. The unauthorized withdrawals were not used for the care and benefit of the protected individuals as required by Section 700.5425(b) of the *Michigan Compiled Laws*. The unauthorized withdrawals were for items such as a car and household furnishings purchased for the conservators rather than the protected individuals (see Finding 9). Conservators for the other 5 cases had not properly taken custody of all the assets belonging to the estates, including

a house, a mutual fund, pension benefits, and promissory notes. As a result, the estates were not able to earn the income from these assets to help pay for the needs of the protected individuals.

Ensuring that conservators comply with the prudent investor rules of the *Michigan Compiled Laws* and establishing administrative controls as recommended in National Probate Court Standards would help probate courts ensure that estate assets are properly managed and safeguarded.

RECOMMENDATION

We recommend that the SCAO provide sufficient direction and guidance to probate courts to ensure effective management of estate assets in compliance with the *Michigan Compiled Laws*.

AGENCY PRELIMINARY RESPONSE

The SCAO agrees that probate courts are obligated to ensure compliance with *Michigan Compiled Laws* provisions that govern estate asset management. The SCAO will review, with the chief judges of the affected courts, the cases cited by the Auditor General in which conservators failed to manage estates as required by State law. Where appropriate, the SCAO will refer those matters to authorities for investigation and/or possible prosecution.

Spot audits will address management of estate assets and include any corrective action that may be appropriate for individual cases, including referrals for investigation and/or prosecution if appropriate. As part of updating conservatorship guidelines for probate courts, the SCAO will direct probate courts to develop a list of banks that honor restricted accounts to ensure that only those banks are used to deposit restricted funds. As part of the guidelines, additional safeguards will be developed so that funds in restricted accounts are not accessible without a court order.

The SCAO will provide training on this issue at a number of sites and in different formats to ensure full participation by all probate courts.

FINDING

9. Disbursement of Estate Funds

Two probate courts did not ensure that conservators expended estate money exclusively for the support, education, care, and benefit of the protected individuals they represented in compliance with the *Michigan Compiled Laws*. The SCAO needs to provide sufficient direction and guidance to probate courts to ensure that conservators expend estate money exclusively for the support, education, care, and benefit of the protected individuals they represent.

Section 700.5425(b) of the *Michigan Compiled Laws* requires conservators to expend or distribute money reasonably necessary for the support, education, care, or benefit of the protected individual or a dependent with due regard. Factors to be considered by the conservator in the expenditure or distribution of money include estate size, duration of conservatorship, likelihood that the protected individual will become self-sufficient in the future, accustomed standard of living, and other money or sources used for the protected individual's support.

Conservators at 2 of the 5 courts that we visited expended estate money for items that were beyond what was necessary for the support, education, care, and benefit of the protected individuals represented:

- a. One case involved a minor who received a multimillion dollar personal injury settlement payable in lump sum and annuity amounts. The court appointed the mother as conservator of the estate, which was valued at \$1.4 million as of April 30, 2001. Our examination of calendar year 2000 expenditures disclosed that, of \$145,532 expended from the estate, only \$53,677 (36.9%) was for the support, education, care, and benefit of the protected individual. This amount included appropriate payments for medical and education expenses, estate taxes, and professional services. The conservator spent the remaining \$91,855 on the general support of the family. Specifically, these expenditures were for home upkeep, including living expenses, utilities, and pool maintenance (\$18,426); medical expenses for family members other than the protected individual (\$26,412); routine care and support normally the responsibility of parents (\$8,092); expenses for camps and tutoring for the minor's sibling (\$1,693); family vacations (\$35,553); and other miscellaneous items (\$1,679). Additionally, we observed that in 1999, the conservator expended estate money for a family car (\$40,000).

- b. Three cases involved three minor children who received proceeds from a settlement related to the wrongful death of their father. The minors' mother was appointed conservator and inappropriately used the estate funds received in the first two years to furnish the household. The conservator could not account for over \$10,000 of expended estate money. Often the receipts that were turned in for each minor child were photocopies of the same receipt. Therefore, money was taken out of each minor child's estate for the full amount of the original receipt instead of one-third of the total amount. For example, receipts turned in were for two televisions and related warranties in the amount of \$983. This amount (\$983) was withdrawn from each minor child's estate for a total of \$2,949 withdrawn, resulting in \$1,966 being inappropriately withdrawn from the estates. The \$1,966 is part of the \$10,000 in unaccounted for funds. We noted similar problems with expenditures for bedding and car repairs. In addition to the unaccounted for funds, there is a question whether the expenditures for two televisions and other items purchased with estate funds are a direct benefit to the minor children and in compliance with the provisions of Section 700.5425(b) of the *Michigan Compiled Laws*.
- c. One case involved an adult who received a multimillion dollar personal injury settlement payable in lump sum and annuity amounts. The court appointed a bank as conservator of the estate, which was valued at \$2.5 million and \$1.2 million as of February 28, 1999 and February 28, 2000, respectively. The estate earned income of \$110,610 and \$109,570 for the accounting periods ended February 28, 1999 and February 28, 2000, respectively. The conservator reported significant expenditures (\$197,099 and \$194,557 for the accounting periods ended February 28, 1999 and February 28, 2000, respectively) that have dissipated the value of the estate. The expenditures included the real estate taxes and upkeep of a house in the city and a cottage on a lake that are both lived in by the protected individual with his wife and children as well as his parents. The conservator placed the protected individual on a monthly allowance in order to attempt to control spending. The allowance is to pay family bills, including groceries, utilities, insurance, education, family recreation, and other expenses. However, the conservator informed us that the allowance was continually overspent and additional funds were routinely requested and withdrawn from the estate. The amount of estate funds for personal support expended in the two annual accountings totaled \$125,666 and \$127,741. These amounts represent 57.9% and 65.7%

of the total estate expenditures for the two accounting periods ended February 28, 1999 and February 28, 2000, respectively. The remaining expenditures were for management fees, professional fees, and real estate expenses. At the current rate of spending over income, the estate could be dissipated within 14 years.

The requirements and guidance provided in Section 700.5425(b) of the *Michigan Compiled Laws* are designed to help prevent the unnecessary dissipation of estate assets. Conservators who adhere to those requirements and guidance improve the likelihood that protected individuals will have sufficient resources to provide for the duration of their needs.

RECOMMENDATION

We recommend that the SCAO provide sufficient direction and guidance to probate courts to ensure that conservators expend estate money exclusively for the support, education, care, and benefit of the protected individuals they represent in compliance with the *Michigan Compiled Laws*.

AGENCY PRELIMINARY RESPONSE

The SCAO agrees that probate courts are charged with ensuring that conservators expend estate money exclusively for the support, education, care, and benefit of the protected individuals they represent. The Auditor General has identified a number of cases in which it appeared that conservators expended estate money for other purposes. The SCAO will review these cases with the chief judges of the affected courts to ensure that corrective action is taken. Where appropriate, the SCAO will refer those matters to authorities for investigation and/or possible prosecution.

The Statewide spot audits will also address disbursement of estate funds and will include any corrective action that may be needed. Where appropriate, the SCAO will refer those matters to authorities for investigation and/or possible prosecution.

The SCAO will provide training on this issue at a number of sites and in different formats to ensure full participation by all probate courts.

FINDING

10. Self-Dealing

Probate court administrative controls in three counties did not prevent conservators from engaging in self-dealing. The SCAO needs to provide sufficient direction and guidance to probate courts related to preventing self-dealing by conservators.

Self-dealing occurs when a conservator engages in transactions with the estate that the conservator represents, excluding court-approved fiduciary fees. Self-dealing by a conservator is prohibited by Section 700.1214 of the *Michigan Compiled Laws*.

At 3 of the 5 courts we visited, we noted instances in which conservators engaged in self-dealing with the estates they represented:

- a. Fifteen conservators borrowed money from estates that they represented. The total amount borrowed was \$241,990. Loan repayment agreements had been established for only 7 of the 15 loans. Of these 7 loans with repayment agreements, valued at \$56,064, 3 of the conservators were not making payments in accordance with the loan repayment agreements. In addition, only 1 of the repayment agreements included provisions for interest payments. Of the 8 loans without repayment agreements, valued at \$185,926, none of the conservators had repaid the loans. It is notable that, although the practice of borrowing money from the respective estates that conservators represent is a prohibited transaction under the *Michigan Compiled Laws*, each of the 15 loans was approved by the probate courts.
- b. One conservator paid its own "chore service" business \$2,089 and \$2,266 to perform chore and grocery shopping services for the estate that the conservator represented during two annual accounting periods examined during our audit.

Self-dealing by conservators may unnecessarily dissipate estate assets. Administrative controls that prevent self-dealing by conservators help protect the assets of individual estates and instill public confidence in the conservatorship program.

RECOMMENDATION

We recommend that the SCAO provide sufficient direction and guidance to probate courts related to preventing self-dealing by conservators.

AGENCY PRELIMINARY RESPONSE

The SCAO agrees that probate courts are charged with preventing self-dealing by conservators. The Auditor General has identified a number of cases in which conservators engaged in self-dealing with the estates they represent. The SCAO will review these cases with the chief judges of the affected courts to ensure that appropriate corrective action is taken. Where appropriate, the SCAO will refer those matters to authorities for investigation and/or possible prosecution.

The Statewide spot audits will also address self-dealing and will include any corrective action that may be needed in individual cases. Where appropriate, the SCAO will refer those matters to authorities for investigation and/or possible prosecution.

The SCAO will provide training on this issue at a number of sites and in different formats to ensure full participation by all probate courts.

SUPPLEMENTAL INFORMATION

Total Probate Court and Conservatorship Cases by County or District
For the Year Ended December 31, 2001

<u>County or District</u>	<u>Total Probate Court Cases</u>	<u>Conservatorship Cases</u>	<u>Conservatorship Cases as a Percentage of Total Probate Court Cases</u>
Alcona	305	74	24.26%
Allegan	1,452	430	29.61%
Alpena	590	200	33.90%
Antrim	368	70	19.02%
Arenac	388	147	37.89%
Baraga	177	54	30.51%
Barry	635	145	22.83%
Bay	1,413	394	27.88%
Benzie	298	112	37.58%
Berrien	1,710	142	8.30%
Branch	522	139	26.63%
Calhoun	2,804	648	23.11%
Cass	643	135	21.00%
Cheboygan	477	121	25.37%
Chippewa	405	67	16.54%
Clinton	727	211	29.02%
Crawford	246	83	33.74%
Delta*	526	125	23.76%
Dickinson	253	50	19.76%
Eaton	1,445	346	23.94%
Genesee	7,454	1,898	25.46%
Gogebic	232	55	23.71%
Grand Traverse	970	284	29.28%
Gratiot	597	144	24.12%
Hillsdale	517	91	17.60%
Houghton	573	149	26.00%
Huron	893	223	24.97%
Ingham	4,039	1,239	30.68%
Ionia	581	139	23.92%
Iosco	652	208	31.90%
Iron	324	56	17.28%
Isabella	639	130	20.34%
Jackson	2,529	813	32.15%
Kalamazoo	1,913	398	20.81%
Kalkaska	293	64	21.84%
Kent	20,444	4,499	22.01%
Keweenaw	21	2	9.52%
Lake	140	21	15.00%
Lapeer	1,167	332	28.45%
Leelanau	214	60	28.04%
Lenawee	1,185	294	24.81%
Livingston	1,579	434	27.49%
Macomb	9,160	2,288	24.98%
Manistee	447	120	26.85%

This schedule continued on next page.

Total Probate Court and Conservatorship Cases by County or District
For the Year Ended December 31, 2001
(continued)

<u>County or District</u>	<u>Total Probate Court Cases</u>	<u>Conservatorship Cases</u>	<u>Conservatorship Cases as a Percentage of Total Probate Court Cases</u>
Marquette	603	101	16.75%
Mason	628	203	32.32%
Menominee	348	92	26.44%
Midland	1,402	458	32.67%
Missaukee	179	39	21.79%
Monroe	1,701	354	20.81%
Montcalm*	484	128	26.45%
Montmorency	240	50	20.83%
Muskegon	3,682	455	12.36%
Newaygo	689	116	16.84%
Oakland	14,343	3,202	22.32%
Oceana	371	92	24.80%
Ogemaw	351	73	20.80%
Ontonagon	157	43	27.39%
Oscoda	120	32	26.67%
Otsego	335	70	20.90%
Ottawa	1,715	349	20.35%
Presque Isle	632	180	28.48%
Roscommon	579	150	25.91%
Saginaw	3,078	715	23.23%
Sanilac	776	198	25.52%
Shiawassee	1,099	318	28.94%
St. Clair	2,442	607	24.86%
St. Joseph**			
Tuscola	1,006	243	24.16%
Van Buren	1,304	411	31.52%
Washtenaw	2,814	658	23.38%
Wayne	86,854	10,375	11.95%
Wexford	521	165	31.67%
District 5 - Alger/Schoolcraft	329	88	26.75%
District 6 - Luce/Mackinac	451	94	20.84%
District 7 - Charlevoix/Emmet	715	151	21.12%
District 17 - Clare/Gladwin	806	172	21.34%
District 18 - Mecosta/Osceola	873	175	20.05%
Statewide	<u>203,574</u>	<u>38,191</u>	18.76%

* No data reported for December 31, 2001. Amounts are as of January 1, 2001.

** No data reported for this county. In 1999, conservatorship cases comprised 110 (12.82%) of 858 total probate cases reported.

Source: One Court of Justice, Michigan Supreme Court, Annual Report 2001, Probate Court Statistical Supplement.

Glossary of Acronyms and Terms

age of majority	The age at which one legally becomes an adult. Under Michigan law, this is 18 years of age.
annual accounting	A document required to be filed each year with the probate court that reports the activity, including income, expenses, and changes in assets, that occurred during the accounting period.
conservator	A court-appointed person who manages a protected individual's estate.
docket backlog	The number of open or pending cases in a court.
effectiveness	Program success in achieving mission and goals.
efficiency	Achieving the most outputs and outcomes practical with the minimum amount of resources.
estate	Financial assets and real and personal property of an individual.
final accounting	A document required to be filed at the end of a conservator's appointment or when the conservatorship case is closed.
guardian ad litem (GAL)	A court-appointed attorney who acts as the protected individual's advocate in court proceedings.
implicit market value	An amount obtained by multiplying the State equalized value by a factor of 2.
inventory	A document required to be filed within 56 days of a conservator or special fiduciary appointment to a conservatorship case listing all known estate assets.

JIS	Judicial Information System.
mission	The agency's main purpose or the reason that the agency was established.
performance audit	An economy and efficiency audit or a program audit that is designed to provide an independent assessment of the performance of a governmental entity, program, activity, or function to improve public accountability and to facilitate decision making by parties responsible for overseeing or initiating corrective action.
protected individual	A minor or other individual for whom a conservator has been appointed.
receipt of funds	A document required to be filed when a minor reaches the age of majority, signed by the minor and the conservator, showing that the estate assets were turned over to the minor by the conservator.
reportable condition	A matter that, in the auditor's judgment, represents either an opportunity for improvement or a significant deficiency in management's ability to operate a program in an effective and efficient manner.
SCAO	State Court Administrative Office.
special fiduciary	A court-appointed person (typically an attorney) who takes over an estate to ensure that estate assets remain safeguarded.