



MICHIGAN

OFFICE OF THE AUDITOR GENERAL

AUDIT REPORT



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

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– Article IV, Section 53 of the Michigan Constitution

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Michigan
Office of the Auditor General
REPORT SUMMARY

Performance Audit
Selected Probate Court Conservatorship and
Guardianship Cases

Report Number:
950-0605-11

Released:
July 2012

A conservatorship case involves a protected individual and a conservator who is appointed by a probate court to manage a protected individual's estate. A guardianship case involves a minor or a legally incapacitated individual, referred to as a ward, and a court-appointed guardian. The State Court Administrative Office (SCAO) is the administrative agency of the Michigan Supreme Court and is charged with helping Michigan trial courts, including probate courts, operate effectively so that they can serve the public.

Audit Objective:

To determine the accuracy and validity of assertions contained in conservators' and guardians' required probate court filings.

Audit Conclusion:

We determined that the assertions contained in the conservators' and guardians' required probate court filings were generally accurate and valid. We noted one reportable condition (Finding 1).

Reportable Condition:

The SCAO should improve its efforts to identify and establish best practices and the probate courts should improve their efforts to follow best practices to help ensure conservator and guardian compliance with requirements of the *Michigan Compiled Laws* and the Michigan Court Rules (Finding 1).

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Audit Objective:

To assess the effectiveness of probate courts' efforts to oversee conservatorship and guardianship cases.

Audit Conclusion:

We concluded that probate courts' efforts to oversee conservatorship and guardianship cases were moderately effective. We noted four reportable conditions (Findings 2 through 5).

Reportable Conditions:

The probate courts should improve their procedures for reviewing conservator-submitted annual accountings (Finding 2).

The SCAO and the probate courts should establish additional controls regarding the oversight of conservatorship and guardianship cases (Finding 3).

The probate courts did not always perform guardianship case reviews in accordance with the *Michigan Compiled Laws* (Finding 4).

The SCAO did not provide guidance to the probate courts on performing background checks prior or subsequent to the appointment of conservators or guardians (Finding 5).

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Agency Response:

Our audit report contains 5 findings and 5 corresponding recommendations. The SCAO's preliminary response indicates that it generally agrees with all 5 recommendations.

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A copy of the full report can be obtained by calling 517.334.8050 or by visiting our Web site at: <http://audgen.michigan.gov>



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July 12, 2012

The Honorable Robert P. Young, Jr.
Chief Justice of the Michigan Supreme Court
and
Mr. Chad C. Schmucker
State Court Administrator
Michigan Supreme Court
Michigan Hall of Justice
Lansing, Michigan

Dear Chief Justice Young and Mr. Schmucker:

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

This report contains our report summary; description; audit objectives, scope, and methodology and agency responses and prior audit follow-up; comments, findings, recommendations, and agency preliminary responses; a description of survey and summary of survey responses, presented as 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 agency's response 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.

Sincerely,


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

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GLOSSARY

Glossary of Acronyms and Terms

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Description

The State Court Administrative Office (SCAO) is the administrative agency of the Michigan Supreme Court. The Michigan Supreme Court has administrative oversight of Michigan's courts and exercises that oversight through the SCAO. The SCAO is charged with helping Michigan trial courts, including probate courts, operate effectively so that they can serve the public. The SCAO provides Statewide policies, procedures, guidelines, and directives for court operations.

Each of Michigan's 83 counties has a probate court, with the exception of 10 northern counties that have consolidated to form five probate court districts. The probate court has jurisdiction over cases that involve the admission of wills; the administration of estates*, trusts, conservatorships, and guardianships; and the treatment of mentally ill and developmentally disabled persons.

In Michigan, conservatorships and guardianships are governed by Sections 700.1101 - 700.1512 and Sections 700.5101 - 700.5433 of the *Michigan Compiled Laws*. A conservatorship is petitioned for on behalf of an individual who is unable to effectively manage his or her property and financial affairs. A guardianship is petitioned for on behalf of an individual who is unable to make informed decisions on his or her living arrangements or care, such as receiving, continuing, discontinuing, or refusing medical treatment. Some of the reasons that an individual may be unable to manage his or her property or financial affairs or make informed decisions on his or her living arrangements or care include mental illness or deficiency, physical illness or disability, chronic use of alcohol or other intoxicants, or the fact that 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*. A conservator is required to file an inventory* of all of the protected individual's property within 56 days of appointment and to file an annual accounting* of the activity in the estate. As of December 2010, there were 22,701 adults and minors with a conservator in Michigan.

A guardian* is a person appointed by a probate court and given power and responsibility to make certain decisions about the care of a ward*. A ward is defined as

* See glossary at end of report for definition.

an individual for whom a guardian is appointed. A guardian is required to visit his or her ward, submit an annual report* on the condition of the ward, and inform the court of the guardian's or the ward's change of address. As of December 2010, there were 76,332 adults, minors, and developmentally disabled individuals with a guardian in Michigan.

There are no statutory qualifications to be a conservator or a guardian. Statutes stipulate that the court may appoint a conservator or a guardian if he or she is suitable and willing to serve. For minor guardianships, if the minor is at least 14 years old, the court shall appoint a person nominated by the minor, unless that person is unsuitable. Statutes also stipulate specific guidelines for the appointment of professional conservators or guardians.

* See glossary at end of report for definition.

Audit Objectives, Scope, and Methodology and Agency Responses and Prior Audit Follow-Up

Audit Objectives

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

1. To determine the accuracy and validity of assertions contained in conservators' and guardians' required probate court filings.
2. To assess the effectiveness* of probate courts' efforts to oversee conservatorship and guardianship cases.

Audit Scope

Our audit scope was to examine the program and other records of probate courts and the records of selected fiduciaries* with regard to conservatorship and guardianship cases. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Our audit procedures, conducted from May through October 2011, generally covered the period October 1, 2008 through July 31, 2011.

Audit Methodology

We conducted a preliminary review of probate court operations and conservatorship and guardianship processes. We reviewed applicable laws, regulations, policies and procedures, and other information to gain an understanding of the controls related to conservatorship and guardianship cases at four probate courts. We judgmentally selected four county probate courts representing 3 of the 4 State Court Administrative Office (SCAO) regional office jurisdictions and based on the courts' conservatorship and guardianship caseloads. These four probate courts represented 31% of all conservatorship cases and 36% of all guardianship cases within the State.

* See glossary at end of report for definition.

To accomplish our first objective, we conducted interviews and performed testing at four probate courts. We tested a random sample of conservatorship and guardianship cases at each of the four courts. We reviewed court records and conservator-submitted inventories and annual accountings. We verified the data reported on the inventories and annual accountings to documentation submitted by the conservators.

To accomplish our second objective, we conducted interviews at four probate courts and reviewed court policies and procedures related to the oversight of conservatorship and guardianship cases. We reviewed a random sample of conservatorship and guardianship cases at the four probate courts to assess the controls over court oversight of the cases. Also, we conducted a survey of the 83 probate courts regarding the required filings and the courts' monitoring of conservatorship and guardianship cases (see summary of survey responses, presented as supplemental information).

Our audit procedures included using nonstatistical sampling techniques to randomly select cases open and cases closed during the audit period. In addition, we evaluated the sampled cases to ensure that they were representative of the population.

When selecting activities or programs for audit, we use an approach based on assessment of risk and opportunity for improvement. Accordingly, we focus our audit efforts on activities or programs having the greatest probability for needing improvement as identified through a preliminary review. Our limited audit resources are used, by design, to identify where and how improvements can be made. Consequently, we prepare our performance audit reports on an exception basis.

Agency Responses and Prior Audit Follow-Up

Our audit report contains 5 findings and 5 corresponding recommendations. The SCAO's preliminary response indicates that it generally agrees with all 5 recommendations.

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

We released our prior performance audit of Selected Probate Court Conservatorship Cases (05-605-11) in October 2003. Within the scope of this audit, we followed up 7 of the 11 prior audit recommendations. The SCAO had complied with 3 and partially complied with 4 of the prior audit recommendations. We rewrote 4 of the prior audit recommendations for inclusion in Findings 1 and 2 of this audit report.

COMMENTS, FINDINGS, RECOMMENDATIONS,
AND AGENCY PRELIMINARY RESPONSES

ACCURACY AND VALIDITY OF CONSERVATORS' AND GUARDIANS' REQUIRED PROBATE COURT FILINGS

COMMENT

Background: 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' and guardians' required probate court filings.

Audit Conclusion: **We determined that the assertions contained in the conservators' and guardians' required probate court filings were generally accurate and valid.** We noted one reportable condition* related to conservator and guardian compliance with laws (Finding 1).

FINDING

1. Conservator and Guardian Compliance With Laws

The SCAO should improve its efforts to identify and establish best practices and the probate courts should improve their efforts to follow best practices to help ensure conservator and guardian compliance with requirements of the *Michigan Compiled Laws* and the Michigan Court Rules. Such efforts would help detect prohibited conservator activity, such as self-dealing*, and would help ensure that conservators and guardians submit accurate and timely filings, including inventories and annual accountings. Accurate and timely filings would help ensure that the assets of protected individuals are safeguarded from waste or dissipation.

* See glossary at end of report for definition.

During our site visits to 4 probate courts, we randomly sampled a total of 149 conservatorship cases. These 149 cases were administered by 133 conservators and contained 63 inventories and 277 annual accountings. We also randomly sampled a total of 65 guardianship cases, administered by 56 guardians and containing 119 annual reports. Throughout our review of the conservatorship and guardianship cases, we found multiple instances in which the SCAO could provide enhanced oversight of the probate courts and instances in which the probate courts could provide enhanced oversight of the fiduciaries. Our review of the randomly sampled cases disclosed:

- a. One conservator engaged in self-dealing transactions with the estate that the conservator represented. This conservator invested the protected individual's assets in a partnership of which the conservator was a partner. The conservator recorded \$56,924 in the annual accounting as the value of the protected individual's assets invested in this partnership as of January 2009. However, the conservator was unable to provide supporting documentation for how this value was calculated.

Section 700.1214 of the *Michigan Compiled Laws* states that a fiduciary, in the fiduciary's personal capacity, shall not engage in a transaction with the estate that the fiduciary represents and shall not invest estate money in a company, corporation, or association with which the fiduciary is affiliated. Self-dealing by conservators may unnecessarily dissipate estate assets.

Upon bringing this matter to the court's attention, the court removed the conservator from the case and appointed a special fiduciary* to oversee the estate. The special fiduciary has filed a petition for surcharge* requesting the court to surcharge the conservator in a preliminary amount of \$246,764 for the improper use of the protected individual's estate.

- b. Conservators did not accurately account for either estate assets or financial activities occurring in an annual accounting period for 22 (8%) of the 277 sampled accountings. Section 5.310(C)(2)(c) of the Michigan Court Rules requires that all accountings must be itemized, showing in detail the receipts and disbursements during the accounting period, unless itemization is waived

* See glossary at end of report for definition.

by all interested persons. We reviewed documentation maintained by conservators to support filed annual accountings. Based on our review of this documentation, we noted the following examples of inaccurate accountings:

- (1) For 2 accountings, the documentation submitted by the conservator supported that funds of \$13,825 during 2009 and \$20,300 during 2010 were withdrawn from the protected individual's investment account, but the conservator did not report the withdrawals in the annual accountings. This led to an understatement of income in the annual accountings. The conservator also underreported the protected individual's assisted living expenses. Although income and expenses were incorrectly reported, the balance of the assets remaining at the end of the accounting periods agreed with the investment firm's financial statement.
- (2) For 10 accountings, the documentation submitted by the conservator did not match the amount of income, expenses, or assets reported on the annual accounting. For example, for one accounting, the conservator reported \$33,389 in education expenses but provided documentation for only \$15,382. Subsequent to our review, the conservator's attorney informed us that \$14,706 of the \$18,007 difference was an expense that was erroneously recorded twice. The remaining difference of \$3,301 was not supported by receipts or any other type of documentation. As a result, we could not determine if expenses were reasonable and for the benefit of the protected individual.
- (3) Two accountings contained mathematical errors. For example, for one accounting, the conservator did not properly calculate the amount of investment gain earned in an accounting period. The gain was reported as \$1,463; however, the gain should have been reported as \$1,768, a difference of \$305.
- (4) One accounting did not include two months of financial activity. The conservator did not include the period August 15, 2009 through October 21, 2009 in the annual accounting. This error caused two months of financial activity to go unreported.

- c. Conservators did not provide us with sufficient documentation to support income, expenses, or assets reported on an inventory or an annual accounting for 16 (20%) of 82 sampled conservators. Total income in the amount of \$411,671, total expenses in the amount of \$238,505, and total assets in the amount of \$320,372 were not supported. Section 700.5417(2) of the *Michigan Compiled Laws* states that the conservator must keep suitable records of the administration of the trust and exhibit those records at the request of an interested person. Without documentation, it is undeterminable whether reported assets and financial activity were reasonable and for the benefit of the protected individual.
- d. Some conservators and guardians did not always submit a court filing as required by statute. We noted:
- (1) Five (4%) of the 133 conservators did not file an annual accounting to report the financial activity and estate assets for a protected individual. The courts sent a notice of deficiency* to 3 of the 5 conservators, informing them that an annual accounting was not filed. For the other 2 conservators, the courts indicated that notices were not sent due to administrative oversight or system errors. One conservator, who received a notice, did not file an annual accounting for two years.

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.

Failure to account for and report estate financial activity and asset balances increases the risk that estate assets could be improperly removed and their removal go undetected.

- (2) Thirty-seven (20%) of the 189 conservators and guardians either did not file a proof of service or did not include all interested parties on a proof of service. A proof of service documents that interested parties have been notified of a proceeding in court related to a conservatorship or

* See glossary at end of report for definition.

guardianship case or have received a copy of a filing, such as an inventory or an annual accounting.

Sections 5.104(A), 5.409(B)(2), and 5.409(C)(1) of the Michigan Court Rules require that conservators and guardians file with the court a proof of service concurrent with an inventory, annual accounting, or annual report on the condition of the ward. Section 5.125 of the Michigan Court Rules specifies the persons who must be served for each court proceeding and required filing.

- (3) Eight (14%) of the 56 guardians did not file an annual report on the condition of a ward. The courts sent a notice of deficiency to 5 of the 8 guardians informing them that an annual report was not filed. For the other 3 guardians, the courts indicated that notices were not sent due to administrative oversight or system errors. One guardian did not report on the condition of a ward for the period January through December 2008 or for the period January through December 2010.

Section 5.409(A) of the Michigan Court Rules requires that a guardian file an annual report within 56 days after the anniversary of appointment.

Failure to report on the condition of a ward increases the risk that a ward's living arrangements or physical, mental, and social needs are not being met and that his or her condition goes undetected.

- (4) Seven (13%) of the 56 guardians did not directly notify the courts of a ward's change of address. For example, one ward moved twice during our audit period; however, the guardian did not notify the court of the address changes within the required 14-day time frame. The court identified the address changes when reviewing the annual reports that the guardian submitted on the condition of the ward.

Section 700.5314(a) of the *Michigan Compiled Laws* requires that a guardian inform the court of a ward address change within 14 days.

Failure to notify the court in a timely manner of a ward's change of address increases the risk that the court or an interested party is not aware of a ward's location.

- e. Some conservators and guardians did not always submit inventories, annual accountings, or annual reports within the required time frames. The SCAO provides the courts with best practices for managing conservatorship cases, including practices for reducing untimely filings. However, the courts did not consistently follow these best practices. For example, we noted that 2 courts followed best practices by mailing pre-notices of account due* to conservators before a filing was due, whereas 2 courts did not mail pre-notices. The courts that mailed the pre-notices to conservators had a lower percentage of untimely filings of annual accountings. We noted:

- (1) Twenty-four (18%) of the 133 conservators did not file 27 inventories within the required time frames. The number of days late ranged from 30 to 1,547 days. The courts sent a notice of deficiency to the conservators for 18 of the 27 untimely inventories. For the other 9 untimely inventories, the courts indicated that notices were not sent due to administrative oversight or system errors.

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 shall prepare and file with the appointing court a complete inventory of the estate subject to the conservatorship.

- (2) Fifty-one (38%) of the 133 conservators did not file 93 annual accountings within the required time frames. The number of days late ranged from 3 to 1,238 days following the 56-day grace period after the end of the accounting period. The courts sent a notice of deficiency to the conservators for 66 of the 93 untimely accountings. For the other 27 untimely accountings, the courts indicated that notices were not sent due to administrative oversight or system errors.

* See glossary at end of report for definition.

Section 5.409(C)(1) of the Michigan Court Rules requires that a conservator file an annual accounting within 56 days after the end of the accounting period.

- (3) Nineteen (34%) of the 56 guardians did not file 32 annual reports within the required time frames. The number of days late ranged from 6 to 374 days. The courts sent a notice of deficiency to the applicable guardians for 26 of the 32 untimely annual reports. For the other 6 untimely annual reports, the courts indicated that notices were not sent due to administrative oversight or system errors.

Section 5.409(A) of the Michigan Court Rules requires that a guardian file an annual report within 56 days after the anniversary of appointment.

RECOMMENDATION

We recommend that the SCAO improve its efforts to identify and establish best practices and that the probate courts improve their efforts to follow best practices to help ensure conservator and guardian compliance with the requirements of the *Michigan Compiled Laws* and the Michigan Court Rules.

AGENCY PRELIMINARY RESPONSE

The SCAO agrees that the probate courts should improve efforts to inform and train conservators and guardians on fulfilling required duties and that the SCAO should provide best practices and training to the probate courts to assist with their efforts.

The SCAO will provide the established best practices to all probate courts and make them available on the Michigan Supreme Court Web site. In addition, the SCAO will continue to train the probate courts on best practices and, in order to maximize training efforts and attendance, will provide training at a number of locations, in different formats, to judges and probate court staff.

The SCAO informed us that the ability of a probate court to follow best practices to help ensure conservator and guardian compliance with the requirements of the *Michigan Compiled Laws* and the Michigan Court Rules is dependent on local funding of the probate court.

EFFECTIVENESS OF EFFORTS TO OVERSEE CONSERVATORSHIP AND GUARDIANSHIP CASES

COMMENT

Audit Objective: To assess the effectiveness of probate courts' efforts to oversee conservatorship and guardianship cases.

Audit Conclusion: We concluded that probate courts' efforts to oversee conservatorship and guardianship cases were moderately effective. We noted four reportable conditions related to annual accounting review procedures, case oversight, court reviews of guardianships, and background checks (Findings 2 through 5).

FINDING

2. Annual Accounting Review Procedures

The probate courts should improve their procedures for reviewing conservator-submitted annual accountings. Improving annual accounting review procedures would help ensure that the annual accountings accurately reflect the activities occurring in an estate and the estate's value during each reporting period.

Section 5.409(C)(6) of the Michigan Court Rules requires courts to review or judges to allow accountings annually, unless no accounting is required. The SCAO provides the courts with best practices for reviewing annual accountings, such as a checklist; however, not all courts implemented these best practices. Our survey of the probate courts asked the courts to select statements that best describe their procedures for reviewing submitted annual accountings. Only 20 (26%) of the 76 courts responding to our survey indicated that they use an established checklist to aid in their review (see survey question 3). In addition, 4 courts indicated that they were not aware of the SCAO's best practices or checklist for reviewing annual accountings.

During our site visits to 4 probate courts, we assessed each court's procedures for reviewing the annual accountings for accuracy. At one probate court, which did not have written procedures for reviewing the accountings, we identified 5 (9%) of 53 sampled accountings reviewed by the court that contained discrepancies which

the court did not act upon. At another probate court, which did have written procedures and a checklist for reviewing the accountings, we did not identify any accountings reviewed by the court that contained discrepancies which the court did not act upon. Discrepancies identified at the court that did not have written procedures for reviewing accountings included:

- a. One conservator reported a beginning balance of assets that did not match the ending balance of assets from the previous accounting. The conservator that filed this accounting submitted eight years of accountings on August 19, 2009. As of the reporting date, the same conservator had not filed annual accountings for 2010 and 2011. The difference in balances from one year to the next, and the lack of conservator compliance with reporting requirements, should have prompted the court to further review the submitted accountings.
- b. One conservator submitted a bank statement for the wrong accounting period and did not include \$501 in savings accounts in the list of assets. These differences should have prompted the court to request bank statements for the correct accounting period from the conservator.
- c. One conservator reported \$11,646 in total assets in the annual accounting. However, the list of assets showed one asset in the amount of \$11,050, for a difference of \$596. We subsequently requested support for the asset and verified its value as \$11,646. However, the difference should have prompted the court to verify the asset's actual value.

RECOMMENDATION

We recommend that the probate courts improve their procedures for reviewing conservator-submitted annual accountings.

AGENCY PRELIMINARY RESPONSE

The SCAO agrees that the probate courts need to adequately review annual accountings submitted by conservators.

The SCAO will improve efforts to publicize current best practices for reviewing annual accountings. The SCAO will provide the established best practices to all probate courts and make them available on the Michigan Supreme Court

Web site. In addition, the SCAO will continue to train probate courts on best practices and, in order to maximize training efforts and attendance, will provide training at a number of locations, in different formats, to judges and probate court staff.

FINDING

3. Case Oversight

The SCAO and the probate courts should establish additional controls regarding the oversight of conservatorship and guardianship cases.

Establishing additional controls, such as best practices for using probate court system reports and reviewing beginning and ending estate values reported in annual accountings, would enable the SCAO and the probate courts to enhance their oversight of conservatorship and guardianship cases. For example:

- a. The SCAO should establish best practices for using probate court system reports to identify cases requiring action.

During our review, we identified three minor conservatorship and guardianship cases at one court that the court did not close in a timely manner after the minor reached the age of majority. The court did not have a control in place to identify minors who had reached the age of majority. Conversely, another court had developed a weekly system report to identify minors who had reached the age of majority. During our review at this court, all cases in our sample had been closed in a timely manner.

The SCAO could identify and share information about the system reports used at various courts to help the courts in their oversight of conservatorship and guardianship cases.

- b. The probate courts did not always review the beginning and ending estate values for each annual accounting period and the historical trends of conservator fees charged to the estate for annual accountings filed.

During our review, we noted one minor conservatorship case in which the estate balance was reduced from \$438,699 to \$248,372, a decrease of \$190,327 (negative 43%), within five years. We also noted that the conservator fees charged to the minor's estate continually increased from \$1,500 in the first accounting to \$5,000 in the fifth accounting. Accumulating and analyzing historical trends of fees could help the courts and the SCAO identify anomalies in the fees and identify cases that may require further review. Rapid decreases in estate balances may signal that estate assets are being unnecessarily wasted or dissipated.

The accountings cited in this part of the finding were allowed by the court as appropriate.

- c. The probate courts did not always analyze the number of cases that conservators or guardians maintain and the deficiency rates for each conservator or guardian.

Analyzing the number of cases in relation to deficiency rates could indicate an acceptable caseload per conservator, help improve the assignment of cases to conservators or guardians, and identify conservators or guardians that need additional training.

RECOMMENDATION

We recommend that the SCAO and the probate courts establish additional controls regarding the oversight of conservatorship and guardianship cases.

AGENCY PRELIMINARY RESPONSE

The SCAO agrees that additional controls could be established to improve the oversight of conservatorship and guardianship cases.

The SCAO will work with Judicial Information Systems and the Judicial Data Warehouse team to identify data and/or reports that could be developed and used by probate courts to improve oversight of conservatorship and guardianship cases. The SCAO will also establish a best practice for using the current Deficiencies in Guardianship/Conservatorship Administration Report to assist probate courts with identifying conservators and guardians with repeated deficiencies. The SCAO will

provide information regarding various reports and established controls to all probate courts and make them available on the Michigan Supreme Court Web site. In addition, the SCAO will train probate courts on these reports and controls and, in order to maximize training efforts and attendance, will provide training at a number of locations, in different formats, to judges and probate court staff.

The SCAO informed us that the ability of a probate court to follow best practices and implement additional controls to provide additional oversight of conservatorship and guardianship cases is dependent on local funding of the probate court.

FINDING

4. Court Reviews of Guardianships

The probate courts did not always perform guardianship case reviews in accordance with the *Michigan Compiled Laws*. As a result, the courts were not able to ensure that the wards' continuing needs were being met and that living conditions were appropriate and safe.

Section 700.5309 of the *Michigan Compiled Laws* requires courts to review a guardianship case of an incapacitated individual* not later than 1 year after the guardian's appointment and every 3 years thereafter. In addition, Section 700.5207 of the *Michigan Compiled Laws* states that the court shall review a guardianship annually if the minor is under 6 years of age.

We reviewed 34 incapacitated adult guardianship cases and 21 minor guardianship cases at 4 probate courts. Our review disclosed:

- a. The probate courts did not perform guardianship reviews of 5 (15%) of the 34 adult guardianship cases as required by Section 700.5309 of the *Michigan Compiled Laws*. The courts did not review 4 of the 5 guardianship cases at least once in a 3-year period, with 6 years passing between reviews. The other case was not reviewed for over 3 years. The courts identified and reviewed 3 of the cases prior to our review and scheduled reviews for the other 2 cases.

* See glossary at end of report for definition.

- b. The probate courts did not conduct an annual review for 2 (10%) of the 21 minor guardianship cases as required by Section 700.5207 of the *Michigan Compiled Laws*. For 1 of these cases, the court did not review the case for 635 days. For the other case, the court was 388 days late in reviewing the case as of October 2011.

RECOMMENDATION

We recommend that the probate courts always perform guardianship case reviews in accordance with the *Michigan Compiled Laws*.

AGENCY PRELIMINARY RESPONSE

The SCAO agrees that the probate courts are responsible for performing statutorily required guardianship case reviews.

The SCAO will provide the established best practices and/or controls to all probate courts and make them available on the Michigan Supreme Court Web site. In addition, the SCAO will continue to train probate courts on statutory requirements and best practices and, in order to maximize training efforts and attendance, will provide training at a number of locations, in different formats, to judges and probate court staff.

FINDING

5. Background Checks

The SCAO did not provide guidance to the probate courts on performing background checks prior or subsequent to the appointment of conservators or guardians. As a result, the courts did not always identify and consider conservators' and guardians' backgrounds in making their appointments. Failure to perform background checks may allow an unsuitable individual to have responsibility over a protected individual.

Although not required by statute, sound business practices suggest that courts be aware of conservators' and guardians' backgrounds. The American Association of Retired Persons (AARP) supports the investigation of the backgrounds and qualifications of prospective guardians.

We surveyed 83 probate courts to gather information regarding conservator and guardian monitoring. We received 76 responses (see summary of survey responses, presented as supplemental information).

We asked the courts if they perform background checks using Central Registry* clearance requests, the Internet Criminal History Access Tool* (ICHAT), or the sex offender registry. Our survey results disclosed:

- a. Thirty-three (43%) of the 76 courts did not perform Central Registry clearance requests through the Department of Human Services on conservators, guardians, or other members of a conservator's or guardian's household prior to the appointment (see survey question 8). Also, 67 (88%) of the 76 courts did not perform Central Registry, criminal history, or sex offender registry checks on conservators or guardians subsequent to the appointment (see survey question 12).
- b. Thirty-four (45%) of the 76 courts did not perform criminal history checks, such as ICHAT, on conservators, guardians, or members of a conservator's or guardian's household prior to the appointment (see survey question 9).
- c. Forty-six (61%) of the 76 courts did not perform sex offender registry checks on conservators, guardians, or members of a conservator's or guardian's household prior to the appointment (see survey question 10).

In addition, 35 (78%) of 45 courts that perform some type of background check indicated that the background check was very or somewhat effective in identifying instances of unsuitable fiduciaries (see survey question 11). Providing guidance to the probate courts regarding which background checks should be performed on conservators and guardians would help ensure that courts consistently consider conservators' and guardians' backgrounds in making their appointments.

RECOMMENDATION

We recommend that the SCAO provide guidance to the probate courts on performing background checks prior or subsequent to the appointment of conservators or guardians.

* See glossary at end of report for definition.

AGENCY PRELIMINARY RESPONSE

The SCAO agrees that the probate courts should be provided guidance on performing background checks of conservators and guardians.

The SCAO will provide the established best practices to all probate courts and make them available on the Michigan Supreme Court Web site. In addition, the SCAO will train probate courts on these best practices and, in order to maximize training efforts and attendance, will provide training at a number of locations, in different formats, to judges and probate court staff.

The SCAO informed us that the ability of a probate court to follow best practices and perform background checks of conservators and guardians is dependent on local funding of the probate court.

SUPPLEMENTAL INFORMATION

Description of Survey

We developed a survey requesting input from Michigan probate courts regarding the review process for conservatorship and guardianship required filings, such as inventories and annual accountings, and the monitoring process over those serving as conservators and guardians.

We e-mailed the survey to Michigan's 83 probate courts and received responses from 76 probate courts, a response rate of 92%.

Our review of the responses indicated that the majority of the courts provide staff with on-the-job training related to the courts' review of conservatorship and guardianship filings. Most respondents indicated that the courts provide literature and verbal guidance to enhance conservators' and guardians' understanding of their responsibilities.

The total responses in our summary of survey responses may not equal 76 for some questions because some respondents did not answer all questions. Also, because we did not include survey questions that asked for respondent comments, there are breaks in the sequence of questions.

SELECTED PROBATE COURT CONSERVATORSHIP AND GUARDIANSHIP CASES
Summary of Survey Responses

Number of surveys sent	83
Number of responses	76
Response rate	92%

2. Please select the statement(s) that best describes the procedures your staff follow for reviewing inventories submitted by conservators or guardians when so ordered. Please check all that apply.

1. We make sure that the inventory is signed.	74	97%
2. We ensure that all required parts of the inventory are completed.	75	99%
3. We use an established checklist to aid in our review.	8	11%
4. We review supporting documentation, albeit not required, such as bank statements, appraisals, etc.	57	75%
5. We do not review the inventories.	0	0%

3. Please select the statement(s) that best describes the procedures your staff follow for reviewing annual accountings submitted by conservators or guardians when so ordered. Please check all that apply. (See Finding 2.)

1. We make sure that the annual accounting is signed.	74	97%
2. We ensure that all required parts of the annual accounting are completed.	75	99%
3. We use an established checklist to aid in our review.	20	26%
4. We review required supporting documentation, such as bank statements.	71	93%
5. We review supporting documentation, albeit not required, such as receipts.	43	57%
6. We perform a separate review of an accounting before it is subject to allowance before the judge.	53	70%
7. We do not review the annual accountings.	0	0%

4. Please select the statement(s) that best describes your court's procedures for reviewing the annual reports of guardians on the condition of minors, legally incapacitated individuals, and developmentally disabled individuals. Please check all that apply.

1. We make sure that the annual report is signed.	74	97%
2. We ensure that all required parts of the annual report are completed.	75	99%
3. We use an established checklist to aid in our review.	8	11%
4. We review the report to ensure that the protected individual was visited at least once every three months, if applicable.	58	76%
5. We do not review the annual reports.	0	0%

5. Please select the statement that best describes the individual responsible for the oversight of the review process over the inventories and annual accountings of conservators and guardians and the annual reports of guardians?

1. The probate register is responsible.	43	57%
2. No one is responsible.	0	0%
3. Someone else is responsible.	32	42%

6. What information or training did your court provide to court employees to help them perform their duties related to the receipt and review of conservatorship and guardianship filings? Please check all that apply.

1. The court provided formal training to the employees.	9	12%
2. The court provided a training manual to the employees.	17	22%
3. The court provided on-the-job training to the employees.	69	91%
4. The court did not provide any training to the employees.	4	5%

8. Prior to appointing conservators or guardians, for which individuals does your court submit central registry clearance requests to the Michigan Department of Human Services? Please check all that apply. (See Finding 5.)

1. Conservator - adult	6	8%
2. Conservator - minor	11	14%
3. Guardian - adult	8	11%
4. Guardian - minor	35	46%
5. Guardian - developmentally disabled	8	11%
6. No checks are performed	33	43%
7. Other members of the conservator's or guardian's household	26	34%

9. Prior to appointing conservators or guardians, for which individuals does your court perform criminal history checks (e.g., ICHAT)? Please check all that apply. (See Finding 5.)

1. Conservator - adult	21	28%
2. Conservator - minor	22	29%
3. Guardian - adult	22	29%
4. Guardian - minor	34	45%
5. Guardian - developmentally disabled	17	22%
6. No checks are performed	34	45%
7. Other members of the conservator's or guardian's household	18	24%

10. Prior to appointing conservators or guardians, for which individuals does your court perform public sex offender registry checks? Please check all that apply. (See Finding 5.)

1. Conservator - adult	10	13%
2. Conservator - minor	13	17%
3. Guardian - adult	12	16%
4. Guardian - minor	24	32%
5. Guardian - developmentally disabled	10	13%
6. No checks are performed.	46	61%
7. Other members of a conservator's or guardian's household	10	13%

11. How effective as a monitoring tool have background checks, such as criminal history or central registry checks, been for your court in identifying instances of unsuitable fiduciaries? (See Finding 5.)

1. Very effective	21	28%
2. Somewhat effective	14	18%
3. Ineffective	1	1%
4. Unsure	9	12%
5. Not applicable. We do not perform background checks.	28	37%

12. After a conservator or guardian has been appointed, does your court perform periodic central registry, criminal history, or public sex offender registry matches on conservators or guardians? (See Finding 5.)

1. Yes	6	8%
2. No	67	88%

13. If you answered yes to question 12, please select the statement(s) that best describes your periodic background check process for conservators. Please check all that apply.

1. We complete a central registry match annually.	4	5%
2. We complete a criminal history match annually.	5	7%
3. We complete a public sex offender match annually.	3	4%
4. We complete a central registry match biennially.	0	0%
5. We complete a criminal history match biennially.	0	0%
6. We complete a public sex offender match biennially.	0	0%

14. Please select the statement(s) that best describes your periodic background check process for guardians. Please check all that apply.

1. We complete a central registry match annually.	5	7%
2. We complete a criminal history match annually.	5	7%
3. We complete a public sex offender match annually.	4	5%
4. We complete a central registry match biennially.	0	0%
5. We complete a criminal history match biennially.	0	0%
6. We complete a public sex offender match biennially.	0	0%

15. In addition to the information provided in the letters of conservatorship, what training does your court offer to conservators to enhance their understanding of their responsibilities? Please check all that apply.

1. Literature (pamphlets, manuals, etc.) is available in the court office.	45	59%
2. We provide specific literature to conservators.	39	51%
3. We verbally explain their responsibilities to them.	56	74%
4. We offer an in-person training session.	14	18%
5. We require an in-person training session.	6	8%
6. We do not offer any training.	7	9%

16. In addition to the information provided in the letters of guardianship, what training does your court offer to guardians to enhance their understanding of their responsibilities? Please check all that apply.

1. Literature (pamphlets, manuals, etc.) is available in the court office.	45	59%
2. We provide specific literature to guardians.	36	47%
3. We verbally explain their responsibilities to them.	56	74%
4. We offer an in-person training session.	13	17%
5. We require an in-person training session.	2	3%
6. We do not offer any training.	7	9%

17. If you provided training, how effective has it been in improving the accuracy of the required filings of the conservators and guardians? For purposes of this question, an example of accuracy would be an annual accounting with a beginning "balance on hand from last account" that matched the previous accounting's "balance of assets remaining."

1. Very effective	7	9%
2. Somewhat effective	24	32%
3. Ineffective	2	3%
4. Unsure	9	12%
5. Not applicable. Training was not provided.	28	37%

18. If you provided training, how effective has it been in improving the compliance of the required filings of the conservators and guardians? For purposes of this question, an example of compliance would be an inventory filed within 56 days of a conservator's appointment.

1.	Very effective	6	8%
2.	Somewhat effective	26	34%
3.	Ineffective	2	3%
4.	Unsure	9	12%
5.	Not applicable. Training was not provided.	28	37%

GLOSSARY

Glossary of Acronyms and Terms

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.
annual report	A document required to be filed at least once every year with the probate court that reports the condition of the ward and the ward's estate that is subject to the guardian's possession or control.
Central Registry	The system maintained at the Department of Human Services that is used to keep a record of all reports filed with it pursuant to the Child Protection Law (Act 238, P.A. 1975, as amended, being Sections 722.621 - 722.638 of the <i>Michigan Compiled Laws</i>) in which a preponderance of relevant and accurate evidence of child abuse and/or child neglect is found to exist.
conservator	A person appointed by a court to manage a protected individual's estate.
effectiveness	Success in achieving mission and goals.
estate	Financial assets and real and personal property of an individual.
fiduciary	A person acting in the role of, but not limited to, a personal representative, guardian, conservator, trustee, plenary guardian, partial guardian, or successor fiduciary.
guardian	A person who has qualified as a guardian of a minor or a legally incapacitated individual under a parental or spousal nomination or a court appointment. The term "guardian" includes a limited guardian.

incapacitated individual	An individual who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause, not including minority, to the extent of lacking sufficient understanding or capacity to make or communicate informed decisions.
Internet Criminal History Access Tool (ICHAT)	A computer search tool that will identify felonies and serious misdemeanors that are punishable by over 93 days and have been reported to the Michigan Department of State Police by law enforcement agencies, prosecutors, and courts.
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.
notice of deficiency	The form used by probate courts to inform conservators or guardians of court deficiencies, such as a late annual accounting or inventory.
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 program operations, to facilitate decision making by parties responsible for overseeing or initiating corrective action, and to improve public accountability.
petition for surcharge	An action in which money is sought from a fiduciary to reimburse the trust or protected individual for some breach of duty.
pre-notice of account due	A notice sent out by the probate court prior to the annual account due date to notify the conservator or guardian that the annual account is due in 30 days.
protected individual	A minor or other individual for whom a conservator has been appointed or other protective order has been made.

reportable condition	A matter that, in the auditor's judgment, is less severe than a material condition and falls within any of the following categories: an opportunity for improvement within the context of the audit objectives; a deficiency in internal control that is significant within the context of the objectives of the audit; all instances of fraud; illegal acts unless they are inconsequential within the context of the audit objectives; significant violations of provisions of contracts or grant agreements; and significant abuse that has occurred or is likely to have occurred.
SCAO	State Court Administrative Office.
self-dealing	When a fiduciary personally derives a profit from the purchase, sale, or transfer of the estate's property.
special fiduciary	A court-appointed person, typically an attorney, who takes over an estate to ensure that estate assets remain safeguarded.
ward	An individual for whom a guardian is appointed.

