LEGAL COMPLIANCE IN GUARDIANSHIP CASES AN EXPLORATORY STUDY:
INVESTIGATING DENTON COUNTY PROBATE COURT VISITORS’ PROGRAM
SUCCESS WITH LEGAL COMPLIANCE IN GUARDIANSHIP CASES IN 2013

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The aim is to evaluate the effectiveness of the legal compliance of the Denton County Probate Court Visitor’s program in the year 2013. Guardianship case management success is based on the presence of legal compliance of both guardians and the Court. When a guardian is legally compliant, a ward is receiving the statutorily minimum standards of care. Legal compliance equates (evidence of) the Ward receiving legally sufficient care.

Research has not been vast; it has been consistent as to necessity of guardianship training, monitoring, and narrow focus of research. Evidence based research will assist in defining and developing appropriate court monitoring programs, which can add to the quality of care for elderly and disabled adults. 1,300 guardianship cases in the probate court. Of these cases, 910 had annual reports of the person filed, which 304 were reviewed using the Legal Compliance Audit. Eight (8) factors of compliance were reviewed with three (3) being Court actions and five (5) being guardian actions. Exploratory study provides evidence based research of the necessary changes to develop the Denton County Probate Court Visitor’s program. The guardians are more legal compliant than the Court.
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CHAPTER 1

INTRODUCTION

The aging population is growing in the United States and Denton County, Texas. According to United States Census Bureau in 2010, the U.S. population was 308,745,538 with 40,267,984 being over age 65, which is 13% of the population (Werner, 2011). As the U.S. population increases so is the population of the State of Texas. According to the United States Census Bureau, in 2010 the State of Texas population was 25,145,561 with 2,601,886 being over the age of 65, which is 10.3% of the population. As the U.S. population grows, so does the Denton County, Texas population. According to the United States Census Bureau in 2010, Denton County, Texas’, population was 662,614 and it increased to 728,799 in 2013. In 2013, 8.3% of the population was age 65 and over, which is approximately 61,000 individuals.

As some of the aging elderly adults become physically and mentally incapable of making decisions or communicating important decisions, those who do not have an agent to assume responsibility for their decision-making may require the appointment of a guardian. A guardian would be appointed to ensure these incapacitated persons are protected from neglect, abuse, and exploitation. However, if there is a concern that an elderly or disabled person is being neglected, abused, or exploited, a report can be made to Adult Protective Services (APS).

Purpose Introduction

In 2013, Texas had 98,920 complaints of abuse, neglect, and exploitation (Texas Department of Family and Protective Services, 2013). Of these complaints, 87,257, 88.2%,
were based on elderly and disabled people living in their homes. The remaining 11,663 complaints were based on adult living in a facility, which is 11.8% of the cases in 2013.

If a person has not named an agent under a power of attorney, and there is no less restrictive alternative available, the court will appoint a guardian for the incapacitated adult. Per the landmark Associated Press 1987 investigative article, the number of guardianships in the United States for senior citizens was believed to be 300,000 to 400,000 (Bayles & McCartney, 1987b). The Associated Press investigators randomly selected and reviewed 2,200 cases from around the United States and Washington D.C. This article and its estimate number of guardianships are considered to be the foundation for number projections. However, there is not a complete and accurate count of guardianships in America because each office for administration of state courts does not have a total and complete number of guardianships. Each jurisdiction counts cases differently and all jurisdictions do not report (Uekert, 2010). It is difficult to obtain the accurate number of guardianships. In Texas, there is one Estates Code, 254 counties with 18 statutory probate courts. Denton County has one of the 18 statutory probate courts with approximately 1,300 guardianships as of May 2013.

I conducted an exploratory study, investigating Denton County Probate Court Visitor’s program success with legal compliance. This paper specifically addresses legal compliance in the area of guardianship of the person. Because the subject of guardianship is broad and general, in this investigative study, I narrowed the focus of the research. The purpose of this study was to review specifically the legal compliance for guardianship of the person for the time period of the year 2013. In order to conduct this investigative study, a legal compliance audit, rubric, was created to audit and review 304 guardianship of
the person cases objectively, which had annual reports filed in 2013. Legal compliance is evidence of the presumed minimal care, which the Ward of the court is receiving. When a guardian is legally compliant, it is evidence of the presumption that the Ward is receiving the minimal basic standard of care. In 2013, there were approximately 1,300 guardianship cases in the probate court. Of these cases, 910 had annual reports of the person filed, 304 of these cases were reviewed using the legal compliance audit.

Although the state law is clear as to the creation and monitoring of a Texas guardianship, courts vary as to specific procedures. Court practices are even more varied across the 50 states. Per the Government Accountability Office, the common factor to the 50 states is Court oversight (Bovbjerg, 2004). Oversight is critical to the protection of incapacitated adults. Oversight has the minimum standard of filing an annual report and/or an annual account. However some courts expand the oversight to include a review of the annual report along with the appointment of a court visitor and audit of the annual accounting by the court auditor. See Appendix A for the Audit Review form. Here Denton County appears to achieve the minimum standard of filing an annual report and annual account.

Considering that the guardian is a court-created fiduciary, one must ask how a court can monitor the protected persons under guardianship. However, before this question is answered, one must understand, who can serve as guardian. This aspect of guardianship would be considered the initiation side, which is pre-appointment. A guardianship matter is more compliant, when the right and most appropriate person is appointed. It is better to slowly appoint the right person, rather than quickly appoint the wrong person.
Texas Law Overview/Explanation of Legal Process

First, under Texas law, any interested person can seek to be appointed guardian over another person. The extent of the interest can be as broad and general as a concern for one’s fellow man to as specific and narrow as one’s mother, who has been exploited. Although any interested party can seek to be appointed guardian, Texas law provides a certain level of priority of persons who are appointed. The first person of priority is the spouse of the proposed Ward (the person, who is the subject of the guardianship) or a person named under a declaration of guardianship signed by the proposed Ward. After the above-referenced level, the order of priority is based on consanguinity. The closer an applicant is in relation to the proposed Ward than another applicant, the higher that applicant’s priority in being appointed. If two competing applicants have the same level of priority, then the court must determine who is the most suitable between the two competing parties. Thus, because any interested person may seek to serve as guardian over another person and be entitled to be appointed because that person has priority, it does not necessarily mean the appointed guardian is the best person for the position or is ready to fulfill their court ordered duties. Even though a person has standing and qualifies, it does not mean that individual will be compliant.

Texas law does not define the qualifications of being a guardian, but instead defines the behaviors, which disqualify a person from serving as guardian. Under Texas law, a person is disqualified from serving as guardian for one of the reasons listed, if the person is:

(1) a minor;

(2) a person whose conduct is notoriously bad;
(3) an incapacitated person;

(4) a person who is a party or whose parent is a party to a lawsuit concerning or affecting the welfare of the proposed ward unless the court determines that there is no conflict to the proposed ward or the court appoints a guardian ad litem to represent the interests of the proposed ward;

(5) a person is indebted to the proposed ward unless the person repays the debt prior to being appointed;

(6) a person asserts a claim adverse to the proposed ward or the proposed ward’s property;

(7) a person who because of inexperience, lack of education, or other good reason, is incapable of properly and prudently managing and controlling the proposed ward or the proposed ward’s estate;

(8) a person found unsuitable by the court;

(9) a person disqualified under a declaration of guardianship;

(10) a nonresident of the state, who has not filed a resident agent; or

(11) a person, who has not been certified by the state of Texas to serve as a private professional guardian (Easy Law Lookup, 2016).

Thus, as long as an interested person applies, has priority and is not disqualified, that applicant can serve as guardian over another person. Because any interested person who applies and has priority, and is qualified and not disqualified, does not mean that person will be compliant under the law.

Prior to an individual being vested with the authority as guardian, the court must determine the suitability and fitness to serve as guardian. As previously stated, Texas law
does not define the qualifications of a guardian, but only defines the behaviors, which disqualify a person from serving as a guardian. As long as a person is not disqualified, he or she is qualified to serve as a guardian. Thus, there is no formalized training that a person undertakes before embarking on the responsibility of being a guardian for an incapacitated person. As long as a person is over the age of 18, not incapacitated, not involved in a lawsuit affecting the Ward, does not owe the Ward money and is suitable, then he is not disqualified to serve as guardian.

Proposed guardians fit into one of four possible categories: (a) private professional guardian (PPG), (b) family member, (c) friend, and (d) attorney. In order to be certified in the state of Texas as a PPG, an individual must meet the following requirements:

a. be at least 21 years of age;

b. be a high school graduate or possess the GED equivalent;

c. have two years of relevant work experience related to guardianship or the following educational or training requirements:

   (i) a minimum of a bachelor’s degree conferred by a college or university accredited by an organization recognized by the Texas Higher Education Coordinating Board in a field related to guardianship including, but not limited to, medical, mental health and mental retardation, law, business, accounting, social work, sociology, psychology, human services, protective services, and criminal justice fields, or

   (ii) completion of a course curriculum or training specifically related to guardianship approved by the board
Meet one of the following criteria:

(1) Have successfully completed an examination approved by the Guardianship Certification Board, now known as the Judicial Branch Certificate Commission ("JBCC") covering Texas law and procedure related to certification of Private Professional Guardians ("PPG");

(2) Guardianship and any other examination required and approved by the Board testing knowledge of guardianship issues;

(3) Be currently certified by and in good standing with the Center for Guardianship Certification and have successfully completed an examination approved by the board covering Texas law and procedure related to guardianship issues;

(4) Attest under penalty of perjury as to whether he/she ha ever been adjudged guilty of or entered a plea of guilty or no contest in return for a grant of deferred adjudication to a felony, crime of moral turpitude, or any offense listed in section 22.01 (assault), 22.011 (sexual assault), 22.02 (aggravated assault), 22.021 (aggravated sexual assault), 22.04 (injury to a child, elderly or disabled individual), 22.041 (abandoning or endangering a child), 22.05 (deadly conduct), 22.07 (terroristic threat), and 32.45 (misapplication of fiduciary property) of the Texas Penal Code; and

(5) Attest under penalty of perjury as to whether he/she:

   (a) Has ever been relieved of responsibilities as a guardian or fiduciary by a court, employer, or client for actions involving fraud, moral turpitude, misrepresentation, material omission, misappropriation,
theft, assault, battery, abuse, neglect, breach of trust, breach of fiduciary duty or conversion;

(b) Has ever been found civilly liable or settled a claim in an action including, but not limited to a surcharge action, that involved allegations of fraud, abuse, neglect, breach of trust, breach of fiduciary duty or conversion on the applicant’s part; or

(c) Has ever been denied certification or has his/her certification, registration or licensure to provide guardianship services.

(6) Provide the Board with a Texas and national criminal history records check by having his/her fingerprints submitted to the Texas Department of Public Safety (“DPS”) to be used by DPS for a Texas and national criminal record history check. (Texas Administrative Code, 2015, Rule §10.311).

Family members are the largest group type of guardians and they receive the least amount of formalized training. Qualified trained individuals are the foundation of legal compliance. Suitable qualified individuals being appointed as guardian is the first half of a case being legally compliant. See Appendix B for a complete list of guardianship definitions.
CHAPTER 2
LITERATURE REVIEW

Landmark History

Although guardianships are governed by each state and the numbers of guardianships increases from year to year, there is insufficient research on guardianships and the various aspects of it. Winsor Schmidt of the University of Louisville in Kentucky completed the first comprehensive study in 1981 (Bell, Schmidt, & Miller, 1981). This project included a statutory and case law analysis, a survey of public guardianship options, and site visits in five states. The outcome of Schmidt’s study was to provide a general overview of the state of guardianships and foundation for the necessity for more research (Bell et al., 1981). Schmidt provided an analysis of each state and showed the variances among the states and classified and categorized each variance (Bell et al., 1981). One of the major findings of Schmidt’s study was that it was too broad of a challenge to study guardianship on the national level because there was such variance among the states (Bell et al., 1981). The researcher concluded the study of guardianship should be limited to a local basis and/or focused on certain aspects of guardianship. In Texas, although there is one state law under the probate code, now known as the Estates Code, it can be administered differently in each county, which is based on the locale of each county within the state. As previously stated, there are 254 counties in Texas, which means at least 254 different ways of locally administering a guardianship under Texas law. This initial literature review confirmed the necessity for me to keep a narrow focus of my research question based on the location of the guardians, the specific area of guardianship, and
period of time. Thus, it was necessary for my research question to limit the time period and type of guardianship.

As a result of random sampling and the increased media attention on guardianship, the next pivotal milestone in guardianship history was an article in 1987 entitled “Guardians of the Elderly: An Ailing System” (Bayles & McCartney, 1987a). Although this series of investigative articles was second to the research done by Schmidt (Bell et al., 1981), this associated press article was based on the review of over 2,200 guardianship cases in 50 states over a three-year period, which means an average of 44 cases for each state was reviewed. In this investigative article, Bayles and McCarney (1987a) questioned the level of training and monitoring of guardians. Another article in the series, “Guardianship: If You’re Old Enough, You Can’t be Foolish” served as an introduction into guardianship horror stories and the abuses and/or lack of training of guardians (Bayles & McCartney, 1987b). This article did not serve to highlight any of the positive aspects and benefits of guardianship.

Guardianship Initiation/Guardianship Training

Again, although there were no empirical studies to support the necessity for guardianship training, guardianship professionals, based on experience, knew that training and monitoring of guardians would improve the quality of guardians and the overall quality of life for the Ward, protected person. Compliance by a guardian translates to a protected person being cared for legally by a guardian. In 1988 the first interdisciplinary National Guardianship Symposium was convened by the American Bar Association (Johns & Sabatino, 2002). The symposium, known as the Wingspan, leaders made the recommendation for the necessity of guardianship training. Specifically, Recommendation
#9 stated, “all guardians receive training and the technical assistance in carrying out their duties” (Johns, & Sabatino, 2002, p. 573). Although this specific recommendation was made, it has not been uniformly or consistently implemented throughout the guardianship community. As previously stated, guardianship administration is so broad and varied, even within the state of Texas; there is no uniform guideline for training throughout the state. Even within a county, which has multiple probate courts, uniformity among these courts is also non-existent. There are 18 statutory probate courts and the only uniformity is the medical evidence letter, which was approved in November 2013 by all the statutory probate courts.

The only other uniformity within the state of Texas is the certification of private professional guardians. Under Texas law, a private professional guardian (PPG) is a person, other than a friend or family member, who is in the business of providing guardianship services. All PPGs must be certified by the State of Texas before being appointed as guardian. Although there is no uniformity as to the training of PPGs, there is uniformity in certifying PPGs under Texas law. However there are only 332 PPGs in the state and estimate of over 100,000 Wards in the state of Texas. Thus, it becomes apparent to me that the majority of people serving as guardians for a Ward are family members and friends of the Ward, who are not required to be certified by the state or have formalized training. As a result, we have more than 100,000 people, who have guardians and it is unknown how much training, if any, each person initially received prior to being appointed guardian. The state has certified this small pool of PPGs, but it has not taken steps to train the larger pool of family and friends, who serve as guardians for incapacitated persons.
In 2005, AARP Public Policy Institute conducted a national survey on guardianship monitoring (Karp & Wood, 2006). This national survey was followed up in 2007 in collaboration with the American Bar Association Commission on Law and Aging and conducted a three-part study on promising practices for court monitoring (Karp & Wood, 2007). This research was broad and general and serves as a foundation for guardianship monitoring, but it does not provide support for guardianship training. Guardianship monitoring is about treating the problem and guardianship training is about preventing and diminishing the problems.

Although among guardianship professionals, it was common practice to recommend guardianship training, there was no formal research to provide empirical data to support this usual and common recommendation. This recommendation even continues today in the literature and in popular news articles that guardians should be trained but there has been no empirical research to support the benefits of training. Guardianship professionals, based on experience, recommend guardianship training. In March 2010, the Center for Elders and the Courts, based on their survey research, found the guardianship process could be improved for all parties by informing guardians of their responsibilities and duties through training (Uekert, 2010). This survey provided evidence that compliance could improve with education and training on a guardian’s duties and responsibilities. According to Fell (1994) of the University of Toledo Law School, he surmised guardians be made aware of their expectations before being held accountable. Again, training has been recommended, but it has not been established as to the how and the why. The applied gerontologist can be a beacon of light in development of the how and to explain the why.
Guardianship Monitoring

Guardianship initiation has been reviewed, now we will review guardianship monitoring. Under Texas law, all wards, protected persons, are to be seen annually. Under Texas Estates Code (2014a), Section 1054.102, a statutory probate shall operate a Court Visitor’s Program. This is a legislative mandate. The existence of the program is a requirement for this court. Non-statutory probate may have a court visitor’s program. In a non-statutory probate court, this is optional. The Court Visitor’s program is a program created in order for the Court to visit each Ward of the Court at least one-time annually to determine the Ward’s current care, condition, and well-being. The Court Visitor is the eyes and ears of the Court to verify that what has been stated in the annual report is actually the case. The Court Visitor is further assessing whether there needs to be a modification of the guardianship.

The Court Visitor legislative mandate began in 1993. Denton County Probate initially had its Court Visitor’s program on an ad hoc basis. The Court Investigator, who is the chief Court Visitor, would visit a Ward if the Court Investigator happened to be seeing a new individual (Proposed Ward) and another Ward was at the facility. The Court Investigator would then see this Ward, however no formal report would be written and no documentation existed as to the visit. No documentation means no evidence of a visit occurring. This was truly a non-existent program. Later in 2003, the Court Visitor’s Program consisted of visits for complaints only. A complaint must be a formal written complaint about an existing guardianship. See Appendix C for the Guardianship Case Complaint form. The complaint could be mailed or delivered to the Court. The complaint must identify the Ward, the Guardian, and the circumstances of the complaint. Once the
complaint was identified, it would be filed and a Court Investigator would be appointed to investigate the complaint and assess the Ward’s current care, condition, and well-being. In 2011, the probate court began a more formalized Court Visitor’s Program. This program consists of a fluctuating set of volunteer court visitors, who have made approximately 300 visits over the last three years. Before being a Court Visitor, each individual completes an application, background check, and a training class. Once training is completed, the Court Visitor is deputized and assigned his or her cases. Any person, who has a desire to help people, may be a Court Visitor. Court visitors have been mainly college students and retirees. The Court has even implemented a policy requiring attorneys to complete three court visits prior to being eligible for placement on the Court’s ad litem list. The current form of the Court Visitor’s Program is informal and inconsistent. Presently, the program consists of a small pool of five volunteer visitors and a court staff member (guardianship assistant), who attempts to recruit and train volunteers and create files when not fulfilling her duties as the guardianship assistant. Denton County’s Court Visitor is under developed and lacks direct Court attention. The guardianship assistant gives attention to the program as needed and directed. Attention to the program is not provided consistently and regularly.

Per the Government Accountability Office, Courts recognized as exemplary focus on training and monitoring. The common ingredients of exemplary Court monitoring consists of the following:

1. computerized case management,
2. court visitor program,
3. in-depth review of annual reports,
4. investigations by court employees to oversee guardianship cases. (Bovbjerg, 2004, p.16)

Case Examples

Guardianship training and monitoring of a guardianship are necessary for the care of an incapacitated person. In one guardianship case, D.P. was placed under guardianship when his mother died and he inherited his deceased mother’s estate. A family member was named as guardian, received limited training, and no formal monitoring was done. The guardian used some of D.P.’s money to compensate for their services and bought a house for D. P. The guardian used D.P.’s money without Court permission. The family argues D. P. is not well cared for, however a Court Visitor was never appointed to confirm what was reported in the annual report. D. P.’s and his deceased mother’s wishes were validated. The reports regarding D. P’s well-being was only based upon the attorney/guardian’s report. The family complained the guardian did not provide an accurate and thorough report to the Court. The attorney/guardian did not consistently visit with D.P. as required by this Court. The family expressed concern about the actual accuracy of the report regarding D.P.’s current care, condition, and well-being. No Court Visitor was ever appointed to visit. The Court did not have a Court Visitor to verify what was reported in the annual report. The Court only got reports from the attorneys, who had made more than $450,000.00 in attorney’s fees. D.P. was a case of a lawyer serving as guardian and no suitable family member stepping up to be appointed guardian.

Being a lawyer is different than being a guardian. In another case, The Bears also had a guardian, who was a lawyer, because they had no known family members. The Bears had impaired cognitive ability and collectively were able to care for each other until the
husband fell and broke his hip. When he broke his hip, his wife was unable to get help immediately. The couple was placed under guardianship and moved into a nursing home. The guardian failed to fulfill his fiduciary responsibilities and resulted in the Bears’ home going into disrepair and then being foreclosed upon. The Bears have been seeking to have some sort of restoration of rights, however that has not occurred. This Court has no Court Visitor program and like D.P., the only reports regarding the Bears came from the guardian. The Court has not had any Court eyes and ears to meet with the Bears. This Court also did not have an independent report to verify the circumstances reported in this case. Again, this is a case of a guardianship going awry.

Not all guardians are failing to be in compliance with the law. M.A. was being controlled and secluded by her son away from the rest of M.A.’s children. Guardian, who was also an attorney, was appointed. Guardian moved M.A. to appropriate housing and arranged for in-home care, established a visitation schedule for all children, created a communication plan, and managed her chronic health care conditions. Son, who was previously controlling M.A., was not happy with the guardian. However all M.A.’s other children were satisfied that M.A. had access to all her children, health care, and finances were being managed.

When cases are being monitored, it can further impact the quality of life for a person under guardianship. When H.M. was placed under guardianship and then moved to another county to be near the guardian and far from H.M.’s friends, supports, and home. A Court Investigator visited her to assess her current care, condition, and well-being. It was based on this meeting that H.M. got to make a request to be re-assessed to see about getting her rights restored. H.M. was reassessed and an application for a partial restoration was
filed and a visitation agreement was established. This guardianship being checked gave H.M. a new lease on life, which may not have occurred if a Court Visitor did not monitor her case.

Best Practices

Per Fell (1994), monitoring and review of existing guardianships are critical to the protection of the most vulnerable of our society. According to identified, well-accepted, promising practices of guardianship monitoring, there are five purposes:

1. Courts have a parens patriae duty to protect vulnerable persons,
2. Needs change over time for an incapacitated person; needs are not stagnant;
3. Assistance to guardians by providing feedback;
4. Provides a system for courts to track effectiveness of guardianships; and
5. Enhancement of Court image and connection to community. (Hurme & Wood, 2002, p. 867)

Courts can use monitoring to review whether a guardianship should continue. Monitoring of the guardianship of the person and estate can take different forms. The best practices for guardianships have been defined as including:

1. required filing of reports, accounts, and plans;
2. court support with report responsibilities;
3. practices to protect assets and care of the Ward;
4. court review of reports and accounts;
5. use of investigation, verifications, and sanctions;
6. development of computerized case database; and
7. guardian training and assistance. (Karp & Wood, 2007)
According to Barbara Uekert of the National Center for State Courts, court monitoring is the only way to protect vulnerable persons from neglect, exploitation, and abuse (Uekert, & Dribble, 2008). Under Texas law, monitoring is required for every guardianship. However, the implementation varies from jurisdiction to jurisdiction. Statutory probate courts, which there are 18 in Texas, are legislatively mandated to have a court visitor program. The non-statutory probate courts are not required to have a court visitor, but may have one. In the Denton County Probate Court, all annual reports and accountings are required to be filed on each guardianship. Every filed annual report of the person is reviewed and every filed accounting is audited. In Denton County, further review of a guardianship of the person can involve a duty call by the court visitor, court investigator or a guardian ad litem. Although there is reportedly approximately 1,300 guardianships, the county received 910 filed annual reports in 2013. It is difficult to determine whether the difference in existing identified guardianships (approximately 1,300) and guardianships with annual reports filed (910) is actually (a) guardian did not file report, (b) guardianship of the estate only, or (c) management trust only.

Guardianship monitoring was the subject of a national survey of court practices sponsored by the American Association of Retired Persons (AARP) in 2006, results were:

1. Guardianship monitoring practices is varied, not uniform.
2. Reporting practices have improved with technology.
3. Guardianship training is the front/beginning of guardianship before monitoring can occur.
4. Guardianship training has increased, which has enhanced compliance and care of protected persons.
5. Court-community involvement is limited and underdeveloped.

6. Funding of guardianship monitoring programs is minimal (Karp & Wood, 2006). Monitoring is so critical that the American Bar Association sponsored a guardianship monitoring project. This project resulted in a book to enhance guardianship monitoring by Sally Balch Hurme. This book outlined the following 10 steps to enhance monitoring, which are as follows:

1. Guardians should be required to report periodically on the Ward’s status;
2. Guardians should be required to file proposed plans of care;
3. Courts can and should facilitate the guardian’s reporting and responsibilities;
4. Courts can and should enforce reporting requirements;
5. Courts can and should devise a system to review annual reports and audits;
6. Courts can and should devise a plan to verify reports and accountings;
7. Courts can and should have hearings in relation to annual reports and accountings;
8. More funding is necessary to handle the increased demands for guardianships;
9. Bar should establish clear ethical guidelines for attorneys representing a petitioner, guardians; and
10. Courts should be aware of and connect other community groups that monitor the Ward’s well-being. (Hurme, 1991)

Recent Research

In 2011, Schmidt, Akinci, and Magil completed research on the risk of elder abuse by certified guardians with legal work experience versus certified guardians with other work experience. In this review, Schmidt et al. found certified guardians with legal work
experience are a greater risk of committing elder abuse than certified guardians with other work experience. The researchers found certified guardians with legal work experience are at greater risk for elder abuse than certified guardians with other work experience. Although the research and literature is not vast, it is consistent - more research must be done. Guardianship training and monitoring are necessary to protect our most vulnerable persons within our society.

Research Purpose

My research was an exploratory study investigating the Denton County Probate Court Visitor’s Program success with legal compliance in guardianship cases in the year 2013. In this investigation, I reviewed legal compliance of guardianship cases in the Denton County Probate Court. In order to have successful legal compliance in a guardianship matter, it requires compliant actions by both the guardian and the Court. Guardianship case compliance is guardian compliance combined with Court’s compliance. The Denton County Probate Court Visitor’s Program is a loosely organized program with no dedicated Court personnel to manage, develop, and lead this program. In this investigative study, I reviewed the legal compliance of guardian’s legal compliance in comparison to the Court’s legal compliance. Because the Probate Court’s Court Visitor’s program is loosely organized, the Court will have a lower level of compliance in comparison to guardians. Thus, the lack of compliance in a guardianship case, which is based on both guardian and court actions, will be low because of the Court’s failure to comply. Thus, the Court is the weak link in the guardianship case equation. The Court’s will have the highest level of compliance with training through the implementation of court instructions. See Appendix D for a copy of court instructions. In contrast the Court will have a low level of compliance
with the appointment of Court Visitors. It will be due to the limited appointment of Court Visitors, which will overall pull down the Court’s legal compliance in guardianship cases.

Although the Court has it shortcomings in legal compliance, the guardian can have its failures in legal compliance also. Guardians, who are family members are the most legal compliant guardians in comparison to the other types of guardians. The Guardian, who is the same gender of the Ward, is more compliant than a guardian of a different gender of the Ward. Further when a guardian lives farther from the Ward, the Guardian's level of compliance decreases. A guardian who lives in Denton County is more compliant than a guardian who lives outside Denton County from the Ward.

With this exploratory study, I will provide evidence based research as to the necessary changes to develop the Denton County Probate Court Visitor’s Program, which can result in improving the lives of the Wards of this Court. Although guardianship research has not been vast, it has been consistent as to the necessity of guardianship training, monitoring, and narrowly focused research. This investigative study is exactly as prescribed in the literature review.

**Research Questions**

The purpose of this research was to evaluate the Denton County Probate Court Visitor's Program success in legal compliance of guardianship cases in 2013. In this study, I describe and analyze the legal compliance of the guardianship of the person cases in the probate court of Denton County, Texas during the year 2013. I reviewed and compared the legal compliance based on gender, age range, and type of guardian. The overarching research question was: Is the guardianship program in Denton County effective in
protecting the rights of individuals under guardianship? Specifically, the research questions evaluated to answer that question were:

1. Is there a correlation of the incidence of legal compliance based upon gender?
2. Is there a clear correlation between the type of guardian and legal compliance?
3. Is there a clear correlation between the age of the Ward and legal compliance?
4. Is there clear correlation of legal compliance based upon the geographic distance between the Ward and Guardian?
5. Is there a clear correlation between Court Compliance and overall legal case compliance?
6. Is there a correlation between the presence of Court Instructions and overall legal case compliance?
7. Is there a clear correlation between the appointment of a Court Visitor and overall case compliance?
8. Is there a correlation between the Guardian compliance and overall legal case compliance?
9. Are Guardians more compliant with their responsibilities than the Court is with its responsibilities?

When a guardian is legally compliant, a Ward is receiving the statutorily minimum standards of care. Legal compliance equates (evidence of) to the Ward receiving legally sufficient care.

It is a basic assumption of courts (the law) that legal compliance equates to evidence of sufficiency of care provided. Because the Ward is incapacitated, the Ward is unable to
complete any quality of life survey or assessment tool. Thus, it would be based upon the
 guardian completing any such survey on behalf of the Ward.

This guardianship case legal compliance audit shows there is a clear correlation
between Court Compliance and overall legal case compliance. The presence of Court
 compliance correlates to overall higher guardianship case compliance. Meaning the greater
the level of Court compliance the greater the overall level of guardianship case compliance.
The Court reflects the presence of great compliance as to the filing of the Court
Instructions. The filing of Court Instructions is greater than the appointment of Court
Visitors. The Court is more compliant with the filing of Court Instructions versus the
appointment of a Court Visitor. The Court is better with equipping a guardian with
instruction than monitoring a guardianship. The appointment of a Court Visitor reflects a
higher level of legal case compliance. In the converse, the lack of appointment of a Court
Visitor reflects lower level of compliance, which means a higher level of noncompliance. In
comparing the two elements of guardianship legal case compliance, guardians have greater
legal compliance than the Court. Thus, the Court is the weak link in the equation of
guardianship case legal compliance. Family members are the most compliant of the various
types of guardians. Further, the closer the Guardian lives to the Ward, the more compliant
the guardian is as to his or her duties. Guardians, who live-in Denton County, are more
compliant with his or her duties than guardians who live-outside Denton County. This
exploratory study confirms that the Denton County Probate failed to fulfill its statutory
requirements to visit/monitor all existing guardianship cases.

As a foundation for future research, the study results provide an exploratory
overview of the legal case compliance of guardians of the person in Denton County, Texas
in 2013. This exploratory researcher examined the incidence of basic legal compliance of guardianships of the person. This investigative researcher assesses the overall guardianship legal case compliance. Guardianship legal case compliance is based on both the required actions of the guardian and the mandatory actions of the Court. Thus, complete guardianship case legal compliance is based on the coordinated cooperative actions of the Guardian and the Court. If either element in the equation fails to be legally compliant, then the entire case can be legally noncompliant. Subsequently, this study can be a starting pointing for evaluating court monitoring programs and eventually guardianship training, which is the foundation for guardianship compliance.
CHAPTER 3

METHODS

Court Process

It is necessary to create an evidence based research tool to gather the necessary data to study the legal compliance of the Denton County Probate Court. This is a study of 304 of the 910 guardianship cases, which have an annual report of the guardian of the person filed in the matter in the year 2013. I reviewed 304 guardianship cases. The study population consists of every third case (annual report), which was filed in the year 2013. A master list of all 910 annual reports filed in 2013 was generated. When an annual report is filed, it is reviewed by the guardianship assistant. The initial review by the guardianship assistant is a review to look at the form of each annual report. The guardianship assistant must make sure every question is answered, signed by the guardian(s) and notarized. The Clerk must insure the proper filing fee has been paid. As the guardianship assistant is reviewing the form of the annual report, she must also review the substance. The guardianship assistant will specifically review whether the Ward has had any major health changes (i.e., injuries, hospitalizations, births, and new medical conditions). The guardianship assistant will also look to see if the Ward’s residence has changed and whether there were problems with visitation. If upon this initial review by the guardianship assistant, the report is passed as acceptable, the annual report is submitted to the judge for the final review and approval. Once the judge reviews the annual report, the Order Approving the Annual Report is signed by the Judge and filed by the Clerk. Once the Clerk files the Order Approving the Annual Report, Letters of Guardianship are issued to the Guardian. See Appendix E for a copy of an Annual Report of the Person.
If the annual report does not pass the guardianship assistant, then there are two possible outcomes: (a) pending awaiting corrective action, or (b) no pass. When an annual report is pending awaiting corrective action, the annual report is then reviewed by the Court Investigator to determine the corrective action. Corrective actions can include filing a supplement to the report, filing additional medical information, and/or filing information related to the Ward’s government benefits. If the annual report is pending awaiting corrective action, then the guardianship assistant contacts the guardian to notify them regarding the pending status of the annual report and specifically what the deficiencies were. The guardianship assistant then sends a letter to the guardian outlining the deficiencies and the necessity to address the corrective actions. This letter to the guardian is then filed in the Court file. When the guardianship assistant completes the review, a note is recorded in the Court’s log to track the status of this matter. If it is time specific as to when a corrective action must occur, then this is documented in the Court’s log. If necessary, this deadline can be placed on the Court’s compliance docket and have a set deadline to comply with the Court’s requirements. When an annual report is approved and new letters of guardianship are issued, the guardianship assistant updates the case’s calendar on the case document management system so next year’s due dates are in place for the upcoming reporting period.

If the annual report does not pass, then the guardian can file a new annual report to be reviewed. Once a new annual report is filed, it is again screened and reviewed by the guardianship assistant. The same process, previously outlined as to the annual report, is performed again for the new annual report.
Upon an annual report being filed, it is placed in queue to have a Court Visitor
assigned and appointed to conduct a Court Visit. Under Texas Estates Code (2014a),
Section 1054.102, a statutory probate shall operate a Court Visitor’s Program. This is a
legislative mandate. The existence of the program is a requirement for this court. Non-
statutory probate courts may have a court visitor’s program. Thus, in a non-statutory
probate court, this is optional. The Court Visitor’s program is a program created in order
for the Court to visit each Ward of the Court at least one-time annually to determine the
Ward’s current care, condition, and well-being. The Court Visitor is the *eyes and ears* of the
Court to verify that what has been stated in the annual report is actually the case. The
Court Visitor could be described best as the verifier. The Court Visitor is further assessing
whether there needs to be a modification of the guardianship.

History of Court Visitor Program

This legislative mandate began in 1993. Denton County Probate Court initially had
its Court Visitor’s program on an *ad hoc* basis. The Court Investigator, who is the chief
Court Visitor, would visit a Ward if the Court Investigator happened to be seeing a new
individual (Proposed Ward) and another Ward was at the facility. The Court Investigator
would then see this Ward, however no formal report would be written and no
documentation existed as to the visit. Thus, this was truly a non-existent program. If there
was no documentation present, then the visit did not occur. Later in 2003, the Court
Visitor’s Program consisted of visits for complaints only. Thus, if a complaint was formally
made to the Court or the Court received a notice from Adult Protective Services (APS),
regarding a Ward, then the Court Investigator would conduct a special visit to verify the
current care, condition, and well-being of the Ward. The Court Investigator would see the
Ward, review medical records, interview the guardian, interview any collateral contacts, and make recommendations. In 2011, the probate court began a more formalized Court Visitor’s Program. This program consists of a fluctuating set of Volunteer Court Visitors, who have made approximately 300 visits over the last three years. Before being a Court Visitor, each individual completes an application, background check, and a training class. Once training is completed, the Court Visitor is deputized and assigned his or her cases. Any person, who has a desire to help people, may be a Court Visitor. Court visitors have been mainly college students and retirees. The Court has even implemented a policy requiring attorneys to complete three Court visits prior to being eligible for placement on the Court’s ad litem list.

In this current form of the Court Visitor’s Program, once an individual is deputized, a Court Visitor file is created and then assigned to a visitor. Each Court Visitor is given a file with the following items:

1. Copy of the original application;
2. Copy of the Doctor’s letter;
3. Copy of the Court Investigator’s Report;
4. Copy of the ad litem Report;
5. Copy of the successor guardianship application;
6. Copy of the most recent annual report;
7. Copy of the Order Appointing Guardian;
8. Court Visitor’s Report form;
9. Contact information for guardian; and
10. Copy of letter to Guardian advising of the pending court visit.
Although the Court Visitor’s program does exist, it is lacking the necessary infrastructure. This Court has 1,300 guardianship cases; however, the Court only has 300 Court Visitor files. The Court should have a court visitor file for each case. A court visitor file is only made and prepared after a Court Visitor is assigned. This creates a delay in initiating a Court Visit because a file must be prepared for the Court Visitor. There is formally no person assigned to manage the Court Visitor program. The guardianship assistant, Diana Holland, is directed to work with the program after she completes her other duties within the court. The guardianship assistant’s job is to do the following: prepare orders appointing court investigators, prepare ad litem orders, contact ad litems, prepare correspondence, trouble shoot calls from guardians, maintain a log of ad litem appointments, and review annual reports. The court also does not have a searchable database of all the guardianships. The present document management system can identify the existence of a guardianship, the attorney on a matter, and the types of orders or specific legal events in a matter. The database system is not presently set-up to identify the Wards by groupings or certain classifications.

Some groupings include the: (a) zip code, (b) type of facility, (c) specific facility, (d) guardian, (e) gender, (f) type of guardian, (g) diagnosis, (h) age, (i) court investigator, and (j) court visitor. A court visit may occur anywhere throughout Denton County, Texas. Any protected person may be in a nursing home, private residence, group home, assisted living centers, or the State Supported Living Center. All visits are within Denton County in a multitude of facilities. The Court Visitors are necessary to ensure the individuals, who are our most vulnerable, are protected because they do not have a voice. The Court Visitor helps to be the protected person’s voice.
Present Day Court Visitor Program

The current form of the Court Visitor’s Program is informal and inconsistent. Presently, the program consists of a small pool of five volunteer visitors and Court guardianship assistant. The staff member attempts to recruit and train volunteers and create files when not fulfilling her duties as the guardianship assistant. This one staff employee on an as-needed/as-able basis creates Court Visitor files. This means when volunteers are ready for more files, the staff member may or may not be able to prepare Court Visitor files. Thus, the volunteers need for more files and the staff member’s timeliness of producing new files are not in sync. There is not a ready set of Court Visitor files. There are approximate 1,300 Wards of the Court and only 300 Court Visitor files. This is a major weakness of the Denton County Court Visitor’s Program as previously outlined.

The Court has approximately 1,300 Wards identified on a master list. The master list is either organized chronologically or alphabetically. However, the present database system does not have a system of categorizing the cases by any other classification. There should be a system in place to categorize the cases by at least the following groups as previously outlined:

1. zip code,
2. types of facility,
3. facility,
4. Guardian by name,
5. age,
6. gender,
A searchable database could add to the efficiency of the Court Visitor Program.

Although the Court Investigator, as defined by Texas Estates Code (2014a), Section 1054.152, shall serve as the chief court visitor and supervise the Court Visitor Program, this has not been the case in the Denton County Probate Court. As outlined in the history, prior Court Investigators did not develop the program and as a result, the Judge vested the guardianship assistant with that task, along with her other duties. Thus, no Court employee has dedicated and given full attention to this mandated program. The Court Investigator is responsible for visiting all newly filed cases, supervising the Court Visitor Program, and being chief Court Visitor. In 2013, there were approximately 200 newly filed cases that were visited by 2 Court Investigators. Thus, there is not enough time for a Court Investigator to conduct all the new case visits and do Court Visits for the existing cases, which would mean 750 visits per year for each Court Investigator (1,300 existing cases plus 200 new cases). To accomplish 750 visits per year, that would mean at least 62.5 home visits completed each month by each Court Investigator. This would be basically impossible for each Court Investigator to achieve visiting each month. Having a searchable database, and the Ward’s geographically grouped, would aid the Court Investigator’s efficiency. It would be necessary and beneficial for the Denton County Probate Court to have a Court Investigator, whose job was dedicated to the development and management of the Court Visitor’s Program. This employee would be responsible for the recruiting,
training, retention, and supervision of volunteers. This Court Investigator would also be responsible for a certain amount of court visits. This is a weakness in the Court Visitor’s Program, which the staff is trying to correct.

In order to correct this deficiency, the Judge has devised a plan to develop the infrastructure by preparing all, or at least 500, of the necessary Court Visitor files and then get volunteers. It has been observed that volunteers complete visits and then return to the Court for more files, but there are no new files available to assign. This idea of developing the court visitor files would require setting aside the time to create the Court Visitor’s files and obtaining file drawers to store all of these files. Obtaining file drawers is easy; however, developing the files requires an investment in the allotment of staff time. This allotment of staff time cannot be achieved unless directed by the Judges or Attorney Administrator. Until this investment of staff time for the creation of files, the Court Visitor’s Program will continue to languish and not flourish.

The overall strength of the Denton County Court Visitor’s Program is the motivation of the staff and willingness to work. The Court Visitor program guardianship team has the necessary education, training, and experience to enrich the volunteers and Wards of the Court. The education of the staff consists of social work, law, health care, criminal, fiduciary, and gerontology. The Court Visitor’s Program also has an appropriate file room for visitors to work. The Court Visitor’s office (file room) has file cabinets, work station, telephone, computer, printer, and two chairs. This office is located in the ante area of the Presiding Judge’s courtroom.
Surrounding County Court Visitor Programs

Denton County is one of 18 statutory probate courts in this state, legislatively mandated to have a Court Visitor’s Program. Each statutory probate court is different and independent about its creation of a Court Visitor Program. Although the existence of the program is legislatively mandated, the Texas legislature did not explicitly outline the form or substance of a Court Visitor. Because the legislation is silent as to the form of a program, each court creates its own version.

Fortunately, as outlined in the literature review, Tarrant County, Texas Probate Court is an example of an exemplary Court Visitors Program. The Tarrant County Probate Court Number 1 has four full-time staff members running this program. This court’s guardianship staff consists of the following:

1. Court Attorney Investigator, who supervises the Court Visitor Program and files legal proceedings;

2. Assistant Court Investigator, who is the Chief Court Visitor and coordinates the volunteers; and

3. Two guardianship assistants, who maintain the Court database, handle and track compliance, and daily correspondences.

Tarrant County Probate Court Number 2 has five full-time staff members running their program. This Court’s guardianship staff consists of:

1. One Court Attorney Investigator, who supervises the Court Visitor Program and files legal proceedings;

2. Three Assistant Court Investigators, who conduct the visits, and coordinate the volunteers; and
3. One guardianship assistant, who maintains the Court database, handles and tracks compliance, and daily correspondences.

Both probate courts in Tarrant County utilize social work interns to conduct court visits. Both Courts have a licensed social worker on staff, who can supervise social work interns. Both courts also use law student interns. All of these interns for both Courts are utilized as court visitors.

Dallas County has three statutory probate courts. The guardianships are managed and monitored through the Court Investigator’s office, an independent department separate from the three probate courts. The Court Investigator’s office has eight positions to manage all of the cases. The positions are:

1. One staff attorney, who files the legal proceedings;
2. Department manager, who serve as a supervisor to the court investigators;
3. One chief court investigator;
4. Three court investigators;
5. Court Visitor Program coordinator, who coordinates the volunteers, and
6. An administrative assistant.

One of the Court Investigator’s positions is dedicated to visiting only the Wards of Dallas County, who are over the age of 50. Dallas County has a searchable case management system, which can search guardianship cases by zip codes, facilities, guardians, and types of facilities. This Court Visitor Program utilizes law interns, social work interns, and attorneys seeking to be on the court appointment list as Court Visitors.

Collin County has one statutory probate. The Court staff has one court investigator and no court visitor program. The Court Investigator is responsible for seeing only newly
filed cases. Although this court is required to have a court visitors program, this court does not maintain one. Wards in this court are not visited and are generally transferred to other jurisdictions if a problem becomes known. Collin County has no monitoring or case management system. The Collin County Court Investigator does not know the number of cases, which this court is responsible for monitoring. This court does not have a system in place to address compliance.

Denton County Probate Court does not flourish and thrive like Tarrant County and Dallas County Probate Court. However, Denton County is more active in monitoring than Collin County Probate Court. Denton County Probate Court staff, which is dedicated to guardianships consists of the following:

1. Attorney administrator, who is responsible for supervising staff and back-up court investigator, if necessary, completing legal research, budget planning and drafting, and reviewing orders (this position was not created until 2015);

2. Attorney Investigator, who is responsible for investigating new, successor, and transfer cases; investigating management trusts and community administrator cases; filing legal proceedings for indigent cases; and drafting and reviewing orders;

3. Court Investigator, who is responsible for investigating new, successor, and transfer cases; and

4. One guardianship administrative assistant, who is responsible for preparing orders appointing court investigators and ad lites, maintaining log of ad lites, reviewing annual reports, preparing correspondences on annual reports, preparing Court files, and training Court Visitors.
Both Court Investigators are responsible for investigating complaints filed about pending guardianships. Court Investigators are also responsible for training new guardians and presenting in the annual ad litem seminar, which is done by the judge.

Denton County Probate Court Guardianship Case Forms

The following forms are presently utilized in guardianships cases in the Denton County Probate Court:

1. Court Instructions:

   This document is a written overview/outline of the guardian of the person duties. This document is not a substitute for having a lawyer and does not provide legal advice. This document provides a written outline of the Court’s expectations of the guardian. Each proposed guardian must meet with a Court Investigator to review the Court Instructions. Each proposed guardian must sign these Court Instructions before the Denton County Probate Court will have the Clerk of the Court issue Letters of Guardianship. The Letters of Guardianship along with the Order Appointing Guardian evidence the individual’s appointment and scope of authority. The Court Instructions are signed by the proposed guardian. The Court Instructions can be and have been used for compliance. The Court Instruction are a good overview of a guardian of the person’s responsibilities. However the Court Instructions are lacking on addressing the guardian’s responsibilities as to intimate relationships and computer usage. The Court Instructions are absolutely vacant as related to the responsibilities of the guardian of the estate. Thus, the Court should also have Court Instructions for guardian of the estate.
2. Annual Report of the Person

The document is completed by the guardian of the person to provide an annual report describing the Ward’s current care, condition, and well-being. The annual report provides information related to the following:

a. placement;

b. medical treatment;

c. doctor’s appointments;

d. physical health;

e. Ward’s funds;

f. Activities;

g. Modifications to the guardianship;

h. Visits, and

i. Additional comments.

The annual report is a check-off and fill-in the blank form. This form is based on Texas Estates Code (2014b), Section 1163.101. The Annual Report is a good overview of an annual summary. However, the annual report is lacking on addressing an annual summary of relationships and computer/internet usage. Instead of the Court being informed about a Ward’s relationships in the annual report, the Court hears about it in the form of a complaint. Relationships are happening and the guardian needs to be managing and monitoring and then reporting it to the Court. The same way Court Instructions need to address intimate relations and computer usage, the annual report should be reporting the annual summary of these issues.
3. Court Visitor’s Report

The Court Visitor’s Report is the form completed by the Court Visitor. See Appendix F for a copy of the Court Visitor’s Report. Per Texas Estates Code (2014a), Section 1054.104, the Court Visitor Report must include:

   a. description of the nature and degree of Ward’s incapacity;
   b. medical prognosis;
   c. list of the Ward’s treating physicians;
   d. description of the Ward’s social, intellectual, physical and educational conditions;
   e. statement that the Court Visitor has personally visited the Ward;
   f. statement identifying the Guardian’s most recent visit with Ward;
   g. recommendation as to any modification needed in the guardianship, and
   h. any other information required by the Court.

The Court Visitor’s Report is a fill-in in the blank form with a few check-off questions interspersed on the form. The form complies with Texas Estates Code (2014a), Section 1054.104. As previously stated regarding an existing deficit in the Court Instructions and the Annual Report (addressing relations and computer/internet usage), this deficit also exists in the Court Visitors Report. Although the Texas Estates code does not explicitly address these two areas, the Judge has general broad authority based on the best interests of the Ward.

4. Legal Compliance Audit

The Legal Compliance Audit is a form used to collect all the legal compliance information in a Court file. See Appendix G for a copy of the Legal Compliance Screening
Audit. The audit collects all the demographic information for both the Ward and the guardian. The compliance audit also collects the following information:

- the date annual report was filed,
- the timeliness of the annual report,
- presence of Show Cause actions,
- Number of visits to Ward,
- Distance between Ward and Guardian,
- Presence of omissions on annual reports,
- Presence of guardian signature, and
- Assignment of Court Visitor.

The audit serves as an organizational tool to gather information regarding the level of compliance for guardians in 2013 for guardianship cases in Denton County. The audit is an objective rubric so each guardianship matter audited is reviewed through the same lens. Based on the information gathered, it can be determined whether a guardian was compliant as it related to the guardian of the person responsibilities. The presence of legal compliance means the Ward is legally satisfied.

The four documents discussed above are the four documents, which are necessary for the completion of this exploratory investigation of the legal compliance of the Court Visitor’s Program for the Denton County Probate Court. Although these four documents are necessary for this exploratory study of legal compliance, there are four other documents, which I recommend for the ultimate best interest of a Ward and the development of legal compliance. Success with compliance is a two-sided approach of education and monitoring. As to education and training, I would utilize Court Instructions
for guardian of the estate. These Court Instructions would not be utilized to usurp or interfere with an attorney-client relationship. See Appendix H for a copy of the Guardian of the State Court Instructions. These Court Instructions would provide a general overview of a guardian of the estate’s responsibilities and a general timeline for completion. Second, I would provide a form plan of care for guardians of the person. See Appendix I for a copy of the Guardian of the Person Plan of Care form. This document serves as a personal inventory of the Ward’s well-being for the guardian of the person to establish a baseline for the Ward. This plan of care would be required in every guardianship case. The third form, which I would utilize, is the creation and implementation of a visitation and communication plan. Visitation and communication plans are an organized thoughtful visitation and communication guide, which increases trust, communication, routine, and a sense of security. See Appendix J for a copy of the Visitation and Communication Plan form. The last form, which would be implemented, is an established guardian of the estate management plan. See Appendix K for a copy of the Guardian of the Estate Management Plan. An estate management plan is a comprehensive plan regarding the handling of Ward’s estate. Management plans are due 180 days after a person qualifies as guardian of the estate. These three additional documents can increase the level of compliance of a guardian in a guardianship matter.

Exploratory Research Methods/Procedures

Once the master list of cases for the year 2013 was generated, each case file selected was assigned a case research number starting with the number one (1) through to end of every third case on the 2013 master list. This selected random sampling created 304 cases to be audited. Once the sample population was created, each file was reviewed to
determine legal compliance. A legal compliance audit was done on each case research file. Thus, all 304 case research files were audited. This audit of 304 of the 910 cases filed in 2013 was 33.4% of the cases, which had annual reports filed. On the other hand 304 cases is only 23.3% of the 1,300 reported cases this Court has under guardianship. Appendix G and herein incorporated by reference is the Guardianship Case Legal Compliance Audit.

Each audit provides the demographic information for both the Ward, (protected person) and the guardian. The demographic information includes the gender and age for both the Ward and the guardian. The Ward’s age will be specifically identified, while the guardian’s age is only identified as an age range.

The age ranges are (1) 18-40 years, (2) 41 – 60 years, and (3) over 60 years. The Court does not gather and record the demographic information of the guardian. The screening audit also documents the demographic difference between the Ward and the guardian as to gender and age range. The Ward and Guardian’s racial ethnicity are not provided in Court documents. Because race is not provided in Court documents, then race could not be documented and used in this investigative exploratory study. Further, because the public record did not provide an exact age of the Guardian, the guardian’s age could only be identified as to age range only. The screening audit also documents the type of guardian appointed. The types of guardian are (1) private professional guardian (PPG), (2) attorney, (3) family member, and (4) friend. There are no other classifications as to the type of guardian appointed. This demographic information is readily available in the court record.
Once all demographic information was determined, the quality of the report was documented. Specifically, the Guardianship Case Legal Compliance Audit documents the incidence of compliance based on the presence of the following:

1. Court Instructions being filed;
2. Annual report being filed;
3. Annual report being filed before due date;
4. Quarterly visits by the Guardian to the Ward;
5. Annual report completely filled out;
6. Annual report signed by Guardian;
7. Court Visitor appointed; and
8. Court Visitor report been filed.

The presence of all eight requirements is evidence of high legal compliance, while the presence of six–seven items would be evidence of moderate legal compliance. However the presence of five or less items would be evidence of low legal compliance. Further, legal case compliance can be divided into elements: (a) Guardian compliance and (b) Court compliance. Guardian compliance plus Court compliance equals Guardianship Legal Case Compliance. For a case to be legal compliant, it takes the coordinated efforts of the Guardian’s required actions and the Court’s mandatory actions. Although it takes both the guardian and the Court to create legal case compliance, it is only the guardian’s actions that are monitored and judged. This exploratory research assesses the legal compliance of guardianships cases in 2013 in Denton County.

Once the legal compliance audit was completed, all the data was entered into the SPSS system and tables created. The tables created provided information as to the
correlation between the incidence of legal compliance based on gender, age of Ward, and type of guardian. The tables would also provide information as to incidence of legal compliance among types of guardians and geographic distance between Guardian and Ward. Lastly, the information would provide for the level of compliance of Court and Guardian and overall guardianship case compliance. This investigative exploratory research provides evidence based research as to the legal compliance of guardianship cases in Denton County in the year of 2013. This exploratory study not only provides an assessment of the guardians’ compliance, but overall assessment of the Court Visitor Program in Denton County. With this exploratory study, I provide evidence-based research regarding the necessity to develop a Court Visitor’s Program in the Denton County Probate Court.

Human Subjects Protection

Human subjects are not involved in this research. All data and information used and reviewed is available to the public. The use of this public data is combined with my expertise to make this data useful and impactful in the development of this research. No human subject were used in this research project. Although all this data and information are available for public inspection and viewing, each subject’s identity was kept private. Specifically, a master list of all annual reports filed in 2013 was generated. From this master list of annual reports, each research compliance file audit was assigned a research number starting with the number one (1) and continuing forward. This master list of research compliance file audits has the code of names, research numbers, and cause numbers. This master research audit list is held at the Denton County Probate Court house separated and secured in the Denton County Probate Court. Although this research uses
public data, public data in this form will be privately stored and not available for public exposure.
CHAPTER 4

RESULTS

In 2013, Denton County had 1,300 existing guardianships with 910 annual reports being filed. All 910 reports were reviewed and 83 court visits were completed. The selected sample consists of 304 cases, which were audited based on the created legal compliance audit form. The form created and used was the Guardianship Case Legal Compliance Audit; which compiles the demographic information and a compliance check for each file reviewed. Using the Guardianship Case Legal Compliance Audit creates an objective consistent review of each guardianship file reviewed. This compliance provided a rubric evaluating each guardianship case.

Demographics Result

As a result of completing the Guardianship Case Legal Compliance Audit for the sampled cases, Tables 1-18 show the findings. Table 1 indicates the Ward’s gender. Of the 304 cases sampled, 162 were males. This was 53.29% of the cases with 46.71% of the cases involving females.

Table 1

Ward’s Gender

<table>
<thead>
<tr>
<th>Gender</th>
<th>Frequency</th>
<th>%</th>
<th>Cumulative Freq.</th>
<th>Cumulative %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Male</td>
<td>162</td>
<td>53.29</td>
<td>162</td>
<td>53.29</td>
</tr>
<tr>
<td>Female</td>
<td>142</td>
<td>46.71</td>
<td>304</td>
<td>100.00</td>
</tr>
</tbody>
</table>

Note. Frequency Missing = 7

Table 2 shows Guardian type. The number 1 represents the Private Professional Guardian (PPG). The number 2 represents an attorney serving as guardian. The number 3
represents a family member, who is serving as guardian. The number 4 represents a friend of the Ward, who is serving as guardian. Here in this selected controlled sampling of 304 cases, 26 of the cases had a PPG as guardian, which is 8.55% of the cases. Attorneys were the smallest group of guardian types with only one attorney guardian out of the 304 cases. Attorney guardians represent less than 1% of the cases. The largest grouping of guardians is the family guardians, which consists 267 of the 304 cases or 87.83%. Friends serving as guardian were a little over 3%, 10 cases of the 304 controlled sampled cases.

Table 2

*Guardian Type*

<table>
<thead>
<tr>
<th>Guardian Type</th>
<th>Frequency</th>
<th>%</th>
<th>Cumulative Frequency</th>
<th>Cumulative %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Private Professional Guardians</td>
<td>26</td>
<td>8.55</td>
<td>26</td>
<td>8.55</td>
</tr>
<tr>
<td>Attorneys Serving as Guardians</td>
<td>1</td>
<td>0.33</td>
<td>27</td>
<td>8.88</td>
</tr>
<tr>
<td>Family Member</td>
<td>267</td>
<td>87.83</td>
<td>294</td>
<td>96.71</td>
</tr>
<tr>
<td>Friend</td>
<td>10</td>
<td>3.29</td>
<td>304</td>
<td>100.00</td>
</tr>
</tbody>
</table>

*Note.* Frequency Missing = 7

Table 3 shows the guardians' age range. The guardian's age is not known specifically. However, the guardian's age is generally known as a range. The three age ranges are: (1) 18-40 years; (2) 41–60 years; and (3) over 60 years. Here the largest age range grouping is 41–60 years, having 205 of the 304 cases or 67.43%. The second largest age range grouping is the guardians over the age of 60 years, which is almost 31% of the cases. The smallest and the youngest grouping was guardians between the ages of 18–40 years, slightly over 1.5% of the cases.
Table 3

*Guardian Age Range*

<table>
<thead>
<tr>
<th>Guardian Age Range</th>
<th>Frequency</th>
<th>%</th>
<th>Cumulative Frequency</th>
<th>Cumulative %</th>
</tr>
</thead>
<tbody>
<tr>
<td>18 to 40 Years</td>
<td>5</td>
<td>1.64</td>
<td>5</td>
<td>1.64</td>
</tr>
<tr>
<td>41 to 60 Years</td>
<td>205</td>
<td>67.43</td>
<td>210</td>
<td>69.08</td>
</tr>
<tr>
<td>Over 60 Years</td>
<td>94</td>
<td>30.92</td>
<td>304</td>
<td>100.00</td>
</tr>
</tbody>
</table>

*Note.* Frequency Missing = 7

Table 4 shows the guardian gender. Guardian gender is divided into types: male and female. One (1) represents males and two (2) represents females. The genders distribution for guardians is different than the gender distribution of Wards. Males make-up 47.70% of the guardians, while females are 52.30% of the guardians. There are more male Wards, while there are more female guardians.

Table 4

*Guardian Gender*

<table>
<thead>
<tr>
<th>Guardian Gender</th>
<th>Frequency</th>
<th>%</th>
<th>Cumulative Frequency</th>
<th>Cumulative %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Male</td>
<td>145</td>
<td>47.70</td>
<td>145</td>
<td>47.70</td>
</tr>
<tr>
<td>Female</td>
<td>159</td>
<td>52.30</td>
<td>304</td>
<td>100.00</td>
</tr>
</tbody>
</table>

*Note.* Frequency Missing = 7

Table 5 shows same gender. Same gender represents whether the Ward and Guardian are the same gender. Guardians and Wards are not always the same gender. Here, one (1) represents yes and two (2) represents no. Here 161 of the cases, 52.96% involved the Guardian and Ward being the same gender. Thus, 143 of the cases involved Guardians and Wards being the opposite gender, which was 47.04% of the cases.
Table 5

*Same Gender*

<table>
<thead>
<tr>
<th>Same Gender</th>
<th>Frequency</th>
<th>%</th>
<th>Cumulative Frequency</th>
<th>Cumulative %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>161</td>
<td>52.96</td>
<td>161</td>
<td>52.96</td>
</tr>
<tr>
<td>No</td>
<td>143</td>
<td>47.04</td>
<td>304</td>
<td>100.00</td>
</tr>
</tbody>
</table>

*Note.* Frequency Missing = 7

Table 6 shows same age range. Same age range represents whether or not the Guardians and Wards are always in the same age range. Here, one (1) represents yes and two (2) represents no. Here 240 of the 304 cases were not in the same range, which was almost 79% of the cases. Guardian’s age being different from the Ward’s age was three times more likely to occur than being the same age range, which was 21%.

Table 6

*Same Age Range*

<table>
<thead>
<tr>
<th>Same Age Range</th>
<th>Frequency</th>
<th>%</th>
<th>Cumulative Frequency</th>
<th>Cumulative %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>64</td>
<td>21.05</td>
<td>64</td>
<td>21.05</td>
</tr>
<tr>
<td>No</td>
<td>240</td>
<td>78.95</td>
<td>304</td>
<td>100.00</td>
</tr>
</tbody>
</table>

*Note.* Frequency Missing = 7

Table 7 shows the number of guardians in Denton County. Guardians residing in Denton County are the most common with 201 of the 304 cases living in Denton County, 66.12% of the cases. As the distance goes beyond Denton County, the number of guardians being outside of Denton County decreases. Seventy-two of the guardianships have guardians, which reside in a county contiguous to Denton County, which is 23.68% of cases. Some guardians reside even farther than one of the contiguous counties. Thirty-one out of
304 cases have guardians, which live beyond one of the contiguous counties. This is 10% of the cases.

Table 7

Residing County of Guardians

<table>
<thead>
<tr>
<th>County</th>
<th>Frequency</th>
<th>%</th>
<th>Cumulative Frequency</th>
<th>Cumulative %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Within Denton County</td>
<td>201</td>
<td>66.12</td>
<td>201</td>
<td>66.12</td>
</tr>
<tr>
<td>Contiguous to Denton County</td>
<td>72</td>
<td>23.68</td>
<td>273</td>
<td>89.80</td>
</tr>
<tr>
<td>Beyond One of the Contiguous Counties</td>
<td>31</td>
<td>10.20</td>
<td>304</td>
<td>100.00</td>
</tr>
</tbody>
</table>

Note. Frequency Missing = 7

Court Compliance Actions

Court Instructions are the Court’s written guidelines of the Court’s expectations of the Guardian’s fiduciary duty. The Court has established guidelines and expectations for the Guardian of the person. The Court Instructions are the Court’s clearly enumerated responsibilities and duties of the Guardian of the person. Table 8 shows the cases with court instructions. Court Investigators are responsible for reviewing the Court Instructions with the Guardian. Here, one (1) represents yes and two (2) represents no. Of the 304 Guardians, 244 had received and reviewed Court Instructions with the Court Investigator, which is a little over 80% of the cases. Approximately 20% of the guardians, which is 60 cases, did not receive and review Court Instructions with the Court Investigator.
Table 8

*Court Instructions*

<table>
<thead>
<tr>
<th>Court Instructions</th>
<th>Frequency</th>
<th>%</th>
<th>Cumulative Frequency</th>
<th>Cumulative %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>244</td>
<td>80.26</td>
<td>244</td>
<td>80.26</td>
</tr>
<tr>
<td>No</td>
<td>60</td>
<td>19.74</td>
<td>304</td>
<td>100.00</td>
</tr>
</tbody>
</table>

*Note.* Frequency Missing = 7

Denton County Probate is a statutory probate court, which means this is a Court with the specific legislation created to handle the specific subject matter of probate, guardianship, and mental health. As a statutory probate court, this court is legislatively mandated to have a Court Visitor Program and visit annually each and every Ward of the court. The existence of a Court Visitor Program is legislatively mandated. Court Visitors must visit every Ward to report and verify the Ward’s current care, condition, and well-being. A Court Visitor is the *eyes and ears* of the Court. Thus, every guardianship case should have a Court Visitor assigned and appointed to it. The Court is responsible for appointing Court Visitors. In Table 9, one (1) represents yes and two (2) represents no.

Table 9

*Court Visitors*

<table>
<thead>
<tr>
<th>Court Visitor</th>
<th>Frequency</th>
<th>%</th>
<th>Cumulative Frequency</th>
<th>Cumulative %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>77</td>
<td>25.33</td>
<td>77</td>
<td>25.33</td>
</tr>
<tr>
<td>No</td>
<td>227</td>
<td>74.67</td>
<td>304</td>
<td>100.00</td>
</tr>
</tbody>
</table>

*Note.* Frequency Missing = 7
The Court only appointed 77 Court Visitors, which is a little more than 25% of the
cases. Almost 75% of the cases did not have a Court Visitor appointed in the matter; which
is 227 cases.

Every Court Visitor appointed must file a Court Visitor Report. The Court Visitor
Report documents the Court Visitor’s verification of the Ward’s current care, condition, and
well-being. A Court Visitor is responsible for filing a Court Visitor Report and the Court is
responsible for ensuring the report is filed. In Table 10, one (1) represents yes and two (2)
represents no. Here only 71 Court Visitor reports were filed, which is a little more than
23%. Thus almost 77% of the cases did not have a Court Visitor Report filed in the matter,
which is 233 cases. Further in 2013, 77 Court Visitors were appointed and 71 Court visitor
reports were filed. Six (6) Court Visitors of the 77 Court Visitors did not file a report. Thus
7.8% of the appointed Court Visitors in 2013 did not file a Court Visitor’s report.
Table 10

<table>
<thead>
<tr>
<th>Court Visitor Report</th>
<th>Frequency</th>
<th>%</th>
<th>Cumulative Frequency</th>
<th>Cumulative %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>71</td>
<td>23.36</td>
<td>71</td>
<td>23.36</td>
</tr>
<tr>
<td>No</td>
<td>233</td>
<td>76.64</td>
<td>304</td>
<td>100.00</td>
</tr>
</tbody>
</table>

Note. Frequency Missing = 7

Court compliance is based on a scoring of the Court’s required actions, which ranges
from 0–3 Court actions being completed. Here, the Court was most compliant with
completing at least one required action with the Court achieving that at least 60% of the
time as shown in Table 11. The Court Compliance of 1 item occurred in 183 cases. While
the highest level of Court Compliance was achieved only a little over 19% percent, which is
58 cases. The Court had difficulty achieving total mandatory legal compliance and fulfilling all three aspects of reviewing Court Instructions, appointing a Court Visitor, and having a Court Visitor file report. The Court was most compliant with reviewing Court Instructions by the Court Investigator.

Table 11

Court Compliance

<table>
<thead>
<tr>
<th>Court Compliance</th>
<th>Frequency</th>
<th>%</th>
<th>Cumulative Frequency</th>
<th>Cumulative %</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>45</td>
<td>14.80</td>
<td>45</td>
<td>14.80</td>
</tr>
<tr>
<td>1</td>
<td>183</td>
<td>60.20</td>
<td>228</td>
<td>75.00</td>
</tr>
<tr>
<td>2</td>
<td>18</td>
<td>5.92</td>
<td>246</td>
<td>80.92</td>
</tr>
<tr>
<td>3</td>
<td>58</td>
<td>19.08</td>
<td>304</td>
<td>100.00</td>
</tr>
</tbody>
</table>

*Note. Frequency Missing = 7*

Guardian Compliance Actions

An annual report must be filed in every case on an annual basis. The Annual Report provides a summary of the last year regarding the Ward’s current care, condition, and well-being. The Guardian must provide a summary of the Ward’s mental, physical, and social health. In Table 12, one (1) represents yes and two (2) represents no. Here 302 annual reports were filed, which is over 99%; while less than 1% of the cases did not file an annual report.

Each annual report has a separate and individual reporting period. Each annual report has an individual due date based upon the initial qualification date of the Guardian. The reporting period of the guardianship is based on the anniversary of the qualification date. Based on this reporting period, a matter’s due dates are determined. The specific due
date determines whether a report is timely or not. In Table 13, one (1) represents yes and two (2) represents no. Here 223 reports, which is 73.36%, were timely filed. While over 26% of the reports were late.

Table 12

**Annual Report Filed**

<table>
<thead>
<tr>
<th>Annual Report Filed</th>
<th>Frequency</th>
<th>%</th>
<th>Cumulative Frequency</th>
<th>Cumulative %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>302</td>
<td>99.67</td>
<td>302</td>
<td>99.67</td>
</tr>
<tr>
<td>No</td>
<td>1</td>
<td>0.33</td>
<td>303</td>
<td>100.00</td>
</tr>
</tbody>
</table>

*Note. Frequency Missing = 7*

Table 13

**Annual Report Timely Filed**

<table>
<thead>
<tr>
<th>Annual Report Timely Filed</th>
<th>Frequency</th>
<th>%</th>
<th>Cumulative Frequency</th>
<th>Cumulative %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>302</td>
<td>99.67</td>
<td>302</td>
<td>99.67</td>
</tr>
<tr>
<td>No</td>
<td>1</td>
<td>0.33</td>
<td>303</td>
<td>100.00</td>
</tr>
</tbody>
</table>

*Note. Frequency Missing = 7*

In Denton County, a Guardian is required to visit the Ward at least four times per year on a quarterly basis. In Table 14, one (1) represents yes and two (2) represents no. Here over 90% percent of the Guardians made quarterly visits. Two hundred eighty of the matters had Guardians making quarterly visits. While a little under 8% of the Guardians did not make quarterly visits.

Annual Reports must be filled out completely by the Guardian for the Court to approve them. In Table 15, one (1) represents yes and two (2) represents no. Here 258
annual reports, which is almost 85% of the cases were completely filed out. While a little over 15% of the cases did not totally complete the annual report.

Table 14

*Quarterly Visits Done*

<table>
<thead>
<tr>
<th>Quarterly Visits Done</th>
<th>Frequency</th>
<th>%</th>
<th>Cumulative Frequency</th>
<th>Cumulative %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>280</td>
<td>92.11</td>
<td>280</td>
<td>92.11</td>
</tr>
<tr>
<td>No</td>
<td>24</td>
<td>7.89</td>
<td>304</td>
<td>100.00</td>
</tr>
</tbody>
</table>

*Note.* Frequency Missing = 7

Table 15

*Annual Report Complete*

<table>
<thead>
<tr>
<th>Annual Report Complete</th>
<th>Frequency</th>
<th>%</th>
<th>Cumulative Frequency</th>
<th>Cumulative %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>258</td>
<td>84.87</td>
<td>258</td>
<td>84.87</td>
</tr>
<tr>
<td>No</td>
<td>46</td>
<td>15.13</td>
<td>304</td>
<td>100.00</td>
</tr>
</tbody>
</table>

*Note.* Frequency Missing = 7

The Guardian must sign the Annual Report. As shown in Table 16, one (1) represents yes and two (2) represents no. In 301 cases and a little over 99%, the annual reports were signed by the Guardians. On the other hand, three Guardians failed to sign the annual report, which made up almost 1% of the cases.

Guardian compliance is based on a scoring of the Guardian's required actions, which ranges from 1–5 Guardian's actions being completed. Guardians actually scored a compliance grade of 5 over 62% of the time; which was 190 cases. When you consider a compliance grade of at least 4, then the Guardians' grade of compliance is over 89% as shown in Table 17.
Table 16

**Annual Report Signed**

<table>
<thead>
<tr>
<th>Annual Report Complete</th>
<th>Frequency</th>
<th>%</th>
<th>Cumulative Frequency</th>
<th>Cumulative %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>301</td>
<td>99.01</td>
<td>301</td>
<td>99.01</td>
</tr>
<tr>
<td>No</td>
<td>3</td>
<td>0.99</td>
<td>304</td>
<td>100.00</td>
</tr>
</tbody>
</table>

*Note. Frequency Missing = 7*

Table 17

**Guardian Compliance**

<table>
<thead>
<tr>
<th>Guardian Compliance</th>
<th>Frequency</th>
<th>%</th>
<th>Cumulative Frequency</th>
<th>Cumulative %</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1</td>
<td>0.33</td>
<td>1</td>
<td>0.33</td>
</tr>
<tr>
<td>2</td>
<td>6</td>
<td>1.97</td>
<td>7</td>
<td>2.30</td>
</tr>
<tr>
<td>3</td>
<td>25</td>
<td>8.22</td>
<td>32</td>
<td>10.53</td>
</tr>
<tr>
<td>4</td>
<td>82</td>
<td>26.97</td>
<td>114</td>
<td>37.50</td>
</tr>
<tr>
<td>5</td>
<td>190</td>
<td>62.50</td>
<td>304</td>
<td>100.00</td>
</tr>
</tbody>
</table>

*Note. Frequency Missing = 7*

**Case Compliance**

Overall case compliance is combining Court Compliance and Guardian compliance. Case Compliance is based on scoring the combined Court actions along with Guardian's actions. Case Compliance actions range from 1–8. The higher level of case compliance is 8, which was 34 cases. These 34 cases makes a little over 11% of the cases. Case Compliance, which had the largest percentage, 42.76%, of cases, was a score of 6. The lowest compliance score was 1, which was less than 1% of the cases.
Table 18

Case Compliance

<table>
<thead>
<tr>
<th>Guardian Compliance</th>
<th>Frequency</th>
<th>%</th>
<th>Cumulative Frequency</th>
<th>Cumulative %</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1</td>
<td>0.33</td>
<td>1</td>
<td>0.33</td>
</tr>
<tr>
<td>2</td>
<td>1</td>
<td>0.33</td>
<td>2</td>
<td>0.66</td>
</tr>
<tr>
<td>3</td>
<td>8</td>
<td>2.63</td>
<td>10</td>
<td>3.29</td>
</tr>
<tr>
<td>4</td>
<td>26</td>
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Note. Frequency Missing = 7

Research Data Analysis

Once the data was gathered and analyzed, I was able to answer the research questions. The overarching research question was: Is the guardianship program in Denton County effective in protecting the rights of individuals under guardianship? Specifically, the research questions evaluated to answer that question were:

1. Is there a correlation of the incidence of legal compliance based upon gender?

   This exploratory research shows there is no actual correlation based on gender. The research shows in this sampling that there are more female guardians than males. There are more females appointed than males as guardians and there are more male wards. There are more women taking care of men versus men taking care of women as guardians.
2. Is there a clear correlation between the type of guardian and legal compliance? Family guardians are the most compliant type of guardian and the most common type of guardian. Guardians, who have personal knowledge of the Ward are more compliant than Guardians who do not have personal knowledge of the Ward. Guardians, who have a familial relationship with a Ward, are more legally compliant than a Guardian who does not have a familial relationship with a Ward.

3. Is there a clear correlation between the age of the Ward and legal compliance? The incidence of legal compliance varies by Guardian’s and the Court’s action; not the Ward’s age. In this exploratory research, I found no correlation between the age of the Ward and legal compliance.

4. Is there clear correlation of legal compliance based upon the geographic distance between the Ward and Guardian? A guardian, who is geographically closer to a Ward, has a greater incidence of legal compliance as compared to a Guardian who lives farther from a Ward. As a guardian’s geographic distance increases from the Ward, there is greater likelihood that the guardian compliance can decrease.

5. Is there a clear correlation between Court Compliance and overall legal case compliance? The filing of Court Instructions increases the incidence of guardianship legal case compliance. The Court’s highest compliance action is the filing of Court Instructions. This Court filing of Court Instructions is more readily done than the appointing of a Court Visitor.
6. Is there a correlation between the presence of Court Instructions and overall legal case compliance? The filing of Court Instructions is more prevalent than appointing a Court Visitor and filing of reports. This appears related to the fact that Court Instructions are done by a staff member and Court Visitors are volunteers, who have no leader.

7. Is there a clear correlation between the appointment of a Court Visitor and overall case compliance? The appointment of a Court Visitor increases the incidence of guardianship legal case compliance. The Court’s appointment of a Court Visitor is one of the Court’s lowest compliance actions. The only compliance action lower is the filing of a Court Visitor report. Although a Court Visitor was appointed, a Court Visitor report was not always filed. The low Court compliance action appears related to the fact that this Court does not have a Court Visitor Coordinator, who can address the issues. The presence of a dedicated staff member(s) to address the development of a Court Visitor program and to oversee compliance would increase the number of this Court compliance action.

8. Is there a correlation between the Guardian compliance and overall guardianship legal case compliance? The presence of low Guardian compliance creates a lack of guardianship legal case compliance. Legal case compliance is based on the coordinated actions of both the Guardian and the Court with the Guardian having more compliance actions to complete based on the rubric of the Legal Compliance Audit. The presence of low Guardian compliance greatly affects the overall guardianship legal case compliance.
9. The Guardians are more compliant with their responsibilities than the Court is with its responsibilities. The Guardians more consistently filed their reports as compared to the Court appointing a Court Visitor. Although a guardian filed his/her annual report, the Court did not always appoint a Court Visitor. The filing of annual report is an easy automatic trigger to appoint a Court Visitor. The presence of legal compliance is evidence of a guardianship as legally successful.

A guardian, who is legally compliant, has met the necessary required minimum standards. Thus, legal compliance means success. Conversely, presence of non-compliance is evidence the Ward is not receiving the minimum standards of care. Non-compliance can be evidence of lack of care. See Appendix L for a copy of the Non-Compliance Docket Notice. Unfortunately because the Court does not have a fully functioning Court Visitor’s Program, the Court is relying upon the Guardian self-reporting and review of the annual report of the Guardian of the person. Relying upon the Guardian to do self-reporting is not the best way to protect vulnerable individuals. This simple system is the Denton County Court Visitor’s Program. In Denton County, Wards are not fully monitored; which means the Wards of this court are very vulnerable and not being fully protected by the court.
CHAPTER 5
SUMMARY / CONCLUSION / POLICY RECOMMENDATIONS

Summary

In 2013, Denton County had 1,300 existing guardianships with 910 annual reports being filed. The sample was 304 of the 910 guardianship cases, which had an annual report of the Guardian of the person filed in the matter in the year 2013. Eighty-three court visits were completed. The sample population consisted of every third case/annual report, which was filed in the year 2013. A master list of all annual reports filed in 2013 was generated. Once the master list of annual reports for the year 2013 was generated, each file selected was assigned a case research number starting with the number one (1) through to end of every third case on the 2013 master list, resulting in 304 cases. Once the sample population was created, each file was reviewed to determine legal compliance. The screening was through a legal compliance audit. The legal compliance audit is an evidence based rubric to objectively assess the Guardians’ and court’s respective actions.

Each audit provided the demographic information for both the Ward (protected person) and the Guardian. Through the screening process, I documented the demographic differences between the Ward and the Guardian as to sex and age range. I also documented the type of Guardian appointed in each sample file and the Guardian’s geographic location as its proximity to Denton County.

Once all demographic information was determined, the quality of the report was documented. Specifically, with the screening/audit, I documented:

1. the filing of Court Instructions;
2. the filing of the annual report;
3. timeliness of the filing of the annual report;
4. number of visits to the Ward, protected person;
5. quarterly visits;
6. distance between Ward (protected person) and the guardian;
7. annual report completely filled out;
8. annual report signed by guardian;
9. appointment of a Court Visitor; and
10. the filing of a Court Visitor Report.

Conclusion

Once the data was gathered and analyzed, I was able to determine:

1. The incidence of legal compliance varies by the gender of guardian.
2. The incidence of legal compliance varies by the age of Ward.
3. The incidence of legal compliance varies by the type of guardian. Family guardians are the most compliant type of guardian.
4. Guardians, who have personal knowledge of the Ward are more compliant than guardians who do not have personal knowledge of the Ward.
5. Guardians, who have a familial relationship with a Ward, are more legally compliant than a guardian who does not have a familial relationship with a Ward.
6. A guardian, who is geographically closer to a Ward, has a greater incidence of legal compliance as compared to a guardian who lives farther from a Ward.
7. The filing of Court Instructions increases the incidence of guardianship legal case compliance.
8. The appointment of a Court Visitor increases the incidence of guardianship legal case compliance.

9. The presence of low Court compliance creates a lack of guardianship legal case compliance. The presence of legal compliance is evidence of a guardianship as legally successful.

A guardian, who is legally compliant, has met the necessary required minimum standards. Thus, legal compliance means success. Conversely, presence of non-compliance is evidence that the Ward did not receive the minimum standard of care. Non-compliance can be evidence of lack of care.

What Denton County Probate Court is professing as having a Court Visitor’s Program is absolutely not monitoring and protecting a Ward. Denton County Probate Court is not fulfilling its legislative mandate. The basic numbers reflect Denton County is not achieving its legislative and community responsibility.

Policy Recommendations and Proposed Program

Denton County’s monitoring of cases consists of two Court Investigators, one auditor, one guardianship assistant, one court administrator, and four volunteer Court Visitors. This staff group is responsible for aiding the court in overseeing the care and condition of approximately 1,300 Wards and over $30 million in estate assets. The best way to protect vulnerable individuals is through a two prong-system of training and monitoring. Formal guardianship training of the proposed guardians can be done to address guardianship of the person, guardianship of the estate, or both. Formal training of both roles would create the most protection for the Wards of the Court. The more informed and aware an individual guardian is, the better the individual will be in
performing his or her fiduciary duties. Fortunately, guardians in Denton County are provided a brief review of Court Instructions for guardian of the person before the guardian can be issued his or her letters of guardianship. The review of Court Instructions provides an overview of a guardian of the person’s responsibilities. Although the review of Court Instructions is brief, a guardian is still provided with a basic foundation. Denton County Probate Court does provide a very basic and limited guardianship training. The training is a brief overview of the guardian of the person’s responsibilities done by the Court Investigator. The training is very brief lasting approximately 20 minutes and addresses only the guardian of the person duties. The training consists of a list of 10 duties with an attached document about reporting of any abuse, neglect, and exploitation of the Ward. During the training the Court Investigator provides the guardian with a blank copy of the annual report of the person. This blank copy is used as a master copy for the annual report for the guardian to complete each year.

Expanded Guardianship Training

The guardianship training is not only brief; it is very limited in scope. A more effective approach would be to increase the time and the scope of the material. The Court Investigator could cover a more expanded training program or the guardian could be sent to guardianship training through a local agency. If the training by the Court Investigator was expanded, it could be expanded by one of these four options: (1) increased the individual training session time with the guardian; (2) expand the material and time of the training session with the Court Investigator; (3) Court Investigator do a group training session of guardians, and (4) require guardianship training occur prior to a Court hearing being set-up. In Tarrant County probate Court Number 2, Guardians go through training
with its court investigator for 90 minutes reviewing guardian of the person duties. This training is more extensive than Denton County, however it is still insufficient because guardian of the estate duties are not addressed.

Expanded guardianship training could provide an overview of guardian of the estate duties. This overview of guardian of the estate duties is not a substitute for having legal counsel and advice. Although a guardian of the estate is not a guardian of the person, each person understanding the role of the other person promotes better care for the Ward. The Court Investigator providing an introduction and overview of the guardianship of the estate aids both guardian and the guardian’s attorney. Court instructions for guardian of the estate can provide of a list nine items about the estate administration. Then, the Guardian is more aware of his responsibilities and the Court’s expectations, which prepares the Guardian for handling the management of another’s life. The guardian’s attorney is aided because training would emphasize the necessity and the requirement to be represented by an attorney to address the administration of the estate.

As a part of guardianship training, a guardian would be given an essentials checklist form for their specific guardianship case and be given suggestions about how to organize their guardianship file. See Appendix M for a copy of the Guardian Essential Checklist form. The essentials checklist is a form, which would summarize critical necessary information that the guardian will always need. The essentials checklist includes:

1. Ward’s full name,
2. Ward’s date of birth,
3. Qualification date,
4. Reporting period,
5. Due date for reports,

6. Expiration date of letters, and

7. Fiduciary name(s).

The essentials checklist would be provided during training and the guardian would be shown how to complete the checklist. Once the essentials checklist is completed, the guardian would be provided case management suggestions. Some case management suggestions are:

1. file organization guidelines,

2. care logs (See Appendix N for the Guardian Care Log),

3. Guardian/Ward communication sheets (See Appendix O for the Guardian and Ward Communication Log),

4. next of kin contact lists (See Appendix P for the Next of Kin form),

5. caregiver medical appointment summary log (See Appendix Q for the Caregiver Medical Appointment Summary form),

6. care plans (See Appendix I for the Guardian of the Person Plan of Care), and

7. management plans (See Appendix K for the Guardian of the Estate Management Plan).

A guardian being aware of his or her duties not only increases the guardian’s knowledge; it also decreases the stress and perceived burden on the guardian. The perceived burden is great on fiduciaries because the fiduciary has double the stress of the Ward. The guardian has his or her own stress plus the Ward’s stress. The Ward is generally not aware of his or her stress. A guardian’s stress can be identified on a continuum. A guardian is least stressed when the Guardian is aware and has foreseeable
circumstances and no family involvement. Training helps to prepare a guardian for foreseeable circumstances. The stress of a guardian then increases when unforeseen circumstances occur. Unforeseeable circumstances on the guardian are the beginning of the guardian's stress level increasing. Unforeseen circumstances can include: Ward becoming pregnant, property destroyed, Ward commits a crime, and the Ward runs away. The stress level and perceived burden further increases when the guardian starts having interaction with family involvement and foreseeable circumstances. Family involvement can lead to increased contact with the Ward, grievances against the guardian, and additional legal actions. The guardian has the most stress when the circumstances are unforeseen and family members are involved. As previously outlined, the unforeseen events with the additional layering family dynamics is the highest level of stress on a guardian.

Court Monitoring

Although the review of Court Instructions is brief, a guardian is still provided with a basic foundation. The other ingredient of a successful guardianship in the protection of a Ward is the use of court monitoring. Unfortunately, the other ingredient of court monitoring is not as expansive and robust as it should be to protect the Wards of the Court. Court monitoring, which provides the best protection for an incapacitated person, involves:

1. utilizing computerized case management,
2. maintaining a compliance docket,
3. the filing of reports,
4. reviewing of reports,
5. the filing of accountings,
6. auditing accountings,

7. investigating complaints, and

8. the visiting of Wards.

Denton County Probate Court does well with the reviewing of filed reports, investigating complaints, setting a compliance docket, and auditing accounts but fails on utilizing a computerized case management system, maintaining a compliance docket, filing of reports, filing accountings, and conducting visits of Wards. Thus, Wards in Denton County have a limited form of protection. In order for the Wards of the Denton County Probate Court to have the best care and meet all minimal standards, Denton County Probate Court needs to provide increased training, tracking of filing of reports, increased filing of accountings, a computerized case management system, and court conducted visits. Thus, Denton County probate Court needs to develop a Court Visitor Monitoring Program. In order to have a fully-operational court visitor monitoring program, Denton County Probate Court would need a chief court visitor/coordinator to conduct visits of Wards and develop a Court Visitor Monitoring Program.

A court visitor monitoring program would consist of the listed staff members:

1. Court Investigators,

2. Auditors,

3. Administrative assistant/paralegal,

4. Court Visitor Program coordinator,

5. Volunteer court visitors,

6. Student Interns, and

7. Judge.
The court visitor monitoring program would be a piece of the court’s overall monitoring of a guardianship. The Court is responsible for monitoring the care, condition, and well-being for 1,300 Wards and over $30 million in estate assets. It is critical to have an administrative assistant/paralegal to assistant in creating and establishing a computerized database of guardianship cases. The computerized database would track all the guardianships and be able to categorize and search the guardianship database by any of the listed categories:

1. zip code,
2. type of guardianship,
3. type of facility,
4. specific facility,
5. guardian,
6. gender,
7. diagnoses,
8. age,
9. court investigator, and
10. court visitor.

Once the computerized database was established, it would be necessary to address the physical infrastructure. A court visitor’s office already exists with only 400 court visitor’s files already existing. The other 900 guardianship cases need court visitor files created. The Court Visitor’s office also needs sufficient file cabinet space, work stations for Court Visitors, and computer and phone access. Once the files are created, there is a need to develop the following monitoring forms:
1. Complaint form,
2. Annual Report review form,
3. Annual accounting review form, and
4. Compliance docket failure notice.

Court Visitor Coordinator

Once a Court Visitor/coordinator is established, a case management compliance system and procedure must be established. Required reporting dates and due dates would be calendared into the document management system. Once all the data entry dates are entered, the document management system would be able to run reports for cases, which have pending due dates for a specific period. Court staff would be able to determine, which cases are upcoming and which are late. This type of system can be used as a notice and a compliance system. As a notice system, guardians and the court could be reminded of upcoming events. As a part of the compliance system, due dates can be set on the court’s compliance docket and when the document is filed, the matter would be removed from the compliance docket. However, if the document was not filed, a compliance docket failure notice would be sent then the appropriate staff members could follow-up and take the necessary action. Having a computerized case management system would allow the court to be more organized and efficient. This type of system would also allow the court to track productivity.

Utilizing a coordinated effort of the manpower of a Court Visitor coordinator and a computerized case management system would allow the court to accurately track the actual number of cases and determine who has actually filed and who has not filed. The current system is based upon what has been filed and the overall case load is not tracked.
As it is already determined, there were approximately 1,300 cases and only 910 annual reports filed. This is a difference of 400 cases. Having the coordinated effort of the manpower of a Court Visitor coordinator and a computerized case management system would begin to allow the court to actually determined specifics of these 400 unknown cases. Simultaneously, the court auditor would be able to track the estates and determine any outstanding inventories, management plans, and accountings. The auditors, Court Visitor coordinator, and the computerized system would begin to allow a concerted effort in tracking the guardianship cases.

The last and most critical aspect of court monitoring, which the Denton County Probate Court needs to address is the appointment of Court Visitors. A Court Visitor coordinator would be responsible for developing a program. Developing a program would involve recruiting, training, and retaining volunteers; supervising visitors, conducting visits; devising forms, and tracking results of program. In order to create a pool of volunteers, the Court Visitor coordinator could utilize university students in the area of sociology, psychology, gerontology, and pre-health care fields. The court could create a visitor internship program for the students, make this a formalized program, and have set requirements for completion of this visitor internship program. Additionally, because one of the Court Investigators is a licensed occupational therapist, level 1 occupational therapy students could serve as a court visitor. Another source of court visitors is AARP. Having a regular working pool of Court Visitors would allow the court to start achieving its legislative mandate to visit all the Wards at least one time annually. Because of the complexity and conflict in some guardianship cases, the Ward needs to be visited more frequently than annually.
Proposed Best Practices for Denton County Probate Court

The best practices for a Court Visitor Monitoring Program for the Denton County Probate Court would consist of:

1. maintaining the current staffing arrangement;
2. employ a full time paid Court Visitor coordinator;
3. recruit, train, and retain volunteer visitors;
4. utilize a computerized case management system;
5. utilize and manage the compliance docket;
6. develop and implement guardianship training for the person and estate;
7. filing and reviewing of care plans and management plans in every case;
8. appointing a Court Visitor in every case;
9. forming partnerships with the community (i.e., universities, AARP, professional organizations, etc.);
10. integrate and coordinate within the overall monitoring system of the court; and
11. track results of the guardianship monitoring program.

A gerontologist or aging specialist would be a suitable and appropriate person to serve as a chief court visitor/coordinator. A gerontologist has the training, expertise, and experience to conduct visits, develop a volunteer program, create forms, and develop databases. Denton County Probate Court and the Wards of this Court would benefit from working with a gerontologist and/or aging specialist. Because the aging population is increasing and the numbers of guardianships are increasing, a gerontology specialist would be beneficial to Denton County Probate Court and the citizens of Denton County.
APPENDICES
Appendix A

AUDITOR REVIEW
AUDITOR REVIEW

Case: ___________________    Cause No.: ___________________

Pleading Reviewed: Account for Final Settlement of Guardianship

Date Filed: _______  Recommended Action: _______  Approval ___  Denial ___

Applicable Statutes: Texas Probate Code §749-752

Citation issued to ward (if living) or to executor of ward's estate (if deceased).

Beginning balance reconciles with Inventory/most recent Accounting.

Description of property coming into Guardian’s hands.

Description receipts.

Disposition of property.

Description of property remaining in Guardian’s hands.

Debts paid and debts still owing.

Tax returns filed/delinquent and taxes paid and to which governmental entity.

Bond premiums paid.

Accounting balances.

Sworn Guardian. ___________________    Date: ________________

By:  Carol P. Dabner    Date: ________________
Appendix B

GUARDIANSHIP DEFINITIONS
GUARDIANSHIP DEFINITIONS

1. **Attorney ad Litem:** Per Texas Estates Code Section 1002.002, an attorney appointed by a court to represent and advocate on behalf of a proposed Ward, an incapacitated person, an unborn person, or another person described by Texas Estates Code Section 1054.007 in a guardianship proceeding.

2. **Court or Probate Court:** Per Texas Estates Code Section 1002.008, means a county court exercising probate jurisdiction; a court created by statute to exercise original probate jurisdiction; or a district court exercising original probate jurisdiction in a contested matter.

3. **Court Investigator:** Per Texas Estates Code Section 1002.009 a person appointed by the judge of a statutory probate court to investigate guardianship cases.

4. **Court Visitor:** Per Texas Estates Code Section 1054.102, a court visitor is an individual appointed by the Court to assess the conditions of the wards and proposed wards of the Court.

5. **Guardianship Estate:** Per Texas Estates Code Section 1002.010, estate is the Ward’s property.

6. **Guardian:** Per Texas Estates Code Section 1002.012, a guardian refers to both guardian person and guardian of the estate.

7. **Guardian ad Litem:** Per Texas Estates Code Section 1002.013, Guardian ad Litem is a person appointed to represent the best interests of an incapacitated person.

8. **Incapacitated Person:** Per Texas Estates Code section 1002.017(2), incapacitated person means an adult who because of a physical or mental condition, is
substantially unable to provide food, clothing or shelter for himself or herself; care for the person’s own physical health; or manage the person’s own financial affairs.

9. Private Professional Guardian (PPG): Per Texas Estates Code Section 1002.025, a PPG is a person involved in the business of guardianship services.

10. Proposed Ward: Per Texas Estates Code Section 1002.026, the Proposed Ward means a person alleged in a guardianship proceeding to be incapacitated.

11. Ward: Per Texas Estates Code section 1002.030, Ward means a person for whom a guardian has been appointed. Ward is also referred to as the Protected Person.
Appendix C

GUARDIANSHIP CASE COMPLAINT FORM
GUARDIANSHIP CASE COMPLAINT FORM

NAME OF WARD: ________________________________________________________
ADDRESS OF WARD: ____________________________________________________
TELEPHONE NUMBER OF WARD: _________________________________________
CAUSE NUMBER (if known): _____________________________________________

COMPLAINING PARTY'S NAME: ___________________________________________
COMPLAINING PARTY'S ADDRESS: __________________________________________
TELEPHONE: ___________________________________________________________
EMAIL: __________________________________________________________________
RELATIONSHIP TO WARD: _______________________________________________
NAME OF GUARDIAN: _____________________________________________________
GUARDIAN'S RELATIONSHIP TO WARD: ____________________________________
COMPLAINANT'S RELATIONSHIP TO GUARDIAN: _______________________________
NATURE OF COMPLAINT: _________________________________________________

COLLATERAL CONTACTS: ____________________________________________________________________

WHAT YOU WISH TO SEE CHANGED: ____________________________________________

DID YOU CALL APS: YES _______ NO _______
IF YES, CASE NUMBER: _____________________________________________

APS CASE WORKER WITH TELEPHONE NUMBER: ____________________________

DID YOU CALL THE POLICE: YES _______ NO _______
IF YES, POLICE REPORT NUMBER: _________________________________________

________________________________________  ______________________________
Signature                                                                 Date

______________________________
Printed Name
Appendix D

COURT INSTRUCTIONS
COURT INSTRUCTIONS

CAUSE NO.: __________

IN RE: GUARDIANSHIP OF §

IN THE PROBATE COURT

§

THE PERSON OF §

§

§

§

OF

OF

DENTON COUNTY, TEXAS

COURT INSTRUCTIONS TO THE GUARDIAN / CO-GUARDIANS OF THE PERSON OF AN INCAPACITATED PERSON

As the duly appointed Guardian of this person, The Court advises that you must do the following:

1. File your Oath and the Judge signed Bond within twenty (20) days of the date the Order. You are not eligible for your Letters of Guardianship until you submit the Bond and the Judge signs it. Letters of Guardianship are what give you authority; they must be renewed each year. We suggest giving a copy of the letters of Guardianship to the Ward’s (hereinafter referred to as “Protected Person”) physician, place of residence, and any agency involved with the Protected Person.

2. File your sworn Annual Report of the Person each year on the anniversary date of your appointment. The due date, or Anniversary date, is the date in which your Bond was signed by the Judge.

3. A copy of the Annual Report of the Person is enclosed. It is suggested that you make copies of it to use each year. If this report is not filed each year your Letters of Guardianship will expire four (4) months after the Anniversary date. At that time your letters of Guardianship are not effective and you are out of compliance with this Court. This report contains all information required by the Estates Code, Section 1163.101. Please fill it out completely with as much detail as possible. The report will be reviewed by Court staff and a recommendation will be made to the Judge as to whether or not the Letters of Guardianship should be renewed. When he/she approves the report the clerks will process it and send you a copy of your renewed letters. The Letters of Guardianship do not have the Judge’s signature; they are issued by the Clerk’s department in accordance with Chapter 1106 of the Texas Estates Code. If you want a copy of the report for your own records, please include that with the original report. Also included should be a self-addressed stamped envelope so your documents may be mailed to you. There is a filing fee of $4 to file the Annual Report of the Person each year which is payable, by cashier’s check or money order, to the Denton County Clerk. If you wish, you can mail your report to the address of:

Probate Court
1450 East McKinney, Suite 2412
Denton, Texas 76209
4. Denton County has a standing requirement for face-to-face visitation with the Protected Person. It is the policy of the Court that any Guardian(s) make necessary arrangements for minimum visitation with the Protected Person at the Protected Person’s place of residence on a quarterly basis (once every three (3) months), except for good cause shown.

5. Keep all Social Security funds you receive on behalf of the Protected Person separate and apart from Guardianship funds. You will have to account to the Social Security Administration for the use of these funds.

6. Per Texas Estates Code, Section 1054.102-1054.105, the Denton County Statutory Probate Court has a Court Visitor Program. The Court Visitor Program was established to assess the conditions of Protected Persons and Proposed Protected Persons. A Court Visitor is appointed by the Judge, is entitled to visit the Protected Person or Proposed Protected Person at any time, and has access to all medical, psychological, and intellectual records. The Court Visitor is required to file a written report to this Court. This Court will require you as a Guardian to comply and cooperate with the Court Visitor.

7. If you are Guardian of the Person Only please file a Final Report of the Person upon the death of the Protected Person or when the Protected Person reaches eighteen (18) years of age. If the Protected Person changes residences or passes away please notify this Court, in writing, within ten (10) days. Texas law requires that you file a sworn affidavit within 60 days after the date that the guardianship be settled due to death, restoration, or majority of the Protected Person that states 1) the reason the guardianship was terminated and 2) to whom the Guardian of the Person distributed the personal property of the Protected Person per Texas Estates Code 1204.108.

8. Read the “Emergency Procedure for Suspected Sexual/Physical Assault” and carry out said emergency steps if necessary.

9. Consult your attorney on any matter regarding this Guardianship that you do not understand.

10. If you have questions regarding the Annual Report of the Person, Court Visitor Program, or any other matter the Court can assist please do not hesitate to call:

   Carol Dabner, JD, OTR, NMG  
   Probate Court Attorney Investigator  
   Denton County, Texas  
   940-349-2148

   Carol “Missy” Rainey, LBSW  
   Probate Court Investigator
Denton County, Texas
940-349-2149

Diana Holland
Guardianship Administrative Assistant
Director, Court Visitor Program
940-349-2144

We / I, the Agent for Guardian / Co-Guardians / Guardian of this person, hereby attest that we / I have read the above instructions and their attachments and understand their contents.

________________________  _____________________
Guardian                     Date

________________________  _____________________
Guardian                     Date
Denton County Probate Court
Suggested Emergency Steps
For a suspected physical/sexual assault of a Protected Person:

The following steps shall be **completed by the Guardian immediately** upon notice that an assault has occurred:

- **Go to the location of the Protected Person to assess the situation.**
  Has the facility called the police? When did it happen? Is staff minimizing the incident?

- **Assess the condition of the Protected Person:**
  Visibly upset? Bruises, bites, or scratches?

- **Call Adult Protective Services and make a report (800-252-5400).** *(Call APS even if someone else says they have already made a report.)*

- **Meet the police at the site of the incident (group home, workshop, etc.) to ensure a police report is filed and an investigation is initiated.** In the case of a sexual assault, ask if police authorization is required for a rape exam at the hospital and seek to preserve DNA evidence at the scene.

- **Take or arrange transportation for the Protected Person to go to the hospital for a sexual assault exam and/or a medical exam.** *(Be sure to take your Letters of Guardianship with you.)*

- **Call the Court Investigator’s Office to notify the Court (940-349-2149, 940-349-2148 or 940-349-2144) and let the Investigator know what arrangements have been made for the Protected Person, which includes an identification of where the Protected Person is living. Also, call the Investigator during the period of the community agency’s investigation of the incident and inform her of the progress being made.** *(If the incident occurred over the weekend/evening, call and leave a message on voice mail and include a number where you can be reached the next business day.)*
• Develop a safety plan:
  • Make arrangements **immediately** to move the Protected Person to a safe place (respite home, nursing home, etc.)
• **Ensure** that the alleged perpetrator has been removed if the Protected Person is going to return to the same home.
• Additional staff should be assigned to provide an increased level of supervision and protection.
• Contact the Victim’s Assistance Liaison in the police department of the city where the alleged assault took place. Ask the Liaison to keep you informed regarding the progress of the investigation in a timely manner. If the assault took place outside the city limits, contact the Victim’s Services within the District Attorney’s Office in the county in which the incident occurred.
Appendix E

ANNUAL REPORT OF THE PERSON
ANNUAL REPORT

| CAUSE NO.: __________________ |
| IN RE: GUARDIANSHIP § IN THE PROBATE COURT § |
| OF THE PERSON OF § OF § |
| § DENTON COUNTY, TEXAS |

Please answer each question as completely as possible. All questions must be answered. The Oath of Guardian must be notarized. Incomplete reports will delay the issuance of Letters of Guardianship.

ANNUAL REPORT OF CO-GUARDIANS OF THE PERSON

Now comes _______________ and _______________, Co-Guardians of _______________, Ward in the above entitled and numbered cause, and files this report covering the time period of ____________, 20__ through ____________, 20__, concerning the Ward’s physical well-being, location, and condition pursuant to Section 1163.101 of the Texas Estates Code.

1. Ward’s name:
2. Ward’s date of birth: _______________ Age:
3. Ward’s address:
4. Ward’s phone number:
5. Co-Guardians’ name:
6. Co-Guardians’ address:

(If Co-Guardians reside separately, provide both addresses.)

7. Co-Guardians’ phone number(s):
8. Co-Guardians’ email address(es):
9. Co-Guardians’ relationship to Ward:
10. Check the type of residence in which the Ward lives:
    □ Guardian’s home (If Co-Guardians reside separately, identify which Co-Guardian is the custodial Co-Guardian.)
    □ Ward’s own home
    □ Denton State Supported Living Center
☐ Nursing home (Name of facility):
☐ Group home (Operated by): ____________________________
☐ Other:

11. How long has the Ward resided at his/her current residence? __________

12. Has the Ward’s residence changed in the last twelve months?
   ☐ No ☐ Yes
   If yes, please provide the date of change and the reason for the change:

13. As the Co-Guardians do you believe the Ward is content with his/her living arrangements?
   ☐ Yes ☐ No
   If no, please provide a brief explanation:

14. As the Co-Guardians do you believe the Ward has any unmet needs?
   ☐ No ☐ Yes
   If yes, please provide brief explanation:

15. As the Co-Guardians we rate the Ward’s living conditions as:
   ☐ Excellent ☐ Average ☐ Below Average
   If below average, please explain:
   As the Co-Guardians we have taken the following steps to improve the living conditions:

16. As the Co-Guardians we rate the Ward’s day to day care as:
   ☐ Excellent ☐ Average ☐ Below Average
   If below average, please explain:
   As the Co-Guardians I have taken the following steps to improve the day to day care:

17. The Ward’s primary physician is:

18. Check the appropriate box if the Ward has been seen by any of the following health care providers within the last year:
   ☐ Psychiatrist: Name Treated for:
   ☐ Psychologist: Name Treated for:
   ☐ Dentist: Name Treated for:
   ☐ Other: Name Treated for:

19. During the past year the Ward’s physical health has:
   ☐ remained the same
   ☐ improved
   ☐ deteriorated
If improved or deteriorated, please explain:

20. During the past year the Ward’s mental health has:
   □ remained the same
   □ improved
   □ deteriorated
   If improved or deteriorated, please explain:

21. Does the Ward have an estate? (SSI benefits are not an estate) □ No
   □ Yes
   If yes, are you the Co-Guardians of the Ward’s estate? □ Yes
   □ No
   If yes, have you filed your Annual Account? □ Yes □ No

22. Do you receive money for acting as the Ward’s Co-Guardians? □ No □ Yes
   (SSI for the Ward is not considered payment for you to act as the Guardian.)

23. Do you receive any funds for the Ward’s care? Please identify all that apply.
   SSI: Amount:
   SSDI: Amount:
   VA: Amount:
   SS Survivor Benefits: Amount:
   Trust Account: Amount:
   Other: Amount:

24. If you receive funds for the Ward’s care, in what kind of account are the funds maintained?
   Separate designated account: □ Yes □ No
   Joint account with Ward: □ Yes □ No
   Other: Please identify:

25. When the Guardianship was granted as the Co-Guardians we posted a:
   □ personal surety bond □ cash bond □ corporate bond
   If a corporate bond was posted have you paid the premium for the next reporting period?
   □ Yes □ No

26. As the Co-Guardians we believe our Guardianship powers should:
   □ remain the same
   □ be increased
   □ be decreased
   If increased or decreased is selected please explain:

27. The Denton County Probate Court has a standing requirement for all Guardians to have face-to-face visits in the Ward’s residence a minimum of four times per year spread throughout the year.
As the Co-Guardians have you met this requirement? (If the Co-Guardians reside separately identify how often each Co-Guardian visits.)

□ No

Please explain why you have not visited:

□ Yes, we □ reside with the Ward; or we visit □ weekly □ every other week □ monthly

Please list the dates of visits if different from the choices above.

28. During the past year the Ward has participated in the following activities:

□ Recreational: (list activities)
□ Educational: (list activities)
□ Social: (list activities)
□ Occupational: (list activities)
□ Limited ability to participate but enjoys: (list activities)

29. Please use this space to share any other information that you would like the Court to know about the Ward and/or your role as Guardian including any new medical issues or concerns:

This Annual Report must be sworn before an officer authorized to administer oaths before it will be accepted for filing.
OATH OF GUARDIAN

THE STATE OF TEXAS § §
COUNTY OF §
BEFORE ME, the undersigned authority, on this the ___ day of ____________, 20___, who duly sworn, states that the within and foregoing report is true, correct, and a complete statement of the present location, condition, and well-being of ______________________, an Incapacitated Person, as of the date stated herein.

Guardian: (signature) ______________________
Printed Name: ____________________________
Current Address: __________________________
County, State, Zip: __________________________

SWORN TO AND SUBSCRIBED BEFORE ME, on this the ___ day of ____________, 20___.

(Seal)
Notary Public in and for the State of Texas
BOTH CO-GUARDIANS ARE REQUIRED TO SIGN AN OATH

OATH OF GUARDIAN

THE STATE OF TEXAS § §
COUNTY OF §

BEFORE ME, the undersigned authority, on this the ___ day of _____________, 20___, who duly sworn, states that the within and foregoing report is true, correct, and a complete statement of the present location, condition, and well-being of ____________________, an Incapacitated Person, as of the date stated herein.

Guardian: (signature)
Printed Name: ________________
Current Address: ________________
County, State, Zip: ________________

SWORN TO AND SUBSCRIBED BEFORE ME, on this the ___ day of _____________, 20___.

(Seal)
Notary Public in and for the State of Texas
Appendix F

COURT VISITOR’S REPORT
IN THE MATTER OF THE § IN THE PROBATE COURT
§ GUARDIANSHIP OF § OF
§ §
_________________________ § §
AN INCAPACITATED PERSON § DENTON COUNTY TEXAS

COURT VISITOR’S REPORT: ADULT

The following information is given under oath:

A. Visitor Information
Name of Visitor: ______________________
Date of Order: _________
Date of Visit with the Ward (hereinafter referred to as Protected Person): __________
Circle one: Annual Visit Visit on Complaint: (For visits on complaints, visitor is to complete entire CV report form and attach separate sheet detailing complaints and findings)

B. Protected Person’s Information
Name: ________________________ Age: ______ Private Home or Facility
Name:__________________________
Address:_________________________
__________________________Phone:________________________
Ethnicity:_________ Gender: ______
Nature of Incapacity:__________________________
C. Guardian Information
Name: __________________________________________
Relation to Protected Person: ____________
Address: __________________________________________
_________________________________________ Phone: __________________________
E-mail: ____________________________Cell Phone: ___________
Date last “Guardian of the Person Annual Report” completed: ___________
If report is past due, provide the Guardian with the Guardianship Administrative
Assistant’s phone number (940-349-2144) and advise them to call to find out how to come
into compliance.

D. Visitation by Guardian
Does the Protected Person live with the Guardian? ____ If no, answer below:
Date of Guardian’s most recent visit:_________ Source: _________________
Number of visits by Guardian in last 12 months:____ Source: __________
List name(s) and relationship to the Protected Person of individuals who visit the Ward
other than G:
____________________________________________________________________
According to the Protected Person, date of Guardian’s most recent
visit:_________ According to the Protected Person, # of Guardian’s visits in last 12
months:________
Can the facility reach the Guardian by phone? ______
If no, please provide more information: ________________________________

Were you able to reach the Guardian by phone? _____
If no, please explain: ________________________________________________
____________________________________________________________________
Comments regarding conversation with Guardian(s):
E. Nature & Degree of Incapacity/ Medical History

Primary Care Physician’s
Name:____________________________________ Address:____________________________________________________
____ Phone:________________________________
Date of primary care physician’s last visit:___________________
List any other physicians:____________________________________
_______________________________________________________________
Medical/Psychiatric Diagnoses:____________________________________
_______________________________________________________________
_______________________________________________________________
_______________________________________________________________
List the Protected Person’s medications:___________________________
_______________________________________________________________
_______________________________________________________________
_______________________________________________________________

Probable course of the Protected Person’s major medical problem:

❑ Stable  ❑ Improving  ❑ Deteriorating
If improved or deteriorated, explain: _____________________________
Injuries to or hospitalizations within the last 12 months:
_______________________________________________________________
_______________________________________________________________

Identify if receiving service and describe; Dental:________________________
Speech Therapy_________________ Physical Therapy________________
Occupational Therapy____________
Comments:
F. Social/Community Services
Does the Protected Person receive any agency based services? ______________
If no, explain ________________________________

If yes, complete the following:
Provider’s Name/Agency:________________________ Phone:________
Provider’s Name/Agency:________________________ Phone:________
What services does the Protected Person receive: ______________________________
______________________________________________________________________
______________________________________________________________________
Comments:
______________________________________________________________________
______________________________________________________________________

G. Living Conditions
Type of residence: Private Home  Group/Foster Home  Nursing Home  Assisted Living
State School  Other: ______________
If private home, list name(s) and relationship of occupants to the Protected Person:
Length of time at current residence:______________
Condition of residence:_______________________
Does the Protected Person have his/her own room?_______
Is the room appropriately furnished?_____ Air-conditioned?_____ Heated?_______
Any offensive odors?___________________________
Is residence appropriate for the Protected Person's needs?_______________
Is there a smoke alarm? _____ If so, does it work? _____
Comments:
H. Social Conditions
Can the Protected Person participate in activities? __________
Is so, list activities:________________________________________________________
__________________________________________________________________
Comments:

I. Intellectual/Educational
Is the Protected Person aware of the current date? __________
Does the Protected Person know where he/she is located? __________
Is the Protected Person able to verbally communicate? ______
If not, describe other means of communication:
__________________________________________________________________

Does the Protected Person respond to his/her name? __________
Is the Protected Person attending high school or college classes? __________
If so, give name of school and/or classes taken:
__________________________________________________________________
Comments:

J. Physical Conditions
Is the Protected Person’s body clean? _____ appropriately dressed? _______
clothing clean? _____ hair clean and appropriate? _______
Is the Protected Person continent of bladder? _____ bowels? _______
Is the Protected Person bedridden? _______
Does the Protected Person have bedsores? _____ If so, are they being treated? ______
Can the Protected Person walk independently? _______
If not, what do they use: __wheelchair __walker __cane
Comments:

K. Workshop/Dayhab/Employment
Does the Protected Person work/attend dayhab? __________
Name of workshop/employer/dayhab: __________
Days/Hours attended: __________
Type of work/activities: __________
Comments: ____________________________________________________________________

L. Recommendations
1. _____ Guardian’s powers should remain the same.
2. _____ Guardian’s powers should be decreased.
3. _____ Guardian’s powers should be increased.
4. _____ Guardianship should be removed because the Protected Person
   has regained total capacity.
5. _____ Guardian wishes to resign
6. _____ Guardian should be removed.
7. _____ Guardianship should be transferred
8. ____ Guardianship should be closed 
9. ____ Guardianship should be reviewed

Explanation: (for items 2 - 9)

M. Persons Consulted During Visit (relation to the Protected Person and their telephone number)

I hereby swear, under penalty of perjury, that this report is accurate to the best of my knowledge.

SIGNED this ___ day of _____________, 20__.

______________________
Court Visitor

SUBSCRIBED AND SWORN TO BEFORE ME UNDER PENALTY OF PERJURY by
______________________, Deputy Clerk, on this ___ day of ________, 20__.

______________________
JULI LUKE, DENTON COUNTY CLERK
Appendix G

LEGAL COMPLIANCE SCREENING AUDIT
WARD DEMOGRAPHIC INFORMATION

Name:______________________________________________________
Address:____________________________________________________
Date of Birth:_______ Age:__________
Sex: Male Female
Age Range: 18 – 40 41 – 60 over 60
Race: Caucasian African American Hispanic Asian Other

GUARDIAN DEMOGRAPHIC SUMMARY

Name:______________________________________________________
Address:____________________________________________________
Sex: Male Female
Same sex as Ward: Yes No
Private Professional Guardian (PPG) Yes No
Attorney Yes No
Family Member Yes No
Age: range 18-40 41 – 60 Over 60
Same age range as Ward: Yes No
Friend Yes No
Age: range 18-40 41 – 60 Over 60
Same age range as Ward: Yes No
Race: Caucasian African American Hispanic Asian Other
Same race as Ward: Yes No

Level of education
a. Did not complete high school
b. Completed high school
c. Completed college
d. Completed graduate school
COMPLIANCE CHECK

1. Are Court Instructions filed?  
Yes  No
2. Is annual report filed?  
Yes  No
3. If yes to number 2 above, then complete the following:
   a. Date filed:____________________
   b. Due date:____________________
   c. Is it timely?  
      Yes  No
   d. Expiration date:________________
4. Number of visits to Ward___________
5. Are visits quarterly?  
Yes  No
6. Distance between Guardian and Ward
   a. Within Denton County
   b. In one of the contiguous counties
   c. Beyond the contiguous counties
7. Annual report completely filled out?  
   Yes  No
8. Is annual report signed by Guardian?  
   Yes  No
9. Is or has been a Court Visitor assigned?  
   Yes  No
10. Has a Court Visitor report been filed?  
    Yes  No

Score: Total number of Yes answers__________

_________________________________________________________________________
Reviewer  Date

Compliance Scale Rating

8     =     High compliance
6 – 7 =     Moderate compliance
5 or less =     Low compliance
Appendix H

GUARDIAN OF THE ESTATE COURT INSTRUCTIONS
CAUSE NO.:________________________

IN RE: GUARDIANSHIP OF § IN THE PROBATE COURT

THE PERSON § OF

§ § DENTON COUNTY, TEXAS

ACKNOWLEDGMENT OF RESPONSIBILITIES/COURT INSTRUCTIONS

FOR GUARDIAN OF THE ESTATE

I _______________, guardian of the estate for_______________________, acknowledge my responsibilities as Guardian of the Estate are as follows:

(1) Retain an attorney

I will retain an attorney to represent me as guardian at all times. Although I may change attorneys, I must always be always be represented by an attorney with regard to the guardian of the estate. I never, ever can be a pro se litigant in this matter as guardian of the estate. I understand I am to seek the assistance of my attorney if I have any questions concerning my responsibilities.

(2) Pay the bond premium when due

I understand that the bond is for my protection and the protection of the ward, and I will pay the premium of the bond to the bond company when it is due. I understand I do not need prior Court approval to pay the bond premium.

(3) Submit an Initial Inventory

I will cooperate with my attorney in preparing an inventory, and I will proceed accurately and timely records to my attorney of all financial transactions of the estate. I understand an inventory is due within 30 days of my qualification as guardian of the estate.

(4) Provide for monthly allowance

I will review the ward’s expenses and monthly income and file an application for monthly allowance within 30 days of my qualification as guardian of the estate. I will review the ward’s expenses on a periodic basis to ensure the ward’s financial needs are being met and within the monthly allowance that has been established.

(5) Notify all creditors

I will send all notices to creditors as prescribed by the Texas Estates Code.
(6) Obtain Court permission prior to buying or selling anything
I understand that, as guardian of the estate, I must request Court permission to purchase
or exchange property, to take a claim or to use property for the benefit of the ward, to
compound a debt, to compromise or settle a dispute, to abandon worthless or
burdensome property and to establish a trust for the ward.

(7) Invest assets appropriately
I will invest all guardianship assets in accordance with Texas Estates Code Section
1161.003 or as otherwise set forth in a Court-approved investment plan.

(8) Provide annual account
I will cooperate with my attorney in preparing the annual account, and I will provide
accurate and timely records to my attorney of all the financial transactions related to
this estate. I will submit all necessary documents as requested by the Court.

(9) Submit a final account
When closing guardianship of the estate is appropriate, I will have my attorney file a
final account with the Court. Once approved, I will seek to be discharged and released as
the guardian of the estate.

I understand the Court’s staff is as follows:

Probate Auditor/Attorney, (940) 349-2147

Carol Dabner, Probate Court Attorney Investigator, (940) 349-2148

____________________________  ________________________
Guardian                     Date
Appendix I

GUARDIAN OF THE PERSON PLAN OF CARE
GUARDIAN OF THE PERSON CARE PLAN

____(NAME)______Guardian of the Person for _____________ (Ward), an incapacitated person, submits the following Guardian of the Person Care Plan showing the following:

I. 

Current Situation of the Ward (Protected Person)

Age:_________________ Date of Birth:________
Height:_____________ Weight:_____________
Address:__________________________________________________

Does the Protected Person live alone? YES NO
If no, name, address and telephone number of individual or place of residence for Protected Person:____________________________________________________

Marital Status: ______________________________________________
Medical Diagnoses:_____________________________________________

Overview of Protected Person's current living arrangements and care:

Environmental Surroundings:
Type of Residence:____________________________________________
Size:__________________________________________________

Protected Person’s Room and Immediate Surroundings (Please describe):_____

_________________________________________________________________________________________________________

Caregiver assistance? YES NO
If yes, how and to what degree:______________________________

__________________________________________________________________

Feeding/Eating: INDEPENDENT NEEDS ASSISTANCE DEPENDENT

Typical meals:__________________________________________________

Meal Preparation:_______________________________________________

Type of Diet:___________________________________________________

Dietary restrictions:____________________________________________

Dressing/Bathing/Grooming:

Assistance: YES NO
If yes, how and to what degree:______________________________

__________________________________________________________________

Instrumental Activities of Daily Living (i.e. laundry, grocery shopping, banking etc.)

Assistance: YES NO
If yes, how and to what degree:______________________________

__________________________________________________________________

Mobility:________________________________________________________Assistance: YES NO
If yes, how and to what degree:______________________________

__________________________________________________________________

Transfers: INDEPENDENT NEEDS ASSISTANCE DEPENDENT

Is this setting the most appropriate to meet the needs of the Protected Person? YES NO
If yes, provide reasons as to placement?____________________________
If no, provide a statement as to how this is being corrected?___________________

Is this setting the least restrictive to meet the needs of the Protected Person?

YES          NO

If yes, please provide reasons as to placement?_____________________________

________________________________________________________________________________________________________
________________________________________________________________________

If no, please provide reasons as to how this is being corrected?________________

__________________________________________________________________
__________________________________________________________________

II.

**Short-Term and Long-Term Goals for Ward**

1. Provide list of three (3) proposed plans and goals for the Protected Person over the next 1 year.

   A.___________________________________________________________

   B.___________________________________________________________

   C.___________________________________________________________
2. Provide a two (2) long-term goals for the Protected Person to occur after one (1) year.

A.___________________________________________________________
B.___________________________________________________________

III. Overview of Protected Person’s Health History

Overview of Protected Person's health history:

A. List of chronic medical conditions:__________________________
   __________________________________________________________
   __________________________________________________________
   __________________________________________________________

B. List of Medications:

<table>
<thead>
<tr>
<th>Name</th>
<th>Dosage</th>
<th>Purpose</th>
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C. List of known allergies:

1. ____________________________________________
2. ____________________________________________
3. ____________________________________________
D. List of Doctors (include name, specialty, address and number)

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<thead>
<tr>
<th>Name</th>
<th>Specialty</th>
<th>Address</th>
<th>Number</th>
</tr>
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E. List of all third party service providers for the Protected Person

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<tr>
<th>Name</th>
<th>Address</th>
<th>Service/Purpose</th>
<th>Number</th>
</tr>
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<tbody>
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IV. **Strengths and Weaknesses**

1. List of Protected Person’s strengths:
   A. ________________________________
   B. ________________________________
   C. ________________________________

2. List of the Protected Person’s weaknesses:
   A. ________________________________
   B. ________________________________
   C. ________________________________

3. List of the Protected Person’s needs:
   A. Physical:
B. Emotional/Mental:

C. Medical:

D. Dental:

E. Social:

F. Spiritual:

G. Vocational:

H. Recreational:

V.

End of Life Issues

1. Do you know the Protected Person’s end of life wishes? YES NO
   If yes, what are the Protected Person’s wishes __________________________
   __________________________
   __________________________

2. Have you talked with the Protected Person regarding end of life issues? YES NO
   If yes, what are the Protected Person’s wishes_________________________
   __________________________
   __________________________

3. Does the Protected Person have an Advanced directive? YES NO
   If yes, please provide a copy of the advanced directive.

4. Have you reviewed end of life issues with the Protected Person’s doctor(s)? YES NO

5. Have you reviewed the Protected Person’s medical records? YES NO

6. Have you talked with any collateral contacts (i.e. family members, friends, pastor etc.) regarding end of life issues for the Protected Person? YES NO

7. Does the Protected Person have a terminal diagnosis? YES NO
   If yes, what diagnosis and its prognosis_______________________________
   __________________________

8. Is the Protected Person on hospice? YES NO
   If yes, provide admitting diagnosis and treating physician:___________
   __________________________
   If yes, also provide name, address and contact person for hospice:______
   __________________________
   __________________________

VI.
Burial Information

1. Does the Protected Person have expressed burial wishes?  YES  NO
   If yes, what are his/her wishes?__________________________________
   ____________________________________________________________
   ____________________________________________________________

2. Are these end-of-life wishes in writing?  YES  NO
   If yes, please provide a copy of such written document.__________
   ____________________________________________________________

3. Does the Protected Person have a burial pre-need policy?  YES  NO
   If yes, the name and location of the policy________________________
   _____________________________________________________________

4. Does the Protected Person have a plot?  YES  NO
   If yes, provide the location of the plot____________________________
   _____________________________________________________________

VII.

Visitation and Communication

1. Does the Protected Person have known family and friends?  YES  NO
2. Does the Protected Person see family and friends?  YES  NO
3. Are there any restrictions placed on the visits?  YES  NO
   If yes, what are the restrictions ________________________________
4. Is the visitation plan in writing?  YES  NO
   If yes, provide a copy of the plan. Copy attached?  YES  NO
5. Do you communicate with the Protected Persons known family and
   Friends?  YES  NO
6. Are there any restrictions on the communication?  YES  NO
   If yes, what are the restrictions? ________________________________
   ____________________________________________________________
7. Are the communication restrictions in writing?  YES  NO
   If yes, provide a copy of the plan. Copy attached?  YES  NO
8. Is the Protected Person’s use of the internet and social media
   monitored for safe and appropriate use?  YES  NO
   If no, please explain how the Protected Person’s safety is
   maintained in the digital world______________________________
   __________________________________________________________
9. How does the Protected Person maintain interpersonal relationships:__
   ____________________________________________________________

VIII.

Benefits

1. Does the Protected Person receive monthly income?  YES  NO
   If yes, what is the source and amount?___________________________
   ____________________________________________________________
2. Does the Protected Person have health insurance coverage?
   YES  NO

   If yes, please provide the name and type of insurance.
   ______________________________________________________
   ______________________________________________________

3. Does the Protected Person have long term care insurance?
   YES  NO

   If yes, please provide the name and type of insurance:
   ______________________________________________________
   ______________________________________________________

4. Is the protected person a veteran?
   YES  NO

5. Does the Protected Person receive veteran’s benefits?
   YES  NO

   If yes, what are the benefits, which he/she receives? (Please name and identify type of benefits owed to the Protected Person.)
   ______________________________________________________
   ______________________________________________________

IX.

Fiduciary Relationships

1. Is there a guardian of the estate or trustee?
   YES  NO

2. Are you the guardian of the estate or trustee?
   YES  NO

3. Do you receive any of the Protected Person’s money?
   YES  NO

   If yes, under what authority do you receive this money?
   ______________________________________________________
   ______________________________________________________

4. Have you met with the other fiduciary to review the Protected Person’s care needs and financial resources to provide for the Protected Person’s care?
   YES  NO

5. Did you discuss this plan with the other fiduciary?
   YES  NO

6. Did you provide a copy of this plan to the other fiduciary?
   YES  NO

If no, please provide an explanation as to why a copy was not provided and date when such copy will now be provided.
I affirm that I understand my duties and responsibilities as guardian of the person as proscribed by law. I further affirm under penalty of perjury under the laws of the State of Texas that the foregoing is true and correct.

Signed this ______day of ______________20____.

__________________________
Signature of Guardian

__________________________
Printed Name of Guardian
Appendix J

VISITATION AND COMMUNICATION PLAN
Visitation and Communication Plans

Visitation is defined as access and contact with the Ward in a social context. Visitation can be done in two approaches:

a. **Open Approach.** The open approach is when you begin with maximum flexibility and contact with the Ward and then drawing or limiting access only as a problem arises. Under the open approach, a visitation plan can be established based on reasonable hours. If the Ward is in a facility, utilize the hours set by a facility. If the Ward is in his/her home, you can also use a facility’s customary visiting hours as the basis for visitation within the home. Another option is using the Ward’s “wake” time, which could be 8:00 am. to 8:00 p.m. Under an open approach, visitation may also include engaging the Ward in activities on and off property at any set time within boundaries of the “reasonably established” visitation hours. Depending on the condition and circumstances of the Ward, open visitation may also include Ward's participation in trips with family members, or going on visits out of state or sleepovers.

b. **Closed Approach.** The closed approach involves granting access and rights on a piece-mill basis. In a closed approach, restricting visitation can be done based on a plethora of factors:

(a) **Days.** Visitation can be limited to certain days of the week. For example, one child may have Monday, Wednesday and Friday and the other child, Tuesday, Thursday and Saturday, and Sunday being a day off from any visitation. Sunday also could be used as the “make nice” day when all parties tolerate a meal together for the benefit of the Ward.
(b) Time. Visitation can be limited based on established times of the day. For example, one child can have visitation between 10:00 a.m. to 2:00 p.m., and another child 2:00 p.m. and 6:00 p.m. This allows the Ward to see each person daily.

(c) Location. Visitation can be limited to specific locations. For example, visitation can be limited to only at the Ward’s home, only at the facility, or only outside the Ward’s home and facility.

(d) Duration. Visitation can be limited as to the amount of time a person can spend with the Ward. For example, visitation can be limited to no more than two (2) hours per day, seven (7) days per week between the hours of 9:00 a.m. and 5:00 p.m.

(e) Activity. Visitation can be limited based on the types of activities available to the Ward. For example, one child may take the Ward to the garden club, while another child takes the Ward to church.

(f) Level of supervision. Visitation may also be limited based on the level of supervision. For example, supervision may be “parallel" type, restricting visitation to being at the facility only and the Ward is unable to leave the facility. Visitation could be off site with the use of third-party supervision. Supervision can be done by a companion or a family therapist to assist family members and/or third parties in the proper modeling of interaction with the Ward.
COMMUNICATION

Communication is defined as a verbal or written message and consists of both communication with the Ward by family and friends and communication between the Guardian and contesting family members. Communication is also your internal communication to oversee and coordinate the care for the Ward.

(a) Communication between Ward and third parties. Communication, just like visitation, between Ward and litigants can be addressed by two approaches:

   (1) Open approach. The open approach is when there is maximal flexibility and communication between the Ward and the litigants and limiting communication only when a problem arises. Communication can be established through the use of telephone and mail correspondence. Under this open approach, communication can be established based on reasonableness of hours. Telephone communication can coincide with reasonableness of visitation. Thus, telephone talk hours can be maintained on the same schedule as visiting hours.

   (2) Closed approach. The closed approach involves granting access and rights on a piece-mill basis. In a closed approach, restricting visitation can be done based on a plethora of factors:

   (a) Days. Calls can be limited to certain days of the week. For example, one child may have Monday, Wednesday and Friday and the other child, Tuesday, Thursday and Saturday, and Sunday being a day off from any communication. Sunday could be used as the “make nice” day to test how parties tolerate sharing communication day.
(b) **Time.** Calls can be limited based on established times of the day. For example, one child can have calls between 10:00 a.m. to 2:00 p.m., and another child 2:00 p.m. and 6:00 p.m. This allows the Ward to talk with each person daily.

(c) **Duration.** Calls can be limited as to the amount of time a person can talk with the Ward. For example, calls can be limited to no more than twenty (20) minutes at a time per day, seven (7) days per week between the hours of 9:00 a.m. and 5:00 p.m., with no more than three (3) calls per day.

(d) **Level of supervision.** Calls may also be limited based on the level of supervision. For example, supervision may be “parallel” type, restricting calls to being at the facility only at the nurse’s station. Supervision can be done by a companion or a family therapist to assist family members and/or third parties in the proper modeling of interaction with the Ward. For example, telephone calls can be monitored and/or recorded in order to maintain appropriate behavior.

(b) **Communication between Guardian and Litigants.** A Guardian’s approach with communication with litigants and/or family members can be done with an open or closed approach.

(1) **Open Approach.** The open approach is when there is maximal flexibility and communication between Guardian and litigants and family members. The ultimate open communication is through the use of a HIPAA Release. A HIPAA Release can be used to grant a family member or interested person access to find out information from the
healthcare provider. One way to manage the use of a HIPAA Release is by requiring that the family member is responsible for paying for all copies of medical records if they so desire them. If the family is a very large family, in order to keep the open approach organized, it is important to designate a family member as a point person to distribute the information and that person will be responsible for imparting it to the rest of the family.

(2) Closed Approach. The “closed approach” involves granting access and rights on a “piece-mill” basis. In a “closed” approach, restricting communication can be done through various approaches.

(a) “Tell nothing” and tell only on an “as need to know” basis. The guardian can remain very hushed and communicate information only when the Ward is in a critical condition or when any formal notice is required as to the management of the property.

(b) Form of Communication. Guardian could limit communication only through certain forms. For example, Guardian could require only communication to be via e-mail or only through the guardian’s attorney.

(c) Family Update Letters. The purpose of this letter is to update the Ward’s family regarding the Ward’s current case, condition and well-being. For example, the Guardian could send a letter informing the family of how Ward did with the doctor’s appointment and of the outcome.
Appendix K

GUARDIAN OF THE ESTATE MANAGEMENT PLAN
GUARDIANSHIP OF § IN THE PROBATE COURT
§ § NO. _____, IN AND FOR
§ § __________ COUNTY, TEXAS

GUARDIAN OF THE ESTATE MANAGEMENT PLAN
Date of Qualification: ______________________

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes _______________________________ ("Guardian"), Guardian of the Person and Estate of __________________________ ("Ward"), an incapacitated person, and presents this verified plan for the retention and investment of the Ward’s estate pursuant to the provisions of §854, et. seq., of the Texas Probate Code, and seeks approval of the plan and the implementation thereof.

I.
CURRENT SITUATION OF THE WARD

A. Age, Gender, Nature of Incapacity: ____________________ is (example: widowed female) whose date of birth is ____________________, making him/her ______________ (___) years of age. She/He suffers from ____________________.

B. Life Expectancy: ___________________________ has surpassed her life expectancy.

C. Employment: _______________________________ is no longer employable.

D. Living Situation: _____________________________ resides at ____________________________.

E. Allowance / Budget: By order signed _____________________, Guardian is authorized, pursuant to §776A, to expend $______________ monthly.

F. Current Bond and Safekeeping Arrangements: Guardian is currently bonded for _____________________ with _________________________ (ex: Western Surety Company). This bond was filed on ___________________ and approved by Judge _____________________.

G. Property not subject to this plan per §855B(d): All property of the Guardianship estate is referenced in this Management plan and is subject to this plan.

H. Evidence of Existing Estate Plan: Ward has a validly executed Last Will; and Testament.
I. **Monthly Income**: The Ward receives the following monthly income:

1. ___________________ $ per month
2. ___________________ $ per month
3. ___________________ $ per month
4. ___________________ $ per month

J. **Pre-Need Funeral Planning**: The Ward does not have a paid pre-need funeral plan.

II. **GUARDIANSHIP ASSETS**

Real Property:

________________________
Legal Description: ________________
2013 _____________ County Appraisal value:

Notes and Cash:

1. _______________ Bank
   Checking Account No. _______________
   Balance as of ___________________________ $ 

2. _______________ Bank
   Checking Account No. _______________
   Balance as of ___________________________ $ 

Personal Property:

1. Personal Property located at __________________________
   Value as of ___________________________ $ 

A. **Stocks**: None

B. **Claims**:
   1. General notice to creditors §783 was given as follows: by publication in the _______________ on _______________.
   2. There are no known claims against the estate.
   3. The following creditors were given notice pursuant to §784: None.
   4. The following creditors were given permissive notice under §784(e): None.
   5. The following claims are known to exist: None.

C. **Unpaid Debts**:

D. **Proposed Action on Claims and Debts**: N/A
III.
GUARDIAN’S PROPOSED PLANS FOR MAINTENANCE AND MANAGEMENT

The assets of __________________________ are currently held as listed in Paragraph II of this Guardian’s Management Plan. Guardian plans to keep Ward’s homestead at this time, as Ward is living in her home.

Regarding the bank and investment accounts, Guardian plans to open an investment account with __________________________, or __________________________, Texas, and invest Ward’s assets as outlined in Exhibit “A.”

IV.
GUARDIANM’S PROPOSED PLANS FOR MAINTENANCE AND MANAGEMENT

Applicant requests to implement and continue this investment plan until further orders of this Court approving a subsequent investment plan for the Ward.

V.
ADDITIONAL INFORMATION

WHREFORE, Guardian prays that the court will approve this investment and management plan and authorize the Guardian to implement this management plan as outlined in this Guardian’s Management Plan.

Respectfully submitted,

____________________________
Attorney for Guardian
STATE OF TEXAS §

COUNTY OF _________ §

I, ___________________________, Guardian of the Person and Estate of ____________________________, an incapacitated person, have read and examined the foregoing Management Plan, it is within my personal knowledge, and to the best of my knowledge is true, correct and complete.

________________________________________

Guardian of the Person and Estate of

________________________, incapacitated person

Sworn to and subscribed before me on this the _____ day of ___________, 20__. 

________________________________________

Notary Public
State of Texas
Appendix L

NON-COMPLIANCE DOCKET NOTICE
CAUSE NO. ______________

IN RE: GUARDIANSHIP § IN THE PROBATE COURT
§
OF THE PERSON OF § OF
§
____________________ § DENTON COUNTY, TEXAS

NON-COMPLIANCE DOCKET NOTICE

On this day ________________, Guardian of the Person and/or Estate of ______________________ was to file ______________________. There has been no filing of documents and no appearance of counsel. Guardian is set to appear before this Court for a status conference on the ____ day of ______________, 20___, at _____ o’clock, located in the Denton County Probate Court, 1450 E. McKinney, Second Floor, Denton, Texas 76209.

Signed this ____ day of ______________________, 20____.

______________________________
JUDGE
Appendix M

GUARDIAN ESSENTIALS CHECKLIST
ESSENTIALS CHECKLIST FOR GUARDIAN

Cause Number:_______________________________________________________________

Ward’s Full Name:__________________________________________________________

Ward’s Date of Birth:________________________________________________________

Qualification Date:__________________________________________________________

Reporting Period:___________________________________________________________

Due Date for Reports:________________________________________________________

Expiration Date of Letters:___________________________________________________

Fellow Fiduciary Name and Number:__________________________________________

Date Completed:____________________________________________________________
Appendix N

GUARDIAN CARE LOG
**Medical Appointments and Decisions**

A Chart to help you keep track of medical appointments and decisions of the Ward

<table>
<thead>
<tr>
<th>Date</th>
<th><strong>Type of Visit</strong> (Dental check-up, annual physical leg injury, emergency etc.)</th>
<th><strong>Who did the Ward see and where?</strong> (Name of doctor, dentist, psychiatrist, etc. and which hospital, name of dental office etc.)</th>
<th><strong>What was the outcome?</strong> (What was the diagnosis? Change in medication, Behavior Modification, no diagnosis, etc.)</th>
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Appendix O

GUARDIAN AND WARD COMMUNICATION LOG
**Guardian Contact with Ward**
A Chart to help you keep track of when you visit or call the Ward

<table>
<thead>
<tr>
<th>Date</th>
<th>Personal Visit or Phone Call</th>
<th>Notes</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>_____ Personal Visit</td>
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<td>_____ Phone call to Ward</td>
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<td>_____ Phone call to a staff member about the Ward</td>
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<td>_____ Phone call to Ward</td>
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<td>_____ Phone call to a staff member about the Ward</td>
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<td>Who did you speak with?</td>
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Appendix P

NEXT OF KIN CONTACT LIST
NEXT OF KIN CONTACT LIST

NAME: ____________________________________________________________
RELATION TO WARD/PROPOSED WARD: ________________________________
ADDRESS: __________________________________________________________
TELEPHONE: _________________________________________________________
CELL: _______________________________________________________________
EMAIL ADDRESS: _______________________________________________________
HOW YOU WISH TO BE CONTACTED: _________________________________
WHAT IS THE BEST TIME TO CONTACT YOU: ___________________________

INFORMATION REGARDING WARD

HOW WARD WISHES TO BE ADDRESSED: _______________________________
WHERE IS WARD ORIGINALLY FROM: _________________________________
WARD’S FAVORITE ACTIVITIES: _______________________________________
WARD’S RELIGIOUS BELIEFS: _________________________________
WARD’S FAVORITE FOODS: _________________________________________
WARD’S PET PEEVES: _____________________________________________
WARD’S EDUCATIONAL BACKGROUND: _________________________________
WARD’S OCCUPATION: _____________________________________________
WARD’S FORMER OCCUPATION: _______________________________________
WARD’S HOBBIES: _________________________________________________
WARD’S INTERESTS AND MUSIC OF CHOICE: ___________________________
_______________________________________________________________
ANY KNOWN ALLERGIES OF WARD: _________________________________
Appendix Q

CAREGIVER MEDICAL APPOINTMENT SUMMARY
MEDICAL APPOINTMENT SUMMARY

Please complete this form and fax it to Carol P. Dabner within 48-hours of all medical appointment: (940) 349-2141.

Ward: ____________________________________________

Date of Appointment: ________________ Time of Appointment: ________________

Physician/Facility: ____________________________________________

Identify all persona presents during examination/treatment: ________________

____________________________________________________________________

Purpose of Visit: ____________________________________________________________________________

Vital Signs: ________________________________________________________________________________

Tests/Procedures: __________________________________________________________________________

Medications Prescribed: ______________________________________________________________________

_________________________________________________________________________________________

Diagnosis: _________________________________________________________________________________

Follow-up Appointment: ______________________________________________________________________
REFERENCES


Texas Administrative Code. (2015). *Title 40, Part 1, Chapter 10, Subchapter C, Rule §10.311.* Retrieved from [http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&amp;app=9&amp;dir=&amp;rloc=&amp;tloc=&amp;ploc=&amp;pg=1&amp;p_tac=&amp;ti=40&amp;pt=1&amp;ch=10&amp;rl=311](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&amp;app=9&amp;dir=&amp;rloc=&amp;tloc=&amp;ploc=&amp;pg=1&amp;p_tac=&amp;ti=40&amp;pt=1&amp;ch=10&amp;rl=311)


