

Managing Probate Courts

How the New National Probate Court Standards Can Help

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The Purpose of the National Probate Court Standards

&

How They Can Be Used

Purpose and Use

- Update the 1993 National Probate Court Standards in light of:
 - Widespread implementation of court technology
 - Promulgation new and revised uniform acts
 - Issuance of national recommendations regarding guardianship and conservatorship
 - Initiatives by probate courts to address problematic areas including expansion of services being provided to court users and increased use of volunteer programs
 - Establishment of State Supreme Court Commissions on elders and the courts
 - Recognition of financial abuse in decedent's estates, trusts under court supervision, guardianships of minors, and conservatorships of adults

Purpose and Use

- Recognition of the impact that the aging of the “Baby Boom” generation will have on probate courts

Purpose and Use

- Promote
 - Uniformity
 - Consistency, and
 - Continued improvement of probate court operations

Purpose and Use

- Provide
 - Examples of promising practices
 - References to information
 - Aspirational goals

Purpose and Use

- Apply to both
 - Specialized probate courts
 - General jurisdiction courts with probate jurisdiction

Purpose and Use

- Serve as:
 - Set of guiding principles
 - Source of improvement ideas
 - Basis for requests for needed budgetary support
 - Tool for strategic change
 - Measure of progress
 - Template for state probate standards

How the Standards Were Developed
&
How They Address Court Management Issues

Development Process

- Task Force
 - 6 members of NCPJ leadership
 - President of NACM
 - Representatives of ABA – RPTE and ACTEC
- NCSC Staff
- Web-based survey of NCPJ and NACM members
- Iterative drafting
- Broad dissemination of a draft for comment

Development Process

- Result:
 - Set of guiding principles (**Section 1**)
 - Access to Justice
 - Expedition & Timeliness
 - Equality, Fairness, and Integrity
 - Independence & Accountability
 - Standards for administrative policies & procedures (**Section 2**)
 - Jurisdiction & Rulemaking
 - Caseflow Management
 - Judicial Leadership
 - Information and Technology
 - Referral to ADR
 - Standards on probate processes and proceedings (**Section 3**)
 - Common practices & procedures
 - Decedent's estates
 - Guardianship & Conservatorship

Development Process

- Adopted by NCPJ membership – 2011
- Endorsed by NACM, CCJ, and COSCA -- 2012

Provisions Related to Court Management

1.1 ACCESS TO JUSTICE

- A. Proceedings and other public business of the probate court should be conducted openly, except in those cases and proceedings that require confidentiality pursuant to statute or rule.
- B. Probate court facilities should be safe, accessible, and convenient to use.
- C. All interested persons who appear before the probate court should be given the opportunity to participate without undue hardship or inconvenience.
- D. Judges and other probate court personnel should be courteous and responsive to the public and should treat with respect all who come before the court.
- E. Access to the probate court's proceedings and records—measured in terms of money, time, or the procedures that must be followed—should be reasonable, fair, and affordable.

Provisions Related to Court Management

Access to Justice

- Standard 3.1.4 Attorney's & Fiduciaries' Compensation
- Standard 3.1.6 Sealing of Records
- Standards 3.3.1 & 3.3.2 Guardianship/Conservatorship Petitions & Initial Screening
- Standard 3.3.4 Court Visitor
- Standards 3.3.5 & 3.5.4 Appointment of Counsel & Representation for Minors

Provisions Related to Court Management

1.2 EXPEDITION AND TIMELINESS

- A. Probate courts should establish and maintain guidelines for timely case processing.
- B. Probate courts should promptly implement changes in law and procedure affecting court operations.

Provisions Related to Court Management

EXPEDITION AND TIMELINESS

- Standard 2.2.1 Court Control
- Standard 2.2.2 Time Standards Governing Disposition
- Standard 2.2.3 Scheduling Trial and Hearing Dates
- Standard 3.2.3 Timely Administration of Estates
- Standard 3.3.3 Early Control & Expeditious Processing of Guardianship/Conservatorship Cases

Provisions Related to Court Management

1.3 EQUALITY, FAIRNESS, AND INTEGRITY

- A. The practices of the probate court should faithfully adhere to relevant laws, procedural rules, and established policies.
- B. The probate court should give individual attention to cases, deciding them without undue disparity among like proceedings and upon legally relevant evidence.
- C. Decisions of the probate court should address the issues presented with clarity and specify how compliance can be achieved.
- D. The probate court should be responsible for the enforcement of its orders.
- E. Records of all relevant probate court decisions and proceedings should be accurately maintained and securely preserved.

Provisions Related to Court Management

EQUALITY, FAIRNESS, AND INTEGRITY

- Standard 2.5.1 Referral to Alternative Dispute Resolution
- Standards 3.1.2, 3.3.14, & 3.5.8 Orientation and Education of Fiduciaries, Guardians/Conservators of Adults, Guardians/Conservators of Minors
- Standard 3.3.4 Court Visitor

Provisions Related to Court Management

1.4 INDEPENDENCE AND ACCOUNTABILITY

- A. Probate courts should maintain their institutional integrity as part of the third branch of government and observe the principle of comity in its governmental relations.
- B. Probate courts should make efficient, effective, and economic use of their resources.
- C. Probate courts should use fair employment and appointment practices.
- D. Probate courts should develop procedures to inform the community of their proceedings.
- E. Probate courts should seek to adapt to changing conditions or emerging issues.

Provisions Related to Court Management

INDEPENDENCE AND ACCOUNTABILITY

- Standard 2.3.1 Human Resources Management
- Standard 2.3.2 Financial Management
- Standard 2.3.3 Performance Goals and Strategic Plan
- Standard 2.4.1 Management Information System
- Standard 2.4.2 Collection of Caseload Information
- Standard 2.4.3 Confidentiality of Sensitive Information
- Standards 3.3.17 & 3.5.11 Monitoring of Guardianships & Conservatorships
- Standards 3.3.18 and 3.5.12 Complaint Process in Guardianship & Conservatorship Cases

How the Standards Are Related to Uniform Acts
&
National Recommendations Regarding Guardianship

The 1993 Standards

- The original 1993 Probate Court Standards were an important achievement
- Notable was their emphasis on unsupervised administration of decedent's estates, reflecting the influence of the Uniform Probate Code and the approval of independent administration in many state probate codes
- Also notable were the Standards' focus on guardianship, which received far more attention in the writing of the standards and also in the final product than did decedent's estates

Wingspread/UGPPA

- Influencing the increased interest in guardianship were two important developments; (1) a 1988 ABA report: An Agenda For Reform, commonly known as “Wingspread,” which has influenced statutory reforms in a majority of states; and (2) the 1982 revision of the Uniform Guardianship and Protective Proceedings Act (UGPPA), which was widely cited in the 1993 Standards
- Among the themes of Wingspread and the UGPPA were the view that alternatives to guardianship should be emphasized and that limited guardianship should be preferred where feasible

Interim Developments

- Since 1993, there have been numerous developments in the law related to guardianship and related fiduciary roles. With respect to decedent's estates, the use of modern technology is leading to greater efficiencies but the basic statutory framework is largely unchanged.

New Uniform Trust Acts

- Since 1993, several new uniform acts or amendments have been approved that are relevant to the work of the probate courts and the Standards. The acts relating to trust law are:
 - The 1994 approval of the Uniform Prudent Investor Act, which changed the investment standards of a trustee and which has had spillover effects to guardianship and decedent's estates
 - The 2000 approval of the Uniform Trust Code with its greater emphasis on the fiduciary duties of the trustee and the importance of nonjudicial settlements

Guardianship/Power of Attorney

Also approved have been:

- The 1997 revision of the UGPPA, which increased the emphasis on limited guardianship and guardianship alternatives
- The 2006 approval of the Uniform Power of Attorney Act, which borrowed from the UTC for its provisions on the fiduciary duties of an agent and also takes steps to address the problem of agent abuse
- The 2007 approval of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA), which addresses the problems of guardianships having interstate contacts

Guardianship Studies

- The 1988 Wingspread report was the first of three national guardianship reports. In 2001, the Wingspan report was completed. In late 2011, the recommendations of the Third National Guardianship Symposium were published.
- Although not extensively cited in the Standards, Wingspread and Wingspan have had a major impact on guardianship in general and so had an impact on the Standards although not necessarily in an obvious way
- The Third Report, while cited in the Standards, was completed so close to the completion of the revised Standards that its influence was less

Guardianship Study

Conclusions

- The Wingspan and even more so the Third Report emphasize that
 - (1) limited guardianship should be preferred where feasible;
 - (2) less restrictive alternatives should be explored before making an appointment; and
 - (3) the guardian, where practicable, should be guided by the ward's prior preferences and should consult with the ward on current decisions

Uniform Law Influence

- The UPC provisions on decedent's estates are cited extensively in Section 3.2 of the Standards on decedent's estates
- Far more notable is the reliance on the UGPPA in Section 3.3 on adult guardianship and conservatorship. Several of the rules appear to have patterned after the UGPPA
- The close correspondence between the UAGPPJA and Section 3.4 on interstate guardianship is consistent with the fact that close to 40 states have enacted the UAGPPJA

