

BALANCING PROTECTION AND AUTONOMY: A PERSON-CENTERED APPROACH TO OLDER ADULT GUARDIANSHIP ADJUDICATION

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Over the past few years, the public debate on guardianship abuse and misuse has prompted a re-examination of judicial decision-making in guardianship cases. To address the need for informed, consistent, and reliable rulings that protect older adults while preserving their fundamental rights, the Department of Justice supported the development of the Judicial Guardianship Evaluation Worksheet.¹ The Worksheet was pilot tested in 51 courts nationwide and was found to enhance judicial confidence, objectivity, and consistency in guardianship decision-making.² This evidence-informed tool guides judges in aggregating the relevant evidence; assessing an older adult's retained abilities and areas of vulnerability; considering a respondent's preferences and goals; evaluating risk factors for elder mistreatment; and examining the potential to order less restrictive alternatives or more limited guardianship rulings.³ It may also serve as a guide for attorneys and other professionals working within the guardianship ecosystem to better safeguard the rights and preserve the dignity of older adults.

Key Words: *guardianship; judges; qualitative methods; older adults; worksheet; person-centered care; less-restrictive alternatives; elder abuse*

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¹ U.S. Dept. of Justice, Elder Justice Initiative, Award No. UP-20-00313.

² Bonnie Olsen & Susie Norby, *Webinar: Judicial Guardianship Evaluation – A New Tool for Judges*, VIMEO (June 22, 2022), <https://vimeo.com/722938044>.

³ *Id.*

I. Introduction

Over the past few years, factual reports and fictional dramas depicting the perils of guardianship have abounded in the media, drawing attention to the tenuous balance navigated by courts to protect older adults with waning capacity while preserving their fundamental liberties. In the wake of Rachel Aviv's expose in the *New Yorker*, "How the Elderly Lose Their Rights,"⁴ Netflix's movie "I Care a Lot,"⁵ and the #FreeBritneySpears movement,⁶ public debate on guardianship abuse and misuse has incited re-examination of the scope, breadth, and function of guardianship. A critical appraisal of the system has also provoked discussion of the propriety of judicial decision-making in guardianship cases; specifically the need to make person-centered, less restrictive rulings that offer protections if needed, and preserve elder rights, whenever possible. To better meet the needs of the growing older population with significant cognitive deficits, eroding decisional capacity, increased care needs, and safety concerns, the Department of Justice funded development of The Judicial Guardianship Evaluation Worksheet (the "Worksheet"),⁷ an evidence-informed approach to guide consistent and reliable judicial decision-making.⁸ This practical tool complements statutory authority while facilitating person-centered guardianship evaluation and circumscribed court-ordered protections. The Worksheet also provides a blueprint for attorneys and other members of the guardianship ecosystem to effectively and meaningfully consider an older adult's retained abilities, areas of vulnerability, preferences, and goals.

I. Background

Probate judges are routinely required to make findings of capacity and determinations of guardianship⁹ to protect individuals who are unable to make decisions in their own behalf or are unable to manage their personal needs to support their welfare.¹⁰ Although definitions of capacity vary between states, and procedural rules often differ among jurisdictions, courts typically review petitions for guardianship accompanied by medical/psychological¹¹ declarations, investigative reports, and testimony to evaluate the necessity and limits of

⁴ See generally Rachel Aviv, *How the Elderly Lose Their Rights*, THE NEW YORKER (Oct. 2, 2017), <https://www.newyorker.com/magazine/2017/10/09/how-the-elderly-lose-their-rights>.

⁵ See generally Netflix, *I Care a Lot*, NETFLIX (2021), <https://www.netflix.com/title/81350429> (last visited Sept. 17, 2024).

⁶ See Brittany Spanos, *#FreeBritney: Understanding Fan-led Britney Spears Movement*, ROLLING STONE (Feb. 8, 2021), <https://www.rollingstone.com/feature/freebritney-britney-spears-legal-829246/>.

⁷ Keck Sch. of Med. of USC, *Judicial Guardianship Worksheet*, U.S. DEPT. OF JUSTICE, <https://www.justice.gov/elderjustice/file/1206636/dl?inline=> (last visited April 14, 2024). See also attached at the end of this article.

⁸ *Judicial Guardianship Worksheet Implementation Project*, USC CENTER FOR ELDER JUSTICE, <https://eldermistreatment.usc.edu/projects/judicial-guardianship-worksheet-implementation-project/> (last visited April 14, 2024).

⁹ Though legal terminology differs by state, for purposes of this proposal all references to guardianship will include and are interchangeable with the term conservatorship.

¹⁰ *Help for Judges Hearing Guardianship Cases*, U.S. DEPT. OF JUSTICE, <https://www.justice.gov/elderjustice/help-judges-hearing-guardianship-cases> (last updated April 16, 2025).

¹¹ All references to medical/psychological will hereinafter be construed to embrace all medical, psychological, psychiatric, primary care, and mental health providers charged with evaluating and rendering an opinion on the status and capacity of older adults.

protective measures.¹² In assessing an individual's capacity, jurists are advised to adopt a best practice, case-specific and person-centered approach.¹³ To this end, courts must balance the individual's right to self-determination and need for safety, consider less restrictive alternatives to guardianship, make findings based upon the evidence presented, and circumscribe orders to promote the individual's best interests.¹⁴

Many cases before the court involve persons who have varying degrees of neurocognitive disorder, which manifest in myriad ways impacting individuals' decision-making and functional capacity. Capacity is complex, variable by task and context, and distinguished by decisional and executorial tasks. The degree of ability across domains is nuanced and influenced by a number of factors in addition to cognition. Assessment of capacity in impaired older adults is additionally complicated by the need to consider, for example, deficits in mobility and sensory loss, such as hearing and vision, which may further compromise independent functioning.¹⁵

Indeed, older adults with cognitive and functional impairment are at significantly greater risk for elder mistreatment.¹⁶ In cases of guardianship, while judges typically prefer appointing family or a trusted other as guardian, abuse is often committed by family members, those ostensibly closest to the subject and with whom they may share a history of complicated family dynamics.¹⁷ Professional court appointed guardians may likewise pose a risk of mistreatment to older adult wards through malintent, neglect, paternalism or less awareness of their wards' values and preferences.¹⁸ Courts must assess and weigh individual, relational, and contextual factors in imposing familial, friendship-based, and professional fiduciaries and the likelihood of mistreatment.

Increasingly, courts also hear cases of individuals, with or without vulnerability, whose decision-making authority has been subverted through the manipulation and deceit of others. Undue influence is a common form of elder financial exploitation, especially among individuals who are isolated, lonely, or dependent.¹⁹ These elements when combined with cognitive deficits, can render individuals even more susceptible to mistreatment.²⁰ Thus, as

¹² U.S. Dept. of Justice, *supra* note 10.

¹³ UNIF. GUARDIANSHIP, CONSERVATORSHIP, AND OTHER PROTECTIVE ARRANGEMENTS ACT § 301, (UNIF. L. COMM'N & NAT'L CONF. OF COMM'RS ON UNIF. STATE LS. 2017).

¹⁴ U.S. DEPT. OF JUSTICE, *supra* note 10.

¹⁵ Am. Bar Ass'n (ABA) Comm'n on L. and Aging et al., *Judicial Determination of Capacity of Older Adults in Guardianship Proceedings*, AM. BAR ASS'N, https://www.americanbar.org/content/dam/aba/administrative/law_aging/2011_aging_bk_judges_capacity.pdf (last visited March 3, 2024).

¹⁶ See Laura Mosqueda et al., *The Abuse Intervention Model: A Pragmatic Approach to Intervention for Elder Mistreatment*, 64(9) JOURNAL OF THE AMERICAN GERIATRICS SOCIETY 1879 (Aug. 22, 2016), <https://pubmed.ncbi.nlm.nih.gov/27550723/>.

¹⁷ Michaela M. Rodgers et al., *Elder Mistreatment and Dementia: A Comparison of People with and without Dementia across the Prevalence of Abuse*, JOURNAL OF APPLIED GERONTOLOGY (Dec. 23, 2022), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10084452/>.

¹⁸ See *Mistreatment and Abuse by Guardians and Other Fiduciaries*, U.S. DEPT. OF JUSTICE, <https://www.justice.gov/elderjustice/mistreatment-and-abuse-guardians-and-other-fiduciaries> (last visited Sept. 18, 2024).

¹⁹ See Mary Joy Quinn, *Defining Undue Influence*, AMERICAN BAR ASSOCIATION (Feb. 1, 2014), https://www.americanbar.org/groups/law_aging/publications/bifocal/vol_35/issue_3_feb2014/defining_undue_influence/.

²⁰ Rodgers, *supra* note 17.

necessary, courts must assess the risk that an older adult's vulnerability to undue influence will further diminish his/her ability to independently manage personal matters.

Courts are charged with adjudicating the ultimate determination of capacity, and crafting orders that enable subjects to retain or relinquish essential rights, analyze and assimilate psychological, psychiatric and medical evidence.²¹ With the rise of the older adult population and the attendant surge in cognitive and functional limitations, courts are increasingly required to evaluate the legal impact of medical and mental health issues. These matters require courts to have substantial knowledge and understanding of these disorders.

Since the court's orders implicate a subject's fundamental rights to liberty and autonomy, they are critically important to individual dignity, and wellbeing.²² To assess both capacity and the risk of mistreatment or self-neglect, jurists are informed by reports prepared by court investigators, capacity declarations of medical/psychological providers and expert clinicians, and the court testimony of the subject, witnesses, and professionals.²³ Notwithstanding the observational data collected, expert opinions rendered, and lay testimony offered, the court must not substitute its own judgment for the testimony of others, expert or otherwise, and need to independently evaluate the evidence to issue its rulings.²⁴

Statutes and interpretive case law provide a structure for governance but offer little guidance in translating laws into applied practice, especially as they relate to the individual. Understanding the unique characteristics and complexities of each individual facing guardianship, the specifics of their situations, while integrating their medical, mental health, cognitive function and preferences and values, is a weighty and consequential task.²⁵ Clinician-executed court forms addressing capacity vary widely across jurisdictions, but often focus on the individual's diagnosis rather than their practical capabilities.²⁶ Yet, an individual's functional aptitudes and retained abilities can mitigate cognitive deficits to some extent and may be more germane to the court's adjudication of capacity and consideration of limited or less restrictive orders.

A holistic, organizational paradigm for jurists to comprehensively evaluate and integrate relevant evidence of capacity, consider less restrictive alternatives to guardianship, and weigh the contextual factors that can forewarn abuse in guardianships is lacking. Similarly, court investigators, attorneys litigating guardianship cases, and guardians ad litem could more effectively assess older adult respondents if provided an analytic lens to view their clients' needs.

Without a conceptual framework for investigation and judicial review, courts are hampered in understanding and appreciating the totality of ambient circumstances. They are similarly impeded in identifying evidentiary gaps and requesting necessary data to advise their guardianship adjudications.²⁷ This may hinder jurists ability to identify modifiable risk factors of mistreatment and domains of retained capacity, which would favor less restrictive alternatives to guardianship. This deficit also impacts a court's ability to craft person-centered, situation specific orders that are narrowly tailored to the need, while promoting autonomy and preserving personal rights where practical. A uniform national approach to guardianship

²¹ See U.S. Dept. of Justice, *supra* note 10.

²² See *id.*

²³ *Id.*

²⁴ Olsen & Norby, *supra* note 2.

²⁵ *Id.*

²⁶ ABA et al., *supra* note 15.

²⁷ Olsen & Norby, *supra* note 2.

determinations across states, despite the disparate laws and definitional elements, will contribute to procedural and substantive consistency.

II. The Project

In 2021, the Department of Justice, Elder Justice Initiative, supported researchers at the University of Southern California, Department of Family Medicine to develop an evidence-based, standardized construct and pragmatic tool for jurists, to evaluate evidence of an older adult's capacity to manage their personal affairs, the propriety of imposing protective measures, including supported decision making and limited guardianships, while assessing the potential risk of maltreatment.²⁸ The interdisciplinary project team was led by Bonnie Olsen, PhD, a geropsychologist, researcher-practitioner, and expert in both elder abuse and capacity, and included a physician's assistant, an attorney, and an evaluator.²⁹ The project goals were to 1) Provide a consistent theory-informed framework for guardianship evaluation; 2) Assess the potential for abuse in guardianship cases; 3) Identify gaps in evidence collection; 4) Clarify respondent's strengths and limitations; 5) Consider less restrictive alternatives to guardianship; and 6) Identify opportunities for limited guardianship.³⁰

III. Theoretical Foundation

From the outset, the project was anchored in the Abuse Intervention Model (AIM), a theoretical framework for considering the risk factors associated with elder mistreatment, viewed through the complex interrelationship between the victim, the trusted other, and the context of their interaction.³¹ Given the high prevalence of abuse within the growing older population, and a key concern among those under guardianship, risk mitigation was a primary goal.³²

It is estimated that one in 10 older adults experiences some form of abuse each year, though the number of incidents is believed to be markedly underreported to authorities.³³ Mistreatment among individuals with neurocognitive impairments is much higher, with nearly half of the population impacted.³⁴ Types of abuse include physical, psychological/emotional, financial abuse, neglect, and self-neglect.³⁵ Polyvictimization, or co-occurring forms of abuse, is not uncommon.³⁶ Most often, elder abuse is committed by family or chosen family, within the context of complicated, multidimensional, and longstanding family dynamics.³⁷ AIM posits

²⁸ USC Center for Elder Justice, *supra* note 8.

²⁹ *Id.*

³⁰ Olsen & Norby, *supra* note 2.

³¹ Mosqueda, *supra* note 16.

³² Olsen & Norby, *supra* note 2.

³³ Ron Acierno et al., *Prevalence and correlates of emotional, physical, sexual, and financial abuse and potential neglect in the United States: The National Elder Mistreatment Study*, AMERICAN JOURNAL OF PUBLIC HEALTH, 100(2), 292-297 (Feb 2010) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2804623/>.

³⁴ XinQi Dong et al., *Elder Abuse And Dementia: A Review Of The Research And Health Policy*, PUDMED (Feb. 24, 2023) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9950800/>.

³⁵ *What is Elder Abuse*, NATIONAL CENTER ON ELDER ABUSE, <https://ncea.acl.gov/elder-abuse#gsc.tab=0> (last visited Sept. 18, 2024).

³⁶ Rodgers, *supra* note 17.

³⁷ *Id.*

a pragmatic and cohesive approach to examine the known, and potentially modifiable, risk factors for the older victim, trusted other, and the circumstances under which they co-exist.³⁸

For the vulnerable elder, predictors of mistreatment include impaired physical function, diminished cognition, emotional or mental distress, and frailty, factors which often require complex caregiving.³⁹ Any of these or other vulnerabilities may expose elders to an increased risk of abuse. Offenders often are trusted others known to the older person, such as a family/chosen family, friend, caregiver, or financial advisor.⁴⁰ The risk of mistreatment rises where the trusted person is financially or emotionally dependent upon the elder; has a mood, personality, or substance use disorder; or suffers a physical limitation inhibiting caregiving effectiveness.⁴¹ Contextual factors that impact this dyad include social isolation of the older adult, low-quality relationship between the elder and other, and the impact of their shared or respective cultural norms.⁴² AIM offers a broad conceptual framework to assess the often dissonant, conflictual interplay between older adults and trusted others, in context.⁴³

IV. Application of the AIM Model in Court Proceedings

The American Bar Association Commission on Law and Aging (ABA) in collaboration with the American Psychological Association and National College of Probate Judges created a handbook on Judicial Determination of Capacity of Older Adults in Guardianship Proceedings in 2006.⁴⁴ The guide laid the foundation for translating the AIM approach to judicial practice. AIM provided an organizing framework to develop a practical, efficient tool for judges to meaningfully aggregate and analyze the totality of relevant evidence in guardianship proceedings, including the complex nuances of capacity while capturing the older person's core values.⁴⁵ The AIM model provides a pragmatic construct to help judges gather relevant data, consider the evidence adduced in probate proceedings, integrate components of capacity, and give a case-based lens for adjudication.⁴⁶ The AIM judicial application illuminates domains where critical evidence is lacking, providing jurists clarity as to the scope and type of information that may be either intentionally or inadvertently withheld from judicial review. Using the Worksheet, review of capacity is framed within a person-centered, in-context lens, recognizing the complex relational factors which comprise the proposed ward's environment and needs.

With this organizational structure, courts may be less apt to impose overbroad guardianships and circumscribe more limited protective orders which enable subjects to retain designated rights and preserve relative autonomy. Rather than resorting to plenary guardianships where all rights are extinguished, courts can recommend less restrictive alternatives such as supported decision making, or order temporary and limited guardianships, enabling individuals to retain prescribed rights, as warranted by the facts. This model also serves as a risk assessment

³⁸ Mosqueda, *supra* note 16.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ See ABA et al., *supra* note 15.

⁴⁵ See Mosqueda, *supra* note 16.

⁴⁶ *Id.*

tool to evaluate and mitigate the likelihood of mistreatment.⁴⁷ Courts will be able to identify the red flags that may portend an increased likelihood of abuse.⁴⁸ This includes potential vulnerabilities within the older adult respondent (including medical, cognitive, mental health, and functional deficits) and characteristics within the proposed guardian (including economic or emotional dependency on the older adult) that may signal heightened concern and safety considerations. The AIM is a best practice approach to inform judicial inquiries, court findings, and orders of protection, while promoting procedural consistency reducing variability of judicial review across jurisdictions.⁴⁹

V. Development of the Judicial Guardianship Evaluation Worksheet

The two-year project was informed by an expert advisory panel comprised of probate judges, attorneys, researchers, and academics.⁵⁰ Each iteration of the Worksheet was reviewed and discussed by the panel, and responsively revised.⁵¹ With the AIM construct as a foundation, the project team built a prototype that mirrored the larger domains of vulnerable older adult, trusted other, and context.⁵² Given the guardianship setting, the categories were correspondingly renamed: “Respondent,” “Proposed Guardian,” and “Context.” A fourth category was added, “Less Restrictive Alternatives.”⁵³

Each section contains subcategories. There are nine subcategories within the Respondent section: “Background,” “Cognition,” “Mental Health,” “Medical Conditions and Physical Functioning,” “Basic Activities of Daily Living,” “Instrumental Activities of Daily Living,” “Judgment, Reasoning, and Executive Functioning,” “Social Connectedness,” and “Values and Preferences.” Subcategories within the Proposed Guardian section include, “Background,” “Dependency,” “Functional Limitations,” and “Guardian History.”⁵⁴ In “Context,” the subcategories are “Respondent Resources,” “Living Arrangements,” “Relevant Relationships,” “Relationship with Proposed Guardian,” and “Current Legal Instruments.”⁵⁵ For Less Restrictive Alternatives, the subcategories are “Decisional and Executive Supports,” “Retained Capacities,” “Areas to Limit Guardianship Powers,” and “Summary Notes.”⁵⁶ The subcategories have selection options for judges to identify with greater specificity risk or protective factors for the Respondent, Proposed Guardian, and Context, as well as options for less restrictive alternatives to guardianship.⁵⁷

VI. Focus Groups

Once the draft Worksheet was developed and vetted by the advisory panel, the instrument was reviewed by three focus groups, each comprised of eight judges.⁵⁸ The judges

⁴⁷ Olsen & Norby, *supra* note 2.

⁴⁸ *Id.*

⁴⁹ See Mosqueda, *supra* note 16.

⁵⁰ Olsen & Norby, *supra* note 2.

⁵¹ *Id.*

⁵² *Id.*

⁵³ Keck Sch. of Med. of USC, *supra* note 7.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Olsen & Norby, *supra* note 2.

represented probate and general jurisdiction courts nationwide.⁵⁹ They were asked to review the Worksheet and respond to a series of questions about the tool in general and each subsection and category.⁶⁰ Content from the focus groups was qualitatively analyzed to assess the relevance, resonance, usability, and efficacy of the tool.⁶¹ Among other topics, in discussion the judges shared their thoughts about the gravity and complexity of guardianship adjudications.⁶² Many expressed the need for additional case-specific information to make fully informed decisions and found the tool a helpful guide to facilitate informed decision-making.⁶³ Focus group discussion further aided development and modification of the tool.⁶⁴ It also helped lay the foundation for a pilot study of the Worksheet in 51 probate, general jurisdiction, and tribal courts across the country.⁶⁵

VII. Pilot Study

Judicial recruitment for the pilot study coincided with COVID-19, which led to unanticipated complexities and delays. Judges were navigating pandemic uncertainty, masking and distancing restrictions, reduced case assignments, and remote hearings. Eventually, 51 courts agreed to participate in the pilot study.⁶⁶ They were asked to use the Worksheet in at minimum five older adult guardianship cases.⁶⁷ Each judge received a 30-minute explanatory training session on the use of the Worksheet.⁶⁸ Technical assistance was offered by the project team through the course of the pilot study.⁶⁹

On average, participants used the Worksheet in 10 cases.⁷⁰ One court used the worksheet in 93 cases.⁷¹ Exit interviews were conducted with 33 of the pilot study judges to assess a number of factors including the benefits and barriers to use of the Worksheet in judicial practice.⁷² The project team was not prescriptive about the specific integration of the tool in guardianship decision-making.⁷³ Thus, each judge used the Worksheet in ways that aligned with their own case review and regular practices. Some judges filled out the worksheet in each of the cases they adjudicated.⁷⁴ Others referred to the Worksheet as a benchcard or checklist to identify issues to address and consider.⁷⁵ A few judges suggested that the Worksheet could be used at subsequent hearings in the same case to more efficiently review relevant factors.⁷⁶

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

Overall, the consensus was overwhelmingly positive. The Worksheet was found to provide a ready and easily accessible comprehensive register of relevant factors.⁷⁷ For many judges, the tool highlighted gaps in evidence, and prompted further inquiry and requests for information from litigants.⁷⁸ The Worksheet was found most useful in complex and contested cases, but also provided a reliable record for subsequent or ongoing case review.⁷⁹ Significantly, judges observed that the tool reinforced confidence, objectivity and consistency in decision-making, while facilitating holistic, person-centered case review and providing a check on potential biases.⁸⁰ The vast majority of judges also noted the perceived utility of the Worksheet, if not for their own personal use, then for use by others within the court system.⁸¹

VIII. Attorney Application

The Worksheet has been found to be an effective structured assessment and decision-making tool to facilitate informed judicial review in guardianship cases.⁸² Integration of the Worksheet by professionals across the guardianship ecosystem may promote culture change that better supports older adults whose fundamental rights are at issue. Both private and court appointed attorneys representing older adults in guardianship cases may utilize the Worksheet to understand the risk and protective factors within each of the Respondent, Proposed Guardian, and Contextual domains. Utilizing a common framework and guide to identify relevant, person-centered, case-specific evidence in guardianship cases would promote consistent evidence collection and judicial review, supporting more consistent, tailored, and nuanced rulings that impact older adults.

IX. Additional Takeaways

In balancing safety with countervailing considerations of autonomy, judges have been inclined to order broad plenary guardianships that offer greater protection rather than limited orders or less restrictive alternatives.⁸³ Plenary orders are motivated by the perceived need for protection.⁸⁴ However, the court should guard against the risk that they act from latent paternalism, ageist assumption, or a reluctance to tolerate potential risk and avoid, as possible, the removal of fundamental rights and rulings that run counter to the older person's preferences, values, and life goals. The Worksheet may offer a mechanism to pinpoint an older person's retained abilities, preserved function, as well as areas of limitation to better inform person-centric, tailored orders that align with the older person's wishes and needs. The tool can enable judges to better assess ambient risk, and potentially provide them with the confidence to issue rulings that embed reasonable risk to advance the dignity and desires of older people.

Finally, research is essential to assessing the efficacy of practices across domains. Within the guardianship arena, robust research initiatives can help assess the effectiveness of existing practices and vet promising innovations that directly impact - and may ameliorate - the

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *See id.*

⁸⁴ *See id.*

lives and wellbeing of older adults under guardianship or who are otherwise exposed to the removal of fundamental rights. Research studies at the intersection of law and aging may advance knowledge and encourage the translation of validated methods into applied practices to elevate legal practice and judicial decision-making.

Copy of Judicial Guardianship Evaluation Worksheet:

1

Judicial Guardianship Evaluation Worksheet CONFIDENTIAL		
Case #: Respondent: Petitioner: Proposed guardian: <input type="checkbox"/> Person <input type="checkbox"/> Estate <input type="checkbox"/> Other	Hearing date: Precipitating event, if any: Contested by: <input type="checkbox"/> Respondent <input type="checkbox"/> Multiple petitions <input type="checkbox"/> Other	Link to Worksheet Orientation Link to State Probate Statutes
1. RESPONDENT		
A. Background Age: _____ Highest education: _____ Marital/Partnership status: _____ Occupational history: _____ English literacy: <input type="checkbox"/> speak <input type="checkbox"/> read <input type="checkbox"/> write Preferred language: _____ <input type="checkbox"/> interpreter required Other language: _____ literacy: <input type="checkbox"/> speak <input type="checkbox"/> read <input type="checkbox"/> write		
B. Cognition <i>Areas of concern:</i> <input type="checkbox"/> memory <input type="checkbox"/> concentration <input type="checkbox"/> wandering <input type="checkbox"/> aggression <input type="checkbox"/> confusion <input type="checkbox"/> episodes of delirium Diagnosis of dementia: <input type="checkbox"/> mild <input type="checkbox"/> moderate <input type="checkbox"/> severe Rx: _____ <input type="checkbox"/> no known deficit <input type="checkbox"/> other: _____ <i>Retained abilities:</i> _____		
C. Mental Health <i>Areas of concern:</i> <input type="checkbox"/> depression <input type="checkbox"/> anxiety <input type="checkbox"/> hallucinations <input type="checkbox"/> delusions <input type="checkbox"/> impulsive behavior <input type="checkbox"/> substance abuse <input type="checkbox"/> hoarding <input type="checkbox"/> other: _____ diagnosis: _____ Rx: _____ <input type="checkbox"/> no known deficit Comments: _____		
D. Medical Conditions and Physical Functioning Relevant medical diagnoses: _____ <u>A</u> cute <u>C</u> hronic <u>R</u> eversible <i>Areas of concern:</i> <input type="checkbox"/> inadequate self-management <input type="checkbox"/> mobility <input type="checkbox"/> frequent falls <input type="checkbox"/> pain <input type="checkbox"/> physical frailty <input type="checkbox"/> incontinence <input type="checkbox"/> legally blind <input type="checkbox"/> hearing impaired <input type="checkbox"/> adaptive equipment: _____ <input type="checkbox"/> no known conditions <input type="checkbox"/> other: _____		
E. Basic Activities of Daily Living <i>Areas of concern:</i> <input type="checkbox"/> eating/feeding <i>Retained</i> <input type="checkbox"/> bathing <input type="checkbox"/> dressing <input type="checkbox"/> toileting <input type="checkbox"/> grooming <input type="checkbox"/> no known deficit <i>abilities:</i> _____		
F. Instrumental Activities of Daily Living <i>Areas of concern:</i> <input type="checkbox"/> meal preparation/adequate nutrition <input type="checkbox"/> housekeeping <input type="checkbox"/> personal finances <input type="checkbox"/> shopping <input type="checkbox"/> medications <input type="checkbox"/> arranging transportation <input type="checkbox"/> internet use <input type="checkbox"/> telephone use <input type="checkbox"/> other: _____ <input type="checkbox"/> no known deficit <i>Retained abilities:</i> _____		
G. Judgment, Reasoning, and Executive Functioning <i>Areas of concern:</i> <input type="checkbox"/> identify abuse/neglect/protect self from harm <input type="checkbox"/> recognize potential danger/respond to emergencies <input type="checkbox"/> understanding of care needs <input type="checkbox"/> susceptibility to exploitation/undue influence <input type="checkbox"/> prior episodes of mistreatment <input type="checkbox"/> other: _____ <input type="checkbox"/> no known deficit		
H. Social Connectedness <i>Areas of concern:</i> <input type="checkbox"/> limited contact with family/friends/community <input type="checkbox"/> recent relocation <input type="checkbox"/> recent loss of significant relationship <input type="checkbox"/> lack of significant longterm relationships/attachments		
I. Values & Preferences Accepts/desires guardian? <input type="checkbox"/> no <input type="checkbox"/> yes: _____ Current most valued relationships/associations/activities: _____ Consistency of preferences with past patterns: _____ <input type="checkbox"/> importance of religious/cultural/spiritual influences <input type="checkbox"/> insistence on family care <input type="checkbox"/> pets <input type="checkbox"/> preference to age-in-place <input type="checkbox"/> rejection of needed care <input type="checkbox"/> other: _____		

2. PROPOSED GUARDIAN	
<input type="checkbox"/> lay guardian	<input type="checkbox"/> private/professional guardian <input type="checkbox"/> public guardian <input type="checkbox"/> financial institution <input type="checkbox"/> certification
A. Background	
Age: _____ Highest education: _____ Employment history: _____	
B. Dependency	
<input type="checkbox"/> financially dependent on respondent <input type="checkbox"/> emotionally dependent on respondent	
C. Functional Limitations	
Cognitive concerns: _____ <input type="checkbox"/> no known deficit <input type="checkbox"/> info unavailable	
Mental health/Substance abuse concerns: _____ <input type="checkbox"/> no known deficit <input type="checkbox"/> info unavailable	
Physical concerns: _____ <input type="checkbox"/> no known deficit <input type="checkbox"/> info unavailable	
D. Guardian History	
# Of cases: current _____ previous _____ <input type="checkbox"/> ever removed <input type="checkbox"/> revoked license <input type="checkbox"/> surcharge imposed <input type="checkbox"/> rep payee	
<input type="checkbox"/> bonded/insured <input type="checkbox"/> poor credit history <input type="checkbox"/> criminal history <input type="checkbox"/> APS complaints <input type="checkbox"/> protective orders <input type="checkbox"/> bankruptcy	
Guardian history: _____	
3. CONTEXT	
A. Respondent Resources	
Sources of income: <input type="checkbox"/> pension <input type="checkbox"/> social security <input type="checkbox"/> annuity monthly total income: \$ _____ value of estate: \$ _____	
Veteran status: <input type="checkbox"/> yes <input type="checkbox"/> no Health insurance: <input type="checkbox"/> Medicare <input type="checkbox"/> Medicaid <input type="checkbox"/> other: _____	
<input type="checkbox"/> barriers to access/services/assessments <input type="checkbox"/> internet access	
B. Living Arrangements _____ Adequate?/Appropriate? _____ With whom? _____	
Comments: _____	
C. Relevant Relationships	
Family structure: _____	
Family dynamics: _____	
Other supportive relationships: _____	
Other involved parties: _____	
Areas of conflict: _____ <input type="checkbox"/> pending legal action/protective order: _____	
D. Relationship with Proposed Guardian	
Nature and history of relationship? _____	
Actual/potential conflict of interest? _____ Respondent dependent on proposed guardian: <input type="checkbox"/> yes <input type="checkbox"/> no	
E. Current Legal Instruments	
Will/Trust: Executor/Trustee _____ Date executed: _____	
Medical POA: _____ Date executed: _____ Financial POA: _____ Date executed: _____	
4. LESS RESTRICTIVE ALTERNATIVES	
A. Decisional and Executive Supports	
<input type="checkbox"/> hired/family caregiver <input type="checkbox"/> home/community-based services <input type="checkbox"/> memory aids <input type="checkbox"/> assistive technology <input type="checkbox"/> medical POA	
<input type="checkbox"/> hired/family fiduciary <input type="checkbox"/> direct deposit <input type="checkbox"/> joint account <input type="checkbox"/> rep payee <input type="checkbox"/> financial POA <input type="checkbox"/> trust <input type="checkbox"/> SDM agreement <input type="checkbox"/> other	
B. Retained Capacities:	
C. Areas to Limit Guardianship Powers:	
D. Summary Notes:	