

**THE SUPREME COURT OF SOUTH CAROLINA**

**REPORT OF THE**  
**TASK FORCE ON STATE COURTS AND THE ELDERLY**

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**Friday, July 16, 2010**

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## **ACKNOWLEDGMENTS**

The Chair and members would like to thank the following individuals for their contributions to the work of the Task Force:

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I. Executive Summary. Along with court systems in other states and many other components of society, the South Carolina's court system is, in part, an economic institution subject to the age old economic law of supply and demand. Factors affecting the supply of court services include the available pool of resources (people, money, time, space, etc.), the processes and procedures employed by the courts, and the caliber of management applied to the one constant in this world, change. Factors affecting the demand for court services include population trends, legal dispute trends, applicable laws and regulations, and enforcement trends. Based upon available data, projections, and other evidence, this Task Force concludes that

- A. The issues relevant to the mission of this Task Force are long term issues that demand long term attention.
- B. Population and court caseloads are related, and both are unevenly distributed across the State of South Carolina due to the distinct urban/rural character of each of our State's 46 counties.
- C. The capacity of individual South Carolina courts or the court system as a whole is not known at this time.
- D. The capacity of individual South Carolina courts or the court system as a whole will be challenged in the years to come by demographic trends and other significant drivers including increased legislation and regulation, more enforcement, and a higher incidence of contested legal proceedings.
- E. These challenges will be addressed in a funding and budgetary environment unknown in modern times.
- F. The ability of South Carolina's court system to respond to this new reality will depend upon a dedicated and unceasing commitment to prepare for, execute, and manage change.
- G. The prospects for successfully meeting systemic challenges will be heavily dependent upon the court system's ability to articulate the need for constructive change; develop "win/win" initiatives; build widespread supporting consensus among court constituencies and resources; and move quickly, sensitively, and responsively.

Against this background, the Task Force recommends

- That the Supreme Court replace the Task Force with a Commission on State Courts and the Elderly;
- That the Commission emphasize a variety of non-legislative strategies to the extent practicable to effect necessary or desirable change;
- That the Commission adopt a philosophy of “agile management” characterized by use of “moving target” goals; pilot and demonstration programs; process re-engineering; and innovative funding and staffing arrangements;
- That the Commission undertake a program to educate and build consensus among the judiciary, the bar, other court constituencies, state and county officials, non-governmental service organizations, and the public.

## *II. Introduction.*

- A. Mission and Structure. The mission of the Task Force on State Courts and the Elderly is stated in the Order of Chief Justice Jean Hofer Toal dated October 6, 2009.<sup>1</sup> At its first meeting on November 16, 2009, the Task Force set up three workgroups --- Court Procedures, Court Resources, and Services. The primary focus of the Court Procedures workgroup was to examine needs and opportunities for improvements in court procedures with special attention to Probate Courts. The primary focus of the Court Resources workgroup was to examine issues related to court resources and an approach to implementing possible solutions. The primary focus of the Services workgroup was to examine needs and opportunities arising from the network of public and private services that serve the elderly and vulnerable adults.
- B. Points of Departure.<sup>2</sup> This Report is the result of efforts by Task Force members to organize and express their experiences, thoughts, and concerns on the subjects the Task Force has been asked to examine. Note that no mention is made here of disparate points of view despite the members’ different roles and perspectives as judges, attorneys, government officials, social workers, and private citizens. There have been few, if any, disagreements about either the

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<sup>1</sup> See Exhibit 1.

<sup>2</sup> For additional background, see Exhibit 2.

present strengths and weaknesses of the court system, the impacts that elderly and vulnerable adults will have upon that court system, the impacts that the court system will have on elderly and vulnerable adults in the years to come, or the conclusions and recommendations set forth in this Report. Initially, as points of departure, Task Force members agreed that:

1. The Elderly Interact with All Courts, but Especially with Probate Courts. The 46 Probate Courts of our State are not the only state courts in which elder issues arise. As examples, Family Courts have jurisdiction over vulnerable adult cases brought by the South Carolina Department of Social Services' Adult Protective Services staff, and Circuit Courts have jurisdiction over a wide range of cases implicating elder and vulnerable adult issues including torts such as fraud and unfair trade practice; contracts and related issues such as gift presumption, undue influence, and unjust enrichment; and, of course, violations of criminal statutes. Probate Court caseloads are the venue for matters affecting the independence and control of the elderly over their own lives and for the intergenerational transfer of wealth.
2. Vulnerable Adult Issues are Important. In addition to guardianship/conservatorship ("G/C") issues, many interfaces between the elderly and the court system deal directly or indirectly with abuse, neglect, and exploitation issues common to all vulnerable adults.
3. Economics Affect Basic Court Functions. Economics is the allocation of scarce resources. Time, money, and talented, dedicated people are some of the scarce resources that enable the courts to serve South Carolina's citizens. Availability of these resources is a necessary condition for the courts to function.
4. Probate Court Procedures Affect Economics. Because of the nature of probate and elder law practice, attorneys often cross county lines in their work. Since, in practice, each of our 46 Probate Courts requires adherence to its own rules, this lack of procedural uniformity can be confusing, time-consuming, and inefficient. Among other effects are higher costs to litigants,

inefficient use of court resources, and divergent interpretations of procedural requirements.

5. The Role of Community Services Is Not Well Understood. There are innumerable services available to assist the elderly and vulnerable adults. However, understanding what is available, what is provided, who can use the services, where and how they are delivered, and what they cost is a problem. Organizing this information, identifying the “holes” in it, and making it easily accessible to the various constituencies it is intended to serve is a huge task. But service providers have relationships and communications with elderly and vulnerable adults that can be invaluable in identifying, understanding and addressing problems before court filings become necessary.

III. Demographics. Obviously, a Task Force devoted to studying interaction between the elderly and South Carolina’s courts needs to pay attention to how many elderly there are. The first issue is simple: Who are the elderly? Census data contains data sets for several different age cohorts --- 60+, 65+, 75+, and 85+. Historically, social security eligibility implied 65 as a retirement age. But now eligibility for social security is in transition to 67 as a retirement age. On the younger end of the scale, the American Association of Retired Persons (AARP) accepts members from age 50. And then there are other questions: Is “elderly” a physical age, a state of mind or some combination of attributes? For its purposes, the Task Force has simply applied available census data as noted below.

- A. Trends. South Carolina’s elderly population is growing both absolutely and relatively. Table 3.1 projects growth in the *number* of South Carolinians aged 65 and over from 2000 to 2030, as follows:<sup>3</sup>

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<sup>3</sup> In 2005, at 12.6%, South Carolina was estimated to rank ninth nationally in the percentage of its population that was 65 years of age or older. State of South Carolina, Office of Lt. Governor, Office on Aging, State Plan on Aging 2009-2012 (2008), p. 26.



<b>Table 3.1: Projected SC 65+ Population 2000 - 2030</b>			
Age	2000	2030	Growth
60+ Est.	651,482	1,450,487	123%
65+ Est.	485,333	1,134,459	134%
75+ Est.	215,285	521,625	142%
85+ Est.	50,269	141,286	181%
Derived from State of South Carolina, Office of Lt. Governor, Office on Aging, <u>State Plan on Aging 2009-2012</u> (2008), p. 25.			

A glance at this data shows that the older the age group, the faster the projected rate of growth. Table 3.2 below shows that the growth in the *percentage* of South Carolinians aged 65 and over is accelerating:<sup>4</sup>

<b>Table 3.2: SC 65+ Population Percentage 1900 - 2030</b>			
Year	Population (Millions)	Growth since 1900 (%)	65+ Population (%)
1900	1.3+	Baseline	3.00%
2000	3.9+	197%	12.25%
2030	5.1+	392%	22.00%
Derived from State of South Carolina, Office of Lt. Governor, Office on Aging, <u>State Plan on Aging 2009-2012</u> (2008), pp. 25-26.			

<sup>4</sup> Note that, in the 100 years from 1900 to 2000, the increase was 9 percentage points, but, in the 30 years from 2000 to 2030, it is expected to be 9.75 percentage points.

There are two principal reasons for this projected growth. First, due to advances in living conditions and healthcare, Americans are living longer.<sup>5</sup> Second, we have been discovered: South Carolina was recently ranked as the sixth fastest growing state for in-migration.<sup>6</sup>

B. Data Limitations. Available demographic data is problematic for several reasons. For example,

1. Old Data. The 2000 census data is 10 years old, and 10 years is a long time. Data from the 2010 census will likely not be available until perhaps 2011, and complete data may not even be available then.
2. Undercounts. South Carolina's response to the 2000 census may have caused our State's population to be undercounted, and it has been estimated by one source that such an undercount cost the Palmetto State \$600 million to \$800 million over the last decade.<sup>7</sup>
3. Unknown Assumptions. The assumptions and algorithms underlying the U.S. Census Bureau's projections are not all widely known or understood. Therefore, whether and to what extent those projections remain valid is an open question.
4. "Boomer" Status. To an unknown extent, the demographic implications of aging "Boomers" have not yet been fully felt. Since that generation is generally viewed as having started in 1946, they only reached 60 years of age in 2006, and they will not reach 65 years of age until 2011.

#### IV. Probate Courts.

A. Background. The South Carolina Probate Courts are county courts with 46 popularly elected judges each answering to constituents, applying the Probate Code, and operating under a county budget. Probate Judges have great

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<sup>5</sup>It has been estimated that, between 1979 and 2006, a 65 year old gained two years of life expectancy. Source: U.S. National Center for Health Statistics, National Vital Statistics Reports (NVSR), U.S. Decennial Life Tables, for 1999-2001, United States Life Tables, Volume 57, Number 1, August 5, 2008, and unpublished data. While longer life spans are the good news, higher incidences of dementia are the bad news. Thus, the risk of developing Alzheimer's Disease doubles every five years after the age of 65 and is nearly 50% at age 85. See Alzheimer's Association, 2009 Alzheimer's Disease Facts and Figures.

<sup>6</sup> See, e.g., <http://www.census.gov/popest/states/tables/NST-EST2007-05.xls>

<sup>7</sup> Greenville News, April 30, 2010.

autonomy by virtue of their status as elected officials and the discretion afforded them under the Probate Code. These very dedicated public servants are elected officials who must be judges as well as clerks of court, law clerks, budget directors, and human resource managers. As such, they need a wide berth to direct their operation.

B. Probate Court Resources.

1. Court resources are a zero sum management issue. Although its mission made specific reference to G/C cases, the Task Force recognized that all elements of a Probate Court's, or for that matter, any other court's workload demand resources in the form of people, time, money,<sup>8</sup> space, and so forth. Thus, any significant increase in any part of Probate Court caseload will necessarily and negatively affect that court's overall ability to process cases unless compensating adjustments are made in staffing, processes, and/or procedures.
2. Demographics and related factors will drive up demand for court resources. The Task Force believes that demographics is the primary factor in any analysis of demand for court resources over the next 20 years or more. But it is not the only driver of the rising demand for court resources. Also to be considered are:
  - a) More Laws, Regulations, and Enforcement. An increasing percentage of our nation's and State's population is elderly or otherwise vulnerable to abuse, neglect, and financial exploitation. Thus, it should be expected that national and state legislatures would respond to protect them, and indeed they have. As but one example at the national level, Chapter 4 of Title VII of P.L. 89-73, the Older Americans Act of 1965, as amended by P.L. 109-365 in 2006 supports legal assistance development programs at the state level to aid in protecting the interests of "older individuals", and section 702(c) of that Act authorizes appropriations for that purpose for FY2007 and beyond. In South Carolina, the Omnibus Adult

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<sup>8</sup> Of course, budgetary funding for the Probate Courts is handled by the individual counties. A summary of available 2009 county Probate Court budget information is set forth in Exhibit 3 to this Report.

Protection Act addresses the protection of vulnerable adults from abuse, neglect, and exploitation. These and other laws will likely increase court workloads by expanding protections and legal assistance for elderly and vulnerable adults, and this trend will likely continue.<sup>9</sup> And just as new laws generate new cases, so will the issuance of regulations and heightened enforcement of existing laws.

- b) More Contested Cases. South Carolina's Probate Courts process a large number of estate cases every year. Most of these cases are uncontested probates of decedents' estates. But informal, anecdotal estimates by a number of judges suggest that our Probate Courts are seeing a significant increase in the number of contested estates and other cases. At the present time, there is no statewide tracking of contested Probate Court case data.
- c) Self-Represented Litigants (SRL's). SRL's are a fact of life; they have always played a role in court dockets, but as time has gone on, the number of self-represented litigants appears to be increasing.<sup>10</sup> Economic conditions, including higher entrenched unemployment, suggest that the number of SRL's will keep growing.<sup>11</sup> For these reasons, the Commission on Access to Justice and the Supreme Court have been working to disseminate forms and training materials to educate SRL's and facilitate their access to and use of the court system.

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<sup>9</sup> A recent example is the inclusion of Elder Justice funding in the recently passed Federal health care reform legislation, H.R. 3590, and the subsequent Reconciliation Act of 2010, H.R. 4872. This package provided, among other things, \$100 million for state demonstration grants to test methods for detecting and preventing elder abuse, \$400 million for adult protective services funding, and \$26 million for elder abuse, neglect, and exploitation forensic centers.

<sup>10</sup> In 2009, the Judicial Department noted a total of 3,661 Family Court actions in which at least one party was self-represented or appeared *pro se*. (*N.B.*: 45 of 46 counties reporting.) This effort is the first to collect SC SRL data.

<sup>11</sup> The South Carolina Budget and Control Board has estimated that, as of 2007-2008, 14% of the State's population was at or below the poverty line. See <http://www.sccommunityprofiles.org/census/pov2008.php> citing U.S. Census Bureau, Current Population Survey, 2006 to 2009 Annual Social and Economic Supplements. Statistics on poverty among the elderly tend to be less available and under-reported. However, in 2010, the Federal government issued a supplemental poverty measure expected to increase the number of poor Americans and highlight the disproportionately higher poverty risk on the elderly. See, e.g., [http://www.huffingtonpost.com/2010/03/03/poverty-formula-revised-n\\_n\\_483594.html](http://www.huffingtonpost.com/2010/03/03/poverty-formula-revised-n_n_483594.html).

Anecdotal evidence suggests that SRL cases may consume court resources at a rate double or triple that of non-SRL cases.

- d) Public Guardianship Initiative.<sup>12</sup> While the above points are expected to challenge court resources, the Task force believes that it is possible that a carefully structured and operated public guardianship program could help with the prudent allocation of Probate Court and possibly other court resources. Working with community service agencies, the Task Force believes that a “triage” approach to identifying and addressing elder and vulnerable adult issues might become practical. More specifically, service providers’ relationships and communications channels with these constituencies may open the door to identifying whether potential actions need to proceed quickly, might benefit from pre-litigation counseling or mediation, or might not be problems at all. While there is general agreement that a statewide public guardianship program could supply valuable services to the indigent, the Task Force recognizes that there are formidable obstacles that will have to be dealt with as prerequisites: defining costs, finding funding, and organizing the services community.
- C. Procedural Uniformity. Given the challenges ahead, the goal of the Task Force is not to diminish the office of Probate Judge in any way, but rather to demonstrate how uniformity can simplify court operations and enhance the responsiveness of each court to its citizens. The quest for uniformity in the Probate Courts is nothing new. For over 20 years the Association of Probate Judges has struggled internally over various differences in practices that have given rise to complaints from probate attorneys who practice in more than one county. The results have been mixed with some issues getting resolved and others not. Some examples are when to charge a filing fee, when to require a “Summons” in some types of litigation, what information is required on

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<sup>12</sup> For a definition of public guardianship and additional information on the subject, see Pamela B. Teaster, Elica F. Wood, Susan A. Lawrence, and Windsor C. Schmidt, “Wards of the State: A National Study of Public Guardianship” in 37 Stetson Law Review 193-241 (2007).

mandatory filings, etc. To date, the existing “non-uniformity” has just been built into the way business is done, and we all have adapted. The Task Force believes that county by county process variations can no longer be sustained as they produce time and cost inefficiencies for users of court services.

D. Probate Court Caseloads. The best data available on elderly caseloads is the data collected by South Carolina Court Administration from reports submitted by the 46 county Probate Courts.<sup>13</sup> The Task Force reviewed the available data for FY2007, FY2008, and FY2009. In reviewing this data, the Task Force added staffing information provided by 36 Probate Courts responding to an informal survey conducted at the Task Force’s request during the first quarter of 2010 and limited budget information provided through the efforts of a staff intern at the Greenville County Probate Court. The Task Force’s analysis of available Probate Court caseload data showed that, for FY2007 - 2009:<sup>14</sup>

1. Caseloads are very unevenly distributed among counties and are not fully understood. Not surprisingly, more heavily populated metropolitan area counties are much busier than more sparsely populated rural counties. For example, in FY2009, the mean number of estate cases varied from a high of 2,639 to a low of 39, and the mean number of G/C cases varied from a high of 813 to a low of 9. The Task Force views this caseload distribution as generally reflective of the distribution of the population, and especially of the elder population, across our State.

But caseload distribution is only one issue. The nature of caseloads needs to be explored further. For example, in addition to G/C cases affecting the elderly, Probate Court G/C decisions address a younger population of adults with intellectual disabilities, closed head injuries from accidents, and mental

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<sup>13</sup> After exerting some effort to collect and assess elderly caseload data available for other state courts, the Task Force concluded that such data as may be available from whatever source is too incomplete to support meaningful analysis at this time.

<sup>14</sup> The spreadsheet compiled for this analysis is attached as Exhibit 3. *See also* Exhibit 4 for one estimate of Family Court adult protective services caseloads.

illness. There is no State data on the number of guardianships and conservatorships that have been established for these reasons.<sup>15</sup>

Probate Courts will also need to pay more attention to overseeing the administration of guardianships and conservatorships with particular attention to high-risk situations. By their nature, guardianships and conservatorships deprive the incapacitated person of independence and control over all or some aspects of their lives. The role of Guardian/Conservator is highly complex, involving legal, social, financial, and psychological dimensions. While most guardians and attorneys do an admirable job, it is necessary for Courts to exercise active oversight in order to protect and preserve the interests of the persons with a legal incapacity. While there is no reliable data on this point, it appears that the majority of guardians/conservators are family members performing difficult, unpaid, and thankless work, solely from a sense of familial devotion and duty. In this setting, Court oversight should identify those cases that need Court intervention, and, when needed, such intervention should be carried out in the least restrictive, burdensome, and disruptive manner consistent with the incapacitated person's best interests.

Currently, Probate Court oversight of G/C cases varies among SC counties. Generally, due to limited staff and resources, such oversight is passive. Courts will act if: i) required filings are not made; ii) filings are obviously inaccurate or suspect; or iii) the Court receives outside complaints. Once the adversarial process is completed, *i.e.*, when the fiduciary is appointed, the safeguards afforded by the adversarial process are lost. From there on, Court oversight is the only safeguard if the fiduciary breaches his/her duty to the incapacitated adult. But exploitation or neglect can also occur even with on time filings and a lack of complaints. Given this context and the expected

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<sup>15</sup> Nationally, there are 9.2 million Americans with intellectual and developmental disabilities; this number will rise with new forms of medical treatment that extend the lives of people with these conditions. See Presidents Committee for People with Intellectual Disabilities, Administration for Children & Families, U.S. Department of Health and Human Services, Fact Sheet, <http://www.acf.hhs.gov/programs/pcpid/pcpid/fact.html> and American Association on Intellectual and Developmental Disabilities, [http://www.aaid.org/Policies/faq\\_intellectual\\_disability.shtml](http://www.aaid.org/Policies/faq_intellectual_disability.shtml).

growth of the G/C caseload, the Task Force believes that the Probate Courts should pay more attention to what happens after a guardianship or conservatorship is created.

2. Court productivity appears to vary widely, but is not well understood. A threshold question is how to measure court productivity. For G/C cases, this question is especially difficult because these cases typically go on for years and end only when the ward or protected person dies, recovers, or, in the case of a conservatorship, runs out of assets. Complicating this situation further is the fact that the Task Force is aware of no productivity standard that has been defined or applied to Probate Court cases. While the Task Force has calculated some productivity measures, these measures are of necessity constrained by the availability of data and, at this time, are based largely upon the number of disposed cases. Focusing solely upon these measures for disposed G/C cases risks painting an incomplete picture.<sup>16</sup> In FY2009, individual Probate Court productivity measured by the number of disposed G/C cases per Judge of Probate varied from a high of 162 to a low of 1.<sup>17</sup> Looking at a different measure of productivity, in FY2009, the number of turns (disposed G/C cases/average G/C cases) per judge of probate varied from a high of 66.67% to a low of 3.98%. Do these numbers tell us answers or suggest further questions? Given the typical bases for closing a G/C case, how likely is it that any county would be closing two-thirds of its G/C caseload within a single year? Might different counties be using different triggers for reporting this data? Might there be reporting inaccuracies? To what extent is a court with a small caseload naturally susceptible to a higher G/C case disposition rate? To what extent does the random complexity of cases in different courts affect disposition rates?

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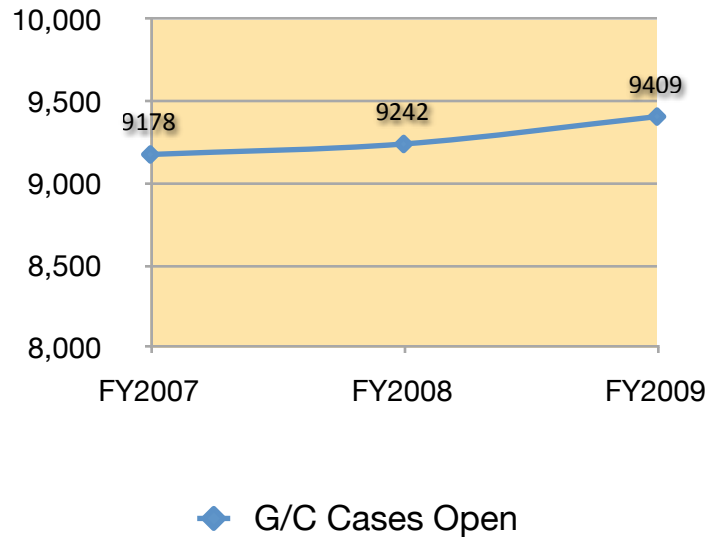
<sup>16</sup> For example, might it be helpful to benchmark exactly what a case disposition is? Should we only track when a G/C case is “closed”, or might we also track the elapsed time from the date of filing of a petition for guardianship/ conservatorship to the date of the determination of capacity or the date of appointment of a guardian or conservator?

<sup>17</sup> *N.B.*: Judicial staffing data has been obtained from an informal, limited survey of Probate Courts. However, only 36 Probate Courts responded. Obviously, to some extent productivity is dependent upon workload and case status. Further, no allowance has been made here for differences, if any, in complexity among individual court dockets.



3. Statewide caseloads appear manageable, but future capacity challenges are likely.<sup>18</sup> As shown by Chart 5.1 below,<sup>19</sup> from FY2007 to FY 2009 inclusive, the number of G/C cases open as of the beginning of each fiscal year grew, but not much. The growth rates calculated here --- 0.70% from FY2007 to FY2008, and 1.81% from FY2008 to FY2009 --- are deemed manageable at this time.

**Chart 5.1: G/C Caseload Growth FY2007-FY2009**



But Table 5.1 below<sup>20</sup> provides a somewhat different perspective.

<b>Table 5.1: G/C Cases Added FY2005 - FY2009</b>					
Cases Added Yr./Yr.	FY2005	FY2006	FY2007	FY2008	FY2009
Numeric increase	1,987	2,107	2,279	2,305	2,802
Rate of increase	Baseline	6.04%	8.16%	1.14%	21.56%

<sup>18</sup> *N.B.*: No allowance has been made here for differences, if any, in complexity among individual court dockets.

<sup>19</sup> Source: South Carolina Court Administration data.

<sup>20</sup> Source: South Carolina Court Administration data.

While Chart 5.1 deals with the number of G/C cases open at the beginning of a fiscal year, Table 5.1 deals with the number of G/C cases added from one fiscal year to another.<sup>21</sup> In Table 5.1, the *rate* of increase dipped from FY2007 to FY2008, but rose sharply from FY2008 to FY2009. Cases added year to year should be watched. If their number keeps growing as it did in FY2009, the capacity of individual Probate Courts may be challenged sooner rather than later.

**Chart 5.2: Estate Caseload Growth FY2007-FY2009**

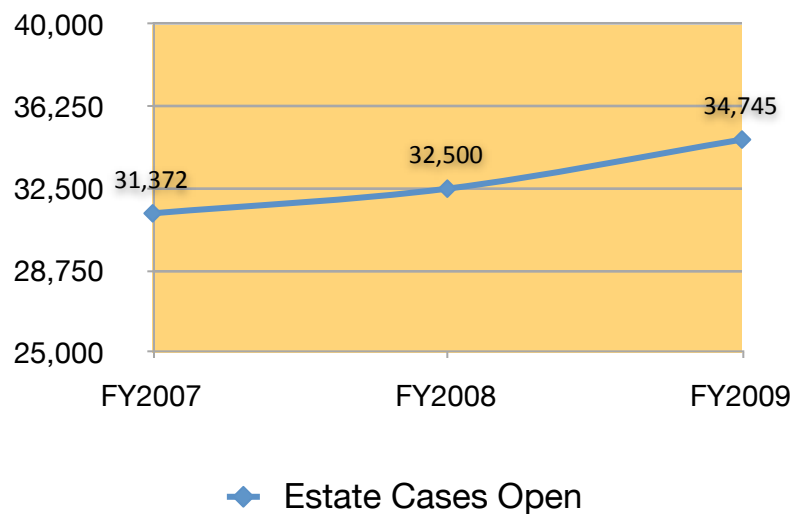


Chart 5.2 above<sup>22</sup> shows the number of estate cases open as of the beginning of each fiscal year and reveals both a higher caseload and faster growth. The growth rates calculated here --- 3.60% from FY2007 to FY2008, and 6.91% from FY2008 to FY2009 --- are more worrisome than the comparable G/C data. If this growth in estates continues, it could begin to challenge capacity in individual Probate Courts.<sup>23</sup>

<sup>21</sup> For FY2009, this measure is calculated as follows --- Step 1: Subtract the number of G/C cases disposed of in FY2008 from the number of cases open at the beginning of FY2008; Step 2: Subtract the result of Step 1 from the number of cases open at the beginning of FY2009.

<sup>22</sup> Source: South Carolina Court Administration data.

<sup>23</sup> The Task Force notes that the data discussed above cannot and does not reflect the full impact of the “Baby Boom”.

4. Data Limitations. The statewide case management system does not yet include case management data from the 46 Probate Courts. Instead, each county separately funds its own information technology budget and reports its own case management data to Court Administration. There are multiple information technology vendors and multiple formats involved in the reporting process. It is apparent that, at this time, the lack of a unified system for Probate Court case management and reporting raises questions about the reliability of available data for policy-making purposes.<sup>24</sup> For example,
  - a) Some data appears anomalous. For example, in FY2007, FY2008, and FY2009, one county seems to have disposed of 293.33%, 181.82%, and 154.55%, respectively, of its average caseload.<sup>25</sup>
  - b) Data definition may not always be consistent among the counties. For example, does the count of adult G/C cases for each county actually include minor settlements, minor conservatorships, special conservatorships, and/or trusts?
  - c) Some data is not collected at all. For example, the number of contested cases in Probate Court, removals and appeals from Probate Court, and the number of cases involving elderly and other vulnerable adults in Circuit Court are unknown at this time.

V. Conclusions. Based upon its work to date, the Task Force has concluded that:

- A. The issues relevant to the Task Force's mission demand long term attention. The Baby Boom generation runs roughly from 1946 through 1966. Irrespective of other pressures, its economic demands upon society, including the courts, can be expected to last at least through 2030 and, given increased life expectancies, quite likely for many years thereafter.

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<sup>24</sup> Although accurate, reliable data is critical to court oversight of G/C cases, data quality and quantity is a national issue. See, e.g., Uekert & Schauffler, "The Need for Improved Adult Guardianship Data" in 93 Judicature 201 (March-April 2010).

<sup>25</sup> Source: South Carolina Court Administration data.

- B. Population and court caseloads are related and unevenly distributed. It should come as no surprise that court caseloads in densely populated urban counties are significantly higher than in sparsely populated rural counties. This fact may present some opportunities for avoiding or addressing capacity challenges in individual Probate Courts.
- C. At present, court system capacity is unknown. The absence of a consistent and comprehensive data design, collection, analysis, and auditing regime means that system capacity is not knowable today. Although the Task Force fully expects that strains are increasing and will continue to increase, there is no visible “line in the sand” that can be used to gauge a particular point at which system capacity will be exceeded. However, as strains accumulate, negative effects can be expected in docket length, mean docket times, quality, appeals, public dissatisfaction, and media attention. The challenge here is to institutionalize a management culture of rational change before the system breaks down in order to assure that the courts maintain their integrity, perform essential functions suitably, and meet the reasonable expectations of the public. But, as with beauty, what constitutes a “broken system” will always to some extent be “in the eyes of the beholder”.
- D. The capacity of South Carolina courts will be challenged in the years to come. Without significant change, the effects of demographic and related trends will accelerate over the next 20 years and challenge individual Probate Courts and perhaps the court system as a whole.
- E. This challenge will be confronted in a difficult and competitive funding environment. The court system is operating in a challenging and constrained environment, and this situation is not going away. Indeed, given the fact that no Federal stimulus funds will exist after FY2011, the Task Force believes that, until proven otherwise, it is necessary to presume that Judicial Department and county court budgets will be severely constrained in the years to come as

public officials as well as non-governmental sources make harsh choices about what to fund and what not to fund.<sup>26</sup>

- F. Traditional court management approaches will likely not work in the future. The combination of demographic challenges and new budgetary realities represents a significant long term paradigm change. The future holds more cases, more contested cases, higher expectations, and fewer public sector resources. Such a seismic shift will require a dedicated and unceasing commitment to develop, execute, and manage long and short term strategies that presume an uncertain economic environment.
- G. Educating constituencies and building consensus will be critical. The prospects for successfully meeting systemic challenges will be dependent upon the court system's ability to articulate the need for constructive change; develop "win/win" initiatives; build widespread supporting consensus among court constituencies and resources; and move quickly, sensitively, and responsively.

#### VI. Recommendations.

- A. Commission. The Supreme Court should convert the Task Force into a Commission on State Courts and the Elderly with a mission to
  - 1. Develop strategies and implement recommendations set forth in this Report; and
  - 2. Identify and analyze further challenges to the efficient and effective performance of state court functions as applied to elderly caseloads.The Commission should have its own dedicated staff.
- B. Non-Legislative Strategies and Priorities. Although certain system improvements may require legislative action or funding, initial emphasis should be on non-legislative strategies to expedite needed changes, support court system priorities, and preserve the independence of the Judicial Department. Accordingly,

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<sup>26</sup> It is too soon to know whether and to what extent the net economic effects of population growth and other factors will be positive or negative insofar as the court system goes. However, the Task Force believes that to manage as if further budgetary pressures will be avoided is to invite a court system crisis.

1. The Commission should initially focus upon substantially increasing process and procedural uniformity in our 46 county Probate Courts including but not limited to the following:
  - a) Adopt consistent and comprehensive computerized pattern orders easily accessible to judges to expedite order preparation;<sup>27</sup>
  - b) Adopt simplified plain language pleading and report forms for G/C and other proceedings easily accessible to courts, attorneys, and the public at Probate Courts and through the Judicial Department website;
  - c) Establish a committee with membership drawn from the Probate Court bench and the elder, probate, estate, and trust bar to promote statewide procedural uniformity in our 46 Probate Courts;
  - d) Establish Probate Court caseload performance benchmarks and metrics including but not limited to benchmarks and metrics applicable to contested cases;<sup>28</sup>
  - e) Restructure Probate Court caseload data collection, analysis, and auditing practices to enhance data accuracy and reliability;
  - f) Introduce county-by-county Probate Court reports on contested cases, recusals, removals, and appeals;
  - g) Redesign and identify potential funding sources for Probate Court G/C administration activities to emphasize the welfare of the incapacitated person by incorporating “best practices” and expanding use of information technology including but not limited to the following:
    - (1) Strengthen Probate Court identification and oversight of high risk G/C cases;

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<sup>27</sup> The Task Force has used document assembly software that can build an Order in any court case. An Order can be generated at the conclusion of a hearing and avoid problems that would otherwise arise if judges had to await Orders. G/C cases are time sensitive. See Exhibit 5 for a sample.

<sup>28</sup> Data for this purpose may include, but not necessarily be limited to data similar to Circuit Court and Family Court data and trends reported on the Judicial Department’s website.

- (2) Develop a computerized “project management” approach to Probate Court oversight of G/C cases;<sup>29</sup>
  - (3) Expand use of volunteer visitors for high risk G/C case administration including but not limited to use of carefully supervised nursing, social work, accounting, and law students;
  - (4) At the discretion of the Probate Court, require supplements to annual reports, more frequent (semi-annual, quarterly, or monthly) reports for high-risk G/C administration,<sup>30</sup> and triggers for the conduct of G/C oversight hearings;
  - (5) Develop new templates for G/C case administration plans and periodic reports for high risk G/C cases;
  - (6) Develop a specification for a competitive solicitation for a statewide Probate Court docketing system and a companion statewide G/C case administration monitoring system.
  - (7) Develop and implement standards for identifying problem G/C scenarios; and
  - (8) Develop and implement guidelines for action by Probate Courts to address problem G/C scenarios.
- h) Review qualifications for Judges of Probate;
  - i) Study the benefit of and, as may be applicable, propose a plan and schedule for transferring jurisdiction over adult protective services cases from Family Court to Probate Court;<sup>31</sup>
  - j) Propose a plan and schedule for a statewide volunteer registry as a Probate Court resource for appointments of *pro bono* visitors, guardians ad litem, guardians/conservators, and attorneys;

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<sup>29</sup> Thus, individualized care plans can be developed including medical appointments, financial audits, scheduled and unscheduled visits, monitoring of established milestone events and deadlines, and health condition and other status reports, as applicable. See Exhibit 6 for sample report forms.

<sup>30</sup> Photographs of the incapacitated person and his or her living environment should be required periodically.

<sup>31</sup> Among other matters, this plan and schedule should address compliance issues, if any, with statutory requirements. See, e.g., the Omnibus Adult Protection Act §43-35-45(C).

- k) Propose a plan and schedule for a statewide registry of caregivers, guardians, and conservators removed for cause and of individuals adjudged as having abused, neglected, or exploited an elderly or vulnerable adult;
  - l) Design and implement solutions as required to cope with specific Probate Court caseload capacity issues specifically including one or more special elder court demonstration initiatives and one or more inter-county court resource sharing pilot programs;
  - m) Design education and training initiatives to improve knowledge and understanding of Probate Court elder issues for lay guardians and conservators, Probate Court staffs, governmental and community service resources, parties to cases, members of the Bar, volunteers, and the public at large.
2. As future priorities, the Commission should:
- a) Explore a pilot public guardianship initiative to provide support services for indigent elderly and other vulnerable adults, but do so carefully;<sup>32</sup>
  - b) Explore a suitable public guardianship organizational setting;
  - c) Explore establishment of a Public Attorney legal staff for court representation of indigent elderly and vulnerable adults;
  - d) Propose a plan and schedule for dissemination of centralized, publicly accessible (by computer and otherwise), and current information for the elderly and vulnerable adults describing public and private community services available for their support together with contact information;
  - e) Design a pre-litigation triage pilot to identify disputes that can be easily settled, disputes that can benefit from pre-litigation mediation, and disputes that need to be litigated quickly.
  - f) Consider a Caregivers Licensing Program; and

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<sup>32</sup> There are a number of initiatives in place in various jurisdictions. The structure, operation, record, and potential fit for South Carolina should be examined with attention to the practical realities of cost, funding, management, staffing, and ease of integration with existing programs and entities.



- g) Conduct education and training initiatives including without limitation publication of an Advocate’s Guide and training in elder and vulnerable adult issues for law enforcement personnel and other first responders.
- C. Agile Management. The environment that the court system is entering can fairly be characterized as demanding and uncertain. The unexpected will happen and, with a bow to “Murphy’s Law”, at the worst possible time. What will be required will be a balance, so as not to over-react or under-react to a range of challenges that today can only be guessed at, and flexibility because what works in one place, time, or situation may not work in another. In this context, the Task Force believes that an environment of uncertainty is also an environment of opportunity. The Task Force recommends managing through flexible and innovative approaches, moving target goals, “outside the box” thinking, and an openness to new ideas.
- D. System Priorities. If court system capacity is severely challenged, we will face difficult choices, and time may be critical. In such a setting, pre-defined court system priorities would expedite any decision-making process. Accordingly, the Task Force believes that it is important to develop such priorities before any such situation arises. What is needed here is not goals for one group that compete with goals for another group for acceptance and funding. Instead, what is required here is leadership to develop an ordering of simply stated and easily explained statewide court system priorities. In short, if something has to give, what will it be, and why?
- E. Consensus Building. The Task Force believes that consensus building among the various courts, their constituencies, and State and county officials is essential. Such initiatives should include outreach efforts, open communication channels, and targeted education activities. For example, the Task Force believes strongly that greater uniformity in Probate Court procedures is necessary for both efficiency and effectiveness. However, if this belief is to become a reality, a consensus will have to be built and sustained among Probate Judges, county officials, and perhaps legislators. This effort can succeed, but only if carried out in an open, disciplined, focused manner.

EXHIBITS

1. Order 2009-10-06-02 (Amended by Order <u>2009-12-10-01</u> )	
Creating the Task Force on State Courts and the Elderly	..... 27
2. Elder Care Task Force Briefing Document	..... 29
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Legal Actions During 2009	..... 34
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Exhibit 1: Task Force Mission

The Supreme Court of South Carolina

TASK FORCE ON STATE COURTS AND THE ELDERLY

ORDER

I FIND that the rapidly increasing number of elderly individuals in our state presents a challenge to our court system that can only be met through advance planning.<sup>1</sup> I further find that a task force which specifically studies and reviews elder issues in our state courts, particularly related to elder abuse, and adult guardianships will aid in the court responses.

THEREFORE, pursuant to the provisions of Section 4, Article V, South Carolina Constitution,

IT IS ORDERED, that a Task Force is created to study and make recommendations to the Supreme Court to improve court responses to elder abuse, adult guardianships and conservatorships. The Chief Justice shall appoint the Chair of the Task Force. Members will be appointed as follows:

- (1) Judiciary: One Probate Court Judge, current or retired; one Family Court Judge, current or retired; and the State Court Administrator;
- (2) Lawyers: Two practicing lawyers experienced in litigation or transactional issues affecting the elderly, at least one of whom is experienced in working with the indigent elderly;
- (3) Public Officials: Two officials from an agency/office charged with the protection of the elderly;
- (4) Geriatric Care Professional: One health care professional or master's level social worker with expertise in geriatric care;
- (5) Law Enforcement Professional: One law enforcement professional with expertise in crimes against the elderly;

(6) Consumer: One citizen volunteer;

(7) Legislature: One legislator designated by the Chairperson of the Joint Legislative Committee on Aging;

(8) Other Members: Such other members as the Chief Justice may appoint. The Task Force chairperson may establish interdisciplinary committees to research and gather information, develop or review proposals, monitor implementation of initiatives and otherwise aid in executing the goals of the Task Force.

The Task Force is charged with the following goals, purposes, and responsibilities:

(1) Conducting such studies as necessary to accomplish its purpose.

(2) Collecting data to aid in determining needs, promoting beneficial outcomes, and fostering overall system accountability.

(3) Fostering training and education for judges, court personnel, attorneys, court-appointed Guardians, Guardians ad Litem, Conservators, mediators, law enforcement, and other persons on matters affecting the elderly such as dementia; financial exploitation, physical abuse and neglect;

(4) Recommending changes in court structure, laws, regulations, or rules in order to protect the legal rights of the elderly, promote process fairness, and facilitate the economic use of available resources;

(6) Reporting the status of the Task Force's work to the Supreme Court and other interested parties by July 1, 2010.

IT IS SO ORDERED.

s/Jean Hoefler Toal  
Jean Hoefler Toal, Chief Justice

October 6, 2009 Columbia, South Carolina

<sup>1</sup> South Carolina ranked 29th in the nation with 485,333, or 12.6%, of its population 65 and over in 2000. U.S. Census Bureau projections indicate that this segment of our population will increase to 1,134,459, or 22%, of our population by 2030. A significant percentage of these individuals will live in poverty and at least 50% of those over 85 will have reduced mental capacity. The confluence of these facts presents a challenge for our court system that can only be met by advance planning.

## Exhibit 2: Elder Care Task Force Briefing Document

1. Introduction. By its inherent nature, the guardianship/conservatorship process is an invasion of a protected person's privacy and a restraint on a protected person's control and liberty. This reality forms an ever-present background for any consideration of process initiatives. Guardianship initiatives owe at least some of their momentum to Associated Press coverage in 1986 reviewing guardianship practices across the U.S. and finding numerous issues and defects. Thereafter, government, professional, and interest group studies examined guardianship practices, made recommendations, and acted as a spur to action. Impediments included missing data; no or inadequate funding; inadequate technological and other resources; and an incomplete understanding of the commitment needed to effect meaningful change. Nevertheless, over the years, recommendations in the various studies and actual "on the ground" changes in guardianship practices began to show an emerging consensus.
2. General Overview. Initiatives introduced in certain jurisdictions --- for example, Florida, California, New Hampshire, and Minnesota --- have been discussed as models. But even a quick look at some of those initiatives yields the obvious conclusion that change is occurring not only at the state level through legislation, but also at the county level through court practices. Regarding guardianship monitoring, the courts in Tarrant County, TX,<sup>33</sup> Suffolk County, NY,<sup>34</sup> Ada County, ID,<sup>35</sup> Ramsey County, MN,<sup>36</sup> and Maricopa County, AZ,<sup>37</sup> have been praised. While different studies have produced all kinds of recommendations, it is suggested that a platform for effecting change can be based upon three summary planks:
  - a. *Limited Guardianships*. This category should examine the arguments for and the philosophy of utilizing limited guardianships, when and to the extent practicable, in preference to general guardianships with attention to the four necessary conditions listed in item 4 below. Included here should be the identification of criteria to be examined for making decisions as to the nature and extent of limited guardianships, the types of limitations that may be desirable and feasible, and the means for implementing limited guardianships in court orders.

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<sup>33</sup> "One court relies heavily on legal staff and experienced volunteer visitors, while the other combines the skills of social workers (and social work students) with legal staff for detailed training and monitoring of every case each year." NAELA, *Guardianship/Capacity SIG Bulletin* (Spring 2008), p. 6.

<sup>34</sup> "... (A) 'model guardianship court' ... uses 'a problem-solving restorative jurisprudence approach,' including mediation, a resource co-ordinator, volunteer advocates[, compliance conferences,] and the ability to integrate all pending cases involving the incapacitated person." *Ibid*.

<sup>35</sup> "... 45 volunteers [serve] as records researchers, visitors and auditors; and an experienced resourceful co-ordinator [is] responsible for oversight and training." *Ibid*.

<sup>36</sup> This court uses "e-filing systems for accountings by guardians." *Ibid*.

<sup>37</sup> "Highlights include rigorous case management, staff investigators and accountants, trained volunteer monitors, use of bonding and restricted accounts to secure assets, and a database to track and flag key case events." *Ibid*.

- b. *Planning*. This category should include the purpose and scope of guardianship plans, the criteria for determining the adequacy of those plans in different types of limited and general guardianship settings, plan content and detail, and plan form and structure.
  - c. *Monitoring*. This category should address the purposes and scope of monitoring, identification and utilization of monitors, frequency of monitoring activities, reports required of monitors, monitor report review and follow-up actions, and data systems and processes to audit and track monitoring.
3. Infrastructure. For any set of initiatives to succeed, there are four necessary conditions, *i.e.*, without any one of these conditions being fulfilled, change cannot reasonably be expected to occur:
- a. *Training*. This condition includes training for guardians, monitors, attorneys, and judges including consideration of such related issues as certification, court and other publications, continuing education, and distance learning.
  - b. *Resources*. This condition includes the human and technological resources required to identify change opportunities, design new initiatives, implement new processes and programs, and audit program results.
  - c. *Funding*. This condition includes decisions regarding short- and long-term budgeting and funding, determination of funding priorities and criteria, interaction with political processes, state/county intergovernmental relations, and audit provisions.
  - d. *Commitment*. Simply put, without real, meaningful, dedicated commitment to improving the operation of the legal system, everything else is a waste of time. Here, for certain initiatives, the judiciary is key. If judges do not care --- and care deeply --- about improving guardianships, little if anything can or will be accomplished. However, for longer term institutional progress, the legislature will also be key, thus adding political processes to the commitment mix.
4. Criteria for Selecting and Introducing Change Initiatives
- a. *"Low-Hanging Fruit"*. In this context, the low-hanging fruit paradigm refers to a timing criterion of identifying and introducing changes geared to a pace at which the legal system can absorb them. In short, less strain on the four necessary conditions noted above equates to higher priority in the drive to introduce a particular innovation or set of innovations. It should also be recognized that a set of initiatives considered together may not qualify under this concept if introduced all at once. Thus, some elements of a set may qualify earlier than other elements due to differential impacts upon the four necessary conditions. In such a situation, attention should be paid to developing a sequence best calculated to expedite earlier introduction of one or more desired elements, while maximizing the potential for later introduction of related elements.
  - b. *"Best Interests of the Protected Person"*. In this context, "best interests" refers to a qualitative criterion for identifying guardianship/conservatorship initiatives and assessing their desirability. However, there is a problem here in that the meaning of that phrase in specific situations may be amorphous to the point that the layman --- and, indeed, the professional --- may not always understand how that phrase will be applied and by whom. Therefore, for present purposes,

it is submitted that the “best interests” standard should be applied in a manner such that the protected person is made to suffer the least interference with his or her privacy, control, and liberty consistent with protection of his or her physical, mental, and economic health and welfare --- and nothing more.

5. Sequencing. The perfect should not become the enemy of the good. Thus, the concept of low-hanging fruit implies that sequencing change initiatives may be not only useful, but also desirable. Indeed, the four necessary conditions postulated above may be argued to represent a practical filter for identifying early change candidates. For example, if we presume that public guardianships and a specialized guardianship court are desirable, but would require legislative action, the time, effort, and uncertainty inherent in the legislative process would have to be carefully weighed against simpler steps more easily achievable in the near term. Thus, it might be prudent to calculate whether a combination of shorter term efforts --- improved data collection and analysis, better education and training of opinion leaders, and more widespread use of guardianship planning and monitoring routines --- might produce earlier legal system improvements, positive cost/benefit, and a more solid foundation for future implementation of public guardianships and a specialized guardianship court.
6. Proposed Stage I Initiatives. Subject to debate regarding suitability when measured against the discussion above, it is respectfully suggested that the following “Stage I” efforts be undertaken in roughly the sequence presented with resources as assigned by the Supreme Court, Probate Judges Association, the Lt. Governor’s Office on Aging, the Adult Protection Co-ordinating Council (or constituents thereof), the National Guardianship Association, and/or the SC Bar:
  - a. Training.
    - i. Scope.
      1. Guardian/Conservator Training and Mentoring.
      2. Monitor Resource Identification and Training.
      3. Bench/Bar Training.
      4. Resource Training (Health care institutions, VA, Ombudsmen, etc.)
    - ii. Pilot Program Design.
      1. Target Participant Identification.
      2. Teaching Resource Identification.
      3. Syllabus.
      4. Media Selection.
      5. Funding.
      6. Pilot Program Implementation.
  - b. Pilot Monitoring Program.
    - i. Case Selection.
    - ii. Monitor Resource Identification and Assignment.
    - iii. Reporting and Follow-Up.
      1. Guardian/Conservator.
      2. Monitor.
      3. Other.
      4. Probate Court.
    - iv. Continuous Improvement.

- v. Formal Adoption.
- c. Pattern Orders.
  - i. Pattern Selection.
  - ii. Pattern Order Design and Preparation.
- 7. Proposed Stage II Initiatives. Subject to debate regarding suitability when measured against the discussion above, it is respectfully suggested that the following “Stage II” efforts be undertaken in roughly the sequence presented with resources as assigned by the Supreme Court, Probate Judges Association, the Lt. Governor’s Office on Aging, the Adult Protection Co-ordinating Council (or constituents thereof), the National Guardianship Association, and/or the SC Bar:
  - a. Limited Guardianships/Conservatorships.
    - 1. Pilot Order Implementation.
    - 2. Continuous Improvement.
    - 3. Formal Adoption.
  - b. Affirmative Support Program Design.
    - i. Existing Statutory Review.
    - ii. Existing Public and Private Sector Resource Identification.
    - iii. Opportunity Identification.
    - iv. Case Selection.
    - v. Resource Assignment.
- 8. Proposed Stage III Initiatives. Subject to debate regarding suitability when measured against the discussion above, it is respectfully suggested that the following “Stage III” efforts be undertaken in roughly the sequence presented with resources as assigned by the Supreme Court, Probate Judges Association, the Lt. Governor’s Office on Aging, the Adult Protection Co-ordinating Council (or constituents thereof), the National Guardianship Association, and/or the SC Bar:
  - a. Public Guardian/Conservator Study.
  - b. Specialized Guardianship/Conservatorship Court Study.



Exhibit 3: FY2009 Probate Court Data\*

County	ESTATES			G/C			STAFF			STAFF METRICS			FY2009 BUDGET*			BUDGET METRICS		
	All	Open		Formal	Average	Turnover	Judges	Other	Open/Judge	Turns/Judge	Disposed/Judge	Turns/Judge	Disposed/Judge	\$/Staff	\$/Open Case	\$	\$	\$
		Open	Formal															
County																		
Abbeville	221	58	11	57	19.30%	1	1.5	58.00	19.30%	11.00	18.00	19.30%	11.00	108,337.00	43,334.80	388.30	0.00	0.00
Alken	898	449	54	453	11.93%	3	11	149.67	3.98%	18.00		3.98%						
Allendale	57	22	1	29	3.51%													
Anderson	1,511	383	89	401	22.19%	3	6	127.67	7.40%	29.67	22.67	7.40%	29.67	433,315.00	48,146.11	228.78	0.00	0.00
Bamberg	131	19	12	18	66.67%	1	1	19.00	66.67%	12.00		66.67%	12.00					
Barnwell	266	52	1	53	1.89%													
Beaufort	846	166	55	168	32.84%	2	13	83.00	16.42%	27.50	325.50	16.42%	27.50	892,704.00	59,513.60	882.12	0.00	0.00
Berkeley	748	651	86	661	13.01%	2	6	325.50	6.51%	49.00		6.51%	49.00					
Calhoun	108	9	0	10	0.00%													
Charleston	2,179	813	265	781	33.95%	3	17	271.00	27.14%	27.00		27.14%	27.00	1,996,779.00	99,838.95	667.37	0.00	0.00
Cherokee	380	96	27	100	27.14%	1	4	96.00	27.14%	27.00		27.14%	27.00					
Chester	339	90	38	86	44.44%	1	4	90.00	44.44%	38.00		44.44%	38.00					
Chesterfield	1,435	66	18	68	26.67%	2	2	33.00	26.67%	36.00		26.67%	36.00					
Clarendon	553	153	36	145	24.83%	1	1	153.00	24.83%	36.00		24.83%	36.00	118,380.00	59,190.00	167.68	0.00	0.00
Colleton	375	119	29	119	24.37%	1	3	119.00	24.37%	29.00		24.37%	29.00					
Darlington	541	210	38	213	17.84%	1	3.5	210.00	17.84%	38.00		17.84%	38.00					
Dillon	180	72	10	70	14.29%													
Dorchester	1,055	285	88	272	32.35%													
Edgefield	108	67	14	71	19.72%	2	4	33.50	17.55%	105.67		17.55%	105.67	910,556.00	50,586.44	270.92	0.00	0.00
Fairfield	254	73	13	73	17.93%	1	1.5	73.00	17.93%	13.00		17.93%	13.00	193,600.00	193,600.00	935.27	0.00	0.00
Florence	919	316	162	321	50.55%	1	8	316.00	50.55%	162.00		50.55%	162.00	512,634.00	56,959.33	415.09	0.00	0.00
Georgetown	417	134	21	128	16.47%	1	4	134.00	16.47%	21.00		16.47%	21.00	262,120.00	52,424.00	475.72	0.00	0.00
Greenville	2,487	585	218	584	37.33%	2	18	292.50	32.88%	109.00		32.88%	109.00	926,576.00	46,328.80	301.62	0.00	0.00
Greenwood	636	181	61	186	32.88%	1	5	181.00	32.88%	61.00		32.88%	61.00	232,485.00	38,747.50	284.56	0.00	0.00
Hampton	68	13	17	11	154.55%													
Horry	2,639	722	317	602	52.66%	3	15	240.67	17.55%	105.67		17.55%	105.67	910,556.00	50,586.44	270.92	0.00	0.00
Jasper	148	59	23	62	37.10%													
Kershaw	761	161	26	158	16.46%	2	3	80.50	8.23%	13.00		8.23%	13.00	236,961.00	47,392.20	257.01	0.00	0.00
Lancaster	875	125	34	120	28.45%	2	4	62.50	14.23%	17.00		14.23%	17.00	300,339.00	50,056.50	300.34	0.00	0.00
Laurens	611	124	23	119	19.41%	2	5	62.00	9.70%	11.50		9.70%	11.50	208,015.00	29,716.43	283.01	0.00	0.00
Lee	117	51	15	48	31.25%													
Lexington	1,703	396	90	408	22.09%	2	8	198.00	11.04%	45.00		11.04%	45.00	650,424.00	65,042.40	309.87	0.00	0.00
Marion	175	81	11	79	13.92%													
Marlboro	332	95	16	94	17.11%	1	2	95.00	17.11%	16.00		17.11%	16.00					
McCormick	39	13	1	14	7.14%	1	1	13.00	7.14%	1.00		7.14%	1.00					
Newberry	305	90	15	90	16.67%	2	2	45.00	8.33%	7.50		8.33%	7.50	260,862.00	65,215.50	680.41	0.00	0.00
Oconee	2,128	187	16	193	8.31%	1	5	187.00	8.31%	16.00		8.31%	16.00	378,843.00	63,140.50	163.65	0.00	0.00
Orangeburg	1,240	215	43	217	19.82%	2	4	107.50	9.91%	21.50		9.91%	21.50	344,842.00	57,473.67	237.00	0.00	0.00
Pickens	1,056	130	21	134	15.67%	2	3	65.00	7.84%	10.50		7.84%	10.50	283,050.00	56,610.00	238.66	0.00	0.00
Richland	1,395	625	132	636	20.77%	2.5	18	250.00	8.31%	52.80		8.31%	52.80	1,051,337.00	51,284.73	520.46	0.00	0.00
Saluda	153	62	10	61	16.39%	1	1	62.00	16.39%	10.00		16.39%	10.00					
Spartanburg	1,905	442	122	446	27.38%	3	15	147.33	9.13%	40.67		9.13%	40.67	1,077,940.00	59,885.56	459.28	0.00	0.00
Sumter	724	298	75	298	25.17%	2	3	149.00	12.58%	37.50		12.58%	37.50					
Union	268	35	7	34	20.90%	1	3	35.00	20.90%	7.00		20.90%	7.00					
Williamsburg	365	94	15	96	15.71%													
York	1,094	322	94	321	29.28%	2	6	161.00	14.64%	47.00		14.64%	47.00	479,726.00	59,965.75	338.79	0.00	0.00
TOTAL	34,745	9,409	2,470	9,298	26.27%	62	212							12,668,852.00				
MEAN	755	205	54	202	26.27%	2	6							34.39	506,754.08			
MEDIAN	547	125	25	119	20.83%	1	4							27.00	344,842.00			
MIN	39	9	0	10	0.00%	2	1							1.00	108,337.00			54.00
MAX	2,639	813	317	781	154.55%	3	18							162.00	1,996,779.00			1,016.63

\* 2009 data.

Exhibit 4: Department of Social Services APS Legal Actions During 2009

<b>Office #</b>	<b>Office</b>	<b># Cases</b>
002	Aiken	10
003	Allendale	1
004	Anderson	19
005	Bamberg	1
007	Beaufort	3
008	Berkeley	21
009	Calhoun	4
010	Charleston	41
011	Cherokee	1
012	Chester	4
013	Chesterfield	17
014	Clarendon	3
015	Colleton	8
'017	Darlington	13
018	Dillon	2
019	Dorchester	1
020	Edgefield	2
023	Fairfield	10
024	Greenville	19
025	Hampton	3
026	Horry	14
028	Kershaw	27

<b>Office #</b>	<b>Office</b>	<b># Cases</b>
030	Laurens	4
032	Lexington	4
034	Marion	7
035	Marlboro	5
036	Newberry	21
037	Oconee	3
038	Orangeburg	12
039	Pickens	12
040	Richland	40
041	Saluda	1
042	Spartanburg	132
043	Sumter	11
044	Union	11
045	Williamsburg	4
046	York	3
<b>Total</b>		<u>494</u>

## Exhibit 5: Proposed Pattern Probate Court G/C Order with Instructions

In order to streamline the process of not only being able to build a Court order very quickly when a judge is on the bench in the long range, self represented litigants are increasing in our legal organization and this system is efficient and easy to understand for all.

This template is a multifaceted order that encompasses any possible scenarios that you may need but has the flexibility to have language added, changed or deleted based on what you want. Court staff will create interviews as templates which are built to be a flexible document-automation engine to automate production of documents pertaining to dozens of different legal scenarios. The Task Force has the Hot Docs program to design a pattern order.

From the internal side of the program, an order is built “behind the scenes” so that the user does not see the coding that has been implemented to construct the language of the order like the following example:

**State of South Carolina  
Greenville County**

**In the Probate Court**

In the Matter of:

«Incapacitated Person»,

Incapacitated Person

DOB: «Birth Date»

Case Number: «Case Number»

**ORDER APPOINTING**

«ASK Order Appointing»

[ «IF Order Appointing = "Incapacity"»

**X«END IF»**

] **Incapacity**

[ «IF Order Appointing = "Limited  
Guardianship of Person"»

**X«END IF»**

] **Limited Guardian of Person**

[ «IF Order Appointing = "Full  
Guardianship of Person and/or"»

**X«END IF»**

] **Full Guardian of Person and/or**

[ «IF Order Appointing = "Limited  
Conservatorship of Estate"»

**X«END IF»**

] **Limited Conservator of  
Estate**

[ «IF Order Appointing = "Full Conservator  
of Estate"»

**X«END IF»**

] **Full Conservator of Estate**

[ «IF Order Appointing = "Clerk's Action  
Required"»

**X«END IF»**

] **Clerk's Action Required,**

### Clerk's Information Summary

Due Date for Initial Personal Care Plan and/or Inventory: «Date of Initial Personal Care and/or Inventory»  
Due Date for Receipt of funds in Restricted Account(s): «Due date for Receipt of funds in restricted acct»  
Due Date for Report and Accounting: «Due date for Report & Accounting»  
Due Date for Filing Fee: «Due date for Filing Fee»  
The clerk shall notify the auditor of loss of voting rights: «Notify Auditor of loss of voting rights?»

[ «IF Guardianship Status = "Professional Guardian"  
»  
X«END IF»  
] Professional Guardian [«IF Guardianship Status = "Non-Professional Guardian"»  
X«END IF»  
] Non-Professional Guardian [«IF Guardianship Status = "Training Required"»  
X«END IF»  
] Training Required  
[«IF Conservator Status = "Professional Conservator"»  
X«END IF»  
] Professional Conservator [«IF Conservator Status = "Non-Professional Conservator"»  
X«END IF» ] Non-Professional Conservator [«IF Conservator Status = "Training Required"»  
X«END IF»  
] Training Required

Date of Hearing: «Date of Hearing»

Presiding Judge: «Presiding Judge»

Attorney for Petitioner(s): «Attorney for Petitioner»

Petitioner(s): «REPEAT Petitioners»«Petitioner»«.lb»«END REPEAT»

Attorney for Alleged Inc. Person: «Attorney for Alleged Incapacitated Person»

Attorney for Respondent(s): «Attorney for Respondents»

Guardian ad Litem: «Guardian ad Litem»

Self Represented Litigant (s): «REPEAT Self Rep Lit»«Self Represented Litigants»«.lb»«END REPEAT»

Court Appointed Visitor: «Court Appointed Visitor»

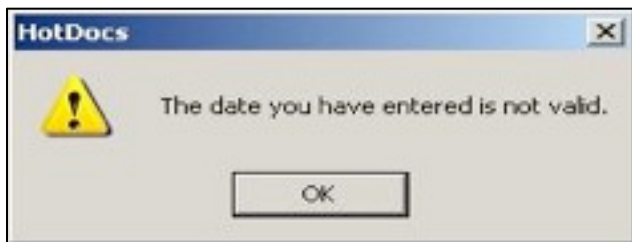
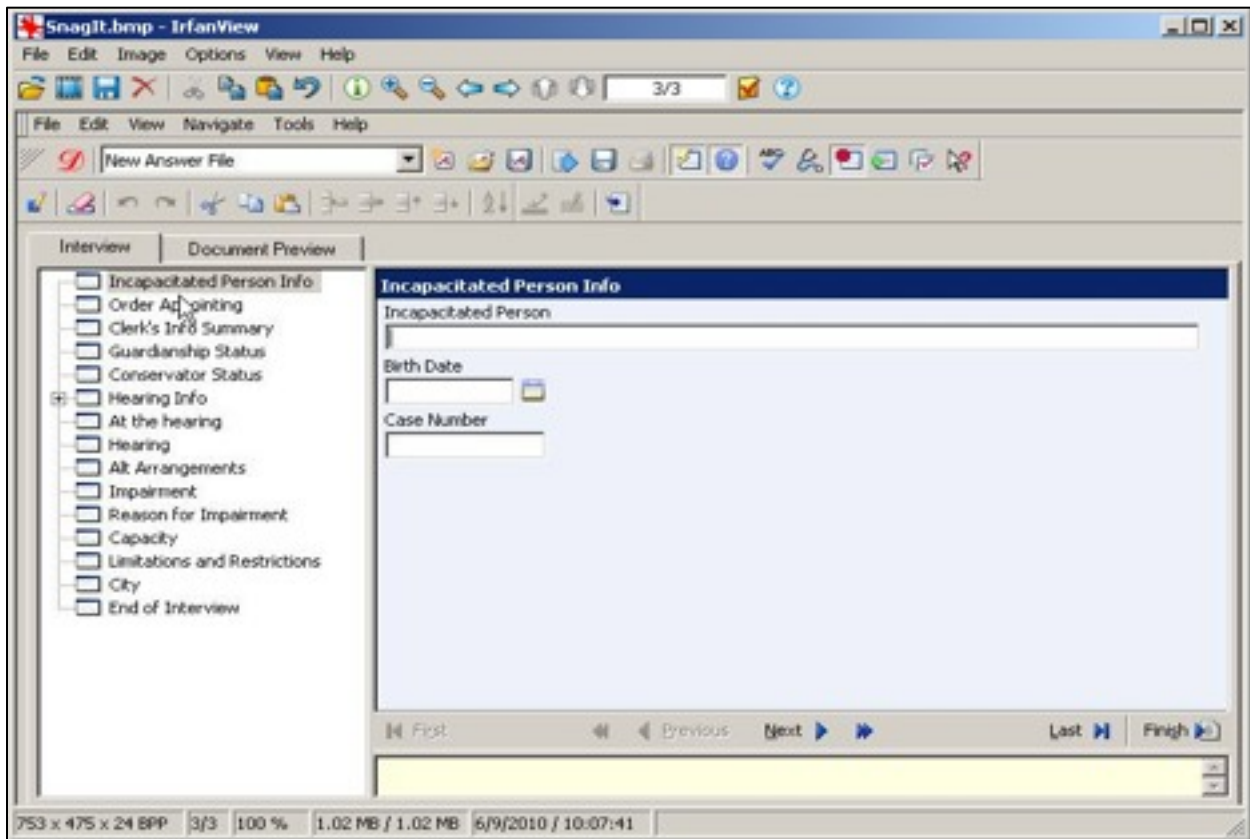
Court Appointed Examiner(s): «Court Appointed Examiner»

Court Reporter: «Court Reporter»

At the hearing:

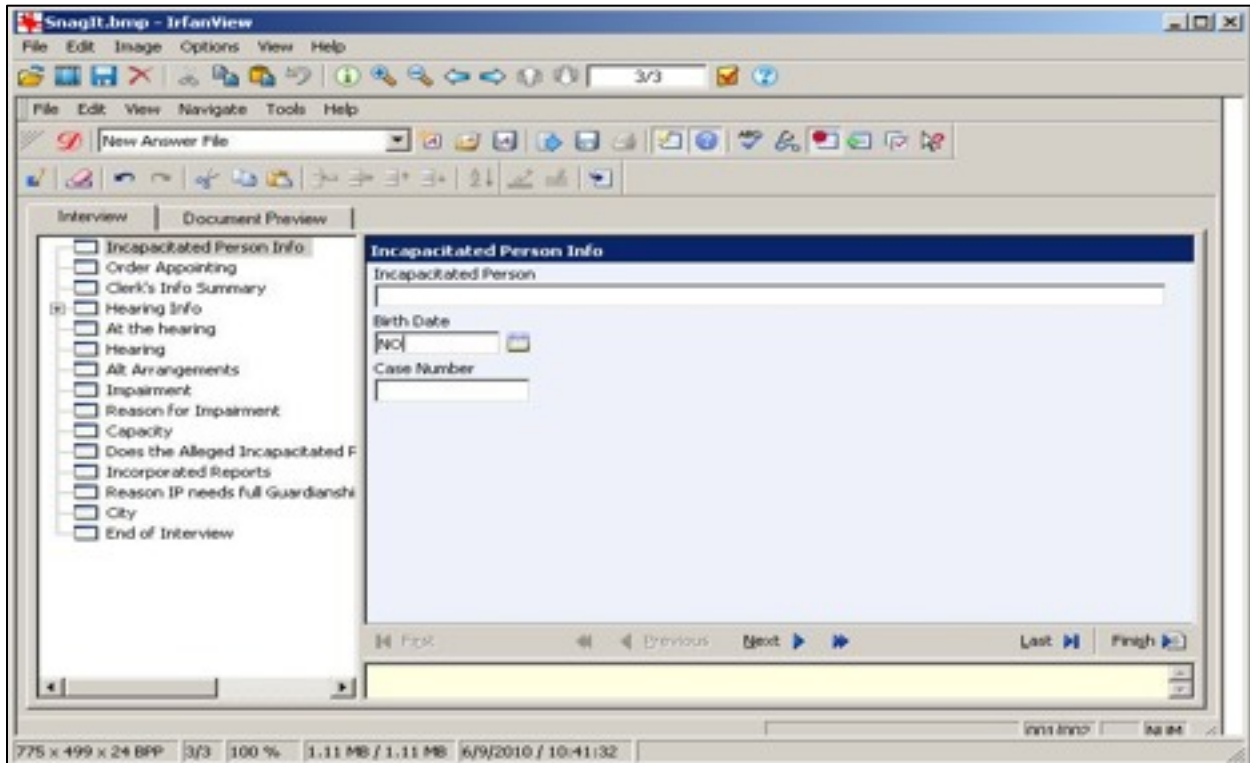
```
[ «IF At the hearing = "The Alleged Incapacitated Person was Present in Court"»
X«END IF»
] The Alleged Incapacitated Person was present in Court;
[ «IF At the hearing = "The hearing was conducted at the location of the Alleged Incapacitated Person"
»
X«END IF»
] At the location («Location of Hearing») of the Alleged Incapacitated Person;
[ «IF At the hearing = "The Alleged Incapacitated Person's presence was waived for good cause shown
other than mere inconvenience"»
X«END IF»
] The Alleged Incapacitated Person's presence was waived for good cause shown other than mere
inconvenience. The reason was «Reason IP's presence was waived»
[ «IF At the hearing = "Closed Hearing"»
X«END IF»
] Closed hearing 62-5-303
[ «IF At the hearing = "Other"»
X«END IF»
] Other «Hearing Other».
```

-----  
From the external side, the user works with easy to follow, drop boxes or categories that can be easily filled in like the following example:



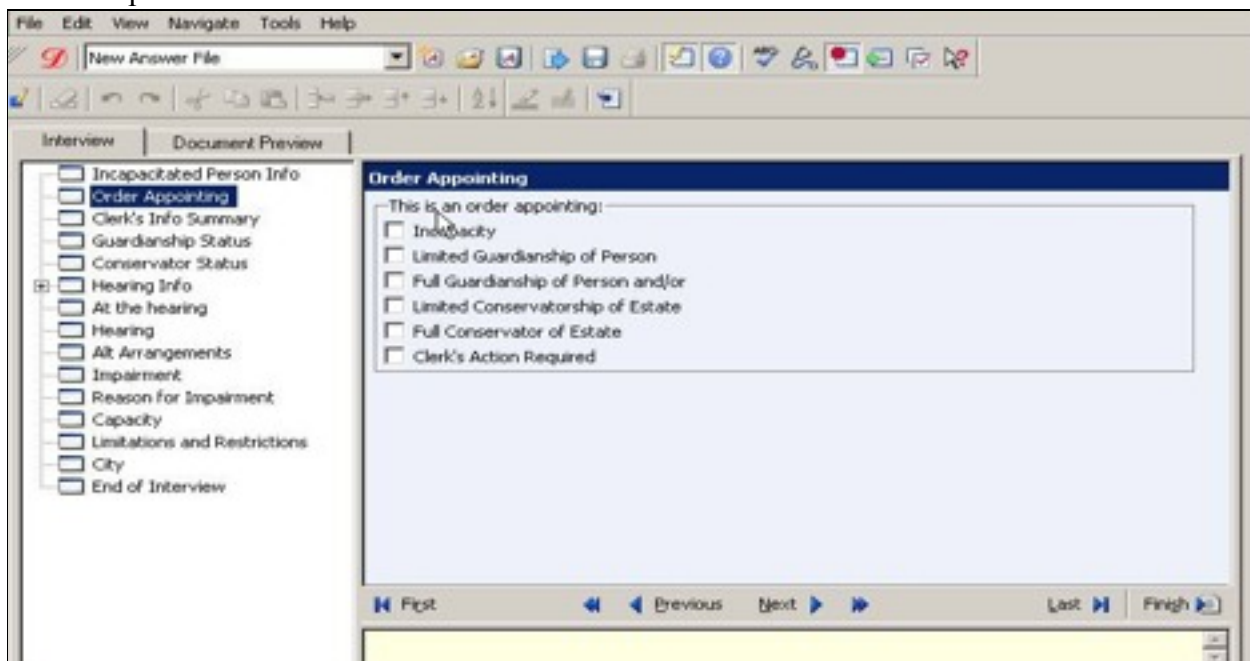


The program is also built to avoid errors. For instance, if the field is for a date of birth and data is entering into the field, an error will appear in order to make the correction.



Once the user adds the specific information that is being asked for then the program will build the order and continue to the next interview question.

For example:



As the interview questions change, the order is built based on the input of the data.

The screenshot shows the 'Pattern Order - HotDocs 2009 Professional Edition' interface. The 'Interview' tab is active, and the 'Document Preview' pane displays the 'Clerk's Info Summary' section. The left sidebar contains a tree view of interview sections, with 'Clerk's Info Summary' selected. The main content area includes the following fields and options:

- Date of Initial Personal Care and/or Inventory**: [Text Field]
- Due date for Receipt of funds in restricted account**: [Text Field]
- Due date for Report & Accounting**: [Text Field]
- Due date for Filing Fee**: [Text Field]
- Notify Auditor of loss of voting rights?**:
  - Yes
  - No
- Guardianship Status**:
  - Professional Guardian
  - Non-Professional Guardian
  - Training Required
- Conservator Status**:
  - Professional Conservator
  - Non-Professional Conservator

Navigation buttons at the bottom include 'First', 'Previous', 'Next', 'Last', and 'Finish'. The status bar at the bottom right shows '001/002' and 'NUM'.

The screenshot shows the 'Pattern Order - HotDocs 2009 Professional Edition' interface. The 'Interview' tab is active, and the 'Document Preview' pane displays the 'Hearing Info' section. The left sidebar contains a tree view of interview sections, with 'Hearing Info' selected. The main content area includes the following fields and options:

- Date of Hearing**: [Text Field]
- Presiding Judge**: [Text Field]
- Attorney for Petitioner**: [Text Field]
- Attorney for Alleged Incapacitated Person**: [Text Field]
- Attorney for Respondents**: [Text Field]
- Guardian ad Litem**: [Text Field]
- Court Appointed Visitor**: [Text Field]
- Court Appointed Examiner**: [Text Field]
- Court Reporter**: [Text Field]
- Click to add self represented litigants

Navigation buttons at the bottom include 'First', 'Previous', 'Next', 'Last', and 'Finish'. The status bar at the bottom right shows '001/002' and 'NUM'.

One questions flows into the next set of questions allowing a seamless transition as the order is constructed.

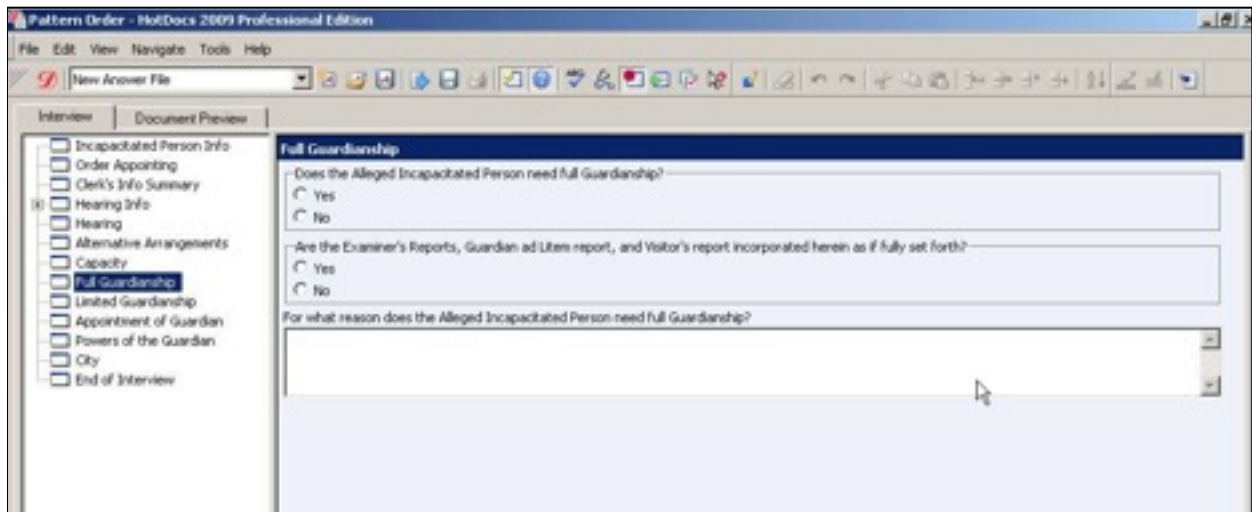
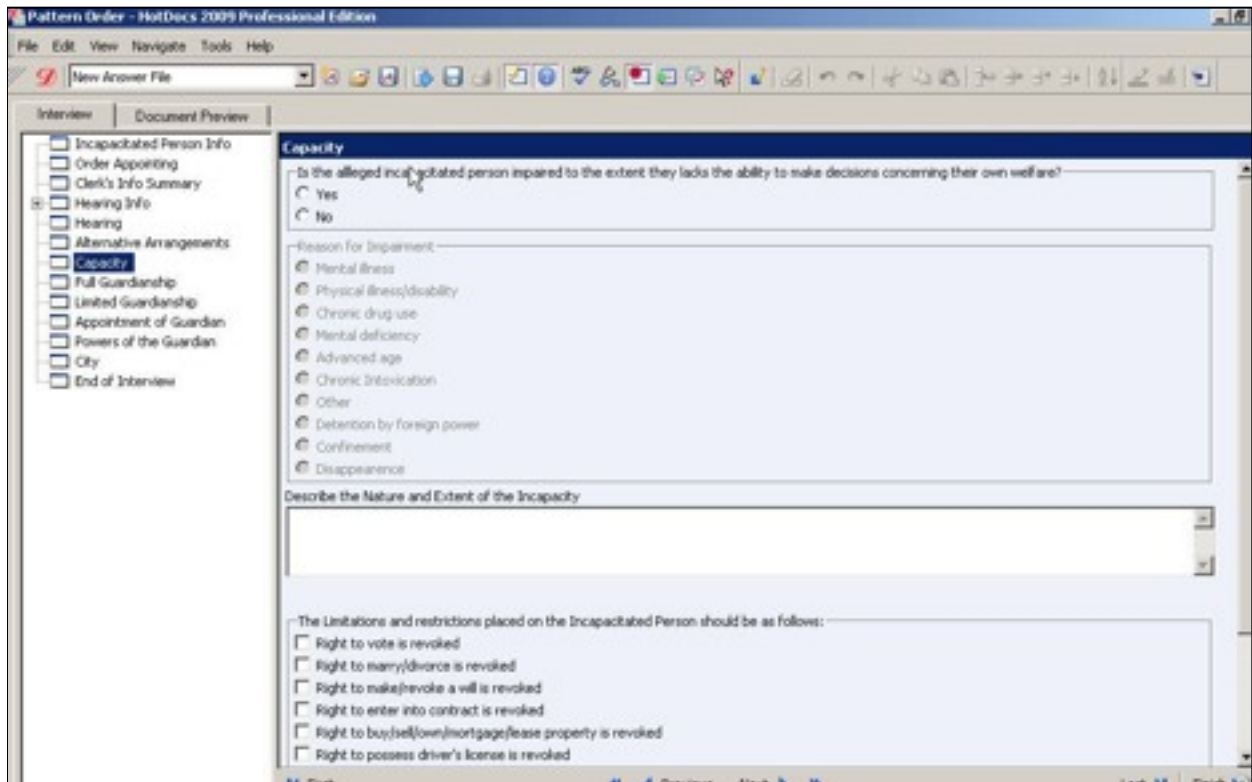
The screenshot shows the 'Pattern Order' software interface. The left sidebar contains a list of sections with checkboxes: Incapacitated Person Info, Order Appointing, Clerk's Info Summary, Hearing Info, Hearing, Alternative Arrangements, Capacity, Full Guardianship, Limited Guardianship, Appointment of Guardian, Powers of the Guardian, City, and End of Interview. The 'Hearing' section is selected. The main area displays the following questions and input fields:

- Hearing**
- At the hearing:
  - The Alleged Incapacitated Person was Present in Court
  - The hearing was conducted at the location of the Alleged Incapacitated Person
  - The Alleged Incapacitated Person's presence was waived for good cause shown other than mere inconvenience
  - Closed Hearing
  - Other
- Location of the Incapacitated Person if not in Court:
- Reason Incapacitated Person's presence was waived because:
- Other:

The screenshot shows the 'Pattern Order' software interface. The left sidebar contains a list of sections with checkboxes: Incapacitated Person Info, Order Appointing, Clerk's Info Summary, Hearing Info, Hearing, Alternative Arrangements, Capacity, Full Guardianship, Limited Guardianship, Appointment of Guardian, Powers of the Guardian, City, and End of Interview. The 'Alternative Arrangements' section is selected. The main area displays the following questions and input fields:

- Alternative Arrangements**
- What, if any, alternative arrangements have been made by the alleged incapacitated person?
  - Did not make alternative arrangements
  - Made alternative arrangements, but these arrangements were inadequate
  - (Name of Fiduciary) has been acting in fiduciary capacity for alleged incapacitated person but should not continue
- Why were the arrangements inadequate?
- Name of Fiduciary:
- Why should the fiduciary no longer act in a fiduciary capacity for the Alleged Incapacitated Person?

Once the first yes or not question is answered with a yes, the computer will then prompt you for the reason for impairment. If you answer with a no, that portion of the template will not be a part of the order.



There are areas in building the order that allow you to add more detail based on the case and the history so that you can limit power, duties or appointments in a broad or narrow fashion.

The screenshot shows the 'Limited Guardianship' section of the software. On the left, a navigation pane lists various sections, with 'Limited Guardianship' selected. The main area contains a form with the following elements:

- Limited Guardianship**
- UG Incorporated Reports**
  - Yes
  - No
- The Alleged Incapacitated Person is capable of managing some of his/her personal affairs as follows:**
  - A large text input field for providing details.

The screenshot shows the 'Appointment of Guardian' section of the software. On the left, a navigation pane lists various sections, with 'Appointment of Guardian' selected. The main area contains a form with the following elements:

- Appointment of Guardian**
- The Proposed Guardian's Address**
  - Text input field for the address.
- Proposed Guardian's Business Phone Number**
  - Text input field for the business phone number.
- Proposed Guardian's Personal Phone Number**
  - Text input field for the personal phone number.
- Proposed Guardian Email Address**
  - Text input field for the email address.
- Guardian's Priority of Appointment**
  - Testamentary appointment by parent of incapacitated person
  - Testamentary appointment by spouse of incapacitated person
  - Nominated by the incapacitated person
  - Attorney-in-fact as set forth in 62-5-501 whose authority includes powers over the person
  - Spouse of the incapacitated person
  - Adult child of the incapacitated person
  - Parent of the incapacitated person
  - Other relative
  - Person nominated by the person who is caring/paying benefits for incapacitated person
- Estate File Number**
  - Text input field for the estate file number.
- Proposed Guardian Education**
  - Text input field for the proposed guardian's education.
- Proposed Guardian Employment**
  - Text input field for the proposed guardian's employment.
- Does the proposed guardian have a criminal record?**
  - Yes
  - No
- Click to add Convictions and Dates of Convictions**

The prompts allow a consistent methodology for someone that may have limited legal experience or assists the expert to quickly identify the needs of the order and customize it using a standard format.

Pattern Order - HotDocs 2009 Professional Edition

File Edit View Navigate Tools Help

New Answer File

Interview Document Preview

- Incapacitated Person Info
- Order Appointing
- Clerk's Info Summary
- Hearing Info
- Hearing
- Alternative Arrangements
- Capacity
- Full Guardianship
- Limited Guardianship
- Appointment of Guardian
- Powers of the Guardian
- Proposed Conservator's Address
- Proposed Conservator's Business
- Proposed Conservator's Persona
- Proposed Conservator's Email Ad
- What is the value of property on
- Funds Needed for support
- City
- End of Interview

### Appointment of Guardian

The Proposed Guardian's Address

Proposed Guardian's Business Phone Number Proposed Guardian's Personal Phone Number

Proposed Guardian Email Address

Guardian's Priority of Appointment

- Testamentary appointment by parent of incapacitated person
- Testamentary appointment by spouse of incapacitated person
- Nominated by the incapacitated person
- Attorney-in-fact as set forth in 62-5-501 whose authority includes powers over the person
- Spouse of the incapacitated person
- Adult child of the incapacitated person
- Parent of the incapacitated person
- Other relative
- Person nominated by the person who is caring/paying benefits for incapacitated person

Estate File Number

Other Relative

Proposed Guardian Education

Proposed Guardian Employment

Does the proposed guardian have a criminal record?

- Yes
- No

First Previous Next Last Finish

Pattern Order - HotDocs 2009 Professional Edition

File Edit View Navigate Tools Help

New Answer File

Interview Document Preview

- Incapacitated Person Info
- Order Appointing
- Clerk's Info Summary
- Hearing Info
- Hearing
- Alternative Arrangements
- Capacity
- Full Guardianship
- Limited Guardianship
- Appointment of Guardian
- Powers of the Guardian
- Proposed Conservator's Address
- Proposed Conservator's Business
- Proposed Conservator's Persona
- Proposed Conservator's Email Ad
- What is the value of property on
- Funds Needed for support
- City
- End of Interview

### Powers of the Guardian

Guardian Powers

- Custody of ward
- Determine the residence of ward
- Provide for care, comfort, maintenance of ward
- Training and education of ward
- Care of ward's personal property (clothing, furniture, vehicles)
- Consent to medical or other professional care, counsel, treatment, or service
- Report condition of his/her ward at least annually

Is there a Conservator?

- Yes
- No

There is no Conservator, Guardian may:

- Institute proceedings to compel support
- Receive money and property and apply toward care of ward, conserving any excess

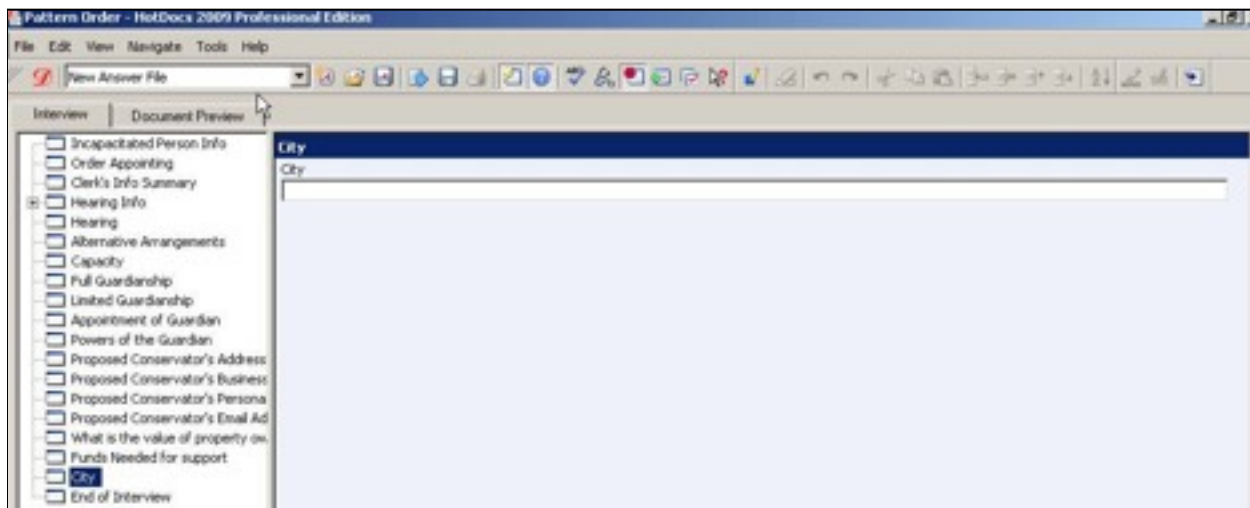
Pay over excess funds to Conservator and accounts to Conservator for all funds received?

- Yes
- No

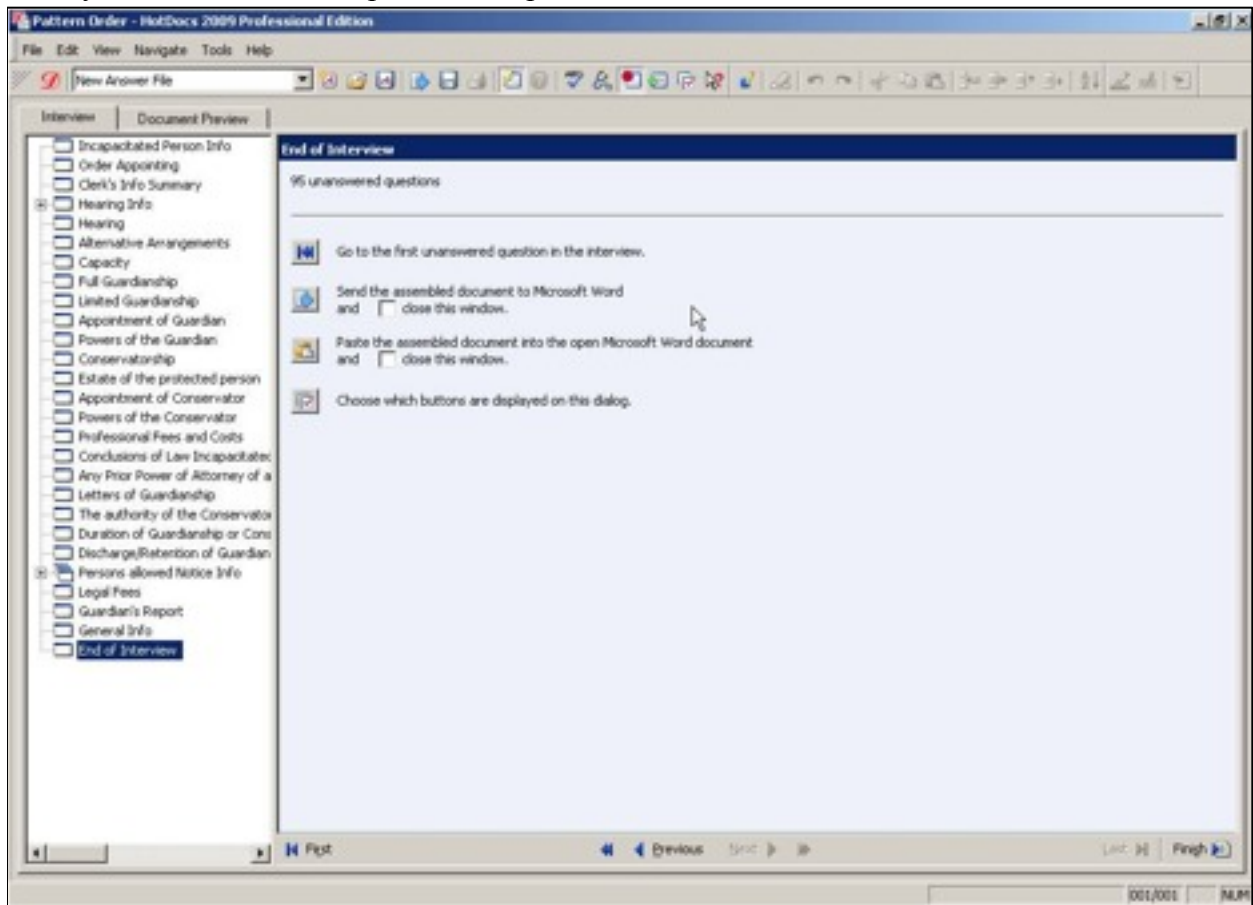
The powers are further described as follows:

First Previous Next Last Finish

The interview “tree view” can be as limited or specific so that it is fully customizable.



Once you end the interview process and proceed to click finish,



the once eighteen page order will be customized yet in a standard format of four pages.



Exhibit 6: Proposed Examiner Reports

STATE OF SOUTH CAROLINA

IN THE PROBATE COURT

COUNTY OF \_\_\_\_\_

IN THE MATTER OF:

CASE NUMBER:

EXAMINER'S AFFIDAVIT/ REPORT REGARDING CAPACITY

FAILURE TO PROVIDE DETAILED RESPONSES TO THE QUESTIONS ON THIS AFFIDAVIT MAY OBLIGATE YOU  
TO APPEAR AT THE PROBATE COURT HEARING.

All information MUST be typed or clearly printed.

PERSONALLY APPEARED BEFORE ME \_\_\_\_\_ who being duly  
sworn, deposes and says:

I am (Name and medical credentials)

Business address and telephone:

Date, time, and place of THIS examination:

\_\_\_\_ I evaluated this person alone. OR

\_\_\_\_ I evaluated this person in the presence of \_\_\_\_\_.

\_\_\_\_ I have had no previous opportunities to evaluate this person. OR

\_\_\_\_ I have evaluated this person in the past on the following occasions:

\_\_\_\_\_ I have been a regular health care provider for this person from \_\_\_\_\_ to \_\_\_\_\_.

The person is \_\_\_\_\_ years old and has the following health problems:

The person's physical appearance was:

\_\_\_\_\_ neat and clean                  \_\_\_\_\_ disheveled                  \_\_\_\_\_ with body odor  
\_\_\_\_\_ dressed appropriately for the temperature                  \_\_\_\_\_ dressed unsuitably for the temperature  
\_\_\_\_\_ bruised, cut or visible sores                  \_\_\_\_\_ very thin                  \_\_\_\_\_ very overweight  
\_\_\_\_\_ within normal range of weight                  \_\_\_\_\_ stained or soiled clothing  
\_\_\_\_\_ normal level of consciousness                  \_\_\_\_\_ sleepy or sedated

Appearance was additionally notable for:

When asked today's date during the exam, the person said it was \_\_\_\_\_. This response was given \_\_\_\_\_ quickly \_\_\_\_\_ slowly \_\_\_\_\_ after orally problem solving to arrive at an answer.

When asked where we were, the person answered \_\_\_\_\_.

When asked the purpose of this evaluation, the person said \_\_\_\_\_.

Emotional state at beginning of evaluation:

Emotional state mid-evaluation:

Emotional state at end of evaluation:

The person is taking the following medications on a regular basis:

In addition, the person had taken the following medications in the two days prior to my evaluation:

The person \_\_\_\_\_ was in a normal state of health during the evaluation. OR

The person \_\_\_\_\_ was experiencing the following temporary health problems:

The person \_\_\_\_\_ was experiencing the following temporary emotional or stressful situation:

Has the person ever been rated or found to be

disabled	_____yes	_____no	_____unknown
mentally ill or incompetent	_____yes	_____no	_____unknown
chemically dependent	_____yes	_____no	_____unknown

Can the person independently

ambulate as needed	_____yes	_____no	_____unknown
bathe and perform personal hygiene	_____yes	_____no	_____unknown
prepare and eat meals	_____yes	_____no	_____unknown
clean house	_____yes	_____no	_____unknown
maintain bank accounts or funds	_____yes	_____no	_____unknown
pay bills	_____yes	_____no	_____unknown
maintain a safe environment	_____yes	_____no	_____unknown
operate a car	_____yes	_____no	_____unknown
take medication unsupervised	_____yes	_____no	_____unknown
refill medication as needed	_____yes	_____no	_____unknown

recognize familiar people             yes     no     unknown

recognize dangerous situations     yes     no     unknown

In the last six months, has the person been hospitalized, had therapy or treatment, inpatient or outpatient surgery, or any major medical, psychological or psychiatric testing? If so, explain

Results of the following tests bearing on capacity are:

Has the person had any recent falls?     yes     no

Has the person been in any serious motor vehicle accidents?     yes     no

How much alcohol does the person generally consume?

Does the person use any other illicit drugs or substances?     yes     no    If yes, provide known details.

I also spoke to the following family members or persons knowledgeable about this person. (List names, addresses, phone numbers, and concerns.)

Indicate which of the following, to your knowledge, the person has: (Attach pertinent copies, if available.)

a general durable power of attorney

a health care power of attorney

a living will

Medicare

Medicaid

other health insurance

- \_\_\_\_\_ long term care insurance
- \_\_\_\_\_ veteran's health insurance
- \_\_\_\_\_ community agency assistance (Provide details.)

Does the person have a primary care giver? \_\_\_\_\_yes \_\_\_\_\_no      If so, provide contact information and any other pertinent information.

Would the person benefit from any type of training, education, therapy, assistive devices or community agency assistance? \_\_\_\_\_yes \_\_\_\_\_no      If yes, explain:

Length of evaluation: \_\_\_\_\_

**BASED ON MY EVALUATION OF THIS PERSON:**

\_\_\_\_\_ I DO NOT believe that this person is an "incapacitated person." I do not find any impairment by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, or other causes to the extent that this person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning self, property or finances.

\_\_\_\_\_ I DO BELIEVE THAT THIS PERSON IS AN "INCAPACITATED PERSON" and in need of a guardian and/or conservator. I find this person to be impaired by reason of : (Check all of the following that apply and describe the limitations resulting from each.)

- \_\_\_\_\_ Mental Illness
- \_\_\_\_\_ Mental deficiency
- \_\_\_\_\_ Physical illness or disability
- \_\_\_\_\_ Advanced age
- \_\_\_\_\_ Chronic use of drugs
- \_\_\_\_\_ Chronic intoxication
- \_\_\_\_\_ Other

"Incapacitated person" means any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication or other causes to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person or property. (Section 62-5-101 of the SC Code of Laws)

\_\_\_\_\_ This condition is permanent. OR

\_\_\_\_\_ This condition is temporary.

\_\_\_\_\_ This person is able to perform activities of daily living. OR

\_\_\_\_\_ This person is unable to perform activities of daily living. OR

\_\_\_\_\_ This person is unable to perform some activities of daily living. (See previous detailed list.)

What type of family or other support does this person have? Are there any issues related to support or disharmony that the Court should be aware of?

What other information would be helpful to the Court in making a determination of capacity?

FURTHER AFFIANT SAYETH NOT.

Examiner's Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Examiner's Credentials: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

SWORN to me this \_\_\_\_\_ day of

\_\_\_\_\_, 20\_\_\_\_.

Notary Public of South Carolina

My Commission expires \_\_\_\_\_

STATE OF SOUTH CAROLINA

IN THE PROBATE COURT

COUNTY OF \_\_\_\_\_

IN THE MATTER OF

CASE NUMBER

VISITOR'S REPORT

I, the undersigned court-appointed visitor in this guardianship proceeding, submit the following report concerning the investigation which I conducted pursuant to Section 62-5-303 of the SC Probate Code. In my visit to the place where the allegedly incapacitated person resides, I observed the following:

Date, time, and place of interview:

When asked today's date, the person said:

When asked where we were, the person said:

When asked for birth date and age, the person said:

How many years of education has the person had?

List several previous jobs the person has held in the past:

Physical Appearance: \_\_\_\_\_very thin    \_\_\_\_\_very overweight    \_\_\_\_\_about normal weight

\_\_\_\_\_neat and clean    \_\_\_\_\_body odor    \_\_\_\_\_visible bruises, cuts, sores

\_\_\_\_\_clothed appropriate for temperature    \_\_\_\_\_clothed inappropriate for temperature

\_\_\_\_\_disheveled

Appearance additionally notable for:

Did the person remember you were coming? \_\_\_\_\_yes    \_\_\_\_\_no

Emotional state at beginning of visit:

Emotional state mid-visit:

Emotional state at end of visit:

Had the person gotten the usual amount of sleep the night prior to the visit? \_\_\_\_\_yes or \_\_\_\_\_no

If no, what was different?

Who are the person's closest family members? ( Include contact information.)

Who are the person's closest friends? (Include contact information.)

Does the person have a primary care doctor? (Include contact information)

When was the person last seen by a doctor? (Include contact information.)

What other health care professionals does the person see for care? (Include contact information.)

Does the person have an attorney? (Include contact information.)

Does the person think he/she needs help in self care, finances, or other areas of living? \_\_\_\_\_no

\_\_\_\_\_yes In what areas is help needed?

Does the person want help in self care, finances or other areas of Living? \_\_\_\_\_yes or \_\_\_\_\_no



What medical problems does the person have?

What prescribed or over the counter medications/ supplements does the person take on a regular basis? Ask the person show them to you and note any discrepancies (prescriptions not filled, multiple bottles of same medications, different medications in one container, etc.) Note all pharmacies used.

After reviewing medications, would you like the guardian ad litem to secure copies of all pharmacy records for the last three years for further investigation? \_\_\_\_yes \_\_\_\_no

What prescribed or over the counter medications or supplements were taken within the last two days other than the ones routinely taken?

When asked what the person would do if a new prescription for medication were given to the person today, the person said:

The person's manner of conversation was: \_\_\_\_clear speech and easy to understand

\_\_\_\_focused, attentive      \_\_\_\_appropriate volume      \_\_\_\_too soft      \_\_\_\_very loud

\_\_\_\_frequently mumbled      \_\_\_\_frequently tangential      \_\_\_\_interrupts frequently

\_\_\_\_maintained eye contact      \_\_\_\_avoided eye contact      \_\_\_\_nonsensical

\_\_\_\_difficulty with remembering the "right" word      \_\_\_\_loses train of thought

\_\_\_\_difficult to understand      \_\_\_\_rambling

When asked what the person would do if their power went off, the person said:

When asked about what bills were received and how they were paid, the person said:

The person could show me a current bank statement or checkbook register \_\_\_\_yes or \_\_\_\_no

If yes, did the information match what the person told you about bill payment? \_\_\_\_yes or \_\_\_\_no

If not, how was it different?

The person's primary language is \_\_\_\_English \_\_\_\_other (specify)

This interview was conducted in \_\_\_\_English \_\_\_\_other (specify)

Did the person seem to have any difficulty understanding you, due to language or hearing issues?

\_\_\_\_yes or \_\_\_\_no If yes, please elaborate:

Has the person recently experienced any temporary health problems, emotional issues or any other unusual stressors? \_\_\_\_yes or \_\_\_\_no If yes, please describe:

Does the person know the proposed guardian? \_\_\_\_yes or \_\_\_\_no or \_\_\_\_not sure

How does the person feel about having that person appointed as guardian?

Does the person feel that the any of the guardian powers should be limited or restricted in any way? \_\_\_\_yes or \_\_\_\_no? How?

How does the person feel about the proposed guardianship?

How does the person feel about the proposed scope and duration of the proposed guardianship?

#### REPORT ON CONDITION OF THE RESIDENCE

Date and time visited:

Address:

Proximity of other residences:

The residence is a \_\_\_\_\_single family home \_\_\_\_\_condo \_\_\_\_\_apartment \_\_\_\_\_mobile home

The residence is \_\_\_\_\_owned by the resident \_\_\_\_\_rented \_\_\_\_\_owned by someone else who  
allows this person to live there

This person \_\_\_\_\_lives alone or \_\_\_\_\_lives with others (specify who the others are and relationships)

This person has the following pets in the house:

This person has the following pets outside the house:

Describe the condition of the pets:

Describe the condition of the residence:

exterior:

interior:

cleanliness:

working utilities:

fire hazards:

safety hazards:

noise level:

#### REPORT ON THE PROPOSED GUARDIAN

Has an adult protective service case or family management case ever been opened on this person?

\_\_\_\_yes or \_\_\_\_no

If yes, does the DSS record reveal anything the court should know? \_\_\_\_yes or \_\_\_\_no

If yes, elaborate:

Does your investigation of the proposed guardian reveal anything the court should know?

\_\_\_\_yes or \_\_\_\_no If yes, elaborate:

Does your investigation reveal any other person who should be considered to be appointed as guardian for this person? \_\_\_\_yes or \_\_\_\_no If yes, elaborate, including name, address, telephone, age, and relationship to the allegedly incapacitated person:

#### CONCLUSIONS AND ADDITIONAL COMMENTS:

Prior to your visit, did you know the person alleged to be incapacitated? \_\_\_\_yes or \_\_\_\_no

If yes, explain:

Prior to this case, did you know the person seeking appointment as guardian? \_\_\_\_yes or \_\_\_\_no

If yes, explain:

Prior to your visit, did you have a personal interest in these proceedings? \_\_\_\_yes or \_\_\_\_no

If yes, explain:

Identify all sources of information received about this person other than your observations and conversations with the person. Include contact information.

Executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Signature \_\_\_\_\_

Printed name \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

Business telephone \_\_\_\_\_ Home telephone \_\_\_\_\_

#### ATTACHMENTS

Dated photographs of \_\_\_\_\_ allegedly incapacitated person (Several may be used to highlight general appearance and any noted problems. These may be used to track changes over time.)

\_\_\_\_\_ exterior of residence

\_\_\_\_\_ person's bedroom

\_\_\_\_\_ person's bathroom

\_\_\_\_\_ person's kitchen

\_\_\_\_\_ any other pertinent areas

STATE OF SOUTH CAROLINA

IN THE PROBATE COURT

COUNTY OF \_\_\_\_\_

CASE NUMBER \_\_\_\_\_

DATE \_\_\_\_\_

GUARDIAN PERSONAL PLAN OF CARE FOR INCAPACITATED ADULT

\_\_\_\_\_ PROSPECTIVE \_\_\_\_\_ INITIAL OR \_\_\_\_\_ RECURRING

FACILITY RESIDENCE

Name of Ward \_\_\_\_\_

Name of Residential Facility \_\_\_\_\_

Address of Residential Facility \_\_\_\_\_

Telephone Contacts at Facility \_\_\_\_\_

\_\_\_\_\_

Type of Facility \_\_\_\_\_ Boarding Home \_\_\_\_\_ Assisted Living \_\_\_\_\_ Nursing Home

Admission Date \_\_\_\_\_

Does the ward have advanced directives? \_\_\_\_\_ yes or \_\_\_\_\_ no

Name of Guardian \_\_\_\_\_

Address of Guardian \_\_\_\_\_

Telephone: Home \_\_\_\_\_ Work \_\_\_\_\_ Cell \_\_\_\_\_

CURRENT STATUS

REASON FOR INCAPACITY \_\_\_\_\_

MEDICAL

DIAGNOSES \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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EMOTIONAL STATUS \_\_\_\_\_

---

CURRENT WEIGHT \_\_\_\_\_ WEIGHT AT LAST REPORT \_\_\_\_\_

CHANGES SINCE LAST REPORT, INCLUDING HOSPITALIZATIONS \_\_\_\_\_

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HEALTH CARE PROFESSIONALS INVOLVED IN CARE

Name \_\_\_\_\_ Location \_\_\_\_\_ Service \_\_\_\_\_

Name \_\_\_\_\_ Location \_\_\_\_\_ Service \_\_\_\_\_

Name \_\_\_\_\_ Location \_\_\_\_\_ Service \_\_\_\_\_

Attach copies of \_\_\_\_\_ Current facility plan of care, including a medication/supplement list

\_\_\_\_\_ Last facility resident summary

\_\_\_\_\_ Current dated photo of resident

FREQUENCY OF MONITORING

How often have you visited and assessed the ward since the last report to the court?

\_\_\_\_\_ daily \_\_\_\_\_ weekly \_\_\_\_\_ monthly \_\_\_\_\_ NA (Initial Report)

\_\_\_\_\_ other \_\_\_\_\_

How often do you contact care providers?

\_\_\_\_\_ daily \_\_\_\_\_ weekly \_\_\_\_\_ monthly \_\_\_\_\_ NA (Initial Report) \_\_\_\_\_ other \_\_\_\_\_

---

When was the last time you saw the ward? \_\_\_\_\_

How long are your visits to the ward? \_\_\_\_\_

Describe how the ward participates in decision making, if at all.

\_\_\_\_\_  
\_\_\_\_\_

Describe how you are caring for the ward's home and possessions while resident is in the facility.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

#### GUARDIAN'S SUMMARY

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Do you anticipate any required changes prior to the next report to the court? If so, please describe

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Do you need any additional information to assist you in your care of this person? If so, please describe

\_\_\_\_\_  
\_\_\_\_\_

Signature of Guardian \_\_\_\_\_

Date \_\_\_\_\_



STATE OF SOUTH CAROLINA

IN THE PROBATE COURT

COUNTY OF \_\_\_\_\_

CASE NUMBER \_\_\_\_\_

DATE \_\_\_\_\_

GUARDIAN PERSONAL PLAN OF CARE FOR INCAPACITATED ADULT

\_\_\_\_\_ PROSPECTIVE \_\_\_\_\_ INITIAL OR \_\_\_\_\_ RECURRING

PRIVATE HOME RESIDENCE

Name of Ward \_\_\_\_\_

Current Address \_\_\_\_\_

\_\_\_\_\_

Telephone \_\_\_\_\_

Names, ages and relationships of other persons living in residence \_\_\_\_\_

\_\_\_\_\_

Notable problems of others in residence affecting status of ward \_\_\_\_\_

\_\_\_\_\_

Type of Residence \_\_\_\_\_ Mobile home \_\_\_\_\_ Apartment

\_\_\_\_\_ Condominium \_\_\_\_\_ House

Residence is \_\_\_\_\_ Owned (no mortgage); \_\_\_\_\_ Owned (with mortgage);

\_\_\_\_\_ Rented (Owned/managed by \_\_\_\_\_)

Telephone of owner/manager \_\_\_\_\_

Name of Guardian \_\_\_\_\_

Address of Guardian \_\_\_\_\_

\_\_\_\_\_

Telephone: Home \_\_\_\_\_ Work \_\_\_\_\_ Cell \_\_\_\_\_

CURRENT STATUS

REASON FOR INCAPACITY \_\_\_\_\_

MEDICAL DIAGNOSES \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

EMOTIONAL STATUS \_\_\_\_\_

\_\_\_\_\_

Has the person executed advanced directives? \_\_\_\_\_ yes or \_\_\_\_\_ no

CURRENT WEIGHT \_\_\_\_\_ WEIGHT AT LAST REPORT \_\_\_\_\_

CHANGES SINCE LAST REPORT, INCLUDING HOSPITALIZATIONS

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

HEALTH CARE PROFESSIONALS INVOLVED IN CARE:

Name \_\_\_\_\_ Location \_\_\_\_\_ Service \_\_\_\_\_

Name \_\_\_\_\_ Location \_\_\_\_\_ Service \_\_\_\_\_

Name \_\_\_\_\_ Location \_\_\_\_\_ Service \_\_\_\_\_

CURRENT NEEDS

PLAN TO MEET NEED

Assistance with bathing/hygiene \_\_\_\_\_

Movement assistance \_\_\_\_\_

Toileting assistance \_\_\_\_\_

Feeding assistance \_\_\_\_\_

Meal preparation \_\_\_\_\_

Needed shopping \_\_\_\_\_

Care of wounds, skin problems \_\_\_\_\_

Medication administration and reordering

Assistance with behavioral problems

Wandering \_\_\_\_\_

Aggressiveness \_\_\_\_\_

Striking out \_\_\_\_\_

Yelling \_\_\_\_\_

Refusals \_\_\_\_\_

Other \_\_\_\_\_

Removal of weapons \_\_\_\_\_

Payment of bills \_\_\_\_\_

Communication about and transportation to health care appointments

Safety of home environment \_\_\_\_\_

Operation of machinery or electronic devices

Washing of clothing \_\_\_\_\_

Cleaning of home \_\_\_\_\_

Recreational/ social activities \_\_\_\_\_

Can ward make needs known? \_\_\_\_\_ yes or \_\_\_\_\_ no

Is ward's speech understandable? \_\_\_\_\_ yes or \_\_\_\_\_ no

Does ward recognize family? \_\_\_\_\_ yes or \_\_\_\_\_ no

Is ward driving

Legally? \_\_\_\_\_ yes or \_\_\_\_\_ no

Illegally? \_\_\_\_\_ yes or \_\_\_\_\_ no

FREQUENCY OF MONITORING

How often have you visited and assessed the ward since last report to court?

\_\_\_\_\_ daily \_\_\_\_\_ weekly \_\_\_\_\_ monthly \_\_\_\_\_ NA (INITIAL REPORT)  
\_\_\_\_\_ other \_\_\_\_\_

How often do you contact other care providers?

\_\_\_\_\_ daily \_\_\_\_\_ weekly \_\_\_\_\_ monthly \_\_\_\_\_ NA (INITIAL REPORT)  
\_\_\_\_\_ other \_\_\_\_\_

When was the last time you saw the ward? \_\_\_\_\_

How long are your visits to the ward? \_\_\_\_\_

Describe how the ward participates in decision making, if at all. \_\_\_\_\_

SUMMARY

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Do you anticipate any required changes prior to the next report to the court? If so, please describe \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Do you need any additional information to assist you in your care of this person? If so, please describe

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ Attach a current dated photo of ward.

\_\_\_\_\_ Attach a pharmacy record for the past three years for each pharmacy used .

\_\_\_\_\_ Attach a list of all over the counter medications and supplements used in the past year.

\_\_\_\_\_ Attach a current photos of the ward's residence

\_\_\_\_\_ Home exterior

\_\_\_\_\_ Ward's bedroom

\_\_\_\_\_ Ward's bathroom

\_\_\_\_\_ Ward's kitchen

\_\_\_\_\_ Any other area you think is pertinent

Signature of Guardian \_\_\_\_\_

Date \_\_\_\_\_