

Written Testimony to the United States Senate Special Committee on Aging
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I. Introduction

Chair Collins, Ranking Member McCaskill, and other members of the Committee, I am Cate Boyko, manager of the Conservator Account Auditing Program for the Minnesota Judicial Branch. I have been the manager of this statewide audit program since its inception in 2012.

This testimony addresses: 1) Financial abuse in conservatorships in Minnesota, 2) Action taken by the Minnesota Judicial Branch to improve the courts oversight of vulnerable persons under conservatorship, and 3) Findings of conservator account audits.

I believe the Minnesota experience and approach can be a national model to address the issue of financial abuse of older Americans by guardians (conservators). The State Justice Institute has provided funding to the National Center to State Courts for the purpose of replicating the Minnesota software in other states¹.

II. The Minnesota Story

The amount of money lost through exploitation of elders is staggering and growing. A 2011 MetLife Study² estimated the national annual financial loss at \$2.9 billion dollars- an increase of 12% over their findings in 2008. A more current study in 2015 by True Link³ estimates the loss at \$36.48 billion dollars.

¹ The Conservator Accountability Project

² MetLife Study of Elder Financial Abuse Crimes of Occasion, Desperation, and Predation Against America's Elders (2011) MetLife Mature Market Institute, Roberto, K. A., Teaster, P.B., National Committee for the Prevention of Elder Abuse (2011, June) *The MetLife Study of Elder Financial Abuse Crimes of Occasion, Desperation, and Predation Against America's Elders* (p. 2)

Retrieved from: <https://www.metlife.com/assets/cao/mmi/publications/studies/2011/mmi-elder-financial-abuse.pdf>

³ True Link Report on Elder Financial Abuse 2015, Orlov, Laurie, True Link data science team.

Retrieved from: <https://www.truelinkfinancial.com/research>

With a more than twelve times increase from the Met Life study, there is no question these losses are increasing at an alarming rate.

While this exploitation can occur in many forms such as neglect, mismanagement, fraud, swindle, and theft; when the loss is occasioned by the very conservators, guardians, or fiduciaries the court has appointed to protect the assets of the vulnerable person, it leaves a bold black mark on the court's performance – often under banner headlines reading, “A License to Steal?” or “Money Disappears Under Court's Watch”. The losses erode the public confidence and trust placed in the courts. When the court appoints someone to protect the assets and manage the estate of a protected person who is unable to handle those financial issues and decisions themselves, the court has a special responsibility to ensure the assets are being handled appropriately.

However, with court budgets being cut and public safety being a priority, “probate” case types tend to receive lower priority and attention throughout the nation. Moreover, courts don't always have the staff – or staff with the necessary expertise – for the specialized monitoring and auditing of financial accounts required to discover losses or inappropriate expenditures. The work can be tedious, difficult, and time-consuming. Minnesota and other jurisdictions are developing new approaches to help with these tasks. While states may define terms differently and use the terms guardianship and conservatorship interchangeably, in Minnesota conservatorship is used to describe the court appointment of someone to handle the financial matters of a vulnerable person.

Conservators in Minnesota are required to file annual accountings of the assets under conservatorship with the court on the anniversary of their appointment. In 2015, Minnesota conservators filed inventories and annual accountings that reported over \$908 million in assets under court jurisdiction. Many courts are not aware of the value of assets under their jurisdiction. When Minnesota courts first determined the amount under court jurisdiction in 2011 it was eye opening.

Previously, our state had no way of knowing how much money was under court jurisdiction. I believe the same is still true today for many other states.

As recently as 2010, conservator accountings in the state were submitted to the court largely through a paper-based process, which often included the submission of boxes of receipts and other documentation. This unwieldy process put a heavy burden on the local district court staff responsible for overseeing the work of conservators – staff who often lacked the specialized skills needed to conduct this complex and sophisticated auditing work.

In 2005, a Minnesota professional conservator was found to have exploited her clients in one of our county courts. Unbeknown to that county, the conservator was exploiting clients in two other counties as well. At the time, our state did not have a consistent, reliable way to share information between counties about conservators whose work had come under suspicion. This allowed this conservator to continue exploiting clients in other parts of the state, even after the conservator was removed from cases in one county. The professional conservator was eventually charged with stealing from 10 vulnerable adults⁴.

In response to losses at the hand of this professional conservator, the Ramsey County Probate Court in Minnesota developed an online conservator accounting system called the Conservator Account Monitoring Preparation and Electronic Reporting, better known as CAMPER. The design captured all transactions made by a conservator and provided a spreadsheet to make sense of the shoebox full of receipts that often accompanied an annual financial report. It saved conservator and staff time by automatically performing mathematical calculations, as well as allowing ready access to expense and receipt details. Time that was previously spent organizing or checking the arithmetic of the account

⁴ In 2010 Terri Ann Hauge was charged with stealing \$68,000 for 10 vulnerable adults.
<http://www.startribune.com/unfit-to-be-lawyer-yet-a-guardian-for-200/117860934/>

would instead be devoted to looking at the transactions themselves and whether they were appropriate to meet the needs of the protected persons.

As part of a Minnesota Judicial Branch transformational study, CAMPER was identified and recommended as a statewide solution to improve conservatorship oversight and reduce administrative costs. It was already apparent that – despite the existence of statewide rules and forms – there was a lack of consistent statewide court practices in conservatorship cases. There were also varying levels of training being done by court staff for conservators and varying comfort levels by court staff when examining accounts. While court staff in some counties actually verified receipts and required entry into specific categories, others were simply running adding machine tapes to be certain the amounts matched. Any discovered losses by a conservator were generally handled on a county-by-county basis, and there was no communication to other counties using the same conservator. Some counties allowed conservators to request account waivers for amounts under \$3,000 or even under \$10,000, while others allowed waiving of the hearing on the account if there were no apparent issues. It was evident that informal practices and frequent use of reporting waivers had obscured the lack of understanding on the part of many conservators about their responsibilities.

The Minnesota Judicial Council, the statewide policy-making body of the Minnesota Judicial Branch, determined that the use of the CAMPER system should be implemented statewide. Implementation work, along with software upgrades needed to allow for multi-county use, statewide support, and monitoring was funded. In August 2010, the Minnesota Judicial Council mandated use of this electronic system for all conservators appointed on or after that date and for any accounts filed after January 1, 2011. This ambitious rollout schedule underscored how eager Minnesota was to improve its monitoring of conservatorship cases.

The announcement was met with a variety of responses from stakeholders. For conservators in Ramsey County already using the CAMPER system, the response was, “it’s about time.” They very much

appreciated the ability to file in all 87 counties using the same software program. Conservators with limited computer skills, expressed a significant amount of trepidation about moving away from the traditional paper-based system. Based on those concerns, as part of the statewide rollout, Minnesota added one element that Ramsey County had not allowed: the option to designate an agent to complete and file the accounts online. Some conservators were already using bookkeepers, accountants, or lawyers; now those professionals could be designated to enter transactions and file reports on the conservator's behalf. In addition, training and support was offered through presentations to conservator groups; video materials and a telephone help line were provided; and slowly the use of CAMPER on a statewide basis took hold.

The critical first step to improve oversight in Minnesota was the statewide roll out of CAMPER. The initial plan did not consider an enhancement of the existing application. However, it was understood that the application would require improvement and specialized staff to ensure that auditing of the annual accounts would be done.

It was also understood that while having an automated system to do the mathematical calculations provided some relief to court staff, there was still a piece missing with respect to the level of auditing needed for these accounts. Specialized auditing skills and management, plus statewide coordination were needed. In September 2011, the Judicial Council authorized the State Court Administrator to implement and operate the Conservator Account Auditing Program or CAAP. This centralized account auditing center was created and funded to monitor and audit financial activities of conservators to safeguard the assets of protected persons through professional, impartial compliance audits. In 2012, the Court hired me as the audit manager to build the auditing component for the new program from the ground up.

Part of the challenge was to scale the resources that had been allocated with the amount of work that needed to be done. The decision was made to focus the resources where they would have the

greatest impact. The first priority was to audit every first annual account with an asset balance greater than \$3,000. This would accomplish four things:

- First, the expectation would be created so the new conservator would better appreciate how the accounts had to be filed and documented. It also reinforced the training that had been provided to the conservator. If the conservator could complete the first audit to the new auditing standards, the conservator would know what was expected for future accountings. Accounts less than \$3000 are still examined by local court staff and, should staff feel they need more assistance, may be referred to the CAAP unit.
- Second, the court wanted to make sure there was a complete audit before the account was approved by a judge. In Minnesota, accounts must be submitted every year, but a hearing to formally allow those accounts only needs to be held every five years. As part of this statewide transformation, Minnesota established a best practice to set cases for a hearing every four years, and provided that a CAAP audit would be completed before the hearing was held. It was determined that local court staff would continue to monitor and review annual accounts between hearings for any red flags.
- Third, the new unit was to be a resource to local courts so that when court staff discovered an issue during their review, they could refer the account to CAAP for a full audit or contact the unit to seek their input and guidance.
- Fourth, one of the deficiencies of the pre-CAAP system was the lack of coordination and review of conservators who may be operating in multiple jurisdictions. Now, if a problem is discovered with a conservator having multiple accounts under his or her care, an audit can be initiated to sample the status of other accounts in other locations to make sure that there is no pattern of inappropriate transactions in other files. Previously there was no coordination with the

Veterans Administration and the Social Security Administration. CAAP works with both these entities when auditing concerns arise and there are VA or SSA funds.

III. The Audit Program

CAAP has a staff of ten auditors, (seven full time and three part time), one half time help desk person, and a manager. CAAP audits all conservator accountings from both professional conservators and non-professional conservators. The audits completed by CAAP are extensive; the auditor reviews the account that is filed and reconciles the accounting with all financial statements. The conservator must submit, electronically or on paper, all supporting documentation to determine if the information has been accurately reported in the annual accounting. The annual account contains all transactions (income, expense, and debt) that occurred during the annual reporting period. Financial statements, canceled checks, invoices, fee invoices, receipts, and tax returns are just some of the documents that are reviewed during the audit. The audit also reviews the spending to determine if the spending is appropriate for the protected person's⁵ station in life. Once the audit is completed, the auditor files an audit report with the court and provides the audit report to the conservator. The average time to complete an audit is 8 hours, but this varies from one hour for well-organized and well-done accountings to over 40 hours for highly complex accountings.

IV. Audit Findings

At the conclusion of the audit, the auditor completes and files an audit report with the court and rates the audit according to the audit findings. Once the court receives the audit report, a hearing is

⁵ A person under conservatorship in Minnesota is referred to as a protected person

scheduled to address any issues identified in the audit. There are four possible audit levels, with level 1 having no issues and level 4 having the highest level of concern.

Level 1: No issues found in the accounting. The auditor recommends approval of the accounting by the court. In 2016 (Jan. to Oct.), 17% of cases audited have been identified as Level 1.

Level 2: The auditor has found minor issues, such as the accounting period is incorrect, expenses or income are placed in incorrect categories, or transaction numbers are manipulated to balance the account. The auditor recommends an adjustment to the next accounting to “fix” the issue. If the accounting issue is more significant, the auditor can recommend an amended account be filed with the correction prior to the next accounting. The auditor has no concerns of loss found or misuse of assets and recommends court approval with recommendations on technical issues to the conservator. In 2016 (Jan. to Oct.), 48% of cases audited have been identified as Level 2.

Level 3: The auditor has identified multiple accounting issues, and adjustments to the accounting are needed. Issues identified could be items such as the account balance may be incorrect, income and expenses are omitted, there is comingling of funds when the conservator and protected person have a marital or parental relationship. However, the auditor has not found any concern of loss or misuse of assets and recommends court approval once the adjustments have been made to the account. These are the cases where the conservator may not understand their responsibility or may not have the skills to manage the protected person’s assets appropriately. In 2016 (Jan. to Oct.), 23% of cases audited have been identified as Level 3.

Level 4: In level 4 audits, the auditor has found concerns of loss, loans from protected person, expenditures without court approval or expenditures not in the best interest of the protected person, or comingling of funds between conservator and protected person. The auditor may recommend to the

court removal of the conservator and or repayment of funds to the protected person. In 2016 (Jan. to Oct.), 12% of cases audited have been identified as Level 4.

Audits that result in Level 4 are identified differently in the court case management system so that the court knows that these cases should be addressed promptly. Some examples of findings in level 4 cases are:

- Missing income
 - Social Security income or VA income within the reporting period cannot be identified in the financial statements as deposited
 - Cash withdrawals with no substantiation of where the money was spent and who benefited from the spending
- Questionable expenses, (expenses are not appropriate based on the vulnerable persons station in life)
 - An elderly man in a nursing home with a traumatic brain injury with expenses to nail salons, women's hair salon, women's clothing stores
 - The purchase of a Ford F150 truck with high end accessories for a vulnerable person in a nursing home without a drivers' license
 - Multiple dining out expenses for multiple people
 - Vacation expenses for multiple people
 - A pool
 - A house
- Irregular expenses
 - Hundreds of dollars spent on candy and a generator for an individual in a group home
- Nepotism

- Household repairs conducted by unqualified family members without permits billed at professional rates
- Care services provided by family members billed at professional rates
- Charging excessive rent when the conservator and protected person are related and the protected person lives with the conservator; usually a parent
- Sale of assets below fair market value to family
- Gifting of assets
 - Gifts given to family members without court approval and not consistent with past gifting of the vulnerable person
 - Gifts to the conservator
 - Gifts to choice family members
- Loans from the protected person's funds to the conservator or family members
- Assets omitted from the inventory or annual accounting that are discovered during the audit
 - Unreported investment accounts
- Fraudulent Documentation
 - Invoices and receipts provided during the audit have been created by the conservator to make it look like the expense was for the benefit of the protected person when in fact the expense benefited the conservator
 - Creation of an invoice for a pre-paid burial account when in fact no pre-paid burial account existed
- Fees
 - Extraordinary Guardian fees, conservator fees, or attorney fees
- Money repaid after receipt of an audit letter from the Conservator Account Auditing Program

The auditor may be required to testify at the account hearing, although in most cases the audit report provides significant detail for the court to understand the issues of concern. At this hearing, the protected person may be represented by an attorney appointed by the court. The judge addresses the issues presented in the audit report. Examples of results of accounts hearings include:

- Discharge of the conservator
- Termination of the conservator
- Referral to the county attorney for criminal investigation
- Repayment of funds
- Order for Judgement
- Request for further documentation
- Filing of amended accountings

There have been cases where the court has referred the case to the prosecutor and the audit staff have provided forensic accounting of the conservatorship accounts for the court and, upon court order, the county attorney. The CAAP has worked in conjunction with investigators from the Social Security Administration and the Veteran's Administration on conservator cases that involved misuse of Social Security and Veteran's funds. These relationships and cooperation are extremely important to the success of the program. One example is the case of a professional conservator who was charged with stealing over \$120,000 from multiple vulnerable persons⁶.

V. MyMNConservator (MMC)

⁶ <http://www.startribune.com/former-conservator-admits-stealing-120k-to-feed-gambling-habit/268931441/>

As the audit program was developed, it became evident that the CAMPER system was not a robust application and did not provide adequate tools for auditors. With the assistance of a grant from the State Justice Institute (SJI), the Minnesota Judicial Branch developed a new application in 2014.

The philosophy for the design of MyMNConservator (MMC) was to keep it simple for the conservator. It was important that the look and feel of the application be similar to other online financial applications. Both professional and lay conservators were involved and consulted during both the design and testing phases. Short video tutorials walk the conservator step by step through the process related to the page in the application they are working. Textual help provides specific directions that pertain to the page shown in the application. The template and instructions are available within the application. MMC is not just an application to report annual accountings to the court. Conservators can use the application as a financial management tool to reconcile the assets under their control.

For the court, MMC is a much more robust and intuitive application with integrations into the court's current case management system to avoid duplication and manual entry of information. The automation from integrations between the two systems reduces work for court staff. System logic sends the annual account to the appropriate work queue for audit or court review.

VI. Red Flags and Risk Indicators

One of the greatest benefits of MMC is the red flag logic that assists in the court review and audit process. There are red flags⁷ that have been programmed into the application. When the accounting is filed, the system logic reviews the accounting in its entirety and by line item for these logic flags.

⁷ The current red flags are based on information from the National Center for State Courts; the ICM Fellows Paper PROTECTING THE ASSETS OF OUR MOST VULNERABLE IN MINNESOTA and CAAP audit experience

A very exciting improvement was recently made to the MMC application. As part of the Conservator Accountability Project, we provide one year of audit data to the National Center for State Courts (NCSC). The NCSC conducted an analysis of our data and developed 10 empirically based risk indicators. These risk indicators predictably identify accountings that would result in a level 4 audit. These have been integrated into our application and we will be testing them during the next 12 months to determine the benefit for assisting for differentiated case management.

VII. Replication of the Minnesota Model

Minnesota is fortunate to have an online reporting program for conservatorship accountings. Other states have reported a significant need to increase their oversight of these cases. Numerous jurisdictions⁸ have shown interest in the Minnesota model and obtaining the MMC source code. We have worked with numerous other courts to share our source code, and the processes and procedures we have developed for auditing. The National Center for State Courts has been instrumental in promoting the Minnesota model through the State Justice Institute funded Conservator Accountability Project. Other jurisdictions are doing good things in tackling this problem. Sharing our best practices is the only way we can all become better at what we are trying to accomplish; protecting those that are vulnerable.

MMC was an ambitious undertaking, and although under funded was completed on an aggressive rollout schedule. Minnesota has successfully delivered a robust application that is meeting the needs of court staff, judges, conservators, and protected persons. It is notable that MMC has mandated the use of an online application by members of the public. It should be noted in Minnesota, most conservators, even if represented initially, do not maintain legal representation after appointment. Most electronic

⁸ Palm Beach County, Florida, Washington, Colorado, Idaho, Michigan, Arizona, Indiana, Wisconsin, South Carolina, Iowa, Texas, New Mexico, Nevada, New Jersey, Netherlands and Finland.

filing systems do not plan for self-represented litigants or provide a tool for them to use. Most online systems make self-represented use optional. This project provides a significant system for the self-represented conservator to use.

The Minnesota Judicial Branch's aggressive approach in recognizing the problem, applying resources, and moving forward with a solution demonstrates the importance of building trust and confidence in our court system for the citizens of Minnesota. The idea of improving the courts ability to protect assets of the vulnerable is intriguing to all courts. MMC is a tool that provides benefits to conservators, court personal, and, above all, increases oversight of assets for the benefit of vulnerable persons.