

NATIONAL CENTER FOR STATE COURTS

TECHNICAL ASSISTANCE REPORT

Use of Court Automation to Aid Fiduciary Management in Large Urban Probate Courts

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Technical Assistance Team

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Introduction

This is a brief report on probate court management of fiduciaries to deal with possible abuses of trust. It focuses specifically on the current experience of officials in selected large urban probate courts and the use of court automation to aid fiduciary management.

Probate and estate workloads in trial courts that have jurisdiction of such matters have increased notably in recent years. Along with this increase comes an addition in responsibility. Fiduciary management in terms of monitoring and compliance observation has become very difficult from the standpoint of an in-depth review/audit. Some probate courts may find themselves entrusting individuals of the community with important financial roles with only limited means of screening and continuous supervision.

There are steps that must be taken to combat and deter the mishandling of such

funds in estate matters. The court must create and maintain an expectation among fiduciaries and the public that it can and will oversee the actions of fiduciaries in order to ensure that the interests of beneficiaries are protected. It is important that public trust and confidence in the probate court not be misguided. Long before the age of large urban court settings and overwhelming caseloads, the court was better situated to exert far better control over such financial matters and, therefore, many problems such as possible theft were not an issue. The public's trust is threatened, however, when there is intentional misuse of funds entrusted to the care of a court-appointed guardian, conservator, administrator, executor or trustee.

It is important for probate courts to be able to monitor the activities of such fiduciaries in order to maintain public trust and confidence. The court must make *active* oversight of fiduciaries an important probate court management priority. As the National Commission on Probate Court Standards has suggested, "The court should have written policies and procedures to ensure the prompt review of reports and requests filed by guardians [and conservators]."

The court should monitor the actions of those whom it appoints as guardians [and conservators] (e.g., by reviewing the reports filed by the guardian [or conservator] on a regular basis and following up on any deficiencies that may be noted). Although it cannot be expected to provide detailed or daily supervision of the guardian's [or conservator's] actions, the court should assume a passive role, responding only upon the filing of a complaint. The court should actively monitor the guardian [or conservator] and any failures by the guardian [or conservator] to meet his or her duties.

The challenge for any probate court, and especially for one in a large urban jurisdiction with growing workload, is how to do such monitoring and enforcement with finite resources.

One tool that should be relied upon to detect and discourage fraudulent behavior by fiduciaries is the use of automation. In many courts, however, the use of technology now focuses primarily on court notification that particular filings have not been filed with the court. In fact, many such automation systems simply act as "ticklers" for this type of compliance information and are not capable of producing reminder letters or orders for

show cause hearings. Still fewer systems have the capacity to aid courts in the task of reviewing filings by fiduciaries in order to identify possible inconsistencies or problem areas.

Technical Assistance Overview and Methodology

The purpose of the technical assistance effort reported here is to gather information on the use of court automation to help courts hearing probate matters manage the fiduciaries in certain large jurisdictions. In a project completed for the Superior Court of the District of Columbia in January 2000, the National Center for State Courts had gathered information about automation vendors that have provided case management software and imaging systems for probate matters. From the information gathered in that effort, six large urban locations were chosen to represent a narrow sample of probate jurisdictions from across the country. A member of the National Center team for this technical assistance report contacted officials in those courts by telephone between March 8 and March 15, 2000. The National Center for State Courts would like to thank each jurisdiction representative for taking time to provide information and assistance to us.

The technical assistance team leader developed a list of questions as a means in which to solicit such information from each location. The locations of each jurisdiction and contact information are listed below in Table 1. Each contact person shown there has agreed to provide further insight into his or her particular jurisdiction and can be reached at the address or telephone number shown in the table.

TABLE 1.
URBAN PROBATE COURTS AND CONTACT PERSONS

Court Location – City (County)	Contact Information
San Jose, CA (Santa Clara County) 191 N. First Street San Jose, CA 95113	Felicia Brown, Chief Probate Court Investigator (408) 299-3484 Bob Collier, Probate Examiner (408) 299-2740

<p>Denver, CO (Denver County)</p> <p>City and County Building</p> <p>1437 Bannock Street, Room 230</p> <p>Denver, CO 80202</p>	<p>Sandie Franklin, Magistrate</p> <p>(303) 640-2327</p>
<p>Fort Lauderdale, FL (Broward County)</p> <p>Broward County Courthouse</p> <p>201 SE Sixth Street</p> <p>Fort Lauderdale, FL 33301</p>	<p>Mel Grossman, Administrative Judge</p> <p>(954) 831-7759</p>
<p>Indianapolis, IN (Marion County)</p> <p>Marion Superior Court</p> <p>City-County Building</p> <p>200 E Washington Street</p> <p>Indianapolis, IN 46204-3381</p>	<p>Charles J. Deiter, Judge</p> <p>(317) 327-5063</p>
<p>Cincinnati, OH (Hamilton County)</p> <p>Hamilton County Courthouse</p> <p>1000 Main Street</p> <p>Cincinnati, OH 45202</p>	<p>Mark E. Combs, Court Administrator/Chief Magistrate</p> <p>(513) 946-3554</p>

<p>Baltimore, MD (Baltimore City)</p> <p>111 N Calvert Street, Room 311</p> <p>Baltimore, MD 21202</p>	<p>Joyce Baylor Thompson, Judge</p> <p>(410) 396-5034</p> <p>Norma T. Harrell, Asst. Deputy/PC Administrator, Registrar of Wills Office</p> <p>(410) 752-5131</p>
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The remainder of this report is set out in a format that provides the question and response per probate jurisdiction followed by a summary of the issues discussed. In some cases, questions two and three have been combined based on how the jurisdiction responded.

San Jose, CA (Santa Clara County)

Approximately how many probate cases does your court have?

2,494 cases were filed with us during 1998 (1998 case statistic summary).

What does your court do to monitor compliance and performance by trustees, guardians, and conservators?

Probate matters are split into two different sections within Santa Clara County. Descendant estate matters are under the Probate Examiner's Office and guardianship/conservator matters are under the Probate Investigator's Office. The Examiner's office does require certain regular filings during the life of each case but there is not a system set up to notify the court or Examiner's Office as to whether or not the fiduciary has been compliant. However, the Investigator's Office is automated and does tickle as to when certain filings/accountings have not been filed with the court. This system is not able to generate notices/orders to send to the relevant parties. In fact, both sets of probate matters only require a minimum number of filings per case. For example, in guardianship cases fiduciaries are required to file one accounting a year after appointment and then only one filing every two years thereafter. Both systems rely heavily on the use of fidelity bonds to circumvent any wrongdoing and to protect the beneficiary.

Does your court have an automated system for probate cases? If so, what is it able to do for you? And, what does it do to support the management of

fiduciaries?

See above.

What are your court's biggest problems with the management of fiduciaries?

Enforcement of the fiduciary to produce accountings. It is rare that we find a fiduciary that ignores the orders of our court, but it does occur.

If it were feasible, what might your court do, with automation or otherwise, to improve the management of fiduciaries?

To implement a case management system in the Examiner's Office and update the one in the Investigator's Office so, it will automatically generate notices/orders.

Denver, CO (Denver County)

Approximately how many probate cases does your court have?

About 2,500 a year are filed with our court.

What does your court do to monitor compliance and performance by trustees, guardians, and conservators?

We currently require annual accountings to be filed with the court. Monitoring is infrequent and typically only deals with compliance of these annual accounting filings. However, the public is routinely told that we do perform random auditing.

Does your court have an automated system for probate cases? If so, what is it able to do for you? And, what does it do to support the management of fiduciaries?

All pleadings are posted to our statewide criminal justice information system and case events are tickled. Most often, the only case event that is tickled is the annual accounting. If compliance has not occurred then a reminder letter is manually issued that extends the compliance time by 30 days. If there is still no compliance on the part of the fiduciary, then an Order to Show Cause hearing is scheduled and issued. The fiduciary's letter of appointment can be retracted if compliance remains a problem. At this time, however, all reminder letters and

such are manually generated.

What are your court's biggest problems with the management of fiduciaries?

The manual follow-up in terms of court compliance. We need a system that automatically issues these documents.

Lack of resources for regular, random audits to be done.

If it were feasible, what might your court do, with automation or otherwise, to improve the management of fiduciaries?

Same as above.

Fort Lauderdale, FL (Broward County)

Approximately how many probate cases does your court have?

We have an average of about 12,000 filed with us per year. Only a few hundred of these are mental health cases.

What does your court do to monitor compliance and performance by trustees, guardians, and conservators?

First, we require an annual filing of all accountings and information documents. (Information documents are filed on guardianship cases). We investigate the criminal and financial background of each guardian prior to court appointment. And, we update this investigation on an annual basis.

The clerk has the responsibility by statute to audit and review estate accounts periodically. But, of course, this does not occur due to manpower limitations. So, a few years ago, I was able to scrape enough resources together to hire a full-time CPA to perform these functions for us. He immediately updated all accounting forms and began work on reviewing cases. He performs these functions quite well. He does a basic level audit of every case, then takes a sample of these cases to review in-depth. Then, a further sample of these cases is taken and marked for a source document audit. Each of these individual fiduciaries is required to meet with him and bring all financial paperwork (bank statements, cancelled checks, etc.). In fact, he is about to start taking a sample of all of the guardianship cases and reviewing the plan of the court for each to determine their status and wellbeing.

Our current automation system is able to inform us of delinquent filings and generate its own documents (reminder letters, Orders to Show Cause, etc). Also, we are currently in the process of working with a developer to create a windows-based software package that will track probate cases and tickle abnormal occurrences within a case. In other words, it will be set up to look at certain characteristics of a case, such as multiple, high dollar bank transactions in a close proximity of time, and be able to inform the court so, that immediate and further review can be done. It will fit on an AS400 system server and include a platform for electronic filing. We should have a beta system ready for assessment by the end of August 2000.

Does your court have an automated system for probate cases? If so, what is it able to do for you? And, what does it do to support the management of fiduciaries?

See above.

What are your court's biggest problems with the management of fiduciaries?

Lack of staffing and resources. Also, one of the biggest issues, as I see it, is our lack of proactive planning in the past. Courts tend to be very reactive, especially, in the area of probate. We have a very current high rate of growth and this was not really taken into account in the past.

If it were feasible, what might your court do, with automation or otherwise, to improve the management of fiduciaries?

Successfully implement the new software system.

Indianapolis, IN (Marion County)

Approximately how many probate cases does your court have?

Approximately 3,000 a year. Estates are split into supervised and unsupervised cases. Currently, the decision is made by the court after the case has been filed and, as a general rule, if the filing complies with statutory requirements then it will go as unsupervised.

What does your court do to monitor compliance and performance by trustees, guardians, and conservators?

We have one full-time employee that performs in-depth reviews on all supervised cases. Fiduciaries are only required at this time to file a statement claiming that an inventory of the estate exists, but are not required to file the inventory with the court. We tend to rely, quite heavily, on fidelity bonds for beneficiary protection. The only case type in which the bond is automatically waived is where the spouse is the fiduciary and he or she is to be the only distributee.

Does your court have an automated system for probate cases? If so, what is it able to do for you? And, what does it do to support the management of fiduciaries?

We have what is called a diary for case compliance that covers an inventory checklist, accounting filings, and a closeout filing. The system tickles as to which cases have failed at filing the required documents by a specific date. Reminder cards and second-issuance letters, as well as, the Orders for Show Cause are still done manually.

What are your court's biggest problems with the management of fiduciaries?

Many attorneys simply do not take the time necessary in explaining to the fiduciary his or her special responsibilities as such. This explanation, I feel, would benefit the court in terms of helping to monitor the case and its compliance information.

If it were feasible, what might your court do, with automation or otherwise, to improve the management of fiduciaries?

The automation system being able to generate the tickled documents without utilizing staff time and energies to do so.

Cincinnati, OH (Hamilton County)

Approximately how many probate cases does your court have?

8,000 cases can be open at any given time. However, over the last four years, we have had an average of 7,500 cases filed each year.

What does your court do to monitor compliance and performance by trustees, guardians, and conservators?

At the time of the fiduciary appointment timelines are established for court

compliance filings. We have annual accountings filed with us – with the exception of trusts – they are filed bi-annually.

Does your court have an automated system for probate cases? If so, what is it able to do for you? And, what does it do to support the management of fiduciaries?

Yes, we have had two updates/refinements to it in recent years. But, it is basically a system that tickles us as to when a filing has not occurred and, automatically generates the notices/orders of delinquency. It also automatically docketed a hearing date for the Order to Show Cause.

What are your court's biggest problems with the management of fiduciaries?

Fortunately, I do not foresee any problems. I do know that the previous judge that approved such filings (4.5 magistrates currently sit to hear these matters) only reviewed copies of cancelled checks. Whereas, the new judge asks to see any and all bank transactions – normally by reviewing bank statements, etc. In other words, it is more of an in-depth review than was done in the past.

If it were feasible, what might your court do, with automation or otherwise, to improve the management of fiduciaries?

Use automation to generate our reminder cards . . . as this process is still being done manually.

Baltimore, MD (Baltimore County)

Approximately how many probate cases does your court have?

About 4,000 to 4,500 a year.

What does your court do to monitor compliance and performance by trustees, guardians, and conservators?

We do have auditors that review each case prior to approval of filing. Then, after filing a law clerk will review each case even further in an attempt to locate any problems with each of the cases.

Does your court have an automated system for probate cases? If so, what is it able to do for you? And, what does it do to support the management of

fiduciaries?

Baltimore City's system dictates that the Registrar of Wills acts as the Clerk of Orphan's Court. And, our current automation system tickles them as to when a filing that was to occur by a certain date has not occurred. After approximately 15 days, if there has been no answer/action taken by the parties, then the Registrar of Wills office will contact the court to have them file an Order to Show Cause on the case. A hearing will be scheduled if the situation necessitates. Templates of forms are used to generate the notices. Therefore, only particular case information has to be entered on to the documents. Other than what I have already explained, there is very little control. The court would not be able to detect any wrongdoing on its own. We have to be told by an outside party of the problem before anything is done.

What are your court's biggest problems with the management of fiduciaries?

The large numbers of pro se litigants. Explaining their role as a fiduciary is a very time consuming process.

If it were feasible, what might your court do, with automation or otherwise, to improve the management of fiduciaries?

Access information on our system faster. Also, if the system would provide a complete case history as it relates to the next case proceeding . . . that would be helpful. The current case automation system is slow and it does not always provide us with a complete case history.

Summary

It is quite clear to every jurisdiction we contacted that public trust and confidence in the work currently being done in matters of probate is in some respects optimistic. Every location had a recent story to tell of fraudulent behavior on the part of a well-respected fiduciary. Even more alarming is the overwhelming number of ways in which possible theft can occur in these types of matters. One of the respondents even made the comment that if one were willing to do so, it would be quite easy to forge orders with the use of a scanner and an electronic signature these days. That particular jurisdiction, due to just such a recent occurrence, has been forced to rely on a raised seal as a means of prevention. But, still, this is only a temporary solution to the problem.

Probate courts cannot afford to think in passive and reactive terms about the management of fiduciaries. Courts must anticipate such misconduct and work towards finding the necessary resources to prevent such behavior. The

increasing workload and lack of judicial staffing further exacerbate such needs. Active court management efforts are mandatory for fiduciary compliance and technology is an effective tool to aid the accomplishment of this goal.

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