

How Can Tennessee Provide Better Oversight for Conservatorships?

by Amy Willoughby Bryant



Individuals have certain fundamental rights to make decisions regarding their own body and property. In a conservatorship, individuals who lack the capacity to make such decisions have some of those rights removed and given to another person or entity to make those decisions for them. In Tennessee, the terms used to describe a person who has been appointed by the court to have authority for an adult person deemed to have a disability is called “conservator of the person,” “conservator of the property (or estate)” or “conservator of the person and property.”¹ Nationally, conservatorships are also known as guardianships, but in Tennessee, the term “guardianship” is used to describe appointed authority for persons under the age of 18. Additionally, the law specifies who is eligible to serve as a conservator and who can file a petition to establish a conservatorship.²

Because of the highly sensitive and invasive nature of a conservatorship, the court maintains a reasonable level of responsibility for oversight. Tennessee laws provide the framework for courts to determine how to provide oversight of conservatorship cases. This includes mandatory reporting requirements such as the Report of Physician³ and an annual status report.⁴ Other reporting requirements, determined on a case-by-case basis, may include the appointment of a guardian ad litem⁵ or attorney ad litem,⁶ an inventory,⁷ an annual accounting,⁸ a property management plan⁹ or a bond.¹⁰

One important statutory requirement that is currently lacking

in Tennessee is the mandatory training for conservators. There is no requirement for a conservator over person or property to have any training prior to being given the authority to make the life changing decisions for the person with a disability they have been ordered to protect. Due to a lack of mandatory training and self-initiated education, family members have had judgments placed against them, and successor conservators had to be appointed. Over the years, several bills have been introduced to the Tennessee General Assembly to amend Tennessee Code Annotated Title 34 to require court-appointed conservators to complete court-approved training. This requirement would establish an appropriate educational foundation for conservators and better equip conservators to perform required duties and other necessary actions that could help protect the interests of the disabled adult. However, these bills failed each session.

Secondarily, Tennessee lacks a statewide conservatorship registry and an oversight agency. In 2014, the Office of Conservatorship Management in Davidson County (OCM) was formed to oversee conservatorships in Davidson County in response to the discovery of a conservator misappropriating funds from the disabled adults he was responsible to protect. In 2013, it was determined that attorney and conservator, John Clemmons, had been misappropriating funds from a respondent. Clemmons stole over \$60,000 from the respondent's estate by paying himself from the estate without court approval. Initially, the theft was discovered by the Rutherford County Clerk and Master. Clemmons was then removed from his case in Rutherford County and his license suspended temporarily. The Probate Court of Davidson County discovered additional misappropriation by Clemmons. He was removed from four cases in Davidson County and convicted of stealing about \$1.3 million from his respondents and then spending the money on gambling sprees at casinos. In 2013, he was sentenced to 18 years in Davidson County and eight years in Rutherford County. In 2014, he was disbarred and remains incarcerated.

As a result, the OCM was created in Davidson County by the Metro Council as a division of the Metropolitan State Trial Courts Department to monitor conservatorships and minimize such exploitation from happening again. As part of the management process, the OCM partnered with the Metro

Government Departments of Social Services to assess the welfare of respondents. The OCM is funded by the Metro Council as part of the State Trial Courts budget, so the OCM is only able to serve Davidson County. If the OCM were to expand to other counties, there would need to be more funding from other sources in order to make statewide oversight possible.

Tennessee lacks the ability to ascertain the number of people under conservatorship and the amount of assets being controlled by conservators. There are approximately 8,368¹¹ known conservatorships in Tennessee. Currently, each county is left to its own devices to create a data collection system for tracking active conservatorships. Very few counties have a tracking system or the infrastructure to support such. Tennessee does not have a statewide tracking system or statewide list of individuals or organizations serving as conservators.

Since 2019, the OCM has completed yearly check-ins with each county to determine the number of conservatorships that each county may have to manage.¹² This task came about when, as the director of the OCM, I was asked to give a presentation on the state of conservatorships in Tennessee to the Tennessee Bar Association leadership. In order to paint an accurate picture of conservatorships statewide, I felt it prudent to ascertain the number of conservatorships in each county and learn how each county maintains their conservatorships. I found that many Tennessee counties have little or no established processes through which they track or manage conservatorship cases after a court officially appoints a conservator. Sadly, most counties simply do not have the resources or the manpower to properly oversee conservatorship management.

It is important for a county to know how many people are under conservatorship and how many conservatorships any one person or entity may have. There are numerous ways (file cabinets, file drawers, calendars, binders, electronic systems and paper files in boxes) counties keep track of conservatorship cases and statutorily required reporting requirements such as accountings. The clerk in each county is responsible for maintaining a system for reporting deadlines for each case.¹³ Additionally, it is just as important to know if accountings are being filed and if they are accurate.¹⁴ This ensures the assets of any disabled adult with a conservator are being managed properly and helps protect them from exploitation. Several counties do not track required accountings.¹⁵ It is clear from my yearly check-ins with each county that both are unknown in many counties.

As the director of the OCM, I know that we receive many phone calls from individuals and agencies who inquire about conservatorships. However, without access to conservatorship cases in every county, it can be extremely difficult for the OCM to determine the existence of the conservatorship if it did not



AMY WILLOUGHBY BRYANT serves as Director of the Nashville Office of Conservatorship Management. She demonstrates her passion for her community through service as a leader, instructor and volunteer in numerous organizations. Bryant serves as an adjunct

professor at Belmont University College of Law in Elder Law. A Memphis native, she is a Tennessee State University alumna and obtained her law degree from Saint Louis University School of Law.

CONTINUED ON PAGE 37 >

originate in Davidson County. By implementing a statewide registry or database, individuals or agencies who need to inquire about a conservatorship could search across every county in the state. Currently, if someone wants to find a conservatorship case but is unsure in which county it originated, they will need to contact every clerk with probate jurisdiction in each county until they find the county where the conservatorship originated. A registry or database simplifies this process and allows courts with probate jurisdiction to search in one place for every county.

To help combat this oversight problem, either the Tennessee General Assembly (by statute) or the Supreme Court through the Administrative Offices of the Courts could mandate the use of a statewide registry of conservators. A statewide registry or database could provide a solution for the lack of conservatorship oversight here in Tennessee by creating a relatively inexpensive and easy way to track conservatorships, especially in larger counties like Shelby, Hamilton and Knox. Since funding is an issue, we could recruit the assistance of technology organizations to create the statewide registry of conservators.

The OCM maintains a database for conservatorships in Davidson County, which allows the OCM to keep case notes for each case regarding welfare and court hearings, document who serves as conservator and keep track of assets being managed by the conservator. Most importantly, the OCM can track if a conservator has been removed for maleficence. To date, 57 successor conservators have been replaced due to actions of the OCM. The database allows the OCM to track every individual involved in the case and make note of any important information about the case. For example, if an individual has called the OCM about concerns with their conservatorship, the database can keep track of this information so that the OCM has information to provide to the Court about potential concerns related to the welfare of a respondent. With a statewide registry or database, a fiduciary who is being investigated for improper conduct in one county can be searched in the database to determine if they have any conservatorship cases in other counties, making it easier to identify or potentially prevent improper conduct.

The clerk's office of the probate court and the OCM conduct financial reviews of conservatorships of the property to prevent this type of misconduct by conservators. This review process begins with a review of information by the clerk's office of the probate court. Once it has been reviewed by the clerk's office, the financial information then undergoes a judicial review, and finally is reviewed by the OCM. The first step in this process is a review of all the court records. Financial documents are then requested and reviewed as needed. Once that is complete, the attorney of record or conservator is contacted to verify any information and provide more information if needed. A report is then provided to the OCM director if there are concerns and a report is filed with the court to bring any concerns to the court's attention if needed.

Tennessee can improve conservatorship oversight, and the Davidson County model is a potential solution. It is important

to note that the lack of oversight for conservators is a national issue that often leads to the exploitation and abuse of vulnerable elderly individuals and individuals with disabilities. There is no indication that any respondent has been harmed by the lack of management, but without oversight, it is difficult to track abuse. However, without the ability to ascertain who has a conservatorship and who is a current conservator, it is difficult to ascertain the welfare and financial security of each person under conservatorship in Tennessee. III

NOTES

1. § 34-3-107
2. § 34-3-102; § 34-3-103
3. § 34-3-105
4. § 34-1-111(i)(3) Subdivision (d)(2) requiring a report regarding the physical or mental condition of the person with a disability may not be waived or excused.
5. § 34-1-107. Guardian Ad Litem
6. § 34-1-125. Attorney Ad Litem
7. § 34-1-110. Management of Property — Inventory — Filing — Failure to File or Appear — Revocation of Authority
8. § 34-1-111. Accounting with Court
9. § 34-1-115. Investments; Property Management Plan; Court Approval to Change Nature of Investments; Property of Minors or Person with Disability
10. § 34-1-105. Bond
11. There are likely more conservatorships; however, of the 95 counties 15 did not report and 21 stated they do not know and cannot determine the number of conservatorships for their county.
12. By phone and email to the Clerks of Court or Clerk and Master
13. The clerk shall maintain on all guardianship and conservatorship cases the same type docket books, files, minute books, and other records as in all other cases. In addition, the clerk shall maintain an appropriate index or tickler so that reporting deadlines established in §§34-1-110 and 34-1-111 and the like are easily ascertainable. The clerk shall issue the notices and summons described in §§34-1-110 and 34-1-111 to each delinquent fiduciary.
14. *Tenn. Code Ann.* 34-1-111 Except as provided in subsection (i), within thirty (30) days after the six month anniversary of the fiduciary's date of appointment, the fiduciary shall file a sworn accounting with the court Except as provided in subsection (i), within 60 days after each anniversary of the accounting required in subsection (a) or any other end of an accounting period selected by the fiduciary after the subsection (a) accounting, the fiduciary shall file a sworn accounting with the court. To select an accounting period end other than the end of the month during which the fiduciary was appointed, the fiduciary shall file a statement with the clerk advising of the accounting period selected. The accounting period shall not exceed 12 months.
15. *Tenn. Code Ann.* 34-1-111(d)(2) combined with *Tenn. Code Ann.* 34-1-111 (i)(3) to require an annual status report for the conservator. "(2)The accounting shall contain a statement concerning the physical or mental condition of the person with a disability, which statement shall demonstrate to the court the need, or lack of need, for the continuation of the fiduciary's services." "(3)Subdivision (d)(2) requiring a report regarding the physical or mental condition of the person with a disability may not be waived or excused."