

Redesigning Guardianship:
How Universal Redesign Concepts Can Impact a Redesign of the Guardianship Process in Minnesota

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Abstract

Service providers and policymakers in the field of disability are faced with a difficult balance of protecting individuals but also allowing individuals self-determination. Particularly, the Fourth Judicial District Probate Court of Minnesota is forced to engage in this balance when reviewing cases of guardianship for people with disabilities. However, the process to guardianship hosted by the Probate Court is difficult for people with disabilities to fully participate in due to barriers in accessibility and equity. Many people with disabilities are often automatically considered for guardianship, even when there are less-restrictive alternatives available to them.

This paper examines the guardianship process through the lens of Universal Design to improve access and participation for all people of all abilities, cultural backgrounds, ages, and gender identities. To do so, it provides an overview to the guardianship process in Minnesota, explores the problem space in the Fourth Judicial District Probate Court (specifically processes and physical buildings), and provides a proposed plan for redesign of the Probate Court.

Introduction

Throughout history, discrimination and stigma have prevented people with disabilities from fully integrating into the community through policies, programs, and services. In the 1900s, under the knowledge of the medical model, the public assumed that people with disabilities were unable to learn, work, or contribute to society. During this time, people with disabilities were isolated from the community and placed in institutions where basic rights and opportunities were taken away from them.¹ Since then countless policies, procedures, and federal laws have been enacted to protect the safety and rights of people with disabilities. However, these policies have the impact of restricting people with disabilities from independence and self-determination, or the power of choice.

One such policy that reduces a person's self-determination and autonomy is guardianship. Guardianship is a legal state process which places an individual who is deemed as "incapacitated" under legal oversight of another adult. In Minnesota, there are seven decision areas in which a guardian can be granted powers—thereby taking these powers of decision from a person—including housing, medical care decisions, supervisory authority, providing for an individual's basic needs, taking care of an individual's personal belongings, managing an individual's government benefits, and approving or rejecting contracts that an individual may sign.² According to a 2017 survey of 25,000 individuals with disabilities, people with disabilities who have a guardian are less likely to be able to make choices in the following areas: where to live or with whom to live, who their support staff or case manager are, their schedule, what to do during the day or in their free time, and what to do with spending money.² The importance of self-determination is clear: studies show that self-determination leads to a better quality of life and increased independence.³

At the time of a guardianship hearing, the petitioner must prove that an individual's "deficits" are great enough to prevent them from taking care of themselves in some or all of these areas. In addition, paperwork and statute states that other lesser restrictive alternatives have been considered, including use of technology. During the hearing, the individual's ability and right to vote also comes into question. Guardianship is an option for any person whom others believe may not be able to make decisions for themselves. This may be due to temporary impairment, such as a person who is suffering from severe illness or who is unconscious. However, guardianship is commonly granted when a person has a diagnosis of a mental illness or a disability. According to a survey of 25,000 people with disabilities across the United States in 2017-2018, 41.2% respondents reported that they had a guardian. When looking at each state's respondents individually, percentage of people under guardianship ranged between 5.5% and 89% of respondents. In Minnesota, 57% of respondents reported currently being under guardianship.⁴ This number has tripled since 1995.⁵

While these numbers are large, there is no law or statute that states a person with a disability is required to have a guardian. In fact, many people with disabilities live rich and fulfilling lives without a guardian.

¹ *Turning Rights Into Reality: How Guardianship and Alternatives Impact the Autonomy of People with Intellectual and Developmental Disabilities*. National Council on Disability, 2019, *Turning Rights Into Reality: How Guardianship and Alternatives Impact the Autonomy of People with Intellectual and Developmental Disabilities*.

² Human Services Research Institute (HSRI), National Association of State Directors of Developmental Disabilities Services (NASDDDS). (2019). National Core Indicators. *2017-2018 Annual Report*. https://www.nationalcoreindicators.org/upload/core-indicators/17-18_IPS_National_Report_PART_I_3_20_19.pdf.

³ Jameson, J. M., Riesen, T., Polychronis, S., Trader, B., Mizner, S., Martinis, J., & Hoyle, D. (2015). Guardianship and the Potential of Supported Decision Making With Individuals With Disabilities. *Research and Practice for Persons with Severe Disabilities*, 40(1), 36–51. doi: 10.1177/1540796915586189.

⁴ Human Services Research Institute (HSRI), National Association of State Directors of Developmental Disabilities Services (NASDDDS). (2019). National Core Indicators. *2017-2018 Annual Report*. https://www.nationalcoreindicators.org/upload/core-indicators/17-18_IPS_National_Report_PART_I_3_20_19.pdf.

⁵ Jameson, J. M., Riesen, T., Polychronis, S., Trader, B., Mizner, S., Martinis, J., & Hoyle, D. (2015). Guardianship and the Potential of Supported Decision Making With Individuals With Disabilities. *Research and Practice for Persons with Severe Disabilities*. doi: 10.1177/1540796915586189

According to a statement from the Arc and the American Association on Intellectual and Developmental Disabilities (AAIDD), “Most people with intellectual and developmental disabilities (IDD) can manage their own affairs with assistance and guidance from others, such as family and friends. If guardianship is necessary, it should be tailored to the person’s needs. Strict monitoring must be in place to protect the best interests and preferences of each person.”⁶ While these are recommendations from two prominent disability advocacy organizations, they clearly often do not become reality. There is rarely education around other support options besides guardianship, such as Health Care Directives, Limited Guardianship, Supported Decision Making (SDM), Temporary Guardianship, or no guardianship at all (see Appendix B for more information). Rather, most schools automatically recommend guardianship when the individual turns 18, often biasing parents towards guardianship in the “school-to-guardianship pipeline.”⁷ In addition, research indicates that the label of disability diagnoses impact court guardianship decisions. Jameson et al argue that “guardianship is predicated on the premise that individuals lack decision-making capacity. However, this premise and the assumptions on which it is based are built upon age-old and often discredited ideological stigmas associated with people with disabilities.”⁸

In Hennepin County, Minnesota, the Fourth Judicial District Probate Court is tasked with guardianship cases. They are faced with the difficult challenge of protecting people with disabilities but also allowing them self-determination. The implementation of a person being legally given a guardian, unfortunately, is not accessible for people with disabilities and is difficult for people with disabilities to fully participate in. The inability for an individual to fully participate and make decisions around their guardianship case before a guardian is even deemed necessary does not allow for self-determination for these individuals. It does not allow a person with a disability to take active part in their lives.

This new movement towards self-determination and less restrictive alternatives for people with disabilities does not align with the process to guardianship, or the role of the Minnesota Probate Courts. Because the process, building, and language is inaccessible for so many, this restricts individuals from being able to fully participate in guardianship. In addition, monitoring or reporting current guardians is inaccessible for similar reasons. A redesign should be considered to promote these ideas and allow for full participation of people with disabilities. Universal Design requires that buildings, processes, and other elements are accessible to all people, preferably without using modifications. The process is the same for everyone, regardless of ability, age, language, or background. In turn, Universal Design benefits everyone. This process, in conjunction with including stakeholders and users of the court in the redesign, will allow for a more accessible court that encourages participation for all people.

⁶ Autonomy, Decision-Making, and Guardianship Position Statement. (2016, April 20). Retrieved from <https://www.aaidd.org/news-policy/policy/position-statements/guardianship>.

⁷ *Turning Rights Into Reality: How Guardianship and Alternatives Impact the Autonomy of People with Intellectual and Developmental Disabilities*. National Council on Disability, 2019, *Turning Rights Into Reality: How Guardianship and Alternatives Impact the Autonomy of People with Intellectual and Developmental Disabilities*.

⁸ Jameson, J. M., Riesen, T., Polychronis, S., Trader, B., Mizner, S., Martinis, J., & Hoyle, D. (2015). Guardianship and the Potential of Supported Decision Making With Individuals With Disabilities. *Research and Practice for Persons with Severe Disabilities*. doi: 10.1177/1540796915586189

The History and Current Status of Guardianship

In the Western world, the idea of Guardianship began in the time of the Ancient Greeks. A “tutor” was assigned to manage property of women, orphans, and any other people who were not able to take care of their own property.⁹ Later, in Britain during the 14th century, guardianship was the duty of the king, who was considered the father and guardian, to take care of his people—including those who could not care for themselves. Coined the “royal prerogative,” it was initially created to ensure that land was in the hands of “the capable.”¹⁰ As centuries passed and populations increased, the “royal prerogative” responsibility of guardianship was passed down to agencies and citizens. Perhaps this idea of valuing and protecting land over assisting “incapable” people, leading to a devaluation of people, is what was carried forward through guardianship today.

Once the United States established itself as a nation, the term “royal prerogative” became *parens patriae*, or parent of the country. This meant that the state took care of those who were unable to care for themselves. Guardianship responsibility fell to each state to determine and state guardianship laws and regulations were initially informal and relaxed.¹¹ These regulations remained unchanged for over 100 years and meant that it was simple for families, friends, and community members to continue to care for their loved ones. In the early 1900s, the “medical model,” the idea that people with disabilities were sick and needed to be taken care of and cured,¹² defined how people with disabilities were allowed to live. The United States forced individuals with developmental disabilities into public institutions. Parents were pressured to terminate their parental responsibility, and the individuals in institutions were monitored by the Department of Human Services (DHS) commissioner. As institutionalization ended and individuals began to move back into the community in the mid-1900s, guardianship was formalized.¹³

Guardianship has seen many reforms over the last half-century, most led by individual state statute, rather than federal law. The first sign of change for guardianship was in 1978 when the American Bar Association created a “model guardianship statute” and proceeded with the *Uniform Guardianship and Protective Proceedings Act (UGPPA)* that provided more guidance on differences in guardianship statute in each state. These protections were clearly insufficient, since in 1987 the Associated Press released an expose entitled “Guardians of the Elderly: An Ailing System.” The AP claimed that “The nation’s guardianship system, a crucial last line of protection for the ailing elderly, is failing many of those it is designed to protect.”¹⁴ That same year, the National Guardianship Association formed, developing more standards of practices for guardians, along with a code of ethics.² In the early 2000s, an attempt again was made at transforming guardianship, this time with a focus on state responsibilities for guardianship and transitioning between states. These many efforts for redesign continue to be ineffective: each year many vulnerable adults are abused, neglected, and exploited.

⁹Johns, A. Frank “Ten Years After: Where is the Constitutional Crisis with Procedural Safeguards and Due Process in Guardianship Adjudication?,” *Elder Law Journal* 7 (1999): 48.

¹⁰ Beyond Guardianship: Toward Alternatives That Promote Greater Self-Determination. (2018). Beyond Guardianship: Toward Alternatives That Promote Greater Self-Determination. Retrieved from https://ncd.gov/sites/default/files/NCD_Guardianship_Report_Accessible.pdf.

¹¹ Beyond Guardianship: Toward Alternatives That Promote Greater Self-Determination. (2018). Beyond Guardianship: Toward Alternatives That Promote Greater Self-Determination. Retrieved from https://ncd.gov/sites/default/files/NCD_Guardianship_Report_Accessible.pdf.

¹² Then, S. N. (2013). Evolution and innovation in guardianship laws: Assisted decision-making. *Sydney L. Rev.*, 35, 133.

¹³ Public guardianship. (2003, January 10). Retrieved from https://www.dhs.state.mn.us/main/idcplg?IdcService=GET_DYNAMIC_CONVERSION&RevisionSelectionMethod=LatestReleased&dDocName=ID_000896

¹⁴ Bayles, F. (1987, September 19). Guardians of the Elderly: An Ailing System Part I: Declared ‘Legally Dead’ by a Troubled System. Associated Press. Retrieved from <https://www.apnews.com/1198f64bb05d9c1ec690035983c02f9f>

Today guardianship processes, oversight, and statute vary by state. Guardianship evolution continues to evolve to protect the rights of vulnerable adults. Some states are evolving to favor less restrictive options to encourage self-determination and autonomy. These alternatives include Supported-Decision Making, healthcare directives, power of attorneys, limited or temporary guardianship, or even no legal action at all.¹⁵ These options are key to person-centered practices that fall under Universal Design: no person is the same, and a person with a disability label should not be automatically considered for guardianship while a person without a disability is not. Many advocacy organizations, including The Arc, The American Bar Association Commission on Law and Aging, The National Guardianship Association, and the National Council on Disability have come out in support of lesser restrictive alternatives so that individuals with disabilities have control over where they live, work, and play.

All states in the United States formalized guardianship to protect people with disabilities, but bureaucratic elements, meant to protect everyone involved, became an element of the process during this time. This focus on bureaucracy creates barriers for people with disabilities and can prevent a person under guardianship from self-determination. While there is no law requiring individuals with disabilities to be under guardianship, guardianship is often the norm for people with disabilities.

The Guardianship Process in Minnesota

A guardian in Minnesota is legally appointed to a person if proven they “are an incapacitated person in that they lack sufficient understanding or capacity to make or communicate responsible decisions concerning their person,” and that they have “demonstrated behavioral deficits evidencing an inability to meet their needs.”¹⁶ There are seven areas in which a guardian can be granted powers—and these powers taken from an individual—including housing, medical care decisions, supervisory authority, providing for an individual’s basic needs, taking care of an individual’s personal belongings, managing an individual’s government benefits, and approving or rejecting contracts that an individual may sign.²

The guardianship process in Minnesota is a complicated process often needing the aid of an attorney or court administrative staff. The “Petitioner” is a person who is asking the courts that guardianship be given of the Respondent (also called the “Ward” or “Protected Person”). The Petitioner can be anyone but oftentimes is a family member or caretaker (such as a Social Worker) for the Respondent and is not necessarily the proposed guardian. The Petitioner fills out a Petition for Guardianship, which starts the process. From there, the court reviews the Petition, sets a date for a hearing, and sends a notice to the Petitioner. Before the hearing, the Petitioner is charged with notifying all “interested parties:” family, healthcare agents, or any agency where the Respondent has lived more than 6 months.

Guardianship Application Process

The Proposed Guardian, who can be a family member, friend, or a professional guardian who is paid for their services, must complete an oath and a background check completed by the Department of Human Services (DHS). If they have not served as a guardian in the past, proposed guardians must also watch a brief “training” video. This is the only training and vetting required of a guardian, even when the guardian is a professional guardian who is paid to serve as a guardian of a person. Minnesota has developed one-page optional handouts that explain a guardian’s role and bench cards for judges and attempt trainings with external stakeholders through annual summits and social work trainings. While Minnesota has no further requirements or training for guardians, other states are developing training. Maryland and Oregon, for example, require guardians to complete training.¹⁷

¹⁵ See Appendix B for definitions.

¹⁶ Hennepin County Probate Court, Petition for Appointment of Guardian, 2019.

¹⁷ Wood, E. (2019). WINGS Groups Take Off. *Bifocal, A Journal of the ABA Commission on Law and Aging*, 40(5), 81–86. Retrieved from https://www.americanbar.org/content/dam/aba/administrative/law_aging/bifocal-may-june-2019-vol-40-no-5.pdf

After being granted guardianship, a guardian must submit yearly Personal Well Being Reports (PWBR),¹⁸ reporting on the Protected Person’s physical, mental, and social well-being, to the courts.¹⁹ Guardians must also submit a yearly background check and keep the courts updated on the Protected Person’s location as necessary. This brief check-in is often not enough. The Government Accountability Office (GAO) found evidence of allegations of physical abuse, neglect, and financial exploitation by guardians in 45 states. While Minnesota was not included in this review, GAO’s results illustrate the need for more follow-up to continue to “protect” the Protected Person.²⁰

Minnesota Probate Court administrative staff are leading a pilot project to improve the review of PWBRs to prevent issues of vulnerable adult abuse or neglect. These flagged PWBRs will be further reviewed to decide the next steps, which may involve an investigation if deemed necessary. This is a step in the right direction, as PWBRs are the point of contact for all guardianship cases. Administrative staff “flags” PWBRs that should be investigated further by either a judge, an attorney, or a court visitor.

Process to Guardianship for the Respondent

The Petition and Notice of Hearing and Rights hold the contents of important information involving the hearing, the Respondent’s rights, and information regarding guardianship. The Petition and orders included in the mailing are full of legal terms and only available on paper and in English. Research proves that individuals experiencing stress or trauma have lowered reading level abilities.²¹ In addition, many individuals with developmental disabilities have a lower than average reading level. This makes it difficult for Respondents to understand complex Petitions full of complex legalese writing. This means that Respondents may be unable to fully understand a hearing that has the power to take away many of their rights.

These documents, along with many other legal documents, require Petitioners to list “behavioral deficits.” Person-Centered language puts the individual first, taking their thoughts, interests, needs, and personal choices into account²² and discourages language like “behavioral deficits.” Petitions are deficit-based rather than strength-based and typically do not contain information around supports already in place. This content is unpleasant and demeaning for a Respondent to read and neglects information that could inform guardianship decisions.

The Respondent is often notified of the Petition by their attorney through the mailing of a Petition. To mitigate the misunderstanding of court documents, a Court Visitor, who is an Officer of the Court and serves as a neutral party to guardianship proceedings, may be appointed to meet with the Respondent to personally serve the Petition and Notice of Hearing and Rights. The meeting explains the contents of the court documents, including the Respondent’s rights and the date of the hearing. During the visit, the Court Visitor assesses the Respondent for their understanding and asks questions about the Respondent’s support needs. The Court Visitor then completes a report listing the Respondent’s opinion on the matter, Respondent’s support needs, and makes a recommendation for guardianship to the courts. If a Court Visitor is not appointed, the Petitioner or Petitioner’s attorney is responsible for serving the Petition.

Following the Court Visitor meeting, the Court-Appointed Attorney schedules a meeting with the Respondent. The attorney assesses Respondent’s level of understanding and what would be in the

¹⁸ See Appendix C for a copy of the most recent Personal Well-Being Report (PWBR)

¹⁹ Developmental Disability Protection, 2019 Minnesota Statutes § 252A.

²⁰ U.S. Government Accountability Office. (2010, September). GUARDIANSHIPS Cases of Financial Exploitation, Neglect, and Abuse of Seniors. Retrieved from <https://www.gao.gov/new.items/d101046.pdf>.

²¹ Duplechain, R., Reigner, R., & Packard, A. (2008). Striking differences: The impact of moderate and high trauma on reading achievement. *Reading Psychology*, 29(2), 117-136.

²² Condon, C., Fichera, K., & Dreilinger, D. (2003). More than just a job: Person centered career Planning. *The Institute Brief*, 12(1), 1-6.

Respondent's "best interest." If the Respondent does not appear able to attend court, typically due to a medical or safety issue, the attorney works with Respondent's physician to obtain a letter to the courts to request the Respondent's attendance at the hearing be waived.²³

Court administrative staff ensure Respondents have interpreters for any language they may need, including American Sign Language. Probate Court Judicial Officers or Judges allow Respondents to sit where they are comfortable in the court room, even if it means sitting with the proposed guardian or with another caretaker. While it is the attorney and Petitioner's duty to request any necessary accommodations that may be needed, Respondents are never asked if they need additional accommodations to attend court and are instead more often excused from attending. The courts are compliant with the Americans with Disabilities Act (Title II, Subpart D), because individuals can request accommodations on the court's website.²⁴ However, making an accommodation request is never clearly stated as an option during the process. An individual would have to find it on the court website, where it states the following:

*"If you have a disability and anticipate needing an accommodation, please complete the ADA Accommodation Request Form. It is recommended that you submit your completed request form at least 10 business days prior to the date you need your accommodation. All requests for accommodation will be given due consideration and, if necessary, may require an interactive process between the requester and the court to determine the best course of action."*²⁵

While this policy is important for individuals with disabilities and mental illness, it is not easy to locate and requires internet connection, which is an issue of equity. A person in crisis or experiencing high amounts of stress, which may happen when interacting with the courts, may have difficulty finding this information. Lack of accommodations may prevent an individual from attending their own court hearing, simply because a form was not made clearly available to them.

If the Respondent tells their Court-Appointed Attorney that they oppose to guardianship, they may go to trial and testify. Otherwise, the Respondent is often not questioned in the court hearing. Rather, the Court-Appointed Attorney represents the Respondent. Again, this simple notion, meant to protect the individual, maintain efficiency and time management, make a pleasant experience for the sometimes already anxious Respondent, and allow for representation through an attorney, illustrates the lack of power given to a Respondent in the courtroom. If there appears to be no disagreements around guardianship, guardianship can be granted at the initial hearing regardless of the Respondent's attendance.

After the hearing, most Respondents do not have contact with the courts, and may struggle to change guardians or alter guardianship powers allowed to the guardian. On an annual basis, guardians are required to present Respondents with a letter to inform them that they may contact the courts if they have questions or concerns, with contact information included. If the Respondent sends a letter to the Probate Court, they assign an attorney for the Respondent to work with to establish a Petition and return to court. However, this relies on the assumption that the Respondent is able to read and process the information in the letter, or that the Respondent has a support person who will help the Respondent understand and respond if necessary. Respondents may not fully understand their right to go back to court, nor understand how to begin the process. Complaints regarding guardians can only be accepted in writing, placing a huge barrier for people who do not write for various reasons. Working Interdisciplinary Networks of Guardianship Stakeholders (WINGS), an advocacy group for those under guardianship, assert that

²³ Developmental Disability Protection, 2019 Minnesota Statutes § 252A.

²⁴ Nondiscrimination on the Basis of Disability in State and Local Government Services. (2016, October 11). Retrieved from https://www.ada.gov/regs2010/titleII_2010/titleII_2010_regulations.htm

²⁵ Minnesota Judicial Branch - ADA Accommodations. (n.d.). Retrieved from <http://www.mncourts.gov/ADAAccommodation.aspx>

“Adults subject to guardianship are at a severe disadvantage in making their voices heard. They are generally unable to file a petition for court review and secure an attorney.”²⁶ This is not just a problem in Minnesota. According to a survey of 43 states and 387 respondents, only 25.9% of respondents reported that court staff visit individuals under guardianship.²⁷ Washington DC, in response to a lawsuit, required that each guardianship case established after 2015 would be under review every three years.²⁸ Michigan attempted to encourage judges to set guardianship to expire after five year. While this was not implemented, this would be an efficient way for the courts to manage their caseload.³⁷

During communication amongst states, WINGS found that Idaho has a less formal complaint process for those under guardianship and that Washington DC recently created a complaint form. In Minnesota, this is much more difficult. Changing guardians or terminating guardianship requires extra knowledge on the Respondent’s behalf. If a guardian were not doing a sufficient job as guardian, a Respondent is directed to file a complaint with the court, but oftentimes investigations do not occur to years due to staffing shortage. Due to lack of training for Guardians and lack of following up and vetting the Guardians, there are times where Guardianship may harm the individual whom it is meant to protect.^{29,30}

The Fourth Judicial District Court Probate Division

There are ten Judicial Districts in Minnesota, the largest of which is the Fourth Judicial District Court. The Fourth Judicial District Court reviews 40% of cases filed in Minnesota and includes only Hennepin County, the most populous county in the state (1.2 million people). The seven divisions of the Fourth Judicial District Court include Civil Court, Conciliation Court, Criminal and Traffic Court, Housing Court, Family Court, Juvenile Court, and Probate/Mental Health Court. Probate Court manages cases involving court-supervised trusts, distribution of property of deceased people, and guardianship and conservatorship for “minor children and incapacitated or incompetent adults.”³¹

Hennepin County “experiences some of the largest gaps in health, employment and economic opportunity by race in the nation.”³² The Fourth Judicial District Court is actively working to reduce these gaps in racial equity and was the first courts system to join the Local and Regional Government Alliance on Race & Equity (GARE) in 2017. The vision of the Fourth Judicial District Court is “The general public and those who use the court system will refer to it as accessible, fair, consistent, responsive, free of discrimination, independent, and well-managed.” To promote racial equity and align with their vision, the court has developed trainings, policies, research areas, and procedures. Their new strategic plan will only add to these attempts. The courts have enabled staff at all levels to report inequities safely and anonymously. One such change involves a change in paperwork for psychiatric diagnosing to reduce bias. There is bias when diagnosing individuals; for example, Black individuals are significantly more likely to

²⁶ Wood, E. (2019). WINGS Groups Take Off. *Bifocal, A Journal of the ABA Commission on Law and Aging*, 40(5), 81–86. Retrieved from https://www.americanbar.org/content/dam/aba/administrative/law_aging/bifocal-may-june-2019-vol-40-no-5.pdf

²⁷ Karp, N., & Wood, E. F. (2007). Guardianship monitoring: A national survey of court practices. *Stetson L. Rev.*, 37, 143.

²⁸ *Turning Rights Into Reality: How Guardianship and Alternatives Impact the Autonomy of People with Intellectual and Developmental Disabilities*. National Council on Disability, 2019, *Turning Rights Into Reality: How Guardianship and Alternatives Impact the Autonomy of People with Intellectual and Developmental Disabilities*.

²⁹ U.S. Government Accountability Office. (2010, September). GUARDIANSHIPS Cases of Financial Exploitation, Neglect, and Abuse of Seniors. Retrieved from <https://www.gao.gov/new.items/d101046.pdf>.

³⁰ Serres, C. (2019, April 11). Report highlights abuses, preventable deaths in Minnesota's assisted-living facilities. *Star Tribune*. Retrieved from <http://www.startribune.com/report-highlights-abuses-preventable-deaths-in-minnesota-s-assisted-living-facilities/508316922/>.

³¹ “Guardianship.” Guardianship, Minnesota Judicial Branch, www.mncourts.gov/Help-Topics/Guardianship.aspx.

³² Ingram, S. (2017). Fourth Judicial District Court, Hennepin County, MN. Retrieved from <https://www.racialequityalliance.org/jurisdictions/fourth-judicial-district-court-hennepin-county-mn/>

be diagnosed with a psychotic disorder than White individuals.³³ To reduce this proven bias, diagnostic assessments completed by psychiatrists at the courts now list an individual's demographics briefly at the end rather than the beginning.

Research indicates that diversity in the workplace increases organization productivity and performance, increase communication skills, improve teamwork, enhances creativity, and leads to better financial outcomes for the organization.^{34 35 36 37} Research emphasizes the importance of employee demographics matching the general population in federal agencies as well: representative bureaucracy leads to more active participation of the community.³⁸ There is a gap in research regarding the importance of representation of people with disabilities in the workforce, particularly in federal organizations. There is also no public information regarding people with disabilities working in the Minnesota Judicial System. Representation of any characteristic creates diversity that can impact the organization. The Fourth District Judicial Court's strategic plan does not mention representation of people with disabilities as a priority.

Staff are not trained to be successful while assisting people with disabilities, even though many users of the Probate Court do have a diagnosed disability. Because statute requires that Respondents be "an incapacitated person in that they lack sufficient understanding or capacity to make or communicate responsible decisions concerning their person,"³⁹ many users of the Probate Court often have a diagnosed mental illness or disability. Their method of processing or understanding may be different than other users of the court. While there is a help counter or a phone number that they can call if necessary, Probate Court staff, while required to attend racial equity trainings, are not required to attend trainings on working with people with disabilities or mental illness. While these options are important to make the court accessible, they do not allow the courts to be "usable by all people, to the greatest extent possible, without the need for adaptation or specialized design,"⁴⁰ as is required by Universal Design. The counter is difficult to get to and higher than is friendly for a person in a wheelchair. Phone calls may be difficult for people to make due to anxiety, differences in processing, or inability to physically place a call. Overall, assistance is difficult to obtain and is only available in some formats, many of which may be inaccessible to large groups of people.

The Court Building Design: Then and Now

In England in the 1800s, hearings often took place in individuals' homes and not in a formalized building. The United States initially adopted the same system and until 2011, courts in Connecticut made it an option to go continue going to Respondent homes or locations. Eventually, Connecticut, just like the other 49 states, had to change this process to protect Respondents and court staff and to ensure oversight of the

³³ Perry, B.L., Neltner, M. & Allen, T. A Paradox of Bias: Racial Differences in Forensic Psychiatric Diagnosis and Determinations of Criminal Responsibility. *Race Soc Probl* 5, 239–249 (2013). <https://doi-org.ezp1.lib.umn.edu/10.1007/s12552-013-9100-3>.

³⁴ Why Representation Matters in the Workplace. (2016, November 15). Retrieved from <https://dignityandrespect.org/representation-matters-workplace/>

³⁵ Phillips, K. W. (2014, October 1). How Diversity Makes Us Smarter. Retrieved from <https://www.scientificamerican.com/article/how-diversity-makes-us-smarter/>

³⁶ Hunt, V., Layton, D., & Prince, S. (2015, January 1). Diversity Matters. Retrieved from <https://www.mckinsey.com/business-functions/organization/our-insights/why-diversity-matters>

³⁷ Bourke, J., & Dillon, B. (2018, January 22). The diversity and inclusion revolution: Eight powerful truths. Retrieved from <https://www2.deloitte.com/us/en/insights/deloitte-review/issue-22/diversity-and-inclusion-at-work-eight-powerful-truths.html>

³⁸ Pitts, D. (2005). Diversity, Representation, and Performance: Evidence about Race and Ethnicity in Public Organizations. *Journal of Public Administration Research and Theory: J-PART*, 15(4), 615-631. Retrieved May 8, 2020, from www.jstor.org/stable/3525684

³⁹ Hennepin County Probate Court, Petition for Appointment of Guardian, 2019.

⁴⁰ Connell, B. R., Jones, M., Mace, R., Mueller, J., Mullick, A., Ostroff, E., ... Vanderheiden, G. (1997, April 1). The Principles of Universal Design. Retrieved April 13, 2020, from https://projects.ncsu.edu/ncsu/design/cud/about_ud/udprincipletext.htm

court cases.⁴¹ The influence of the history has forced changes to protect individuals, but it has also harmed individuals. This redesign had unintended consequences in Minnesota, making it very difficult for individuals to attend their own hearings.

Today, the Hennepin County Government Center, built in 1969 and rented by the Fourth District Judicial Court, houses most Probate hearings. It is across the street from many light rail and bus transit stops, making it accessible by public transit. However, parking is expensive and difficult to find once the parking ramp is full. Once entering the building and going to the second, or “skyway” floor, the interior of the building has high ceilings which create echoes of the many people speaking, a large water fountain structure, armed security or police officers, and a help desk staffed by volunteers. Navigation is confusing and does not provide much help by way of signage apart from a large “C” and “A” to represent “Court” and “Administrative” to divide the building into two entrances. The administrative side is where individuals can apply for and maintain their public benefits, and the court side is where hearings are held. All non-employees must go through security that is similar to airport security. Individuals must ride in elevators—stairs are not an option for security purposes—to reach the floor where their hearing is located. On each floor, there are many rooms and very little signage but for television screens at the entrance to the hallway that list the Respondent’s name and their assigned room number. At one end of the hallway is a row of rooms labeled with room numbers and at the opposite end, a help desk.

Barriers to access continue at the entrance to the courtroom, which is an inaccessible door that swings outward and is not automated. The only push button is to enter an accessible bathroom at the end of the hall. The waiting area in the courtroom has no additional space for wheelchairs or other accessibility devices. To enter the hearing area once an individual’s name is called, they must enter through swinging doors. People with physical disabilities often need assistance entering this area. There are microphones in each courtroom that record what happens in the room and amplify a person’s voice.⁴² The entire building is lit by fluorescent lighting. All individuals wait in the courtroom for their name to be called for up to two hours. No other options are provided without an accommodation request or advocacy from the attorneys.

Because the courts rent the building from the county, they would need to go through a complex process to obtain permission from Hennepin County—the landlord—to make changes to the building. The Hennepin County Government Center is overwhelming for any individual. Navigation of the building is confusing, and even entering a courtroom is difficult and may require assistance. There are sounds, armed guards, lighting, and unfamiliar processes to adjust to, and little signage or direction to assist an individual. The building is not designed with Universal Design or even accessibility in mind.

⁴¹St. John Margaret E. (2011). The Connecticut Probate Court system reform: A step in the right direction. *Quinnipiac Probate Law Journal*, 24(3), 290-312.

⁴² See Appendix A for an approximate picture of a Probate Court courtroom.

The Idea and Practice of Universal Design

The evidence above illustrates the inaccessibility of participating in the guardianship processes for people with disabilities, though people with disabilities have the right to participate in everything people without disabilities participate in. Participation in the hearing is the right of the Respondent, as stated in the Order for Hearing and Notice of Rights issued by the courts. However, attending court is not always possible due to the many barriers previously laid forth.

While accessible design considers the needs of individuals with disabilities and accommodates for these needs, Universal Design, if implemented correctly, designs products, processes, and environments to be usable by all people with no need for modification or accommodation. Universal Design addresses equal access for people of all abilities, cultural backgrounds, ages, gender, or social status.

Universal Design is not only inclusive of physical accessibility, but also other forms of accessibility. It promotes accessibility for people with sensory or cognitive disabilities and evaluates spaces, ideas, documents, and other products for “emotional design,” “perceptive design,” and “cognitive design.”⁴³ Universal Design removes the “locus of disability” from the individual and “recognizes that both the social and physical environment are factors in the disablement process.”⁴⁴ Universal Design is more equitable and allows individuals access without having to do more work to get access. There are seven Principles of Universal Design, not all of which are relevant to all designs:⁴⁵

1. *Equitable Use:* The design can be used by people of all abilities. When possible, the design should be the same for all; when not possible, the design should be “equivalent.” Safety, security, and privacy should be accessible to all users of said design.
2. *Flexibility in Use:* The design should be flexible enough to fit with an individual’s preferences and abilities. should be able to be used by right- and left-handed individuals and should be adaptable to a person’s “pace.”
3. *Simple and Intuitive Use:* The design is easy to understand for *everyone*, regardless of physical or mental ability, language, or culture.
4. *Perceptible Information:* The design presents information to the individual in a simple and effective way, regardless of an individual’s ability. This may require different types of communication (verbal, pictures, written word) for a design. Directions should be provided in a variety of ways that can be accessed with various accessibility devices.
5. *Tolerance for Error:* If used incorrectly, the design should minimize negative consequences. The design should provide warnings if hazards or errors occur.
6. *Low Physical Effort:* The design should be used with minimal physical effort, regardless of a person’s abilities. The design should not rely on certain body positions (such as bending over or reaching up) or repetitive actions.
7. *Size and Space for Approach and Use:* The design should allow for an appropriate space for use regardless of an individual’s “size, posture, or mobility.” Individuals should be able to access or see the design from seated or standing position and should allow for variations in grip.

There is not a single solution when designing a Universal Design. Nor is there always “perfect” solution. Each Universal Design will have flaws and not be entirely accessible or “universal,” but should be

⁴³ Steinfeld, E. (2010). Using Human Factors Research as an Evidence Base. In Steinfeld, E (Ed.), *The State of the Science in Universal Design : Emerging Research and Developments* (pp. 47–70). Bentham Science.

⁴⁴Steinfeld, E. (2010). Advancing Universal Design. In Steinfeld, E (Ed.), *The State of the Science in Universal Design : Emerging Research and Developments* (pp. 1–19). Bentham Science.

⁴⁵ Connell, B. R., Jones, M., Mace, R., Mueller, J., Mullick, A., Ostroff, E., ... Vanderheiden, G. (1997, April 1). The Principles of Universal Design. Retrieved April 13, 2020, from https://projects.ncsu.edu/ncsu/design/cud/about_ud/udprinciplestext.htm

accessible to “as many users as possible.” Universal Design does not mean more expenses; it may mean less. Universal Design positively impacts the environment for those with and without disabilities. One such example of universal design in the workplace are adjustable height desks, a design many office workers now enjoy. The adjustable height desks are adjusted by the user to fit the height of the person using it. They are easy to use, typically with a button or lever to change the height, and provide equitable and flexible use. When making an error with the desired height of one’s desk, they can simply fix it with another click of a button. Buttons do not require reading, as they typically have arrows that are textured. In addition, clicking the button will give immediate feedback as to which direction the desk is moving.

Using Universal Design to create documents or resources is also important. Just as most websites are made usable by many different types of computers and web browsers, documents should be made usable by people who read different languages, process differently, or have different understanding. This means having documents available in different formats (such as electronically and on paper) and in different languages. This means utilizing plain language to ensure understanding for all who read the document. Plain language means that documents would be able to be understandable and legible by those for whom the documents are written. This does not mean “dumbing down” an article, rather, plain language is “an intellectual pursuit that eliminates linguistic arrogance or reader distancing and condescending language.”⁴⁶ Creating a simplified version of the Petition, with a checklist for individuals to review, would ease the difficulty of these documents.

However, Michael Iseri, an attorney at the Center for Accessible Technology in California, argues that the seven principles designed above are “not really tailored for what is needed in the legal field.”⁴⁷ Instead, the focus in the legal field to ensure Universal Design should be on clarity, visibility, and structure. This would assist an individual in making legal decisions and help them understand documents without assistance from a legal professional. In addition, this would “demonstrate an attorney’s mastery of the material.” “Law itself,” Michael Iseri concludes, “is complicated, so making it more accessible through legal accessibility should be greatly appreciated and fully embraced.” This is certainly true in the case of Probate Court. Guardianship is a complicated system full of legal terms that are even difficult for the average layperson to understand. Still, the seven principles are important to consider when restructuring processes and physical structures of buildings.

⁴⁶ Petelin, R. (2010). Considering plain language: Issues and initiatives. *Corporate Communications: An International Journal*, 15(2), 205-216.

⁴⁷ Iseri, Michael. “How Universal Design Principles Can Improve Legal Accessibility.” How Universal Design Principles Can Improve Legal Accessibility, American Bar Association, 2 May 2018, www.americanbar.org/groups/litigation/committees/jiop/articles/2018/how-universal-design-principles-can-improve-legal-accessibility/.

Factors to Consider in a Redesign

There are both internal and external factors to consider when assessing the environment for a redesign. These factors may complicate some aspects of redesign and simplify others.

External Factors

Becoming a United States citizen is a long and complicated process. Adults who need extra assistance due to disability or long-term illness are able to request help from their “legal guardian, surrogate, or an eligible designated representative completes the naturalization process for the applicant.”⁴⁸ Therefore, families of individuals with disabilities applying for citizenship often apply for guardianship so that they can become citizens. This makes it more important than ever to address inequities in race and language.

Many disability and law organizations are evaluating alternatives to guardianship. Organizations such as the Institute on Community Integration are providing trainings and resources for people with disabilities.⁴⁹ There is an increasing body of research that enforces the importance of options such as supported decision making or no guardianship at all for increased self-determination for people with disabilities, therefore increasing quality of life. Other organizations, such as WINGS and the Minnesota Elder Law Center, are advocating for change in guardianship processes. The wide range of research, advocacy, and training around alternatives to guardianship creates opportunity for the courts to reduce their caseload and partner with community organizations.

Reports from external units such as GAO and Star Tribune continue to cite the importance of fundamental change to the guardianship system.^{50 51} Reports indicate that guardianship is not monitored, and guardians are not trained or vetted nearly as much as they should be. The findings of these reports may someday carry larger repercussions for the courts and the courts should work to find solutions before it is too late. For example, Washington DC courts experienced a lawsuit, resulting in a more regular review of cases.

Another factor to consider is the increase in the use of technology and technology security over the past decade. This allows people who were once unable to keep themselves safe to use technology to support their needs. This technology includes medication machines, phone applications that tell users when to get on and off the bus, and video monitors that ensure people are being safe. While this technology increases independence and may someday allow for fewer cases of Guardianship and Conservatorship, it also can support individuals in the courtroom. Technology could allow individuals to attend their court hearing using video calling, a service not yet used. Due to the spread of COVID-19 and shelter in place orders, remote hearings via Zoom, VMR, or WebEx are available for applicable hearings.⁵² Studies have shown the possibility of saving money and resources through utilization of videoconferencing,⁵³ and the option to videoconference gives more options for people with other barriers to attendance, like work schedules or transportation barriers.

⁴⁸ Chapter 3 - Oath of Allegiance Modifications and Waivers. (2020, April 24). Retrieved from <https://www.uscis.gov/policy-manual/volume-12-part-j-chapter-3>

⁴⁹ (2019, Fall). Impact: Feature Issue on Self-Determination and Supported Decision-Making for People with Intellectual, Developmental, and Other Disabilities, 32(1), Retrieved from <https://ici.umn.edu/products/6sQ344H3QBu8KtJm3ogFIA>.

⁵⁰ U.S. Government Accountability Office. (2010, September). GUARDIANSHIPS Cases of Financial Exploitation, Neglect, and Abuse of Seniors. Retrieved from <https://www.gao.gov/new.items/d101046.pdf>.

⁵¹ Serres, C. (2019, April 11). Report highlights abuses, preventable deaths in Minnesota's assisted-living facilities. Star Tribune. Retrieved from <http://www.startribune.com/report-highlights-abuses-preventable-deaths-in-minnesota-s-assisted-living-facilities/508316922/>.

⁵² Remote Hearing Information. (2020). Retrieved from <http://mncourts.gov/remote-hearings>

⁵³ Rogers, L. (2013). Petitioners Entitled to Only Virtual Presence At State Post-Conviction Evidentiary Hearing. *Criminal Law Reporter*, 92(23), 728.

Finally, the political environment is an important factor to consider when redesigning the Probate Court. A redesign would require changes in policy, legislation, and funding that would not be able to be implemented by the Minnesota Judicial System. Currently, the focus on the COVID-19 pandemic is a priority. A redesign would currently not be appropriate or available at this time.

Internal Factors

The Minnesota Judicial Branch is acknowledging inequities that exist throughout the courts and trying to make change to reduce these inequities. They are evaluating their programs and services for racial equity, but the process is slow and not yet embraced by all the staff of the Fourth Judicial District Court. This process is providing promising results.⁵⁴ More specifically, the Fourth Judicial District Court is providing trainings around equity and diversity, are a part of Government Alliance on Race and Equity (GARE) and have opportunities for staff to participate in change for equity through both the Committee for Equality and Justice (CEJ) and Access, Inclusion, Diversity, and Equity (AIDE). According to the Minnesota Judicial Branch's 2019 annual report, the Fourth Judicial District "participated in various staff development and outreach events in 2019." This includes presentation of tribal flags, a new Juror Experience Project and Warrant Hotline Project, new community outreach programs, warrant forgiveness days, and listening sessions with the Division of Indian work. They have developed new strategic infrastructure goals to address racial equity and focus on various factors to retain and recruit workers to promote a diverse workforce. They have developed nine new "Diversity and Inclusion Education Courses," focusing on workplace inclusivity, racial equity, LGBTQ+ population, and tribal justice.

Notably, of the 13-page Minnesota Judicial Branch 2019 report, disability is only mentioned once in a brief paragraph titled "Americans with Disabilities Act (ADA) Resources." Staying compliant with the ADA is not promoting equity and diversity, rather, it is following the ADA Act as law. According to this short paragraph, on-demand training is "available...to help the courts provide assistance for court users who have a disability." While some trainings, such as racial diversity trainings, are provided regularly and required for all staff, there is very little required training around disability. Staff are required to take an ADA compliance course. There are trainings provided as optional in the training archives around people with disabilities, but these are out of date.

These factors merely are indicators to review when considering a redesign of the Probate Court. They may promote use of certain stakeholders, create hurdles and barriers to change, or create a sense of urgency for change.

Important Stakeholders for the Redesign Process

Oftentimes, change meant to do good has unexpected consequences because "they are not based on the client's or customer's needs and have never been prototyped to solicit feedback."⁵⁵ Stakeholder engagement is essential to an equitable and inclusive redesign. The following internal stakeholders are key to an effective redesign in this particular case:

- **Judicial District Administrator** for Fourth Judicial District Court is the most important stakeholder to engage at the beginning of the redesign process. She is open to change and is trying to ensure equity at the courts through producing workgroups and strategic plans emphasizing equity.
- **Frontline staff, court-appointed attorneys, administrative staff, and judges in the Probate Court:** Frontline staff and court-appointed attorneys have the most interactions with individuals

⁵⁴ Minnesota Judicial Branch. (2020). *Diversity and Inclusion Annual Report* (pp. 1–13). St. Paul, MN.

⁵⁵ Tim Brown & J. Wyatt (2010). "Design Thinking for Social Innovation." *Stanford Social Innovation Review*.

and are best able to report what they see as issues. They would best be able to provide feedback about new ideas and provide new practices. Implementation of new programs or policies would be ineffective without frontline staff.

- **AIDE members** would be important to consult to evaluate both the current environment and a redesign for equity. The court is fortunate enough to already have a group of people who can assist in evaluating each part of the redesign for equity. AIDE members have high amounts of legitimacy and network power within Hennepin County Court, which will help other stakeholders get on board.
- **Fourth Judicial District Court's Research Department**, who designs research for all divisions of the Fourth Judicial District Court. The research department has expertise and insight into the court system and can utilize resources already available to help push change.

The following external stakeholders would provide feedback and be able to advocate for legislative changes as necessary.

- **Respondents, Respondent family, and Guardians:** For a redesign to be person-centered, the most important stakeholders to engage would be the Respondents' and Respondents' families and guardians. The easiest way to engage these individuals would be by eliciting feedback from them after their hearings if they are willing. An interpreter would need to be present for this feedback. While maybe not effective in getting completely honest feedback, a survey would be most effective at getting the most responses. Each year, Guardians and Conservators are required to submit a Personal Well-Being Report (PWBR) about the individual they are Guardian or Conservator for. By including the survey in with the PWBR, there is potential for more responses. Those who are interested to take a larger part in the redesign to improve the experience for future Respondents and Petitioners should be allowed and encouraged to provide feedback throughout the process and help with each step.
- **Other Guardianship Reform/Advocacy Organizations** such as the Working Interdisciplinary Networks of Guardianship Stakeholders (WINGS), Minnesota Association for Guardianship & Conservatorship (MAGiC), and the Minnesota Elder Justice System.
- **Governmental Organizations:** The Minnesota Council on Disability, The Governor's Council on Developmental Disabilities, The Minnesota Deaf and Hard of Hearing Services Division, and the Minnesota Department of Human Rights are all experts in their areas. They would be able to provide feedback on various current accessibility of the courts.
- **Other District Probate Courts:** To make the design useful statewide, collaborating with the other nine district probate courts in the state will be important to understanding needs across the state. These needs may differ due to context and demographics of each district's community. Redesigns in each district will not be able to be replicated. Collaborating to use what is learned in other districts while customizing each district's redesign will be important to success.⁵⁶
- **Other State Probate Courts:** Other states have reformed their guardianship process and tried variations in redesigns. WINGS has collected this information and can work to unite the courts making changes in their guardianship process.⁵⁷

Many of these stakeholders would be difficult to reach, which would mean doing so through evaluation techniques such as surveys in partnership with the research department. Working with each group of

⁵⁶ Susan Evans and Peter Clarke (2011). "Disseminating Orphan Innovations," *Stanford Social Innovation Review*. Winter: 42-47.

⁵⁷ Wood, E. (2019). WINGS Groups Take Off. *Bifocal, A Journal of the ABA Commission on Law and Aging*, 40(5), 81-86. Retrieved from https://www.americanbar.org/content/dam/aba/administrative/law_aging/bifocal-may-june-2019-vol-40-no-5.pdf

stakeholders is key to success and will allow for a variety of change ideas that can be implemented immediately, short-term, and long-term to produce long-lasting results.

Redesign Process

While Universal Design elements are essential to an equitable design, involvement of internal and external stakeholders will identify the real barriers to accessibility and participation, potential solutions, and discover potential consequences to solutions. As problems increase in complexity, adversarial and managerial modes of policy making and implementation are no longer sufficient for governance.”⁵⁸ Nongovernmental stakeholder engagement is essential to a redesign that ensures equitable and fully accessible policies and procedures. To encourage engagement with the wide range of stakeholders, a monthly meeting of advocates, guardians, people under guardianship, and advocacy organizations would be the first step in a redesign. This would allow the courts to address issues as they come up and be aware of new research. This step of the redesign process falls under Priority 3A Strategic Goal 3 of the Minnesota Judicial Branch’s strategic plan for 2020-2021: “Seek input from court customers on court practices and collaborate to identify, reduce, and eliminate disparities in the court system.”⁵⁹

There are many external stakeholders who are already involved in affecting change in guardianship, as well as a WINGS work group and other partnerships that the Probate Court staff are involved in. Sharing findings and feedback across groups would help develop a more diverse set of ideas and solutions.

The Fourth District Judicial Court has an internal research department to conduct evaluations and other research for the court. The next step would include partnering with the research department to design and implement an evaluation regarding Respondents’ experiences of the Probate Court. This evaluation could utilize various forms of feedback, such as interviews, surveys, or focus groups. Interpreters would be provided, and any paper copies would be provided in other formats to allow for a diverse group of participants in the evaluation. While it would be important to draw from individuals who had recently attended hearings or trials, it would also be important to interview current guardians and people who have been under guardianship for more than one year. These evaluations would be conducted on a regular basis to measure process and make changes as needed. In addition, those interested in continuing to participate in redesign can be provided the opportunity to join already existing work groups. This would ensure feedback not only from administrators and professionals, but also from the court users themselves.

Staff are charged with implementing the redesign, and implementation does not happen without staff endorsement of a redesign.⁶⁰ Therefore, creating change in a system means addressing internal models and ideas that staff and other stakeholders hold.⁶¹ Annually, staff are provided the opportunity to present “spark ideas” to improve the courts. Many of these ideas have been or are currently being implemented. To continue to learn from staff, collecting ideas and problems from staff would help inform redesign. Collecting information from administrative staff, attorneys, judges, and judicial officers would create a more robust set of information and allow for contribution from the staff who would be impacted by redesign. Results from evaluations would be made public and shared with workgroups to continue to inform future redesign.

⁵⁸ Gray and Purdy (2018). “Collaborative Governance,” *Collaborating for our Future: Multistakeholder Partnerships for Solving Complex Problems*. Oxford University Press. pg. 156-171.

⁵⁹ Minnesota Judicial Branch. (2020). *Minnesota Judicial Branch 20-21 Strategic Plan*. Retrieved from http://www.mncourts.gov/mncourtsgov/media/scao_library/MJB-Strategic-Plan.pdf.

Sandfort, J., & Moulton, S. (2015). *Effective implementation in practice: Integrating public policy and management*.

⁶¹ Stroh, D. P. (2015). *Systems Thinking for Social Change*. Chelsea Green Publishing Co.

A close relationship with those in power would result in a more comprehensive redesign. Sharing information and gathering feedback from those who can promote redesign, such as the Judicial District Administrator. Partnering with court staff would inform workgroups on what is feasible and what needs legislative change to implement.

Getting a diverse range of stakeholder feedback would encourage an inclusive, universal design. Involving the research department of the Fourth Judicial District Court to create systems for feedback and evaluation in partnership with stakeholders would discover new issues of accessibility and equity that would need to be addressed. Creating networks and partnerships amongst the courts and advocacy organizations to encourage a feedback loop. This will allow for continued redesign and change to ensure that the Probate Court continues to evaluate for equity and accessibility.

Potential Redesign Recommendations for the Fourth Judicial District Probate Court of Minnesota

The redesign process of the Fourth Judicial District Probate Court will result in more equitable and accessible services for all people. If implemented correctly, outcomes may include an increase in Respondent participation, a decrease in guardianship caseload, a better understanding of guardianship and alternatives, and guardianship serving its intended purpose: to help people meet their personal needs if they are unable to do so without the supports and services that they have in place. To promote a redesign, external and internal stakeholders will need to continue to produce a sense of urgency for change through training, advocacy, and research.

Many of the proposed redesign options would require extra funding and legislative changes. The Probate Court implements law and policy, and while they are able to make changes to reduce inequitable results in the courts, there are other areas that would be outside of their jurisdiction or abilities to change. For example, the courts cannot create laws or legal backing for Supported Decision Making. This would require legislative change.

Funding a redesign would take reallocation of funding or additional funding given to the Probate Court. For example, more consistent monitoring by meeting with individuals to discover effectiveness of their guardians would require an increase in administrative staff. Ensuring person-centeredness from all staff would require additional training. Developing and changing many of these processes would be expensive. Approximately 43.4% of respondents from a 2006 survey of 387 guardians, probate judges, court managers, elder law attorneys, and representatives of people with disabilities reported that “funding for monitoring is unavailable or clearly insufficient” and 31.3% of respondents reported no specific funding stream for monitoring of guardianship.⁶² By encouraging lesser-restrictive alternatives for Petitioners and Respondents, there would, in time, be a decrease in guardianship cases and staff time could be redistributed. In addition, other states utilize state legislation appropriations or filing fees as a source of funding for guardianship monitoring. While funding and legislation may be difficult, it is every person’s right to attend their hearing. This should make this a priority.

Traditions and norms guide the American Court System. Challenging these assumptions is a part of “Exploring the Problem Space,”⁶³ which may make it difficult to get critical internal stakeholders on board. Because court traditions, norms, and assumptions are a national standard, it seems that at this point the physical layout of the courts are not ready for change. For example, the court doors swing open, making it difficult for people with mobility issues to get to the front of the room where they should be seated. Over the years, various staff, including judges and administrative staff, have proposed removing

⁶² Karp, N., & Wood, E. F. (2007). Guardianship monitoring: A national survey of court practices. *Stetson L. Rev.*, 37, 143.

⁶³ Christian Bason (2017). *Leading Public Design: Shaping the Next Governance Model*. Policy Press: Bristol, UK. Selections.

the doors but these doors remain. Judges often apologize to people who struggle with the doors during hearings. Those in power use the bases of power of legitimacy and expertise to prioritize tradition over equity and accessibility.

The Fourth Judicial District Court may, however, be ripe for process and policy changes. Due to their commitment to GARE and racial equity, many policies and processes are being transformed in other departments in ways that were once thought impossible. Because of the COVID-19 pandemic and crisis, stay at home order have forced the courts to become creative and break norms in ways that were once unacceptable. Much of the outlined plan aligns with the mission of the Minnesota Judicial Branch, “To provide justice through a system that assures equal access for the fair and timely resolution of cases and controversies.” It also aligns with the Minnesota Judicial Branch’s vision: “The general public and those who use the court system will refer to it as accessible, fair, consistent, responsive, free of discrimination, independent, and well-managed.”⁶⁴

Due to these variables, there are clearly certain areas where utilizing Universal Design concepts is possible, and other areas where accommodations can be made in place of Universal Design. There are many lesser-restrictive legal options to guardianship. Often these options are not fully considered, and the default is to assign a guardian. People with disabilities and mental illness diagnoses should be given these opportunities by the courts, and a redesign with a focus on Universal Design would help move them in that direction. In addition, access to the courts should be more accessible for Respondents to allow for self-determination and serve as an example for guardians. Stakeholder engagement would determine the redesign, but some potential outputs from this redesign process are as follows:

- Increase Staff Representation
- Engage Staff in Trainings Around People with Disabilities
- Providing Alternatives to Guardianship during Meetings with Respondents
- Providing Bench Cards or Evaluation tools to determine the best option for Respondents
- Monitoring Guardianship Caseload
- Redesigning Court Visitor and Attorney Visits for better access, to promote better understanding, and to provide a trauma-informed meeting ...
- Increasing Attendance Options for Respondents through virtual meetings, usage of social stories, and providing more opportunity for accommodation requests.
- Redesigning the Courtroom and Court Building
- Producing Person-centered, Strengths-Based Petitions and Court Documents written in Plain language

⁶⁴ Minnesota Judicial Branch. (2020). Minnesota Judicial Branch – About the Courts. Retrieved from <http://www.mncourts.gov/About-The-Courts.aspx>.

Conclusion

Because self-determination and less restrictive alternatives are embraced by much of the disability community, the courts should, in turn, change with these ideals. The courts have oversight over all other organizations that the changes they make are changes the rest of the disability and aging community must cope with.⁶⁵ This power of legitimacy that the courts have over all other organizations can be very effective to change the idea of Guardianship and Conservatorship throughout all organizations. If the Fourth Judicial District Court decides to progress with a redesign of guardianship, it will impact the entire system of disability services.

The redesign relies on stakeholder engagement to determine the areas of need for a redesign. The proposed redesigns may change, pending stakeholder feedback, and the courts should be willing to work with all stakeholders to improve guardianship for people with disabilities. Because stakeholders should be continually engaged, even after the initial redesign is “complete,” redesign will never be complete and will always be evolving to improve design and outcomes. Much of this redesign sets groundwork to ensure that change should never stop. Emergent Strategy, initially named by Octavia Butler, says that change is constant and that we must constantly adapt to grow with the change that is happening.⁶⁶ Change in organizations happens just like change in nature: once change is complete, another change begins.⁶⁷ As the world changes, the answers to these questions may change, requiring constant engagement in the idea of change to produce equitable and inclusive results.

If the Fourth Judicial District Probate Court were to pursue a redesign, it would be important to ask how staff can embed equity and accessibility into the process and the building that the process is housed in. Following the guidelines of Universal Design will not only help individuals with disabilities but also others who struggle to understand the court process. It is pertinent to include individuals impacted by the redesign in constructing the redesign, and to ask what Alford asked in 2009: “To the question ‘What do clients want from our organisation?’, a prior question must be added: ‘What does our organisation want from its clients?’ This in turn calls for a deeper understanding of the value the organisation is seeking to create and the processes by which it produces that value.”⁶⁸

⁶⁵ Kania, J., & Kramer, M. (2011). *Collective impact*.

⁶⁶ Brown, A. M. (2017). *Emergent strategy: shaping change, changing worlds*. Chico, CA: AK Press.

⁶⁷ Allen, Kathleen. *Leading from the Roots: Nature-inspired Leadership Lessons for Today's World*. New York: Morgan James Publishing, 2019.

⁶⁸ Christian Bason (2017). *Leading Public Design: Shaping the Next Governance Model*. Policy Press: Bristol, UK. Selections.

Appendix A: Courtroom picture

Obtained from <https://www.startribune.com/hennepin-county-expanding-security-at-3-suburban-courts/142525345/>



Appendix B: Lesser Restrictive Alternatives

Temporary Guardianship: If an individual is temporarily in need of a guardian, temporary guardianship can be requested. This is a good alternative when a person becomes incapacitated due to medical issues, such as being in a coma.

Limited Guardianship: Guardianship can be granted with only one or two powers, so that an individual legally still holds most of their powers.

Health Care Directives: A health care directive can address a wide variety of issues. It is a written document that expresses a person's health care wishes. Typically, it names another person to be in charge of a person's healthcare decisions if they are unable to.

Psychiatric or Mental Health Advance Directive: While rare, Psychiatric Advance Directives (PAD) will allow an individual to name their preferences for care. This is filled out while an individual is stable, in case of a mental health crisis.

Power of Attorney: Power of Attorney gives a chosen person power to make business or monetary decisions on another person's behalf. This is appropriate if the individual has a large sum of money that they may need help handling.

Rep Payee: For those receiving Social Security, a Rep Payee helps manage social security money so that an individual has enough to pay for necessities.

Supported-Decision Making (SDM): SDM allows a person with a disability to choose a person or people to assist with their decisions. This person would help them understand options, consequences, and communicate the decision once it is made to the appropriate people. This person *does not make decisions for the person with a disability*. The person with a disability retains all rights to decision-making. Currently there is no legal backing for SDM in Minnesota, though this may change with time, as many advocates are encouraging this change.

Other Community-Based Services: Services may be able to substitute for guardianship, such as direct care staff, case managers, an individual's faith community, or other trusted organizations. There is no law to require an individual to be under guardianship.

Appendix C: Personal Well-Being Report (PWBR) from the Probate Court, 2020

Obtained from <http://www.mncourts.gov/mncourtsgov/media/CourtForms/GAC-11-U.pdf?ext=.pdf>

State of Minnesota

District Court
Probate Division

County _____

Judicial District: _____
Court File No.: _____
Case Type: 14, Guardianship

In Re: the Guardianship of

Personal Well-Being Report
(Annual Report of Guardian)

_____ Ward

Minn. Stat. § 524.5-316

As required by Minnesota law, I make this annual Personal Well-Being Report for the reporting period from _____ to _____.

The Guardian (Me)

My name, and the address and phone number where I can be contacted:

Name: _____

Street Address: _____

City, State and Zip Code: _____

Phone: _____ Type: _____

Email: _____

The Ward

1. **Current Address.** The Ward's current address and living arrangement:

Street Address: _____

City, State and Zip Code: _____

Living Arrangement: _____

2. **Previous Addresses.** Has the Ward lived at any other address during this reporting period?

Yes No

If No, skip to #3. If Yes:

Street Address: _____

City, State and Zip Code: _____

Living Arrangement: _____

Date Range Ward Lived Here: _____

If there is more than one previous address, add another sheet.

Current Conditions

For questions #3 through #5, rate the Ward's **current** mental, physical, and social conditions by choosing a number on a scale of 1 to 5 (1 = very poor, and 5= excellent). Then give a brief explanation of why you rated the way you did.

3. I rate the Ward's current **mental** condition as:

1	2	3	4	5
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Very poor		Excellent		

The reason I gave this rating: _____

4. I rate the Ward's current **physical** condition as:

1	2	3	4	5
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Very poor		Excellent		

The reason I gave this rating: _____

5. I rate the Ward's current **social** condition as:

1	2	3	4	5
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Very poor		Excellent		

The reason I gave this rating: _____

The Guardianship

6. **Contact with the Ward.**

a. In the last year, I have had contact with the Ward:

- Daily
- Weekly
- Monthly
- Other:

b. I usually contact the Ward:

- In person
- By telephone (calling)

- By text
 - By email
 - Other:
-

Services

For questions #7 through #10, tell whether the Ward received any **medical, educational, vocational, or other services** in the last year. Then, you should:

- Describe the services;
- Tell whether you believe the services were adequate; and
- If services were not adequate, explain why not.

7. Did the Ward receive any **medical services** in the past year?

- Yes No

If **Yes**:

Describe: _____

Were the medical services adequate?

- Yes
- No, because:
-

8. Did the Ward receive any **educational services** in the past year?

- Yes No

If **Yes**:

Describe: _____

Were the educational services adequate?

- Yes
- No, because:
-

9. Did the Ward receive any **vocational services** in the past year?

- Yes No

If **Yes**:

Describe: _____

Were the vocational services adequate?

- Yes
- No, because:
-

10. Did the Ward receive any **other services** in the past year?

Yes No

If Yes:

Describe: _____

Were the other services adequate?

Yes

No, because:

11. **Restrictions.** Did you place any restrictions on the Ward's right to communicate with and visit with anyone?

Yes No

If Yes:

What happened to cause these restrictions? _____

12. **Reimbursement for Services.** Have you received any money as reimbursement for services the Ward received in the past year?

Yes No

If Yes:

How much did you receive? \$ _____

Was any of this money reimbursed by county contract?

Yes, and the amount reimbursed was \$ _____

No

13. **Continuation or Changes to the Guardianship.** *Any information you include here is so that the court knows your opinion about the guardianship. This is not a formal request to change or end the guardianship (there are other forms available at <http://mncourts.gov/GetForms.aspx?c=21> for making these requests).*

a. Do you believe the Ward should still be under guardianship?

Yes No

Explain: _____

b. Do you think the guardianship should be changed?

Yes No

Explain: _____

14. Are you a professional guardian?

Yes No

Under Minnesota law, a professional guardian means a person acting as guardian for three or more people who are not related to the guardian by blood, adoption, or marriage.

Everything I have stated in this report is true and correct.

Dated

Signature of Guardian

Name: _____

Address: _____

City/State/Zip: _____

Telephone: _____

Email: _____

Each year, this report must be given to the Ward and to interested persons of record with the court within 30 days after the anniversary of the appointment of the guardian. If the Personal Well-Being Report is not filed within 60 days of the due date, the court shall issue an Order to Show Cause.

An interested person may notify the court in writing that he or she does not want to receive copies of annual reports as required by law.