

HUMAN SERVICES COMMITTEE

Testimony of Sally Holewa North Dakota State Court Administrator

October 25, 2011

Good morning Chairman Wieland and members of the Human Services Committee. This testimony is being presented on behalf of the state court administrator, Sally Holewa.

The Committee has requested information on how many guardians are appointed by the court. Guardianships and conservatorships are closely related court actions. A guardian has authority over the person while a conservator has authority over the estate of the person. In most cases, the guardian is also given conservatorship powers, but there are instances where a conservator is appointed instead of a guardian, or may be appointed separately from the guardian for a variety of reasons. The numbers in the chart below represent both guardianships and conservatorships filed in North Dakota during the years indicated. They do not include guardians or conservators appointed for minor children. Over the past 3 years, we have appointed 933 guardians and conservators, which works out to an average of 311 new appointments every year.

Guardianship and conservatorship cases are typically active for several years. During this time, the guardian or conservator must file certain documents on an annual basis and may periodically make application to the court to dispose of the ward's or conservatee's property or appear before the court to explain their accounting. Because the cases continue beyond the year they are initiated, it is useful to consider how many cases are active during a given year. For 2010, there were 2,038 open cases, of which 1,715 had some type of court activity during the year.

Guardianship and Conservatorship Cases 2008-2010

Year	New Filings	Continuing Cases	Total Cases with Activity Occurring Within the Year
2008	285	1,342	1,627
2009	325	1,267	1,592
2010	323	2,038	1,715

I know that the issue of adequate funding for public administrators is an issue that is linked to the larger discussion of guardianship services. At the present time, we do not distinguish cases by type of guardian appointed so we have no way to identify those specific cases in which a public administrator has been appointed.

The Committee has also requested information on current guardianship services. The court does not provide direct guardianship services or oversight of guardians. Absent a motion by an interested party, the court's role is limited to making an initial determination as to whether a petition for guardianship or conservatorship should be granted, requiring a guardian to post a bond, and monitoring for filing of annual reports.

The concern the court has been raising is not limited to the issues of guardianship or public administrators, although they are certainly part of it. Rather, our concern continues to be eldercare issues in general. Elderly people are at risk for financial abuse through non-court proceedings such as powers-of-attorney and Social Security representative payee arrangements that are not subject to any type of scrutiny or oversight. They may fall victim to people who deliberately befriend seniors who are alone or suffering from confusion or illness with the intention of stealing from them. In other instances, it is family members themselves who may be taking advantage of an elderly relative by getting them to turn over money or property, stealing from their homes or bank accounts, and worse, subjecting them to physical harm or neglect. Sometimes the person perpetrating these harms is the guardian but other times they are not. These are very grave issues and the need to address them increases every year as our population ages. It is only through a coordinated, multidisciplinary effort that we will be able to move from a reactive system where abuse is caught after it has occurred to a proactive system that emphasizes prevention.