



## Categorized Recommendations of The Elder Law Task Force

### RECOMMENDATIONS TO THE SUPREME COURT OF PENNSYLVANIA

**Recommendation 1:** The Task Force recommends that an Office of Elder Justice in the Courts (“OEJC”) be established to assist the Supreme Court in implementing the recommendations in this Report, and that the Director of the OEJC, research, grant-writing, legal analysis, information technology and secretarial services be provided by AOPC staff. This Recommendation has been approved by the Supreme Court, and the OEJC will be established in January 2015. See *Overarching Findings and Recommendations*, §§I.C.1 and 2.

**Recommendation 2:** The Task Force recommends that an Advisory Council on Elder Justice in the Courts (“Advisory Council”) be established to serve as a liaison to the executive and legislative branches, and to communicate with the AOPC and the Supreme Court regarding the implementation of the Task Force’s recommendations and other matters involving elder justice. This Recommendation has been approved by the Supreme Court, and the Advisory Council will be formed in January 2015. See *Overarching Findings and Recommendations*, §§II.C.

**Recommendation 3:** The Task Force recommends that the AOPC Judicial Education Department and the OEJC develop training for judges and attorneys handling guardianship matters. See *Guardians and Counsel Committee Report*, §X.C.1.a.

**Recommendation 4:** The Task Force recommends that training for Judges and attorneys developed by the AOPC Judicial Education Department and the OEJC include information on ascertaining when a limited guardianship would be appropriate, and how to make a limited guardianship effective when it is appropriate. See *Guardians and Counsel Committee Report*, §X.C.1.i.

**Recommendation 5:** The Task Force recommends that the AOPC Judicial Education Department and the OEJC, in consultation with interdisciplinary groups or practicing professional and non-professional guardians, develop a guardianship bench book to assist judges. See *Guardians and Counsel Committee Report*, §X.C.1.j. See also *Overarching Administrative Findings and Recommendations*, §IV.C.

**Recommendation 6:** The Task Force recommends that the AOPC Judicial Education Department and the OEJC develop training for judges and financial institutions on the use of emergency guardianships. See *Guardians and Counsel Committee Report*, §X.C.1.k.

**Recommendation 7:** The Task Force recommends that a standardized deposition form be implemented to ensure consistent quality and quantity of pertinent information that should be considered by judges when determining capacity. See *Guardianship Monitoring Committee Report*, §I.C.1.

**Recommendation 8:** The Task Force recommends that, in cases where the qualified individual recommends a limited guardianship and the judge and counsel may need additional information to determine the areas a partially incapacitated person can handle without a guardian, a best practice be adopted for judges to request that a deposition take place by telephone, videoconference, or in-person to allow for follow-up questioning and cross examination. See *Guardianship Monitoring Committee Report*, §I.C.2.

**Recommendation 9:** The Task Force recommends that the AOPC Judicial Education Department train judges who hear guardianship cases on the components of the assessment process to determine capacity, and that the information from training materials be summarized into a bench card and provided to every Orphans' Court Judge. See *Guardianship Monitoring Committee Report*, §I.C.3 and 4.

**Recommendation 10:** The Task Force recommends that judges be informed when the AIP was previously involved in a case under OAPSA, and that the guardianship petition be assigned to the same judge who heard the protective services case. See *Guardianship Monitoring Committee Report*, §II.C.1.

**Recommendation 11:** The Task Force recommends that the training requirement for judges on the assessment of capacity include recommended practices for determining if conflicts of interest are present or if there is evidence of elder abuse underlying the AIP's weakened capacity. See *Guardianship Monitoring Committee Report*, §II.C.2.

**Recommendation 12:** The Task Force recommends that judges receive education on representative-payment and fiduciary programs such as those administered by SSA and the VA. See *Guardianship Monitoring Committee Report*, §II.C.2.

**Recommendation 13:** The Task Force recommends that judges determine if there is involvement from agents under a power of attorney, SSA representative payee, or VA fiduciary in order to uncover potential conflicts of interest. See *Guardianship Monitoring Committee Report*, §II.C.3.

**Recommendation 14:** The Task Force recommends that guardianship files be sealed to protect personal information included in the revised forms. Interested parties who are named in the case should have the ability to access the file by presenting a copy of the Certificate of Filing. In order to assist investigative agencies in their task of researching allegations of abuse, it is recommended that the proposed request form be used. See *Guardianship Monitoring Committee Report*, §III.C.5 and *Appendix H thereto*.

**Recommendation 15:** The Task Force recommends that guardians be provided with oral instructions and a packet of written instructions from the judge or administrative staff at the time of appointment. See *Guardianship Monitoring Committee Report*, §IV.C.2.

**Recommendation 16:** The Task Force recommends that if a guardian does not respond to the delinquency notice in Recommendation 64, it is a recommended best practice for the judge to conduct a review hearing with the guardian present. See *Guardianship Monitoring Committee Report*, §IV.C.4.

**Recommendation 17:** The Task Force recommends that Clerks of the Orphans' Court or the court administration office be responsible for determining the reasons for failure to file required reports and addressing those reasons with appropriate instruction to the guardian. See *Guardianship Monitoring Committee Report*, §IV.C.5.

**Recommendation 18:** The Task Force recommends that judges hold periodic review hearings, either on a regular basis or at random, to monitor the status of the guardianship. See *Guardianship Monitoring Committee Report*, §IV.C.7.

**Recommendation 19:** The Task Force recommends that judicial staff or court administration staff be available to answer a guardian's question(s) or assist a guardian with completing forms, and that resources for guardians be centrally located on a statewide website which includes training materials, forms, and instructions on completion of those forms. See *Guardianship Monitoring Committee Report*, §IV.C.8.

**Recommendation 20:** The Task Force recommends that counties adopt a volunteer monitoring program leveraging local/regional resources to assist the courts in their monitoring responsibilities, using The Orphans' Court Guardian Program in Chester County and the Pro Bono Guardianship Monitoring Program in Dauphin County as models. See *Guardianship Monitoring Committee Report*, §IV.C.9.

**Recommendation 21:** The Task Force recommends that adequate funding be provided to support the Judges and Clerks of the Orphans' Court in fulfilling their guardianship monitoring responsibilities. See *Guardianship Monitoring Committee Report*, §IV.C.10.

**Recommendation 22:** The Task Force recommends that courts, particularly those in counties with limited access to bonding sources, consider online bonding as an alternative, providing that the online bonding companies are on the list of approved sureties. See *Guardians and Counsel Committee Report*, §V.C.1.e.

**Recommendation 23:** The Task Force recommends that, to establish an accurate inventory of active guardianships, each county purge inactive guardianships from its case management system, and complete the Orphans' Court e-form, noting the number of guardianship terminations which occurred during the purge. See *Guardianship Monitoring Committee Report*, §V.C.5 and Appendix K thereto.

**Recommendation 24:** The Task Force recommends that the AOPC's judicial automation plan for an Orphans' Court module include a monitoring tool capable of web-based applications, monitoring and auditing tools for court staff, financial accounting, automated reminders to both guardians and court staff, and interface with the Orphans' Court Common Pleas Court Management System ("CPCMS") application to provide guardianship monitoring data to court staff. See *Guardianship Monitoring Committee Report*, §V.C.6.

**Recommendation 25:** The Task Force recommends that adequate funding be provided to support the Clerks of the Orphans' Court in their ability to implement a local case management system. See *Guardianship Monitoring Committee Report*, §V.C.9.

**Recommendation 26:** The Task Force recommends that the Bill of Rights of an Alleged Incapacitated Person be provided to the AIP, as well as to any family members or concerned parties, at the time he or she is served with the petition, and that the Bill of Rights of an Incapacitated Person be provided to the IP and interested family members or concerned parties, at the time the IP is adjudicated incapacitated. The guardian should receive copies of both the Bill of Rights of an Alleged Incapacitated Person and the Bill of Rights of an Incapacitated Person in the packet of instructions which the guardian receives upon appointment. It is also recommended that the OEJC create a separate document based on the specifics of the statute to be provided to guardians. See *Guardianship Monitoring Committee Report*, §VI.C.1.

**Recommendation 27:** The Task Force recommends that in order to provide the IP with access to justice, the court-appointed attorney be required to make contact with the IP on an annual basis to determine if a guardianship continues to be necessary and if the guardian is adequately performing his or her duties. See *Guardianship Monitoring Committee Report*, §VI.C.4.

**Recommendation 28:** The Task Force recommends that educational initiatives be undertaken to ensure judges are aware of 42 Pa.C.S. § 9728(e) and (f) to help ensure funds and assets are available

to satisfy anticipated restitution orders in appropriate cases. See *Elder Abuse and Neglect Committee Report*, §I.C.2.d.

**Recommendation 29:** The Task Force recommends that the Supreme Court consider authorizing a limited practice for *pro bono* service by retired and voluntarily inactive lawyers to work with elders. See *Elder Abuse and Neglect Committee Report*, §I.C.2.e.

**Recommendation 30:** The Task Force recommends that the Supreme Court consider providing continuing legal education (“CLE”) credits to encourage active attorneys to provide *pro bono* services to elder Pennsylvanians. See *Elder Abuse and Neglect Committee Report*, §I.C.2.e.

**Recommendation 31:** The Task Force recommends that the AOPC Judicial Education Department, with the assistance of the OEJC, develop and distribute bench cards for judges on identifying and reporting elder abuse, provide information about the bench cards to judges at educational conferences, and make the information available on court websites. See *Elder Abuse and Neglect Committee Report*, §II.C.1.

**Recommendation 32:** The Task Force recommends that the AOPC Judicial Education Department, with the assistance of the OEJC, develop an Elder Abuse Bench Book and conduct educational sessions for the judiciary on its contents. See *Elder Abuse and Neglect Committee Report*, §II.C.2. See also *Overarching Administrative Findings and Recommendations*, §IV.C.

**Recommendation 33:** The Task Force recommends that the Supreme Court consider the creation of a Statewide Elder Justice Roundtable similar to the one created by Justice Max Baer and the Office of Children and Families in the Courts (“OCFC”), with administrative support provided through the OEJC. See *Elder Abuse and Neglect Committee Report*, §II.C.4.

**Recommendation 34:** The Task Force recommends that the Supreme Court suggest that a victim’s age be documented by police departments in all criminal complaints and that information be included in the CPCMS. See *Elder Abuse and Neglect Committee Report*, §III.C.1.

**Recommendation 35:** The Task Force recommends that the Supreme Court suggest that the plaintiff’s age in Protection from Abuse matters be documented and reported to the AOPC Research and Statistics Department. See *Elder Abuse and Neglect Committee Report*, §III.C.1.

**Recommendation 36:** The Task Force recommends that the Supreme Court consider if the Comment to Pa.R.Crim.P. 500 should be amended to help ensure the testimony of elder victims and witnesses in criminal cases can be preserved. It further recommends that educational efforts be undertaken to ensure judges and attorneys are aware of this Rule and its implications for cases involving elders. See *Elder Abuse and Neglect Committee Report*, §III.C.2.b.

**Recommendation 37:** The Task Force recommends that the Supreme Court consider authorizing a pilot “Elder Court.” See *Elder Abuse and Neglect Committee Report*, §III.C.4.b.

**Recommendation 38:** The Task Force recommends the implementation of a statewide Orphans’ Court case management system. In the interim, Clerks of the Orphans’ Court should make the necessary upgrades to their case management systems in order to comply with the Guardianship Monitoring Committee’s recommendations and as a precursor to migrating data into the statewide system. See *Overarching Administrative Findings and Recommendations*, §III.C.2.

**Recommendation 39:** The Task Force recommends that Orphans’ Courts and the AOPC collaborate and coordinate with federal agencies that administer representative-payment programs on the exchange and collection of data, training, and education on adult guardianships. See *Overarching Administrative Findings and Recommendations*, §VIII.C.

**Recommendation 40:** The Task Force recommends that, whenever possible, courts should favor the appointment of a family member as guardian of the person. Through amendment to the Orphans’ Court Procedural Rules, the definition of “family member” should be expanded so as not to be limited

to immediate family, but rather attempts to contact other relatives and friends should be encouraged. In addition, the Rules should be amended to encourage courts to look to the hierarchy in 20 Pa.C.S. § 5461(d)(1) for guidance. *See Guardians and Counsel Committee Report, §I.C.1.a.i.*

**Recommendation 41:** The Task Force recommends that, through amendment to the Orphans' Court Procedural Rules, courts may favor the appointment of a family member to serve as a guardian of the estate when the estate of the incapacitated person consists of minimal assets or where the proposed guardian of the estate has the skills and experience necessary to manage the estate and is able to obtain a bond or provide other assurance of financial responsibility. *See Guardians and Counsel Committee Report, §I.C.1.b.i.*

**Recommendation 42:** The Task Force recommends that, through amendment to the Orphans' Court Procedural Rules, a list of individuals and agencies qualified to act as guardian of the person or estate to serve if family and friends are not viable options be mandated. *See Guardians and Counsel Committee Report, §§I.C.1.a.ii and I.C.1.b.ii.*

**Recommendation 43:** The Task Force recommends that, through amendment to the Orphans' Court Procedural Rules, training be mandated for all guardians. *See Guardians and Counsel Committee Report, §II.C.1.c.* This training should include, but not be limited to matters of liability and ethics. *See Guardians and Counsel Committee Report, §III.C.1.a.*

**Recommendation 44:** The Task Force recommends that, through amendment to the Orphans' Court Procedural Rules, all individual guardians, family and professional, be required to undergo criminal background checks. *See Guardians and Counsel Committee Report, §IV.C.1.a.*

**Recommendation 45:** The Task Force recommends that the Orphans' Court Procedural Rules be amended to require that in all guardianship matters where the court does not require a bond, the proposed guardian be required to submit a current credit report. This requirement should be ongoing and, after appointment, the guardian should be required to supply a current credit report each year together with the annual report. The guardian's credit reports should be kept confidential and not be made publicly available. For good cause shown, the court may waive the requirement of a credit report. If the court waives the requirement of a credit report, however, it should still require an assurance of financial responsibility as recommended in Section V.C.1.d. *See Guardians and Counsel Committee Report, §IV.C.1.b.*

**Recommendation 46:** The Task Force recommends that the Orphans' Court Procedural Rules be amended to require that in addition to not having any interest adverse to the AIP, the proposed guardian should have the willingness and ability to visit with the AIP on a regular basis and be available at all times to confer with the AIP's physicians, nurses, and other care providers. If the proposed guardian is not a family member, he or she should have some education and/or experience in guardianship or in providing services to elders and/or the disabled. In lieu of adopting specific requirements concerning minimum education and/or experience for all guardians, the Task Force believes that the goal of assuring that qualified guardians are appointed would similarly be met by mandating that all guardians undergo training before assuming their duties. *See Guardians and Counsel Committee Report, §IV.C.1.c.*

**Recommendation 47:** The Task Force recommends that the Orphans' Court Procedural Rules be amended to limit a potential guardian's appointment to a guardianship of the person in appropriate circumstances to avoid potential intra-familial disagreements as well as any financial responsibility of a potential guardian. *See Guardians and Counsel Committee Report, §VI.C.1.h.*

**Recommendation 48:** The Task Force recommends that the Orphans' Court Procedural Rules be amended to require that in all cases where the AIP does not have private counsel, counsel should be appointed. Private counsel for an AIP should be required to enter his or her appearance as soon as possible to allow the court to quickly identify when counsel needs to be appointed. Counsel fees should be paid by the AIP whenever possible and, if resources are insufficient, then by the Commonwealth, as under the existing approach. *See Guardians and Counsel Committee Report, §VII.C.1.a b and c.*

**Recommendation 49:** The Task Force recommends that Clerks of the Orphans' Court have the capability to produce a standardized list of data items for each active guardianship (including Case Management and Caseload Reports). To ensure uniformity across all counties, this practice should be implemented through a statewide Orphans' Court Procedural Rule. See *Guardianship Monitoring Committee Report*, §V.C.1, 2, 3, and 4 and Appendix J thereto.

**Recommendation 50:** The Task Force recommends that the Orphans' Court Procedural Rules and/or Disciplinary Rules be amended to require attorneys serving as guardians to complete the same training and other requirements as professional guardians, unless the court specifically waives that obligation, and that CLE credit, including ethics credit, be made available to attorneys for this training. See *Guardians and Counsel Committee Report*, §VIII.C.1.b. and §X.C.1.h.

**Recommendation 51:** The Task Force recommends that the Orphans' Court Procedural Rules and/or Disciplinary Rules be amended to require attorneys to clarify to the client, the court, and all other involved parties which role or roles counsel is assuming and to clarify those role(s) through a letter of engagement stating who is being represented and describing counsel's role. It should also be required that these role(s) be restated to the court when entering an appearance with the court. See *Guardians and Counsel Committee Report*, §VIII.C.1.d.

**Recommendation 52:** The Task Force recommends that the Orphans' Court Procedural Rules be amended to require that where the court appoints counsel to represent an AIP, the court indicate whether, except for pursuing rights of appeal, counsel for the AIP is discharged or is to continue representing the person now under guardianship in the event the petition is granted and a guardian is appointed. See *Guardians and Counsel Committee Report*, §VIII.C.1.e.

**Recommendation 53:** The Task Force recommends that, through amendment to the Orphans' Court Procedural Rules, model language be developed pertaining to retention or discharge of counsel which can be inserted into a final decree of incapacity and appointment of a guardian. See *Guardians and Counsel Committee Report*, §VIII.C.1.f.

**Recommendation 54:** The Task Force recommends that, through amendment to the Orphans' Court Procedural Rules, guardians and IPs have access to legal counsel for consultation following adjudication. See *Guardians and Counsel Committee Report*, §VIII.C.1.g.

**Recommendation 55:** The Task Force recommends that the Orphans' Court Procedural Rules be amended to require that the assets of the IP be used for the purpose of maintaining the best possible quality of life for the IP. See *Guardians and Counsel Committee Report*, §IX.C.1.e.

**Recommendation 56:** The Task Force recommends that the Orphans' Court Procedural Rules be amended to require that fee disputes be resolved in a timely, efficient manner. See *Guardians and Counsel Committee Report*, §IX.C.1.h.

**Recommendation 57:** The Task Force recommends that the Orphans' Court Procedural Rules be amended to require that professional guardians, i.e., those guardians with more than two guardianships at the same time, should be certified by the professional guardian certification program referred to in §II.C.1.f. See *Guardians and Counsel Committee Report*, §X.C.1.b.

**Recommendation 58:** The Task Force recommends that guardians be required, through amendment to the Orphans' Court Procedural Rules, to complete the inventory (as revised per Appendix C to the Guardianship Monitoring Committee Report) 90 days after appointment. See *Guardianship Monitoring Committee Report*, §III.C.1.

**Recommendation 59:** The Task Force recommends that guardians be required, through amendment to the Orphans' Court Procedural Rules, to complete the Annual Report of the Person (as revised per Appendix F to the Guardianship Monitoring Committee Report, and/or Annual Report of the Estate as revised per Appendix E to the Guardianship Monitoring Committee Report) one year after appointment. See *Guardianship Monitoring Committee Report*, §III.C.2.

**Recommendation 60:** The Task Force recommends that guardians be required, through amendment to the Orphans' Court Procedural Rules, to complete a Firearms Search (Appendix D to the Guardianship Monitoring Committee Report) within 90 days of appointment. See *Guardianship Monitoring Committee Report*, §III.C.3.

**Recommendation 61:** The Task Force recommends that guardians be required, through amendment to the Orphans' Court Procedural Rules, to send a Certificate of Filing (Appendix G to the Guardianship Monitoring Committee Report), to the persons identified at the time of adjudication, within 10 days of filing each form with the Clerk of the Orphans' Court. See *Guardianship Monitoring Committee Report*, §III.C.4.

**Recommendation 62:** The Task Force recommends that the imposition of filing fees for required annual reports by local court or administrative order should be prohibited through amendment to the Orphans' Court Procedural Rules. See *Guardianship Monitoring Committee Report*, §IV.C.1.

**Recommendation 63:** The Task Force recommends that the Supreme Court, through amendment to the Orphans' Court Procedural Rules, require that Clerks of the Orphans' Court be responsible for docketing and monitoring guardians' compliance with submitting the inventory and annual reports by the required due dates. See *Guardianship Monitoring Committee Report*, §IV.C.3.

**Recommendation 64:** The Task Force recommends that the Clerks of the Orphans' Court, through amendment to the Orphans' Court Procedural Rules, be responsible for providing delinquency notices to guardians when required reports become past due. See *Guardianship Monitoring Committee Report*, §IV.C.4.

**Recommendation 65:** The Task Force recommends that the judge or judge's staff be required, through amendment to the Orphans' Court Procedural Rules, to review the content of all inventories and annual reports received by the court to identify areas requiring further scrutiny, additional documentation, or a review hearing. See *Guardianship Monitoring Committee Report*, §IV.C.6.

## RECOMMENDATIONS TO THE OFFICE OF ELDER JUSTICE IN THE COURTS AND TO THE ADVISORY COUNCIL ON ELDER JUSTICE IN THE COURTS

**Recommendation 66:** The Task Force recommends that the OEJC, in conjunction with the local GSA, if one exists, coordinate the creation of a list of individuals and agencies qualified to act as guardian of the person to be referred to when family and friends are not viable options to serve as guardian. See *Guardians and Counsel Committee Report*, §I.C.1.a.ii.

**Recommendation 67:** The Task Force recommends that the OEJC develop training for guardians, judges, court administrative staff, attorneys and others involved in guardianship matters. See *Guardians and Counsel Committee Report*, §II.C.1.c. and §X.C.1.a.

**Recommendation 68:** The Task Force recommends that the training developed by the OEJC for guardians be divided into pre-service training and some form of continuing education that would include training on the powers, duties and responsibilities of the guardian, including reporting requirements, ethics and liability. See *Guardians and Counsel Committee Report*, §X.C.1.c.

**Recommendation 69:** The Task Force recommends that the Supreme Court, through the OEJC, encourage local courts to develop interdisciplinary teams to advise and support guardians and the court. See *Guardians and Counsel Committee Report*, §II.C.1.d. (Rev. 10/14/15)

**Recommendation 70:** The Task Force recommends that the Supreme Court, through the OEJC, encourage the creation of local GSAs to be relied upon to take an active role in the implementation of education and training, and to support local guardianship improvement. See *Guardians and Counsel Committee Report*, §II.C.1.e. and §X.C.1.d.

**Recommendation 71:** The Task Force recommends that the Supreme Court, through the OEJC, develop a program for the certification of professional guardians. See *Guardians and Counsel Committee Report*, §II.C.1.f and §X.C.1.b.

**Recommendation 72:** The Task Force recommends that the Supreme Court, through the OEJC, develop a program for the mandatory education and training of individual guardians on matters of liability and ethics. See *Guardians and Counsel Committee Report*, §III.C.1.a.

**Recommendation 73:** The Task Force recommends that the Supreme Court, through the OEJC, develop a program for the mandatory education and training of individual guardians that will be required before assuming their duties. See *Guardians and Counsel Committee Report*, §IV.C.1.c.

**Recommendation 74:** The Task Force recommends that the Advisory Council and the OEJC study funding sources, such as the state lottery, to develop guardianship support services and provide small tax deductions to guardians for certain guardianship expenses to determine how best to implement them. See *Guardians and Counsel Committee Report*, §VI.C.1.a & c.

**Recommendation 75:** The Task Force recommends that the OEJC work with the SSA, VA, RRB and other federal representative-payment and fiduciary programs to develop a system for greater information sharing on adult guardianships. See *Elder Abuse and Neglect Committee Report*, §II.C.5.

**Recommendation 76:** The Task Force recommends that the OEJC equip and assist local agencies in developing methods to retain guardians, focusing on helping agencies handle more guardianships as an alternative to relying on ill-equipped family members, and encouraging and expanding the use of GSAs. See *Guardians and Counsel Committee Report*, §VI.C.1.d, e, and f.

**Recommendation 77:** The Task Force recommends that the OEJC: develop free training for non-attorney guardians on filing required documents; put helpful “how to” videos online to answer questions and provide more detailed instructions for the completion of guardianship tasks such as filing reports and inventories; and encourage a dialog with federal agencies such as the SSA, VA, and RRB, which administer representative-payment and fiduciary programs to develop training for guardians who manage an IP’s benefits. See *Guardians and Counsel Committee Report*, §VI.C.1. g, i and j, and §X.C.1.e., f. and g.

**Recommendation 78:** The Task Force recommends that the Advisory Council and the OEJC study the Third National Guardianship Summit Recommendations for Action §§ 3.1-3.8, pertaining to fees, to determine to what extent these recommendations should be adopted in Pennsylvania. See *Guardians and Counsel Committee Report*, §IX.C.1.f.

**Recommendation 79:** The Task Force recommends that the Advisory Council and the OEJC explore the feasibility of asking the General Assembly to establish a fund to pay for guardianship services for those with limited available resources. See *Guardians and Counsel Committee Report*, §IX.C.1.g.

**Recommendation 80:** The Task Force recommends that the OEJC work with the SSA, VA, and the Department of Aging to establish a collaboration process among the agencies to establish a notification system to share information when it is found that a representative payee is abusing an incapacitated person. See *Guardianship Monitoring Committee Report*, §V.C.8.

**Recommendation 81:** The Task Force recommends that the Advisory Council and the OEJC study NGA Standards 12 and 17 to ascertain whether these standards can be adopted by court rule or if legislation is required. See *Guardians and Counsel Committee Report*, §II.C.1.a.

**Recommendation 82:** The Task Force recommends that the OEJC, in conjunction with the help of a working group composed of guardianship stakeholders, develop and offer a fee schedule as a model uniform court rule for compensation of guardians. See *Guardians and Counsel Committee Report*, §IX.C.1.a, b, c, and d.



**Recommendation 83:** The Task Force recommends that the OEJC provide training for judges and guardians on the recommended Bills of Rights provided in the Guardianship Monitoring Committee Report, §VI.C.1. See *Guardianship Monitoring Committee Report*, §VI.C.2.

**Recommendation 84:** The Task Force recommends that the OEJC develop a guide for guardians that includes information about the minimum standards of care for an incapacitated person, and the expectations for and responsibilities of the guardian, including requiring the guardian to maintain in-person contact with the IP at a minimum of once per quarter or more often as appropriate. See *Guardianship Monitoring Committee Report*, §VI.C.3.

**Recommendation 85:** The Task Force recommends that, in order to provide the IP with access to justice, the OEJC and Advisory Council research the impact of requiring the court-appointed attorney to make contact with the IP on an annual basis on the current funding stream. See *Guardianship Monitoring Committee Report*, §VI.C.4.

**Recommendation 86:** The Task Force recommends that the possibility of piloting a program similar to the Court Appointed Special Advocates (“CASA”) be researched by the OEJC and the Advisory Council to provide a volunteer advocate for the AIP throughout the guardianship process who could alert the court of any observed wrongdoing. See *Guardianship Monitoring Committee Report*, §VI.C.6.

**Recommendation 87:** The Task Force recommends that the Advisory Council examine how an effective complaint form and process, specific to guardianships, can be implemented among the appropriate stakeholders. See *Guardianship Monitoring Committee Report*, §VI.C.5.

**Recommendation 88:** The Task Force recommends that the Advisory Council study the feasibility and benefits of collaborating with and encouraging colleges, universities, and law schools to develop elder clinics and other programs to assist elder Pennsylvanians in accessing social services and, with appropriate supervision, drafting or reviewing simple documents, such as a power of attorney or living will. The development of such elder clinics could provide tremendous benefits to elder Pennsylvanians. See *Elder Abuse and Neglect Committee Report*, § III.C.4.c.

**Recommendation 89:** The Task Force recommends that the Advisory Council, with the assistance of the OEJC, study the advisability and feasibility of creating and supporting guardianship mediation programs in Pennsylvania. If the Advisory Council determines that such programs are advisable and feasible, it should also study the questions of program structure and implementation. See *Overarching Administrative Findings and Recommendations*, § V.C.

**Recommendation 90:** The Task Force recommends that the Advisory Council study the feasibility and implications of allocating a portion of filing fees in guardianship cases that involve significant assets to funding initiatives in this Report. See *Overarching Administrative Findings and Recommendations*, §IX.C.2.

**Recommendation 91:** The Task Force recommends that the Advisory Council consider, and, if appropriate, the Supreme Court adopt the ABA’s 29 recommended guidelines for state courts to increase access to justice for Pennsylvania elders. See *Elder Abuse and Neglect Committee Report*, §III.C.4.a.

## RECOMMENDATIONS TO THE LEGISLATIVE BRANCH

**Recommendation 92:** The Task Force recommends that the proposed change to 20 Pa.C.S.A. § 5521(g) be removed from Senate Bill 117 of 2013, Pr. No. 73. See *Guardians and Counsel Committee Report*, §III.C.1.b.

**Recommendation 93:** The Task Force recommends that the General Assembly provide guidance as to what the courts should consider “cause shown” in proposed new 20 Pa.C.S. § 5515.3 in Senate Bill 117 of 2013, Pr. No. 73 and clarify whether determinations of “cause shown” would be appealable. See *Guardians and Counsel Committee Report*, §V.C.1.a.

- Recommendation 94:** The Task Force recommends that the General Assembly set a minimum total value for an estate before making a bond mandatory in every situation. *See Guardians and Counsel Committee Report, §V.C.1.b.*
- Recommendation 95:** The Task Force recommends that the General Assembly enact legislation allowing the acceptance of forms of financial security for guardians other than bonds. *See Guardians and Counsel Committee Report, §V.C.1.d.*
- Recommendation 96:** The Task Force recommends that the General Assembly establish a fund to pay for guardianship services for those with limited resources. *See Guardians and Counsel Committee Report, §IX.C.1.g.*
- Recommendation 97:** The Task Force recommends that adequate funding be provided to support the Clerks of the Orphans' Court and Judges in their ability to fulfill their guardianship monitoring responsibilities. *See Guardianship Monitoring Committee Report, §IV.C.10*
- Recommendation 98:** The Task Force recommends that adequate funding be provided to support the Clerks of the Orphans' Court in their ability to implement a local case management system. *See Guardianship Monitoring Committee Report, §V.C.9.*
- Recommendation 99:** The Task Force recommends that § 5515.1 of Senate Bill 117 of 2013, Pr. No. 73, addressing the grounds and procedures for removing and replacing guardians, be adopted into the Probate Code. *See Guardianship Monitoring Committee Report, §VI.C.7.*
- Recommendation 100:** The Task Force recommends that the General Assembly enact a statute consistent with § 116 of the Uniform Power of Attorney Act (Standing). *See Elder Abuse and Neglect Committee Report, §I.C.1*
- Recommendation 101:** The Task Force recommends consideration by the Legislature of mandatory minimum and/or enhanced sentences, in addition to those listed in 42 Pa.C.S. § 9717, for the conviction of crimes against elders. *See Elder Abuse and Neglect Committee Report, §III.C.2.a. (Rev. 10/14/15)*
- Recommendation 102:** The Task Force recommends that the General Assembly consider enacting amendments to the existing Pennsylvania Slayer's Statute, 20 Pa. C.S. §§ 8801-15, to include not only homicide, but also elder abuse, neglect and exploitation resulting in convictions of specified crimes. Such statutory expansion would be a progressive and significant step in addressing both prevention and remediation of serious elder abuse. *See Elder Abuse and Neglect Committee Report, , §III.C.3.b.*
- Recommendation 103:** The Task Force recommends that the General Assembly consider how to provide greater and more consistent funding and support of civil legal aid, including services specifically targeted to low-income Pennsylvania elders. *See Elder Abuse and Neglect Committee Report, §III.C.4.d.*
- Recommendation 104:** The Task Force recommends that the General Assembly enact a statute requiring financial institutions to be mandatory reporters of suspected financial abuse or exploitation of elders. *See Elder Abuse and Neglect Committee Report, §I.C.2.a.i.*
- Recommendation 105:** The Task Force recommends that the General Assembly statutorily require financial institutions to administer training programs to help identify, prevent, and report elder financial abuse. *See Elder Abuse and Neglect Committee Report, §I.C.2.a.ii.*
- Recommendation 106:** The Task Force recommends that the General Assembly statutorily authorize financial institutions to delay for five days suspicious financial transactions of elder customers. *See Elder Abuse and Neglect Committee Report, §I.C.2.a.iii.*
- Recommendation 107:** The Task Force recommends that the General Assembly increase funding to the Department of Aging to facilitate thorough investigations of alleged financial abuse. *See Elder Abuse and Neglect Committee Report, §I.C.2.b.*

**Recommendation 108:** The Task Force recommends that the General Assembly consider if all personal care homes, assisted living residences and home health care agencies should carry a minimum of liability insurance. See *Elder Abuse and Neglect Committee Report*, §I.C.2.f.

**Recommendation 109:** The Task Force recommends that the Legislature facilitate the creation or continuation of Elder Abuse Task Forces in each county/judicial district to develop best practices, facilitate information sharing and enable and promote collaboration. See *Elder Abuse and Neglect Committee Report*, §II.C.3. (Rev. 10/14/15)

**Recommendation 110:** The Task Force recommends that the General Assembly create a civil private right of action for elder abuse or exploitation, such as the one recognized in House Bill 2057 of 2014, Pr. No. 3054. An award of attorneys' fees or other sanctions may also be appropriate for the frivolous pursuit of causes of action alleging financial abuse or exploitation. See *Elder Abuse and Neglect Committee Report*, §III.C.3.a.

**Recommendation 111:** The Task Force recommends that Clerks of the Orphans' Court become employees of the Unified Judicial System of Pennsylvania. See *Overarching Administrative Findings and Recommendations*, §III.C.1.

**Recommendation 112:** The Task Force recommends that the General Assembly – in the interest of all Pennsylvanians – provide an annual appropriation to the Supreme Court for the implementation and ongoing support of the initiatives in this Report and explore other available sources of funding, such as the state lottery. See *Overarching Administrative Findings and Recommendations*, §IX.C.1.

**Recommendation 113:** The Task Force recommends that decisions whether to require a bond when a guardian of the estate is appointed remain at the discretion of the court. See *Guardians and Counsel Committee Report*, §V.C.1.c.

## RECOMMENDATIONS TO THE EXECUTIVE BRANCH

**Recommendation 114:** The Task Force recommends that, to the greatest extent possible, information on identifying elder abuse and neglect be disseminated to the public in public forums, through the distribution of literature, and online. Elder Abuse Task Forces should determine the most effective ways of relaying this information to their communities. See *Elder Abuse and Neglect Committee Report*, §II.C.6.

**Recommendation 115:** The Task Force recommends that the Pennsylvania Department of Aging determine if it should request copies of SARs from the Pennsylvania Attorney General's Office. See *Elder Abuse and Neglect Committee Report*, §I.C.2.a.iv.

**Recommendation 116:** The Task Force recommends that the Department of Aging and financial institutions work together to determine the most effective and efficient way for AAAs to obtain financial records needed to conduct investigations of alleged financial abuse and exploitation. See *Elder Abuse and Neglect Committee Report*, §I.C.2.c.ii.

**Recommendation 117:** The Task Force recommends that the OAG and the PSP make financial investigators available to assist local prosecutors and AAAs when complex cases of elder financial abuse are alleged. See *Elder Abuse and Neglect Committee Report*, §I.C.2.c.i.

**Recommendation 118:** The Task Force recommends that DHS be encouraged to pay guardians who find alternatives to an IP's placement in a nursing home where the total cost to DHS for community-based services is 50% or less of the cost of a nursing home placement. This may be accomplished by amending the home and community-based waiver to allow guardianship support to be billable as a waiver service, either as part of an existing service category or as a new waiver service category. Such services would be reimbursed based on the guardian's direct time working with and on behalf of the IP. See *Overarching Administrative Findings and Recommendations*, §VII.C.

**Recommendation 119:** The Task Force recommends that DHS' policy be changed to allow the Orphans' Court to authorize payment of guardianship fees greater than \$100 per month where the

court determines greater fees are necessary because of the amount of the guardian's time required to monitor and advocate for the incapacitated nursing home resident's needs. *See Overarching Administrative Findings and Recommendations, §VI.C.*

## RECOMMENDATIONS TO THE FEDERAL GOVERNMENT

**Recommendation 120:** The Task Force recommends that the U.S. Congress act on the March 31, 2014 and April 11, 2014 requests made by U.S. Senators and U.S. Representatives to raise the 2015 VOCA cap. *See Overarching Administrative Findings and Recommendations, §X.C.1.*

**Recommendation 121:** The Task Force recommends that the federal government act on proposed legislation that would fund a state GCIP program similar to the CIP. *See Overarching Administrative Findings and Recommendations, §X.C.2.*

## RECOMMENDATIONS TO PROSECUTORS

**Recommendation 122:** The Task Force recommends that prosecutors utilize 42 Pa.C.S. § 9728(e) and (f) to the fullest extent to help ensure funds and assets are available to satisfy anticipated restitution orders in appropriate cases, and that educational initiatives be undertaken to ensure district attorneys and Common Pleas Judges are aware of this mechanism for freezing assets. *See Elder Abuse and Neglect Committee Report, §I.C.2.d.*

**Recommendation 123:** The Task Force recommends that educational efforts be undertaken to ensure prosecutors are aware of Pa.R.Crim.P. 500, and its implications for preserving testimony of elders in appropriate cases. *See Elder Abuse and Neglect Committee Report, §III.C.2.b*

**Recommendation 124:** The Task Force recommends that district attorneys consider requiring municipal police departments to obtain their approval before filing criminal charges in certain cases involving victims over age 60. *See Elder Abuse and Neglect Committee Report, §III.C.2.c.*

## RECOMMENDATIONS TO VICTIM SERVICES PROVIDERS

**Recommendation 125:** The Task Force recommends that advocates, attorneys, law enforcement, and courts work collaboratively with the Office of Victim Services, Office of Victim Advocates and other victim service providers to continue to evaluate and improve services to elder crime victims. *See Elder Abuse and Neglect Committee Report, §III.C.2.d.*

## RECOMMENDATIONS TO BAR ASSOCIATIONS

**Recommendation 126:** The Task Force recommends that discussions among attorneys and judges to better define the roles of counsel in guardianship matters be encouraged, and involve the participation of the PBA and local bar associations. *See Guardians and Counsel Committee Report, §VIII.C.1.a.*

**Recommendation 127:** The Task Force recommends that the PBA and local bar associations be involved in providing support, advice and ethical counsel for attorneys willing to assume any of the roles of counsel in a guardianship matter. *See Guardians and Counsel Committee Report, §VIII.C.1.c.*

**Recommendation 128:** The Task Force recommends that, where appropriate, the PBA, the Pennsylvania Bar Institute, and local bar associations, working with the OEJC, develop training sessions as recommended in this Report. *See Guardians and Counsel Committee Report, §X.C.1.a and i.*

## RECOMMENDATIONS TO THE PUBLIC

**Recommendation 129:** The Task Force recommends that Pennsylvanians who believe an elder displays the warning signs of mistreatment should report such symptoms by calling either of the state's two Elder Abuse Hotlines.

**Statewide Elder Abuse Hotline: 1-800-490-8505**

**Office of Attorney General Elder Abuse Hotline: 1-866-623-2137**

Abuse reports can be made on behalf of an older adult who lives in his or her home or in a care facility (e.g., nursing facility, personal care home, hospital, etc.). A caller may remain anonymous, and has legal protection from retaliation, discrimination, and civil or criminal prosecution. See *Overarching Administrative Findings and Recommendations, §XI.C.1.*

**Recommendation 130:** The Task Force recommends that everyone learn the signs that indicate elder abuse, and take steps to prevent it. See *Overarching Administrative Findings and Recommendations, §XI.C.2.*