
Alaska's Adult Guardianship Mediation Project Evaluation

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Alaska Court System Adult Guardianship Mediation Project

Executive Summary

The Alaska Court System, with the support of the Mental Health Trust Authority, created a program to provide mediation in appropriate adult guardianship and conservatorship cases. The program began work in 2005, and has handled about 113 cases since then. To provide a basis for evaluating the program, project personnel compiled data from the mediators in 103 mediations, and from about 260 participants and parties.

The Alaska Judicial Council evaluated the program and found that:

- Agreements on some or all issues were reached in 87% of the cases mediated.
- If APS was involved in the case, agreements were reached 95% of the time.
- Participants were satisfied with the agreements reached most (91%) of the time.
- Participants believed that they were listened to and that their concerns were understood most of the time. Almost all would recommend mediation to others.
- The evaluation included 103 mediations conducted during the first three years of the project. The judge or professionals referred tough cases that they thought would need costly court hearings to resolve. Mediators and project staff believed that the referral for mediation avoided contested court hearings in all but a handful of cases.
- The mediators served much of the state, from Kotzebue to Kenai, all of Southcentral, and Fairbanks and the Fourth District. Mediators also worked with parties by telephone.
- In most of the cases mediated, questions about whether there were alternatives to guardianship were discussed and resolved. Other common issues mediated included the finances of the protected adult, the level of care needed, and decision-making and communication among family members and those responsible for the adult.

Alaska's senior population is projected to almost triple from 43,000 in 2005 to 124,000 in 2025, leading to an increased number of people who may need guardians or conservators.¹ The rest of the state's population will continue to grow at a slower rate,² resulting in an increasing number of guardianship cases for other vulnerable adults.

¹ (Source: DHSS Medicaid forecast, http://www.hss.state.ak.us/das/budget/pdfs/longterm_medicaidforecast'05-'25slideshow.pdf).

² *Id.* The rate of growth in the state's population will slow over the next 20 years from just over 1.0% currently to less than 0.6% by 2025.

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Part 1

Introduction

A. Need

Alaska's senior population is projected to almost triple from 43,000 in 2005 to 124,000 in 2025.³ The rest of the state's population will continue to grow at a slower rate.⁴ These increases in state population will lead to increasing numbers of people who may need guardians or conservators to help handle their affairs, and an increase in the number of superior court cases to make the appointments.

B. Court Response

The Alaska Court System, with the support of the Mental Health Trust Authority, created a program to provide mediation in appropriate adult guardianship or conservatorship cases. Mediation was a voluntary process. Participants knew that if they did not mediate, a court hearing would be held to resolve the issues. The court and Trust sought an objective assessment of the outcomes of the project, with an analysis of the previously collected data, and interviews of stakeholders.

The court asked the Council to evaluate the success of the program based on:

- Did participants reach agreements on some or all of the issues?
- Did the mediations result in plans that enhanced the care and safety of high-risk adults?
- Did the use of mediation avoid a contested court proceeding in the case?
- Did participants experience mediation as a satisfactory process?

³ (Source: DHSS Medicaid forecast, http://www.hss.state.ak.us/das/budget/pdfs/longterm_medicaidforecast'05-'25slideshow.pdf).

⁴ *Id.* The rate of growth in the state's population will slow over the next 20 years from just over 1.0% currently to less than 0.6% by 2025.

C. Background of Alaska Project

Courts and other community institutions have operated adult guardianship mediation programs for about thirty years.⁵ Like Alaska's program, they focus on finding ways to protect vulnerable adults whose cases have reached the courts, but for whom the difficulties and cost of a contested hearing might be avoided. A 2001 evaluation⁶ of programs in four states found that most mediations did end in agreements that kept the cases from contested hearings, and that participants were "well satisfied"⁷ with the process.⁸

Alaska's program,⁹ modeled on these other successful programs, began in 2005 with funding from the Alaska Mental Health Trust Authority. Between 2005 and 2008, the project dealt with more than 100 cases¹⁰ referred by judges, attorneys, court visitors and others.¹¹ All but four involved adults who were Mental Health Trust beneficiaries¹² in Anchorage, Fairbanks, and Southcentral Alaska.¹³

About half of the mediations were scheduled at the time that a petition was first filed with the court. The other half occurred later in the process, when a guardianship had been in place for

⁵ Butterwick, Hommel and Keilitz, *EVALUATING MEDIATION AS A MEANS OF RESOLVING ADULT GUARDIANSHIP CASES*, 2001, The Center for Social Gerontology, Inc. The report was funded by the State Justice Institute.

⁶ Butterwick, et al, *id.*

⁷ *Id.*, page 123.

⁸ A 2002 Stetson University law review article, Mary F. Radford, "Is the Use of Mediation Appropriate in Adult Guardianship Cases?" noted that the number of adult guardianship cases in American courts increased greatly after 1970, as the older Americans became a much larger percentage of the population. *Id.*, page 613.

⁹ For a detailed description of the program, see Appendix A, which was written by the Court's Project Manager, Karen Largent.

¹⁰ The 103 cases analyzed in this report are those that were completed, and for which the survey data had been entered by the court into its database. The project had handled more cases, and some were in progress at the time of the analysis.

¹¹ See Appendix B for a description of the parties involved in adult guardianship cases, and their roles.

¹² Trust beneficiaries include "mentally ill," "mentally defective and retarded," "chronic alcoholics suffering from psychoses," and "senile people who as a result of their senility suffer major mental illness." A small number of those served by the Adult Guardianship Mediation Project were so seriously physically ill that they were incapable of caring for themselves, but most also were mentally disabled.

¹³ A handful of mediations have also occurred in Dillingham, Buckland and other locations in the state.

some time. Professionals interviewed for the evaluation noted that in many situations families, service agencies, and communities worked out ways to take care of adults without going to court. The cases that went to court with a petition for guardianship or conservatorship might have been cases in which other alternatives were tried without success. Or they could have been cases in which the parties did not have enough information about the possibilities available to them.

When the court received a petition, it appointed an attorney for the adult in question, and a court visitor. The court visitor investigated the situation and reported back to the court with a recommendation about whether a guardianship was needed, and other points for the court to consider. The court visitor report could also include a recommendation for mediation, or other parties to the process could have asked for mediation.

Many cases were resolved by the parties short of mediation, and without substantial time in court. In general, cases appropriate for mediation were those in which parties could not agree on basic issues, including whether there should be a guardian, who the guardian should be, or what limitations should apply to the guardian's role. A court rule¹⁴ prohibited mediation in which there was an active restraining order involving any of the parties who might be involved in the case. At times, principals in the case – the judge, court visitor, attorneys or parties – believed that the issues were not appropriate for mediation, or that the parties simply could not come to an agreement, and that the court process would suit the needs of the case better. A relatively small number of cases in Alaska were referred for mediation,¹⁵ but the number appeared to be higher than in other similar programs around the U.S.

¹⁴ Probate Rule 4.5.

¹⁵ The court keeps some data in CourtView about the numbers of probate cases that involved adult guardianship mediation issues. See Appendix C, Methodology.

Part 2

Outcome Measures and Findings¹⁶

The project established four goals at the beginning of its work. It later provided more detail about the measures¹⁷ to use to show whether the project was effective. Table 1 shows the project's goals, and the measures created to determine whether the project had met its objectives.

Table 1 Outcome Objectives and Measures
<p>Reach agreements on some or all issues (Measure A: agreements are reached on some or all issues at least 70% of the time)</p>
<p>Create plans that enhance care and safety of high risk adults (Measure B: When APS is involved as a legal party, they are in agreement with plans created/agreements reached and agreements are reached at least 70% of the time)</p>
<p>Avoid contested court proceeding (Measure C: Hearings or trials taken off the court calendar, or petition or motion dismissed/to be dismissed/held in abeyance as a result of mediation in at least 70% of the mediations in which this was applicable)</p>
<p>Participants experience mediation as satisfactory process (Measure G: Responses on post-mediation survey indicate an average minimum score of at least 3.2, whether or not agreements were reached)</p>

A. Participants reached agreement on some or all issues

Agreements on some or all issues were reached in 87% of the cases mediated. Mediators said that parties were most likely to reach agreements on:

- whether a guardian or conservator was needed and who it should be (86% of the cases in which that issue was mediated);
- the level of care needed, and how to make those decisions (88% of the cases in which those issues were mediated);
- living arrangements for the adult (90% of the cases in which those issues were mediated);
- how decisions should be made (83% of the cases in which those issues were mediated);

¹⁶ This section provides the analysis and findings related to the goals and objectives of the project. Detailed information about the responses to the other questions on the Mediators' Survey are found in Appendix D.

¹⁷ The Measures are contained in *Report to the Adult Guardianship Mediation Project Advisory Committee June 28, 2006*. The report is available from the court system. Measures D, E, and F were determined by the project staff in 2006 to be not measurable with the resources available and were not included in this evaluation.

- finances, property, and who/how those decisions would be made (81% of the cases in which those issues were mediated).

Agreements were not quite as likely in other types of issues, including situations in which there were disagreements with the decisions made by the guardian or the conservator. The situations in which agreements were least likely were those in which the focus of the mediation was on creating plans for how the family should deal with disagreements or conflicts. Those issues arose in relatively few cases; when they did occur, agreements were reached in 59% of the cases.

B. If Adult Protective Services was involved, plans were created that enhanced the care and safety of high risk adults

APS was involved in 49% of the cases; high risk adults were defined as those in whose cases APS was involved. Two characteristics distinguished these adults:¹⁸ they were likely to be older adults,¹⁹ and they were more likely to be suffering from dementias. Their problems with dementia were consistent with their greater age.

If APS was involved, agreements were reached in 95% of the cases.²⁰

When APS was involved and an agreement was reached:

- The agreement reached had “an acceptable level of risk” in 91% of the cases.
- Agreements about whether a guardian was needed and/or who it should be were reached in 89% of the cases.

¹⁸ Most (72%) of the adults whose cases were referred for mediation were Caucasian. Another 22% were Alaska Native/American Indian, and 6% were of other ethnicity. The adult’s ethnicity was unrelated to the APS involvement in the case.

¹⁹ They were involved with about one-third of the cases where the adult was under 30; about half of the cases where the adult was age 30 to 69; and about two-thirds of the cases in which the adult was 70 years and older.

²⁰ An agreement was not reached in one case because APS went to court for emergency relief to protect the adult.

C. Avoid contested court proceedings

Interviews suggested that if agreements were reached in mediation, contested court hearings were avoided. Most cases that were referred to mediation appeared to be cases likely to have a contested hearing, so the data suggest that the court avoided as many as eighty or ninety contested hearings over the three years of the project in the analysis. The analysis requires several cautions:

- The agreements reached in mediation usually would go to court for the judge's ratification of the agreement. As a result, a hearing would rarely be taken off the calendar entirely; instead a brief uncontested hearing would take place, rather than the contested hearing that had been scheduled. A reworded question for the mediators could provide more useful data in future evaluations.²¹
- No data were available on what percentage of adult guardianship cases in the court had contested hearings. A good measure for this objective would be a count of contested hearings during a year or two before the program started, and a count of contested hearings during the years while the program has been operating.²²
- Other data might be helpful. Under the pressure of a scheduled contested hearing or trial some cases would settle anyway, even without mediation. Data about all of the cases set for contested hearings could help to clarify whether cases similar to the mediated cases settled without mediation.

D. Participants experienced mediation as a satisfactory process.

Participants were satisfied with the agreements reached most (91%) of the time. In the surveys completed at the end of each mediation by attorneys, protected persons, guardians, court visitors, and family members, respondents gave their satisfaction with the outcome of the mediation a rating of 3.6. This was well above the proposed measure of a rating of "at least 3.2" (with "4" being the highest on a 1 to 4 scale). On other measures, the participants said:

- "I was prepared for mediation and knew what to expect" – 3.7;
- "I understood the mediation process" – 3.8;
- "I was listened to" – 3.9;
- "I had a better understanding of other persons' views" – 3.6;
- "My concerns were understood and addressed in mediation: – 3.7;

²¹ For example, a reworded question might ask, "If a contested hearing or trial had been scheduled, was it taken off the calendar because the issues were resolved in mediation?"

²² All of the courts with CourtView case management system have information about whether guardianship cases involved children or adults. However, the system does not track whether a scheduled hearing was contested or not. This information could only be obtained by reviewing the paper court case files.

- “I think mediation was helpful” – 3.7;
- “The mediator treated all of us fairly” – 3.9;
- “The mediator was respectful” – 4.0;
- “I would recommend mediation to others” – 3.8.

There were no differences in satisfaction by location, but there were two differences among participants that depended on the role that they played in the process.

- The participants who believed that they understood the views of others better were the Adult Protective Services staff and the Assistant Attorneys General who represented the state’s interests, and the respondents and their attorneys. Those who were least likely to think that they understood others’ views better were the people who identified themselves as “family.” Guardians and “others” (e.g., interpreters, therapists) also were less likely to think that they understood others’ views better. This finding could be at least partially explained by the fact that those with less understanding included people who probably had very little experience with similar situations. Those who had the better understanding tended to be attorneys and APS staff who had frequent exposure to situations in which adults needed to be protected.
- “Family and “others”²³ were least likely to say that “I was prepared for mediation and knew what to expect” was “very true.” Court visitors and attorneys were the most likely to say that this was true. Because families and others are much more likely to be new to the process, and attorneys and court visitors may have participated in numerous mediations, this result was not surprising.

²³ Many respondents to the survey identified themselves only as “family,” with no further information about whether they were a guardian, a prospective guardian, or an interested person in a different way. This was the largest single group of respondents to the surveys. The category “Others” included participants in mediation such as interpreters, friends, case managers, agency representatives, and many others who were not family. Only one or two showed up in each category, and they could not be accurately combined with any of the larger groups.

Part 3

Conclusions

Based on the information available about the program, mediation for adult guardianship cases with significant conflicts appeared to be successful in most instances. Parties reached agreement, most of the time, and on most of the issues mediated. Vulnerable adults were protected by the agreements reached. In all but a handful of cases, contested or lengthy court hearings appeared to have been averted by using mediation (although there were no baseline data to show whether contested hearings would have occurred without the mediation). Parties were very satisfied with the outcomes of most mediations and said that they would recommend the process to others.

The court compiled substantial and useful survey data about the goals and objectives established for the process. Project staff successfully encouraged mediators and participants to complete the surveys, and then entered the data from the surveys into a database for evaluation. They also provided background information that enriched the perspectives on the project.

Some changes could be made to the survey forms that would enable the court to conduct more detailed evaluations in the future. The Judicial Council will meet with the court staff, at their convenience, to review suggested re-wording and re-structuring of the data. Council staff will also review data entry processes with the project to see whether more effective methods are possible.

Future evaluations could benefit from additional CourtView data. Those entering data into the case management system could note whether a hearing involved contested issues or a trial. This would allow the project to better assess the extent to which the mediations were keeping contested matters out of the courtroom.

Appendix A

Purpose and Structure of Project

By Karen Largent, Project Manager, Alaska Court System

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Purpose and Structure of Project

By Karen Largent, Project Manager, Alaska Court System

One of the most difficult dilemmas facing our society today is maintaining a person's autonomy when mental capacities fail and family and community supports may be needed. Families and others must increasingly make decisions that can affect the quality of life for adults who experience difficulties in care, safety, and decision-making and may become vulnerable to unsafe conditions, financial and other exploitation, physical and emotional abuse, and neglect.

Balancing efforts to preserve the autonomy and self-determination of vulnerable adults while providing for their care and safety involves including them in decisions about their lives. Even in the best of situations, this balance can be difficult to maintain, particularly when there is disagreement about what is needed, who should provide care, in what setting, how finances are handled, whether a guardian or conservator should be appointed, and, if so, who that should be. Often Adult Protective Services (APS) becomes involved.

Increasingly, decision-making falls to the legal system. Courts are limited to statutory solutions when what is needed is a way to effectively and satisfactorily address very difficult, complex and emotional issues and resolve conflict. A plan is needed that addresses those care and safety concerns. Although guardianship or conservatorship may sometimes be necessary to meet the needs of an incapacitated person, it should be considered only when no other less restrictive options are available. Bringing the vulnerable adult and the system of people involved with him or her together with a specially trained neutral mediator for a thoughtful, private discussion in which the voice of the adult is heard and reflected in the decision-making is the focus of this project.

A. Purpose

The overall aim of this project is to develop an approach to guardianship and conservatorship concerns using mediation to preserve the autonomy and dignity of these adults, while assisting and enabling family to resolve problems, which if left unresolved, could destroy the family and caregiver support system and result in the affected adult's loss of independence and rights, institutionalization, or in financial exploitation, neglect or abuse.

B. Project Goals

- Engage the adult, his or her family and others closely involved, in a productive, creative, problem-solving process addressing care, safety and capacity concerns

- Protect the adult's autonomy
- Seek creative and least restrictive options by exploring alternatives to guardianship or conservatorship for meeting the needs of the adult
- Increase communication and understanding among family members and others involved
- Encourage consensus building among family and others closely involved
- Maintain supportive family relationships
- Prevent victimization of vulnerable adults
- Create plans that reflect the real needs of the adult
- Provide the adult, family and others a satisfactory decision-making process
- Avoid the trauma and adversarial nature of a contested court proceeding
- Eliminate unnecessary appointments of guardians or conservators
- Conserve judicial resources

C. Project Approach

1. Project Development

Inspired and informed by the groundbreaking work of The Center for Social Gerontology, Inc. (TCSG) of Ann Arbor, Michigan, which piloted projects in Ohio, Florida, Wisconsin and Oklahoma, and their 2001 report evaluating mediation as a means of resolving adult guardianship cases, the Alaska Court System (ACS), with funding from the Alaska Mental Health Trust Authority, launched a 5 year pilot project in 2005.

With the assistance of Penny Hommel and Jim Bergman, co-directors of the TCSG, the ACS brought together a stakeholder group to develop the foundation for this project. This planning committee later became the steering committee for this project.

The first two years the project was piloted in Anchorage, Homer, and Kenai cases. Based on results in those communities, other courts throughout Alaska were offered the option of having this program, resulting in its expansion to serve Fairbanks; Bethel; Palmer; Kodiak; Dillingham; Valdez; and Kotzebue cases. It was also contemplated that the project would serve pre-judicial filing cases in its later years, and although protocols have been developed involving Long Term Care Ombudsman and Adult Protective Services referrals, to date no such referrals have been made.

2. The Mediation Model

This project offers a facilitative, non-evaluative, collaborative problem-solving model of mediation that is voluntary and confidential. The emphasis of this form of mediation is on helping empower participants to reach understandings that benefit and improve communication, resolve

difficult issues - beyond the legal issues - and to address conflict in ways that encourage ongoing relationships. It seeks to create understanding and consideration of the participants' needs and concerns, building a foundation for consensus, and expanding the options for possible solutions. Mediators are not decision-makers and do not take sides, nor do they give advice or make recommendations. Decision-making rests with the participants. The mediator offers them a structure and process for discussion and decision-making.

3. The Mediators

Mediation in adult guardianship issues is highly specialized and requires a variety of competencies. The project solicited mediators with these qualifications and selected the most qualified for specific training at the beginning of the project, and repeated this for the project's second phase. Upon completion of training and successful mentorship, the ACS contracted with mediators to provide mediation services.

4. The People and Issues Involved in Mediation

Conflicts, disputes, or the need for joint decision-making may arise at various stages of a guardianship proceeding. Many arise at the time an initial guardianship petition is filed with the court. These issues, raised either by the adult or by another interested party, may involve disagreement about the need for a guardian, limitations on a guardian's powers, or who should be the guardian. Other disputes arise after a guardian has been appointed and may include accounting for money spent by the guardian; the need to continue the guardianship; a change in guardian, limiting or expanding the powers of the guardian; or a challenge to an action or proposed action of the guardian.

Often, the legal issues presented in the court petition or motion are not the underlying issues causing the family or others turmoil. The parties in mediation may focus on quite different issues from those that would be argued in a legal case. Sometimes there are no contested legal issues, but there are still family disputes or concerns that need to be addressed.

Issues likely to be raised in guardianship mediation tend to revolve around safety and autonomy, living arrangements, and financial management. When the adult is one of the disputing parties and objects to the need for a guardian, the primary issue often presents as one of safety versus autonomy. Does this adult have the right to make his or her own choices and decisions if others feel those decisions are unwise and will impact his or her safety? To what extent is an adult allowed to make what others may consider to be "bad" decisions? Are family members attempting to control decisions that should not be theirs to make? For the court, the question is whether there is sufficient evidence to show that the person meets the legal definition of incapacity. In mediation, a legal

finding of capacity or incapacity is not the issue. Rather, the issue may be whether there are ways that a person can reduce risks to health and safety within a context of dignified autonomy. Other issues in dispute may concern the type or level of care and assistance a person might need and should receive, who will provide services/care to the extent they are needed, where a person will live, how money will be spent or invested and who will be involved in decisions about money, or what medical treatment will be given.

The participants in a mediation typically include the adult who is the subject of the guardianship or conservatorship filing; family members; attorney or guardian ad litem (GAL) for the adult; other attorneys (for petitioner and perhaps others); Court Visitor; public or private guardian or conservator (if already appointed); and other interested parties such as non-family caregivers, other services providers, and support persons. Adult Protective Services is involved in about half the mediations.

5. Referral Process

Referrals may be made at any time or at any stage in a case once a petition is filed. A request for mediation may also be filed with the petition. This project emphasizes the importance of early referrals - as soon as possible from the point of petition. These services are, however, also available throughout the life of the case. Mediation may also be requested at any point, even years, after a determination of capacity has been made.

Cases are referred to the Adult Guardianship/Conservatorship Mediation Project by judge, master or magistrate in response to a request from the adult; family member; Court Visitor; guardian or conservator; other interested persons, attorneys; or sua sponte.

6. Preparation, Screening, and Engagement of Participants

The mediator makes contact with mediation participants prior to the joint mediation session, meeting in person and individually with the vulnerable adult and family members whenever feasible. The purposes of these contacts are to explain and prepare the participants for mediation; screen for safety and other concerns that might have bearing on the appropriateness to mediate; provide for needed accommodations; consider strategies to maximize effective and productive participation of all participants; assure that the right people are present for mediation given the issues to be discussed; and to begin to engage the participants in a collaborative decision-making process.

7. Cost of Services

Project funding covers the costs of mediation services provided for the adult and the guardianship and/or caregiving system. There are no direct costs to the participants for mediation services, as even small fees may be a barrier to needed services being accessible. Initial project mediation costs are higher than anticipated future costs as most have included the costs of a mentor who provides consultation and co-mediation for the assigned mediator. Ultimately, only one mediator will be involved in a referral, and co-mediation is only part of the mentorship which typically ends after about three mediations. Thus far, the average cost is \$1,380 per referral and that includes mediator and mentor time in preparation, joint session(s), agreement writing, program paperwork; mediator travel, interpreter, teleconference, and room rental (in locations where court not able to provide) costs.

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Appendix B

Adult Guardianship Participants

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Adult Guardianship Participants

This appendix describes the participants involved in a typical adult guardianship case. Some of this information came from the Family Law Self-help Center web site: (<http://www.state.ak.us/courts/guardianship.htm>). The site provides a detailed description of the process, and links to forms needed at various steps in the case.

Incapacitated adults may be cared for under two different arrangements: a guardianship or a conservatorship. Guardianship means the guardian makes decisions about housing, medical care, legal issues and services. Conservatorship focuses just on the incapacitated person's financial affairs. The statutes²⁴ allow one person to be appointed to both positions.

The main participants are:²⁵

- a respondent (“incapacitated person” / ward);
- a petitioner (someone who thinks that the respondent /ward can't take care of him or herself) (the petitioner may or may not become the guardian);
- a guardian/conservator;
- a court visitor. The court visitor is always appointed at the beginning of a case, and a court visitor must report to the court every three years on the ward's situation;
- a judge; and
- attorneys: The judge will appoint an attorney for the respondent/ward. The petitioner, Adult Protective Services (if it is involved), and other also may have attorneys.
- Adult Protective Services (APS)

Respondent/Ward

The respondent is the person who is in need of care. An adult may be considered in need of protection because of mental illness, developmental disabilities, and a wide range of self-neglect or other actions that leave him or her vulnerable to disease, or various sorts of harm. After the court declares the person an “incapacitated person,” and appoints a guardian, the respondent becomes the ward.

²⁴ The Family Law Self-Help Center website says that this was allowed beginning in 2004, prior to the date that this project started.

²⁵ The data collected by the project showed that numerous other people could be involved in a case, including family members other than the petitioner or guardian, interpreters, social workers, and therapists.

Petitioner

The petitioner is the person who asks the court for guardianship/conservatorship authority. It may be a family member or friend, or Adult Protective Services. The petitioner may or may not become the temporary, or partial or full guardian/conservator.

Guardian/Conservator

The guardian's responsibilities are legal and personal. The conservator's are primarily fiscal. They are often the same person. The guardian or conservator may or may not be the same person as the petitioner.

They may be partial (defined by the court) or full.

They may be: parent, child, sibling, other relative, friend, spouse, appointed by OPA, or a business.

The guardian decides: housing; care, comfort and maintenance (must visit the ward regularly); health and safety (mental and physical health); must assure that person receives services to enable ward to develop or regain care of self; protect personal, civil and legal rights (including filing lawsuits). The guardian must: talk to the court visitor; notify the family and court of ward's death; file a final report.

The conservator must: apply for benefits that ward is eligible for; list all property; insure all assets; list all debts; identify all income; prepare tax returns and pay taxes; pay bills; maintain accurate records; keep ward's property separate from guardian's at all times.

Court Visitor

The Office of Public Advocacy is required by Alaska Statute to provide court visitor services "OPA contracts with individuals across the state to provide these services. A court visitor is appointed when a petition for guardianship or conservatorship is filed to investigate involved persons and the situation and recommend to the court an appropriate resolution. Court visitors are also reappointed every three years to review and report to the court regarding existing guardianship and conservatorship cases."²⁶

²⁶ <http://www.state.ak.us/local/akpages/ADMIN/opa/pg/visitors.shtml>.

Judge

When a petition is filed with the court for a guardian or conservator, the judge appoints a court visitor and assures that the respondent has an attorney. When the court visitor reports back to the court, the judge reviews the case, decides whether a guardian or conservator will be appointed, and what conditions will apply. The judge also hears motions to make changes to the initial order, and presides over contested hearings or trials at all stages of the case.

Attorneys

Any one of the parties – respondent/ward, petitioner, guardian/conservator, court visitor, Adult Protective Services, and so forth – may have an attorney, at any point in the case.

Adult Protective Services

The state agency with the responsibility for handling cases in which vulnerable adults are alleged to have been abandoned, abused, exploited, neglected, or to be neglecting themselves. The APS is analogous to the Office of Children's Services. If the APS is involved, an Assistant AG will represent the state's interests in the case.

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Appendix C

Methodology of Evaluation

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Methodology of Evaluation

A. Review and analyze the data compiled by the project.

1. **Outcome Measures:** The Adult Guardianship Mediation project compiled data from 103 mediator data forms and 263 participants in mediations. In 2006, 2007 and 2008 project staff made interim data reports using the outcome measures shown below.²⁷ The Judicial Council used the data provided by the project to measure the outcomes and objectives specified by the project, to the extent possible. It also analyzed the data available to determine whether outcomes varied by court location, type of participant, and other known factors.

Table 1 Outcome Objectives and Measures
Reach agreements on some or all issues (Measure A: agreements are reached on some or all issues at least 70% of the time)
Create plans that enhance care and safety of high risk adults (Measure B: When APS is involved as a legal party, they are in agreement with plans created/agreements reached and agreements are reached at least 70% of the time)
Avoid contested court proceeding (Measure C: Hearings or trials taken off the court calendar, or petition or motion dismissed/to be dismissed/held in abeyance as a result of mediation in at least 70% of the mediations in which this was applicable)
Participants experience mediation as satisfactory process (Measure G: Responses on post-mediation survey indicate an average minimum score of at least 3.2, whether or not agreements were reached)

2. **Referrals, issues and other process information:** The Council worked with project staff to identify and analyze data that showed the types of referrals made to the Project, the sources of referrals, the types of issues raised during the mediations, the length of mediations, and other information that showed whether the Project was operating as planned.²⁸

²⁷ These were outlined in *Report to the Adult Guardianship Mediation Advisory Committee*, June 28, 2006. They included: “A. Measure: When the parties elect to mediate, agreements on some or all of the issues are reached at least 70% of the time.” “B. When Adult Protective Services is involved as a legal party, they are in agreement with plans created/agreements reached, and agreements are reached at least 70% of the time.” “C. Mediation is successful in avoiding contested court proceeding.” “G. Responses on post-mediation survey indicate an average minimum score of at least 3.2 (on a 1 - 4 Likert scale) whether or not agreements were reached.” The court decided that measures D. (“Issues requiring judicial decision are narrowed and reduced to more manageable level”); E. (“Plans created in mediation are durable”); and F. (“Participants benefit from effective problem-solving process results”) were not measurable at the time of the evaluation.

²⁸ Butterwick, et al, *supra* note 5, pages 16 - 18. In that evaluation, the advisory committee recommended against viewing mediations in comparison to other adult guardianship cases because the number of mediations was too small to draw any statistical conclusions. The present evaluation would have to consider the same statistical

B. Conduct stakeholder interviews

The Council interviewed mediators, attorneys, guardians, Adult Protective Services, and a court visitor about their perspectives and experiences with the project.

C. Review information about similar projects, court caseload, and other background materials

The Council reviewed reports and an article about similar projects in other jurisdictions.²⁹ Court staff provided data from CourtView courts about the numbers of adult guardianship cases filed in recent years (Table 2). Some mediated cases came from communities that did not have enough CourtView data to analyze.

Table 2 Adult guardianship cases by year and location (courts with CourtView CMS)				
	2005	2006	2007	2008
First Judicial District				
Second Judicial District				
Barrow				2
Kotzebue				5
Nome				9
Third Judicial District				
Anchorage	162	168	230	207
Cordova				2
Palmer	39	34	81	51
Fourth Judicial District				
Fairbanks	66	61	43	48
Nenana				1
Tok				1

Anchorage had 605 adult guardianship filings in 2006 - 2008.³⁰ During that same period, 46 cases, about 8% of the total, were referred for mediation. In Fairbanks, during the same period, 152 cases were filed, and 20 were referred for mediation, or 13%. Palmer had 166 adult guardianship cases and five referrals, or 3% of the total.

issues if complete data about the court's adult guardianship cases were available.

²⁹ Mediation in adult guardianship mediation is a relatively new concept, and little information was available about other projects or evaluations.

³⁰ The table only includes CourtView courts that showed adult guardianship cases filed.

Appendix D

Description of Mediator Survey Data Adult Guardianship Mediation Project

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Description of Mediator Survey Data

This Appendix reports the results for each individual question on the mediators' survey that the mediator completed at the end of each mediation. Analysis of the results is contained in the body of the report.

1. Who requested mediation?

- The Adult Protective Services worker or the AAG = 33%
- The adult, or the attorney for the adult = 26%
- The court visitor = 25%
- Judge/judicial officer referred for mediation = 11%

Subtotal: = 95%

- The remaining 5% of the mediations were requested by the family of the adult (someone other than the petitioner), a guardian, the petitioner, or others.

Those who requested mediation were the people who knew that the option was available. Typically family members, petitioners or respondents would not be aware that mediation was a choice. The assistant attorney general or the Adult Protective Services worker were the most likely to ask for mediation.

2. What was the reason for the referral?

The question was open-ended, and the mediators provided detailed reasons for the referral of a case to mediation. The broad array of reasons touched on:

- Whether a guardian was needed, or whether there was an alternative to guardianship. Is a guardian needed? Are there alternatives to a guardian? Who should be the guardian? (Occasionally, the question was more limited to conservatorship.) The decision of whether to appoint a guardian or conservator, or whether to find alternatives always involved discussion of a plan for the safety and welfare of the adult as well.
- An existing plan needed to be revised, or a new plan needed to be developed. Issues addressed included housing, health care, diet, education, visitation, safety, other APS concerns and the case plan in general.

- A relatively few mediations focused either on financial issues or on disagreements among siblings or a combination of both. They addressed concerns about payment of bills, debts, obligations; about the need to improve communication among family members about financial management; or to make a conservatorship work smoothly. Other issues included allegations of financial mismanagement, fraud, distrust over financial issues, concern that one sibling was stealing from the ward.

3. Question #3: At what stage in the legal process was the case when it was referred to mediation?

In 53% of the cases, the petition had been filed but there was no legal finding yet. In 37% of the cases the answer was “Legal determination of incapacity and appointment of guard/conserv already made and a new motion has been filed with the court.” In the remaining cases In the remaining 10% of the cases, either no new motion was filed with the court or “Other” was checked. In addition, 21 mediators gave more information about the reasons for the mediation.

4. Has the adult been the subject of AGM project mediation before?

In almost all cases (93.1%; N=95) the answer was “no.”

Note: Questions 5, 6, and 8 asked for dates of events and were not analyzed.

7. How many joint mediation sessions were there?

About half (46 of 98 cases) had only one session. Twenty-one (21%) had two sessions, and 15 (15%) had three sessions. Two cases had six sessions.

9. Total time in joint mediation session(s)?

The amount of time ranged from thirty minutes to 1,200 minutes (twenty hours). The most common length of mediation was about three hours. The mean was 269 minutes (4 hours, 48 minutes).

10. What is the age of the adult?

Ages ranged from 18 to 92. Forty percent of the adults were 70 or older. Thirty-one percent were under 30, and 30% were between 30 and 69 years old.

11. Is the adult Spanish/Hispanic/Latino?

Three said “yes.” the remainder said “no,” or “unable to determine” (N=3).

12. Ethnicity (“race”) of the adult as described by those close to adult.

Caucasians comprised 76% of the adults (N=77); Alaska Natives/American Indians were 22% (N=22), and a very small number were other ethnicities.

13. The adult experienced, or was thought to be experiencing, mental/neurological/physical incapacity related to (check all that apply):

This question allowed the mediator to choose more than one reason that the adult was incapacitated. The responses were:

- Alzheimer’s, dementias, etc: 39.2%
- Mental illness: 33.3%
- Developmental disabilities: 25.5%
- Other physical trauma, illness: 16.7%
- Other other: 16.7%
- Chronic alcoholism, other substance abuse: 10.8%
- Traumatic brain injury: 8.8%

A total of 149 answers were given (19 were “other” text comments) for the 98 cases that had information. The most common responses were Alzheimer’s and related disorders (N=37), mental illness (N=32) and developmental disabilities (N=26). Eighteen answers were related to alcohol or drug abuse, including FAS, FAE, and fetal drug damage. Three were related to diabetes.

To provide more useful data for the analysis, each mediation was re-coded so that the adult was described with only one problem. If the adult had one problem that qualified him or her as a Mental Health Trust beneficiary, that was the category used. Using this analysis, the data showed that all but four adults served by the Adult Guardianship Mediation Project were Trust beneficiaries. The remaining four may have had problems that would have qualified them that were not mentioned.

These categories were cross-tabulated with the information about whether Adult Protective Services was involved with the case.

- 40% of the vulnerable adults involved had dementia as the major reason for referral. Over half of those involved with APS fell into this category.

- 33% had a developmental disability or traumatic brain injury. A little under half of those involved with APS fell into this category.
- 19% had a mental illness as the primary reason for referral, and 8% had another reason.

14. The basis for the answer(s) about the adult’s incapacities is:

The mediator could check more than one answer. A total of 248 responses were given, indicating that the information typically came from at least two sources. Typically, a family member or an attorney disclosed the reason for incapacitation. One important source not listed in Question #14 was the court visitor.

- Family member disclosed the information: 73.3%
- Attorney disclosed the information: 57.4%
- Caregiver disclosed the information: 33.7%
- Other: 27.7%
- Client self-disclosed: 26.7%
- Guardian disclosed: 24.8%
- Client medical records: 14.9%

15. Please check if any concerns were expressed before or during mediation that the adult . . . [might have been neglected, exploited, abused, etc.].

This question was only supposed to be checked if some concerns were expressed, and more than one answer was permitted. A total of 129 boxes were checked, in 74 different cases. The most frequent response (N=45 of 129, 35%) was that someone was concerned that the ward might have been exploited financially or in other ways. Another large group (N=53, 41%) believed that either the ward was being neglected or might have been neglecting him or herself. Thirty-one responses were concerned about mental, emotional or physical abuse (N=31, 24%).

16. In what setting was the adult living at the time of the referral?

The most common answers were “In the adult’s own home, with others” (22%), in an “assisted living facility” (20%), and “with family” (18%). Another 11% were living alone in their own home. The remaining 29% were spread among supported living, extended care facilities, nursing homes, a hospital and a homeless shelter.

17. Was/is Adult Protective Services involved in the case?

APS was involved in 49% of the cases. In 33% of the 103 cases, APS was the petitioner, and in the remaining cases in which it was involved, APS had an open case or was investigating the situation. See the main report for more analysis of the types of cases in which APS was involved.

18. Did a Pre-Joint-Session Orientation Meeting(s) occur with the adult?

In 78% of the cases, an in-person meeting occurred, and in 4% of the cases, a session occurred by phone. There were a number of comments, some of which suggested that despite efforts by the mediator to conduct a pre-joint session meeting, the adult's physical condition, or family members prevented the meeting.

The stakeholders interviewed believed that the pre-session meetings with parties (not just the adult) were very important to the success of the process. The findings from the Satisfaction survey suggested that those who were less familiar with the process (e.g., families, petitioners) were less likely to feel well-prepared, emphasizing the importance of this step.

19. With whom else did you communicate for the Pre-Joint Session Orientation/Info Meeting(s)?

Most of the mediators had communicated with the attorney for the adult (87%), the court visitor (82%), and the family of the adult, not the petitioner (79%). They had also communicated with the petitioner (48%), the Assistant Attorney General (40%), the Adult Protective Services worker (40%), and the guardian (32%) or the GAL (13%).

20. Did a joint mediation session convene?

In most cases (90%), a joint session did convene. In the 10% of the cases in which the mediation did not occur, many of the explanations focused on the fact that just the discussion of the mediation had provided an impetus for parties to resolve the issues among themselves. Occasionally a party decided not to mediate for other reasons, or it became clear that the parties were not willing to mediate.

21. If a joint mediation session did convene, who attended (i.e., was present for at least some part).

The adult was present in 68 mediations. The attorney or the GAL for the adult was present in 76 cases; the family of the adult, not the petitioner was present in 66 cases; the court visitor was present in 59 cases; and various other people were present less frequently.

22. Total number of participants (does not include mediator)?

The data suggest that numerous people were involved in the mediation sessions. The smallest number of people in any one session was four; the largest number was nineteen. The most frequent responses were that five to eight participants were present. There were multiple sessions in more than half of the cases, so different numbers of participants could have been present at different sessions.

23. If the adult was not present for any of the joint session, please explain:

Generally mediators said that if the adult was not present it was because the adult was incapable, mentally and/or physically of participating in any way in the mediation. Adults were described as having Alzheimer's or other dementias, being in a frail physical condition, unable to speak, and so forth.

24. If the adult's attorney was not present for all or most of the mediation, please explain.

Generally, it appeared that the adult's attorney was present. Sometimes the GAL was present instead, and in one case the attorney had assumed a new role as the GAL.

25. Did the group that convened for the joint session go on to mediate?

In 88% of the cases, the group did mediate. One person said, "no" but did not elaborate, and eleven gave no answer [they may have felt that they had answered that in Question #20.]

E. What kinds of issues were mediated, with what outcomes?

The twelve questions in Part E of the Mediators' Survey form asked first whether the issues were mediated, and if they were mediated, whether agreements were reached. The answers are tallied in Table 4, below.

Table 4 Tally of Issues and Agreements: Mediator Questions 26 - 37		
	Were issues mediated? % Yes	Agreements reached? % Yes
Q. 26: Whether guard/conserv needed, or who should it be	92%	86%
Q. 27: Level of care needed; how to decide what's needed	69%	88%
Q. 28: Living arrangements for adult?	56%	90%
Q. 29: Needs of other family; caregivers	42%	70%
Q. 30: Nature/effectiveness of communication among those involved with adult	66%	79%
Q. 31: How decisions should be made	66%	83%
Q. 32: Family disputes; impediments to decision-making	34%	59%
Q. 33: Finances, property; making those decisions	72%	81%
Q. 34: Disagreements with decisions made by Guardian /conservator	22%	74%
Q. 35: Change in guardian/ conservator	38%	79%
Q. 36: Guardian/ conservator no longer needed	12%	100%
Q. 37: Other issues:	35%	87%

Comments on Questions 26 - 37

Questions 26 - 37 on the mediators' survey asked for information about the types of issues considered during the mediations. The questions asked first, whether that issue was mediated in each case; second, whether any agreements regarding the issue was reached; and third, in some detail, what the agreements were about.

a) What issues were mediated?

- The most common issues mediated were: Whether a guardian/ conservator was needed and/or who the person should be (92%); Finances (72%); level of care (69%); Nature/ effectiveness of communication among responsible persons (66%); How decisions should be made (66%); and living arrangements for adult (56%).
- The least frequently mediated issues were: Whether a guardian/conservator was no longer needed (12%); disagreements with decisions made by the guardian/ conservator (22%); how the family should deal with disputes among its members (34%); and Other issues (35%).
- In addition, in about two-fifths of cases, two other issues were mediated: Change in the guardian/ conservator; and needs of other family members and caregivers (42%).

b) Were agreements reached?

Agreements were more likely to be reached in some categories of cases than in other categories. The more likely categories included:

- Whether a guardian or conservator was no longer needed (Unlikely to be mediated, but if it was, agreements were reached 100% of the time);
- Living arrangements for the adult (90% agreements);
- Level of care, and how to decide that (88% agreements);
- Other issues (87% agreements);
- Whether/who guardian/ conservator should be (86% agreements);
- How decisions should be made (83% agreements);
- Finances, property and how the decisions were made (81% agreements);
- Nature and effectiveness of the communication among the persons responsible for the adult (79% agreements);
- A change in the guardian/conservator (79% agreements).

Agreements were less likely to be reached in some issues.

- The least likely area in which to reach agreements was how the family should deal with disputes in its own ranks, such as sibling rivalries. 59% of the cases in which these issues were mediated reached agreements.
- Two other areas with relatively low agreement rates were needs of other family members and caregivers (70% agreements); and how to deal with disagreements with decisions made by the guardian/conservator (74% agreements reached).

38. Was a hearing/trial to be taken off the court calendar as a result of agreements reached in mediation?

In 35 cases, a hearing was taken off the court calendar as a result of the agreements reached in mediation. In 38 cases, a hearing was not taken off the calendar, and in 13 cases, the mediator did not have that information. As noted in the main report, the agreements reached in mediation were often taken to court to be recorded. A contested hearing or trial may have become a non-contested hearing as a result of the mediation, which would be a desirable outcome because it would require substantially less time from the court and participants. The main report suggests types of data that could be compiled from court case files to provide more context for this question.

39. Was a petition or motion dismissed, or to be dismissed, as a result of agreements reached in mediation?

The responses are very contextual. Without knowing how many of the 98 cases had such a petition or motion, the data aren't meaningful. So, in 60 cases, the answer was no, but there may not have been a petition or motion in most of those cases.

40. Was a petition or motion held in abeyance, or to be held in abeyance, as a result of agreements reached in mediation?

As with Questions 38 and 39, the responses are very contextual. Without knowing how many of the 98 cases had such a petition or motion, the data aren't meaningful. So, in 65 cases, the answer was no, but there may not have been a petition or motion in most of those cases.

41. Was it necessary for a Report of Harm to be made during the mediation process?

Most mediators said "Not that I am aware of." There were six reports of harm made from mediators and participants, and two consultations with APS about the possible need to make a report.

42. Total number Mediation (Satisfaction) Surveys were handed out/mailed to parties?

The total number for the 83 mediations included in this analysis was 630 forms (mediators filled out their surveys for some cases in which no mediation occurred, so no forms were distributed). The average number of forms distributed was 7.5.

43. Please describe any issues or problems that were barriers to reaching agreements: [62 mediators described barriers]

The mediators' responses are briefly summarized below.

- Telephonic participation can be more difficult than in-person mediation. At least once the problem was in part because the equipment wasn't adequate.
- Fatigue, of respondent and other parties. Intervening physical problems (accidents happening while the mediation was going on; respondent's physical condition not reliably up to the strain).

- Problems that require court intervention – e.g., a protective order was requested between two of the parties to a mediation; allegations of physical abuse of respondent led to emergency relief request by APS.
- Side issues may need to be addressed, rather than the issue that was supposed to be the focus of the mediation (#43).
- Lack of sufficient information, about medical issues or about services available, can lead to delays and difficulty in arriving at a solution.
- Most of the other barriers were related to distrust on the parts of some or all of the parties (including the professionals), and to the baggage that people brought with them to the mediation.

44. Please describe any issues or factors that really help this resolve issues: [76 mediators made comments]

- Pre-mediation work, whether done by the mediator(s) or the parties, appeared to help. This was mentioned a number of times, both in #43 (lack of preparation as a barrier) and #44 (sufficient preparation as an assist).
- A few mentioned that the pressure of an upcoming scheduled hearing acted as an incentive for arriving at agreements.
- Meeting in person appeared to be helpful, and gave people to work out issues (sometimes) that would have difficult without the personal contact. [In other situations, the in-person aspect didn't seem to overcome long-standing distrust and disagreement, although no-one commented that it ever made things worse to have in-person mediation.

45. Any other comments regarding this mediation? [57 comments]

- Several people mentioned the benefits/pleasures of co-mediation; no-one said anything negative about it.
- A number of the comments were notes what happened next, and not particularly helpful for evaluation.
- Several mediators commented that the outcome was good for the situation, and could not have been achieved in court.
- In a few cases, the mediators noted that they ran out of time to address a particular issue, or that the mediators thought the case would return to court later because of unresolved issues.

- There were a couple of comments related to language / cultural issues, suggesting that an interpreter could be helpful, and that participants should be alert to culturally-based differences in expectations and needs.
- Several noted that the respondent/adult in some instances were pleased with the attention that they were receiving; were pleased because they heard from family members who otherwise were absent from their lives; and who improved in some ways as a result of the mediation process.