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Adult Guardianship Court Data and Issues Results from an Online Survey



National Center for State Courts

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This survey was carried out at the request of the CCJ/COSCA Joint Task Force on Elders and the Courts.

Acknowledgements

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Table of Contents

Recommendations	1
Executive Summary.....	4
Background	6
Guardianship Process.....	6
Historical Overview	6
Major Issues Associated with Guardianships.....	7
Survey Methodology.....	9
Respondents	9
Data Quality	11
Data Variances within States	11
Statewide Data.....	13
Securing and Retaining Family Guardians.....	15
Socio-demographic Factors.....	16
Family Dynamics	17
Guardianship Requirements	17
General Lack of Support.....	19
Sufficiency and Training of Guardians, by Type.....	19
Recruiting, Retaining, and Training Family Guardians.....	22
Training Programs.....	22
Handbooks and Manuals	23
Website Forms and Resources.....	24
Guardianship Assistance Programs.....	24
Guardianship Monitoring Programs	24
Appendices.....	29

Recommendations

The CCJ/COSCA Joint Task Force on Elders and the Courts, in conjunction with NCSC's Center for Elders and the Courts, recommends the following actions.

Recommendation 1: Each state court system should collect and report the number of guardianship, conservatorship, and elder abuse cases that are filed, pending, and concluding each year.

In 2009, CCJ and COSCA passed Resolution 14, "Encouraging Collection of Data on Adult Guardianship, Adult Conservatorship, and Elder Abuse Cases by All States."¹ Results from this online survey emphasize the need for quality data. In particular, local and state courts must make a concerted effort to track guardianship/conservatorship caseloads. The NCSC/COSCA *State Court Guide to Statistical Reporting* provides the definitions of guardianships and conservatorships to ensure consistency in data collection across states.²

Recommendation 2: Each state court system should develop written and online materials to inform non-professional guardians and conservators about their responsibilities and how to carry out those responsibilities effectively.

The guardianship process can be improved for all parties by the provision of materials that succinctly outline the responsibilities of guardians and conservators. In addition, guardians/conservators should be provided a list of resources that will help them interface with various agencies. Wherever possible, states should strive toward the development of guardianship assistance programs that can assist guardians with training, fiduciary responsibilities, report writing, securing government benefits, making plans for the ward, and locating resources.

Recommendation 3: Each state court system should implement procedures for monitoring the performance of guardians and conservators and the well-being of incapacitated persons.

Survey results indicate that court monitoring of guardians and conservators is an ongoing challenge for most courts. The CCJ/COSCA Joint Task Force on Elders and the Courts encourages courts to raise their monitoring standards to ensure the financial and physical well-being of wards. Monitoring should include regular audits and reviews of accountings and reports. Dedicated staff devoted to the oversight and monitoring function will be necessary for courts handling a sizeable number of cases. A further discussion of promising practices can be found in a report produced by the AARP and the ABA Commission on Law and Aging.³

¹ The resolution can be found in Appendix C of this report.

² The guide can be found online at www.ncsconline.org/D_Research/csp/CSPStatisticsGuidev1.3.pdf.

³ See N. Karp and E. Wood (2007). *Guarding the Guardians: Promising Practices for Court Monitoring*. Washington, DC: AARP (http://assets.aarp.org/rgcenter/il/2007_21_guardians.pdf).

Recommendation 4: Courts should explore ways in which technology can assist them in documenting, tracking, and monitoring guardianships.

Courts should consider using technology to help them manage guardianship caseloads. At minimum, the technology should include a “tickler” system that reminds courts and guardians/conservators of upcoming reporting requirement deadlines. Courts should explore additional technologies, such as the system being piloted in Ramsey County, Minnesota that will automate the financial reporting process and offer measures of accountability.

Recommendation 5: State courts should partner with the executive and legislative branches to develop solutions to state and local guardianship issues.

Many of the reforms necessary to improve the guardianship process will be difficult to implement without collaboration and support from the judicial, executive, and legislative branches of state government. State courts should inform the legislature of legal reforms that will promote national guardianship standards and work with the executive branch to advance the causes of technology and resources that will enhance accountability. State task forces and working groups should include stakeholders from all three branches of government with the goal of creating policy, practices, and resources that prioritize the well-being of incapacitated persons placed under guardianships.

Recommendation 6: NCSC should develop model materials that courts can adapt to educate non-professional guardians on their duties and responsibilities, and document effective monitoring procedures and technologies.

The National Center for State Courts should take a leadership role in developing templates that offer basic guidance to family guardians and to courts. The templates should be easily modified by state courts to meet local needs and requirements.

Recommendation 7: NCSC should develop training materials for judges who oversee the guardianship process.

The need for additional training for judges and judicial officers who oversee the guardianship process was cited by the U.S. Government Accountability Report to the U.S. Senate Special Committee on Aging. The Task Force recommends that NCSC develop judicial training materials that provide information on the basic guardianship process and the role of the court. Training may consist of handbooks and guides as well as in-person and distance-learning courses. NCSC should work with the National College of Probate Judges to implement this recommendation.

Recommendation 8: Federal, state, and private funding sources should support the:

- a. Collection and analysis of national information regarding the number of guardianships and effective court practices.**
- b. Development, evaluation, dissemination, and implementation of written and online material to inform non-professional guardians and conservators of their duties and responsibilities.**
- c. The use of technology to improve guardianship reporting and accountability.**
- d. Development, documentation, evaluation, dissemination, and evaluation of effective guardianship monitoring procedures and technologies.**
- e. Development and delivery of judicial training materials and courses.**

Executive Summary

In October and November 2009, the National Center for State Courts' Center for Elders and the Courts (CEC) carried out an online survey on behalf of the Conference of Chief Justices/Conference of State Court Administrators (CCJ/COSC) Joint Task Force on Elders and the Courts.¹ The survey was conducted informally through key association listservs, including the Conference of State Court Administrators, the National Association for Court Management, and the National College of Probate Judges. The survey focused on the availability and accuracy of adult guardianship data, sufficiency and training of guardians at the local level, and practices that hold promise in recruiting, retaining, and training guardians. Results are not nationally representative, as findings are based on a "sample of convenience." While at least one response was received from 36 state jurisdictions, some states are over-represented in the sample—one-third of respondents were from three states: Nebraska, Missouri, and Vermont (Nebraska accounts for 19 percent of the 187 respondents). Consequently, caution is warranted in the interpretation and application of findings.

❖ **Quality data on adult guardianship filings and caseloads is generally lacking. The absence of accurate caseload measures is widespread.**

Approximately one-third of all respondents provided data on both filings and caseloads and indicated that the figures were based on actual data. In addition, almost one-fourth of respondents could provide actual data for one number (typically filings) but could provide only estimates of the second figure (caseloads). The inability to provide caseload data based on actual data demonstrates the challenges posed by tracking cases that may be open for years. In addition, the inclusion of minors in the adult guardianship data was noted by a number of respondents.

❖ **The demand for adult guardianships is increasing in a sizeable proportion of jurisdictions.**

When asked how guardianship filings and caseloads have changed over the last three years, 37 percent of those who responded to this item indicated that filings had increased, and 43 percent noted an increase in caseloads. As longevity increases, guardianship caseloads are particularly impacted as cases stay open for longer durations of time.

❖ **The lack of private professional guardians in local jurisdictions places added strain on the public guardianship system. In localities lacking public guardians, the court is increasingly reliant on family and friends to serve as guardians.**

The majority of respondents (68 percent) indicated that both private professional guardians and public guardians were available in their jurisdiction. In these circumstances, 72 percent of guardianship cases were served by family or friends, 14 percent were handled by private professional guardians, and 14 percent by public guardians. If this break-out of cases by guardian type is the "norm," then the lack of private professional guardians in a jurisdiction results in much greater demand for public guardians; while the lack of public guardianship programs requires additional dependence on family and friends.

❖ **Securing and retaining family and friends to act in the capacity of guardian is problematic for half of the reporting jurisdictions.**

Family and friends tend to be the most preferable option in guardianship cases. Yet about half of the respondents stated that securing and retaining the services of family members or personal friends to act in the guardianship capacity was problematic. About one-fourth of respondents noted that over the last three years, fewer family and friends were willing or able to serve as guardians.

❖ **There is considerable need for additional public and private professional guardians. The greatest need for training is for family and friends serving as guardians.**

More than 40 percent of respondents felt that additional public guardians and private professional guardians are needed. About 25 percent of the respondents indicated that greater training was needed for local private professional guardians and public guardians—but this figure pales in comparison to the 64 percent of respondents noting a greater need for training for family/friend guardians.

❖ **Guardianship monitoring efforts by the courts are generally inadequate.**

A number of courts are unable to adequately monitor guardianships as a result of insufficient staffing and resources. When automated computer systems are used, they are generally used as a reminder of upcoming reporting deadlines. Few courts regularly monitor the condition of the incapacitated person. Without specialized staff and devoted resources, guardianship monitoring is likely to remain insufficient.

Background

"We are all aging, but unfortunately, I cannot say with confidence that if any one of us becomes incapacitated that a robust system is in place to protect our person and our financial assets." – Senator Gordon H. Smith (2007)

Guardianship is a relationship created by state law in which a court gives one person or entity (the guardians) the duty and power to make personal and/or property decisions for another (the ward). In this survey, the term refers to all types of guardianships, including conservatorships (fiduciaries). Guardianships were designed to protect the interest of incapacitated adults and elders in particular. Yet Congress, national advocacy organizations, and the media have increasingly highlighted problems with the guardianship process.

The Guardianship Process

Due to the seriousness of the loss of individual rights, guardianships are considered to be an option of "last resort." The court can order either a full or limited guardianship for incapacitated persons. Under full guardianship, wards relinquish all rights to self-determination and guardians have full authority over their wards' personal and financial affairs: Persons subject to guardianship lose all fundamental rights, including the right to manage their own finances, buy or sell property, make medical decisions for themselves, get married, vote in elections, and enter into contracts. For this reason, limited guardianships—in which the guardian's powers and duties are limited so that incapacitated persons retain some rights depending on their level of capacity—are preferred.

Courts rely on a variety of types of guardians, including private and professional individuals and entities. Courts prefer to appoint a family member to act as guardian over an incapacitated relative, but it is not always possible to find family members or friends to take on this responsibility. In recent years, an entire service industry of private professional guardians has grown out of the increasing demand for guardians. In addition, most states have a public guardianship program, funded by state or local governments, to serve incapacitated adults who do not have the means to pay for the costs associated with guardianship and do not have family or friends who can serve in a guardianship capacity.²

The guardianship process can vary significantly by state, court, and judge. Generally, the process begins with the determination of incapacity and the appointment of a guardian. Interested parties, such as family or public agencies, petition the court for appointment of guardians. The court is then responsible for ensuring that the alleged incapacitated person's rights to due process are upheld, while making provisions for investigating and gauging the extent of incapacity. Should the individual be deemed incapacitated, the judge appoints a guardian and writes an order describing the duration and scope of the guardian's powers and duties. Once a guardianship has been appointed, the court is responsible for holding the guardian accountable through monitoring and reporting procedures for the duration of the guardianship. The court has the authority to expand or reduce guardianship orders, remove guardians for failing to fulfill their responsibilities, and terminate guardianships and restore the rights of persons who have regained their capacity.

Major Issues Associated with Guardianships

In reality, the guardianship process lacks safeguards to prevent abuse. Uekert and Dibble (2008) note five major issues that pose particular challenges for the court: (1) the determination of capacity, (2) costs associated with the administration of guardianships, (3) training and education standards for judges and court staff, (4) court monitoring of guardianships, and (5) the collection of data.³

Capacity. The determination of “capacity” is not an exact science. Capacity is both situational and transient—different degrees of capacity are required for different tasks and an individual can experience both periods of relative lucidity and confusion. Moreover, capacity can be affected by external factors, such as medication. Thus, the judicial finding of incapacity must take into account objective criteria as well as an

“The appointment of a guardian or a conservator removes from a person a large part of what it means to be an adult: the ability to make decisions for oneself. ...We terminate this fundamental and basic right with all the procedural rigor of processing a traffic ticket.”
– Utah Judicial Council’s ad hoc Committee on Probate Law and Procedure (2009)

analysis of how specific capacities impact an individual’s ability to function in a variety of settings. Yet, reports suggest that courts are reluctant to order lengthy and costly investigations that document capacity (see Smith 2007).⁴ Rather, judges may use their own discretion by installing an emergency guardian, effectively denying prospective wards their right to due process. Similarly, full guardianships may be “easier” for a judge to grant as they do not require a full assessment of the dimensions of capacity and functionality.

Financial Costs. The costs of guardianship nationwide have not been documented, and there tends to be little guidance and few regulations on the types of “acceptable” costs in the administration of a guardianship. In individual cases, guardianships can result in the loss of a person’s resources (unless the guardian was fully bonded).⁵ The public can also pay a heavy price as public guardianship programs are funded through state and local tax dollars. In a recent study of public guardianships, Teaster *et al.* (2005) concluded that there was “...significant unmet need for public guardianship and other surrogate decision-making services.”⁶ The combination of scarce funds and an increasing number of impoverished incapacitated elderly persons requiring public guardians creates an undue burden on individual courts to fund improvements.

Training and Education. Judicial training has not kept pace with the demands. In its 2007 report on “Guardianship for the Elderly,” the U.S. Senate Special Committee on Aging noted that there is a strong sentiment that judges receive very little education that would enable them to address complicated guardianship issues.⁷ The lack of judicial training is associated with the greater use of full guardianships, questionable monitoring practices, and difficulties in identifying and replacing poor performing guardians. The lack of guardianship training is especially apparent in cases where family or friends are assigned as guardians with little guidance on the boundaries of their authority or knowledge of appropriate actions.

Court Monitoring. It is the responsibility of the court to oversee and monitor guardianship cases—indeed, court monitoring is the only way to ensure the welfare of wards, discourage and identify neglect, abuse, or exploitation of wards by guardians, and sanction guardians who demonstrate malfeasance. Yet, court monitoring is an expensive and timely proposition, and despite twenty years of legislation designed to reform guardianship procedures, the failures of the court to provide appropriate oversight and monitoring continue to make national headlines. A 2006 report from AARP and the American Bar Association (ABA) Commission on Law and Aging found that court oversight of guardianships is generally lacking, citing infrequent reviews of guardian reports and visits to wards, under-utilized volunteers, and wasted community resources.⁸

Data. Research on guardianships continues to be hampered by the lack of quality data.⁹ The number of adults under guardianship in the U.S. can only be estimated—a 1996 estimate by Schmidt put the total at approximately 1.5 million. Recent attempts at collecting state data on guardianships have demonstrated the absence of meaningful data—NCSC found in 2006 only thirteen states and the District of Columbia could report complete statewide guardianship data to the Court Statistics project. Results from this survey show inconsistencies within states that suggest that much of the reported statewide data is inaccurate or incomplete.

“Deficiencies in the statewide collection of data on the number of active cases are compounded by the lack of statewide case management systems that can identify key case events for guardianships and conservatorships.”

– Brenda Uekert and Richard Schauffler (2008)

The “official” court data at the state level is plagued with problems. In a survey of state court administrators, the ABA Commission on Law and Aging found that many state court administrative offices did not receive information on guardianship from trial courts and concluded that “there is no state-level guardianship data for the

majority of reporting states.”¹⁰ The problem is compounded by the lack of statewide case management systems that can identify case events for guardianships and conservatorships. Where information does exist, it has been collected through random means. For example, while a study of guardianships released by AARP’s Public Policy Institute, in collaboration with the ABA Commission on Law and Aging, claims to be a “national survey of court practices,” the “survey” was administered in the form of an Internet-based questionnaire and includes responses from only 26 probate judges.¹¹ The lack of state-level data requires researchers to focus on local courts, the only source of accurate and reliable guardianship data. To countermand this trend, in 2009 the Conference of Chief Justices (CCJ) and the Conference of State Court Administrators (COSCA) passed Resolution 14 in support of the collection of data on adult guardianship, adult conservatorship, and elder abuse cases by all states (see Appendix).

Survey Methodology

In fall 2009, the National Center for State Courts' Center for Elders and the Courts (CEC) carried out an online survey on behalf of the Conference of Chief Justices/Conference of State Court Administrators (CCJ/COSC) Joint Task Force on Elders and the Courts. The survey (see Appendix A) was conducted informally through key association listservs, including the Conference of State Court Administrators, the National Association for Court Management, the National College of Probate Judges, and the American Judges Association. The survey focused on the availability and accuracy of adult guardianship data, sufficiency and training of guardians at the local level, and practices that hold promise in recruiting, retaining, and training guardians.

Respondents

The questionnaire was completed by 187 persons, with responses from 36 different states/territories. The interpretation and application of the findings are limited, as a “sample of convenience” was used to draw respondents to the survey. Without a scientifically based sample, findings are not considered representative of larger national issues and trends. Nevertheless, results can be used as a means for further investigation based on more sound empirical methods.

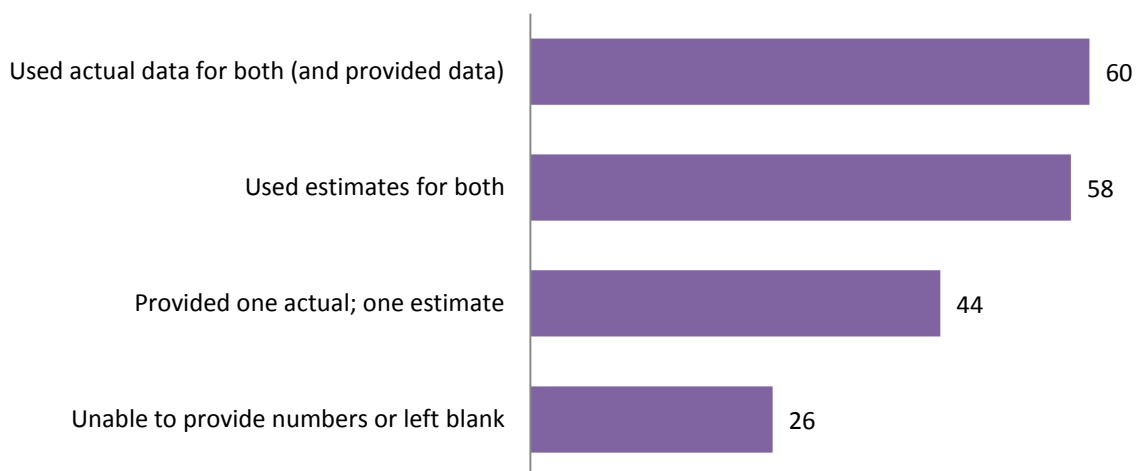
Nearly all respondents fell into one of three occupational categories: judges/judicial officials (45 percent), court managers (21 percent), and court clerk/registrar (18 percent). More than half (54 percent) of respondents stated that they were from rural jurisdictions. The high percentage of rural jurisdictions is likely a result of active promotion of the survey in states that tend to be more rural, especially Nebraska, Missouri, and Vermont. The table on the following page shows the number of respondents per state, by the number of responses. Responses from Nebraska alone contributed to 19 percent of the total responses. Separate analysis for the most responsive states can be found in Appendix B.

State	Responses	Percent of Total
Nebraska	36	19.3%
Missouri	16	8.6%
Vermont	11	5.9%
Florida	10	5.3%
North Dakota	10	5.3%
Maryland	9	4.8%
Michigan	9	4.8%
Pennsylvania	7	3.7%
South Carolina	8	4.3%
Texas	8	4.3%
Louisiana	7	3.7%
California	5	2.7%
Wisconsin	5	2.7%
New Mexico	4	2.1%
Oregon	4	2.1%
Washington	4	2.1%
Colorado	3	1.6%
Guam	1	0.5%
Hawaii	3	1.6%
Indiana	3	1.6%
Kansas	3	1.6%
Arizona	2	1.1%
Georgia	2	1.1%
Massachusetts	2	1.1%
Minnesota	2	1.1%
New Jersey	2	1.1%
New York	2	1.1%
Delaware	1	0.5%
District of Columbia	1	0.5%
Idaho	1	0.5%
Maine	1	0.5%
Mississippi	1	0.5%
Northern Mariana Islands	1	0.5%
Ohio	1	0.5%
South Dakota	1	0.5%
Utah	1	0.5%
TOTAL	187	

Data Quality

The questionnaire requested respondents to record the number of adult guardianship case filings and the current guardianship caseload. Respondents were then asked to indicate the source of the data (actual data, estimates) or note the unavailability of data. The table below shows that 60 respondents (32 percent) could provide actual data on both filings and caseloads. The number of filings appeared to be more accessible than caseloads.

Provision of Self-Reported Guardianship Data



Item #5: *Approximately how many adult guardianship cases were filed in your court in 2008?*

Item #6: *Please provide your court's current guardianship caseload.*

Item #7: *Are the numbers provided above an estimate or based on actual data?*

Data Variances within States

The challenge of collecting and reporting “good” guardianship data led to further analysis. A careful examination of the data and comments led to the exclusion of 8 cases in which minors were included in the data (4 cases) or the filings exceeded the caseload (4 cases).¹² The remaining 52 cases of “good” data represent those instances in which data was provided for both filings and caseloads and the numbers were based on actual data. A key question that arises in guardianship data is whether the provision of “good” data is statewide, or subject to the capabilities and diligence of local jurisdictions. To further explore this question, we looked at the number of respondents in each state that could provide “good” data. The following table shows the percentage of respondents in each state providing “good” data. States in bold highlights have at least three responses in which at least two-thirds of respondents provided “good” data.

State	Total Responses	"Good" filings and caseload data	% with "good" data
Nebraska	36	9	25%
Missouri	16	5	31%
Vermont	11	5	45%
Florida	10	1	10%
North Dakota	10	0	0%
Maryland	9	2	22%
Michigan	9	6	67%
South Carolina	8	3	38%
Texas	8	2	25%
Louisiana	7	0	0%
Pennsylvania	7	2	29%
California	5	4	80%
Wisconsin	5	2	40%
New Mexico	4	1	25%
Oregon	4	1	25%
Washington	4	0	0%
Colorado	3	0	0%
Guam	1	0	0%
Hawaii	3	2	67%
Indiana	3	1	33%
Kansas	3	0	0%
Arizona	2	0	0%
Georgia	2	0	0%
Massachusetts	2	0	0%
Minnesota	2	2	100%
New Jersey	2	0	0%
New York	2	1	50%
Delaware	1	0	0%
District of Columbia	1	1	100%
Idaho	1	1	100%
Maine	1	0	0%
Mississippi	1	0	0%
Northern Mariana Islands	1	0	0%
Ohio	1	1	100%
South Dakota	1	0	0%
Utah	1	0	0%
TOTAL	187	52	

The state-by-state table of “good” data demonstrates marked variability across jurisdictions. Of those states with at least three responses, only Michigan, California, and Hawaii had at least two-thirds of their responding jurisdictions reporting “good” data. The District of Columbia is also noted here as it is served by a single court. Of the top three responding states—Nebraska, Missouri, and Vermont—the percentage of jurisdictions with “good” data ranged from 25 percent in Nebraska to 45 percent in Vermont.

Statewide Data

A number of respondents were able to provide information on the availability and accuracy of statewide guardianship data.¹³ The table below summarizes the quality of statewide data.

Provision of Accurate Data	States
Unable to Provide Numbers	Colorado, Maryland, North Dakota, Texas
Provided data that included minors	Georgia, Guam, Northern Mariana Islands
Providing actual data on filings only	Delaware, New Jersey, Massachusetts, Pennsylvania
Used estimates for filings and caseloads	Utah
Provided actual data on filings and caseloads	District of Columbia, California, Hawaii, Minnesota, New York

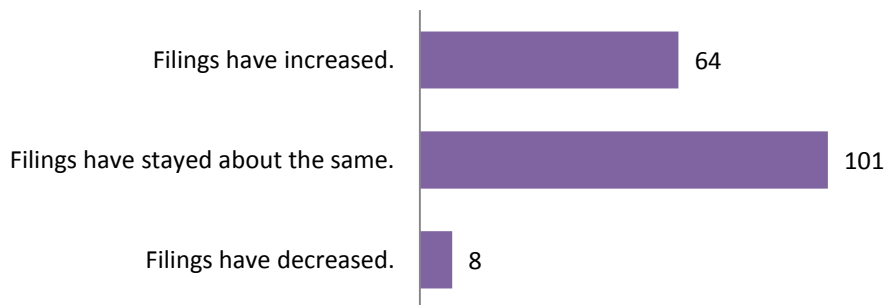
The District of Columbia, California, Hawaii, Minnesota, and New York indicated their statewide data was based on actual data. Their filings and caseloads are shown below.

State	Guardianship Filings	Caseloads
District of Columbia	395	1,841
California	5,089	39,909
Hawaii	57	724
Minnesota	3,066	28,012
New York	2,686	17,518

The statewide data in these four states and the District of Columbia appear promising. However, it is worth noting that the statewide data may in all practicality, be estimates. For instance, the California statewide respondent noted that the data represent “actual” data as reported by local courts, which in some cases, are based on estimates. While the New York state respondent provided statewide figures, the respondent from a New York metropolitan jurisdiction was unable to provide actual data. Minnesota may hold the most promising data, as the state has encouraged local courts to assess and “clean” their guardianship/conservatorship data in preparation for a new automated system.

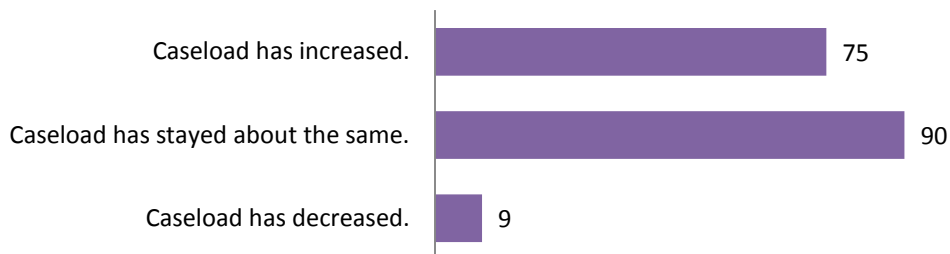
Respondents were asked to identify how guardianship filings and caseloads have changed over the last three years. While the lack of actual data warrants caution in evaluating the results, 64 respondents (37 percent) indicated that filings had increased and 75 respondents (43 percent) noted an increase in caseloads. Most respondents reported no noticeable change in guardianship filings and caseloads.

Perceived Changes in Guardianship Filings



Item #8: *Generally, how has the number of adult guardianship filings (including conservatorships) changed over the last three years?* (The bar graphs does not include 14 non-responses)

Perceived Changes in Guardianship Caseloads

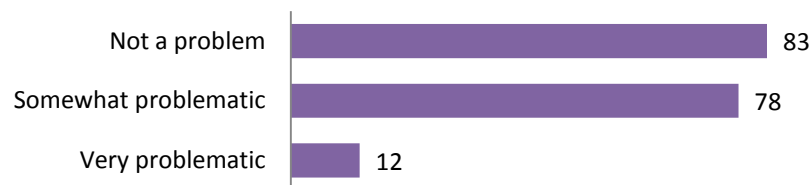


Item #9: *Guardianships often continue for many years. Which of the following best represents your court's guardianship caseload?* (The bar graph does not include 13 non-responses)

Securing and Retaining Family Guardians

Family guardians are considered the preferable choice for taking care of the physical and financial well-being of the ward. Indeed, some jurisdictions do not have private professional or public guardians available, making the family/friend guardians the *only* option. Roughly half of the respondents stated that securing family and friends to serve as guardians was “not a problem.” The remaining half were likely to note that securing family and friends to act in this capacity was “somewhat problematic.”

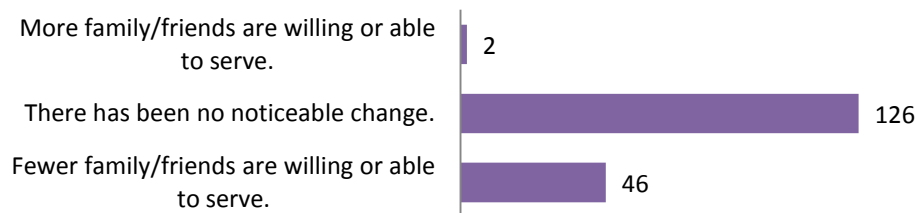
Difficulties in Securing Family and Friends as Guardians



Item #11: *Generally, what level of difficulties is the court experiencing in securing the services of family members or personal friends to act in the guardian/conservator capacity?*

Courts were most likely (72 percent) to note that there had been little noticeable change in the ability to secure the services of a family or friend to act in the guardian capacity. A sizeable minority (46 respondents, 26 percent) said that fewer family/friends are willing or able to serve today, when compared to three years ago.

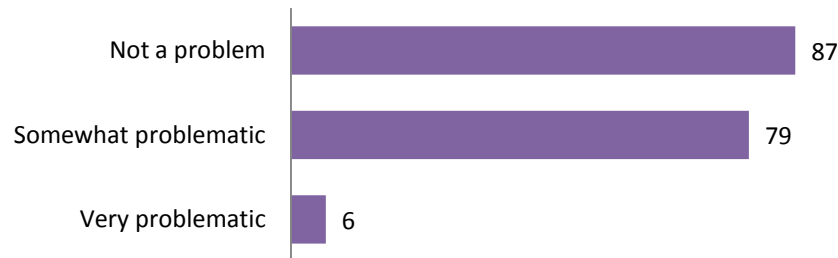
Changes in Securing Family and Friends



Item #12: *Over the last three years, has there been a change in the ability to secure the services of a family or friend to act in the capacity of guardian/conservator?*

Retention of family/friend guardians was also addressed. Similar to the response to the previous item on securing family/friends as guardians, half of the respondents (51 percent) noted that retention of family/friend guardians was “not a problem” for their court. Remaining respondents were more likely to note that retention was “somewhat problematic.”

Retention of Family Members



Item #13: *As a guardianship proceeds over time, it may be difficult to retain family members to act in the capacity of a guardian or conservator. To what extent is this an issue for your court?*

Respondents were asked to identify factors that accounted for challenges associated with securing and retaining the services of a family member or personal friend to act in the capacity of a guardian. Factors tended to fall into three categories: (1) socio-demographic families, including the aging of guardians and social mobility of family members; (2) family dynamics; (3) requirements associated with the guardianship process; and (4) the general lack of support.

Socio-demographic Factors

Aging and the death of guardians were noted as key challenges that impacted the guardianship process. This issue was noted as a particular problem for parents of incapacitated adult children. As life spans increase, both wards and guardians are living longer. Guardians may reach an age when it becomes difficult to provide for their own needs, and they simply do not have the ability to care for the ward. Similarly, the deterioration of the health of the ward may result in the guardian being physically unable to take care of the ward. A number of respondents noted the challenges imposed by mental health issues: “We are appointing more guardians for seriously mentally ill individuals, and the family has difficulties dealing with the emotional aspect and the complexities of the mental health system.”

“As parents age, they are no longer able to perform the guardianship duties for their adult incapacitated children. There often is no other family member or personal friend able/willing to act in the capacity of guardian.”

“Most family or friends live in another state and are not available to oversee care on a continuing basis.”

The United States’ society is highly mobile. Very often, the ward is geographically isolated from other members of the family. Consequently, there is a genuine lack of family members who can serve in the capacity of guardian. Friends of the ward are likely to be of a similar age, often with their own medical and financial issues.

Family Dynamics

On an individual basis, family dynamics may make it extremely difficult to secure and retain guardians. “Family disputes,” “family feuds,” and the estrangement of family members affect individual guardianships. In addition, some family members may pursue guardianship for the misguided purpose of exploiting the elderly ward. A number of respondents noted that this issue arose in the context of conservatorships, in which control of the ward’s financial well-being was an issue of contention among family members. One respondent offered the following suggestion: “Because we can divide up responsibilities between a guardian of the property and a guardian of the person, we are able to take advantage of relative strengths and weaknesses of different family members.”

“The potential for disputes causes some family members to ask to resign.”

Guardianship Requirements

In many cases, the guardianship process and the accompanying requirements make it difficult to secure and retain guardians. Three topics particularly relevant to this topic are bonds, training, and reporting requirements. The quandary for the courts is how to ensure accountability without alienating family guardians. A number of states have increased oversight and requirements of guardians. The quote below notes the challenges imposed by additional requirements, especially for those guardians who are not represented by attorneys.

“As the Court makes more changes to the guardianship practice and requires more from our guardians, it makes it harder for the Court to convince family members to become a ward’s guardian. Pro se litigants especially, take up a lot of the Court’s time requiring much direction and support.”

Bonds

A best practice is to require guardians to secure a bond, especially when the ward has significant funds or property. Insurers frequently require that guardians have excellent credit

“The principal factor that accounts for the inability of family members or friends to serve as guardian is the inability of such person to obtain a surety bond in cases where the court has ordered that such bond be obtained.”

ratings before they will issue bonds. Unfortunately, family guardians may be unable to secure a bond, thus excluding them from consideration. One respondent notes that “innovative solutions, such as restricted accounts, can be utilized to overcome this dilemma in some cases.”

Training and Court Services

“While [family guardians] are well-intentioned, they often lack knowledge or skills.”

The responsibility of guardianship can be overwhelming, especially in cases where training is not available or inadequate. A respondent to the survey noted that “The Probate Court has no funds for recruitment, training, and retention of guardians.” In these cases, the family guardian shoulders a heavy responsibility.

Some states, such as Nebraska, have a statewide training program for family guardians. However, accessibility to the training may be limited due to the need to drive long distances to attend training—a particular burden for elderly relatives who serve as guardians. The combination of inadequate training and nonexistent court services produces reluctant and unskilled guardians.

Reporting Requirements

Guardians are charged with filing personal care plans and financial accountings. Reporting requirements have become more stringent in a number of states, thus placing additional burdens on family guardians. One respondent noted that “...reporting requirements have recently become more onerous. Many family members are balking at the additional time involved in meeting the requirements.”

“Sometimes we find family members resent all the necessary reporting requirements on top of the mental and physical stress involved.”

Annual accounting requirements were mentioned as a source of frustration for many family guardians. Guardians who do not have help from legal or financial services are expected to complete the annual accounting requirements on their own, or with some assistance from court staff. In addition, family guardians have a long-term burden to track due dates of various filing requirements—family guardians may fall out of compliance with statutory mandates because they are unable to complete reports by a specified time. Family guardians must then be concerned with liability issues, which is another factor that impacts guardian retention.

There is a cost factor associated with the court process. The time demands to complete annual accountings and to provide care for the ward can be cost prohibitive. The time commitment may become too burdensome for family guardians. The guardian and ward may be unable to secure the services of an attorney to assist in the process. Finally, court fees may factor into the ability of the family member to take on the role of guardian.

General Lack of Support

Family guardians must perform a complicated array of tasks that place them in regular contact with courts, government agencies, and health care systems. They must often apply for government assistance, such as Medicaid, on behalf of the ward. Of particular concern, is the ability of the guardian to navigate through a convoluted mental health system as required by the ward. Very often, the guardian receives little to no help, thus adding to their emotional and financial burdens.

Sufficiency and Training of Guardians, by Type

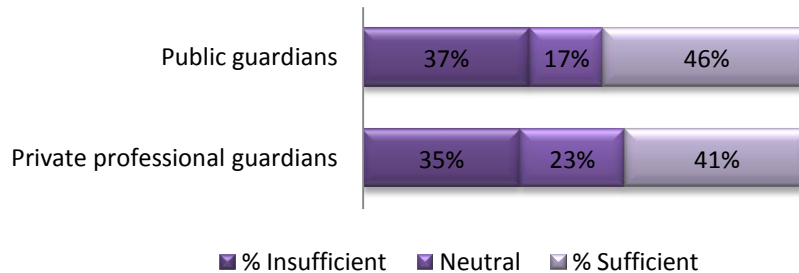
Generally, there are three types of guardians: (1) family/friends, (2) private professional, and (3) public guardians. Not all types of guardians are available in all jurisdictions. For example, some states do not have a public guardianship program, and some jurisdictions, due to their location and/or size, do not have either private professional guardians or public guardians available. The chart below shows the estimated percentage of guardians by type, based on the availability of private and public guardians.

The majority of those who responded to this item (112 of 164 responses, or 68 percent) have both private professional and public guardians available in their local jurisdiction. The percentage break-out of guardianships by type in these jurisdictions is 72 percent family, 14 percent professional, and 14 percent public. The next most common scenario (n=32) was the availability of professional guardians, but not public guardians. In these cases, there was a much higher percentage of family/friends acting in the capacity of guardian (81 percent). Finally, there were 15 instances in which respondents noted the availability of public guardians, but not professional guardians. In this scenario, the burden of guardianship was dramatically shifted to public guardians, who comprised 38 percent of the guardianship caseload. While these figures are likely based on estimates rather than actual data, they suggest some interesting questions concerning the impact of professional guardians and public guardianship programs.

Percentage of Guardians, by Type and Availability of Guardians in Jurisdiction		
	Public Guardians	
	<u>Available</u>	<u>Not Available</u>
<u>Professional Guardians Available</u>		
Percent Family Guardians	72%	81%
Percent Professional Guardians	14%	19%
Percent Public Guardians	14%	NA
	n=112	n=32
<u>Professional Guardians Not Available</u>		
Percent Family Guardians	61%	100%
Percent Public Guardians	38%	NA
	n=15	n=5

The sufficiency and qualifications of private professional guardians and public guardians were addressed through several items. For those jurisdictions in which public and private guardians are available, slightly more than one-third of respondents felt that the number of both private professional and public guardians were insufficient. More than 40 percent of respondents felt that private and public guardianship resources were sufficient in their community.

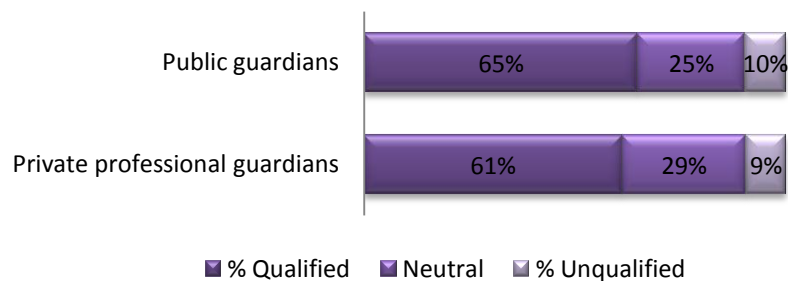
Sufficiency of Public and Private Professional Guardians



Item #15: *The unavailability of family and friends to serve in the capacity of guardian requires back-up resources, including private professionals and public guardians. How sufficient are these resources in your locality?* (Percentages do not include responses indicating public or private guardians were not available in the local jurisdiction.)

Respondents were asked about the qualifications of local private professionals and public guardians operating in their jurisdictions. Close to two-thirds of respondents indicated that both groups of professionals were qualified. A very small minority of respondents (10 per cent or less) felt that their local public and private professional guardians were unqualified.

Qualifications of Public Guardians and Private Professional Guardians



Item #16: *How would you describe the qualifications of local private professionals and public guardians operating in your jurisdiction?* (Percentages do not include responses indicating public or private guardians were not available in the local jurisdiction.)

Finally, respondents were asked to check a box if additional guardians and training were needed for each of the three major types of guardians. Unfortunately, this type of question cannot distinguish between respondents who feel there is no additional need from those who simply skipped the question. Consequently, the percentages may be somewhat deflated as the total number of respondents is used as a base number. With this caveat in mind, about 40 percent of respondents indicated a need for additional public and private professional guardians in particular.

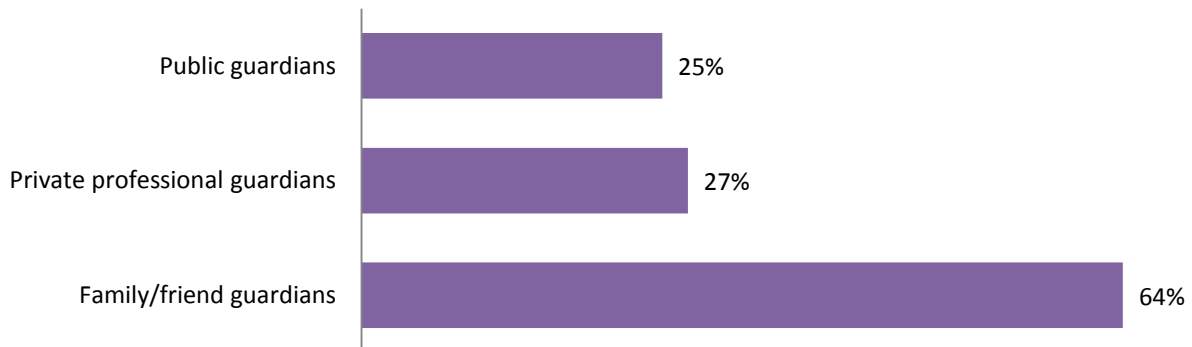
According to almost two-thirds of respondents, there is a particular need for training of family/friend guardians. By comparison, just 25 to 27 percent of respondents indicated a need for additional training for local public guardians and private professional guardians, respectively.

Percentage of Respondents Indicating a Need for Additional Guardians, by Type



Item #17: *Is there a need for additional guardians or training for the three major types of guardians?* (n=187)

Percentage of Respondents Indicating a Need for Additional Training, by Guardian Type



Item #17: *Is there a need for additional guardians or training for the three major types of guardians?* (n=187)

Recruiting, Retaining, and Training Family Guardians

Respondents were asked about programs or practices they have implemented (or are preparing to implement) to recruit, retain, and/or train family guardians. A few respondents noted that it was not the courts' responsibility to recruit, retain, and train family guardians; while others noted that current budget constraints were impacting their ability to address this issue. Of those who indicated specific programs or practices, four topics emerged: (1) training programs, (2) brochures, manuals, and printed materials, (3) website resources, and (4) guardianship assistance programs. In addition, a number of states have task forces (California, Pennsylvania¹⁴) that are addressing guardianship reform in their states.

Training Programs

Professional guardians have many opportunities for training, including courses offered by the Center for Guardianship Certification.¹⁵ Family guardians may find some resources at the National Guardianship Association, which they may join for a nominal fee.¹⁶ But there is no single source of information on training programs available for family guardians nationwide. Results from this survey suggest that statewide training programs are rare. Respondents from just a few states noted statewide training programs for family guardians. For example, Nebraska requires education classes for all newly appointed guardians and conservators under the Nebraska Probate Code. Florida's statute requires a minimum of eight hours of instruction and training for family guardians. Kansas also has a training program—the training consists of reading a booklet. Several respondents noted that their states were working to implement training programs (Oregon, North Dakota, Massachusetts, Northern Mariana Islands). Indiana held its first statewide guardianship training conference in 2009.



[The Nebraska Supreme Court offers Guardian Conservator Training Classes through the University of Nebraska – Lincoln Extension and Volunteers Assisting Seniors \(VAS\).](#)¹ The 4-hour class provides information on serving as Guardian or Conservator and includes a review of quick reference sheets, inventory checklists, annual reporting forms and proof of possession forms. Certificates of attendance are provided for filing with the court.



Respondents noted some challenges that arise in statewide training programs. In particular, the ability of elderly guardians to attend classroom instruction in rural localities was mentioned as a challenge in Nebraska. Another Nebraska respondent noted that attorneys are not always present to answer legal questions, and that the training does not seem to be retained. Respondents in both Nebraska and Florida noted that the “mandatory training” can be waived at the discretion of the court.

While statewide training for family guardians appears to be inadequate or non-existent throughout most of the nation, many local courts have developed their own programs for family guardians. This varies from one-on-one assistance to more formalized programs. For instance, a court respondent in New Mexico noted that training by the Court’s staff attorney can be provided “if needed.” A court in South Carolina provides personal training that consists of a review of a video, a question and answer session, and instructions on proper accounting procedures. A court respondent in Ann Arundel County, Maryland, noted that they have a mandatory guardianship training program for all newly appointed family guardians that has since spread to other jurisdictions in the state.



The **Greenville County Probate Court (South Carolina)** offers classes for conservators. The court has worked with professional accountants to set up simple systems for lay conservators to use for their inventories and accountings. The court is implementing a program that will require all conservators to meet with Probate Court staff at the time their inventory is filed in order to discuss the maintenance of records and annual accounting filings.



In February 2009, the **San Bernardino County Superior Court (California)** established a mandatory training program for proposed conservators. The training encompasses State laws and Rules of Court pertaining to the duties and liabilities of a conservator of the person and/or estate and provides instructions on how to prepare accountings. The three-hour classes are provided by the court twice a month and taught by one of the Court Investigators and one volunteer attorney from the local probate bar in a classroom-style setting with a PowerPoint presentation. The three-hour class includes handouts and a question and answer session.



Handbooks and Manuals

Brochures, handbooks, and manuals are common means of providing information to family guardians. The California Judicial Council publishes a *Handbook for Conservators*, which newly-appointed conservators must by law acquire before they qualify to serve. Delaware offers a revised handbook, brochures, and sample petitions that are regularly handed out to the community, facilities, and local hospitals. Vermont has a complete set of forms and comprehensive instructions for completion of the forms that are given to guardians at the time of their appointment.

Website Forms and Resources

A number of states and local courts provide online forms and resources. California has one of the more extensive online resources for conservators.¹⁷ The Utah courts provide an online manual of basic information that includes a short test that guardians must take to qualify for appointment.¹⁸ The Minnesota website offers court forms online at its self-help center, though it does not offer instructions.¹⁹ Pennsylvania has a guardianship manual and forms online.



The **California Courts** have an online self-help center that offers information on the duties of a conservatorship. The website includes the *Handbook for Conservators* and provides links for free and low-cost legal help. The website includes court forms that must be used in conservatorship practice, including 35 forms for the schedules of accountings that must be filed periodically by conservators and guardians of estates.



Guardianship Assistance Programs

A few respondents noted the existence of guardianship assistance programs, though follow-up research showed that the programs referred to public guardianship programs. The exception is in New York's Guardian Assistance Network, which holds considerable promise and may be a model for other states to emulate.²⁰



The **Guardianship Assistance Network (GAN)** offers practical advice and training for lay guardians under Article 81 of New York State Mental Hygiene Law. GAN can help with:

- Taking the steps needed to become official guardian, such as fulfilling the training requirement and getting the “commission.”
- Setting up a Guardian bank account.
- Writing reports and accountings required by the court.
- Finding services and applying for government benefits.
- Making a plan for the ward that allows as much independence as possible.
- Locating resources to help you care for your ward.



Guardianship Monitoring Programs

In 2007, AARP and the American Bar Association issued a report called *Guarding the Guardians: Promising Practices for Court Monitoring*.²¹ The report notes that “judicial monitoring practices vary substantially by jurisdiction,” and provides a list of promising practices. In this informal survey, respondents were asked to describe their court’s ability to properly monitor guardianships and conservatorships. Findings are consistent with those noted in the AARP/ABA publication.

Finding 1: Insufficient staff and resources limit the court’s ability to monitor guardianships.

A number of respondents acknowledge the fact that guardianship monitoring is currently being neglected as a result of a shortage in staff and resources. Despite state laws that require guardianship monitoring, some local courts are unable to perform this function.²² This sentiment was not specific to any particular state, as seen by the range of comments.

“The Court is unable to adequately monitor guardianships. There is no funding with which to hire staff to monitor guardianships due to budget constraints.” (Indiana judge)

“The court lacks the resources to fully implement or adequately monitor guardianships/conservatorships.” (Minnesota court manager)

“We have insufficient staff (investigators, examiner, and attorneys) to implement the mandates of current law in California.” (California court manager)

“We do not have the personnel or resources to monitor them at all.” (South Carolina judge)

Finding 2: Case management systems are used primarily to document compliance with reporting requirements.

Annual filing requirements are typical in guardianship cases. Automated “tickler” systems are increasingly commonplace, prompting staff to send reminders to guardians about important due dates. The case management systems are useful in documenting compliance. Follow-up court action (e.g., “show cause” hearing, appointment of counsel) is required when the guardian is out of compliance. However, not all courts are able to adequately follow-up on non-compliant cases. A Vermont Clerk/Registrar noted that “rarely is there a consequence of failing to file their required reports.”

We use “a tickler system to alert the Court as to whether or not required reports have been filed.” (Massachusetts judge)

“We are in the process of updating our computer system to automatically track compliance by guardians with statutory reporting requirements.” (Pennsylvania judge)

Case management systems appear to do an adequate job of reminding the court and guardians of important deadlines and actions. The potential of automated computer systems to track, reconcile, and “flag” accounting reports is substantial. For example, guardianship databases could be mined to “flag” outlying cases that may require follow-up and/or investigation. A promising pilot program in Minnesota may signal the wave of the future in automated accountings.



Minnesota’s Second Judicial District (Ramsey County) created a pilot program that is expected to be implemented statewide. The project requires online submission of financial reports and provides the following benefits:

- The software is able to produce comparative reports on demand.
- Analysis across all or a selected group of conservators/conservatorships can be completed quickly.
- Additional supplemental information is handled electronically.
- Audit abilities are greatly enhanced.
- The increased capabilities, documentation, and accountability have a deterrent effect.
- Less staff time is required for reviewing and filing reports and associated activities.
- The system reduces paper and paperwork.



Finding 3: Few courts regularly monitor the condition of the ward.

“We rely on self monitoring and annual reports to the court, which are reviewed and routinely approved unless there is a glaring deficiency.” (North Dakota judge)

“Monitoring is limited to the review of filings made by guardians/conservators, and the use of the computer system to assure required filings are timely made.” (Nebraska judge)

For the most part, courts equate monitoring with oversight of compliance of annual accountings. Monitoring of financial transactions appears commonplace, while it is considerably challenging to monitor the health and well-being of the ward. For example, a Mississippi judge noted that “There is no monitoring by the court of whether or not the physical and medical needs of the ward are being properly cared for.” Generally, courts do not monitor apart from annual reports.

Just a handful of respondents specifically mentioned their efforts to visit wards. A Texas judge reported that the court was “able to personally visit the majority of our wards on an annual basis.” A Michigan judge added that they “conduct in-person reviews every three years.” A California court manager stated that “court investigators are assigned to personally visit and monitor each conservatee and prepare a report with any concerns.” These examples appear to be exceptions, as court staff or their representatives seldom carry out personal visits with the ward.

Finding 4: Specialized court staff are essential to raising guardianship monitoring standards.

Courts that are most active in guardianship monitoring share one characteristic: each have dedicated staff to support the monitoring function. While some courts rely on volunteer monitors, a specially trained court staff or specialist oversees the program. Typical job titles involved in guardianship monitoring are court investigator, court examiner, auditor, guardianship monitoring program director, and visitors. Leadership from judges handling guardianship cases has been critical to the establishment of many of these programs.

Ideally, courts would be sufficiently staffed to provide professional oversight of guardians and to offer assistance as needed. Resources to provide this service are severely limited in many jurisdictions. Consequently, a number of courts have established volunteer monitoring programs, which are overseen by professionals. The widespread use of volunteer monitoring programs dates to 1990, when AARP initiated a *National Guardianship Monitoring Project* that would last for seven years.²³ At least one court noted AARP’s contribution to their new volunteer program. Examples of guardianship monitoring programs follow.



In **Delaware**, the court has a full time Guardianship Monitoring Program Director, who investigates specific cases for the Court. Also, the Monitor directs a group of volunteers who periodically visit disabled guardians in their homes or facilities in which they reside. The Monitor is available to all agencies to coordinate investigations and information exchanges for specific guardianship cases.



The **Greenville County Probate Court (South Carolina)** is working with the State Ombudsman’s Office to ensure wards living in nursing homes and other facilities receive regular visits. The court is in the process of establishing a volunteer Guardianship Monitoring Program based on the AARP model and using college students as volunteers. In addition, the court is requiring that photographs of the ward be provided when a guardianship is opened and annually.



In 2008, the **District of Columbia** started the Guardianship Assistance Program (GAP). An experienced social worker hired by the Probate Division serves as a field instructor to students seeking advanced social work degrees in local universities. The students volunteer their time in exchange for course credit.





This year in **Massachusetts**, a Conservator’s annual account will be reviewed by volunteers from the Boston Bar Association’s Volunteer Lawyer Project, *Senior Partners for Justice* program. All of the volunteers have undergone training by the Administrative Office of the Probate and Family Court in connection with reviewing the reports. Reviewers will complete a checklist for each report that highlights any problems or concerns with the content of the report.



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- ¹ The Center for Elders and the Courts is supported through a generous grant from the Retirement Research Foundation of Chicago.
- ² The attorney and court fees associated with filing for guardianship, as well as the expenses incurred by a guardian in managing an incapacitated adult’s affairs, typically are covered by the incapacitated adult.
- ³ B. Uekert and T. Dibble. 2008. “Guardianship of the Elderly: Past Performance and Future Promises,” *The Court Manager*, 23 (4): 9-15.
- ⁴ Gordon H. Smith. 2007. “Smith Report Exposes Deficiencies in Elder Abuse Prevention: Report examines the federal role in overseeing America’s guardianship system. December 13 press release at www.aging.senate.gov.
- ⁵ A bond acts as an insurance policy in that an annual premium is paid and the ward is fully protected should the guardian mishandle the liquid assets. Courts vary considerably in their use of bonds.
- ⁶ P.B. Teaster, E. F. Wood, N. Karp, S. A. Lawrence, W. C. Schmidt, Jr., and M. S. Mendionado. 2005. *Wards of the State: A National Study of Public Guardianship*. The Retirement Research Foundation.
- ⁷ United States Senate Special Committee on Aging. 2007. *Guardianship for the Elderly: Protecting the Rights and Welfare of Seniors with Reduced Capacity*. Washington, DC: United States Senate.
- ⁸ N. Karp and E. Wood. 2006. *Guardianship Monitoring: A National Survey of Court Practices*. Washington, DC: AARP Public Policy Institute.
- ⁹ R. Schauffler and B. Uekert. 2008. “The Need for Improved Adult Guardianship Data,” *Caseload Highlights*, 15 (2).
- ¹⁰ E. Wood. 2006. *State-Level Adult Guardianship Data: An Exploratory Survey*. Washington, DC: National Center on Elder Abuse.
- ¹¹ Karp and Wood. *Supra*.
- ¹² While there are some instances where the filings may exceed the caseload, such as the removal of court jurisdiction or a high refusal rate of filings, it is equally likely that the figures are erroneous.
- ¹³ A Florida respondent reported 78 filings statewide, which is likely in error. Indiana reported only appeals to the court of last resort.
- ¹⁴ The Pennsylvania AOC is currently exploring the feasibility of creating an elder law task force to address and make recommendations about guardianships, elder abuse, and access to justice for older Pennsylvanians.
- ¹⁵ For more information, visit the CGC’s website at www.guardianshipcert.org.
- ¹⁶ The National Guardianship Association website is www.guardianship.org.
- ¹⁷ See www.courtinfo.ca.gov/selfhelp/seniors/duties.htm.
- ¹⁸ See www.utcourts.gov/howto/seniors/g_and_c.asp.
- ¹⁹ See www.mncourts.gov/default.aspx?siteID=50&page=1207.
- ²⁰ More information can be found at www.courts.state.ny.us/ip/gan/index.shtml.
- ²¹ N. Karp and E. Wood. 2007. Washington, DC: AARP (available at www.aarp.org/ppi).
- ²² In fact, some state laws simply require courts to document the timely submission of reports and do not specifically require the court to review the documents.
- ²³ E. Klem, *Volunteer Guardianship Monitoring Programs: A Win-Win Solution*. 2007. Washington, DC: AARP.

Appendices

A: Questionnaire

B: Individual State Responses (Nebraska, Missouri, Vermont)

C: CCJ/COSCA Resolution 14

CCJ/COSCA Adult Guardianship Survey

Introduction

The CCJ/COSCA Task Force on Elders and the Courts, in partnership with NCSC's Center for Elders and the Courts, requests your participation in this online survey. The goals of the survey are twofold: (1) To explore the availability of guardians/conservators, and (2) To gather information on programs that appear successful in recruiting, retaining, and training guardians. We thank you in advance for your help with this project. If you need any assistance with this survey, please contact Brenda Uekert, PhD, at buekert@ncsc.org or 757-259-1861.

This survey uses a general definition of guardianship: a relationship created by state law in which a court gives one person or entity (the guardian) the duty and power to make personal and/or property decisions for another (the ward). The term includes all types of guardianships, including conservatorships (fiduciaries).

1. Which category best describes your profession?

Please select the most appropriate title.

- Judge/judicial officer
 Court manager
 Court clerk or registrar
 Court investigator
 Court staff
 Other, please specify _____

2. In which state or territory do you primarily work?

-- None --

3. Which best describes the jurisdiction in which you serve?

Please select one answer.

- State Region/District (multiple counties) County

4. Please describe the setting that best describes your jurisdiction.

- Statewide Metropolitan Suburban Rural

CCJ/COSCA Adult Guardianship Survey

Guardianship Data, Needs, and Resources

For purposes of this survey, guardians are classified into three different types: (1) family/friends, (2) private professional, and (3) public guardians. This section explores

Appendix A: Questionnaire

guardianship data and sufficiency of resources. In addition, we are also interested in state and local programs and policies aimed at identifying, recruiting, and retaining family guardians.

5. Approximately how many adult guardianship cases were filed in your court in 2008? Include all types of adult guardianships, including conservatorships.
Please provide an estimate if a precise number is not known. If you cannot provide an estimate, enter NA.

6. Please provide your court's current guardianship caseload. This includes all guardianships and conservatorships currently under the supervision of the courts.
Please provide an estimate if a precise number is not known. If you cannot provide an estimate, enter NA.

7. Are the numbers provided above an estimate or based on actual data?

- Both are estimates
 Both are based on actual data
 One is based on actual data; the other is an estimate
 We were unable to provide numbers

8. Generally, how has the number of adult guardianship filings (including conservatorships) changed over the last three years?

- The number of guardianship filings has increased.
 The number of guardianship filings has stayed about the same.
 The number of guardianship filings has decreased.

9. Guardianships often continue for many years. Which of the following best represents your court's guardianship caseload?

- The guardianship caseload has increased.
 The guardianship caseload has stayed about the same.
 The guardianship caseload has decreased.

10. Approximately what percentage of guardianship/conservatorship cases fall into each of the three major types?

Estimates are fine to include here.

Percentage

Family/Friend Guardians

Private Professional
Guardians

Public Guardians

11. Generally, what level of difficulties is the court experiencing in securing the services of family members or personal friends to act in the guardian/conservator capacity?

- This is not a problem for us.
 This is somewhat problematic.

Appendix A: Questionnaire

This is very problematic.

12. Over the last three years, has there been a change in the ability to secure the services of a family or friend to act in the capacity of guardian/conservator?

Please select the most appropriate response based on your experience.

Fewer family/friends are willing or able to serve.

There has been no noticeable change.

More family/friends are willing or able to serve.

13. As a guardianship proceeds over time, it may be difficult to retain family members to act in the capacity of guardian or conservator. To what extent is this an issue for your court?

Retention of family guardians is not a problem for our court

Retention of family guardians is somewhat problematic for our court

Retention of family guardians is very problematic for our court

14. What factors account for challenges associated with securing and retaining the services of a family member or personal friend to act in the capacity of a guardian?

15. The unavailability of family and friends to serve in the capacity of guardian requires back-up resources, including private professionals and public guardians. How sufficient are these resources in your locality?

	Very Insufficient	Insufficient	Neutral	Sufficient	Very Sufficient	Not available in my jurisdiction
Private professional guardians	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Public guardians	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

16. How would you describe the qualifications of local private professionals and public guardians operating in your jurisdiction?

Qualifications

	Very Qualified	Qualified	Neutral	Unqualified	Very Unqualified	Not available in my jurisdiction
Private professional guardians	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Public guardians	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>


17. Is there a need for additional guardians or training for the three major types of guardians?

Check only those boxes that apply.


Appendix A: Questionnaire

	Additional guardians needed	Training needed
Family/friend guardians	<input type="checkbox"/>	<input type="checkbox"/>
Private professional guardians	<input type="checkbox"/>	<input type="checkbox"/>
Public guardians	<input type="checkbox"/>	<input type="checkbox"/>


18. What programs or practices have you implemented (or are preparing to implement) in your court to recruit, retain, and/or train family/friend guardians?



19. Please describe your court's ability to properly monitor guardianships and conservatorships. Include any programs/projects that improve the monitoring role of the court. Also distinguish between monitoring of private/public guardians and family guardians.



20. Do you have any additional comments, suggestions, or recommendations on this topic?



21. If you would like to receive a copy of the survey results report, please enter your email address below.

Please send a description of any programs and practices that you use to address guardianships that you would like to share with the Task Force to Brenda Uekert, PhD, at the National Center for State Courts (buekert@ncsc.org; 757-259-1861 phone; 757-564-2059 fax).

Appendix B: Individual State Responses

Nebraska (36 respondents)

	<u>Number</u>	<u>Percentage</u>
Size of Jurisdiction		
Metropolitan	2	6%
Suburban	3	8%
Rural	31	86%
Profession		
Judge/judicial officer	14	39%
Court manager	7	19%
Court clerk of registrar	11	31%
Other	4	11%
Provision of Filing and Caseload Data		
Unable to provide numbers or left blank	2	6%
Provided one actual; one estimate	9	25%
Used estimates for both	16	44%
Used actual data for both (and provided data)	9	25%
Guardianship Filings and Caseloads		
Guardianship filings have increased.	10	28%
Guardianship filings have stayed about the same.	26	72%
Guardianship filings have decreased.	0	0%
The guardianship caseload has increased.	16	44%
The guardianship caseload has stayed about the same.	19	53%
The guardianship caseload has decreased.	1	3%
Securing Family and Friends as Guardians		
This is not a problem for us	16	46%
This is somewhat problematic	13	37%
This is very problematic	6	17%
Fewer family/friends are willing or able to serve.	13	36%
There has been no noticeable change.	23	64%
More family/friends are willing or able to serve.	0	0%
Retention of family guardians		
Not a problem	14	39%
Somewhat problematic	19	53%
Very problematic	3	8%
Need for Additional Guardians		
	<u>Needed</u>	
Family/friend guardians	15	42%
Private professional guardians	17	47%
Public guardians	20	56%
Need for Training		
	<u>Needed</u>	
Family/friend guardians	15	42%
Private professional guardians	17	47%
Public guardians	20	56%

*Nebraska does not have a public guardianship program.

Appendix B: Individual State Responses

Missouri (16 respondents)

	<u>Number</u>	<u>Percentage</u>
Size of Jurisdiction		
Metropolitan	1	6%
Suburban	2	13%
Rural	11	69%
Profession		
Judge/judicial officer	15	94%
Other	1	6%
Provision of Filing and Caseload Data		
Unable to provide numbers or left blank	3	19%
Provided one actual; one estimate	1	6%
Used estimates for both	7	44%
Used actual data for both (and provided data)	5	31%
Guardianship Filings and Caseloads		
Guardianship filings have increased.	6	43%
Guardianship filings have stayed about the same.	6	43%
Guardianship filings have decreased.	2	14%
The guardianship caseload has increased.	6	40%
The guardianship caseload has stayed about the same.	6	40%
The guardianship caseload has decreased.	3	20%
Securing Family and Friends as Guardians		
This is not a problem for us	7	47%
This is somewhat problematic	7	47%
This is very problematic	1	7%
Fewer family/friends are willing or able to serve.	5	33%
There has been no noticeable change.	10	67%
More family/friends are willing or able to serve.	0	0%
Retention of family guardians		
Not a problem	8	53%
Somewhat problematic	7	47%
Very problematic	0	0%
Need for Additional Guardians		
	<u>Needed</u>	
Family/friend guardians	4	25%
Private professional guardians	2	13%
Public guardians	0	0%
Need for Training		
	<u>Needed</u>	
Family/friend guardians	8	50%
Private professional guardians	1	6%
Public guardians	4	25%

Appendix B: Individual State Responses

Vermont (11 respondents)

	<u>Number</u>	<u>Percentage</u>
Size of Jurisdiction		
Metropolitan	0	0%
Suburban	0	0%
Rural	11	100%
Profession		
Judge/judicial officer	2	18%
Court manager	2	18%
Court clerk of registrar	6	55%
Other	1	9%
Provision of Filing and Caseload Data		
Unable to provide numbers or left blank	0	0%
Provided one actual; one estimate	5	45%
Used estimates for both	0	0%
Used actual data for both (and provided data)	6	55%
Guardianship Filings and Caseloads		
Guardianship filings have increased.	5	50%
Guardianship filings have stayed about the same.	5	50%
Guardianship filings have decreased.	0	0%
The guardianship caseload has increased.	6	55%
The guardianship caseload has stayed about the same.	5	45%
The guardianship caseload has decreased.	0	0%
Securing Family and Friends as Guardians		
This is not a problem for us	7	64%
This is somewhat problematic	4	36%
This is very problematic	0	0%
Fewer family/friends are willing or able to serve.	1	9%
There has been no noticeable change.	10	91%
More family/friends are willing or able to serve.	0	0%
Retention of family guardians		
Not a problem	6	55%
Somewhat problematic	4	36%
Very problematic	1	9%
Need for Additional Guardians		
	<u>Needed</u>	
Family/friend guardians	1	9%
Private professional guardians	5	45%
Public guardians	6	55%
Need for Training		
	<u>Needed</u>	
Family/friend guardians	9	82%
Private professional guardians	2	18%
Public guardians	1	9%

**CONFERENCE OF CHIEF JUSTICES
CONFERENCE OF STATE COURT ADMINISTRATORS**

Resolution 14

**Encouraging Collection of Data on Adult Guardianship, Adult
Conservatorship, and Elder Abuse Cases by All States**

WHEREAS, the number of vulnerable elderly persons will increase rapidly over the next twenty years; and

WHEREAS, this demographic trend is likely to result in a substantial increase in the number of cases intended to protect vulnerable elderly persons including guardianship, conservatorship, and elder abuse proceedings; and

WHEREAS, most state court systems are not currently able to determine the number of guardianship, conservatorship, and elder abuse cases that are filed, pending, and closed each year; and

WHEREAS, timely, accurate, and complete data on the number of guardianship, conservatorship, and elder abuse cases is essential in determining the policies, procedures, approaches, and resources needed to address these cases effectively and in measuring how the courts are performing in these cases; and

WHEREAS, the National Center for State Court's Court Statistics Project overseen by a Committee of the Conference of State Court Administrators has developed the attached standard definitions applicable to guardianship, conservatorship, and elder abuse proceedings;

NOW, THEREFORE, BE IT RESOLVED that the Conferences urge each state court system to collect and report the number of guardianship, conservatorship, and elder abuse cases that are filed, pending, and concluded each year.

Adopted at the COSCA 2009 Annual Meeting on August 5, 2009.

Guardianship–Adult: Probate/Estate cases that include cases involving the establishment of or a controversy over the relation existing between a person (guardian) and an adult (ward). *Note: The guardian is lawfully invested with the power and charged with the duty of caring for and managing the affairs of an adult (ward) who is considered by the court to be incapable of caring for himself/herself.*

Conservatorship/Trusteeship: Probate/Estate cases that include cases involving the establishment of, or a controversy over: 1) the relation existing between a person (conservator) and another person (ward) or 2) the legal possession of real or personal property held by one person (trustee) for the benefit of another.

Note: The conservator is lawfully invested with the power and charged with the duty of taking care of the property of another person (ward) who is considered by the court as incapable of managing his or her own affairs. When states cannot distinguish the person from property (guardianship from conservatorship in the above terms) they report their caseload here.

Probate/Estate–Other: Cases that include the establishment of guardianships, conservatorships, and trusteeships; the administration of estates of deceased persons who died testate or intestate, including the settling of legal disputes concerning wills. Use this case type for Probate/Estate cases of unknown specificity, when Probate/Estate cases are not attributable to one of the other previously defined Probate/Estate case types, or when all Probate/Estate cases are reported as a single case type. As distinguished from:

Probate/Wills/Intestate: Probate/Estate cases that include cases involving: 1) the determination of whether a will is a valid instrument; 2) the statutory method of establishing its proper execution; and 3) the determination, in the absence of a will, of the disposition of the decedent's estate. Court actions providing for estate administration, appointment of executors, inheritances, and so forth should be included in this category.

The data requested are the various categories of Incoming, Outgoing, and Pending cases outlined in the *Guide*. You can see these as the column headings on this web page: http://www.ncscstatsguide.org/civil_caseload.php

Elder Abuse: Criminal cases involving offenses committed against an elderly person. Seven types of offenses are usually included: physical abuse, sexual abuse, psychological abuse, neglect, abandonment and isolation, financial or fiduciary abuse, and self-neglect. Physical abuse is generally defined as improper use of physical force that may or does result in bodily harm, injury, physical pain, or restraint of an individual. Sexual abuse is any non-consensual sexual touching or contact with an elderly person or a person who is incapable of giving consent (e.g., a mentally disabled individual). Psychological abuse is the intentional or reckless infliction of psychological pain, injury, suffering, or distress through verbal or nonverbal acts. Neglect is the failure to provide for the care and treatment or safety of an elder. Abandonment is the desertion of an elderly person by an individual responsible for providing care or by a person with physical custody of an elder. Financial or fiduciary abuse is the illegal or improper use of an elder's funds, property, or assets, or the conversion or misappropriation of such property, for uses other than for the elder. Self-neglect is behavior of an elderly person that threatens his/her own health or safety.