



ADULT GUARDIANSHIP MONITORING: A NATIONAL SURVEY OF COURT PRACTICES

Diane Robinson, Ph.D.
Sarah Trescher, Ph.D.
Miriam Hamilton, M.S.

May 2021



THIS DOCUMENT WAS DEVELOPED UNDER GRANT NUMBER SJI-15-P-237 FROM THE STATE JUSTICE INSTITUTE. THE POINTS OF VIEW EXPRESSED ARE THOSE OF THE AUTHORS AND DO NOT NECESSARILY REPRESENT THE OFFICIAL POSITION OR POLICIES OF THE STATE JUSTICE INSTITUTE.

Table of Contents

Executive Summary	2
Background.....	4
Methodology	4
Results	6
Reporting, Accounting and Care Plan Practices	6
Court Assistance to Guardians and Conservators	7
Late Reports.....	10
Responsibility for Monitoring Activities.....	12
Response to Complaints	15
Review Hearings.....	18
Funding.....	19
Data, Technology, and Court Files	19
Discussion of Findings and Conclusions.....	21
Appendix: Survey.....	24

EXECUTIVE SUMMARY

Effective ongoing monitoring of guardianship and conservatorship continues to be a challenge for courts. This report highlights areas of progress and areas of continuing need, based on a recent survey of those involved with guardianships.

Background. Guardians and conservators are empowered by the court to make decisions on behalf of vulnerable persons. Courts' responsibilities do not end with the granting of the petition, however. Courts are charged with ongoing monitoring of guardianships and conservatorships to ensure the wellbeing of the person and the estate. As this duty continues long after adjudication of the case, it is essential that courts are set up for efficient and effective monitoring practices. In 2020 the National Center for State Courts surveyed guardians, judges, and other stakeholders via an online questionnaire to gauge the state of current monitoring practices as perceived by those directly involved. While over 500 responses from 46 states and Washington D.C. were collected, the majority of responses came from a handful of states, making this report informative but not nationally representative.

Findings. Survey results show great variation in guardianship monitoring, including in how expectations are communicated to guardians, what resources are made available, what happens when required reports are late or missing, how cases are reviewed, and what measures are taken in response to suspected malfeasance. Most respondents reported that their courts require accounting and personal status reports annually. However, future care and financial management plans were only a standard requirement for about a third of the courts. Although doubts were voiced regarding the depth of the review, most respondents indicated that there was *someone* responsible for reviewing reports, yet one out of six respondents did not know *who* was responsible. Over half of the respondents indicated that guardians receive guidance about reporting responsibilities. A third also indicated that the court sends a reminder before the filing deadline. Varying by jurisdiction, other resources are also often made available, such as written instructions (most common), sample reports, or, more rarely, court-provided training sessions. Nevertheless, one out of eight respondents reported a complete lack of resources. According to a third of respondents, funding for monitoring is unavailable or clearly insufficient – a lack that was especially strongly expressed by judges and court administrators.

Nearly half the guardians stated that they can file reports online, and, compared to earlier findings, the courts' overall use of technology seemed to have progressed significantly. Required forms are available on the websites of most courts, and many courts have systems to alert court personnel or court clerks to late filings. Still, basic data elements, like the powers sought and granted, are not routinely captured; and complaints are only tracked in approximately a quarter of courts represented. Routine procedures for late reports do not always exist. However, over half of the courts in the survey seem to send a notice of delinquency, and about a third enter a show cause order when appropriate. Fewer responses indicated that court staff contacts guardians in such cases, but rarely are fines involved. When the filing is habitually late, status hearings seem to be commonly required, and, as reported by almost a third of respondents, guardianships may be revoked.

While most courts have clear procedures for responding to complaints regarding a conservatorship or guardianship, others do not. Post-appointment visits with individuals under

guardianship are not common practice, and original attorneys representing the person seldom continue on the case once a guardian or conservator is appointed. Similarly, periodic hearings to assess the continued necessity of the guardianship are not routinely held but occur upon request or when deemed necessary. Almost a third of all respondents did not know what action the court would take in response to a guardian's or conservator's malfeasance, although most judges and court administrators stated that the guardian would be removed in such a case.

Conclusions. Despite a wide variation of local practices, many courts have clear reporting instructions, follow-up procedures and case management systems for guardianship cases in place. The results may show a more positive picture than is warranted, as those who received and responded to the survey may come from jurisdictions with more robust practices in place. Furthermore, judges and court administrators viewed the court's role as more active than survey respondents did as a whole, possibly due to a greater knowledge of the system and the resources available.

While the survey results demonstrate that overall progress in monitoring practices is evident, especially in the use of technology, critical needs remain in the areas of staffing and improved data collection. Areas where improvement is needed include routinely requiring future care plans, vigorously reviewing annual accounting and well-being reports, making regular visits to individuals under guardianship, and holding periodic hearings to assess the continuing need for the guardianship. These steps are necessary to prevent and detect negligence or malfeasance. They are also necessary to ensure the use of the least restrictive alternative available to protect the person given that individuals' needs change over time.

BACKGROUND

Guardianships and conservatorships are granted by state or tribal courts for a person to make personal and/or property decisions for another person.¹ Guardianships are formed to protect a vulnerable person, but they involve the loss of individual rights. These rights may include the right to manage one's own finances and property, the right to make medical decisions, the right to marry, the right to enter into contracts, and even the right to vote. A guardianship is granted when a person is found by a court of law to be unable to make such financial and personal decisions for themselves. Individuals who receive guardians may have dementia, severe mental illness, traumatic brain injuries, or may be developmentally disabled. Guardianships can continue for many years. Courts maintain the duty to monitor the guardianship throughout the life of the guardianship. This monitoring is essential to ensure that the person's well-being is protected and that the person's assets are being managed in a way to meet their needs in a way that is sustainable.

Although nationwide statistics are not available, most guardians are family members or other individuals with a connection to the person needing a guardian. Some guardians are private professional guardians and others are public guardians. Public guardians are funded by state or local governments to serve when no family member is available and/or willing and when the person needing guardianship does not have the means to pay the costs of a private professional guardian.

Prior surveys of guardianship monitoring were published in 2006 and in 1991. The 2006 survey, based on the survey conducted by the American Bar Association (ABA) in 1991, identified several themes. These included wide variation in guardianship monitoring, advances in reporting practices over the previous 15 years, minimal use of technology, the need for guardian training, the lack of verification of reports and accounts, a minimum role of volunteers, and a lack of court-community linkages.² In 2020 the National Center for State Courts surveyed guardians and judges regarding local practices monitoring guardianships and conservatorships to examine areas of progress and areas of continuing need, as perceived by individuals directly involved in guardianships.

METHODOLOGY

To identify current practices and experiences with court monitoring of guardianship and conservatorship cases, the National Center for State Courts administered an internet-based survey with the goal of reaching a variety of stakeholders, including professional and private guardians and conservators, attorneys, judges, court staff, Adult Protective Services (APS) staff, and others. The survey was launched on September 25, 2020 and distributed via e-mail to professional networks and mailing lists or listservs, including an NCSC monitored nationwide list. Responses were accepted until November 19, 2020.

Some organizations, such as the Greater WI Agency on Aging Resources & Elder Law and Advocacy Center aided the effort by forwarding the survey to their own networks. However, due to the nature of the distribution method, the respondents are not a nationally representative sample, and,

¹ For purposes of this paper guardianships refer both to guardianships of the person and guardianships of the estate (conservatorships).

² Karp, Naomi & Wood, Erica. (2007). Guardianship Monitoring: A National Survey of Court Practices. *Stetson Law Review*. 37.

although 544 responses were collected, there are no estimates of how many were initially reached with the survey request.

Respondents were encouraged to access the survey online and answer questions with reference to the jurisdiction they were most familiar with. The questionnaire, which is based on the survey conducted by the AARP Public Policy Institute and ABA Commission on Law and Aging,³ was designed in Qualtrics.⁴ The full survey instrument is shown in the Appendix and includes 25 questions on reporting, accounting and care plan practices, the availability of assistance, information, and resources for guardians, the tracking and monitoring practices, typical court responses, funding, the practices in regards to data and court file management, technology utilized, and the roles and responsibilities of those involved in a guardianship or conservatorship case.

Five hundred forty-two people completed the survey. One-third of survey respondents were guardians or conservators. APS staff members provided 18% of the responses. Forty-three judges (8%) responded to the survey and 52 (9%) court administrators responded (Table 1).

Table 1: Survey respondents

Role	Frequency
Guardian/Conservator	181 (33%)
Attorney	58 (11%)
Judge	43 (8%)
Court Administrator	52 (9%)
Visitor/evaluator/investigator/auditor	23 (4%)
G/C Program Manager	46 (8%)
Other volunteer	2 (<1%)
Other	22 (4%)
APS	99 (18%)
Advocate	7 (1%)
Clerk	3 (0.5%)

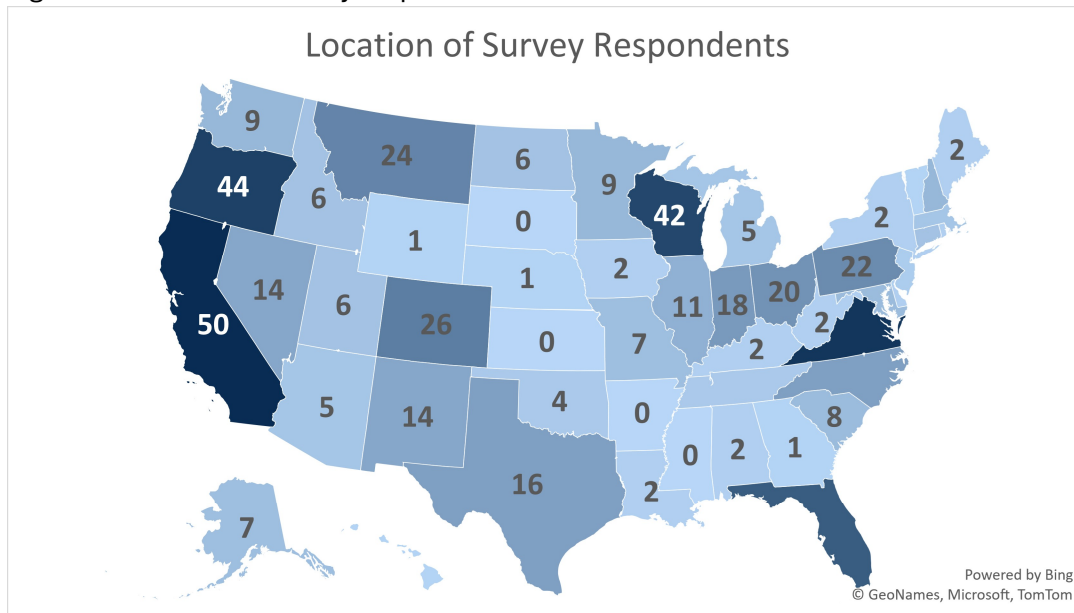
If participants listed more than one role, the first one listed was the one used. Because several respondents indicated that they were advocates, that category was also included. Auditors, investigators, evaluators, and court visitors were grouped together into a single category.

Survey respondents came from 46 states and Washington DC. Most of the respondents were from California (50), Virginia (47), Oregon (44), Wisconsin (42), and Florida (36). The map below depicts the number of respondents from each state (Figure 1).

³ Karp, Naomi & Wood, Erica. (2007). Guardianship Monitoring: A National Survey of Court Practices. Stetson Law Review. 37.

⁴ Qualtrics software, Version XM of Qualtrics. Copyright ©2020 Qualtrics. Qualtrics and all other Qualtrics product or service names are registered trademarks or trademarks of Qualtrics, Provo, Utah, USA. <https://www.qualtrics.com>.

Figure 1: Location of survey respondents



In addition to examining overall responses, the authors also separately examined the responses of judges and court administrators, guardians, and G/C program managers. Judges and court administrators had very similar survey responses and were thus combined into one group. Additionally, G/C program managers and guardians were combined for group analysis. Because judges from Oregon were overrepresented, additional analyses removing their responses were conducted. Doing so did not affect the overall results.

RESULTS

REPORTING, ACCOUNTING AND CARE PLAN PRACTICES

Most respondents (n=400, 79%) indicated that the court requires accounting reports annually.

Forty-six (9%) indicated that the court requires them less than annually, 1% indicated they are required more than annually and 2% indicated they are required as needed. Only 2% indicated the court does not require them and 6% of respondents did not know. Even more respondents indicated that personal status reports are due annually (n=425, 83.5%), 5% indicated they are required less than annually and 4% indicated they are required more than annually. Only 3% of respondents indicated they did not know how often personal status reports are required.

According to the comments, the frequency of accounting sometimes depends upon the value of the estate. One respondent reported that it was only required annually if an estate is worth more than \$10,000 while another reported it was waived if the estate was worth less than \$50,000. Some courts require an accounting after the

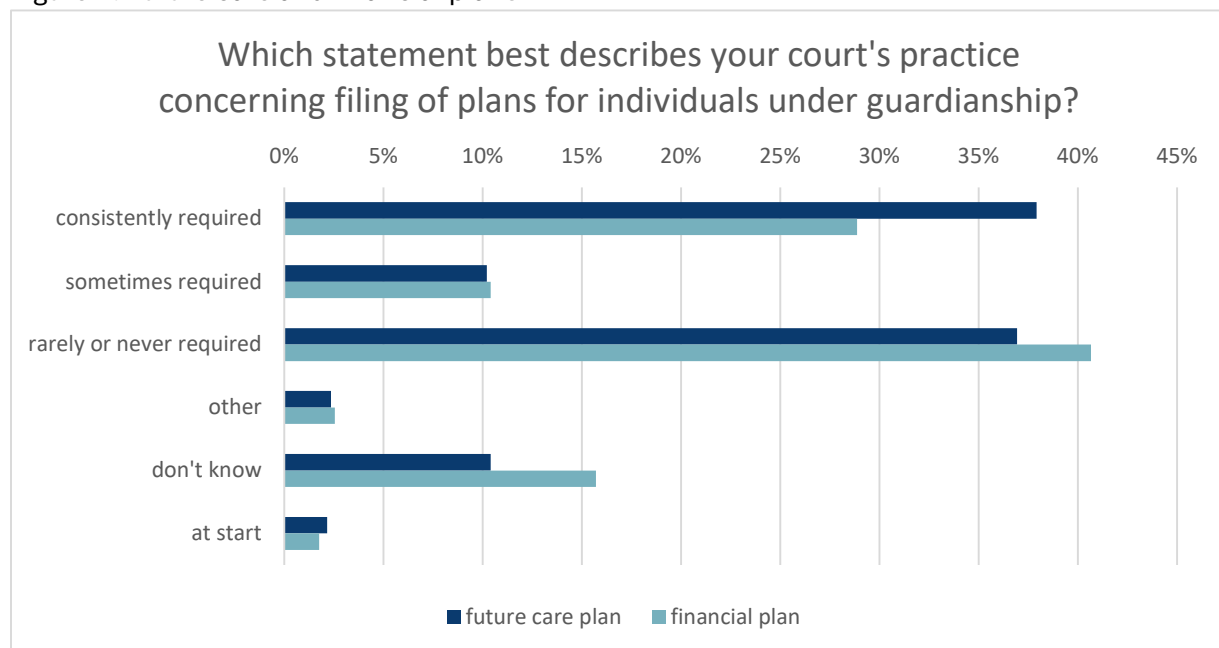
“A guardian should be required to file with the probate court a guardianship plan and a report on the respondent’s condition, with annual updates provided by the guardian thereafter...”
National Probate Court Standard 3.3.14

“A conservator should be required to file with the probate court an inventory of the respondent’s assets and a statement setting forth a plan to meet the respondent’s needs and to allocate resources for those needs, with annual accountings or updates provided by the conservator thereafter. . .”
National Probate Court Standard 3.4.15

first year but less frequently after that, particularly if the person has few assets. One respondent reported that their court only recently resumed requiring annual accountings, which had ceased due to budgetary concerns.

Future care and financial management plans should be an important part of guardianships. However, only 38% of respondents indicated that future care plans are consistently required and 29% indicated that financial plans or budgets are consistently required. Further, 37% of respondents indicated that future care plans are rarely or never required and 41% indicated that financial plans or budgets are rarely or never required. These results highlight that there tends to be less of a focus on future planning of guardianships compared to simply providing status reports (Figure 2).

Figure 2: Future care and financial plans



In some cases, the future care is addressed as part of the annual guardian’s report. Some jurisdictions require it within three months of the establishment of the guardianship, while others require it only if there is a material change. One person stated, “future care is more a reactive process in response to a change in individuals’ personal or medical status,” rather than a standard report.

COURT ASSISTANCE TO GUARDIANS AND CONSERVATORS

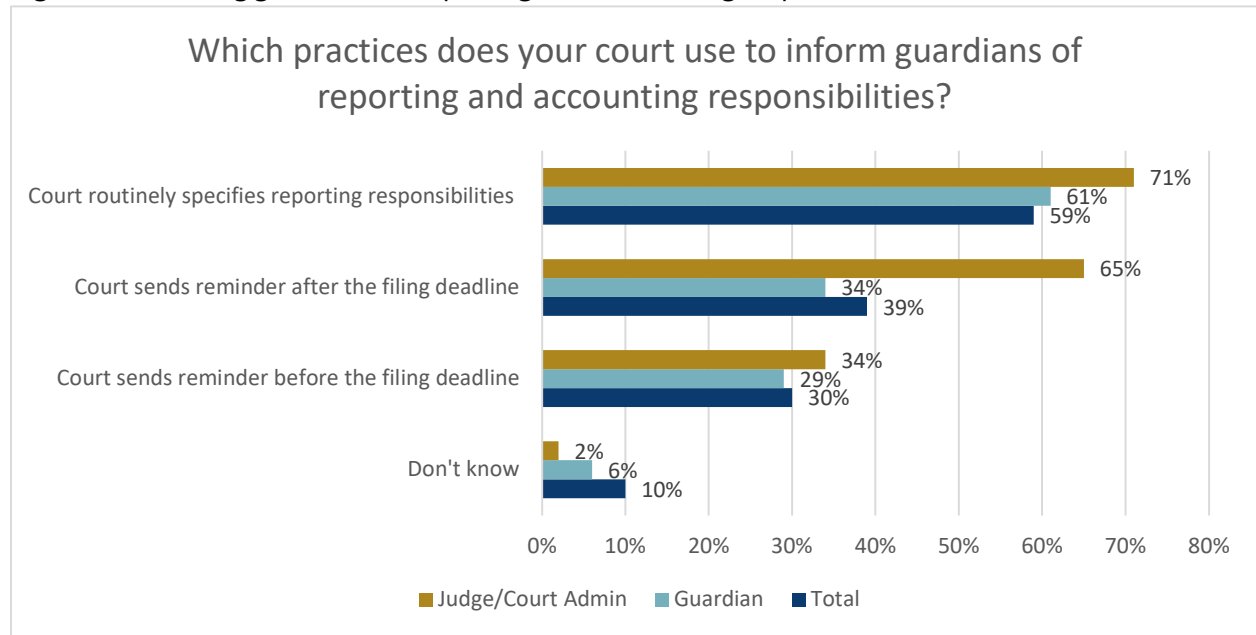
The survey included three questions to tap into what assistance the court provides to guardians and conservators. First, respondents were asked what practices the court uses to inform guardians/conservators of reporting and accounting responsibilities. Over half of respondents (59%) indicated that the court routinely specifies reporting responsibilities.

“The probate court should develop and implement programs for the orientation and training of guardians.”
National Probate Court Standard 3.3.13

Additionally, 39% indicated that the court sends a reminder after the filing deadline and 30% indicated the court sends a reminder before the deadline. Only 10% of respondents indicated they did not know. Judges and court administrators reported more frequently than others that the court routinely specifies reporting responsibilities (71% for judges compared to 59% of all respondents). Similarly, 65% of judges and court administrators indicated that the court sends a reminder after the filing deadline if the report has not been received, whereas only 34% of the guardians reported that. Approximately one third of judges, guardians, and all survey respondents agreed that the court sends a reminder before the filing deadline (Figure 3).

*“(a) The order issued by the probate court should detail the duties and powers of the guardian, including limitations to the duties and powers, and the rights retained by the respondent.
 (b) The court should make known to the guardian what the guardian’s responsibilities are, what requirements are to be applied in making decisions and caring for the respondent, and that the guardian must file with the court periodic reports on the respondent’s personal status.”*
 National Probate Court Standard 3.3.12

Figure 3: Informing guardians of reporting and accounting responsibilities

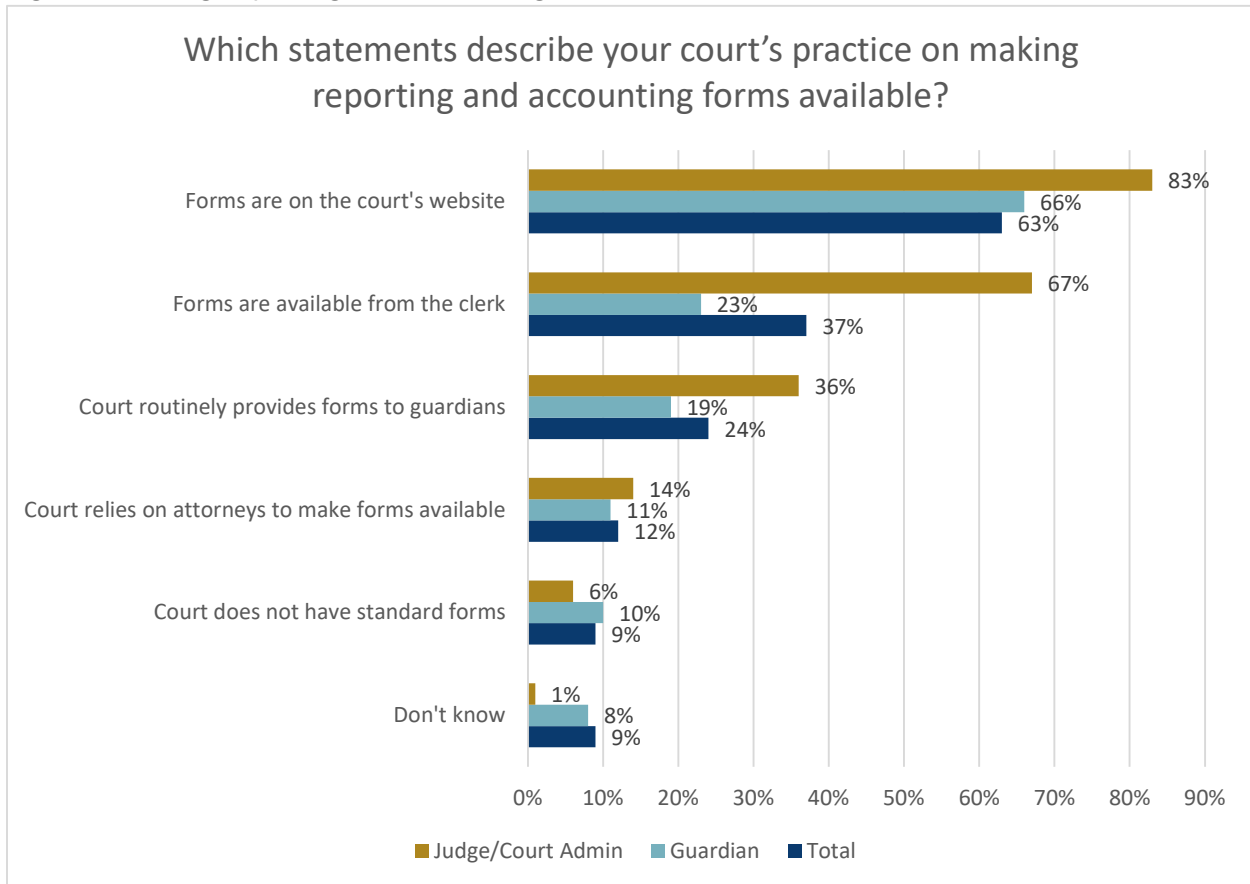


Several respondents commented that the court requires a course, video, or other training and that guardians are informed upon appointment about the reporting responsibility. Some courts post due dates on the court website, some email or call guardians. If a report is late, some commented that the court issues a citation or show cause order and the guardian is ordered to appear. Some state that parties are advised by counsel as to their reporting responsibilities. Others reported that the court does not advise guardians of their responsibilities.

Next respondents were asked what the court’s practice was on making reporting and accounting forms available. Respondents could choose more than one option. The most common response was that the forms are available on the court website (63%) followed by the forms being available from the clerk (37%). Only 24% of respondents indicated that the forms are routinely provided to guardians. Judges and court administrators reported these resources are available on the website

at a higher rate than the rest of the survey respondents (83% and 63% respectively). Nine percent of respondents indicated that the court does not have standard forms and 9% (but only 1% of judges/court administrators) indicated they did not know the court’s practice on providing forms (Figure 4).

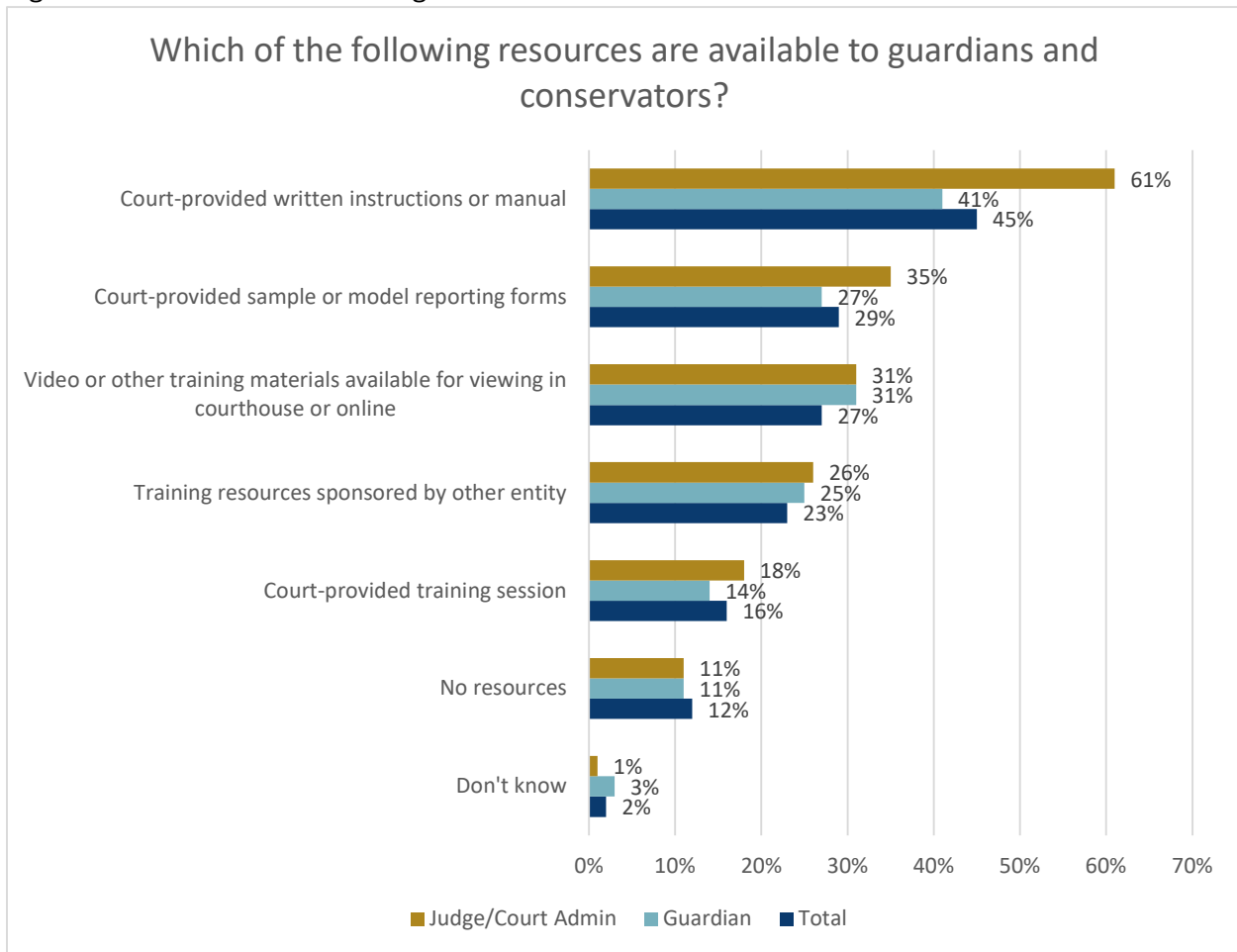
Figure 4: Making Reporting and Accounting Forms Available



In the comments section, some stated that APS sends the forms. One person commented that through their state online portal, “questions are asked online and converted into a report,” and others also reported online portals for reports and accountings. There were several comments about the forms that are difficult to complete, including non-fillable PDFs, forms that are confusing, and one person noted that the clerk charges for the forms, though they are available free online.

Respondents were also asked what resources are available to guardians and conservators, with the ability to choose as many as applied (figure 5). Overall, most respondents reported there are resources available; only 12% of respondents indicated no resources were available and 2% did not know what resources were available. The type of resources varied across respondents. Forty-five percent indicated the court provided written instructions or a manual, 29% indicated court provided sample reporting forms, and 27% indicated the court provided video or other training material for viewing. Judges and court administrators were more likely to report that the court provides written instruction or manual to guardians (61%) compared to all survey respondents.

Figure 5: Resources available to guardians and conservators

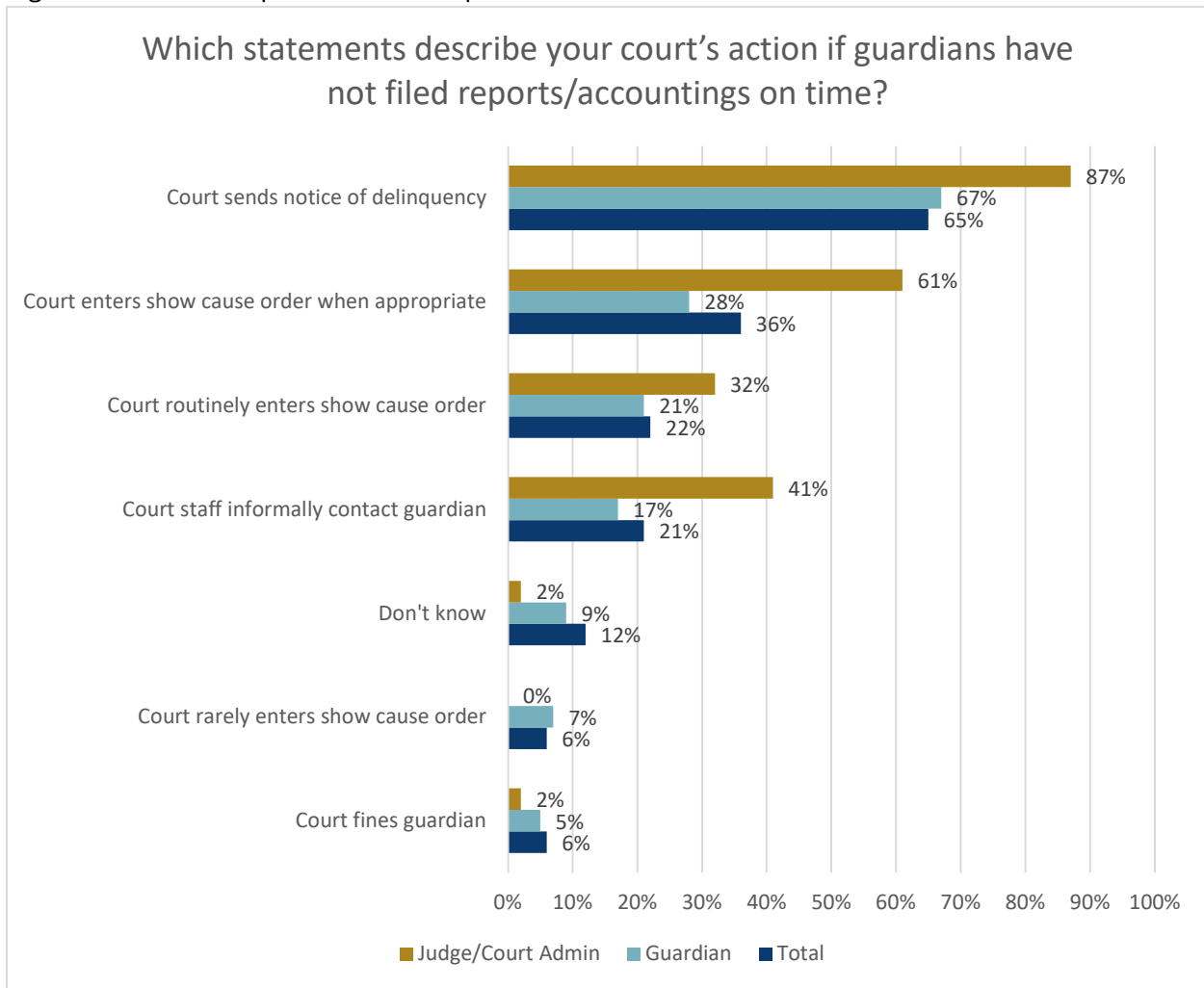


Several respondents noted that, in addition to the options in the survey, that APS provides information to guardians. Professional guardians from Arizona and Florida noted that they are required to take a course to become certified. One person commented that while there are explanations of forms on the court’s website, it would be helpful to have a reference to each question on the form. Another described a “worthless” booklet. A guardianship program manager in Nevada reported use of an automated interview to help guardians with forms.

LATE REPORTS

Respondents answered two questions on how the court tracks and enforces guardianships. First, respondents were asked what best describes the court’s actions if guardians have not filed reports on time. Over half (65%) indicated that the court sends a notice of delinquency and just over one third (36%) indicated the court enters a show cause order when appropriate. Twenty-two percent indicated that the court routinely enters a show cause order with only 6% indicating that the court rarely enters a show cause order. The court staff might also informally contact the guardian (21%) or fine the guardian (6%). However, 12% of respondents indicated they did not know what the court’s action would be (Figure 6).

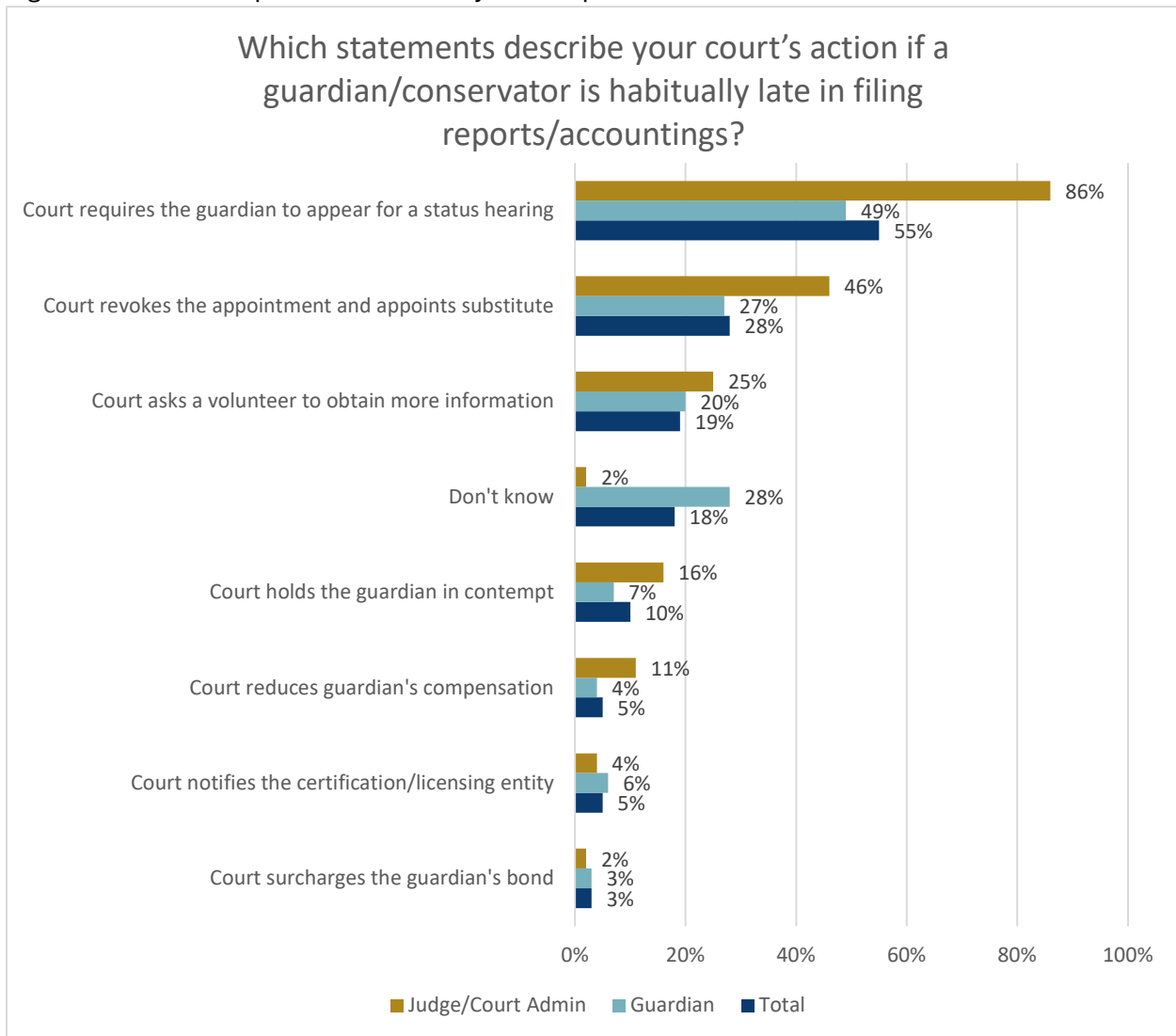
Figure 6: Court's Response to Late Reports



In addition to the options provided in the survey, several reported that APS is notified and sends information to the court if the guardian does not respond. Some courts appoint a GAL or court visitor to follow up with the guardian. Guardian fees may be withheld or a fine issued in the case of a professional guardian. One person from New Mexico reported that “the court charges a \$25/day late fee” though another person said that is only done in extreme circumstances. Several reported that the court does not do anything if reports are late or “only act if a party brings up the issue.”

Respondents were also asked about the court’s action if a guardian is habitually late in filing the reports. The most common response was that the court requires the guardian to appear for a status hearing (55%) followed by the court revokes the appointment of the guardian (28%). However, judges and court administrators were much more likely to report that the court requires the guardian to appear for a status hearing (86%) and that the court would revoke the guardianship (46%). Eighteen percent of survey respondents indicated they did not know what the court’s response would be (Figure 7).

Figure 7: Court's Response to Habitually Late Reports



In the comment section, several respondents indicated that the court charges a fine. In Virginia, APS initiates an investigation, but it was reported that the court does not initiate any actions. A clerk commented, “Each case is handled differently. . . Sometimes there is a good reason, other times, there is not. We review these on a case-by-case basis.” Others reported that even in cases of habitually late reports, little or nothing is done. One person stated, “usually goes unnoticed and is not addressed unless someone else petitions and brings issue to the attention of the court.” Another stated, “We seem to allow our guardians/conservators to continually file late reports. This is most likely because it is hard to replace (guardian/conservator) here due to lack of affordable resources.”

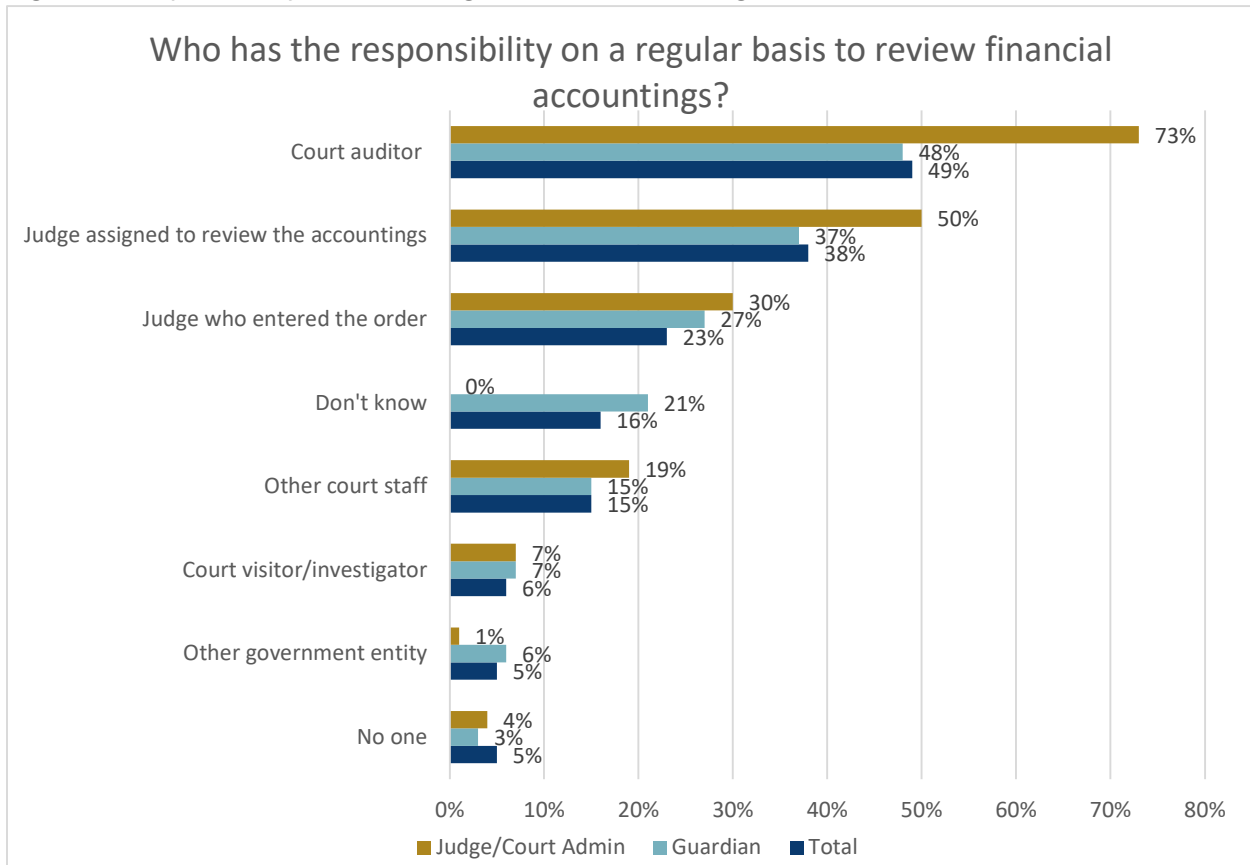
RESPONSIBILITY FOR MONITORING ACTIVITIES

Most participants indicated that there was someone responsible for regularly reviewing the financial accountings (Figure 8). Only 5% indicated that no one is specifically responsible for the review of financial accounts (although 16% of respondents indicated they did not know who is responsible).

The most common role mentioned (49%) was the court auditor or other court personnel whose primary responsibility is to review the accountings (although this number was much higher for judges and court administrators at 73%). This was followed by the judge who is assigned to review the accountings (38%) and the judge who entered the order (23%).

“The probate court should have written policies and procedures to ensure the prompt review of reports and requests filed by guardians (conservators).”
National Probate Court Standard 3.3.15 & 3.4.16

Figure 8: Responsibility for Reviewing Financial Accountings

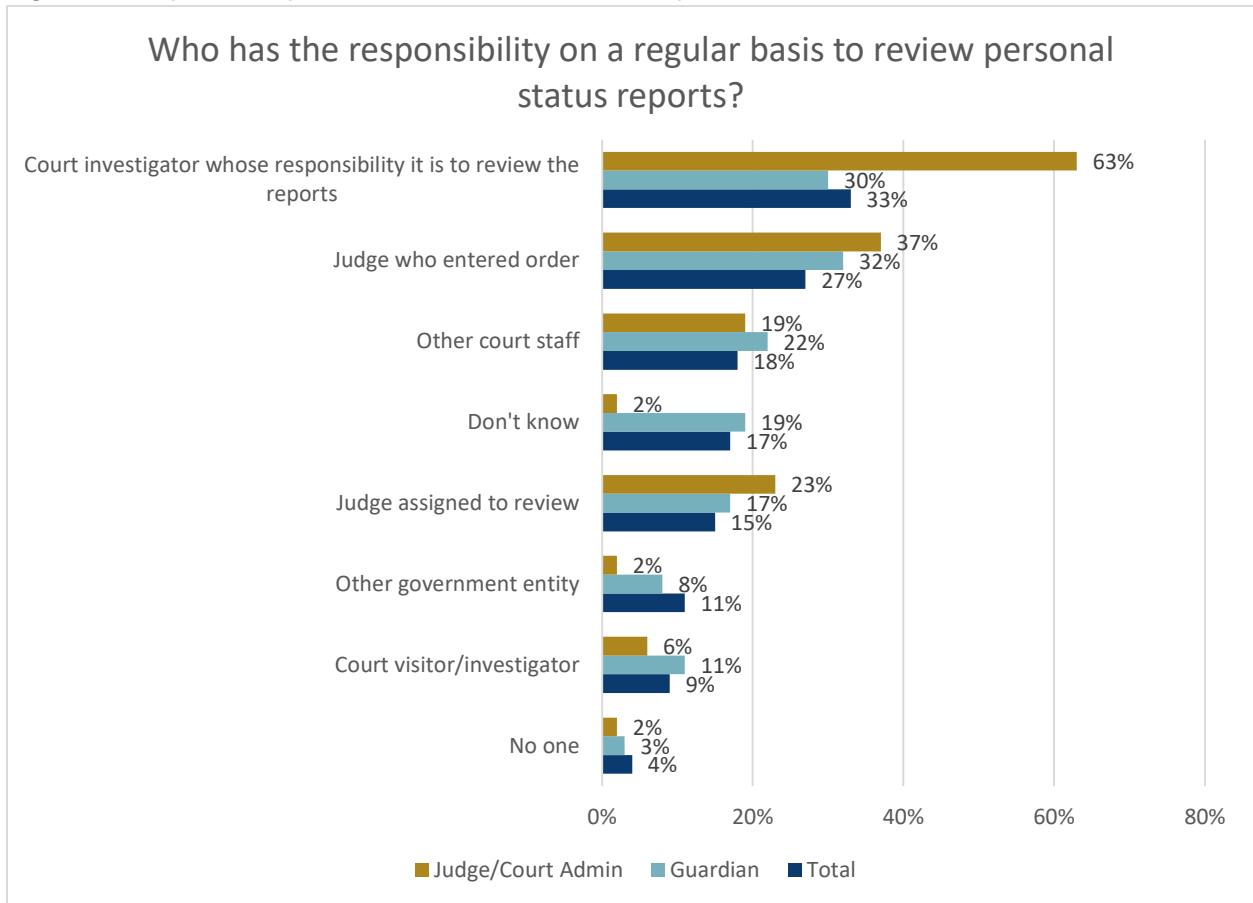


A number of respondents from Virginia noted that the Commissioner of Accounts is responsible for reviewing financial reports. One person stated, “Although it appears that court commissioners are reviewing the accountings, it seems apparent that there may be no in-depth review” and another from California noted that reviews are “cursory.” One person said, “The judges don’t tend to review them at the annual due to time restraints. A court visitor is appointed every three years to do a review.” One respondent said that even when obvious billing irregularities were pointed out, no action was taken by the court. Some noted that the GAL reviews the accountings and others pointed to the court clerk or the Register in Probate. A respondent from North Dakota said that a court monitor randomly selects cases to review.

Next respondents were asked who has the responsibility to review personal status reports on a regular basis (Figure 9). Like the review of financial accountings, only 4% indicated that no one was specifically responsible for this task, but 17% indicated they did not know who was responsible. Other responses did vary more compared to the previous question. Thirty-three

percent indicated that a court investigator whose primarily responsibility is to review personal status reports, followed by the judge who entered the order (27%). Eighteen percent indicated other court staff review the reports and 15% indicated that a judge is assigned to review those reports. Again, there were large discrepancies between judges and court administrators and the rest of survey respondents; 63% of judges and court administrators indicated a court investigator is responsible for reviewing the report, which is double of what all survey respondents indicated.

Figure 9: Responsibility to Review Personal Status Reports

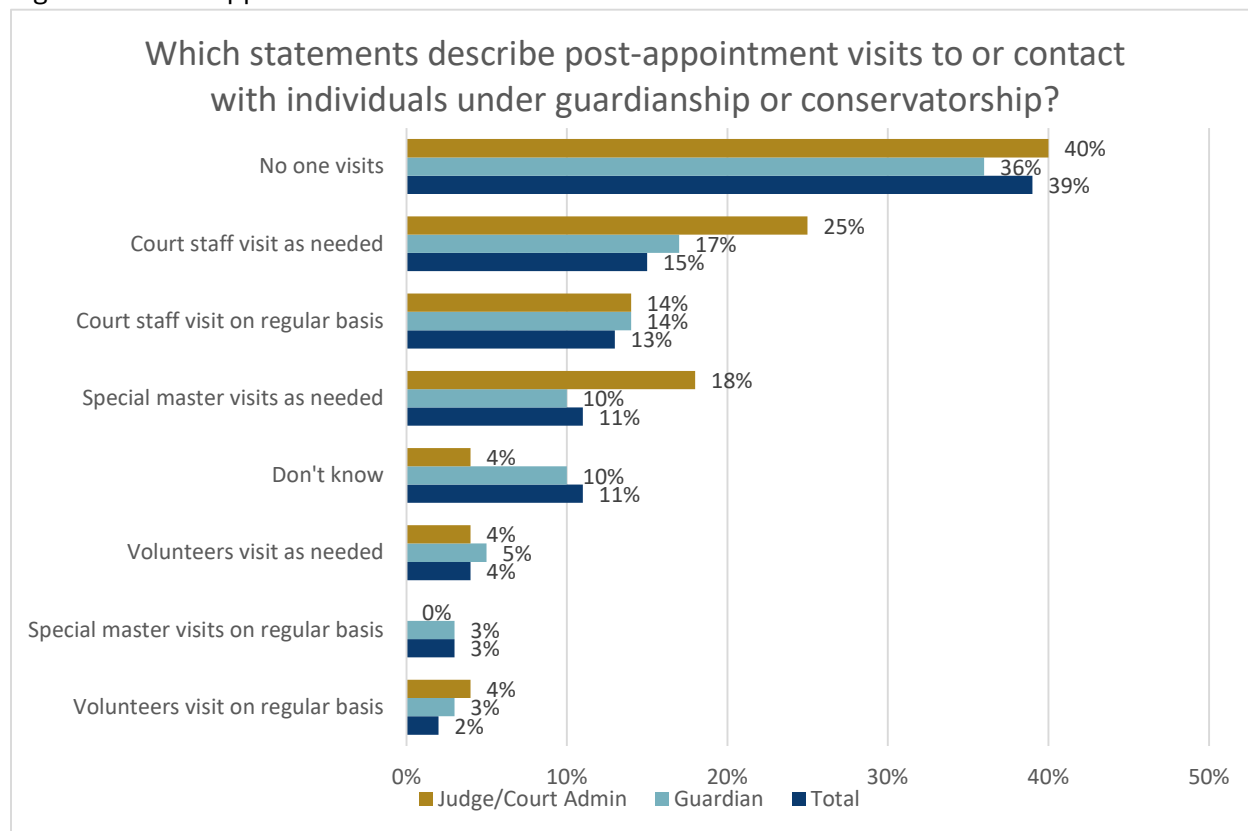


Several individuals reported in the survey that APS staff members review the reports while others stated Guardians ad Litem review the reports. Two people commented that the reviews are “cursory” or that not much attention is paid to them. Other reviewers identified were the Office of Conservatorship Management, the Probate Commissioner or Register in probate, and the court clerk.

Respondents were asked what statement best describes post-appointment visits or contact with individuals under guardianship. The most common response was the no one visits (39%), followed by court staff as needed (15%) and then court staff on a regular basis (13%). Eleven percent indicated that a special master or GAL visits as needed and 3% indicated that the special master or GAL visits on a regular basis. Eleven percent indicated they did not know. Judges and court administrators reported that court staff visited as needed (25%) and a special master visited as needed (18%), which is higher than was reported by other survey respondents. Overall, these

responses demonstrate that there does not appear to be regular visits or contacts occurring with people in guardianships (Figure 10).

Figure 10: Post-Appointment Visits



In addition to the visits by the guardian or conservator, individuals in Alaska reported that the three-year review includes a visit. A judge in Wisconsin and a guardian in California both reported that an investigator visits annually. Others reported that a GAL visits.

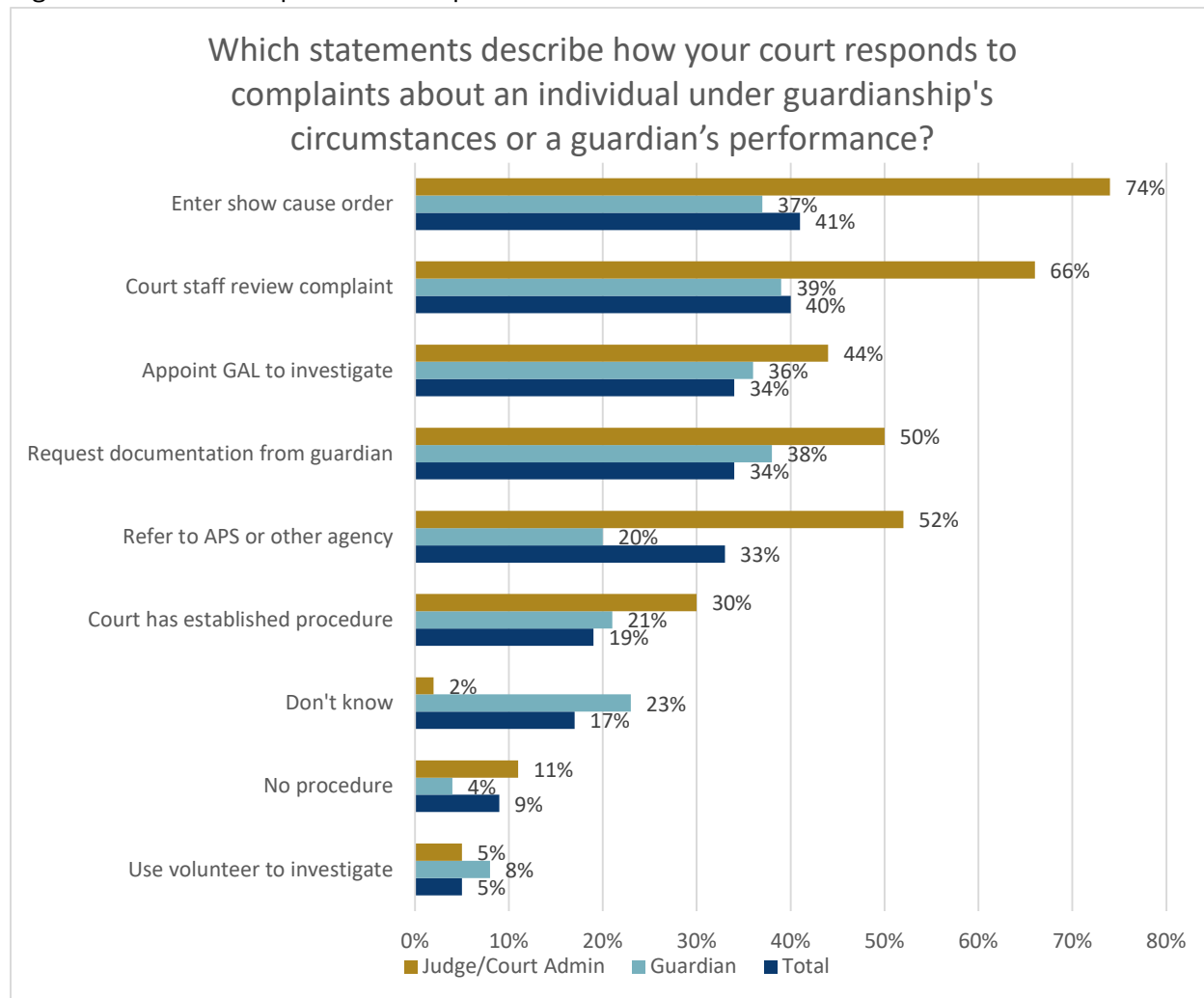
In some jurisdictions, an attorney represents an individual for the guardianship hearing, but does not continue to represent the person for the entire life of the guardianship. Respondents were asked what best describes the extent to which the attorney assists the court in monitoring the person’s well-being. The most common response (39%) was that the attorney is dismissed by the court after the appointment and has no further role. Twenty-two percent indicated that the attorney stays on for the record, but involvement varies or is infrequent. Only 14% of survey respondents indicated that the attorney remains involved until the court determines the attorney is no longer needed and 8% indicated that the attorney remains routinely active throughout the case. Eleven percent of respondents indicated they did not know the attorney’s involvement.

RESPONSE TO COMPLAINTS

Survey respondents were asked to indicate how the court responds to complaints about an individual under guardianship (Figure 11). Respondents were invited to respond to all appropriate statements. The most common response was that the court enters a show cause order or sets a hearing (41%) closely followed by the court staff review the complaint (40%). Respondents also reported that the court appoints a GAL or special master to investigate (34%), the court requests

documentation from the guardian (34%), and the court refers the case to adult protective services or an outside agency (33%). Further, 17% of respondents did not know how the court responds and 9% indicated there is no procedure in place to respond to complaints. Generally, judges reported responses at higher frequencies than guardians and other survey respondents. Guardians were also more likely to report they did not know the court’s response (23%) compared to judges and court administrators (2%).

Figure 11: Court’s Response to Complaints



While some courts have clear procedures for responding to complaints, others do not. One person commented that it depends on the guardian’s role: the “Office of the Public and Professional Guardians receives and investigates complaints against professional guardians. Court staff reviews complaints about family guardians.” A fairly typical comment was: “There does not appear to be a

“(a) The probate court should enforce its orders by appropriate means, including the imposition of sanctions. These may include suspension, contempt, removal, and appointment of a successor.
 (b) Where the court learns of a missing, neglected, or abused respondent, it should take immediate action to ensure the safety and welfare of that respondent.”
 National Probate Court Standard 3.3.17

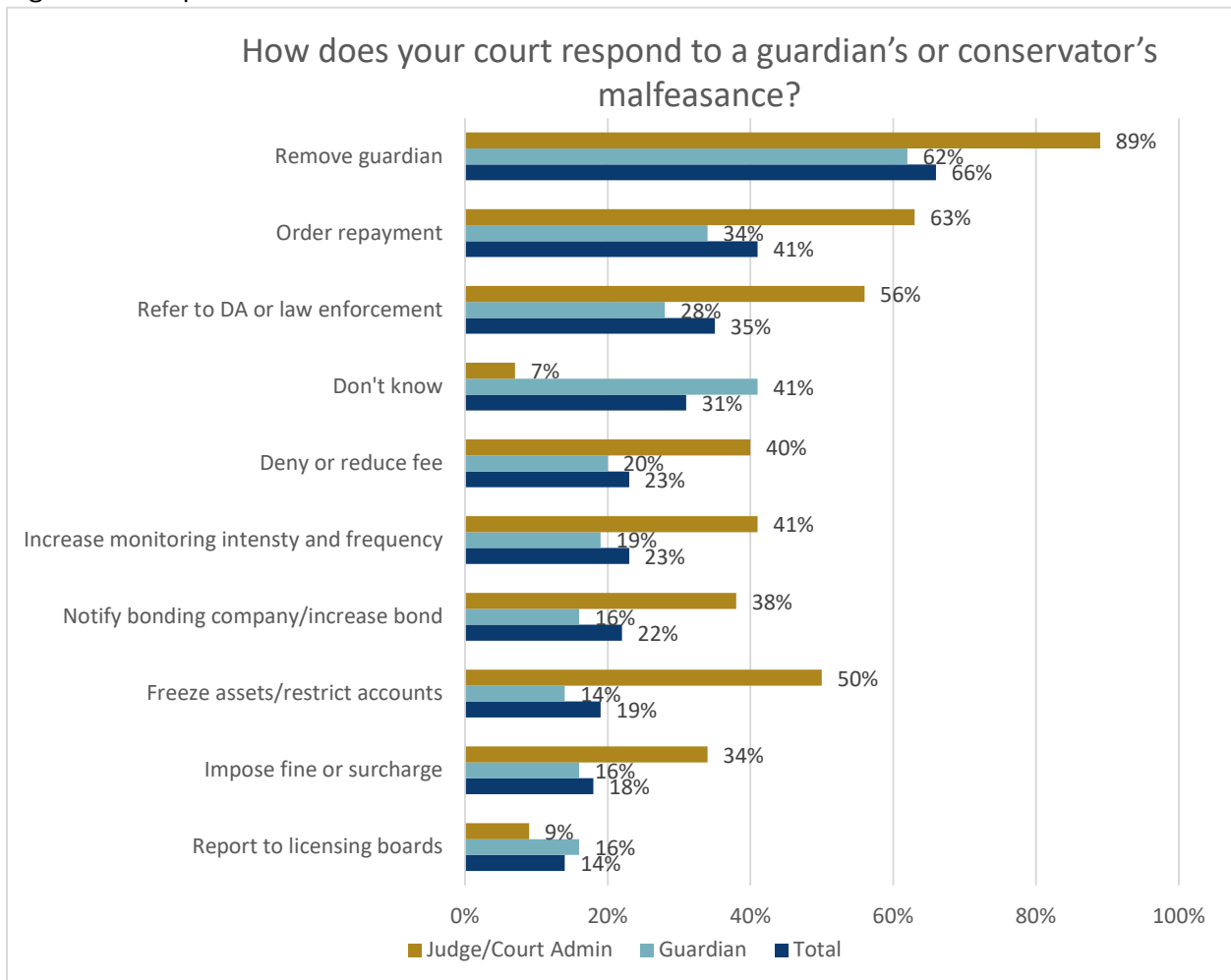
regular process for this, besides a party bringing the issue to the court. In the event a party brings the issue, a court would likely have staff review the complaint, appoint an investigator, or set a hearing.” One

“(b) Where the respondent’s assets are endangered, the court should consider suspending the conservator and appointing a special fiduciary to immediately take control over the respondent’s assets.”
National Probate Court Standard 3.4.18

person commented that there was no complaint process and that the only option was a petition to modify or terminate the guardianship. Several individuals said that the court tends to dismiss or disregard complaints. Others stated that the judge reviews the complaint.

Courts have several options in response to a guardian’s or conservator’s malfeasance. The most common response is that the guardian is removed, and a successor is appointed (66%) This response was chosen much more frequently by judges and court administrators (89%). Forty-one percent indicated that the guardian is ordered to repay the exploited finances and 35% indicated that a referral is made to the district attorney or law enforcement. Again, these numbers are considerably higher for judges and court administrators. A total of 31% of survey respondents did not know what the consequence would be, but only 7% of judges and court administrators (Figure 12).

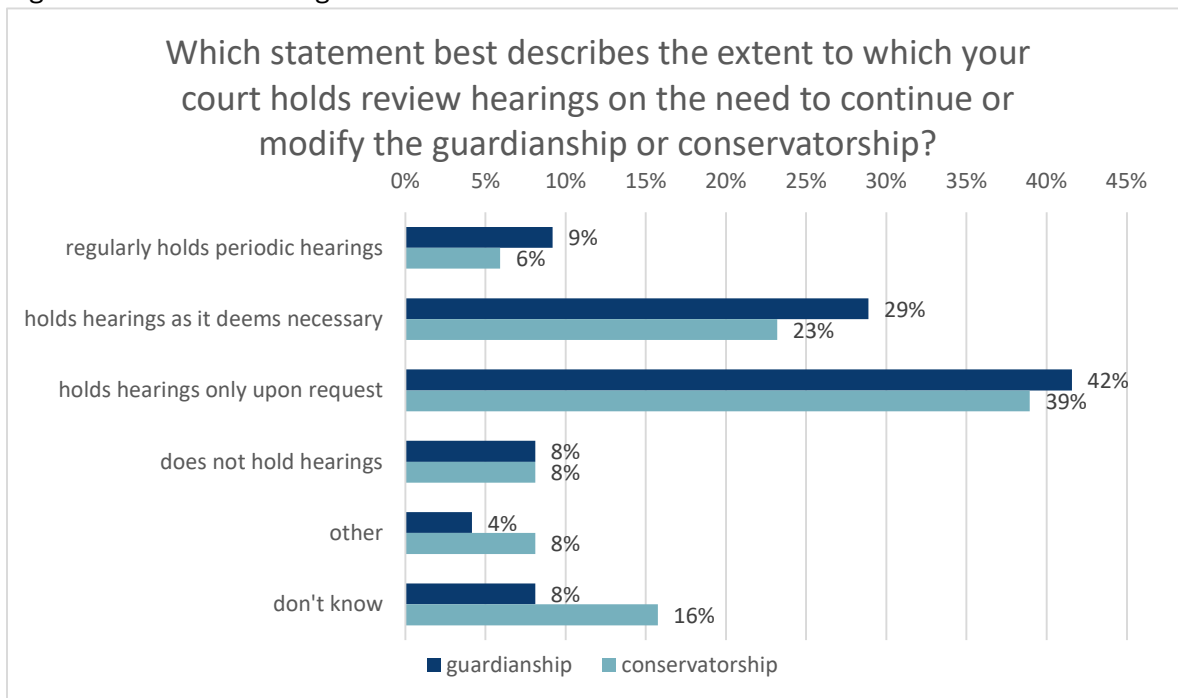
Figure 12: Response to Malfeasance



REVIEW HEARINGS

Next respondents were asked the extent to which the court holds review hearings on the need to continue or modify the guardianship (Figure 13). The most common response was the court only holds hearings on request (42%) followed by holding hearings as it is deemed necessary (29%). Only 9% indicated that the court regularly holds periodic hearings and 8% indicated the court does not hold these hearings. The same question was asked for conservatorships. The results were similar to guardianships: 39% indicated that the court only holds hearings on request, followed by holding hearings as it is deemed necessary (23%). However, 16% of respondents indicated they did not know how often the court holds review hearings for conservatorships (compared to 9% for guardianships).

Figure 13: Review hearings



Respondents stated that hearings are held annually (California), every three years (Nevada), every five years (North Dakota), or every ten years (New Mexico). In Maryland, a review board of volunteers reviews the public guardianships every two years. A respondent from Florida reported that “the guardian must provide the court with an annual report from a physician identifying which rights may be restored or removed in a guardianship.”

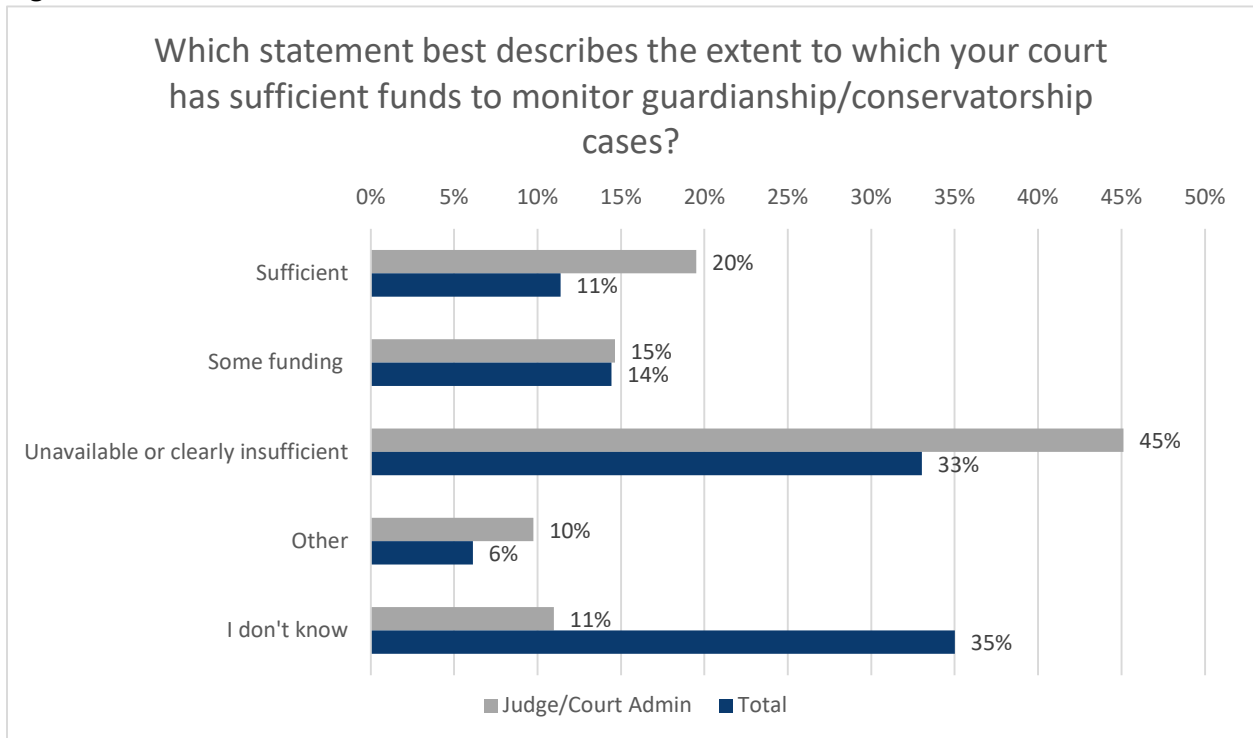
“The probate court should adopt procedures for the periodic review of the necessity for continuing a guardianship (conservatorship). A request by the respondent for a review of the necessity for continuing a guardianship (conservatorship) should be addressed promptly.”

National Probate Court Standard 3.3.16 & 3.4.17

FUNDING

All respondents were asked one question to describe the extent to which their court has sufficient funds to monitor guardianship/conservatorship cases. Only 11% of respondents indicated that sufficient funds are available to the court and 14% said that some funding for monitoring activities or personnel is available. One third of respondents indicated that funding for monitoring is unavailable or clearly insufficient and 35% indicated they did not know. Judges and court administrators were more likely to report that sufficient funds are available (20%) compared to all survey respondents but were also more likely to indicate that funding is unavailable or insufficient (45%). Only 11% of judges and court administrators reported they did not know if their court has sufficient funds to monitor guardianship/conservatorship cases (Figure 14).

Figure 14: Funds to monitor cases

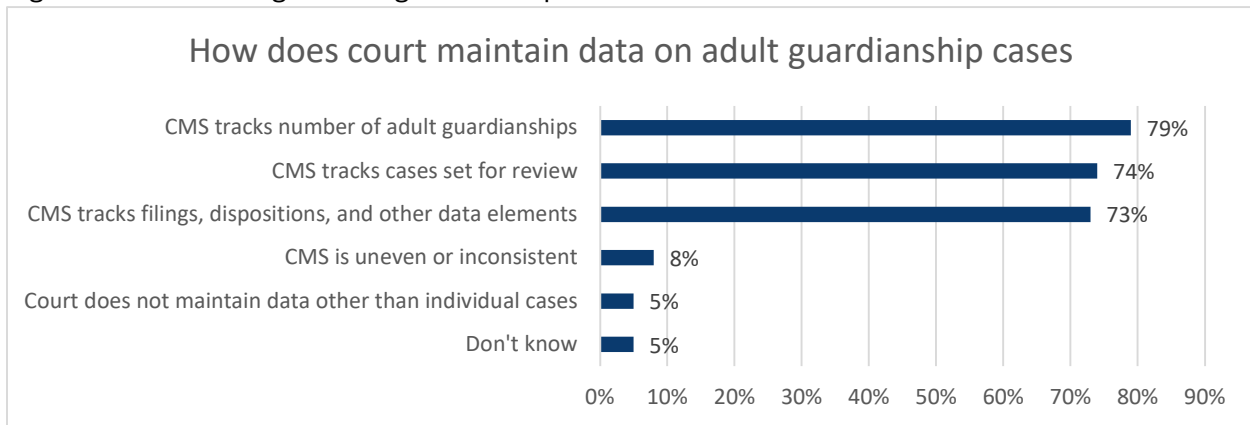


DATA, TECHNOLOGY, AND COURT FILES

Judges and court administrators (n=80) were asked to describe the extent to which the court maintains data on adult guardianship/conservatorship cases. The results indicate that courts tend to have case management systems (CMS) to maintain data including data on the number of guardianships (79%), filings, dispositions, and other data elements (73%), and cases set for review (74%). Set for review is a case status indicating that there is no petition pending but that the case is still under the court's oversight.

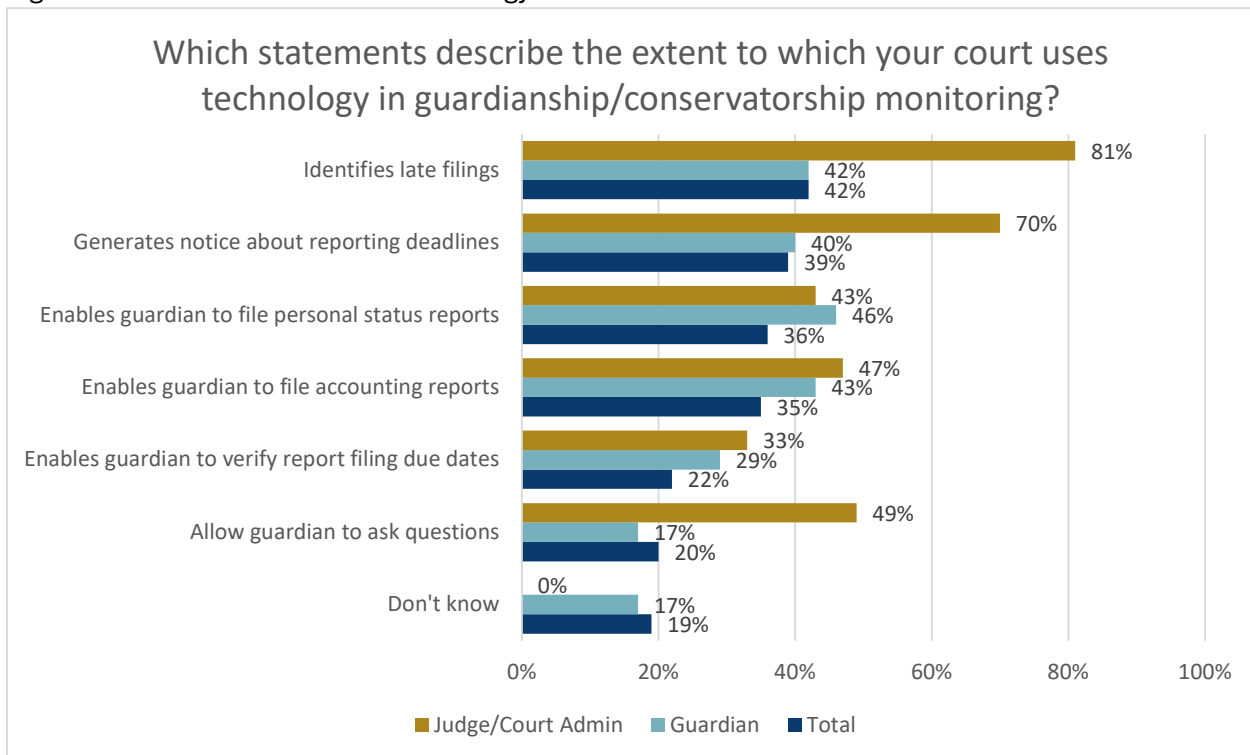
However, 8% of judges and court administrators indicated that the case management system is uneven, inconsistent, or in the process of changing, 5% indicated that the court does not maintain data other than individual cases, and 5% did not know how the court maintains data (Figure 15).

Figure 15: Maintaining data on guardianship cases



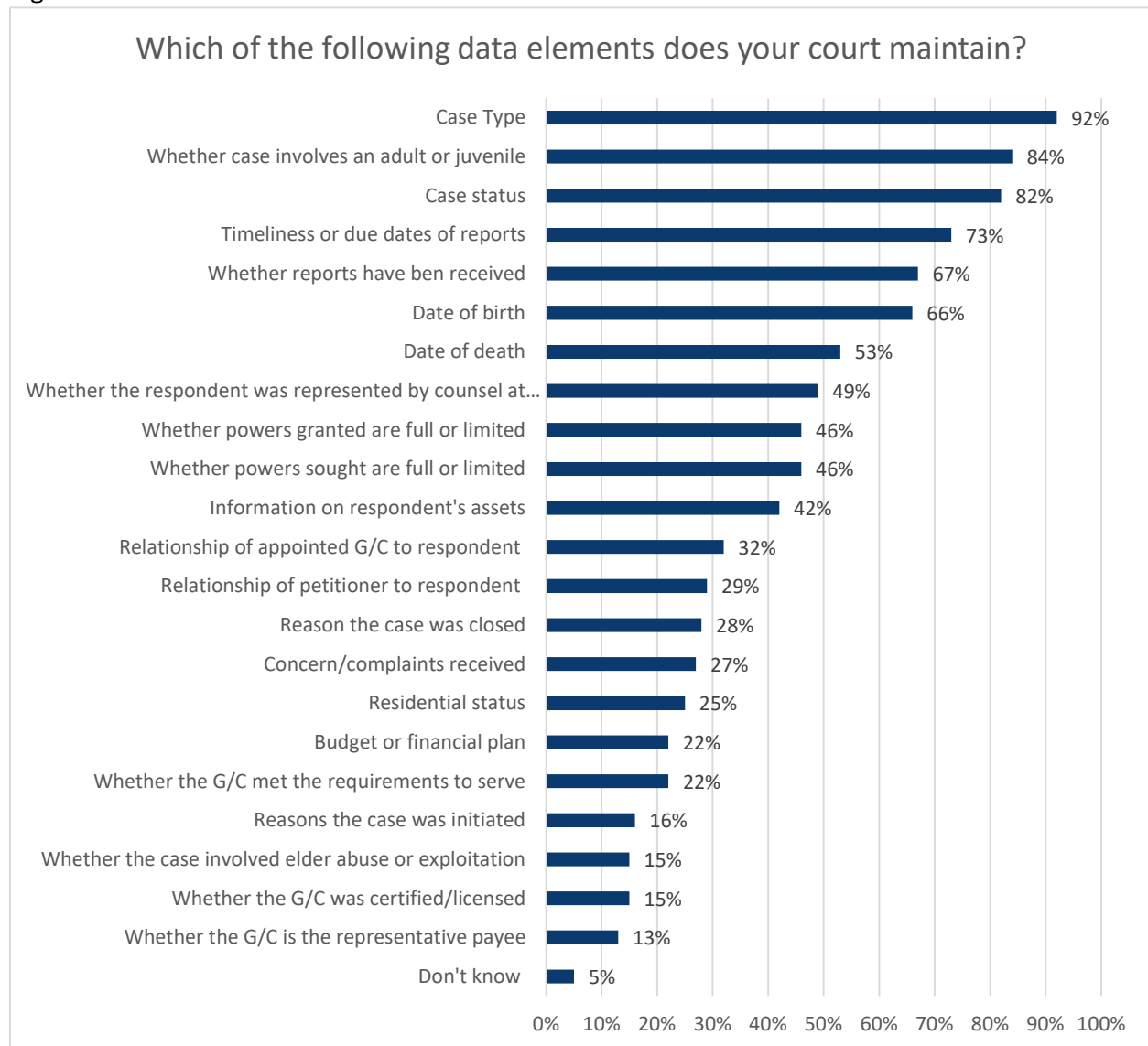
All survey respondents were asked to indicate the extent to which the court uses technology in guardianship/conservatorship monitoring. The most common response was that it identifies late filings (42% overall/81% for judges/court administrators) followed by generating notices about reporting deadlines (39% overall/70% for judges/court administrators). Just over a third (36%) indicated that technology enables guardians to file personal status reports and 35% indicated it enables guardians to file accounting reports. One out of five survey respondents did not know how the court uses technology in guardianship cases. It is notable that judges and court administrators are much more likely to state that the court uses technology to identify late problems, generate notice about deadlines, and allow the guardian to ask questions, suggesting that court users do not report the same access to technology that judges and court administrators report are available (Figure 16).

Figure 16: How the court uses technology



Judges and court administrators were asked to indicate which data elements the court maintains. The most common response was case type (92%; guardianship, conservatorship, or both), followed by whether the case involves an adult or juvenile (84%), and case status (82%). The least common responses were reasons the case was initiated (16%), whether the case involved elder abuse or exploitation (15%), whether the guardian/conservator was certified/licensed (15%), and whether the guardian/conservator is the representative payee (13%). All responses can be found in Figure 15. Last, 48% of judges and court administrators indicated that their court uses redaction software to protect privacy/confidentiality in guardianship/conservatorship files (Figure 17).

Figure 17: Data Elements



DISCUSSION OF FINDINGS AND CONCLUSIONS

Parens patriae refers to the duty of the state to protect individuals unable to care for themselves, and, as was stated in the previous survey of guardianship practice, monitoring is at the heart of the

court's *parens patriae* duty.⁵ Monitoring guardianships and conservatorships is central to the role of the court and is essential to ensure that the changing, and often challenging, needs of the individual are met. However, this is one of the few areas in which the majority of a court's work occurs following adjudication of the petition. As such, many courts struggle to meet their duty under *parens patriae*.

This survey, while demonstrating ongoing challenges in monitoring guardianships, may show a more positive picture than is warranted. It was difficult to reach family guardians through the survey process and it is likely that responses came from states that have more robust guardianship networks and monitoring. The lack of any responses from four states and fewer than five responses from an additional 17 states means that it cannot be considered to be representative of courts across the nation.

Salient themes from the survey findings include the following.

1. As with the prior surveys, **guardianship monitoring practices continue to show wide variation**. There is variation in how expectations are communicated, what resources are made available to guardians and conservators, how late or missing reports are treated, how cases are reviewed, and what measures are taken in response to malfeasance. Given that an individual's assets need to be used in a way that is sustainable, the lack of future care plans and budgets is a concern. Because only 38% of respondents indicated that future care plans are consistently required and 29% indicated that financial plans or budgets are required, it is evident that many courts are not requiring documentation for how the ongoing needs of individuals will be met.
2. **Judges and court administrators viewed the court's role as more active and engaged than survey respondents as a whole**. Judges and court administrators were more likely to report that sample reports and training resources were available, that court staff are assigned to review reports, and that the court is likely to hold a hearing and remove a guardian if problems arise. This could be due to a greater knowledge of the system and of the resources available. A guardian who has consistently complied with the requirements of the guardianship may not be aware of the actions the court takes when a guardian is not in compliance, for example. It could also be due to a lack of communication: guardians and other survey respondents might not know what resources are available and demonstrates that it is important court users are made aware of what is available to them in their case.
3. **The use of technology in monitoring has progressed significantly**. In the 2005 survey, 22% of respondents stated that the court did not use computer technology in monitoring and only one-third said that the court used technology to identify late filings. In the 2020 survey, over 80% of judges and 42% of respondents overall said that technology is used to identify late filings. Only 5% reported that guardianship data is stored only in the case file and nearly half of guardians reported that they can file reports online.

⁵ Karp, Naomi & Wood, Erica. (2007). Guardianship Monitoring: A National Survey of Court Practices. Stetson Law Review. 31.

4. **The need for improved data collections remains high.** Improvement in capturing necessary data elements is a high need. Even seemingly basic data elements, such as date of birth, are not routinely captured. Fewer than half of the judges and court staff reported that the extent of the powers sought and granted are captured in the case management system. Concerns and complaints are only tracked in approximately a quarter of the courts reporting, and the prevalence of elder abuse or exploitation is rarely captured.
5. **Visits to individuals under guardianship** are not routine in many jurisdictions. As in the prior survey, nearly 40% reported that no one visits other than the guardian. Given that only 9% reported regular review hearings in guardianships and 6% in conservatorships, there is, as was stated in the previous report, “ample room for actions by guardians who may be inclined toward negligence or malfeasance.”⁶
6. **Adequate funding for monitoring guardianships remains a critical need.** Only 20% of judges, and 11% of respondents overall, indicated that sufficient resources were available. Nearly half (45%) of judges and a third of all respondents indicated that funding is unavailable or clearly insufficient. In the 2005 survey, 43% of respondents stated that funding was unavailable or insufficient. Given the critical importance of guardianship monitoring, providing adequate resources is essential. This will require increasing awareness of the need in local communities, at the state level, and at the national level.
7. **Most courts are not reassessing the need for the guardianship or conservatorship on a regular basis.** In most jurisdictions, the default seems to be that guardianships or conservatorships will continue indefinitely. Less than 10% of survey respondents said that courts routinely hold review hearings to assess the ongoing need for the guardianship or conservatorship. Given that individuals’ needs change over time, this is a significant barrier to ensuring that courts are using the least restrictive alternative available to protect the person.

⁶ Karp, Naomi & Wood, Erica. (2007). Guardianship Monitoring: A National Survey of Court Practices. Stetson Law Review. 34.

APPENDIX: SURVEY

Adult Guardianship & Conservatorship Monitoring Practices Survey National Center for State Courts 2020

Because terminology varies considerably across the country, this survey uses these definitions:

- A GUARDIAN is an individual or organization named by court order to exercise some or all powers with regard to the personal affairs of an adult.
- A CONSERVATOR is an individual or organization who possesses some or all powers with regard to the real and personal property of an adult.
- A RESPONDENT is an individual for whom a petition for guardianship or conservatorship has been filed, but not adjudicated.

I have the most familiarity with the guardianship/conservatorship monitoring practices in:

County/City _____

State _____

My most frequent role in the process is as (select one):

- a. Guardian or Conservator
- b. Attorney
- c. Judge or special master
- d. Court administrator/manager/staff
- e. Visitor/evaluator/investigator
- f. Guardianship/conservatorship program manager
- g. Guardian ad litem
- h. Other volunteer
- i. Adult Protective Services
- j. Other (specify): _____

Please answer the following questions based on your experience with the ACTUAL PRACTICES in the court with which you are MOST FAMILIAR.

Reporting, Accounting, and Care Plan Practices

Which statement best describes your court’s practice regarding the frequency of reports by guardians on the individual’s personal status? The court requires personal status reports:

- a. annually.
- b. more frequently than annually.
- c. less frequently than annually.
- d. as needed.
- e. does not require/often waives.
- f. other (specify): _____
- g. I don’t know.

Which statement best describes your court’s practice regarding the frequency of accountings by conservators? The court requires accountings:

- a. annually.
- b. more frequently than annually.
- c. less frequently than annually.
- d. as needed.
- e. does not require/often waives.
- f. other (specify): _____
- g. I don’t know.

Which statement best describes your court’s practice concerning filing of plans for future care of individuals under guardianship? Plans for future care are:

- a. consistently required.
- b. sometimes required.
- c. rarely or never required.
- d. other (specify): _____
- e. I don’t know.

Which statement best describes your court’s practice concerning the filing of financial management plans or budgets for individuals under conservatorship? Financial management plans or budgets are:

- a. consistently required.
- b. sometimes required.
- c. rarely or never required.
- d. other (specify): _____
- e. I don’t know.

Court Assistance to Guardians and Conservators

Which practices does your court use to inform guardians/conservators of reporting and accounting responsibilities? Check all that apply.

- a. The court routinely specifies reporting responsibilities in initial order or letter.
- b. The court sends reminder before filing deadline.
- c. The court sends reminder after filing deadline.
- d. Other (specify): _____
- e. I don't know.

Which statements describe your court's practice on making reporting and accounting forms available? Check all that apply.

- a. Forms are on or through the court's website.
- b. Forms are available from the clerk.
- c. The court routinely provides forms to guardians/conservators.
- d. The court relies on attorneys to make forms available.
- e. The court does not have standard forms.
- f. Other (specify): _____
- g. I don't know.

Which of the following resources are available to guardians and conservators? Check all that apply.

- a. Court-provided written instructions or manual
- b. Court-provided sample or model reporting/accounting forms
- c. Video or other training materials available for viewing in courthouse or online
- d. Court-provided training session
- e. Training resources sponsored by other entity
- f. No resources available
- g. Other (specify): _____
- h. I don't know.

Tracking and Enforcement

Which statements describe your court's action if guardians/conservators have not filed reports/accountings on time? Check all that apply.

- a. The court sends notice of delinquency.
- b. Court staff informally contact the guardian/conservator.
- c. The court routinely enters show cause orders (or local equivalent).
- d. The court enters show cause orders when appropriate.
- e. The court rarely enters show cause orders.
- f. The court fines the guardian/conservator.
- g. Other (specify): _____
- h. I don't know.

Which statements describe your court's action if a guardian/conservator is habitually late in filing reports/accountings? Check all that apply.

- a. The court asks a volunteer or investigator to obtain more information.

- b. The court requires the guardian/conservator to appear for a status hearing.
- c. The court holds the guardian/conservator in contempt.
- d. The court surcharges the guardian's/conservator's bond.
- e. The court reduces guardian/conservator compensation.
- f. The court revokes the appointment and appoints a substitute/successor guardian/conservator.
- g. The court notifies the certification/licensing entity.
- h. Other (specify): _____
- i. I don't know.

Responsibility for Monitoring Activities

Who has the responsibility on a regular basis to review financial accountings? Check all that apply.

- a. Judge who entered the order
- b. Judge assigned to review the accountings
- c. Court auditor or other court personnel whose primary responsibility is to review the accountings
- d. Other court staff
- e. A court visitor/investigator/magistrate
- f. Other governmental entity such as department of social services, public guardian, state auditor, state inspector
- g. Volunteer
- h. No one is specifically responsible for review of financial accounts
- i. Other (specify): _____
- j. I don't know.

Who has the responsibility on a regular basis to review personal status reports? Check all that apply.

- a. Judge who entered the order
- b. Judge assigned to review the status reports
- c. Court auditor or other court personnel whose primary responsibility is to review the reports
- d. Other court staff
- e. Court visitor/investigator/magistrate
- f. Other governmental entity such as department of social services or public guardian, state auditor, state inspector
- g. Volunteer
- h. No one is specifically responsible for reviewing personal status reports
- i. Other (specify): _____
- j. I don't know.

Which statements describe post-appointment visits to or contact with individuals under guardianship or conservatorship? Check all that apply.

- a. Court staff/investigator visit on regular basis.

- b. Court staff/investigator visit as needed.
- c. Special master, visitor, guardian ad litem, or other person visits on regular basis.
- d. Special master, visitor, guardian ad litem, or other person visits as needed.
- e. Volunteers visit on regular basis.
- f. Volunteers visit as needed.
- g. No one visits.
- h. Other (specify): _____
- i. I don't know.

Which statement best describes the extent to which the attorney for the individual under guardianship/conservatorship assists the court in monitoring the individual's well-being?

- a. The attorney remains the attorney of record and routinely stays actively involved throughout the case.
- b. The attorney remains the attorney of record, but involvement varies or is infrequent.
- c. The attorney remains involved until the court/attorney determines that the attorney is no longer needed.
- d. The attorney is dismissed by the court after the appointment and has no further role.
- e. Other (specify): _____
- f. Don't know.

Court Assessment of Guardianships/Conservatorships

Which statements describe how your court responds to complaints about an individual under guardianship/conservatorship's circumstances or a guardian's or conservator's performance?

Check all that apply.

- a. Court staff review the complaint.
- b. Court appoints a guardian ad litem, special master, or visitor to investigate.
- c. Court refers to adult protective services, law enforcement, or other state agency.
- d. Court requests documentation or other reports from the guardian or conservator.
- e. Court enters show cause order or sets hearing.
- f. Court uses volunteer to investigate.
- g. Court has an established procedure to respond to complaints.
- h. No procedure is in place to respond to complaints.
- i. Other (specify): _____
- j. I don't know.

Which statement best describes the extent to which your court holds review hearings on the need to continue or modify the **guardianship**? The court:

- a. regularly holds periodic hearings.
- b. holds hearings as it deems necessary.
- c. holds hearings only upon request.
- d. does not hold hearings.
- e. other (specify): _____
- f. I don't know.

Which statement best describes the extent to which your court holds review hearings on the need to continue or modify the **conservatorship**? The court:

- a. regularly holds periodic hearings.
- b. holds hearings as it deems necessary.
- c. holds hearings only upon request.
- d. does not hold hearings.
- e. other (specify): _____
- f. don't know.

How does your court respond to a guardian's or conservator's malfeasance? Check all that apply.

- a. Court refers to district attorney or law enforcement.
- b. Court orders repayment of exploited finances.
- c. Court removes guardian/conservator and appoint successor.
- d. Court reports to professional licensing boards.
- e. Court imposes fine or surcharge.
- f. Court denies or reduces fee.
- g. Court notifies bonding company and/or increases bond or other security.
- h. Court increases monitoring intensity and frequency.
- i. Court freezes assets/restrict accounts.
- j. Court does not generally impose sanction or take other action.
- k. Other (specify): _____
- l. I don't know.

Funding

Which statement best describes the extent to which your court has sufficient funds to monitor guardianship/conservatorship cases?

- a. Sufficient funds are available to the court.
- b. Some funding for monitoring activities or personnel is available.
- c. Funding for monitoring is unavailable or clearly insufficient.
- d. Other (specify): _____
- e. I don't know.

Data, Technology, Court Files

Which statements describe the extent to which your court uses technology in guardianship/conservatorship monitoring. Check all that apply.

- a. A notice to the guardian/conservator about reporting deadlines is generated.
- b. Late filings are identified.
- c. The guardian/conservator is enabled to verify report filing due dates.
- d. The conservator is enabled to file accounting reports electronically.
- e. The guardian is enabled to file personal status reports electronically.
- f. The guardian/conservator is allowed to ask questions about the administration of the case.

- g. No technology is used for guardianship/conservator monitoring.
- h. Other (specify): _____
- i. Don't know.

The questions below were displayed only if the answer to “my most frequent role in the process is as” was judge or special master or court administrator/manager/staff.

The court has a case management system that maintains data on (select all that apply):

- a. the number of adult guardianship/conservatorship filings and dispositions.
- b. cases set for review (ongoing monitoring).
- c. hearing dates.
- d. The court's case management system for guardianship/conservatorship cases is uneven, inconsistent, or in the process of change.
- e. The court does not maintain data on guardianship/conservatorship cases other than in individual case files.
- f. Other (specify): _____
- g. I don't know.

Which of the following data elements does your court maintain? Check all that apply.

- a. Case type (guardianship, conservatorship, or both)
- b. Whether case involves an adult or juvenile
- c. Whether powers sought are full or limited
- d. Whether powers granted are full or limited
- e. Case status
- f. Reasons the case was initiated
- g. Reason the case was closed
- h. Date of birth
- i. Date of death
- j. Residential status
- k. Relationship of petitioner to respondent
- l. Relationship of appointed guardian/conservator to respondent
- m. Whether the guardian/conservator met the requirements to serve
- n. Whether the guardian/conservator was certified/licensed
- o. Whether the guardian/conservator is the representative payee
- p. Whether the respondent was represented by counsel at time of adjudication
- q. Information on respondent's assets
- r. Timeliness or due dates of guardianship/conservatorship reports
- s. Whether guardianship/conservatorship reports have been received
- t. Budget or financial plan
- u. Concern/complaints received
- v. Whether the case involved elder abuse or exploitation
- w. Other (specify): _____
- x. I don't know.

Does your court use redaction software to protect privacy/confidentiality in available guardianship/conservatorship files?

yes

no

Don't know

If we may contact you for additional information, please provide

Name _____

Phone _____

Email _____