



Ohio Guardianship, Guardians, and the Courts:

Findings from a Survey of Adult
Guardianship in Ohio

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An Ohio Center of Excellence



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Adult Guardianship in Ohio**

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EXECUTIVE SUMMARY

BACKGROUND

Adult guardianship is a necessary strategy to promote a high quality of life while preventing the exploitation of individuals who are not capable of making decisions for themselves. Guardianship is managed by Ohio's Probate Courts, but little is known about how they provide oversight of adult guardianship. Inspired by recent legislation to improve guardianship practice (Rule 66), this report summarizes the adult guardianship practices of Ohio's Probate Courts. Recently enacted rules for the probate courts to improve adult guardianship practices— codified in the Rules of Superintendence (§66.01 et seq. commonly known as Rule 66) went into effect on June 1, 2015. The purpose of Rule 66 is two-fold. First, the rule provides guidance to guardians about their responsibilities and sets clear expectations for the practices that are necessary to fulfill the role. At the same time, Rule 66 placed additional requirements on the courts regarding their role in appointing, training, and monitoring the activities of guardians.

The enactment of Rule 66 was a significant step forward in ensuring consistency and enhancing adult guardianship practices across the state. Several noteworthy aspects of the legislation highlight the responsibilities of the guardian to the person under guardianship. This new rule also requires guardians to provide more documentation to the courts regarding their activities. Simultaneously, this rule brought forth additional responsibilities and potential challenges for the probate courts: The rule requires enhanced review and oversight of applicants for guardianship and active guardians. It also requires formalized procedures for guardianship hearings and ongoing monitoring. Courts are also expected to ensure the educational preparedness of guardians, before appointment as well as on a continuing basis.

The intention of this survey was to discover whether any of Ohio's Probate Courts were already engaged in the practices required by the new legislation, Rule 66, and if so, to be able to report on how these practices operate in order to share this information with other counties working towards meeting the law's requirements. Ultimately, the goal of this report is to help the courts address guardianship challenges through the identification of promising practices.

METHODS

An online survey of Ohio's 88 counties was undertaken to get a broad perspective on Ohio guardianship. Questions asked within the *Survey of Adult Guardianship in Ohio* were developed from semi-structured interviews with 20 experts in guardianship, including judges, magistrates, advocates, and professional and family member guardians (Reece & Roberts, 2016). These key informants identified important topics, such as challenges faced by the courts and guardianship programs and how they are being met, the expectations courts have for guardians and how to better prepare guardians to fulfill their duties, and the desired outcomes of adult guardianship. An invitation to participate in the survey was emailed to the Judge and Court Administrator in each of Ohio's 88 counties and the survey closed with a 63% response rate.

RESULTS

In 2014 Ohio's Probate Courts reported a total of 47,038 adults under guardianships in their counties (Supreme Court of Ohio, 2015b). This suggests that the average county has over 500 active adult guardianships to manage and monitor, with the number of cases ranging from 27 to 8000 per county (Supreme Court of Ohio, 2015b). Guardianships may be for an individual only (65%), the individual and his/her estate (32%), or an individual's estate only (3%). Activities of guardians for an estate often include managing the financial affairs and property of the person under guardianship, whereas guardians for the person are responsible for making daily decisions about living arrangements, services, and healthcare.

It is important to note that counties vary dramatically based on the number of persons under guardianship, staffing, and the processes for managing adult guardianships. Very few counties – fewer than 10 percent – are tracking information about persons under guardianship, such as their living environment (e.g., the community or institutional care) or the population served (e.g., developmental disability, Alzheimer's disease and related dementias, or severe mental illness).

In the majority of counties (61.5%), guardianship caseloads have increased in the previous three years, as guardianships tend to be a long-term arrangement. While about half of the current statewide caseload has been open for five or fewer years, the other cases span a longer timeframe. Nearly one-quarter of the cases in 2014 had been open for more than 10 years, and slightly fewer than 10 percent of the total have been opened for 20 years or more. Once an adult guardianship has been established, the decision is unlikely to be reversed. In Ohio, four percent of adult guardianship cases were closed because the person under guardianship was returned to competency. In most instances (71%), adult guardianship cases are closed only due to the death of the ward. Guardianship cases are opened by an applicant applying for guardianship over an individual where there is a concern that the individual may not be capable of making decisions in his or her best interest. In the majority of cases a competency evaluation is performed by an authorized professional, a hearing is conducted with full protection of due process for the potential ward including the right to be represented by an attorney and have evidence presented on his or

her behalf. However, in nearly 20 percent of cases opened in Ohio (18%) the situation demands a much speedier resolution.

Per Ohio law, emergency guardianships are established “if an emergency exists and it is reasonably certain that immediate action is required to prevent significant injury to the person or estate ...the court, ex parte, may issue any order that it considers necessary to prevent injury to the person or estate of the minor or incompetent, or may appoint an emergency guardian for a maximum period of seventy-two hours” (Ohio Revised Code, §2111.02(B)(3)). Approximately 10 percent of the counties did not establish any emergency guardianships in 2014. However, emergency guardianships comprised more than half of the overall guardianship caseload in four counties, and made up three-quarters of the guardianships established in one county.

In the majority of guardianship cases opened in Ohio, the guardian was a family member or friend (70.4%). However, in many cases the guardian was a professional guardian or an attorney (18.3%). Rule 66 addressed an important concern the courts have regarding a specific type of guardian: those who have oversight and responsibility for 10 or more individuals. Our respondents reported they are monitoring at least 100 of such guardians who are almost exclusively professional guardians or attorneys.

Consistently, the courts expressed high expectations for guardians, including such responsibilities as monitoring the person under guardianship (94.4%), engaging in person-centered care (90.7%), and overseeing finances (90.7%). To ensure that these high expectations are being carried out, courts engage in a number of activities to assist guardians such as scheduling a formal hearing to help guardians work out a problem or address an issue (81.6%), explaining how to file paperwork (69.4%), and arranging informal meetings (59.2%). To provide this assistance the courts have an internal team to assist with the guardianship caseload. Depending on the size of the county and the guardianship caseload, this team could be made up of the judge, magistrate(s), staff attorney(s), and court investigator(s). Some courts also have the assistance of the deputy clerk and the court administrator.

The courts face a variety of challenges in their role as Superior Guardian. The most common challenges respondents reported were ensuring that guardians comply with filing requirements (72.0%), funding (72.0%), recruiting guardians when no one is available (64.0%), and family dynamics (64.0%). The intention of Rule 66 is to elevate practice standards, but to do so, the courts are facing challenges to implementing the requirements of the rule. These challenges include, ensuring compliance by guardians (85.2%), resistance from guardians to training (85.2%), and managing more paperwork and filings (70.4%). Many courts were already engaged in the activities required by Rule 66, however more than half of the courts will have to put a formalized complaint tracking and monitoring system in place, nearly half will have to begin overseeing guardian training, and almost all will have to create an internal structure to manage the additional paperwork and proactive monitoring required by Rule 66. For the average court in Ohio, these new processes will need to be created from scratch.

In order to address these challenges, the courts have developed resourceful ways to improve guardianship such as building strong community collaborations, recruiting and retaining guardians, using volunteers creatively, and proactively monitoring guardianships. The average court has 11 community partners and many courts (43.4%) have formalized their partnerships by establishing a county-based I-Team to bring together community resources and increase communication among local entities. I-Teams are groups of interdisciplinary stakeholders who convene to solve a specific problem or address specific issues. These community collaborations were seen as critical to augmenting the courts' guardianship management processes and helpful in leveraging resources. In counties where a guardianship program exists courts found these programs to be extremely beneficial because they ensure the availability of paid or volunteer guardians (90.3%), serve as a resource for the court (87.1%), and often provide training and education for guardians (71.0%). Finally, some of the courts (37.7%) are implementing monitoring programs that provide an in-person visit with the person under guardianship and/or the guardian to gain a more objective assessment of the person under guardianship's living environment and quality of life. In some counties, volunteers and college students are assisting with a proactive monitoring program.

The information presented within this report provides a means through which the courts can critically examine statewide and county-specific guardianship practices within the context of the existing range of activities that involve supporting and monitoring guardians, responding to complaints, working with community partners, and leveraging resources.

INTRODUCTION

Parens Patriae – the notion that the court is the “father of the country” and thus responsible for protecting its most vulnerable citizens is very much alive in Ohio’s Probate Courts. In Ohio, the probate courts act as Superior Guardian to more than 40,000 of Ohio’s most vulnerable adults. This role carries a great deal of responsibility and presents many challenges. To manage these challenges the courts have put in place a number of promising practices that help successfully manage an ever-growing caseload of adult guardianships. Adult guardianship is a necessary strategy to promote a high quality of life while preventing the exploitation of individuals who are not capable of making decisions for themselves. While the courts serve as the Superior Guardian and bear ultimate responsibility for the care of persons under guardianship (legally known as wards), individual guardians are responsible for day-to-day oversight of persons under guardianship. In this report, we will use both the legal term ward and the person-first term “persons under guardianship” synonymously. The courts rely on guardians, who may be family members, friends, volunteers, or paid professionals, to monitor the person under guardianship and make decisions regarding living arrangements, finances, healthcare, and many other vital decisions on his or her behalf. The courts often collaborate with a network of community partners in managing the guardianship process and ensuring the individuals under guardianship are well cared for, are being supported, and have responsive and involved guardians.

Guardianship is a legal relationship that is becoming increasingly important due to a number of factors including the aging of our population and the opioid epidemic. The need for adult guardianship is likely to increase due to a rapidly growing older adult population and an accompanying increase in the number of individuals with dementia and cognitive impairment, and an increase in individuals with mental health diagnoses, or severe drug dependence. In calendar year 2014, 7099 guardianship applications were filed statewide in Ohio for adults (individuals age 18 and older) and the courts closed 6085 adult guardianship cases (Supreme Court of Ohio, 2015b). Caseloads tend to grow over time because guardianship is often a long-term arrangement, and in most years more new cases are opened than are closed.

RULE 66

Recently enacted rules for the probate courts – codified in the Rules of Superintendence (§66.01 et seq. commonly known as Rule 66) went into effect on June 1, 2015 to improve adult guardianship practices. The purpose of Rule 66 is two-fold. First, the rule provides guidance to guardians about their responsibilities and sets clear expectations for the practices that are necessary to fulfill the role. At the same time, Rule 66 placed additional requirements on the courts regarding their role in appointing, training, and monitoring the activities of guardians.

The enactment of Rule 66 was a significant step forward in ensuring consistency and enhancing adult guardianship practices across the state. Several noteworthy aspects of the legislation highlight the responsibilities of the guardian to the person under guardianship, requiring guardians to ensure the least restrictive alternative, visit the ward at least quarterly, engage in

person-centered planning, and monitor and coordinate services and benefits (Rule 66.09). This new rule also requires guardians to provide more documentation to the courts regarding their activities, such as submitting an annual guardianship plan to describe the guardian's goals for meeting the personal and financial needs of the person under guardianship (Rule 66.08). Further, the rule sets forth additional qualifications that guardians must meet and the courts must enforce. For example, the courts must conduct criminal background checks for potential guardians and the courts must keep track of guardians with 10 or more wards and ensure these guardians report to the court (Rule 66.05). Simultaneously, this rule brought forth additional responsibilities and potential challenges for the probate courts. Courts must now have a written process for emergency guardianships, for monitoring complaints (Rule 66.03), and must consider a limited guardianship when appropriate (Rule 66.04). Courts are also expected to ensure the educational preparedness of guardians, before appointment as well as on a continuing basis. Initially, guardians must complete a six-hour fundamentals course provided by the Supreme Court or another approved entity covering the topics of establishing a guardianship, ongoing responsibilities of a guardian, record keeping and reporting duties, and improving the quality of life of the person under guardianship (Rule 66.06). Guardians must also complete a 3-hour continuing education session annually (Rule 66.07).

The enactment of Rule 66 provides the context for our statewide survey. The survey intended to assess the practices of Ohio's courts as they relate to the requirements detailed above. It was our intention to discover whether any of Ohio's courts were already engaged in these types of practices, and if so, to be able to report on how these practices were implemented and how they operate in order to provide a set of "best practices" as the probate courts work to meet the requirements of Rule 66. Speaking with court personnel and experts throughout the state, we learned that implementing Rule 66 would be a challenge and we hoped to use this survey as not only a benchmark, but also as a means to help the courts address these challenges through the identification of promising practices that courts have had in place and operational for many years.

The oversight of adult guardianship is complicated by the fact that each state has different laws, and each county within Ohio may have different approaches to managing guardianships. Little is known about how the courts across the state provide oversight of adult guardianship, as only basic information about the number of cases opened and closed is being reported to the state by each county. Additionally, counties vary regarding the extent to which data on adult guardianship are tracked. Understanding the ways in which each county manages their guardianship program will provide insights about usual operations across the state as well as identifying innovative programs and practices that may provide a model for other counties.

METHODS

To address these needs, a survey was developed to gather information about guardians, persons under guardianship, the courts, and the guardianship process. In addition to reviewing relevant literature, we interviewed 20 key informants who have expertise in the area of adult guardianship within the state, including judges and magistrates, attorneys, and guardians. These

interviews assisted in determining the areas where information from an Ohio survey would be most useful (Reece & Roberts, 2016). After completing cognitive interviews to ensure that the questions were meaningful and clearly written, an online survey was distributed to the probate court judge in each of Ohio's 88 counties. Fifty-five, or approximately two-thirds (63%) of counties completed their surveys. Counties that responded to the survey were similar to counties that did not respond in terms of urban and rural mix, population size, and the number of older adults (age 60+) per 100,000 population. Items on the survey assessed the following topics and include the activities conducted by the court, how the courts work with their community partners, the expected outcomes of guardianship, the core aspects of adult guardianship throughout Ohio and innovative practices used by the courts to effectively manage guardianship.

SURVEY FINDINGS: GUARDIANSHIP BY THE NUMBERS

OVERVIEW OF GUARDIANSHIPS

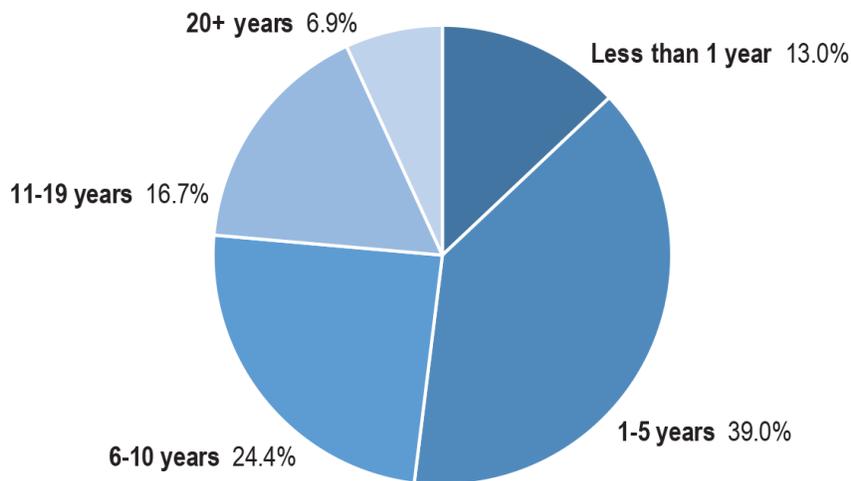
In 2014 Ohio's Probate Courts reported a total of 47,038 adults under guardianships in their counties (Supreme Court of Ohio, 2015b). This suggests that the average county has over 500 active adult guardianships to manage and monitor, with the number of cases ranging from 27 to 8000 per county (Supreme Court of Ohio, 2015b). Guardianships may be for an individual only (65%), the individual and his/her estate (32%), or an individual's estate only (3%). Activities of guardians for an estate often include managing the financial affairs and property of the person under guardianship, whereas guardians for the person are responsible for making daily decisions about living arrangements, services, and healthcare.

Respondents to the survey reported that their courts opened at least 4415 of the 7000 adult guardianship cases in 2014 and indicated an overall trend of an increasing size of adult guardianship caseloads in Ohio. This upward trend is consistent with data published by the Supreme Court of Ohio that shows Ohio Probate Courts reporting an 11 percent increase in guardianship filings from 2011 to 2014 (The Supreme Court of Ohio, 2015a). Similarly, respondents to our survey of adult guardianship in Ohio found that the majority of courts (54%) have reported an increased number of guardianship filings over the past three years and six in 10 courts (62%) described an increase in their guardianship caseload over the previous three years. Within the same timeframe, fewer than five percent of courts reported a decrease in their guardianship caseload.

Each county was asked to report information about their current caseload, such as the number of cases opened and closed in 2014, as well as the number of active cases, and the type of guardianship. Among the counties that provided complete information for the questions about the number of cases opened and the number of emergency guardianships opened in 2014, on average, approximately one-fifth (18%) were emergency guardianships. This number was calculated by averaging the proportion of emergency guardianships opened relative to the total number of cases opened in 2014 for the 28 counties with complete responses. For the 28 counties reporting, no emergency guardianship cases were opened in some counties, while emergency guardianships were common in other counties and made up a sizeable portion of their overall caseload. Approximately 10 percent of the counties did not establish any emergency guardianships in 2014. However, emergency guardianships comprised more than half of the overall guardianship caseload in four counties, and made up three-quarters of the guardianships established in one county. Per Ohio law, emergency guardianships are established “if an emergency exists and it is reasonably certain that immediate action is required to prevent significant injury to the person or estate . . . the court, ex parte, may issue any order that it considers necessary to prevent injury to the person or estate of the minor or incompetent, or may appoint an emergency guardian for a maximum period of seventy-two hours” (Ohio Revised Code, §2111.02(B)(3)).

As shown in Figure 1, adult guardianships are often a long-term legal arrangement. While about half of the current statewide caseload has been open for five or fewer years, the other cases span a longer timeframe. Nearly one-quarter of the cases in 2014 had been open for more than 10 years, and slightly fewer than 10 percent of the total have been opened for 20 years or more. Once an adult guardianship has been established, the decision is unlikely to be reversed. Adult guardianship cases are closed when the person under guardianship no longer needs a guardian. In Ohio, four percent of adult guardianship cases were closed because the person under guardianship was returned to competency. Most of the time (71%), adult guardianship cases are only closed due to the death of the ward.

Figure 1. Reported Duration of Adult Guardianships

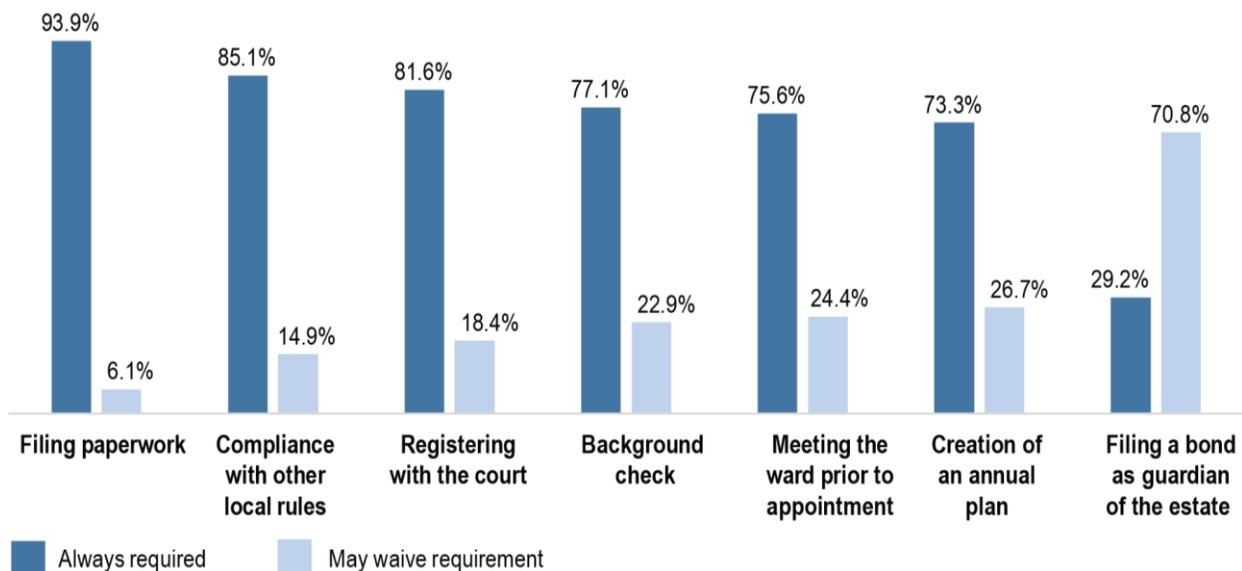


WHO ARE THE GUARDIANS?

A variety of individuals can serve as a guardian, including family members and friends of the person under guardianship as well as volunteers, attorneys, and professional guardians. We asked the counties to estimate the proportion of their guardians that fell into each of the guardian types. Statewide, counties reported that on average, about 70 percent of the guardians were family or friends who were known to the person under guardianship prior to the initiation of guardianship. Nearly 20 percent of guardianships (18%) were managed by professional guardians and attorneys. Respondents in the 55 counties identified 100 guardians with responsibilities for 10 or more wards. These individuals are most commonly professional guardians or attorneys.

Before an individual can serve as a guardian, he or she must meet the requirements of state law as described in Chapter 2111 of the Ohio Revised Code (Ohio Revised Code §2111.01 et seq.), those established by Rule 66, and any local rules a court sets forth. Most of the requirements mandated by state law (e.g., filing paperwork) are also required by local rules. While the majority of courts require compliance with state law, many may waive the requirements and in some cases do not require that the rule be met in their court (see Figure 2). This is especially true in regard to guardianships of the estate: some courts waive the requirement that a bond be posted in order to serve as guardian. Additionally, key informants reported that in many cases, if a guardianship of the estate is established for the purposes of Medicaid spend-down, the court will usually not require a bond. Key informants also mentioned that in the case of a family member guardian, probate court judges might waive the requirement as well, especially if the estate is small. Figure 2 below shows the proportion of counties indicating whether each of these is always required or sometimes waived in their county.

Figure 2. Requirements to Serve as a Guardian



The majority of courts (58%) reported that during the previous year there has been no change in the willingness of family and friends to serve as guardians. However, as guardianships proceed over time, more than three-quarters of courts (77%) report that it is at least somewhat of a challenge to secure the services of a successor guardian (i.e., one who takes over the duties for the current guardian). When looking at the specific needs of the probate courts, nearly nine in 10 courts report needing more family member or friend guardians (90%) and volunteer guardians (88%). Over four in five courts (85%) report needing more attorney guardians and nearly three-quarters (74%) report needing more professional guardians to serve their county.

Removal of guardians is very uncommon. However, respondents reported that in 2014, 100 individuals were legally removed from their appointment as a guardian. The majority of these guardians (73%) were removed because the guardian died. Fewer than twenty percent of guardians were removed for mismanagement and fewer than ten percent resigned or declined to serve (9%).

THE COURTS

Although adult guardianship falls within probate jurisdiction, courts in Ohio are structured in different ways to cover a range of responsibilities within each county. Fifteen of Ohio's 88 counties (17%) have courts with probate jurisdiction exclusively (The Supreme Court of Ohio, 2015a). All other counties have jurisdiction over juvenile (74%), general (9%), and/or domestic relations cases (9%) in addition to probate.

A team within the courts is responsible for assisting with the adult guardianship caseload. Three in four have at least one magistrate, and the average number of magistrates to help oversee guardianship cases is two (median=1, range: 1 – 9). A few courts (29%) have staff attorneys to help manage the work associated with the court's guardianship caseload. About one-fifth of the courts (22%) reported that magistrates also serve as staff attorneys who work on guardianship cases. In addition to the judge, magistrate(s), staff attorneys, and court investigators, courts also have the assistance of the deputy clerk (94%) and the court administrator (25%) to assist with the guardianship caseload.

Court Investigators

Ohio law mandates that the court investigator manage several important aspects of adult guardianship cases. As required by the Ohio Revised Code (§2111.01 et seq.), the court investigator must fulfill a number of responsibilities after an application for adult guardianship is filed including: serving a personal notice on the proposed ward, explaining the rights of the proposed ward in a manner that can be understood by the individual, conducting an investigation, and making a recommendation to the judge based on the investigation for the need to establish a guardianship for the individual (Ohio Revised Code §2111.04). When notice is served on the potential ward, the law requires the court investigator to explain to the individual the rights he or she has in respect to the process and hearing. The proposed ward has the right to be present for the hearing, to contest the application, and to be represented by independent counsel. While all

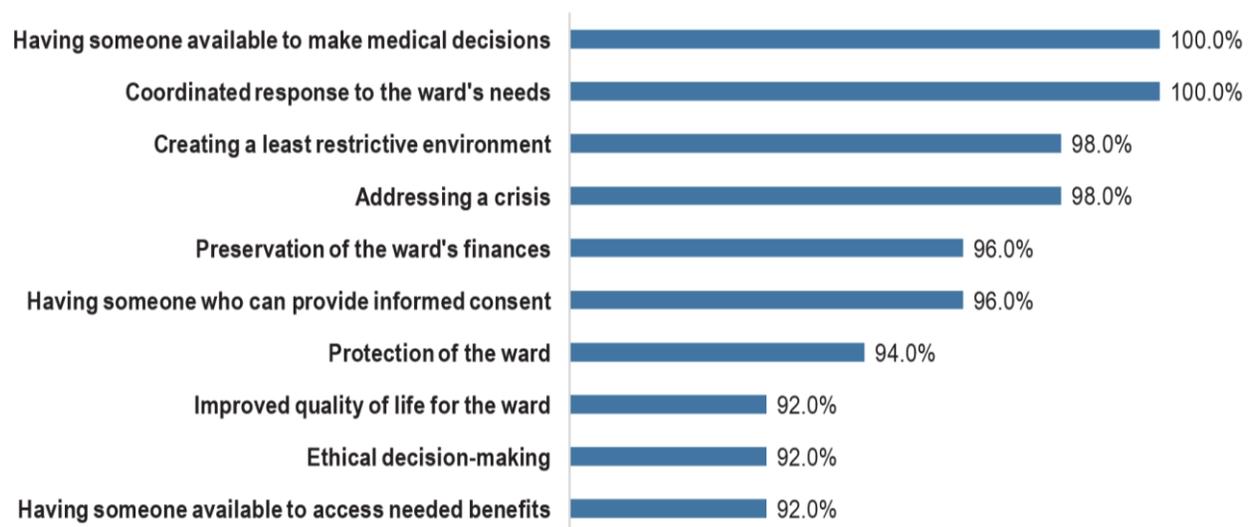
counties will provide counsel at the proposed ward’s request, our survey found that only nine percent of courts require that the proposed ward be represented by counsel during the application and initial hearing.

The Ohio Revised Code places a high degree of responsibility on court investigators to ensure that the proposed ward’s rights are protected, investigations are thorough, and reports are made back to the court. Court investigators are often responsible for informing the court of unique circumstances regarding the ward (85%), following-up on problematic issues (64%), and interviewing the applicant guardian (53%) (see Figure A in the Appendix). In addition, one in four courts (28%) reported that monitoring guardianships is an ongoing duty of their court investigator(s). Of the proportion who do perform monitoring, court investigators are reviewing complaints (100%), interviewing guardians and individuals under guardianship (92%), reviewing reports from guardians (92%), and are able to recommend a review hearing (92%). The professional training and background for court investigators is often social work (59%), law enforcement (17%), or psychology (17%). For the most part, court investigators are not full-time employees of the court. Only about one-quarter of the courts (24%) have one or more full-time court investigators on staff. In the majority of courts (57%), court investigators work on a case-by-case basis.

GOALS OF GUARDIANSHIP AND THE COURTS’ EXPECTATIONS

By virtue of being an extension of the courts, guardians play an important role in the life of the individual ward. In the survey, courts had the opportunity to indicate their perspective regarding the goals and expectations of guardianship. Findings suggest a high level of agreement from the courts as to what the goals of a successful guardianship should be, as shown in Figure 3.

Figure 3. Goals of a Successful Guardianship

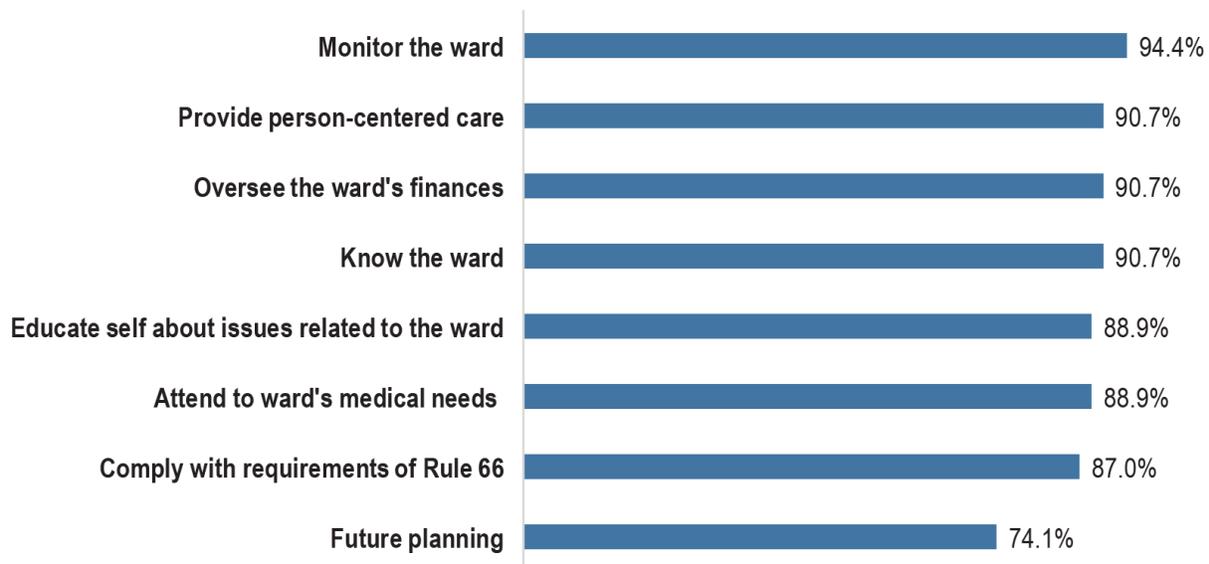


While many of the goals of a successful guardianship were generally agreed upon, respondents were asked to rank the three most important goals of a successful guardianship. The goal most frequently selected as the most important was “protection of the ward,” which appeared in two categories (the first and third ranked goal). The second most important goal was “preservation of the ward’s finances.”

Over 80 percent of courts reported that having someone available to complete end-of-life planning (86%), helping the ward to comply with medications (88%), and providing the ward with an advocate (84%) were important. None of the courts reported these as the top goals of a successful guardianship.

In order for a guardianship to be successful, courts consistently identified a number of expectations for guardians. Courts reported eight practical expectations for guardians. The most commonly reported expectations for guardians include monitoring the ward, providing person-centered care to the ward, and overseeing the ward’s finances, as shown in Figure 4.

Figure 4. Expectations the Court has for Guardians



While monitoring the person under guardianship and overseeing his or her finances are statutorily-required activities guardians are expected to engage in, the provision of person-centered care is not. While Rule 66 encourages guardians to make decisions with the individual under guardianship when practicable, person-centered care goes beyond simply involving the individual. To provide person-centered care, the individual for whom care/services are being provided is at the center of every decision that is made. This is one of the many examples that illustrate the intention of the courts to help persons under guardianship experience a high quality of life.

Courts do have high expectations for guardians, and they are engaged in many activities to assist guardians. On average, courts reported five activities designed to assist guardians in fulfilling their responsibilities. Most often, the courts assist guardians through scheduling formal hearings to work out a problem (82%), explaining how to file paperwork (69%), arranging informal meetings (59%), and providing a handbook (59%) (see Figure B in the Appendix).

FUNDING FOR GUARDIANSHIPS IN THE PROBATE COURT

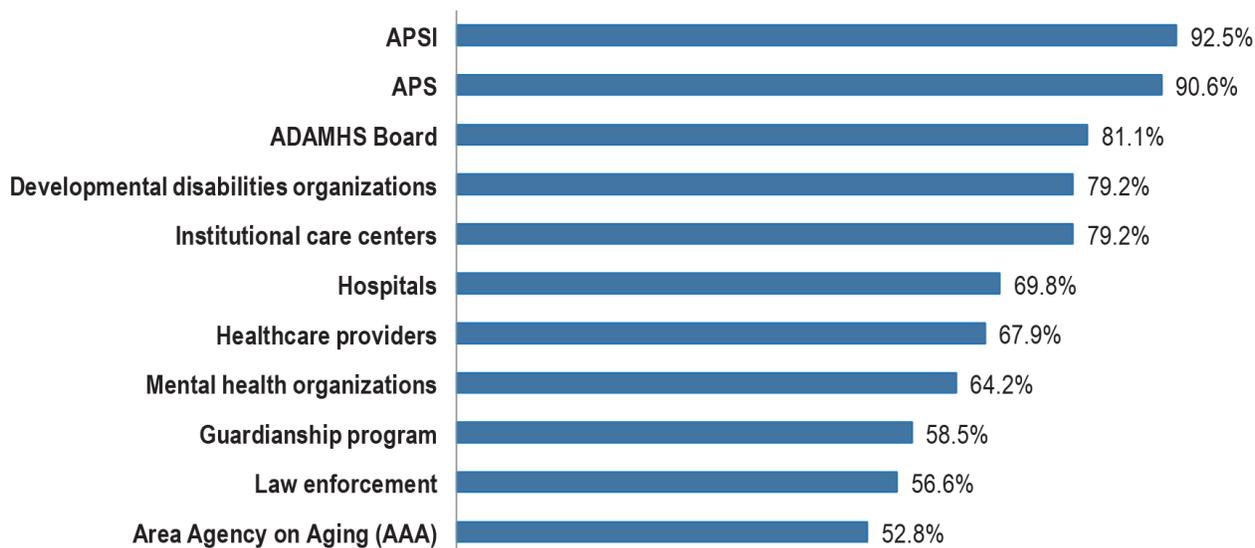
Courts have a variety of funding sources for guardianship activities. While all of the counties reported utilizing their court's indigent guardianship fund, a little more than half accessed general funds (54%). They were much less likely to leverage funds from special projects (24%) or grants (6%).

In Ohio, indigent guardianship funds are often used to pay for statutorily mandated functions, such as counsel to represent the ward at an initial hearing and to pay for an independent expert evaluation. To ensure the due process rights of potential wards are protected, courts use other funding sources to provide these protections as well; four in 10 courts use special projects funds to pay for counsel (42%) and pay for independent expert evaluations (42%). Other court expenditure categories include paying for the services of a professional guardian (50% use the indigent guardianship fund), funding a guardianship program in the county (16% use indigent guardianship funds, 42% use special project funds, and 67% use grant funds), or paying volunteer guardians a stipend (8% use indigent guardianship funds and 25% use special projects funds).

PARTNERSHIPS

The courts partner with an average of 11 organizations to conduct their guardianship activities (Range: 2 – 19). These partners may be non-profit or for-profit organizations, or public entities, that help the courts by serving as guardians, providing a monitoring function, asking for assistance with potential guardianship cases, working together to meet the needs of wards, and serving as a resource to the courts. In many cases, partners provide specialized services for specific populations. The most common partners are Advocacy and Protective Services, Inc. (APSI), Adult Protective Services (APS), and Alcohol and Drug Addiction and Mental Health Services (ADAMHS), as shown in Figure 5.

Figure 5. Organizations that Partner with the Probate Court



Courts were also asked to specify how they worked with the organizations with whom they formed partnerships. Partners could be involved in initiating the guardianship process, being appointed as a guardian, or not be directly involved in the guardianship process at all. The organizations most likely to initiate the guardianship process are APSI (70%), APS (62%), and institutional care centers such as nursing homes (53%). The organizations that are most likely to be appointed as a guardian are APSI (81%), a guardianship program (45%), and someone from the elder law bar (17%). Several organizations were identified by the courts as a partner that does not engage directly in the guardianship process, such as the ADAMHS board, the Area Agencies on Aging (AAAs), the corrections/justice system, and law enforcement.

GUARDIANSHIP PROGRAMS

The courts in Ohio often work together with guardianship programs that are managed independently from the court. In addition to APSI, which is a unique program that provides guardianship services for the developmentally disabled population across all counties in Ohio, nearly half of the courts (46%) work with a guardianship program other than APSI. For the most part (58%), these guardianship programs were geographically bound and served only one county. More than half (53%) of these programs were started within the last five years, although one-quarter (27%) were started between 2000 and 2010. Twenty percent of the guardianship programs identified were started before 2000.

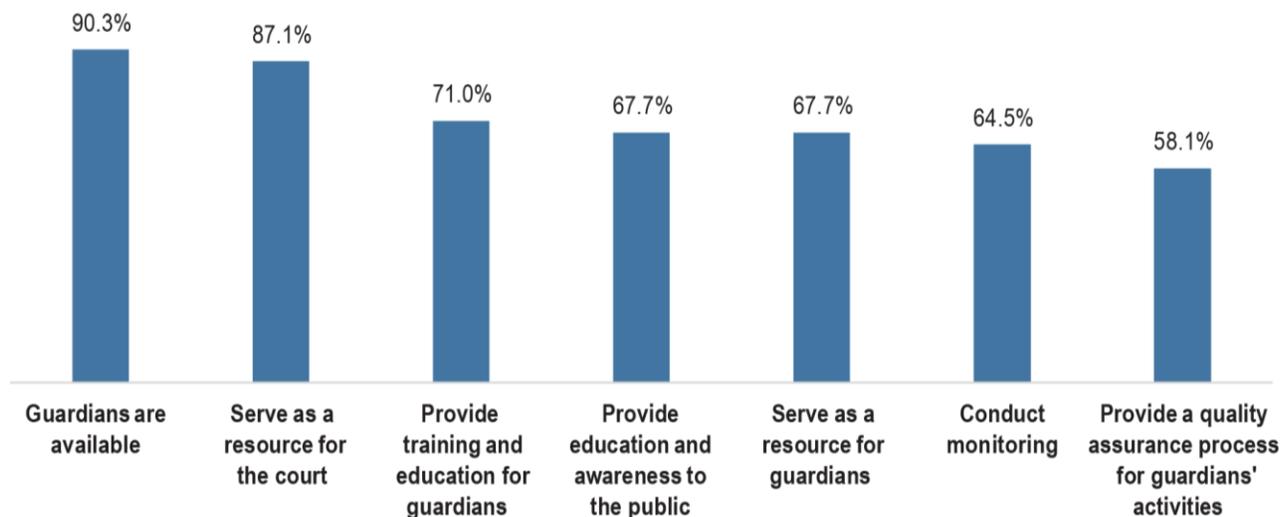
Over two-thirds of these programs (68%) offer the services of professional guardians and slightly over 60 percent (62%) of these programs provide volunteer guardians. The professionals that most often work in these programs are social workers (57%), social services staff (48%), and attorneys (39%).

Guardianship programs serve individuals from many different populations. Over 80 percent of programs serve adults age 60 and older (88%), individuals with mental health diagnoses (84%), and individuals with developmental disabilities (84%). Nearly two-thirds of programs (63%) manage only guardianships of the person. In most cases, these programs offer their services to several populations. However, over 20 percent of programs (22%) offer their services to only one specific group. Most commonly, these programs offer their services only to individuals over the age of 60 (57%), and nearly 15 percent serve only individuals with mental health diagnoses.

All courts that reported information about guardianship programs were asked whether the program(s) they worked with had waiting lists. About 30 percent of programs (31%), including APSI, have waiting lists. Of those programs with waiting lists, over 40 percent (43%) have turned down referrals from the court in the previous six months. The most common reasons that referrals were turned down by the program are that the referral did not meet the program’s criteria (80%), the program has caseload limits (30%), and the individual would not be a good fit with the program (30%). Only 20 percent of referrals were refused because of their complexity.

All courts (including those that only have access to guardianship services provided by APSI) were asked about the benefits of having a guardianship program available in their county. The most commonly reported benefit is that guardians are available, as shown in Figure 6.

Figure 6. Benefits of Having a Guardianship Program in the County



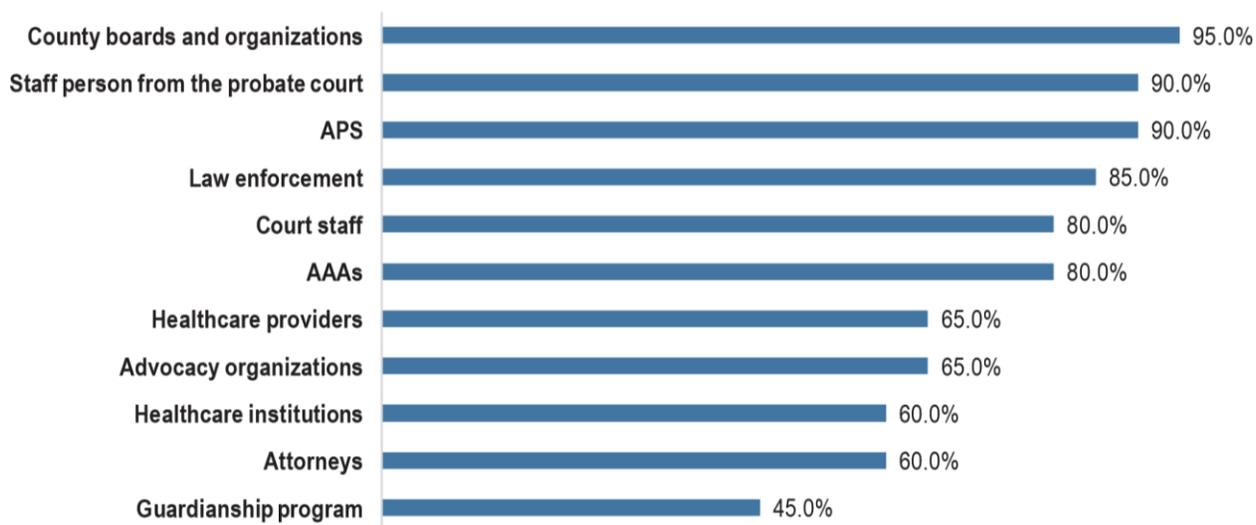
The majority of courts were knowledgeable about how guardianship programs in their county are funded. The most common sources of funding for guardianship programs are the probate court’s indigent guardianship fund (72%), other county funds (44%), and a special projects fund (20%).

INTERDISCIPLINARY TEAMS (I-TEAMS)

As previously mentioned, an I-Team is a group of local, interdisciplinary stakeholders that are brought together to resolve a specific issue or problem in their county. In this case, the role of the I-Team is to improve adult guardianship practices and address challenging cases that span multiple social service and health care systems. Collaboration among several agencies and programs acknowledges that clients often interact with multiple systems of care and helps to ensure a good resolution to crises by bringing together resources and sharing information. Most I-Teams were established in the past five years; only seven percent of courts report their I-Team was established before 2010. Three out of four courts (76%) report that their county’s I-Team is a voluntary collaborative. Slightly more than 10 percent of courts (14%) report that their county’s I-Team was mandated by legislation or administrative policy. Nearly all of the courts (89%) report that their I-Team has a standing meeting, and one-third report that their I-Team operates with formalized policies and procedures (39%) and maintains written materials (33%). A very small percentage of courts (6%) report that their I-Team has a revenue source.

I-Team membership is inclusive of a variety of organizations and disciplines. The most commonly reported members are county boards and organizations, a staff person from the probate court, APS, and law enforcement, as shown in Figure 7. Courts reported an average of nine entities that take part in the county’s I-Team (range: 4 – 13).

Figure 7. I-Team Members



I-Teams are involved in a variety of activities. Courts report that the I-Teams in their county take part in an average of 10 activities (range: 5 – 16). The most common activities are supportive in nature, for example, coordinating available resources (100%), information (100%), providing networking opportunities for colleagues (90%), and updating members (85%), as shown in Table A in the Appendix. Additionally, at least 50 percent of courts report that their county’s I-Team is engaged in proactive strategies to assist individuals who are likely impacted by guardianship (e.g., individuals with cognitive impairment, developmental disabilities, or mental health diagnoses). These proactive strategies include encouraging the investigation and prosecution of elder abuse, resolving complex cases, planning and carrying out coordinated investigations, resolving difficult health and social problems, and cutting through system delays.

Activities of the Court

Probate courts are very active in helping guardianship be a successful relationship for both the person under guardianship and the guardian. The average court is engaged in eight activities that can assist those under guardianship (range: 2 – 11). The most commonly reported activities include, appointing an attorney or guardian ad litem (GAL) (96%), monitoring complaints (94%), screening guardians (87%), and ensuring that guardians are complying with training (85%), as shown in Figure 8.

Figure 8. Internal Probate Court Activities



COMPLAINT MONITORING

Half of the courts report that they had a complaint monitoring process in place before the June 1, 2015 legislative changes. Of those that implemented the process before it was mandated by Rule 66, about 15 percent have had this process in place for more than 10 years. From the 43 courts that responded to questions about complaint monitoring, we learned that complaints about the guardian originated from an array of sources. Most often, complaints regarding the guardian were received from the person under guardianship (86%, 37 of the 43 courts), from family members (81%, 35 of the 43 courts), from third parties (61%, 26 of the 43 courts), and from care/service providers (47%, 20 of the 43 courts). After a complaint has been received, the courts respond to these complaints by assessing the situation (88%), scheduling a review hearing (86%), and notifying the guardian (78%).

While courts are monitoring complaints for red flags, very few have a formal system to track the complaints that come in. Respondents reported the number of complaints that they received from all sources in calendar year 2014. Over half of the courts (54%) did not know the total number of complaints they had received. Of those courts that did track the complaints they received, over 60 percent (64%) reported that they did not receive any complaints in calendar year 2014. Of those counties that did track the number of complaints and who received complaints, the average number of complaints received during calendar year 2014 was 21 (range: 1 – 90).

TRAINING

In addition to the six-hour fundamentals course and the three-hour continuing education courses provided by the Ohio Supreme Court (available in many communities and online for all guardians), over 60 percent of courts (62%) report that they also provide training on additional topics for guardians. Table B in the Appendix describes the most common training topics for guardians offered by the probate courts. While the majority of courts (68%) did not establish their training program until 2015 when it became a requirement of Rule 66, nearly 10 percent of courts (9%) established their training program more than 20 years ago and close to 20 percent (18%) did so at least 10 years ago. Of those courts that do offer a training program, about half require guardians to receive training before they are permitted to serve. Most provide training both online and in-person, and offer a variety of training topics to help guardians fulfill their duties more effectively. On average, courts that offer training provide eight different topics (Range: 1 – 17). However, very few courts (3%) require that guardians complete training on specific topics.

With the enactment of Rule 66, there has been concern that the training requirement may deter some individuals from serving as guardians. However, six in 10 courts (62.5%) that have training programs report that their court's requirement has not led to a change in the willingness of individuals to serve as guardians. For the courts that implemented a required training course before 2015, over 50 percent report no change and fewer than 15 percent report potential guardians are less willing.

Courts that provide training did report several benefits, including allowing guardians to become familiar with court practices (93%), ensuring that guardians are prepared (87%), and that the court becomes familiar with the guardians (73%). While there are benefits, there are also challenges. Courts most commonly report that logistics (78%), attendance (78%) and the cost of providing training (63%) are challenges to providing a training program, especially when guardians are unfamiliar with technology and need help with online registration or other activities.

We asked respondents whether specific groups of guardians (family/friends, attorneys, professionals, and volunteers) needed additional training. Courts reported that volunteers (51%) and family and friends (47%) were more likely to need additional training than attorneys and professional guardians. Over 90 percent of judges (94%) report that they believe they have enough training to effectively oversee guardianship cases in their court.

In spite of their belief that family members and friends need additional training to fulfill their guardianship responsibilities, four in 10 courts (43%) reported that they are waiving the pre-appointment training for this group of guardians. The pre-appointment training is waived less often for attorneys (8%), professional guardians (8%), and volunteer guardians (6%). Approximately half of the courts (55%) report that they will only waive this requirement on an individual, case-by-case basis. Nearly 15 percent report that they will not waive this requirement for any group of guardians.

FORMAL MONITORING PROGRAMS

Nearly 40 percent of courts are engaged in a formal monitoring program and most (63%) existed before June 1, 2015. Of these, more than four in 10 monitoring programs had been established more than 10 years ago.

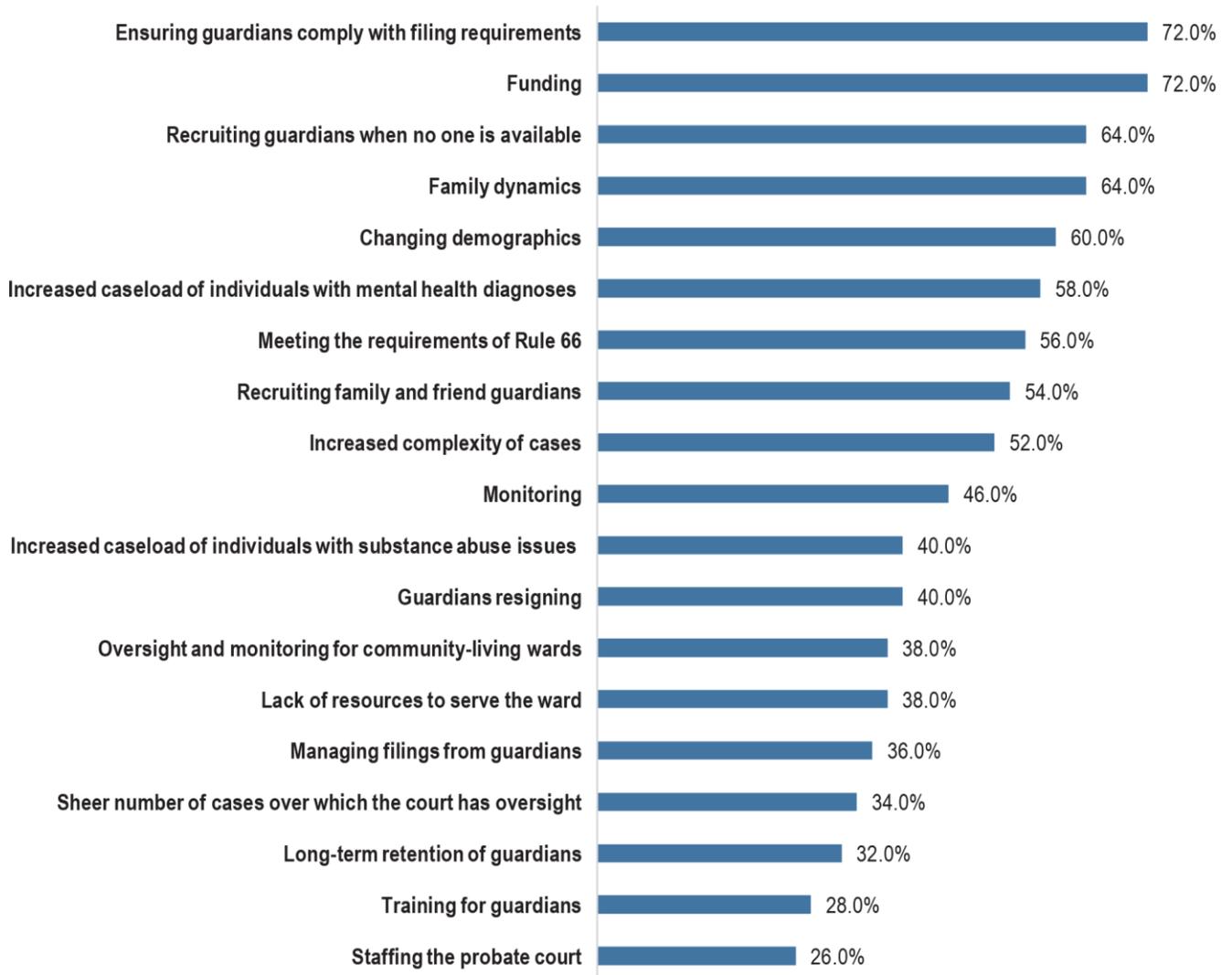
Four in five courts (83%) report that proactive monitoring is conducted by the court investigator. In addition to the court investigator, one-third of courts report that judges, volunteers, and administrative professionals also conduct monitoring. Courts are most commonly monitoring the visits made by the guardian to the person under guardianship, the safety and quality of life of the person under guardianship, and complaints (see Figure C in the Appendix).

Courts use a variety of monitoring approaches. The most common methods used to conduct monitoring are reviewing documentation that is submitted to the court, including a review guardian's reports (95%) and complaints (90%). However, many courts also ensure that someone from the court meets personally with the person under guardianship and/or guardian (79%) and that review hearings are held (74%). Among the courts that visit with the person under guardianship and/or guardian, there are a variety of ways in which these visits are triggered. About half of the courts request a personal meeting after a set period of time (47%), while others schedule a meeting after a complaint is received (27%). For some courts, the timing of the visit is determined by the unique nature of the case (13%).

CHALLENGES

The probate courts face a number of challenges related to the administration of guardianships. From a checklist of 27 possible challenges, respondents were asked to check all that were issues for their court. On average, courts selected 10 areas that posed a challenge to them in administering guardianships (Range: 1 – 27). The most commonly reported challenges were ensuring that guardians comply with filing requirements, funding, and recruiting guardians when no one is available to serve, as shown in Figure 9.

Figure 9. Challenges of Managing Guardianships

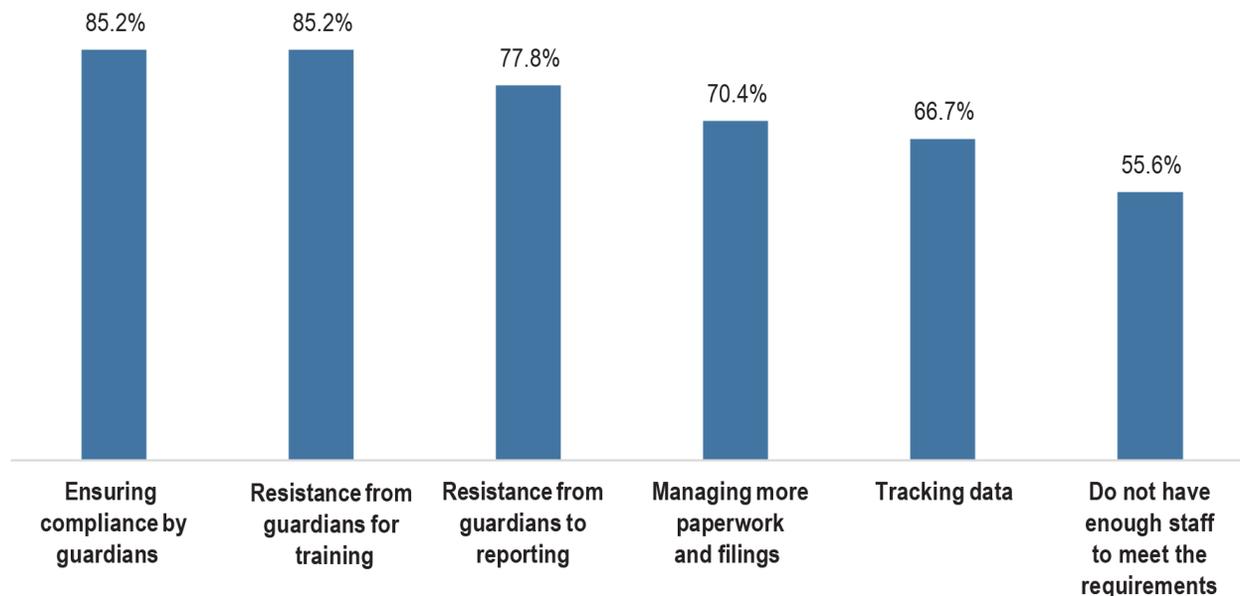


Of the challenges they selected, respondents were asked to select the three that posed the greatest challenges to the court. Most frequently reported as the number one challenge was funding. The second greatest challenge was recruiting guardians. The courts ranked several challenges as a third area including meeting the requirements of Rule 66, staffing the probate court, and the resignation of guardians.

Over 60 percent of courts (64%) report that finding a guardian when no one is available to make an application is a challenge for their court; 15 percent of courts report that this is their top challenge in administering guardianships. We asked courts how they handle this situation when it arises. The majority of courts report that they must lean on the attorneys in their county to fulfill the role of guardian (82%), courts work with guardianship programs in their county if there is one (29%), and also work with social service agencies to find someone who is able to fulfill the obligation (7%).

Over half of the courts (56%) report that complying with the requirements of Rule 66 are a challenge for them. The most common aspects of Rule 66 that courts report being a challenge are ensuring compliance by guardians (85%), resistance from guardians to training (85%), and resistance from guardians to reporting (78%), as shown in Figure 10.

Figure 10. Most Common Challenges Related to Complying with Rule 66



CONCLUSION

In this first statewide survey of adult guardianship practices in Ohio, the courts have provided valuable information about how they go about the work of managing guardianships. Through this detailed survey, we can share a description of the courts' activities that relate to the responsibility of overseeing guardianship for Ohio's most vulnerable citizens. This descriptive study highlights the increasing number of adult guardianships and the existing resources and processes in place to protect persons under guardianship and assist guardians. In general the courts are very active in managing guardianships internally to best serve persons under guardianship and the guardians.

Experts in adult guardianship and the leadership of the Ohio Supreme Court have been a driving force behind Rule 66. The intention is to elevate practice standards for guardians and the courts through incorporating recommendations from the National Guardianship Association and other model practice standards. In order to meet these laudable changes in practice, the courts will have to adopt many changes.

From what we have learned, some conclusions can be drawn about the current adult guardianship practices of the courts in Ohio. On average, courts manage over 700 persons under guardianship and nearly as many guardians. Rule 66 has brought about some significant changes to the process and expectations for managing guardianships. Specifically, the increased filings from guardians, the increased monitoring function of the court, and the increased reporting from the court required by Rule 66 have resulted in significant changes for the court. It is worth noting that more than one key informant observed that the amount of work required by Rule 66 demanded another full-time employee. Unfortunately, these key informants reported that very few courts would have the funding to hire someone.

More than half of the courts will have to put a formalized complaint tracking and monitoring system in place, nearly half will have to begin to oversee training of guardians, and almost all will have to create an internal structure to manage the additional paperwork and the more proactive monitoring required by Rule 66. The typical court will likely be creating all of these processes from scratch.

Promising Practices

Through interviews with key informants as well as responses to the survey, several promising practices to address obstacles have been identified. These include building strong community collaborations, recruiting and retaining guardians, using volunteers creatively, and proactive approaches to monitoring guardianships.

Courts that can develop and maintain strong community collaborations bring in a variety of supports to augment the activities of the court. As we have seen, counties vary dramatically based on the number of persons under guardianship, staffing, presence of a guardianship program, and participation in I-Teams or collaborations with other community partners. Leveraging resources and bringing the community together was a critical component to achieving more holistic adult guardianship services.

Guardianship programs were identified as being very beneficial to the courts because they ensure the availability of paid or volunteer guardians, serve as a resource for the court, and often provide training and education for guardians. These programs are often involved with recruiting and supporting volunteer guardians, so that guardians are encouraged to continue in their role.

Additionally, monitoring programs that provide an in-person visit offer a more objective assessment of the guardian/person under guardianship pair. This information, along with the guardian's reporting requirements, allow for a professional to assess the person under guardianship's living environment and quality of life as well as make sure the guardian has the resources and supports needed to do his or her job effectively. In some counties, volunteers and college students are assisting with a proactive monitoring program.

NEXT STEPS

As we have seen, probate courts face numerous challenges related to the administration of guardianships that emerge at each stage of the process. The courts are struggling to deal with the sheer number of cases over which the court has oversight as well as changing demographics of persons under guardianship and an increasingly complex caseload. Courts can have difficulties with recruiting people to serve as guardians, providing adequate training and oversight, and supporting the long-term retention of guardians. Across the board, funding is a universal issue, along with the difficulty of finding a person to serve as a guardian when no one is available. Limited funding results in a reduced capacity to serve persons under guardianship, as this lack of resources affects the staffing of probate courts and the ability to conduct more proactive monitoring. Additionally, having to find a guardian when no one is available not only causes disruption to the person under guardianship: it also requires the court to take on additional responsibilities while attempting to find someone who would be willing to serve as a guardian. Given the long duration and the anticipated complexities of adult guardianships, it is important to understand more about the characteristics of the persons under guardianship in Ohio. However, only six of our 55 responding counties tracked descriptive information about their guardians or persons under guardianship in 2015. This means that we know very little about the characteristics of populations served.

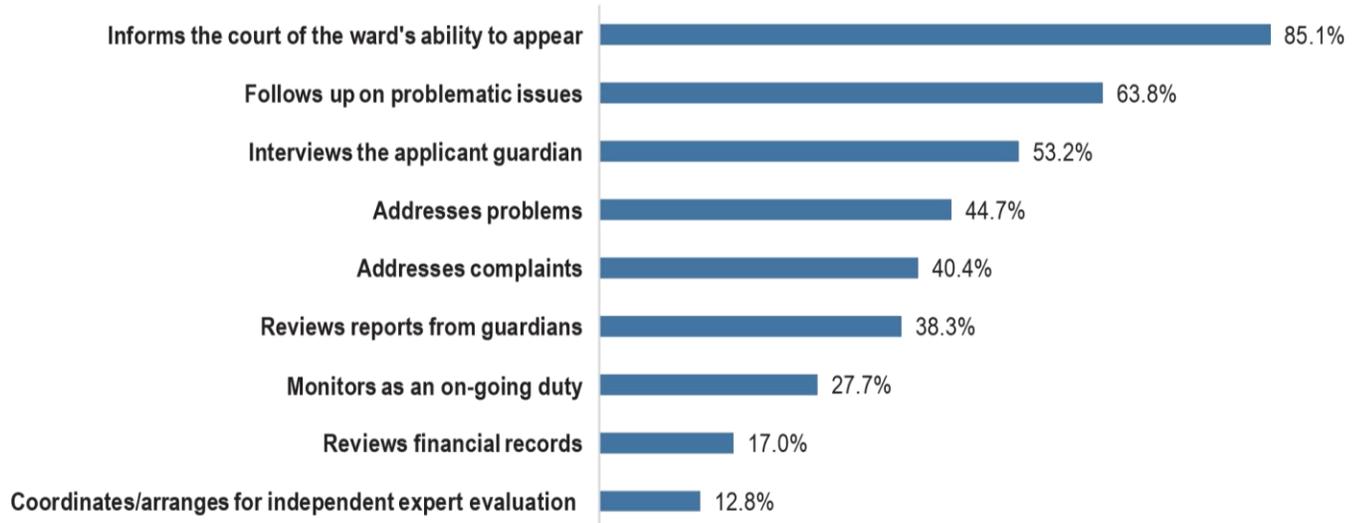
The information presented within this report provides a means through which the courts can critically examine state-wide and county-specific guardianship practices within the context of the existing range of activities that involve supporting and monitoring guardians, responding to complaints, working with community partners, and leveraging resources. Ultimately, we hope these survey findings will be used to help the courts learn from one another and better serve persons under guardianship.

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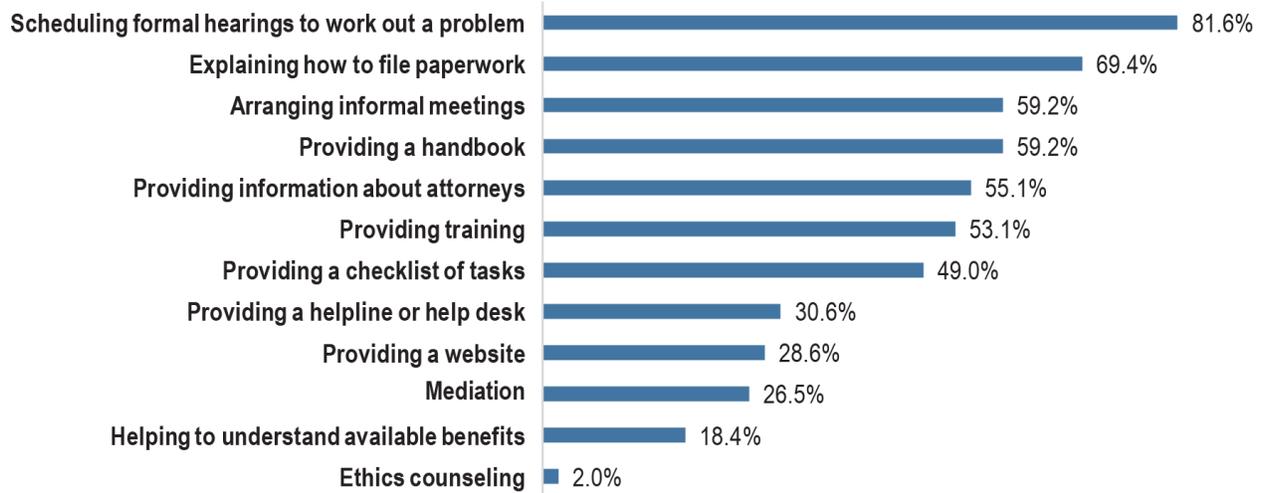
Appendix A

Figure A. Court Investigator Duties



Appendix B

Figure B. How Courts Meet the Needs of Guardians



Appendix C

Table A. I-Team Activities

Information sharing	100.0%
Coordinating available resources	100.0%
Providing opportunities for colleagues	95.0%
Updating members	90.0%
Encouraging investigation/prosecution of elder abuse	85.0%
Networking	85.0%
Identifying service gaps and systems problems	80.0%
Resolving complex cases	75.0%
Planning and carrying out coordinated investigations	70.0%
Resolving difficult health and social problems	55.0%
Planning and carrying out training	50.0%
Cutting through system delays	50.0%
Providing expert consultation	40.0%
Advocating for change	30.0%
Providing training to team members	30.0%

Appendix D

Table B. The Most Common Training Topics Offered by the Courts for Guardians

Responsibilities owed to the ward	70.8%
Reporting requirements	66.7%
Finding resources in the community	58.3%
Ethics	54.2%
Working with healthcare/service professionals	54.2%
End-of-life planning	50.0%
Benefits eligibility	45.8%
Funeral pre-planning	41.7%
How to access benefits	41.7%
How to navigate the care needs of wards	37.5%
How to navigate the nursing home	37.5%
Topics related to aging	37.5%
Topics related to developmental disabilities	33.3%
Topics related to intellectual disabilities	33.3%
Topics related to mental health issues	33.3%
Medical terminology	29.2%
Evidence-based interventions	16.7%

Appendix E

Figure C. What the Courts are Monitoring

