



Administrative Conference of the United States

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**SSA REPRESENTATIVE PAYEE:  
SURVEY OF STATE GUARDIANSHIP LAWS AND COURT  
PRACTICES**

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December 24, 2014

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## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

The Administrative Conference of the United States (ACUS) is an independent federal agency dedicated to improving federal administrative processes through consensus-driven applied research, and provision of non-partisan expert advice and recommendations to federal agencies. The Social Security Administration (SSA) has asked ACUS to study state adult guardianship<sup>1</sup> laws and court practices with an eye toward suggesting potential enhancements in information-sharing and coordination on overlapping guardianship-representative payee matters.<sup>2</sup>

### **I. Introduction**

For years, various entities—including the Government Accountability Office (GAO) and the U.S. Congress—have called on the Social Security Administration (SSA) to improve its collaboration with state courts to protect incapacitated persons<sup>3</sup> better and prevent misuse of federal funds. Recommendations from GAO and the Congress have included the need for better coordination, development of a systematic means for compiling and exchanging data and information, and identification of overlapping fiduciaries (i.e., guardians and representative payees) or populations of protected persons (i.e., wards and incapacitated Social Security beneficiaries).

In 2014, SSA asked the Administrative Conference of the United States (ACUS) to study current state guardianship laws and state court practices. ACUS was charged with (1) carrying out legal research on state laws nationwide governing guardian selection, monitoring, and sanctions; (2) conducting a survey that captures information on state court practices and procedures relating to guardianships, and analyzing the results of the survey;<sup>4</sup> and (3) conducting interviews with up to nine state organizations or governmental entities with expertise in, or that provides services related to, adult protective services or foster care in order to evaluate their respective practices related to guardianship and benefits monitoring. ACUS contracted with the National Center for State Courts (NCSC) to administer and analyze the survey component of the

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<sup>1</sup> In some states the term “conservator” is used to refer to guardians with certain powers over another person’s finances or property.

<sup>2</sup> This report primarily addresses laws and court practices in the adult guardianship area. Guardianship of adults is to be presumed unless the report explicitly states otherwise.

<sup>3</sup> This report uses the term “incapacitated person” in a narrow sense. For purposes of this report, “incapacitated person” refers to a beneficiary for whom a legal guardian is appointed by the court because the beneficiary cannot manage, or direct the management of, his or her benefit payments. SSA appoints a representative payee for these individuals, and the representative payee receives the beneficiary’s monthly payments directly and uses those funds to meet the beneficiary’s basic needs such as food, clothing, and shelter. Currently, more than eight million people who receive Social Security or Supplemental Security Income need help managing their benefits and have a representative payee (*See* <http://www.socialsecurity.gov/policy/docs/statcomps/supplement> for data on representative payees).

<sup>4</sup> SSA sought and obtained approval of this survey from the Office of Management and Budget (OMB) per the requirements of the Paperwork Reduction Act and OMB guidance. (*See* OMB Control Number 0960-0788, Expiration date: 7/31/17.)



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project. ACUS also worked with the National Guardianship Association (NGA) to disseminate a survey to its members.

Following this Introduction section, Part II of this report analyzes and explains the results of a survey, developed jointly by ACUS and NCSC, investigating guardianship practices in state courts. Respondents answered questions on guardianship issues including selection, monitoring, and discipline of guardians, caseloads and electronic case management capabilities, and court interaction with agencies and other organizations.

Part III provides a summary of U.S. and U.S. territory statutes governing guardians and conservators. The section first addresses guardian eligibility, including qualification criteria, disqualification criteria, and background checks. Part III then presents an overview of monitoring and discusses inventories, financial reports, and filing procedures. Lastly, it includes an analysis of conditions for removals and other sanctions.

Part IV provides a summary of interviews conducted with representatives of eight adult guardianship and foster care agencies. This section identifies common practices among these organizations, highlights important differences, and relates both concerns and recommendations provided by interviewees.

Finally, Part V offers common themes and observations which are based on the surveys and interviews.



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### **II. Survey of State Court Guardianship/Conservatorship Procedures & Practices**

In April 2014, ACUS contracted with the National Center for State Courts (NCSC) to administer a survey on adult guardianships to gather information on state court practices for managing these cases. The survey closed on August 29, 2014, at which time 1,002 respondents completed the survey, including 554 judges, 301 court staff, and 143 guardians.<sup>5</sup>

NCSC is an independent, nonprofit court improvement organization with strong connections to state and local courts. The organization's Research Division specializes in a variety of data collection and analysis methods, including the administration of electronic surveys. For this project, NCSC partnered with the Conference of State Court Administrators (COSCA) to disseminate the survey and encourage participation from judges and court staff. COSCA members include the state court administrator or equivalent official in each of the fifty states, the District of Columbia, Puerto Rico, American Samoa, Guam, Northern Mariana Islands, and the Virgin Islands.

#### ***A. Summary of Findings***

The survey analysis is based on a non-probability sampling method known as a convenience sample. Absent a list of all courts and judges who hear guardianship cases, this sample was based on reaching out through state court administrative offices and the NGA listserv. Consequently, findings cannot be interpreted as statistically representative of all state court practices. Nevertheless, the results provide for the first time a rich quantitative and qualitative set of data that is informative on these issues. Respondents provided extensive comments that are organized in the appendices of the report that illuminate the issues behind the numbers.

Key findings specific to this sample are presented below. Specific items are grouped into the following topics: selection of guardians, monitoring practices, case management, sanctions and removal of guardians, caseload trends and court outreach.

#### **Selection of Guardians**

- *Type of Guardians:* About 75 percent of all guardians are friends, family, or

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<sup>5</sup> There were four respondents identified as "Other."



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acquaintances of the incapacitated person. Public guardians<sup>6</sup> account for 12 percent of all guardianships. Professional guardians<sup>7</sup> account for 9 percent of guardianships of the person and 12 percent of guardianships of the estate.

- *Criminal Background Checks:* Almost four of ten survey respondents indicated that criminal background reports are not required of prospective non-professional<sup>8</sup> guardians of the estate.
- *Credit/Financial Reports:* The vast majority of court respondents (60 percent) do not review credit or financial reports on prospective guardians of the estate.
- *Rosters of Potential Guardians:* More than half of the court respondents (53 percent) indicated they do not have a list of potential guardians. Most of those respondents with rosters (60 percent) indicated that they are restricted to use by court personnel.
- *SSA Representative Payee Status:* Almost half of court respondents (47 percent) indicated that the court inquires about the prospective guardian's representative payee status in relation to the incapacitated person in most or all cases.

### Monitoring Practices

- *Inventory Requirements:* Three of every four respondents (75 percent) stated that inventory filings are required at or near the time of the appointment of Guardians of the Estate in all cases.
- *Annual Financial Accountings:* Two-thirds of respondents (67 percent) stated that annual financial accountings for Guardianships of the Estate are required in all cases.
- *Standardized Forms:* The majority of respondents (67 percent) indicated that the court requires Guardians of the Estate to file financial accountings on specific court-provided or approved forms.
- *SS Benefits Line Item:* Of those respondents with court-approved forms, about half (55 percent) stated that at least some of the forms include a specific line item for Social Security benefits received by an incapacitated person.
- *Audits/Evaluations:* Three fourths of all respondents (77 percent) stated that at least some of the financial accounting forms are subject to audits or a similar type of evaluation. In those cases, court staff and judges are most likely to be responsible for the auditing task.

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<sup>6</sup> Public guardians are appointed by the court, and are employed to act as guardians when no private person or agency is available or able to act in a guardianship capacity. Examples include public guardian offices or social service agencies.

<sup>7</sup> Professional guardians are guardians who are not related to the incapacitated person, and who may receive payment for their guardianship services.

<sup>8</sup> A non-professional guardian is a guardian who is not certified or licensed as a professional, such as a family member or friend of the incapacitated person.



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### Case Management

- *E-Filing Practices:* The vast majority of respondents (72 percent) indicated that e-filing was not possible in adult guardianship cases. In those courts where e-filing is used, all of the primary guardianship documents can be filed electronically.
- *Case Management Systems:* Two-thirds of court respondents indicated they use an electronic case management system or database for guardianship cases; another 10 percent expect to use one in the next three years. Such systems are most likely to include filing and disposition data.
- *Public Access to Files:* Over 60 percent of court respondents (62 percent) stated that all or most guardianship case files are available to the public—either electronically or in paper form.

### Sanctions/Removal of Guardians

- *Misconduct and Sanctions:* Two-thirds of court respondents (64 percent) indicated that the court had taken actions against at least one guardian for misconduct, malfeasance, or serious failure to fulfill their obligations in the past three years. In these cases, the most serious sanctions applied were the removal and appointment of a successor guardian and issuing a show cause or contempt citation.
- *Record-Keeping:* Two-thirds of court respondents who had reported a misconduct-related case indicated that records related to the removal of the guardian were kept in individual case files; 18 percent of respondents stated that no records were kept.

### Caseloads

- *Filings and Open/Pending Cases:* Almost half of court respondents (48 percent) reported new filings for cases that included a Guardianship of the Person and/or Guardianship of the Estate ranged from 10 to 99 cases. In terms of open/pending cases, 40 percent of court respondents estimated they carried fewer than 50 cases involving one or both types of guardianship.
- *Filing Trends:* The majority of court respondents (57 percent) indicated that the number of adult guardianship filings have stayed about the same over the last 3 years. A sizeable proportion (38 percent) responded that filings have increased.
- *Dual Guardian-Representative Payee Status:* Almost two-thirds of court respondents (64 percent) did not know what percentage of Guardians of the Estate also serve as representative payee for Social Security benefits.



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### Court Outreach and Interaction

- *Local Interaction:* Most court respondents indicated that the court collaborated with community groups and local agencies that work with incapacitated persons from time to time (41 percent) or very little (39 percent).
- *Federal Interaction:* More than half of the court respondents (55 percent) indicated that they had no interaction with federal agencies and another 14 percent did not know. Those who reported some level of interaction were likely to identify the Social Security Administration and the Department of Veterans Affairs as the major federal agencies.
- *SSA Interaction:* Of those court respondents who reported some level of interaction with federal agencies, 61 percent reported interaction was on a case-by-case basis and infrequent. In contrast, guardians reported much more frequent interaction with SSA—about half of guardians reported their interaction as systematic and/or frequent.
- *Enhanced Coordination with SSA:* Two-thirds of guardians (66 percent) indicated that enhanced coordination or sharing of information with SSA would be beneficial, while 43 percent of court respondents indicated enhanced coordination would be beneficial.
- *Coordination Needs:* Respondents who indicated enhanced coordination with SSA would be beneficial described four areas in which there is a need for greater information sharing: case information; coordination and communication; monitoring; and SSA rules and administration.

### ***B. Survey Administration***

ACUS led the development of the questionnaire, in consultation with NCSC, NGA, and other experts. NCSC transferred the questionnaire into an online software program and in partnership with state court administrators, disseminated the questionnaire to judges and court staff. The NGA was responsible for disseminating an abbreviated survey for guardians to its members.

### The Questionnaire

The questionnaire was divided into following sections: (1) Respondent Characteristics; (2) Selection of Guardians; (3) Monitoring of Guardians; (4) Case Management of Guardianships; (5) Sanctions/Removal of Guardians; (6) Caseload Information; and (7) Court Outreach/Community Interaction. Respondents were asked to provide additional comments and to provide their contact information to receive a copy of the results. The questionnaire, which can be found in Appendix A, was converted into an online survey using ConfirmIt® software.



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ACUS worked with NGA to create an abbreviated version of the survey that was relevant to guardians (see Appendix B).

### Key Definitions

The cover letter included definitions to account for variances in terminology across the country. For purposes of the survey, the following key terms were defined:

*Guardian:* an individual or organization appointed by a court to exercise some or all powers over the person and/or the estate of an adult determined by a court to lack capacity to make decisions on a temporary or permanent basis. When the term "guardian" or "guardianship" is used in survey questions, it should be read broadly to cover both guardians of the person and of the estate.

*Guardian of the Person:* a guardian who possesses some or all powers with regard to the personal affairs of an adult.

*Guardian of the Estate:* a guardian who possesses some or all powers with regard to the finances or property of an adult. (In many states, this type of guardian is referred to as a "conservator.")

*Incapacitated Person:* an adult who has been determined by a court to lack capacity to make some or all personal and/or financial decisions and for whom a guardian has been appointed. (Some states may refer to such individuals as "persons under guardianship," "conservatees," or "wards.")

### Administration of the Survey

Two versions of the survey were developed and administered to different audiences. The full-length survey was distributed to judges and court staff throughout most states. The abridged survey included only those items relevant to guardians and was distributed by NGA.

*Court Survey:* The administration of the court survey was guided by the goal of attaining a large number of judicial and court staff respondents from throughout the United States. Traditionally, participation in surveys tends to be rather low among this group. NCSC's survey methodology called for the involvement of state court administrators to boost response rates. Each state/territory court administrator is a member of the Conference of State Court Administrators (COSCA), which agreed to partner with NCSC on this project. The project was endorsed by the presidents of NCSC and COSCA and an introductory letter was disseminated



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through the COSCA listserv (see Appendix C). The letter, sent on June 17, 2014, requested state court administrators to designate a point of contact within their office for the purpose of disseminating the survey within their state. NCSC then emailed state points of contact instructions on how to disseminate the survey through distribution lists or via personal correspondence (see Appendix D). Points of contact were asked to disseminate the cover letter to judges and/or court managers throughout their state. The cover letter included a link to the online survey, the estimated time of completion, and the submission deadline (see Appendix E). Generic language for email prompts was also provided. The recommended timeframe for the administration of the survey follows.

- 
- |   |                                    |
|---|------------------------------------|
| - Tuesday, July 8: Initial distribution | -Tuesday, August 5: Email prompt 2 |
| - Tuesday, July22: Email prompt 1       | - Friday, August 29: Survey closes |
- 

Variations in court structures from state to state and the preferences of state court administrative offices resulted in some variations in how the survey was distributed from state to state. For example, in Maine, the state courts do not have jurisdiction over adult guardianship cases, which are handled by the county-based Probate Courts. In this case, the state court administrator forwarded the survey request to the lead judge of Probate Courts with a request to forward the cover letter to other probate judges and clerks. In New Jersey, the Administrative Office of the Courts requested some information from court staff and other information from judges—the responses were then compiled and submitted electronically from the state office. In Massachusetts, the point of contact completed one questionnaire on behalf of the entire state. In Arizona, the state court administrator forwarded the survey link to only the state’s largest court system (Maricopa County). There were also variations in the distribution of the survey link by the type of court professional. In 20 states, the survey link and cover letter were sent to distribution lists that included only judges. In 5 states, the survey request was sent to only court managers/administrators. In 19 states, the cover letter and survey links were sent to distribution lists that included both judges and court managers. As a result, some differences found between judges/judicial officers and court staff may be attributed to different distribution methods used among participating state court administrative offices.

*Guardian Survey:* The National Guardianship Association disseminated the link to the shortened guardian survey through their listserv. At the time of dissemination, there were 1,193 listserv members. According to NGA, members of the listserv were self-identified as professional guardians (874 or 73 percent), allied professionals, such as judges, social workers, nursing home administrators (76 or 6 percent), family/volunteer guardians (44 or 4 percent), and retired guardians (10 or less than 1 percent). In addition, newly certified guardians received



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complimentary memberships and were not categorized into guardian types. Thus, the vast majority of listserv members were professional guardians (874) or certified guardians (about 189)—accounting for almost 9 out of 10 listserv members.

The cover letter was sent to NGA listserv members on July 25 (see Appendix F). A follow-up cover letter was sent on July 28. Additionally, the request to participate was included in NGA's August newsletter, which was distributed to members on August 5.

### ***C. Study Limitations***

The primary limitation of the survey is that fact that due to the necessity of using a non-probability sample, the results cannot be interpreted as representative of the guardianship practices in all states. When time, funds and data permit, surveys should be based on a probability sample of the population of interest (popularly known as a representative sample) in which each member of that population has an equal chance of being selected. Drawing a representative sample requires considerable expense and time in identifying the population of interest, developing a randomized or stratified selection scheme, and collecting individual contact information for respondents. Given the fact that no comprehensive list identifying courts or judges that have oversight of adult guardianship cases exists, use of a probability sample was not possible. Instead, a non-probability sample (also known as a convenience sample) was drawn—relying on state court administrators in each state to send the questionnaire through distribution lists of judges or court managers or through personal correspondence with individuals.

Similarly, the survey of guardians was limited to members of the National Guardianship Association's listserv. As discussed above (see *Guardian Survey*), nearly all NGA listserv members are professional and/or certified guardians, whereas the majority of guardians active in state court guardianship cases are family members. Finally, the geographic concentration of respondents—discussed below in the *Background Characteristics* section—shows that a large proportion of both court and guardian respondents are located in a relatively few number of states. Thus, findings from this study are not necessarily representative of the practices of all state courts.

### ***D. Survey Response Rates***

The total number of court respondents and their geographic distribution—854—is an excellent basis for this exploratory study. The estimated response rate of 28 percent is conservative and most likely an underestimate. This is due to the fact that in most states, a request to participate was sent to all judges and court administrators, whether or not they handled



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adult guardianship cases. Thus, since not all of those recipients were qualified to respond (i.e., they do not adjudicate or manage adult guardianship cases), the true universe of qualified respondents is not known.<sup>9</sup> The estimated response rate by state/territory can be found below in Exhibit 1.

The response rate of the guardian survey is more straightforward since it was distributed through the NGA listserv. A total of 143 guardians completed the survey. The number of respondents as a percentage of the number of listserv members (1,193) yields a response rate of 12 percent. If respondents are representative of the membership, we expect that most respondents are professional and/or certified guardians.

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<sup>9</sup> The term “estimated response rate” is used in this study to reflect the fact that in many cases, the survey was distributed beyond the initial circle of those who were contacted. In a non-probability (convenience) sample, the complete universe of all possible respondents is not known. For example, in California, the survey was posted to the online *Court News Update* and on several internal probate and family law listservs as well as to all presiding judges and court executive officers. Presiding judges or court managers who received a request to participate probably forwarded the survey link on to other judges and court staff. While the number who responded is known, the total number of all who might have been eligible to respond is not known. Georgia was unable to provide the number of persons who were asked to participate in the survey. Several state court administrative offices did not disseminate the survey—Kentucky, Louisiana, Maryland, Minnesota, Mississippi, Montana, and Rhode Island. Guam was the only territory to participate in the survey.



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**Exhibit 1: Estimated Court Response Rates by State/Territory**

| State/Territory  | TOTAL Requests Sent | TOTAL RESPONSES | Estimated Response Rate | Dist. to Judges | Dist. To Court Mgrs. |
|------------------|---------------------|-----------------|-------------------------|-----------------|----------------------|
| ALABAMA          | 68                  | 14              | 21%                     | ✓               |                      |
| ALASKA           | 16                  | 7               | 44%                     | ✓               |                      |
| ARIZONA          | 1                   | 1               | 100%                    |                 | ✓                    |
| ARKANSAS         | 68                  | 23              | 34%                     | ✓               |                      |
| CALIFORNIA       | 116                 | 30              | 26%                     | ✓               | ✓                    |
| COLORADO         | 78                  | 13              | 17%                     | ✓               | ✓                    |
| CONNECTICUT      | 112                 | 42              | 38%                     | ✓               | ✓                    |
| DELAWARE         | 3                   | 3               | 100%                    | ✓               | ✓                    |
| DIST OF COLUMBIA | 2                   | 2               | 100%                    |                 | ✓                    |
| FLORIDA          | 40                  | 29              | 73%                     | ✓               | ✓                    |
| GEORGIA          | Not Available       | 19              | --                      |                 |                      |
| GUAM             | 1                   | 1               | 100%                    | ✓               |                      |
| HAWAII           | 11                  | 6               | 55%                     | ✓               |                      |
| IDAHO            | 27                  | 15              | 56%                     | ✓               | ✓                    |
| ILLINOIS         | 24                  | 5               | 21%                     | ✓               |                      |
| INDIANA          | 212                 | 38              | 18%                     | ✓               |                      |
| IOWA             | 38                  | 14              | 37%                     | ✓               |                      |
| KANSAS           | 62                  | 20              | 32%                     | ✓               | ✓                    |
| MAINE            | 15                  | 1               | 7%                      | ✓               |                      |
| MASSACHUSETTS    | 1                   | 1               | 100%                    | ✓               |                      |
| MICHIGAN         | 306                 | 35              | 11%                     | ✓               | ✓                    |
| MISSOURI         | 129                 | 38              | 29%                     | ✓               | ✓                    |
| NEBRASKA         | 61                  | 27              | 44%                     | ✓               |                      |
| NEVADA           | 61                  | 9               | 15%                     | ✓               | ✓                    |
| NEW HAMPSHIRE    | 12                  | 10              | 83%                     | ✓               |                      |
| NEW JERSEY       | 54                  | 35              | 65%                     | ✓               | ✓                    |
| NEW MEXICO       | 44                  | 11              | 25%                     | ✓               | ✓                    |
| NEW YORK         | 64                  | 18              | 28%                     | ✓               |                      |
| NORTH CAROLINA   | 6                   | 6               | 100%                    |                 | ✓                    |



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|                |              |            |            |   |   |
|----------------|--------------|------------|------------|---|---|
| NORTH DAKOTA   | 1            | 1          | 100%       | ✓ |   |
| OHIO           | 162          | 52         | 32%        | ✓ | ✓ |
| OKLAHOMA       | 243          | 46         | 19%        | ✓ | ✓ |
| OREGON         | 53           | 25         | 47%        | ✓ | ✓ |
| PENNSYLVANIA   | 60           | 56         | 93%        | ✓ |   |
| SOUTH CAROLINA | 79           | 5          | 6%         | ✓ |   |
| SOUTH DAKOTA   | 41           | 10         | 24%        | ✓ |   |
| TENNESSEE      | 123          | 7          | 6%         | ✓ |   |
| TEXAS          | 95           | 22         | 23%        | ✓ | ✓ |
| UTAH           | 25           | 19         | 76%        | ✓ | ✓ |
| VERMONT        | 29           | 7          | 24%        | ✓ | ✓ |
| VIRGINIA       | 260          | 58         | 22%        | ✓ | ✓ |
| WASHINGTON     | 44           | 9          | 20%        |   | ✓ |
| WEST VIRGINIA  | 84           | 13         | 15%        | ✓ |   |
| WISCONSIN      | 72           | 43         | 60%        |   | ✓ |
| WYOMING        | 23           | 8          | 35%        | ✓ |   |
| <b>TOTAL</b>   | <b>3,026</b> | <b>854</b> | <b>28%</b> |   |   |

### *E. Findings*

The questionnaire was divided into seven sections and provided the opportunity for respondents to add additional comments. Findings are organized accordingly into Respondent Characteristics, Selection of Guardians, Monitoring Practices, Case Management, Sanctions/Removal of Guardians, Caseloads, and Court Outreach/Community Interaction. Throughout much of this discussion, the general terms of “judges” and “court staff” are used. “Judges” include judicial officers, such as commissioners and magistrates, who act in a judicial capacity in adult guardianship cases. “Court staff” includes a variety of court professionals, such as administrators, managers, clerks, and court auditors.



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### *i. Respondent Characteristics*

The typical survey respondent was a judge/judicial officer working in either a probate or general jurisdiction court. Exhibit 2 provides some basic descriptive data.

**Exhibit 2: Respondents by Profession and Type of Court**

|                    | Number | Percent | Type of Court               | Number | Percent |
|--------------------|--------|---------|-----------------------------|--------|---------|
| <b>Judge</b>       | 554    | 55      | <b>General Jurisdiction</b> | 521    | 52      |
| <b>Court Staff</b> | 301    | 30      | <b>Probate</b>              | 447    | 45      |
| <b>Guardian</b>    | 143    | 14      | <b>Limited Jurisdiction</b> | 23     | 2       |
| <b>Other</b>       | 4      | <1      | <b>Other</b>                | 11     | 1       |
| <b>Total</b>       | 1,002  | 100%    | <b>Total</b>                | 1,002  | 100%    |

*Item: Please describe your most frequent role in the guardianship process.*

*Item: In which type of court do you primarily work or serve?*

Almost 90 percent of respondents primarily work or serve in a general jurisdiction court (52 percent) or probate court (45 percent). Many states do not have specialized probate courts or divisions, and some probate courts do not have jurisdiction over adult guardianship cases. In a few states, such as Maine, local county or municipal courts handle adult guardianship cases; these are referred to as limited jurisdiction courts. Those who responded as “other” were from the state-level administrative office of the courts or did not identify a court.

The geographic distribution of all respondents, by profession, is shown in Exhibit 3. The greatest numbers of court respondents were from Virginia (58), Pennsylvania (56), and Ohio (52). About half (52 percent) of all court respondents work in just ten states: Virginia, Pennsylvania, Ohio, Oklahoma, Wisconsin, Connecticut, Indiana, Missouri, Michigan, and New Jersey. Similarly, the guardians who responded to the survey are concentrated geographically. While the 143 guardian respondents represent 32 different states, almost one half (49 percent) live in six states: Oregon (16 guardians), Florida (13 guardians), California (11 guardians), Washington (11 guardians), Utah (10 guardians), and Pennsylvania (9 guardians).



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**Exhibit 3: Type of Respondent, by State/Territory<sup>10</sup>**

|                      | Judges | Court Staff | Guardians | Total |
|----------------------|--------|-------------|-----------|-------|
| ALASKA               | 5      | 2           | 2         | 9     |
| ALABAMA              | 14     | 1           | 0         | 15    |
| ARKANSAS             | 24     | 0           | 0         | 24    |
| ARIZONA              | 0      | 1           | 7         | 8     |
| CALIFORNIA           | 7      | 24          | 11        | 42    |
| COLORADO             | 10     | 4           | 3         | 17    |
| CONNECTICUT          | 14     | 28          | 1         | 43    |
| DISTRICT OF COLUMBIA | 0      | 2           | 0         | 2     |
| DELAWARE             | 0      | 3           | 1         | 4     |
| FLORIDA              | 20     | 9           | 13        | 42    |
| GEORGIA              | 19     | 0           | 1         | 20    |
| GUAM                 | 0      | 1           | 0         | 1     |
| HAWAII               | 4      | 2           | 1         | 7     |
| IOWA                 | 10     | 4           | 1         | 15    |
| IDAHO                | 4      | 11          | 0         | 15    |
| ILLINOIS             | 4      | 1           | 2         | 7     |
| INDIANA              | 31     | 7           | 7         | 45    |
| KANSAS               | 14     | 6           | 0         | 20    |
| MASSACHUSETTS        | 0      | 1           | 0         | 1     |
| MARYLAND             | 0      | 0           | 4         | 4     |
| MAINE                | 0      | 1           | 1         | 2     |
| MICHIGAN             | 12     | 22          | 3         | 37    |
| MINNESOTA            | 0      | 0           | 4         | 4     |
| MISSOURI             | 38     | 0           | 2         | 40    |
| NORTH CAROLINA       | 6      | 0           | 2         | 8     |
| NORTH DAKOTA         | 0      | 1           | 2         | 3     |
| NEBRASKA             | 17     | 10          | 0         | 27    |
| NEW HAMPSHIRE        | 9      | 0           | 0         | 9     |
| NEW JERSEY           | 34     | 1           | 0         | 35    |
| NEW MEXICO           | 11     | 0           | 3         | 14    |

<sup>10</sup> Table excludes four respondents who listed “other” as profession and could not be reclassified.



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|                |            |            |            |            |
|----------------|------------|------------|------------|------------|
| NEVADA         | 5          | 3          | 5          | 13         |
| NEW YORK       | 18         | 0          | 3          | 21         |
| OHIO           | 28         | 25         | 3          | 56         |
| OKLAHOMA       | 46         | 0          | 0          | 46         |
| OREGON         | 10         | 15         | 16         | 41         |
| PENNSYLVANIA   | 55         | 1          | 9          | 65         |
| SOUTH CAROLINA | 3          | 2          | 2          | 7          |
| SOUTH DAKOTA   | 10         | 0          | 0          | 10         |
| TENNESSEE      | 7          | 0          | 2          | 9          |
| TEXAS          | 7          | 14         | 6          | 27         |
| UTAH           | 3          | 16         | 10         | 29         |
| VIRGINIA       | 22         | 36         | 0          | 58         |
| VERMONT        | 3          | 4          | 3          | 10         |
| WASHINGTON     | 4          | 5          | 11         | 20         |
| WISCONSIN      | 5          | 38         | 2          | 45         |
| WEST VIRGINIA  | 13         | 0          | 0          | 13         |
| WYOMING        | 8          | 0          | 0          | 8          |
| <b>TOTAL</b>   | <b>554</b> | <b>301</b> | <b>143</b> | <b>998</b> |

### *ii. Selection of Guardians*

This section addressed types of guardians, criminal background checks, review of credit or financial reports on prospective guardians, the use and availability of guardian rosters, and inquiries into SSA representative payee status.

Types of Guardians: Court respondents were asked to provide the percentage of Guardians of the Person and Guardians of the Estate by the following types: family/friends; professional guardians; public guardians; volunteers; and other. Because the courts seldom track this level of data, estimates were accepted. Respondents could also check “don’t know” if they were unable to provide estimates. The number of court respondents and the mean averages are shown in Exhibit 4.



**Exhibit 4: Types of Guardians Appointed for Guardianship of the Person and Guardianship of the Estate**

| <b>Guardianship of Person</b> | <b>Mean</b> | <b>Guardianship of Estate</b> | <b>Mean</b> |
|-------------------------------|-------------|-------------------------------|-------------|
| <b>Family/friends</b>         | 74%         | <b>Family/friends</b>         | 73%         |
| <b>Professional Guardians</b> | 9%          | <b>Professional Guardians</b> | 12%         |
| <b>Public Guardians</b>       | 12%         | <b>Public Guardians</b>       | 12%         |
| <b>Volunteers</b>             | 8%          | <b>Volunteers</b>             | 3%          |
| <b>Other</b>                  | 14%         | <b>Other</b>                  | 18%         |
| <b>Number</b>                 | 772         | <b>Number</b>                 | 749         |
| <b>Don't Know</b>             | 87          | <b>Don't Know</b>             | 110         |

*Item: In the past year, about what percentage of Guardians of the Person appointed in your court fell into the following categories?*

*Item: In the past year, about what percentage of Guardians of the Estate appointed in your court fell into the following categories?*

**Note: Estimates were welcome if data for actual percentages was not unavailable. The means reflect average responses and do not sum to 100%.**

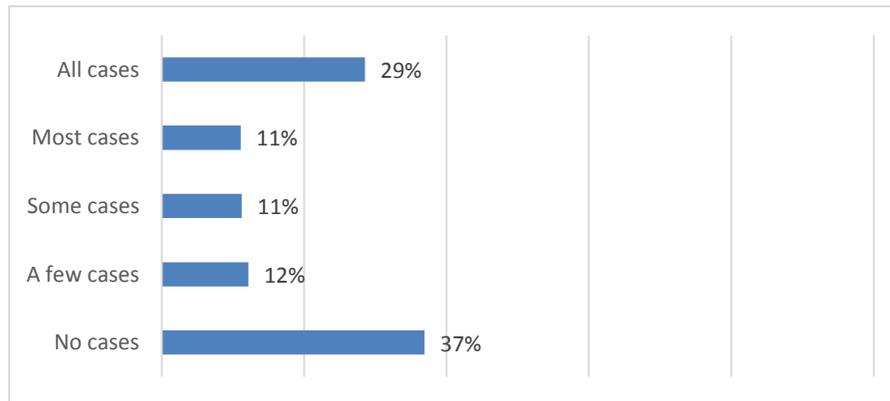
Court respondents estimated that family and friends comprise about three-fourths of guardianships of the person and estate. Beyond this category, responses will be impacted by the availability of professional guardians, public guardians, and volunteer guardianship programs within each specific jurisdiction. Those who responded to the “other” category were asked to specify this category—a few noted local attorneys serving in this capacity but most were unable to clarify their response.

**Criminal Background Reports:** Court respondents were asked to describe their court’s practice regarding review of criminal background checks on perspective Guardians of the Estate prior to appointment. Of 855 court respondents, 91 (11 percent) responded with “Don’t Know.” Exhibit 5 shows the responses of the 764 judges and court staff who were able to respond to this item.



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**Exhibit 5: Court Review of Criminal Background Reports on Prospective Non-Professional Guardians of the Estate**



*Item: Generally, which statement best describes your court’s practice regarding review of criminal background reports on prospective non-professional Guardians of the Estate (i.e., individuals who are not certified or licensed guardians) prior to appointment?*

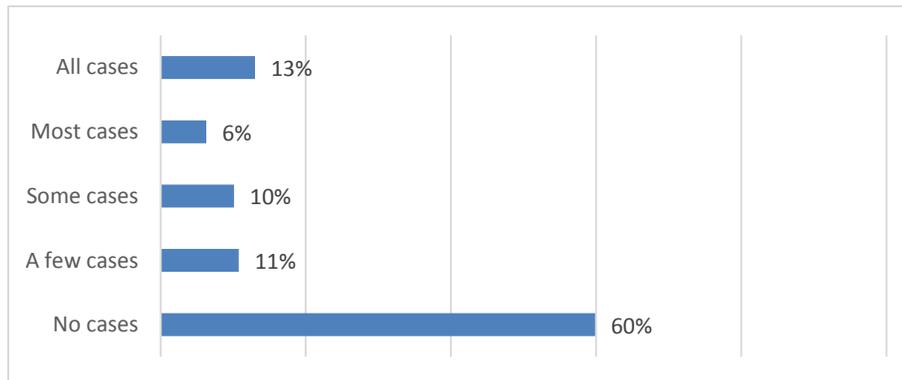
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As shown in the figure above, court responses about background reports were varied. Of the court respondents who could answer the question, almost four in ten (37%) reported that criminal background reports were required in none of their Guardianship of the Estate cases. About a third (34%) indicated that background checks were conducted in “a few cases,” “some cases,” or “most cases.” Finally, about three in ten (29%) reported that criminal background checks were conducted in all cases. There was no difference in responses between judges and court staff.

Credit or Financial Reports: Court respondents were asked to describe their court’s practices regarding the review of credit or financial reports on prospective non-professional guardians. Responses from the 762 respondents who were able to answer this item are shown in Exhibit 6 (93 persons or 11 percent responded “Don’t Know”).



**Exhibit 6: Court Review of Credit or Financial Reports on Prospective Non-Professional Guardians of the Estate**



*Item: Generally, which statement best describes your court’s practice regarding review of credit or financial reports on prospective non-professional Guardians of the Estate (i.e., individuals who are not certified or licensed guardians) prior to appointment?*

Relatively few respondents (13 percent) indicated that they review credit or financial reports in all cases. Rather, the vast majority of court respondents (60 percent) stated that they do not review credit or financial reports on prospective guardians of the estate in any of their cases.

Using and Distributing Rosters: Both court and guardian surveys included an item on the existence of rosters of potential guardians. Exhibit 7 shows the results.

**Exhibit 7: Existence of Rosters or Lists of Potential Guardians**

| Type of Respondent | No  | Yes | Don't know | Number of Respondents |
|--------------------|-----|-----|------------|-----------------------|
| <b>Court</b>       | 53% | 36% | 10%        | 855                   |
| <b>Guardian</b>    | 20% | 43% | 37%        | 143                   |

*Item: Does your court or local agency have a roster or list of potential guardians (i.e., individuals or organizations) that may be asked by the court to serve as guardians when needed?*

About one-third of court respondents (36 percent) indicated that their court or local agency has a roster—more than half (53 percent) do not have a roster. A sizeable percentage of



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guardians (37 percent) did not know if the courts in which they serve had a roster or list of potential guardians.

A follow-up question was asked of the 374 respondents who confirmed that their court or agency used a roster of potential guardians. Exhibit 8 shows responses in regard to the availability of rosters to the general public.

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### Exhibit 8: Public Access to Guardian Rosters (Limited to Respondents with Rosters)

|  | Number | Percent |
|--|--------|---------|
| <b>Roster is on the court's website</b>  | 28     | 8       |
| <b>Roster available at the courthouse</b>  | 53     | 14      |
| <b>Roster available both on the court's website and at the courthouse</b>                      | 13     | 4       |
| <b>Roster not public--only for use by court personnel</b>                                      | 224    | 60      |
| <b>Not publicly available, but can be made available to the Social Security Administration</b> | 5      | 1       |
| <b>Available, but from elsewhere</b>   | 51     | 14      |
| <b>Total</b>   | 374    |         |

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*Item: Is this roster or list of potential guardians currently available to the general public?*

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Of respondents who stated that the court or agency kept a roster of potential guardians, 60 percent indicated that the roster was not available to the general public. Relatively few respondents noted availability of the roster on the court's website (8 percent), at the courthouse (14 percent) or both (4 percent). Only 1 percent of those with rosters indicated that while the roster is not publicly available, they could make it available to the Social Security Administration. Those who indicated that a roster was available, but from elsewhere (i.e., not the court's website or the courthouse) (14 percent), were asked to specify. Examples of some other sources of rosters were state-level guardianship or human services offices.

SSA Representative Payee Status: Court and guardian surveys included an item that asked whether the court typically inquires whether the individual or entity appointed as guardian also serves as a representative payee for Social Security Benefits received by the incapacitated persons. Exhibit 9 shows responses.



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**Exhibit 9: Inquiries into Social Security Representative Payee Status**

|                 | All cases | Most cases | Some cases | A few cases | No cases | Don't know | Number |
|-----------------|-----------|------------|------------|-------------|----------|------------|--------|
| <b>Court</b>    | 23%       | 24%        | 17%        | 9%          | 14%      | 12%        | 855    |
| <b>Guardian</b> | 6%        | 12%        | 8%         | 6%          | 46%      | 22%        | 143    |
| <b>Combined</b> | 20%       | 23%        | 16%        | 8%          | 18%      | 14%        | 998    |

*Item: When your court appoints a guardian, does it typically inquire whether that individual or entity is also serving (or expects to serve) as a representative payee for Social Security benefits (OASDI/SSI payments) received by the Incapacitated Person?*

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Almost half of court respondents (47 percent) indicated that the court inquires about SSA representative payee status in all or most cases, compared to 18 percent of guardians. A large percentage of guardians reports that this is done in “no cases.”

*iii. Monitoring Practices*

The section on monitoring focused on information related to inventories, accountings, court forms, line items for Social Security benefits, and auditing/evaluation practices.

Inventory Requirements: Respondents were asked to describe their court’s practice on whether Guardians of the Estate must file inventories at or near the time of their appointment. Responses for the three major types of respondents are shown in Exhibit 10.



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**Exhibit 10: Inventory Filings Required at or Near the Time of the Appointment of Guardians of the Estate**

|                    | All cases | Most cases | Some cases | A few cases | No cases | Don't know | Number |
|--------------------|-----------|------------|------------|-------------|----------|------------|--------|
| <b>Judges</b>      | 70%       | 14%        | 5%         | 2%          | 2%       | 7%         | 554    |
| <b>Court Staff</b> | 81%       | 11%        | 2%         | 2%          | 1%       | 3%         | 301    |
| <b>Guardian</b>    | 82%       | 10%        | 0%         | 1%          | 1%       | 7%         | 143    |
| <b>Combined</b>    | 75%       | 13%        | 3%         | 2%          | 2%       | 6%         | 998    |

*Item: Generally, which statement best describes your court's practice regarding whether Guardians of the Estate must file inventories at or near the time of their appointment (i.e., within 120 days)?*

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Analyses from previous sections grouped judges and court staff together because responses between the two groups were very similar. However, in terms of monitoring, there are some differences that warrant a breakout among court respondents. Over 80 percent of court staff (81 percent) and guardians (82 percent) stated that inventory filings are required at or near the time of the appointment of guardianships of the estate, in contrast to 70 percent of judges/judicial officers. While judges are responsible for appointing the guardianship of the estate, it may be court staff who oversee the submission of inventories and accountings. This division of labor may explain variances in responses.

Annual Accounting Requirements: Respondents were asked to describe the court's practice on whether Guardians of the Estate are required to file annual financial accountings. Exhibit 11 shows responses for each type of respondent.



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**Exhibit 11: Annual Financial Accountings Required for Guardians of the Estate**

|                    | All cases | Most cases | Some cases | A few cases | No cases | Don't know | Number |
|--------------------|-----------|------------|------------|-------------|----------|------------|--------|
| <b>Judges</b>      | 67%       | 18%        | 5%         | 2%          | 1%       | 7%         | 554    |
| <b>Court Staff</b> | 63%       | 25%        | 5%         | 2%          | 2%       | 3%         | 301    |
| <b>Guardian</b>    | 73%       | 12%        | 7%         | 1%          | 1%       | 6%         | 143    |
| <b>Combined</b>    | 67%       | 19%        | 5%         | 2%          | 2%       | 6%         | 998    |

*Item: Generally, which statement best describes your court’s practice regarding whether Guardians of the Estate must file annual financial accountings?*

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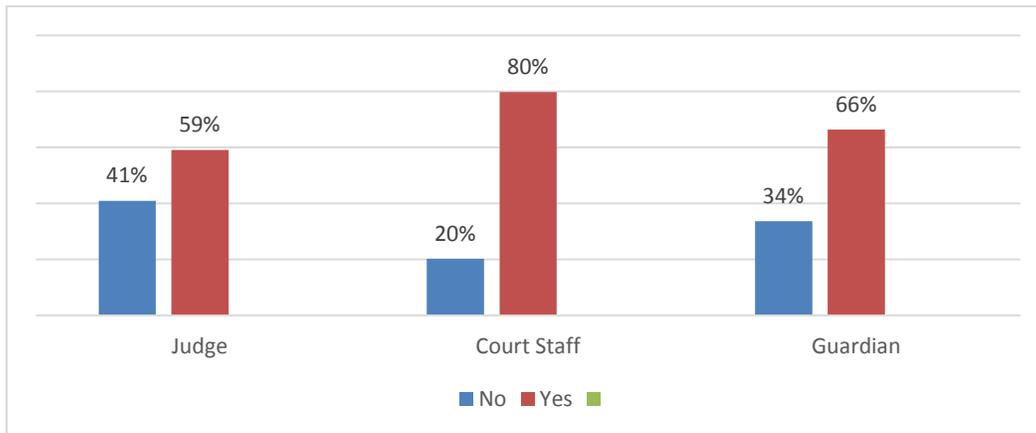
In total, two-thirds of respondents (67 percent) stated that annual financial accountings are required in all cases. Unlike the previous item, there was considerable consistency in responses between judges, court staff, and guardians. A handful of comments noted that some states require accountings biennially rather than annually.

Court Forms: Court and guardian respondents were asked if the court required Guardians of the Estate to file financial accountings on specific court-provided or approved forms. Exhibit 12 shows the percentage of responses by type. The graph excludes those respondents who stated they “Don’t Know” if there are court-provided or approved forms—71 respondents (7 percent).



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**Exhibit 12: Court Requirements to File Financial Accountings on Specific Court-Provided or Approved Forms**



*Item: Does your court require Guardians of the Estate to file financial accountings on specific court-provided or approved forms?*

*Note: Percentages are based on 501 judges/judicial officers, 286 court staff, and 125 guardians.*

---

There is considerable difference between the responses from judges and court staff. While the vast majority of court staff (80 percent) indicated that court-provided or approved forms are required, only 59 percent of the judges concurred. Two-thirds of guardians (66 percent) indicated the required use of court forms. In total, 67 percent of the total sample indicated that court forms are required in financial accountings.

Respondents who stated that they require court forms for accountings were asked if the forms provided a specific line item for Social Security benefits received by an incapacitated person. Exhibit 13 shows the responses provided by the 607 respondents who indicated they used court forms.



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**Exhibit 13: Inclusion of a Specific Line Item for Social Security Benefits Received by an Incapacitated Person**

|                    | <b>Yes, all forms</b> | <b>Yes, but only some forms</b> | <b>No</b> | <b>Don't Know</b> | <b>Number</b> |
|--------------------|-----------------------|---------------------------------|-----------|-------------------|---------------|
| <b>Judges</b>      | 57%                   | 3%                              | 31%       | 9%                | 296           |
| <b>Court Staff</b> | 41%                   | 8%                              | 39%       | 11%               | 228           |
| <b>Guardian</b>    | 49%                   | 4%                              | 41%       | 6%                | 83            |
| <b>Combined</b>    | 50%                   | 5%                              | 35%       | 10%               | 607           |

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*Item: Do these financial accounting forms provide a specific line item for Social Security benefits (OASDI/SSI payments) received by an Incapacitated Person?*

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Of those respondents who use standardized court forms for accountings, half (50 percent) indicate that all forms include a line item for Social Security benefits received by an incapacitated person. Another 5 percent indicate that this line item is included on some forms. More than one-third of respondents (35 percent) stated that a line item pertaining to Social Security benefits was not included in court accounting forms. Results varied considerably by type of respondent.

Audits/Evaluations of Accountings: Court and guardian respondents were asked if financial accountings filed by Guardians of the Estate are subject to audits or similar type of evaluation by court personnel or other authorized persons. Exhibit 14 shows responses for judges, court staff, and guardians.



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**Exhibit 14: Auditing or Evaluations of Financial Accountings Filed by Guardians of the Estate**

|                    | <b>Yes, all forms</b> | <b>Yes, but only some forms</b> | <b>No</b> | <b>Don't Know</b> | <b>Number</b> |
|--------------------|-----------------------|---------------------------------|-----------|-------------------|---------------|
| <b>Judges</b>      | 63%                   | 9%                              | 19%       | 10%               | 548           |
| <b>Court Staff</b> | 83%                   | 6%                              | 5%        | 5%                | 294           |
| <b>Guardian</b>    | 70%                   | 4%                              | 9%        | 17%               | 141           |
| <b>Combined</b>    | 70%                   | 7%                              | 13%       | 9%                | 983           |

*Item: Are financial accountings filed by Guardians of the Estate subject to audit or similar type of evaluation by court personnel or other authorized persons?*

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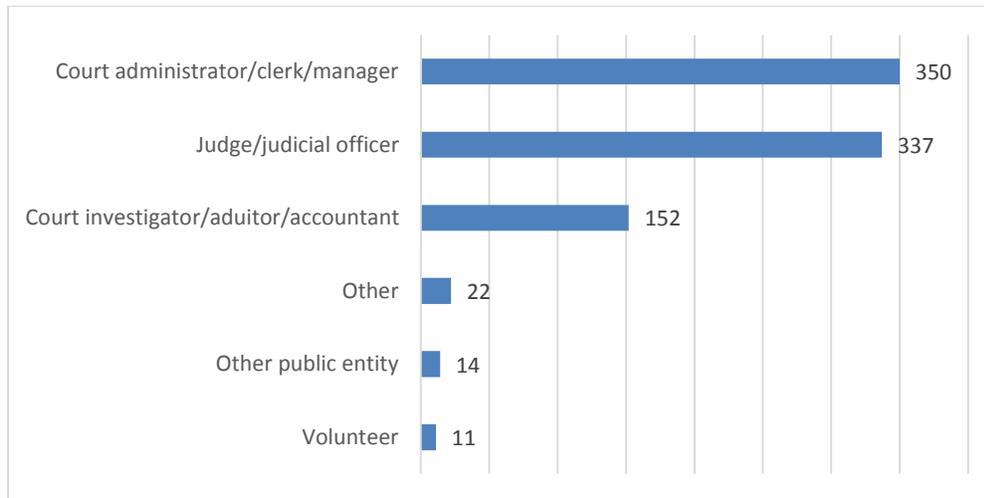
According to the survey, most respondents (70 percent) work in courts that carry out audits or similar types of evaluations on all accounting forms. An additional 7 percent of respondents stated that only some forms were subjected to audits/evaluations. About one of every eight respondents (13 percent) stated that none of the accounting forms were audited or evaluated. Court staff were most likely to indicate that all forms were subject to auditing.

In total, 760 respondents stated that either all or some of the accounting forms were subject to audits or evaluations. These respondents were asked to identify the types of professional who typically audit or evaluate the financial accountings. Exhibit 15 shows the results—multiple professions could be selected.



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**Exhibit 15: Professions of those who Audit or Evaluate Financial Accountings**



*Item:* In your court, who typically audits or evaluates the financial accountings filed by Guardians of the Estate?

*Note:* Data are from 760 respondents who stated that the court audits or evaluates financial accountings on some or all forms and were able to answer this item. Respondents were asked to select all that apply,

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Respondents were most likely to identify court staff and judges as the professions responsible for auditing or evaluating financial accountings. There were 146 instances (19 percent) in which respondents noted that both a judge and court staff were responsible for reviews—in many places, judges must approve the accountings. There were 152 cases in which the respondent noted the role of a court investigator or auditor/accountant—a resource that is not available in all courts. In this study, court investigator includes a broad range of dedicated staff who review accountings at the state or local level. Those who indicated “Other” generally identified the attorney for the person under a conservatorship or a guardian ad litem serving in this capacity.

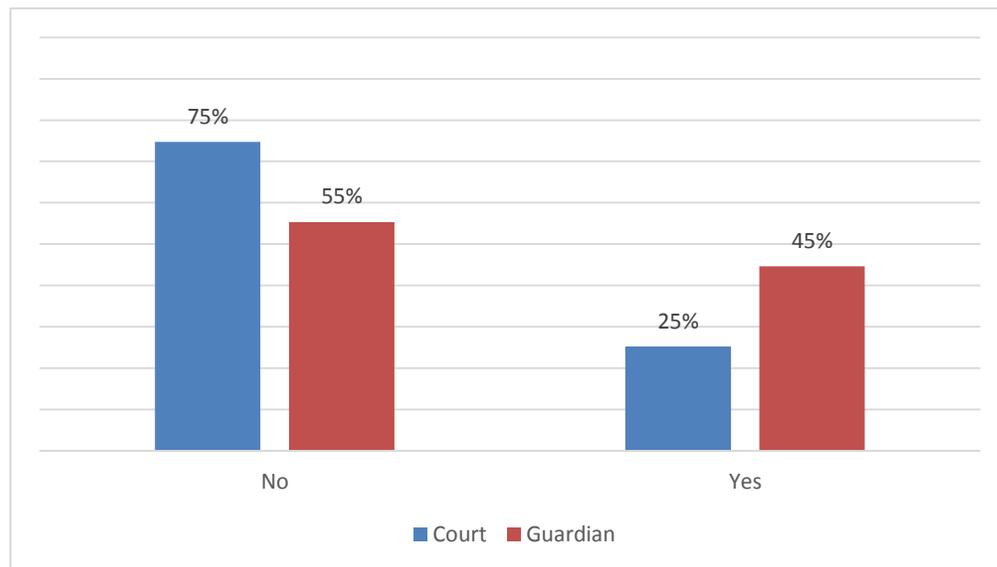
*iv. Case Management*

The section on case management focused on e-filing, the use of electronic case management systems and public access to guardianship files.



**E-Filing Practices:** Court and guardian respondents were asked if the court offers e-filing for any guardianship-related documents. Responses from judges and court staff were nearly identical, while guardians responded quite differently. Exhibit 16 shows the percentage of court and guardian respondents by e-filing practices—it excludes respondents who answered “Don’t Know” to this item.

**Exhibit 16: Capacity to E-file Guardianship-Related Documents, by Type of Respondent**



**Item:** *Does your court offer e-filing for any guardianship-related document?*

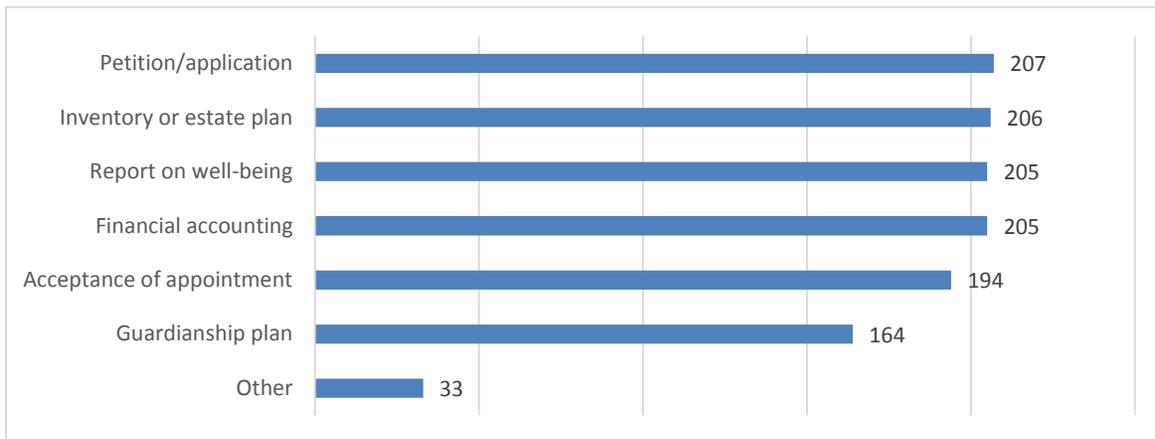
**Note:** *Data is based on 800 court respondents and 121 guardian respondents. It excludes those who answered “Don’t Know” to this item (55 court respondents and 22 guardian respondents),*

In total, 72 percent of survey respondents stated that e-filing was not possible in adult guardianship cases. However, based on the sampling methodology employed in this survey, guardian respondents were more likely to be in jurisdictions with e-filing capabilities than the “average” guardian, so it is likely that the court data is a more accurate measure of prevalence of e-filing.<sup>11</sup> Respondents who stated that e-filing was available in their jurisdiction were asked to identify the types of documents that could be e-filed in the court. Responses are shown in Exhibit 17.

<sup>11</sup> This trend is due to two factors: first, the majority of the guardian respondents live in just six states. Secondly, NGA members are professional and certified guardians. These professional and certified guardians are disproportionately located in urban jurisdictions, which tend to have better technological capabilities.



**Exhibit 17: Types of Documents that can be E-filed**



*Item:* Which type(s) of guardianship-related documents can be e-filed in your court?

*Note:* Graph is based on 232 respondents (257 respondents indicated e-filing was available; 25 individuals did not know which documents could be e-filed).

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In those cases where e-filing is used, most of the basic guardianship documents can be e-filed—petition/application for appointment of guardian; inventory or estate plan; report on the incapacitated person’s status or well-being; financial accountings, acceptance of appointment by guardian; and guardianship plans. Respondents who replied that “other” documents were available for e-filing most commonly noted that all documents can be e-filed with the court. Where e-filing is available, it applies to most if not all basic guardianship documents.

Electronic Case Management Systems: Judicial and court staff were asked about the court’s use of an electronic case management system or database for guardianship cases. Responses are provided in Exhibit 18.



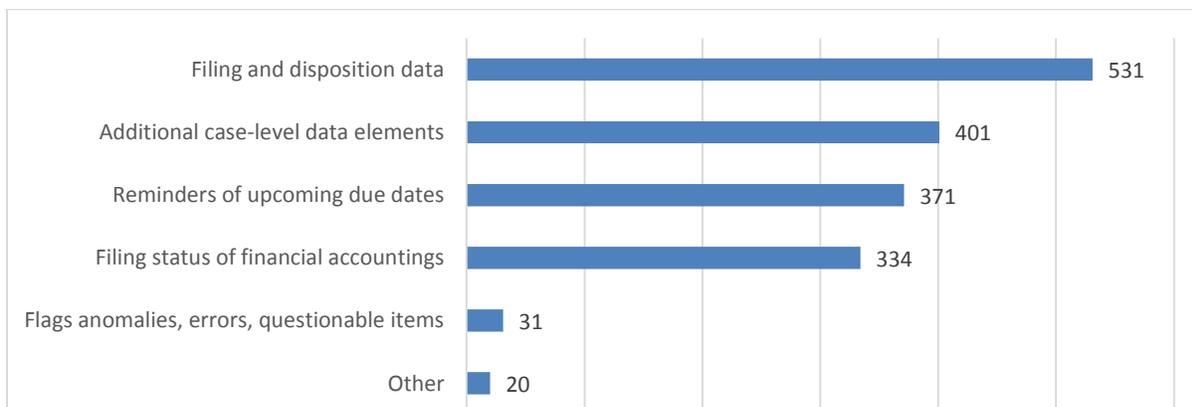
**Exhibit 18: Court use of an Electronic Case Management System or Database for Guardianship Cases**

|                   | Yes | Not currently, but an electronic system is expected in next 3 years | No  | Don't Know |
|-------------------|-----|---|-----|------------|
| <b>Number</b>     | 577 | 87  | 134 | 57         |
| <b>Percentage</b> | 67% | 10%   | 16% | 7%         |

*Item: Does your court use an electronic case management system or database for guardianship cases?*

Two-thirds of court respondents (67 percent) indicated they use an electronic case management system or database for guardianship cases and another 10 percent expect to use an electronic system in the next three years. Judicial and court staff who indicated current use of an electronic case management system or database were asked to identify the capabilities of the system. Responses are shown in Exhibit 19.

**Exhibit 19: Capabilities of the Guardianship Electronic Case Management Systems**



*Item: Which statement(s) best describes the capabilities of the electronic case management system or database used in your court for guardianship cases?*

*Note: Graph is based on 577 judicial and court staff respondents who had indicated use of electronic case management system.*



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Courts that use electronic case management systems in guardianship cases generally have the following capabilities: recording filing and disposition of guardianship cases; capturing additional case-level data elements (such as type of guardianship, name or age of incapacitated person, nature of incapacity); generating reminders of upcoming due dates; and tracking filing status of financial accountings. Of those with case management systems, only 31 respondents indicated systems in use that have the capacity to flag anomalies, errors, or potential “red flags” in financial accountings. Those who noted “Other” most commonly stated that the system was not yet in operation.

Public Access to Files: Court respondents were asked to describe the extent to which guardianship case files were available to the public. Responses can be found in Exhibit 20.

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### Exhibit 20: Extent of Public Access to Guardianship Case Files

|   | Number | Percent |
|---|--------|---------|
| All or most files are open to the public, and available electronically.                           | 192    | 22      |
| All or most files are open to the public, but only available in paper form.                       | 339    | 40      |
| Guardianship files are routinely furnished to specified interested persons or government entities | 104    | 12      |
| Guardianship files are sealed, but can be opened upon specific circumstances with court approval. | 157    | 18      |
| Guardianship files are uniformly sealed, and not available to the public.                         | 70     | 8       |
| Number of Respondents   | 859    |         |

*Item: Which statement(s) best describes the extent to which your court’s files in guardianship cases, excluding confidential or sensitive information (such as social security numbers or medical reports), are open to the public? (Select all that apply).*

---

Judicial and court staff who responded to the survey were most likely to state that “all or most files are open to the public, but only available in paper form” (40 percent). Another 22 percent of court respondents indicated that “all or most files are open to the public, and available electronically.” Thus, over 60 percent of respondents indicated that all or most guardianship case files are available to the public—either electronically or in paper form. Only 8 percent of respondents stated that their files are uniformly sealed and not available to the public.



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### v. *Sanctions/Removal of Guardians*

The section on sanctions and removal of guardians addressed charges of misconduct, court sanctions, and record keeping on removed guardians. Only judicial and court staff received this portion of the questionnaire.

Misconduct: Judicial and court staff were asked if their court had taken actions against any guardians for misconduct, malfeasance, or serious failure to fulfill their obligations in the past three years. Exhibit 21 shows responses for each type of respondent.

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#### **Exhibit 21: Actions Against any Guardians for Misconduct, Malfeasance, or Serious Failure to Fulfill their Obligations in Past Three Years, by Profession**

|                    | No  | Yes | Don't know | Number |
|--------------------|-----|-----|------------|--------|
| <b>Judges</b>      | 29% | 67% | 4%         | 554    |
| <b>Court Staff</b> | 31% | 59% | 11%        | 301    |
| <b>Total</b>       | 30% | 64% | 7%         | 855    |

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*Item: In the past 3 years, has your court taken actions against any guardians for misconduct, malfeasance, or serious failure to fulfill their obligations?*

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Two-thirds of judges who responded to the survey stated that they had taken action against at least one guardian for misconduct-related issues in the past three years. Court staff respondents were slightly less likely to note a case of misconduct (59 percent) than judges (67 percent) and had a higher proportion of “don’t know” responses (11 percent versus 4 percent for judges).

Court Sanctions: Those respondents who stated “yes” to actions taken against any guardians for misconduct-related issues in the past three years were asked a follow-up question on the types of sanctions that have been used in these instances. Responses, sorted by level of popularity, are given in Exhibit 22. Respondents were asked to check all sanctions that applied.



**Exhibit 22: Sanctions in Cases of Misconduct-Related Issues**

|   | <b>Number</b> | <b>Percent</b> |
|---|---------------|----------------|
| <b>Removed and appointed successor guardian</b>                       | 489           | 89             |
| <b>Issued show cause or contempt citation</b>                         | 422           | 77             |
| <b>Suspended and appointed temporary guardian</b>                     | 240           | 44             |
| <b>Reported to adult protective services and/or law enforcement</b>   | 211           | 39             |
| <b>Increased or collected bond (or other security)</b>                | 164           | 30             |
| <b>Ordered additional training</b>                                    | 43            | 8              |
| <b>Reported to bar association or other certifying/licensing body</b> | 40            | 7              |
| <b>Convicted guardian of a crime against an incapacitated person</b>  | 37            | 7              |
| <b>Other</b>  | 29            | 5              |
| <b>Number of Respondents</b>  | 548           |                |

*Item:* Which of the actions listed below has your court taken in the past 3 years against guardians for misconduct, malfeasance, or serious failure to fulfill their obligations? (Select all that apply).

*Note:* Table is based on 548 judicial and court staff respondents who had indicated a case of misconduct, malfeasance, or serious failure to fulfill obligations in the past three years in a guardianship case, and responded to this item.

In this survey, respondents were asked to select all types of sanctions used when addressing a case of misconduct, malfeasance, or serious failure to fulfill obligations. The most common sanction is the removal of the guardian and appointment of a successor guardian—89 percent of court respondents had used this strategy. This was followed by issuing a “show cause” or contempt citation (77 percent). The sanctions least likely to be used include a criminal conviction of the guardian, a report to bar association or other certifying/licensing body, and an order to attend additional training. Of those who indicated “other,” comments included a variety



of tactics, such as verbal reprimands, issuing a bench warrant, and requiring the guardian to pay back funds.

Record-Keeping on Removed Guardians: Judicial and court staff who stated that their court had taken action in the past three years for a misconduct-related issue were asked to describe their record-keeping practices when guardians had been removed. Exhibit 23 shows the results.

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**Exhibit 23: Record-Keeping Practices in Cases in which a Guardian is Removed for Misconduct-Related Issues**

|  | Number | Percent |
|--|--------|---------|
| <b>Records kept in individual guardianship case files</b>                    | 362    | 66      |
| <b>No records are kept</b>   | 100    | 18      |
| <b>Records kept in a computer database or other type of centralized list</b> | 69     | 13      |
| <b>Don't know</b>  | 52     | 9       |
| <b>Other</b>   | 19     | 3       |
| <b>Number of Respondents</b>   | 548    |         |

*Item:* Which statement(s) best describes how your court currently keeps records on guardians removed for misconduct, malfeasance, or serious failure to fulfill their obligations? (Select all that apply).

*Note:* Table is based on 548 judicial and court staff respondents who had indicated a case of misconduct, malfeasance, or serious failure to fulfill obligations in the past three years in a guardianship case.

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Two-thirds of court respondents who had a misconduct-related case (66 percent) reported that any records related to the removal of the guardian were kept in individual case files. Only 13 percent of respondents kept records in a computer database or other type of centralized list. In one of every five cases (18 percent), respondents reported that no records were kept.



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vi. Caseloads

Judicial and court staff were asked to provide estimates of new adult guardianship filings and open/pending cases, trends in the filings, and percentages of cases with dual Guardianship of the Estate/Social Security Representative Payee status.

Filings and Open/Pending Cases: Court respondents were asked to provide ranges for the number of court filings and the number of open/pending adult guardianship cases. In terms of case filings, most courts are unable to identify cases in which there is a guardianship of the person only, guardianship of the estate only, and cases in which there is both a guardian of the person and estate appointed. Consequently, courts were generally grouped by the level of total guardianship caseload, as measured by the combined guardianship of the estate and guardianship of the person caseloads. Exhibit 24 shows the breakout of court workload by case filings in 2013 and open/pending cases.

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**Exhibit 24: Combined Guardianship of the Estate and of the Person Filings and Open/Pending Cases**

| Case Filings in 2013 | Number     | Percent | Open/Pending Cases | Number     | Percent |
|----------------------|------------|---------|--------------------|------------|---------|
| Fewer than 10        | 171        | 20      | Fewer than 50      | 339        | 40      |
| 10 to 99             | 416        | 48      | 50 to 499          | 280        | 33      |
| 100 or more          | 169        | 20      | 500 or more        | 93         | 11      |
| Don't know           | 103        | 12      | Don't Know         | 147        | 17      |
| <b>Total</b>         | <b>859</b> |         | <b>Total</b>       | <b>859</b> |         |

*Item:* For the past year, please indicate below the number for new adult guardianship filings (i.e., new cases) in your court separately for: [Combined both guardianship of estate and person appears to be most reliable and is basis of this table].

*Item:* Please indicate below the current number of open/pending adult guardianship cases in your court separately for: [Combined both guardianship of estate and person appears to be most reliable and is basis of this table].

*Note:* Estimates were requested if actual data were unavailable.

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The percentage of court respondents who were not able to provide data—estimated or actual—on the number of open/pending cases was higher than those who could not provide data



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on the number of filings in 2013 (17 percent versus 12 percent). This is likely due to the fact that the latter can be easily obtained from an annual report, while a court's case management system might not as readily provide the number of currently pending cases to a survey respondent.

Almost half of respondents (48 percent) work in courts with 10 to 99 Guardianship of the Person/Guardianship of the Estate filings. A relatively large percentage of respondents (40 percent) indicated they handled fewer than 50 open cases.

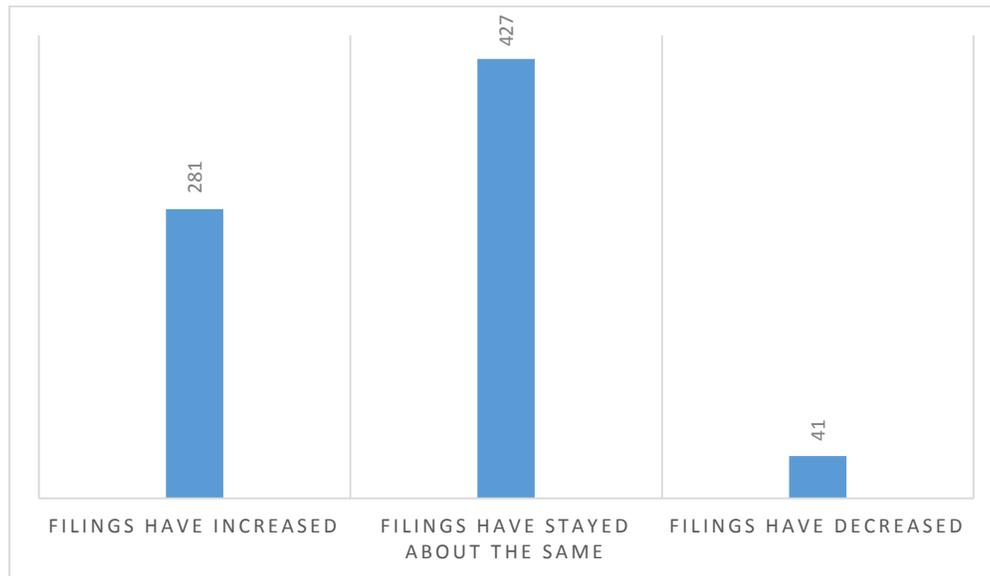
It must be noted that the data may not necessarily reflect the actual caseloads of larger jurisdictions with multiple judges. Rather, the reported caseload data may be specific to a judge or court manager/clerk, rather than the entire jurisdiction. For instance, Court A may distribute 200 adult guardianship cases to 5 different judges, giving each judge an average of 40 cases. Court B may assign all 200 guardianship cases to one judge who specializes in probate matters. While the two jurisdictions handle the same number of cases, judges who responded to this question may have entered quite different values. This limitation notwithstanding, the data can be interpreted to mean that 68 percent of responding judges and court staff handled fewer than 100 new Guardianship of the Person/Guardianship of the Estate filings in 2013.

Filing Trends: Court respondents were asked whether the number of adult guardianship cases (including Guardianship of the Person and Guardianship of the Estate) filed in their court had increased, stayed about the same, or decreased over the last three years. About one of every eight court respondents (13 percent) answered "Don't know." Responses from 749 court respondents are shown in Exhibit 25.



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**Exhibit 25: Estimate of Trends in Adult Guardianship Filings Over the Last 3 Years**



*Item:* Which statement best describes the number of adult guardianship cases (including Guardianship of the Person and Guardianship of the Estate) filed in your court over the last 3 years

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The majority of court respondents (427 or 57 percent) indicated that filings have stayed about the same. A sizeable minority—281 persons or 38 percent of those who could provide a response—indicated that filings have increased. Only 41 persons (5 percent) felt that filings have decreased.

Dual Guardian of the Estate/Representative Payee Status: Judicial and court staff were asked to estimate the percentage of Guardians of the Estate who also serve in the capacity as representative payee for Social Security Benefits. Almost two-thirds of court respondents (64 percent) could not provide an estimate. Results are displayed in Exhibit 26.



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**Exhibit 26: Percentage of Guardians of the Estate estimated to also serve as Representative Payee for SS Benefits**

| Range (Dual Status) | Number | Percent |
|---------------------|--------|---------|
| 0 to 25%            | 49     | 16      |
| 26 to 50%           | 51     | 17      |
| 51 to 75%           | 82     | 27      |
| 76 to 100%          | 127    | 41      |
| <b>Total</b>        | 309    |         |

*Item:* What percentage of guardians of the Estate currently under your court’s supervision serve—with respect to the same incapacitated person—as both guardian and representative payee for Social Security benefits (OASDI/SSI payments)? (Estimates welcome if data for actual percentages are unavailable.)

*Note:* The table is based on 309 of 859 (36 percent) judicial and court staff respondents who were able to provide an estimate.

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Of those respondents who provided an estimate, 41 percent of estimates were in the 76 to 100 percent range. The majority of respondents who provided estimates (68 percent) indicated that dual guardianship/representative payee status applied to at least half of their caseload.

*vii. Court Outreach/Community Interaction*

Court and guardian respondents were asked to provide information on their interaction with community groups and local agencies, federal agencies, and the Social Security Administration. This section solicited comments from respondents, which are summarized by theme.

Local Interaction with Community Groups and Local Agencies: Judicial and court staff respondents were asked to describe the extent to which officials in their court interact with community groups and local agencies that regularly encounter incapacitated persons. Respondents could select multiple options. Exhibit 27 shows the results.



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**Exhibit 27: Extent of Court Interaction with Community Groups and Local Agencies**

| <b>Local/Community Interaction</b>   | <b>Number</b> | <b>Percent</b> |
|--|---------------|----------------|
| <b>The court collaborates with such groups from time to time.</b>                          | 350           | 41             |
| <b>The court has little contact with such groups.</b>                                      | 334           | 39             |
| <b>The court participates in multidisciplinary groups on guardianship-related matters.</b> | 123           | 14             |
| <b>The court has developed referral protocols with such groups</b>                         | 121           | 14             |
| <b>Don't Know</b>  | 103           | 12             |
| <b>Number of Respondents</b>   | 859           |                |

*Item:* Which statement(s) best describes the extent to which officials in your court interact with community groups and local agencies (such as long-term care ombudsmen, social service agencies, adult protective services, and guardianship associations) that regularly encounter Incapacitated Persons? (Select all that apply.)

---

The most common level of interaction between the courts and community groups/local agencies, according to court respondents, is “from time to time” (41 percent). An almost equal number of respondents stated that “the court has little contact with such groups” (39 percent). Only 14 percent of respondents indicated that the court had developed referral protocols and/or participated in multidisciplinary groups.

Interaction with Federal Agencies: Court and guardians were asked to describe the nature and extent of court interaction with federal agencies. This item contained inconsistencies between the question and response categories. While the question asks for interaction with federal agencies—excluding the Social Security Administration—the responses included the option of “None (i.e., no interaction with federal agencies in past 3 years).” Due to a programming error in the survey software, those who entered this response or “Don’t Know,” were not asked the follow-up question that pertains to the Social Security Administration. As Exhibit 28 shows, a large percentage of respondents stated that they had no interaction with federal agencies.



**Exhibit 28: Extent of Court Interaction with Federal Agencies**

|  | Number | Percent |
|--|--------|---------|
| <b>Systematic and frequent</b>                     | 11     | 1       |
| <b>Systematic and infrequent</b>                   | 7      | 1       |
| <b>Case-by-case basis and frequent</b>             | 21     | 2       |
| <b>Case-by-case basis and infrequent</b>           | 231    | 27      |
| <b>None (no interaction with federal agencies)</b> | 466    | 55      |
| <b>Don't know</b>                                  | 119    | 14      |
| <b>Total</b>                                       | 855    |         |

*Item:* Over the past 3 years, which statement best describes the nature and extent of your court interaction with federal agencies (excluding the Social Security Administration) to exchange information or consult on overlapping guardianship-representative payee matters?

Judicial and court staff respondents were asked to list the federal agency(ies) their court interacted with during this period and to briefly summarize the nature of such interactions. Exhibit 29 shows the federal agencies noted by respondents and brief description of issues.

**Exhibit 29: Court Interaction with Federal Agencies and Summary of Interactions**

| Federal Agency                  | Number | Issues  |
|---------------------------------|--------|---|
| Social Security Administration  | 71     | Representative payee status and information, disability status, efforts to locate guardian, SS benefits and payment information |
| Department of Veterans Affairs  | 57     | Copies of accountings, information on provision of VA funds, housing, fees  |
| Federal Bureau of Investigation | 5      | Criminal histories, federal firearms repository   |
| Internal Revenue Service        | 3      | Request and review financial information  |

*Item:* Please list the federal agency(ies) your court has interacted with during this period and briefly summarize the nature of such interactions.

*Note:* There were 155 judicial and court staff respondents who completed this open-ended item. Respondents could list multiple agencies. A number of respondents included state and local agencies, which are not included in this table.



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According to judicial and court respondents who entered information in this question, the greatest level of interaction is with the Social Security Administration and the Department of Veterans Affairs. Respondents who provided specific descriptions of types of interaction noted that contact with SSA concerned issues related to representative payee status, disability status, efforts to locate guardians, and information on Social Security benefits and payments. Interactions with the Department of Veterans Affairs tended to focus on accountings, the need for information on provision of VA funds, housing issues, and fees.

Interaction with Social Security Administration: Judicial and court respondents who indicated some level of interaction with federal agencies were asked to describe the nature and extent of their interaction with the Social Security Administration. Those who indicated they had no interaction with federal agencies in the previous question or who replied “Don’t Know” were not asked this item. This resulted in a relatively low number of judicial and court respondents (270 respondents). Guardians were also requested to answer this item. Results are displayed in Exhibit 30. Judicial and court staff were combined into a “Court” category as responses between the two groups were nearly identical.

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### Exhibit 30: Court and Guardian Interaction with the Social Security Administration

|  | Court | Guardian |
|--|-------|----------|
| <b>Systematic and frequent</b>           | 1%    | 19%      |
| <b>Systematic and infrequent</b>         | 2%    | 5%       |
| <b>Case-by-case basis and frequent</b>   | 4%    | 26%      |
| <b>Case-by-case basis and infrequent</b> | 61%   | 34%      |
| <b>None (no interaction with SSA)</b>    | 24%   | 10%      |
| <b>Don't know</b>                        | 7%    | 6%       |
| <b>Number of Respondents</b>             | 270   | 143      |

*Item: Over the past 3 years, which statement best describes the nature and extent of your (or your staff's) interaction with the Social Security Administration to exchange information or consult on overlapping guardianship-representative payee matters?*

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Guardian respondents have much more frequent interaction with the Social Security Administration than judicial and court respondents—19 percent of guardians indicated “systematic and frequent” interaction compared to 1 percent of court respondents. Approximately six of every ten court respondents (61 percent) described their interaction with the SSA as “case-by-case and infrequent” and another 24 percent stated that they had no



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interaction with SSA. In contrast, only 10 percent of guardians indicated that they had no interaction with SSA.

Benefits of Enhanced Coordination: Court and guardian respondents were asked whether enhanced coordination or sharing of information with the Social Security Administration would be beneficial. Exhibit 31 provides the responses by type of respondent.

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### **Exhibit 31: Perceptions of whether Enhanced Coordination or Sharing of Information with the Social Security Administration will be Beneficial**

|                 | Yes | No  | No opinion | Number |
|-----------------|-----|-----|------------|--------|
| <b>Court</b>    | 43% | 12% | 45%        | 855    |
| <b>Guardian</b> | 66% | 16% | 18%        | 143    |
| <b>Combined</b> | 46% | 13% | 41%        | 998    |

*Item: Do you think that enhanced coordination or sharing of information between you (or your staff) and the Social Security Administration would be beneficial?*

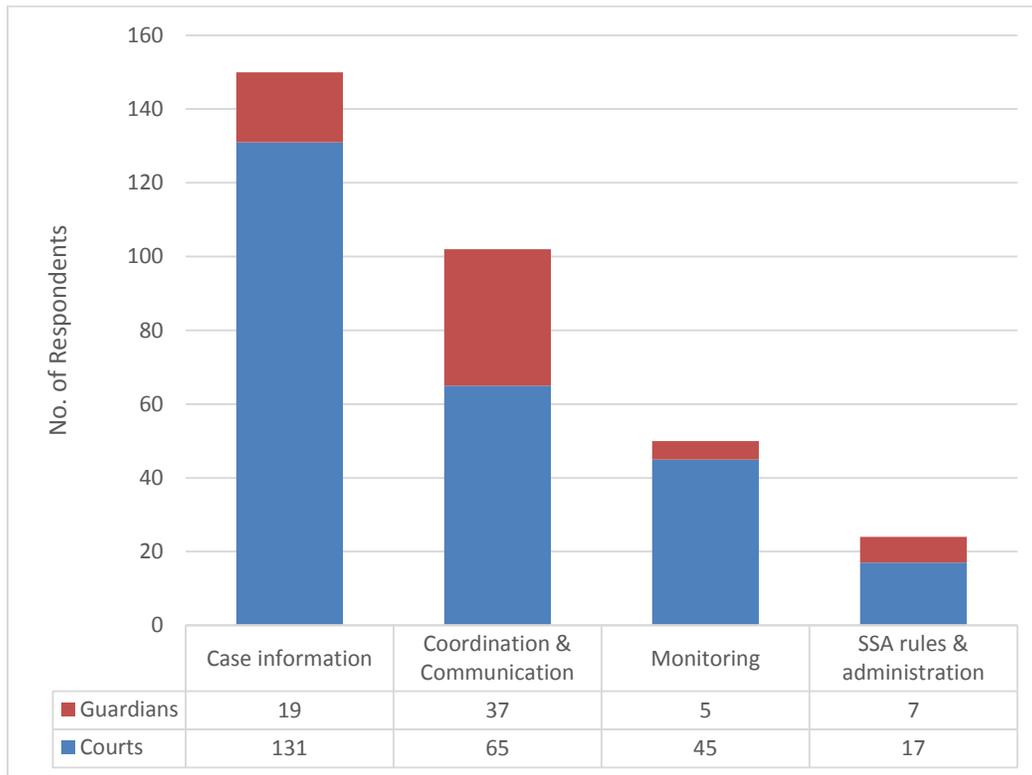
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While 66 percent of guardians felt enhanced coordination with SSA would be beneficial, 43 percent of court respondents felt similarly. Nearly one half of court respondents (45 percent) had no opinion on the subject. The infrequent nature of interactions between the court and SSA might account for the lack of opinion.

Comments about the Social Security Administration: Respondents who indicated that enhanced coordination with the Social Security Administration would be beneficial (366 judicial and court staff and 94 guardians) were asked to “please briefly describe the kinds of coordination or information sharing with the SSA that you think would be most helpful.” A relatively large number of eligible respondents commented on this item—258 or 71 percent of judges/court staff and 65 or 69 percent of guardian respondents. After reviewing all comments, four general categories were used to summarize basic themes (case information, coordination and communication, monitoring, and SSA rules and administration). In instances where respondents mentioned several topics, only the most salient topic was considered for the purposes of categorization. Exhibit 32 shows the number of court and guardian respondents by the types of comments. Individual comments by major category can be found in Appendix G. Comments highlighted in this report were selected based on their representativeness, clarity, and relative lack of grammatical errors.



**Exhibit 32. SSA Coordination and Information Sharing Needs, by Type of Respondent**



*Item: Please briefly describe the kinds of coordination or information sharing with the SSA that you think would be most helpful.*

**Case Information.** The need for specific case information was the focus of 150 respondents. Judges and court staff expressed the need for case information, such as the identity of the representative payee, from SSA for the purposes of (1) establishing whether a guardianship is necessary (which may not be necessary in cases in which an individual is solely reliant on Social Security benefits), and (2) documenting basic financial information that will improve the court’s ability to monitor the assets and transactions associated with the person placed under a guardianship.

Judges and court staff, for the most part, stated the need for the most basic types of information, including:

- The name and address of the payee (or representative payee where applicable)



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- Amount of benefits available
- Transaction history—amount and timing of checks, mailing address, signatories on checks
- Eligibility for benefits and pending applications
- Nature of disability
- Accountings and other financial reports
- Date of death of beneficiaries

Guardians commented on the need for more specific case information from SSA. In addition to the need for the types of information bulleted above, professional guardians indicate a need for much more detailed information on the person placed under a guardianship—location of birth, mother’s maiden name, work history, bank information, legal status, and Medicare information. Professional and private guardians may need this level of detail in their attempts to locate family members, arrange medical services, and properly fill out a death certificate.

Specific comments related to the need for case information follow.

*The amount of SS, SSI or SSD that the individual receives would help the Court and the conservator determine what financial situation the conserved person is in. (Court)*

*If a ward has a disability, it would be nice if we knew what amounts of money they really are getting. Something like a letter stating what amounts, when started, who has access over the funds. (Court)*

*The address of the designated payee would help us locate guardians or conservators who have moved without filing a change of address form with the Court. (Court)*

*Social Security Administration will not speak with our court investigators or provide information regarding representative payee matters. The court knows of several "lost" conservatees (conservatees whose whereabouts are unknown to the court) who continue to receive Social Security benefits and have a representative payee. We need to obtain contact information for the representative payee to ascertain the conservatee's whereabouts and perform the periodic investigations required by state law. (Court)*



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*Upon request of info from court the SSA should provide earnings info including where and when payments are provided. Once a guardianship is ordered the court should have access to the Ward's SSA file. (Court)*

*Past payment information, especially if the checks were not direct deposited and cashed at a check cashing business and not by a bank. It is very difficult to trace where the funds ended up without SS assistance in garnering the asset when family members are uncooperative and possible fraud has occurred. (Guardian)*

*For Social Security to let us know where the ward was born, mother's maiden name so we can get benefits for the ward, try and find family. (Guardian)*

*Incapacitated person's personal information, such as place of birth, parents names, work history, bank information. I am told all this information is prior to the guardianship and I am not allowed to know it. Would help in cases where my person is unable to give the information. Also helps complete a death certificate and prevent putting "unknown" on everything. Incapacitated people deserve better than that. (Guardian)*

**Coordination and Communication.** Coordination and communication issues were mentioned by 99 respondents in total and the biggest concern for guardians. Three specific concern voiced by a number of respondents was (1) difficulties in getting timely information and assistance from SSA, (2) the SSA's lack of recognition of court orders, and (3) inconsistencies in reporting requirements and deadlines. A common theme was the desire for the courts and SSA to improve coordination to better serve the needs of the person placed under a conservatorship and to minimize the need for conservators to make multiple reports to different agencies/courts based on inconsistent deadlines.

Specific comments regarding the need for improvements in timely information and assistance from SSA include the following:

*A point person we could share information with and they could share information with us. (Court)*

*Convenient and or efficient means of communicating and or sharing information as opposed to lengthy waiting time on telephone. (Court)*



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*Direct access to a live person would be a great starting point. (Court)*

*Would be helpful to have quicker responses from Social Security and be able to communicate with them without having to wait for several hours in the lobby. A dedicated time for guardianship agencies once a month would be sufficient and very helpful. (Guardian)*

*Would like to have an assigned case worker that I could talk to when needed in our county. (Guardian)*

*We encounter difficult and complex situations and desire a SSA person to talk individually with via telephone. We are a state government agency. To have a SSA person we could pick up the phone and call or at least email, would save all of us MUCH time. (Guardian)*

The state and federal requirements for a conservatorship and a SS representative payee are independent of one another. Generally, respondents expressed frustration that the SSA failed to recognize court-appointed conservators as representative payees or interested parties in need of case information.

*Social Security has not seemed to be receptive to changing a payee when a guardianship of an estate is appointed if the appointee is not the payee. (Court)*

*Professional fiduciaries who have been appointed as conservators by the court are having difficulty in being appointed as rep payees. (Court)*

*SS should recognize Probate Court Orders and collaborate with Courts and Guardianship efforts to protect people - there should be a contact person familiar with exploitation issues. (Court)*

*SSA should give strong preference to court-appointed conservator, who reports and accounts to the Court on a regular basis, in selection of representative payees. (Court)*

*I believe that sharing about who is the Guardian of the Estate and who is the Rep. Payee is essential. Sometimes even after a guardian has been removed from a case and another guardian appointed SSA makes it*



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*difficult to change the Rep Payee. This is something that should be easily done. (Court)*

*The Social Security Administration should honor the appointment of a Guardian of the Estate and should have a mandatory requirement that such person will be the payee so the Court can monitor all of the financial resources of the disabled person. (Court)*

*It has been our experience that Social Security is less than open when working with a guardian of the person or estate. SS is only interested in talking to us about our ward if we are the person's representative payee in addition to being his or her guardian. It would be very helpful if SS were more willing to talk with us, even if we are "only" the guardian. (Guardian)*

*Even though the court has declared the protected person incapacitated, and in need of someone to manage their financial affairs, the local Social Security office does not automatically allow the Guardian of the Estate to apply as rep payee, even when presented with the original Letters of Conservatorship and the judgment appointing a conservator. (Guardian)*

*Social Security Administration should honor state guardianship and conservatorship orders to determine who should be representative payee rather than making their own decision. (Guardian)*

*SSA needs to recognize guardian's authority in changing rep payee. Many times SSA still requires the person to be present and agree with guardian's change. (Guardian)*

A number of respondents noted the challenges in reporting to both the court and the SSA as a result of inconsistencies in reporting requirements and deadlines.

*The guardians would likely appreciate one report for both the court and SSA. The reports are different and required at different times for more work for them. (Court)*

*Accounting/reporting requirements of guardians of estate and rep payees could be reviewed and revised to be more consistent for use by both Courts & SSA. (Court)*



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**Monitoring.** Fifty respondents—most of them judges and court staff—expressed the need to share information that will help the court monitor cases. In particular, some suggested that the state courts and SSA would benefit by reciprocating information sharing on particular cases in which there are indications of fraudulent or suspicious activity. Specific comments related to monitoring follow.

*From time to time information is needed to stop exploitation of incapacitated individuals, information regarding the Representative Payees for incapacitated individuals, their addresses, and where funds are being deposited would be extremely helpful to protect individuals under guardianship; ... (Court)*

*It would be helpful to be able to share information on whether a rep payee is misusing funds and coordinate when a rep payee should be removed. (Court)*

*For SSA, they may benefit from receiving notice when a conservator of the estate is appointed, suspended, removed, or surcharged. Our court may benefit from similar notice from SSA when they appoint, suspend, remove, or obtain a conviction against a rep payee who is or was appointed as conservator. (Court)*

*SSA should red flag the IP that attempts to reverse the re-payee status back to him/herself... (Guardian)*

*If someone has been removed as a guardian or representative payee. If there have been concerns reported to Adult Protective Services (APS) regarding a guardian or representative payee. (Guardian)*

**SSA Rules and Administration.** Social Security Administration rules and/or administrative procedures was the focal point of 25 commenters. The comments tended to focus on the need for education on SSA requirements and/or administrative improvements.

*SSA needs to let me know what language they prefer in my order appointing guardian(s) to facilitate a change in payee status from the subject to the newly appointed guardian. (Court)*

*How the designated payee system works? How long does it take to get the guardian the money? Any other programs SS offers to guardians. (Court)*



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*Brief, easy to understand description of federal regulations that pertain to benefits. (Court)*

*NEED SOCIAL SECURITY TO PUT ON TRAINING COURSES FOR STATE AND FEDERAL JUDGES ON ISSUES INVOLVING PAYEE REPRESENTATIVES. (Court)*

*We often hear from guardians or prospective guardians that "Social Security requires this" or "Social Security won't allow that." We have no contact person to determine whether the person is misinformed or if there is a new policy. With other agencies we have that type of contact..."*

*Clear information on procedures, fill get out the annual rep payee forms and how to fix problems. (Guardian)*

*Familiarity in general by the Social Security Admin of guardianships / conservatorships. Streamlined forms. (Guardian)*

### *viii. Additional Comments*

Respondents were asked to “please provide any additional comments you may have concerning your court’s guardianship program or any other topic related to the survey.” Comments ranged from court screening of applicants to clarification of questionnaire responses to remarks about coordination across agencies. A full listing of comments is provided in Appendix H. Comments referring to the SSA are grouped together and identified accordingly.



### **III. Summary of State and U.S. Territory Statutes Governing Guardians and Conservators**

ACUS conducted a review of statutes governing guardians and conservators in the U.S. and U.S. territories. ACUS surveyed statutes from all fifty states and three territories, and examined statutory requirements for guardian eligibility and appointments, monitoring and filing requirements, and disciplinary and removal procedures.

#### ***A. Eligibility and Appointment***

##### ***i. Guardian and Conservator Qualifications and Licensing***

The statutory review conducted by ACUS revealed that only 20% of states and territories impose specific requirements on individuals seeking to become a guardian.<sup>12</sup> Of the states and territories surveyed, Alaska, Arizona, California, North Carolina, Nevada, New York, and Texas impose specific requirements in order for individuals to get certified as a guardian. Furthermore, requirements vary from state to state. For example, in Alaska, if the guardian is a non-professional guardian (not engaged in the business of providing guardian services), the guardian must complete one hour of mandatory education covering the basics guardianship and conservatorship practices and file proof of completion with the court within 30 days after the guardian's appointment order is distributed.<sup>13</sup> In Arizona, a licensed fiduciary or a financial institution must complete a training program approved by the state Supreme Court before a Letter of Appointment will be issued.<sup>14</sup> In Texas, certification is required before a person can become a guardian or conservator.<sup>15</sup> To obtain certification, the person must meet the standards set by the board and the certificate is only valid for a period of two years.<sup>16</sup> In California, if the petitioner or proposed conservator is a professional fiduciary, then the petitioner must submit a proposed hourly fee schedule regarding compensation, along with a statement of the petitioner's proposed license information, and how the petitioner came to be involved.<sup>17</sup> In Florida, there is no statutory licensure or certification requirement, but there is a mandatory registration process

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<sup>12</sup> This section attempts to summarize specific state statutes and trends among the states regarding qualification, accounting, and removal procedures. For a more detailed analysis of specific state-by-state practices please refer to Appendix I, which includes a table of authorities of the relevant guardianship statutes and Appendix J, which includes the state guardianship statute forms in full.

<sup>13</sup> Alaska Stat. §§13.26.145(c), 210(g) (2014).

<sup>14</sup> Ariz. Stat. §14-5312; §14-5101-5315.

<sup>15</sup> Tex. Estates Code Ann. §§1104-251, Tex. Gov't Code Ann. §§111.041-111.042.

<sup>16</sup> *Id.*

<sup>17</sup> Cal. Prob. Code § 1821(c).



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whereby professional guardians register with the Statewide Public Guardianship Office using specialized forms.<sup>18</sup>

Although only 20% of states and territories have specific requirements that must be met before an individual can be certified as a guardian, 70% of states and territories require that guardians at least meet some minimal qualification, such as being 18 years of age and “capable of providing an active and suitable program of guardianship.”<sup>19</sup> Virginia is typical of states with minimal requirements as it only requires that the proposed guardian or conservator must be “suitable and competent.”<sup>20</sup> Florida has slightly higher requirements, and according to the Florida statute, non-professional guardians who are residents must be 18 or older and a nonresident may be a guardian if related by lineal consanguinity, a legally adopted child or parent, or a relative.<sup>21</sup>

Ten percent of states and territories have additional requirements for proposed guardians of minors. In Louisiana for example, courts must consider the “moral and financial fitness” of the proposed guardian. Courts must also examine the conditions of the home of the proposed guardian with respect to health, adjustment, and other advantages or disadvantages for the child. Ultimately, the guardians in Louisiana must be able to provide “safe, stable, and wholesome” home that provides for the “best interest” of the child.<sup>22</sup> Similarly, in Idaho, courts may appoint any person “whose appointment would be in the best interests of the minor.”<sup>23</sup>

### *ii. Disqualification and Criminal Background Checks*

Over two thirds of states and territories (70%) disqualify any proposed guardian who has a direct financial conflict of interest with the beneficiary.<sup>24</sup> Twelve percent of states and territories, including Puerto Rico, Florida, and Arkansas also disqualify a potential guardian or

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<sup>18</sup> Fla. Stat. Ann. § 744.1083.

<sup>19</sup> S.D. Codified Laws §§29A-5-110, 304.

<sup>20</sup> Va. Code Ann. §§ 64.2-1703, 2007(C)(D).

<sup>21</sup> Fla. Stat. Ann. § 744.309.

<sup>22</sup> La. Child. Code. Ann. §§721-723.

<sup>23</sup> Idaho Code Ann. § 15-5-206; § 15-5-311; §15-5-410; *see also*, If the minor is over 14, the court shall appoint any person nominated by the minor unless against his/her best interests. For an incapacitated person, the guardian must be competent. *Id.*

<sup>24</sup> D.C. Code § 21-2043 (2014) stating that individuals with a conflict of interest may not serve as a guardian. Examples of possible conflicts include an individual or employee of a business that provides substantial services in a professional or business capacity, a creditor; *See also*, Wyo. Stat. Ann. §3-2-107 stating that, “the court may not appoint a person to be a guardian if the person proposed to act as guardian, is likely to become a creditor of the ward, has interests that may conflict with those of the ward or is employed by a person who would be disqualified.”



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conservator if he or she is a convicted felon.<sup>25</sup> Nine percent of states and territories, such as Oregon and New York, extend automatic disqualification beyond criminal conviction or incapacity, to include financial instability of the proposed guardian.<sup>26</sup> Vermont is one of the only states with a domicile requirement, mandating that a proposed guardian or conservator actually live in Vermont.<sup>27</sup>

Twenty-four percent of states and territories, including Arizona and Florida, require background credit checks before an individual may assume the duties of a guardian or conservator. Florida, Idaho, Oklahoma, and Tennessee require the proposed guardian or conservator to submit a credit check detailing their financial history. In Florida, a professional guardian must complete a credit history before, and at least once every two years after the date of registration.<sup>28</sup> In Idaho, the proposed guardian must provide a report of his or her civil judgments and bankruptcies to the court, the guardian ad litem, and all others entitled to notice of the guardianship proceeding.<sup>29</sup> In Tennessee, the court-ordered representative or guardian ad litem must evaluate the proposed guardian's finances.<sup>30</sup>

### ***B. Monitoring of Guardians through Financial Accounting***

Sixty-nine percent of states and territories require annual submissions of specific financial information, and an additional 11% of states, including West Virginia and South Dakota, require a letter of accounting at the request of the court.<sup>31</sup> In Colorado, “[e]very guardian shall file with the court annually, on the anniversary date of the appointment, a full, true, and accurate account under oath of all moneys or other things of value so received by him or her.”<sup>32</sup> Delaware requires that, “every account of a guardian of the property or trustee shall include a schedule showing the amount of principal on hand at the time the account begins and the manner

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<sup>25</sup> P.R. Laws Ann. tit. 31, § 731-741, stating that, a person cannot be a guardian if, they are under a guardianship; convicted of any felony or misdemeanor that implies moral depravation; sentenced to a term of imprisonment, until the sentence expires; Fla. Stat. Ann. § 744.309, stating that, a person is disqualified if s/he has been convicted of a felony.

<sup>26</sup> Or. Rev. Stat. Ann. §§125.205; 125.210; 125.305, stating that a person cannot be a guardian if they are financially incapable.”

<sup>27</sup> VT. Stat. Ann. 14 §2603, 2664, stating that, A guardian not domiciled in Vermont cannot be named a guardian unless the guardian was named in a will or is a relative of the ward.

<sup>28</sup> Fla. Stat. Ann. §§ 744.3135, 744.

<sup>29</sup> Idaho Code Ann. § 15-5-311.

<sup>30</sup> Tenn. Code. Ann. §§34-1-107, 34-3-104.

<sup>31</sup> W. Va. Code Ann. § 44A-3-9; 11.

<sup>32</sup> Colo. Rev. Stat. Ann. § 28-5-211.



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of investment.”<sup>33</sup> If the beneficiary is a veteran, certain states and territories such as Puerto Rico, the U.S. Virgin Islands, and New Jersey require additional accounting procedures.<sup>34</sup>

### *C. Sanctions and Civil Penalties*

The majority of states and territories—four of every five—have statutes that provide for the removal and sanctioning of guardians. However, only 7% provide for civil penalties, such as fines. If a guardian fails to discharge his or her duties through proper accounting, then that guardian is most often removed as a representative payee without any further action taken against the guardian. Three states, including Alaska, allow civil penalties to be enforced against a removed guardian only when there is a showing of “gross negligence.”<sup>35</sup> According to the Oregon statute, a conservator is personally liable for all tortious actions committed in furtherance of conservator duties.<sup>36</sup> California and Kansas will allow for removal of a conservator or guardian for failing to exercise “due diligence.”<sup>37</sup>

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<sup>33</sup> Del. Ch. Ct. R. 117.

<sup>34</sup> P.R. Laws Ann. tit. 31, §§ 801-805, Stating that, A veteran's guardian must file an accounting annually but it must be sent to the Department of Veterans Affairs; *See also* V.I. Code Ann. 15 § 960 stating that, “A Veterans' guardian can be removed for failure to file an accounting.” *See also*, N.J. Stat. Ann. 3B:13-11; stating that, if guardians of veterans are not required to file an accounting with the state they must, nonetheless, file one with the Department of Veterans Affairs Administration annually.”

<sup>35</sup> Alaska Stat. § 13.26.150(e)(3), stating that, “A guardian is not civilly liable for acts or omissions under this paragraph unless the act or omission constitutes gross negligence or reckless or intentional misconduct.”

<sup>36</sup> Or. Rev. Stat. Ann. §§125.225; 125.485.

<sup>37</sup> Cal. Prob. Code § 2650, Stating that, “a conservator may be removed for failure to use ordinary care and diligence in the management of the estate’ *and see* Kan. Stat. Ann. §59-3089. Stating that, a guardian or conservator can be removed at any time the court has reason to believe that the guardian or conservator, or both, has failed to faithfully or diligently carry out such person's duties or responsibilities or to properly exercise such person's powers or authorities in a manner consistent with their responsibilities.



**IV. Interviews with State Adult and Foster Care Agencies**

ACUS conducted interviews with eight adult protective services and child foster care organizations. The objective of the interviews was to obtain a better understanding of how guardian and foster care organizations operate on a day to day basis and to better understand their activities, capabilities, and the challenges they face. Interviews were relatively unstructured; interviewers guided initial discussion toward relevant topics, but each conversation took a different shape over the course of the interview. As is discussed in more detail below, the organizations ACUS spoke with often had different foci in terms of which guardianship and foster care activities they performed. While some organizations covered the entire foster care or guardianship process, from identification of potential ward to assignation of guardian and subsequent monitoring, other organizations conducted just one portion of those activities.

Organizations that were interviewed are listed in the table below. ACUS attempted to contact one additional child foster care organization—the New York City Administration for Children’s Services—however, that organization had not responded to our requests for an interview prior to publication of this report. Because many of the organizations have very similar names, throughout the following section each organization is referred to by the name of the state in which the organization resides. For example, the Division of Family and Children Services in Georgia is simply referred to as “Georgia.”

| <b>Adult Protective Services (APS)</b>   |                       |
|--|-----------------------|
| <b>Organization Name</b>   | <b>Interview Date</b> |
| <b>Aging &amp; Disability Services (King County)</b><br>Seattle, Washington            | 10-22-2014            |
| <b>Adult Protective Services</b><br>Florida Department of Children and Families        | 10-10-2014            |
| <b>Adult Protective Services</b><br>Texas Department of Family and Protective Services | 10-23-2014            |
| <b>Office of Adult Services</b><br>Maryland Department of Human Resources              | 10-31-2014            |
| <b>Adult Protective Services</b><br>Kansas Department for Children and Families        | 11-03-2014            |



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| <b>Child Foster Care</b>  |                       |
|---|-----------------------|
| <b>Organization Name</b>  | <b>Interview Date</b> |
| <b>Division of Family and Children Services</b><br>Georgia Department of Human Services | 10-28-2014            |
| <b>Department of Children and Family Services</b><br>Illinois                           | 10-27-2014            |
| <b>Department of Children and Family Services</b><br>Los Angeles County                 | 11-03-2014            |

### *A. Adult Protective Services Organizations*

Adult Protective Services (APS) programs tend to be fragmented, and investigations are often conducted by a different office or department from that which does guardian assignments or monitoring. Four of the five APS agencies ACUS interviewed (Florida, Washington, Kansas, and Texas) focus on the initial investigation of abuse reports, and do not handle guardian assignment or monitoring. Because of this fragmentation, agency representatives could only discuss part of the guardianship process in depth, and were often relatively unfamiliar with guardian assignment, monitoring, and removal.

The fifth APS agency ACUS interviewed (Maryland) has an even more narrow focus. The agency exclusively handles adults ages 18-64 who are mentally or physically incapacitated and who do not have family or another caretaker. Elders are handled by a different office, as are individuals with a family member or friend serving as a guardian. The office ACUS interviewed is a small central office involved in oversight of the agency's local offices. Because of this narrow focus, the representatives ACUS interviewed were unable to answer the majority of ACUS's questions.

Despite this fragmentation, several of the organizations ACUS interviewed have large staffs and handle a high volume of cases. For example, the APS program in Florida focuses purely on investigations, and has a staff of just over 600 full-time employees. Roughly 300 investigators handle 47,000 to 48,000 cases annually. The APS program in Texas also focuses on investigations, and has around 1,000 employees.



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### *i. Investigations, Referrals, and Case Types*

Both the Texas and Florida APS programs rely heavily on 24-hour hotlines. The representative from Florida commented that they become aware of about 99% of their cases through their hotline, and the representative from Texas stressed that their hotline is very important for intake statewide. Kansas also has a 24 hour hotline that, along with email messages, serves as a primary method for receiving reports of potential abuse.

Several agencies mentioned mental capacity as an important concern when beginning an investigation. Representatives from Florida, Texas, and Kansas emphasized that the first step in their investigation process is determining whether the elderly or disabled person has mental capacity. If that individual does have capacity, then he or she must give consent before the agency can provide assistance. The representatives from Florida and Kansas both commented that they commonly saw cases in which an adult child (or other relative) is in some way exploiting or abusing an elder—the elder is mentally capable but will not request help, so the agency cannot render assistance. Although frustrated by this problem, neither agency had a suggested solution.

The most common case type in the organizations that ACUS interviewed is that of self-neglect. In Texas, self-neglect cases are the most common cases, followed by abuse and exploitation by family members. The Texas representative called self-neglect cases their “bread and butter.” In Kansas, a full 60% of the 9,000 cases APS investigated last fiscal year were self-neglect cases, followed by various types of abuse. Self-neglect is also the most common type of case seen by the Florida APS. In fiscal year 2013/14, Florida APS investigated 47,000 cases. Over 16,000 of these cases were classified as cases of self-neglect. A further 14,000 were cases of inadequate supervision, followed by 9,000 cases of financial exploitation and 8,000 cases of physical injury.

### *ii. Guardian Appointment and Training*

The organizations ACUS spoke with could not provide detailed information on guardian appointment and training—as mentioned above, the organizations ACUS spoke with are primarily involved in the investigative stage of the guardianship process. Only representatives from Florida and Kansas could speak to training.

Florida has relatively extensive guardianship requirements. Background criminal checks are required, and all guardians must go through a training process. Non-professional guardians (including family members, friends, and neighbors) take just a short, eight-hour course. Professional guardians (including both for-profit and not-for-profit organizations and



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individuals) undergo a more extensive training program. Furthermore, professional guardians must post a \$50,000 bond as insurance for proper treatment of their wards.

In contrast, Kansas requires training only for guardians that are affiliated with the Kansas Guardianship Program—an organization that works with the state to help provide guardians for people who have no family or friend who can be a guardian, and who does not have the financial resources to hire a helper. The representative knew of no training (either mandatory or voluntary) in Kansas for family members or friends who wanted to become guardians.

### *iii. Electronic Capabilities*

With the exception of Baltimore, the agencies ACUS interviewed maintained electronic databases that contained significant case and client information. The representatives from Washington commented that they have an electronic data “warehouse” which contains data that come from both their own organization and from other guardianship organizations in the state. The database serves over 39,000 (duplicated) individuals. The representative from Texas commented that there is a centralized statewide database that handles guardianship issues. APS “piggybacks” off the child care database, and they have access to a “wealth of data.”

The Kansas representative commented that, although they have good data resources, they are not very well set-up to share data on a large-scale basis. In contrast to the other representatives ACUS interviewed, the Kansas representative indicated that she did not feel it was appropriate to establish any kind of large scale data-sharing system with SSA (or any other organization) because of privacy concerns. She thought that data sharing should continue to be conducted on case-by-case basis.

Two of the agencies ACUS interviewed are also making use of mobile technology. The Texas APS relies heavily on mobile case-workers with tablets and smartphones who are able to access the database from anywhere. The Kansas APS just began piloting a project with tablets, and expect the project to be expanded soon.

### *iv. Interactions with Other Organizations*

Representatives from Florida, Washington, and Texas all commented that they work with a range of interests at the state level. These organizations include law enforcement, local nonprofits, mental health agencies, and nursing homes. These contacts seemed frequent and quite positive.



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Coordination with the federal government is quite different. In general, interactions with the federal government are relatively rare for these organizations. The representative in Texas commented that coordination with the federal government is the “exception rather than the rule,” and representatives from Florida and Washington echoed similar sentiments. SSA and VA (Veterans Affairs) were the two agencies cited as having the most frequent contact with these state and local agencies.

Kansas provides an exception: they have a small “fast-track” procedure to help APS staff verify Social Security numbers over the phone. In most cases, if a person needs to obtain or verify the Social Security number of an incapacitated person, he or she must visit the SSA office in person and bring a number of pieces of identity verification (three pieces of identification for the incapacitated person, and two for the person requesting the information). Authorized APS staff in Kansas can verify Social Security numbers over the phone, though they must still visit a SSA office to obtain a Social Security number or replacement Social Security card. However, the Kansas representative stressed that much of this coordination is on an office-by-office basis, and communication is not uniformly smooth.

The representatives ACUS spoke with seemed hopeful that relations with SSA could be made more frequent and systematic. Representatives from Washington, Texas, Kansas, and Florida all echoed similar concerns: in their experiences, the success or failure of their staff’s communications with SSA hinged more on personal relationships than on overarching policy. The representative from Texas remarked that interactions are “hit or miss:” although some jurisdictions within Texas are extremely easy to work with, other offices are difficult to reach or are not forthcoming with necessary information. Representatives from Washington and Florida echoed similar sentiments.

### *v. Trends over Time and Resource Constraints*

Representatives from the Washington, Texas, and Maryland APS programs stressed the increased demands that are being placed on their systems. For instance, a Washington representative called the recent rise in cases “astronomical,” and added that this increased demand was due to greater numbers of elderly persons in need, better awareness of elder abuse, and an increased number of referrals.

Texas has managed to stem the rising caseload temporarily, but they have not found a long-term solution. Several years ago, APS in Texas defined a key term (“substantial impairment”), which led to a 15% drop in cases. However, the number of cases has been gradually creeping back up, in part because of the increasing population of elderly in Texas, and



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in part because (well-intentioned) caseworkers have figured out how to push cases through in spite of the stricter definitional requirements. In contrast, the representative from Kansas said that the number of cases has remained about the same; however, declining resources have increased the number of cases each caseworker has had to manage.

Finding guardians for the incapacitated can often be a time-consuming process. A representative from Washington commented that, for non-emergency cases, it takes “weeks and weeks” for an elderly person to be matched with a guardian. The Kansas APS representative observed that matching guardians and incapacitated people is extremely variable in timing. In certain cases, when there is an emergency or if the incapacitated person is located in a city, matching can happen within hours. In other non-emergency cases, finding a guardian can take a year or more, especially if the incapacitated person lives in a rural area.

APS representatives also expressed concern about resources. The representative from Texas commented that they are always a “dollar and a day late and a couple caseworkers short” of what they need. The representatives from Florida commented that a big challenge they currently face comes from state budget cuts. Five to ten percent of their funding comes from the Social Services Block Grant Program, but the remainder of their funding comes from the state government. Because their budget includes such a large amount of state resources, APS often gets cut early in the process when state budget cuts occur.

### *vi. Recommendations and Requests for SSA*

Representatives from Florida, Texas, and Washington stressed the need for obtaining easier access to data from SSA, particularly proof of income information. The Washington representatives noted that currently, helping elders and the disabled apply for various federal benefits can be difficult: these people need to visit the SSA office personally, request information by the website, or place a phone call to SSA to get the required information. Given that many of these individuals need assistance doing daily activities (and are often not computer savvy), obtaining the required information can be challenging. Getting this information takes caseworker time as well, pulling attention away from other activities. The representatives from Maryland also expressed a desire for a “fast-track” process to get a hold of the local SSA office.

This concern was echoed by Florida both with respect to local SSA branches and with respect to local banks. In some cases, SSA offices are willing to share information, but in other situations privacy concerns are cited as a reason for denying access to information. Representatives stressed the value of a national policy document, issued by SSA, which would clarify and explain some of the relevant privacy concerns and allow caseworkers to access as



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much information as is legal under current privacy laws. The representative from Texas commented that the Texas Finance Code had recently been amended to give APS access to Texas banks. This provides a clear “in” to get information, and had been a big help to APS. The representative from Kansas echoed a similar concern, in that interactions with SSA offices were often uneven: while one officer or office was very forthcoming with information and assistance, another would be reluctant to provide the same or similar information.

The APS programs ACUS interviewed expressed significant interest in having more federal oversight and a more consistent framework for adult care. The representative from Texas commented that he wished there was a more concerted effort at widespread communication at the national level—both vertically (from federal agencies) and horizontally, across different statewide programs. The representatives from Florida stressed the need for a consistent national framework, and wished there could be a program for adults that more closely represented the national framework for Child Protective Services. The representatives from both Texas and Florida indicated that the Elder Justice Act is a step in the right direction, but were interested in fuller implementation of the Elder Justice Act, both for establishing national frameworks for adult protective care and for the financing that the Elder Justice Act could bring. The Kansas representative was also concerned at the lack of coordination between state and federal interests: she had run into a number of situations in which the state had removed a guardian, only to have that person be reinstated as a guardian at the federal level.

The Washington representatives also expressed a desire for SSA offices to keep and disseminate an informal list of representative payees and guardians. They commented that this was something that SSA offices in Washington had done several years ago, and that it would be “enormously” helpful to have SSA maintain and disseminate such a list. The representatives from Maryland also commented that having a SSA-maintained list of guardianship organizations would be extremely helpful.

### ***B. Child Foster Care Organizations***

The foster care organizations that ACUS interviewed differ from the APS organizations in several key respects. In general, the foster care organizations have greater central organization, more robust programs, greater training, and multiple layers of oversight.

The number of calls and investigations made by some foster care agencies is extremely large. For example, the agency ACUS interviewed in California supervises around 36,000 children, 17,000 of which are in foster care. They receive 200,000 calls annually from their



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hotline (monitored by a team of 100 social workers), 40% of which require in-person investigation. The agency oversees around 4,000 foster homes and group homes of various types.

### *i. Investigation, Removal and Placement in Foster Care Homes*

Foster care organizations are often well-equipped for fast response. Both the Illinois and Georgia foster care organizations ACUS spoke with commented that, once they receive a report of abuse or neglect, they are able to be on the scene almost immediately and can remove a child from danger. In both states, initial investigations are done by special investigators, and their investigators have college education and specialized training. The Illinois representative stressed that they can investigate and remove a child from a home within a couple of hours of the initial notification if the child is in danger. The agency can get more a permanent determination from a judge within 24-72 hours, depending on the circumstances.

The representatives from California stressed that they have a very rapid response time as well: some cases are categorized as “immediate,” in which case the response time is within 24 hours (but cases are usually handled by the end of the day). For less immediate cases, investigations are made within five days. Initial calls are taken by social workers, who then hand off the case to an emergency response social worker. Social workers are on hand both during working hours and during evenings and weekends to respond to emergency calls.

In both Illinois and Georgia, foster care representatives stressed the desire to keep families together. Both organizations prioritize keeping children with their biological parents or other family members, before looking for other care options. The Georgia representative commented that, despite their best efforts, they are only able to keep around 15% of the children with family members or other relatives (this is much lower than the national average). The Illinois representative commented that one of the key factors they consider is giving the child some kind of familiarity—if staying with their family is not possible, the agency tries to keep the children within the same school district or provide some other form of consistency.

Agencies attempt to match children with foster homes based on foster-parent preference for gender or age, but the representative from Georgia commented that, in reality, placement is more dependent on space and availability than anything. Especially for families of several children, placement is often determined based on finding a foster family with adequate space. In Georgia, if no foster family is available, children may be placed in a group home (with six or more children), but the representative stressed that this is the least-preferred option.



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### *ii. Training, Monitoring, and Enforcement*

Foster parents generally undergo training before they can take in children. In Georgia, foster parents have 23 hours of mandatory training, as well as an additional 15 hours of training annually. Georgia conducts criminal background checks on prospective foster parents, and conducts a nationwide Child Protective Services clearance process, which investigates the parents' foster care record for the past five years. Each child (or family, if there are multiple children in the same placement) is assigned a case manager. The case manager is required to see the child at least once a month, but two counties have higher standards, requiring visits twice monthly and weekly for eight weeks after a move. If a case worker detects a small violation, the foster family will get a citation; however, the children will not be removed unless a second citation occurs. For larger violations, a single violation is sufficient for the home to be closed. If a foster home or group home is closed involuntarily, the adults involved are prevented from working with children in the future.

In Illinois, each home is assigned a site representative, who checks and approves the foster home every six months. In Illinois, the representative commented that, in addition to training, prospective foster parents' homes are checked for safety, and are licensed for a particular number of children based on number of bedrooms and space. On top of that, each child is assigned a case worker who visits the child with varying frequency—from weekly to monthly—depending on the circumstances. Most of these case workers (around 80%) are members of nonprofit organizations, not by members of the Department. When allegations of misconduct arise, the Child Welfare Employee License board reviews the situation, and will often suspend or revoke the foster care family's license.

California has two different categories of foster family homes. Homes in the first category are recruited, trained, and licensed directly by the state foster care agency (in conjunction with county agencies). These homes receive an initial 30 hours of training, and receive visits at least once a month by the child's social worker. Homes in the second category are certified indirectly by the state: the state licenses a foster family *agency*, then that agency can recruit and train homes. This second type of certification was initially designed to train foster families to receive children with special needs. These families receive 15 hours of initial training, followed by 10 hours of annual follow-up training and weekly visitations by foster family agency social workers. In addition, this second category of certification requires visits by the child's social worker, with at least one visit per month, but visits can often occur more frequently. Families in either category undergo several levels of screening before they are able to take in foster children, including a criminal clearance and examination of the home.



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### *iii. Electronic Capabilities*

Foster care agencies generally have robust electronic capabilities. For example, the Illinois foster care organization has a central registry for foster care children and guardians. Although only agency employees have primary access to the database, individuals from other pre-approved organizations can call in and obtain certain information. Organizations that have been pre-approved tend to be groups that hire adults who interact with children. Representatives from these organizations can request information about a specific adult—if the adult is in the system, the agency will not release information on the individual’s specific offense, but will tell the representative whether and how long an individual has been prohibited from working with children.

The agency in California also maintains thorough electronic records. The agency keeps records of the calls they receive (both those that result in investigations and those that do not), and the statewide database contains significant information about each case, including case management plans and records of visits. The representatives ACUS spoke with in California indicated that the ability to share information outside the agency—for example with SSA—is there, but stressed that they would be more interested in working toward data-sharing if the sharing was “bi-directional.”

### *iv. Interactions with Other Organizations*

The Illinois foster care organization works primarily with other state agencies and nonprofit organizations like the Department of Human Services and the Illinois State Board of Education. Their interactions with federal agencies are limited; they primarily interact with federal organizations while applying for benefits for individual children. The Illinois representative commented that they must go through the same process that parents would undergo in order to apply for and receive federal government benefits for individual children.

The Georgia representative stressed that they work with a large number of organizations—too many to name easily. At the federal level, they most commonly interact with Child Protective Services and with SSA. The California office also commented that they worked with a very large number of organizations, and cited the Superior Court and the California Department of Social Services as the two organizations they engaged with most frequently. The California foster care organization commented that they also work closely with the Pasadena Social Security Office. They reported having a good relationship with the SSA office, and stated that they collaborate frequently on the applications for federal funding and reimbursement issues, among others.



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### *v. Trends Over Time*

In several states, although the overall number of foster care cases have declined or remained constant, the difficulty of each case has increased. In Illinois, foster care cases have remained constant over the last few years, but this consistency has been developed as a result of placing more resources on the front-end of the foster care process, and minimizing the entry of children into foster care. Because of this front-end focus, many of the “easy” cases never make it to foster care. Therefore, although the number of children they have in foster care has remained constant, each case tends to be more difficult and time-consuming. The representative ACUS spoke with felt that need is increasing overall.

Georgia has also seen a recent decline in number of cases, but the representative emphasized that this is a short-term trend. About five years ago, the department made permanency a priority, and that push helped reduce the number of children in foster care by about 40%. Since that time, the number has increased again.

In California, the representatives ACUS spoke with commented that they have seen a decrease in the number of cases they handle, and they have worked to halve the number of children in group homes from around 2,000 children to around 1,100. However, the cases that they see have also become more difficult: many of the children they see now have parents who were in the foster care or probationary system, and many children that are coming into the system have mental health or substance abuse problems.

### *vi. Challenges*

The representative from Illinois mentioned two specific concerns. First, particularly in isolated areas, they have trouble finding enough homes and services for children. They are dependent on recruitment campaigns to find volunteer foster parents, and meeting demand is a constant challenge. Secondly, they often have a difficult time getting the children the services they need. Children in foster care have medical insurance cards, issued by the Department of Human Services, but the cards do not cover all needed services. For example, the cards cover only a limited range of mental health services, and will not cover cosmetic surgery, as in cases of disfigurement.

The representative from Georgia echoed the resource concern issue—one of their biggest problems now is obtaining and retaining good people. Starting salaries for their case managers is \$10,000 less than the starting salaries for teachers in the area, so retaining good workers is challenging. Secondly, she echoed many of the concerns mentioned by APS organizations, and stressed that applying for funding on behalf of children in foster care was difficult. The



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representative commented that it is often difficult for them to determine whether or not a child is eligible to receive federal funding under Title IV-E of the Social Security Act.<sup>38</sup> They would benefit from a clarification as to the eligibility requirements, so as to have a better understanding of when to request federal funds. She also emphasized that they would benefit from having a more systematic method for interacting with SSA. As of now, interactions with SSA are largely unsystematic, and in some cases obtaining information from SSA can be quite time consuming, reducing the time caseworkers can spend on other aspects of their jobs.

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<sup>38</sup> Social Security Act, 42 U.S.C. §670-679(c).



## V. Common Themes and Observations

Although the survey does not reflect a representative sample, the rich quantitative and qualitative set of data is informative of the issues studied. The study presented challenges because a number of identified problems are local and unique to a particular court within a particular state, or with a specific SSA office. Problems experienced by courts in major cities may be quite different than problems experienced in small or rural courts. This means that responses cannot be generalized. The strategy behind this project was to cast a broad net and seek a large respondent pool to collect a dataset that would provide a rich description of the issues. The strategy was effective. The fact that there are over 850 court responses and over 140 guardian responses means that we can glean a lot of useful information in terms of the nature of the problems, even if some of those problems are localized. The results of this study should be a good starting point for SSA; and the agency should be able to assess and act on any serious problems, albeit localized ones.

Despite our inability to make generalizations about the survey, there remain common themes that should help SSA develop best practices going forward.

*1. Requesting and Obtaining Information:* A common concern voiced by both survey respondents and interviewees is that interactions with local SSA offices are ad hoc and rest more on personal relationships than on broader policy. Interviewees often expressed frustration that release of information can be inconsistent from one SSA office to another, leaving them unsure as to when or how to apply for benefits on behalf of incapacitated persons. Finding the correct person to contact at SSA can be time consuming, and many survey respondents and interviewees communicated concern about the time and effort that must be expended to reach the correct SSA staff.

Respondents and interviewees also noted that SSA officials' strong preference to release information directly to the incapacitated individual often made it difficult for the guardian to obtain important information. Given the physical and mental limitations that incapacitated individuals often face, it can be difficult for them to obtain, or make use of, important information.

When we spoke with SSA, they mentioned the *my* Social Security website<sup>39</sup> as a way for social security recipients to access important information easily online. Though we did not specifically ask organizations about the website, none mentioned it while relating concerns about

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<sup>39</sup> *my* Social Security Portal, <http://www.ssa.gov/myaccount/> (Last visited Dec. 12, 2014).



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accessibility of information. This may be due to a lack of awareness about the website, or because the organizations could not use the system effectively because of the incapacity of the social security recipients involved.

3. *Electronic Information:* Although many courts and organizations collect data and maintain databases on guardianship-related issues, collection, maintenance, and dissemination of information is uneven from one entity to another. For example, the court survey indicated that while some courts maintain lists of guardians and representative payees, others do not. When lists exist, they may not be made publicly available, and may be for court use only. Most of the state organizations we interviewed also collect data and some maintain robust databases. Some organizations make substantial use of mobile caseworkers. These organizations maintain data on guardians and incapacitated persons, as well as information on investigations of claims, sanctions of guardians, and many other relevant factors. Representatives of some organizations believed that their data are easy to access and share, and seemed willing to share information with SSA, especially if data sharing was reciprocated by SSA. Currently, data collection and management is a decentralized process, with no universal database of guardians and incapacitated persons.

4. *E-Filing:* Relatedly, e-filing practices vary from court to court. Many courts already allow e-filing of guardian paperwork, and many more are moving in that direction, but there are still significant numbers of courts that do not make use of e-filing practices. If e-filing could be made universal, it would be much easier for different organizations—including courts, state agencies, and SSA—to share information. Of course, we recognize that there may be resource constraints at the state level, particularly for small and rural courts.

5. *Database of Guardians and Incapacitated Persons:* Currently, no nationwide database related to guardianship exists. Survey respondents and interviewees indicated that they would benefit from a nationwide database that provided information on incapacitated persons, eligibility for aid and other sources of income, guardian and representative payee status and identity, and disciplinary status of guardians, among other factors. Many of those involved with guardianship would agree that a database would greatly benefit the elder care system. Although such a database cannot be created overnight, broader adoption of e-filing practices, increased data collection, and increased data sharing among different organizations are necessary first steps in working toward such a database.