

Administrative Conference of the United States Survey of State Court  
Adult Guardianship Practices

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### **Introduction**

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

The Administrative Conference, in partnership with the National Center for State Courts, requests your participation in this online survey. The goals of this survey are twofold: (1) to gather information on state court practices concerning selection, monitoring, and sanctioning of adult guardians/conservators; and (2) to explore possibilities for greater sharing of information and coordination between SSA and state courts.

Please complete the survey by [date]. We thank you in advance for your assistance. If you have questions about this survey, please contact [name and contact information].

### **Instructions**

*Definitions.* Because guardianship terminology varies considerably across the country, for purposes of this survey, the following key terms are defined as follows:

- “***Guardian***” is 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***” is a guardian who possesses some or all powers with regard to the personal affairs of an adult.
- “***Guardian of the Estate***” is 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***” is 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.”)

*Scope.* We understand that some judges, court officials, and others may work or serve in multiple courts. *Please respond to each survey question relative to the court with which you have the greatest familiarity concerning adult guardianship practices and procedures.*

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## A. Background Information

1. Please describe your most frequent role in the guardianship process.

- Judge/judicial officer
- Court administrator/clerk/manager
- Visitor/investigator/evaluator
- Guardian
- Other (please specify: \_\_\_\_\_)

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

[Drop-down list of 50 states, D.C. & territories]

3. In which type of court do you primarily work or serve?

- Probate court
- General jurisdiction court
- Limited jurisdiction court
- Other (please specify: \_\_\_\_\_)

## B. Selection of Guardians

4. In the past year, about what percentage of *Guardians of the Person* appointed in your court fell into the following categories? (Estimates welcome if data for actual percentages are unavailable.)

- \_\_\_ Family/friends
- \_\_\_ Professional guardians
- \_\_\_ Public guardians (such as: public guardian offices, social service or other agencies)
- \_\_\_ Volunteers (such as: pro bono attorneys, trained lay volunteers)
- \_\_\_ Other (please specify: \_\_\_\_\_)
- \_\_\_ Don't know

5. In the past year, about what percentage of *Guardians of the Estate* appointed in your court fell into the following categories? (Estimates welcome if data for actual percentages are unavailable.)

- Family/friends
- Professional guardians
- Public guardians (such as: public guardian offices, social service or other agencies)
- Volunteers (such as: pro bono attorneys, trained volunteers)
- Other (please specify: \_\_\_\_\_)
- Don't know

6. 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?

- All cases
- Most cases
- Some cases
- A few cases
- No cases
- Don't know

7. 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?

- All cases
- Most cases
- Some cases
- A few cases
- No cases
- Don't know

8. 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)?

- Yes
- No <<Skip to Question # 10>>
- Don't know <<Skip to Question # 10>>

9. Is this roster or list of potential guardians currently available to the general public?

- Yes, on the court's website
- Yes, at the courthouse
- Yes, both on the court's website and at the courthouse
- Yes, but from elsewhere (please specify: \_\_\_\_\_)
- No, roster only for use of court personnel
- No, but can be made available to the Social Security Administration

10. 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?

- All cases
- Most cases
- Some cases
- A few cases
- No cases
- Don't know

### **C. Monitoring of Guardians**

11. 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)?

- All cases
- Most cases
- Some cases
- A few cases
- No cases
- Don't know

12. Generally, which statement best describes your court's practice regarding whether Guardians of the Estate must file annual financial accountings?

- All cases
- Most cases
- Some cases
- A few cases
- No cases           <<Skip to Question # 17>>
- Don't know

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

- Yes
- No                   <<Skip to Question # 15>>
- Don't know       <<Skip to Question # 15>>

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

- Yes, all forms
- Yes, but only some forms
- No
- Don't know

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

- Yes, all forms
- Yes, but only some forms
- No                   <<Skip to Question # 17>>
- Don't know       <<Skip to Question # 17>>

16. In your court, who typically audits or evaluates the financial accountings filed by Guardians of the Estate? (Select all that apply.)

- Judge/judicial officer
- Court administrator/clerk/manager
- Court investigator/auditor/accountant
- Other public entity (such as: public guardian office, social service agency)
- Volunteer
- Other (please specify: \_\_\_\_\_)

#### **D. Case Management of Guardianships**

17. Does your court offer e-filing for any guardianship-related documents?

- Yes
- No <<Skip to Question # 19>>
- Don't know <<Skip to Question # 19>>

18. Which type(s) of guardianship-related documents can be e-filed in your court? (Select all that apply.)

- Petition/application for appointment of guardian
- Acceptance of appointment by guardian
- Inventory or estate plan
- Guardianship plan
- Financial accounting (i.e., initial, annual or final)
- Report on an Incapacitated Person's status/well-being
- Other (please specify: \_\_\_\_\_)
- Don't know

19. Does your court use an electronic case management system or database for guardianship cases?

- Yes
- Not currently, but an electronic system expected in next 3 years <<Skip to Question # 21>>
- No <<Skip to Question # 21>>
- Don't know <<Skip to Question # 21>>

20. Which statement(s) best describes the capabilities of the electronic case management system or database used in your court for guardianship cases? (Select all that apply.)

- Records filing and disposition of guardianship cases
- Captures additional case-level data elements (such as: type of guardianship, name or age of an Incapacitated Person, nature of incapacity)
- Generates reminders of upcoming due dates
- Tracks filing of financial accountings
- Flags anomalies, errors, or potential “red flags” in financial accountings
- Other (please specify: \_\_\_\_\_)
- Don’t know

21. 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.)

- All or most files are open to the public, and available electronically
- All or most files are open to the public, but only available in paper form
- Guardianship files are routinely furnished to specified interested persons or government entities
- Guardianship files are sealed, but can be opened under specific circumstances with court approval
- Guardianship files are uniformly sealed, and not available to the public
- Don’t know

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

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

- Yes
- No <<Skip to Question # 25>>
- Don’t know <<Skip to Question # 25>>

23. 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.)

- Issued show cause or contempt citation
- Ordered additional training
- Increased or collected bond (or other security)
- Reported to adult protective services and/or law enforcement
- Reported to bar association or other certifying/licensing body
- Suspended and appointed temporary guardian
- Removed and appointed successor guardian
- Convicted guardian of a crime against an Incapacitated Person
- Other (please specify: \_\_\_\_\_)

24. 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.)

- Records kept in a computer database or other type of centralized list
- Records kept in individual guardianship case files
- Other (please specify: \_\_\_\_\_)
- No records are kept
- Don't know



**F. Caseload Information**

25. For the past year, please indicate below the number for new adult guardianship filings (i.e., new cases) in your court separately for Guardians of the Person (Column A) and Guardians of the Estate (Column B). (Estimates welcome if actual data are unavailable.)

*Note:* Use the “Combined” column (Column C) for cases in which the same individual was appointed as both Guardian of the Person and Guardian of the Estate, or when your case management system cannot distinguish between types of adult guardianships.

| 2013 New Filings | Guardianship of the Person<br>(Column A) | Guardianship of the Estate<br>(Column B) | Combined—Both Guardianship of the Estate and Person<br>(Column C) |
|------------------|--|--|---|
| Fewer than 10    | <input type="radio"/>                    | <input type="radio"/>                    | <input type="radio"/>   |
| 10 to 99         | <input type="radio"/>                    | <input type="radio"/>                    | <input type="radio"/>   |
| 100 to 299       | <input type="radio"/>                    | <input type="radio"/>                    | <input type="radio"/>   |
| 300 to 499       | <input type="radio"/>                    | <input type="radio"/>                    | <input type="radio"/>   |
| 500 or more      | <input type="radio"/>                    | <input type="radio"/>                    | <input type="radio"/>   |
| Don't know       | <input type="radio"/>                    | <input type="radio"/>                    | <input type="radio"/>   |

26. 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?

- Filings have increased
- Filings have stayed about the same
- Filings have decreased
- Don't know

27. Guardianships often continue for many years. For the past year, please provide your court’s current guardianship caseloads—that is, the total number of guardianships under the supervision or ongoing review of your court— separately for Guardians of the Person (Column A) and Guardians of the Estate (Column B). (Estimates welcome if actual data are unavailable.)

*Note:* Use the “Combined” column (Column C) for cases in which the same individual was appointed as both Guardian of the Person and Guardian of the Estate. Also use the “Combined” column if your case management system cannot distinguish between the two types of adult guardianships.

| 2013 Open/Pending Caseload | Guardianship of the Person (Column A) | Guardianship of the Estate (Column B) | Combined—Both Guardianship of the Estate and Person (Column C) |
|----------------------------|---------------------------------------|---------------------------------------|--|
| Fewer than 50              | <input type="radio"/>                 | <input type="radio"/>                 | <input type="radio"/>  |
| 50 to 99                   | <input type="radio"/>                 | <input type="radio"/>                 | <input type="radio"/>  |
| 100 to 499                 | <input type="radio"/>                 | <input type="radio"/>                 | <input type="radio"/>  |
| 500 to 999                 | <input type="radio"/>                 | <input type="radio"/>                 | <input type="radio"/>  |
| 1,000 to 1,999             | <input type="radio"/>                 | <input type="radio"/>                 | <input type="radio"/>  |
| 2,000 to 2,999             | <input type="radio"/>                 | <input type="radio"/>                 | <input type="radio"/>  |
| 3,000 or more              | <input type="radio"/>                 | <input type="radio"/>                 | <input type="radio"/>  |
| Don’t know                 | <input type="radio"/>                 | <input type="radio"/>                 | <input type="radio"/>  |

28. 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 unavailable.)

- \_\_\_ Guardians of the Estate serving in dual capacity
- \_\_\_ Don’t know

## G. Court Outreach/Community Interaction

29. 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 court participates in multidisciplinary groups on guardianship-related matters
- The court has developed referral protocols with such groups
- The court collaborates with such groups from time to time
- The court has little contact with such groups
- Don't know

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

- Systematic and frequent
- Systematic but infrequent
- Case-by-case basis and frequent
- Case-by-case basis but infrequent
- None (i.e., no interaction with federal agencies in past 3 years) <<Skip to Question # 33>>
- Don't know <<Skip to Question # 33>>

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

[Text box for comments.]

32. Over the past 3 years, which statement best describes the nature and extent of [your court's/guardians'] interaction with the Social Security Administration to exchange information or consult on overlapping guardianship-representative payee matters?

- Systematic and frequent
- Systematic but infrequent
- Case-by-case basis and frequent
- Case-by-case basis but infrequent
- None (i.e., no interaction with Social Security Administration in past 3 years)
- Don't know

33. Do you think that enhanced coordination or sharing of information between [your court/guardians] and the Social Security Administration would be beneficial?

- Yes
- No                    <<Skip to Question # 35>>
- No opinion            <<Skip to Question # 35>>

34. Please briefly describe the kinds of coordination or information sharing with the Social Security Administration that you think would be most helpful.

[Text box for comments.]

35. (Optional) Please provide any additional comments you may have concerning your court's guardianship program or any other topic related to the survey.

[Text box for comments.]

36. (Optional) If you would like to receive a copy of the survey results, please provide your email address below.

[Text box for contact information.]

37. (Optional) If you would like to be contacted by Administrative Conference staff to discuss your survey responses, or, more generally, your court's guardianship program, please provide your name and contact information below.

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Work phone: \_\_\_\_\_

Email address: \_\_\_\_\_

Thank you for your assistance!

***Paperwork Reduction Act Statement - This survey, cleared under OMB No. 0960-0788, meets the requirements of 44 U.S.C. § 3507, as amended by section 2 of the Paperwork Reduction Act of 1995. Participation in this activity is voluntary. We estimated that it would take approximately 10 - 30 minutes to complete. If you would like to comment on our time estimate, please send your comments to: SSA, 6401 Security Blvd., Baltimore, MD 21235-6401.***