

# The Probate Courts, Guardianship, and Guardians: Findings from a Survey of Adult Guardianship in Ohio

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## Background

Adult guardianship is a legal process designed to protect individuals - unable to make decisions for themselves - from exploitation and to support a good quality of life for these individuals. Ohio's Probate Judges appoint guardians to make important decisions on behalf of persons determined to need protection by the court. Guardians often make critical decisions, including living arrangements, medical choices, and financial matters. Despite the importance of these decisions, the strategies used by counties to provide oversight of adult guardianship vary across the state and concerns have been raised in some instances about the quality of guardianship practice.

In response to concerns about the guardianship process, a recent legislative change to the probate court Rules of Superintendence (§66.01 et seq. commonly known as Rule 66) was enacted. Rule 66 was designed to ensure consistency and to enhance adult guardianship practices across the state. For guardians, the rule provides guidance about their responsibilities and sets clear expectations for the practices that are necessary to fulfill their role. The rule places an emphasis on initial and continuing education and more frequent reporting to communicate with the probate courts about the well-being of the person under guardianship. At the same time, Rule 66 created additional requirements and potential challenges for the courts regarding their role in appointing, training, and monitoring the activities of guardians. This brief report highlights findings from a 2014 statewide survey on adult guardianship practices (Reece and Roberts, 2017). Our focus is on the approaches used by counties to manage their guardianship responsibilities and to identify innovative programs and practices.

**61.5%**  
of Ohio's counties report that  
guardianship caseloads have  
**increased**  
in the previous three years.

A family member or friend  
served as the guardian in  
**70.4%**  
of guardianship cases  
opened in 2014.

**Only 4%**  
of adult guardianship cases  
were closed because the  
person under guardianship  
was returned to competency.

## Study Highlights

Overall, the number of adult guardianship cases is increasing.

- » More than half (54%) of the counties who responded to the survey reported an increased number of guardianship filings over the past three years.
- » Six in 10 courts (62%) described an increase in their guardianship caseload over the previous three years.

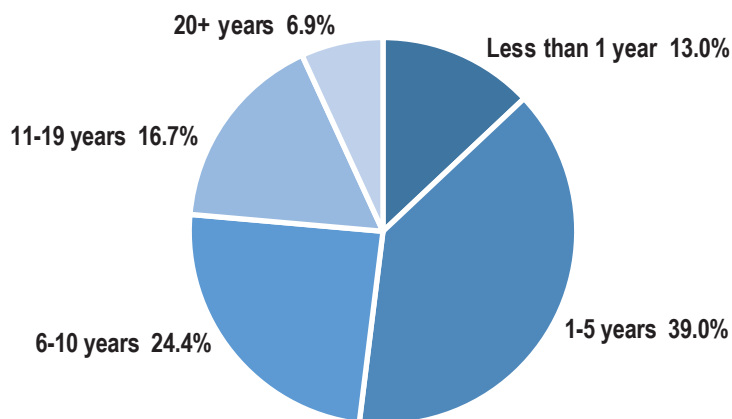
Emergency guardianships, a short-term strategy the courts may use to “prevent significant injury to the person or an estate” by appointing a guardian for up to 72 hours (Ohio Revised Code, §2111.02(B)(3)), were used inconsistently across Ohio.

- » Emergency guardianships are often used in times of crisis – for example, when a person is experiencing an acute mental health crisis, when financial exploitation is occurring, or when consent is needed to perform a necessary medical procedure and an individual is found unable to provide consent.
- » While approximately 18% of the cases opened were emergency guardianships (of the 28 counties that provided complete data on this question), around 10% of the counties reported none in 2014, yet emergency guardianships made up more than half of guardianship cases opened in five counties.

Adult guardianships are often a long-term legal arrangement.

- » As shown below, nearly half of adult guardianship cases have been in existence for longer than six years.

**Figure 1. Reported Duration of Adult Guardianships**



Adult guardianships are rarely reversed.

- » In Ohio, 4% of adult guardianship cases were closed in 2014 because the person under guardianship was returned to competency.
- » In the majority of cases (71%), adult guardianship cases were closed due to the death of the person under guardianship.

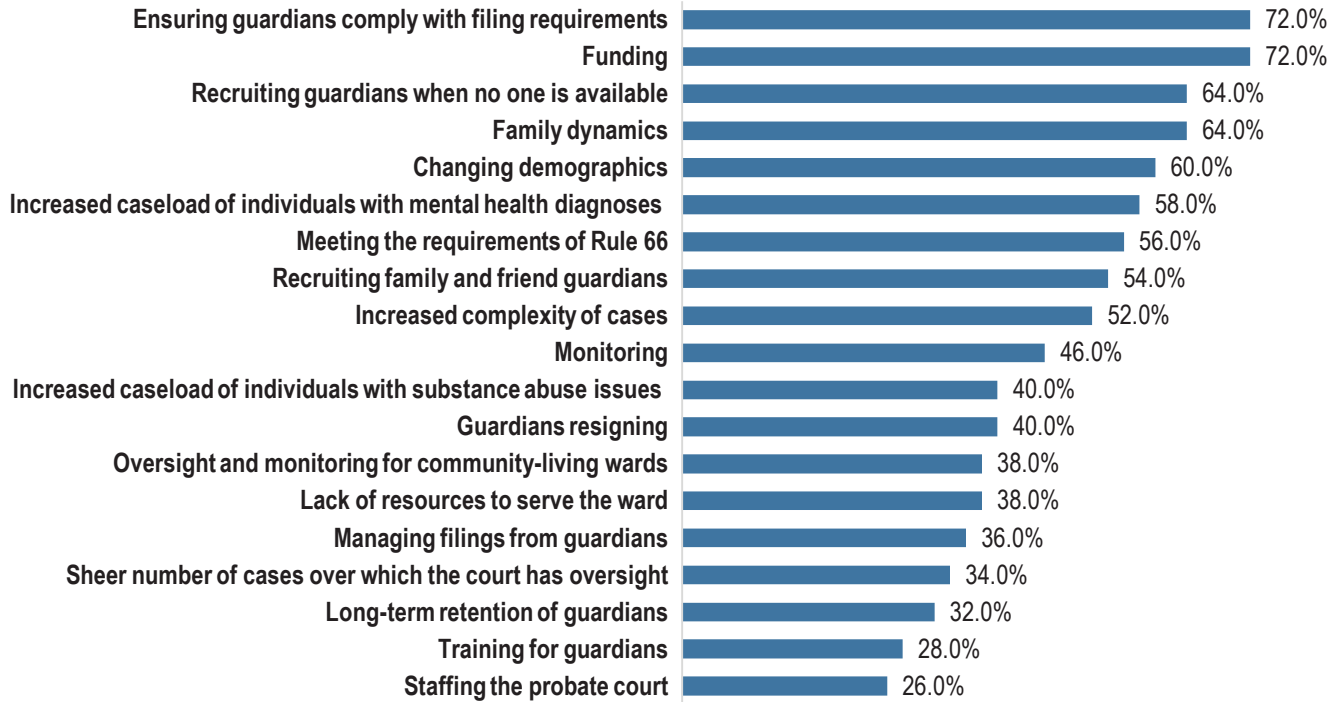
Most guardians (70%) are family or friends known to the individual prior to the guardianship determination.

- » One hundred people in Ohio (usually professional guardians or attorneys) were reported to serve as a guardian for 10 or more persons under guardianship.

Courts report a number of challenges to managing adult guardianship.

- » The most commonly reported challenges were ensuring that guardians comply with filing requirements, funding, and recruiting guardians when no one is available to serve, as shown in Figure 2.

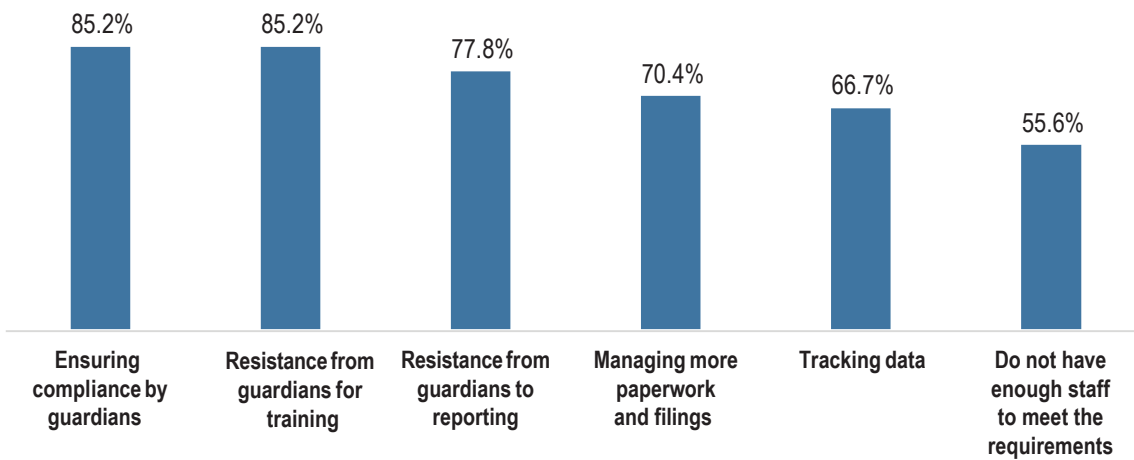
**Figure 2. Challenges to Managing Adult Guardianship**



Rule 66 elevates practice standards for guardians and the courts by incorporating recommendations from the National Guardianship Association and other model practice standards. While Ohio’s courts have many strategies in place to protect persons under guardianship and assist guardians, many of the new requirements demand courts to put in place specific safeguards and practices.

» About half of the courts (56%) reported that complying with the requirements of Rule 66 was a challenge for them. Figure 3 illustrates the specific aspects of Rule 66 that they identified as a challenge for their county.

**Figure 3. Most Common Challenges Related to Complying with Rule 66**



## Study Recommendations

» Probate courts face numerous challenges related to the administration of guardianship, such as the higher number of guardianship cases and an increasingly complex caseload. The courts are very active internally, yet there is considerable variability in the number of persons under guardianship, staffing levels, and processes for managing adult guardianship. Adequate resources for staffing the court are integral to

successfully overseeing adult guardianships and keeping caseloads at a manageable level, especially as courts work towards implementing the new practice standards described in Rule 66.

- » Given the long duration of adult guardianship, efforts are needed to sustain the proactive monitoring of guardianships over the long-run. Monitoring programs that include an in-person visit provide a more objective assessment of the guardian and person under guardianship pair than reviewing a report submitted by the guardian. Courts that have implemented such programs frequently assign a court investigator whose entire workload consists of monitoring. A second option is to rely on the services of volunteers to identify and address problems early and to provide support to guardians and persons under guardianship when needed.
- » Since most of the guardians are family members or friends of the person under guardianship, it is important that they receive adequate training and support in order to fulfill their role. Also, the guardian's capacity to promote quality of life and protect a person under guardianship from exploitation may change over time. The courts can plan ahead and put safeguards in place to ensure the availability of a guardian by identifying potential successors from within the family or enlisting guardianship services from a volunteer guardian or a paid professional.
- » Survey findings also indicate a need for counties to collect more information about populations served under guardianship. Only a few counties were tracking very basic information about the persons under guardianship (six out of the 55 responding counties). Collecting data about persons under guardianship and managing this valuable information could allow counties to understand more about the populations served, and anticipate needs of persons under guardianship for long-term care and social services.
- » In order to overcome many of the challenges associated with managing guardianships, some courts have developed and maintained strong community collaborations to augment the activities of the court. Often, the probate court judges provided leadership in the process of initiating collaborations within their communities to establish a guardianship program. Guardianship programs are beneficial to the courts because they can ensure the availability of paid or volunteer guardians, serve as a resource for the court, and may also provide training and education for guardians. Good relationships with community partners were also necessary in order to bring the community together to leverage financial resources and achieve more holistic adult guardianship services.

## References

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