

A Study of Adult Guardianship in Ohio: Preliminary Results

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Background

Guardianship is a legal relationship created by a county's probate court that gives one person (the guardian) the responsibility and authority to make decisions on behalf of another person (the person under guardianship or ward). Situations that leave adults vulnerable and in need of guardians include serious health conditions, cognitive impairment, developmental disability, severe mental illness, and drug addiction. A legal guardian takes over the most basic and most important decisions from an individual in order to manage the medical needs, living arrangements, and finances of the person under guardianship. The probate court in each Ohio county, similar to the rest of the U.S., is responsible for determining whether guardianship is necessary, appointing a guardian, and overseeing the process. In many counties, courts work with one or more organizations who arrange for guardianship. Guardianship programs can be for-profit or not for-profit. Each of these programs can employ both paid and volunteer guardians. Paid guardians are often individuals with social service backgrounds who are capable of managing some of the most complex cases that come to the probate courts. In the absence of a formal guardianship program, licensed attorneys often fill the role of guardian. These attorney guardians primarily handle guardianships of the estate but also manage guardianships of the person.

*Our state has been leading efforts to make lots of
improvements to the guardianship process.*

The guardianship process is one that presents many challenges for individuals, guardianship programs, and the courts. Managing paperwork and filings, training and supporting guardians, and monitoring guardianships are some of the most clearly articulated challenges faced by the courts and guardianship programs. The issue of monitoring guardianships has recently become a central focus in Ohio as stories of abuse and exploitation have been reported. To improve the guardianship process, the judicial branch in Ohio developed Rule 66 to address concerns related to training of guardians and monitoring of guardianships. Rule 66 codifies increased requirements for training, monitoring, and guardian reporting. Specifically, Rule 66 requires initial and continuing education requirements for guardians, enhanced monitoring by the courts, increased reporting requirements for guardians, and implementing a complaint review process.

This report highlights findings from the first phase of a study entitled: *Adult Guardianship in Ohio: Promising Practices*. In this initial phase key informant interviews were conducted by telephone (with one in-person) during the summer of 2015 with 20 experts on guardianship. Starting with personal contacts and recognized guardianship experts in the state of Ohio, we interviewed these initial contacts and used snowball sampling techniques to identify additional key informants. Through this process, our sample of experts included seven Judges and Magistrates, three Attorneys, nine Guardians (a mixture of professional guardians, volunteer guardians, family member guardians, and several directors of guardianship programs), and one other individual. Almost all of our participants had been or were currently employed in either the probate courts or in guardianship programs. Three individuals had direct personal experience serving as a guardian. Our key informants also have leadership roles at both the state and national level in activities aimed at improving guardianship. Some of these activities include, state judges' associations, committees with the Supreme Court of Ohio, the National Guardianship Association, and others. Many have had their accomplishments acknowledged at both the state and national level. In addition to being leaders in the area of guardianship reform, many of our participants have been working in the area of guardianship, either as judges, advocates, or guardians for many years; many have worked for more than twenty years striving to improve the institution of guardianship.

Our informants discussed outcomes, activities, resources, and other topics of importance related to guardianship in Ohio. The results from these interviews were a helpful resource to inform the second and third phases of our study: the development of an online survey sent to 89 probate courts in Ohio's 88 counties (October, 2015) to be followed by case studies of innovative practices (Spring, 2016). The following brief report is a discussion of the highlights from our interviews about desired outcomes, challenges, and strategies for improvement. Key informants reported on the programs in the counties where they served, as well as providing general information about the overall picture of guardianship in Ohio.

Methods

Our purposive sampling techniques recruited key informants from the Probate Courts, Guardianship Programs, and individual guardians. Open-ended questions were structured in such a way that participants could reflect on and share their individual knowledge and experiences regarding the court and guardianship programs. Key informants discussed policies and practices of the probate courts, ways guardians are assigned, challenges related to guardianship as an institution, and what a successful guardianship looks like.

While interviewing the key informants, both principal investigators took notes and all interviews but two were audio recorded. Through a detailed review of these notes, researchers identified commonalities from responses and summarized themes related to activities, outcomes, and resources. Next, these themes were reviewed carefully within the context of the role of the key informant (e.g., judge or guardian) to determine if responses differed by role.

Desired Outcomes

Respondents had a high level of agreement, regardless of their background, and whether they were speaking about the court or a guardianship program, as to what a good outcome looks like. Respondents agreed that a successful adult guardianship requires that the person under guardianship is safe and their best interests are protected. From a practical standpoint, this means that a person under guardianship should be living in the least restrictive environment that is a good fit with their needs, that he or she has access to all appropriate benefits (e.g., Medicaid, VA, SSI), and that he or she consistently receives high quality care with all of the necessary services—including health care services, mental health services, housing, and meals and nutrition. In order to achieve these outcomes, most of the respondents described the importance of a holistic, person-centered approach to understand the needs and preferences of the person under guardianship before major decisions were made regarding medical treatments, living arrangements, and finances.

The needs of the person should come first. These include quality of life and a responsibility to make sure the person under guardianship is safe and secure, healthy, and happy.

We also repeatedly heard about the importance of capable, well-trained guardians who have a good relationship with the person over whom they have guardianship. When there is a good match between a guardian and a person under guardianship the guardian builds trust and gets to know the person under guardianship as an individual. To be most effective, guardians must comply with all of the training and reporting requirements to stay up-to-date with new developments and relevant topics.

Challenges

Key informants were asked about the challenges faced by either the probate courts or guardianship programs in successfully administering the guardianship process. Similar to the responses about desired outcomes, there was a great deal of agreement among respondents, regardless of their background, as to what challenges their organization faces. Respondents reported that the biggest challenges were the lack of funding available, the increased complexity of the cases that they were handling, the lack of applicants available to serve as guardians, and monitoring guardianships. While these challenges take different forms in the courts versus a guardianship program, they are very similar in how they affect efforts to effectively manage the guardianship process in a way that produces the best possible outcome for the individuals served by guardians.

The biggest challenge to managing guardianships is a lack of funding.

When examining responses by each type of respondent, it is worth noting that the largest percentage of judges and magistrates reported challenges due to limited funding and a lack of available applicants to serve as guardians. In addition to these concerns, attorney guardians commonly identified the increased complexity of cases as a major challenge. Most of the guardian respondents described education and training as obstacles to becoming a guardian and continuing to serve as a guardian over the long-term. Our interviews also revealed that funding was a challenge not just for the probate court, but also for guardianship programs as was the generation of fees for professional guardians.

In sum, many of the identified challenges are a function of the lack of funding experienced by both the courts and guardianship programs. Respondents reported that challenges such as “not enough staff,” “monitoring guardianships,” and “caseload/volume of cases” were all a function of not having enough funds to hire additional staff to assist with monitoring existing cases and managing new guardianships.

Achieving Desired Outcomes

Achieving good outcomes in adult guardianship in the face of inadequate funding, too few staff and guardians, and the immense responsibility of effectively monitoring guardianships for vulnerable persons is daunting. In spite of these challenges, the courts, guardianship programs, and individual guardians we spoke with were able to successfully achieve good outcomes for persons under guardianship.

Our key informants provided information about important strategies to meet these challenges. Respondents discussed effective responses in the areas of monitoring guardianships, training and education for guardians, building community relationships, and engaging volunteers. The following is meant to provide a general description of the efforts made by the probate courts to successfully manage the guardianship process. Our intention is to further analyze some of these strategies in the third phase of our project through a case study approach.

Monitoring Guardianship

While Rule 66 requires enhanced monitoring procedures, many courts had implemented their own practices and formal monitoring programs prior to the creation of the new rule. Although courts use different strategies to perform monitoring, our key informants reported their goals are the same: (1) to ensure the safety of the person under guardianship and (2) to identify issues as soon as possible and proactively address them. Courts use diverse strategies to monitor adult guardianships but our informants suggested that the most successful practices involve a proactive approach. These courts do not wait for complaints or adverse events to alert them to potential issues. These courts take the initiative and engage with guardians and persons under guardianship on a regular basis through calls, visits, and status hearings. For example, one county schedules a visit with each ward and guardian in the county.

Nearly all respondents report that engaging the community is the most effective way to mitigate the challenges of managing guardianships.

Building Community Relationships

Community relationship building is an area that respondents discussed at length. There were many ways that courts engage with other organizations in their communities. Two primary ways respondents discussed were participation in county interdisciplinary teams and working with the guardianship program in their county.

Interdisciplinary Teams

In many counties, interdisciplinary teams have been established to resolve complex issues that affect vulnerable adults, such as mental health issues, substance abuse, and safety. All respondents that participated in interdisciplinary teams noted the benefit of professional networking that can result from these meetings. Often, persons under guardianship will access the services of multiple organizations, but there is little communication from agency to agency. These interdisciplinary team meetings are an opportunity to bring together all parties in a meaningful way and address a complex issue through collaboration and brainstorming.

Guardianship Programs

Several of the judges had assisted in creating their county's guardianship program and provided great insight into the creation of these programs. Professional guardians were also very informative in discussing how these programs had come into existence. Respondents reported that the need for guardians had become such a limitation that action had to be taken. Judges, often with other community partners, sought out a variety of social services agencies in their county to piece together funding. Working together, they were able to create a formal, independent organization dedicated to providing guardianship services when they are needed.

*Well-trained guardians
are critical to a successful
guardianship.*

Engagement of Volunteers

Almost every judge and magistrate we spoke with reported using volunteers in some fashion to successfully manage guardianship in their county. There were several ways volunteers were utilized. Individuals could become a volunteer with the court or the guardianship program (if one exists in the county). As a volunteer for the court, individuals could serve as guardians, assistants to guardians, monitors of guardianship cases, or friendly visitors. Within guardianship programs, individual volunteers could serve as guardians or assist with guardianship duties. Many respondents reported that keeping volunteer guardians long-term was somewhat difficult, as guardianship is a very large responsibility that could span over a period of decades in some situations. In both the courts and the guardianship programs, guardianship assistants were very useful, as they could address the day-to-day responsibilities of being a guardian and assist the person under guardianship within a more manageable level of commitment. Courts and guardianship programs report that they have benefitted enormously from guardianship assistants, often working together to support the volunteer guardians.

Conclusion and Next Steps

Findings from these key informant interviews provide an intriguing picture of the strengths and challenges of adult guardianship in Ohio. We heard a high degree of consistency in participants' understanding of the successful outcomes of adult guardianship. Specifically, our key informants agreed that the most critical outcome of adult guardianship is to ensure that persons under guardianship are safe and have their best interests protected. Many of the challenges identified stem from a lack of financial resources, whether to hire more staff to monitor guardianships, or to recruit additional guardians. While courts continue to report monitoring and training as challenges, the approaches utilized by the courts and their partners have allowed them to get in front of potential issues and identify guardians who need support. Nearly all respondents reported that their relationships with other agencies and organizations enable them to manage guardianships effectively.

In our next step, we look forward to analyzing data collected from a statewide survey of adult guardianship practices to provide more comprehensive information about adult guardianship in Ohio. In our final step in the project we will conduct in-depth interviews with courts and programs about specific promising practices to describe innovative models that may be adapted and applied to practice. Findings from all these components of the study will be combined into a project final report.

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