

A COMPREHENSIVE STUDY OF OREGON COURTS' GUARDIANSHIP AND CONSERVATORSHIP MONITORING SYSTEM & PRACTICES

Juvenile and Family Courts Program Division

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EXECUTIVE SUMMARY

The Oregon Judicial Department's (OJD) circuit court monitoring of guardianship and conservatorship cases is a quilt of varied policies and practices. This report describes an in-depth look at these practices based on surveying and interviewing staff and judges, reviewing case filings, and data generated by the case management system. It highlights instances of effectiveness and explains where improvement could be targeted.

Background – Guardians and conservators are granted substantial authority by a court to make decisions and manage the lives of Oregonians who are determined not able to do so themselves. Unlike many other case types in Oregon circuit courts, protective proceedings require judges and staff to vigilantly monitor the wellbeing of the protected person while scrutinizing the performance of their fiduciary, in some cases for decades. From the filing of the first petition seeking appointment of a fiduciary through the final report confirming the appropriateness of the fiduciary's last actions, courts have been granted extensive investigative and protective authority in the execution of substantial responsibility. As Oregon's population increases and ages, it is the purpose of this assessment to consider our courts' policies and highlight where they could be strengthened.

Findings and Conclusions – Survey results convey a picture of three tiers of circuit courts, generally divided by protective proceeding caseload. The largest tier is generally better staffed with a stronger foundation of monitoring practice afforded by training, resources, and experience. The middle tier maintains a mix of established process, with strong monitoring on some elements of cases and less-developed methods on others. The smallest tier has few predictable filings, with judges and staff carrying diverse responsibilities for many non-protective proceeding case types.

Every circuit court in the state performs some aspects of case monitoring well, but rarely are these aspects universal to all circuits. Some courts are especially diligent before a fiduciary is appointed, with stringent processes in place to ensure that appointment is necessary, while others appear to focus on monitoring the fiduciary's administration of the proceeding post-appointment.

There are specific areas where centralized support would strengthen many courts' ability to better monitor individual cases. Development of materials, resources, and building community among judges and staff, will foster long-term improvement statewide and reduce the dependence on any particular individuals' experience or direction.

INTRODUCTION

Between 2010 and 2020 the number of Oregonians aged 65 or older rose from 14% of the state population to 18.6%¹, notably higher than the national average growth for that demographic.² Such a rise represents a population increase of older Oregonians of 46.9%³, with the number of older Oregonians expected to grow even faster in years to come.⁴ Nationally, the number of Americans aged 85 or older is expected to nearly double from 6.5 million in 2020 to 11.8 million in 2035.⁵ Based on preliminary court data gathered between January 2020 to present, an estimated 40% of the adult protective proceedings in Oregon involve someone aged 65 or older at the time of filing. The tremendous growth of the older American population, predicted as early as 2008⁶, carries with it a direct and correlated impact on Oregon's probate courts, which hold jurisdiction over guardianship and conservatorship proceedings.⁷

Although the rise in Oregon's older population has been expected⁸, it is not the only life circumstance correlated with an increase in protective proceeding case numbers. There are many other conditions an individual may experience that causes them to seek the assistance of the court and indicia of these conditions also appear to be on the rise. Specifically, the number of adults with serious mental illness increased nationally from 8.3 million to 14.2 million between 2008 and 2020⁹ and there are estimated to be more than 7 million people in the United States

¹ *Our Changing Population: Oregon*, USA Facts, at <https://usafacts.org/data/topics/people-society/population-and-demographics/our-changing-population/state/oregon> (data updated July 2022).

² Elliot Njus, *Senior Population Boom Hits Every Corner of Oregon: See Which Counties Are Aging Fastest*, *The Oregonian/OregonLive*, June 21, 2018, at https://www.oregonlive.com/news/erry-2018/06/a13f685ef71978/oregons_aging_counties.html.

³ *Our Changing Population: Oregon*, USA Facts, at <https://usafacts.org/data/topics/people-society/population-and-demographics/our-changing-population/state/oregon> (data updated July 2022) drawn from US Census data, showing 536,859 in 2010 to 768,612 in 2020.

⁴ National Association for Court Management, *Adult Guardianship Guide: A Guide to Plan, Develop, and Sustain a Comprehensive Court Guardianship and Conservatorship Program 2* (Updated 2022).

⁵ *Id.*

⁶ Richard Van Duizend, *The Implications of An Aging Population for The State Courts*, *Future Trends in State Courts* (2008) (Predicting increased incidence of elder abuse, public focus on guardianships, and higher probate court caseloads).

⁷ Or. Rev. Stat. § 111.085 (2021).

⁸ Elliot Njus, *Senior Population Boom Hits Every Corner of Oregon: See Which Counties Are Aging Fastest*, *The Oregonian/OregonLive*, June 21, 2018, at https://www.oregonlive.com/news/erry-2018/06/a13f685ef71978/oregons_aging_counties.html.

⁹ Substance Abuse and Mental Health Services Administration (SAMHSA), *2020 National Survey of Drug Use and Health* Table 10.1A, available at <https://www.samhsa.gov/data/release/2020-national-survey-drug-use-and-health-nsduh-releases>.

with an intellectual disability.¹⁰ Further, the United States has a reported 2.87 million emergency room visits for traumatic brain injury every year.¹¹

Oregon's growing aged population, combined with these types of illnesses and injury, have relatedly increased media attention on individuals affected by guardianship or conservatorship, and not just for well-known celebrities¹². Since 2010 the Oregonian newspaper has published no less than 15 articles directly relating the anecdotal guardianship and conservatorship experiences of people in Clackamas, Clatsop, Lane, Linn, Multnomah, Washington, and Yamhill counties.¹³ The Oregon Judicial Department's court monitoring efforts, as reflected in these stories, would be charitably characterized as mixed.

Within the context of an expanding caseload and increased attention to the efforts our state courts provide, the Office of the State Court Administrator (OSCA) applied for and obtained an Elder Justice Initiative Grant (EJIG) from the Administration for Community Living (ACL). The EJIG intended to support state courts in assessing and implementing improvements in their handling of guardianship and conservatorship process, including enhancements to fairness, effectiveness, timeliness, safety, and integrity of the system.¹⁴ Through funding of the EJIG, OSCA hired two employees, an auditor and an analyst, who began this work with existing staff in the Juvenile & Family Courts Program Division (JFCPD) and Internal Audit Office (IA). This report is the product of the first year of grant work, encompassing OSCA's examination of the monitoring practices of our state circuit courts, the findings from that research, and recommendations that will support the goals of the EJIG purposes.

Definitions and Background

Many of the legal definitions applied to individuals within this assessment are terms of art, granting specific power and authority to some, and potentially removing substantial rights from others. Precision matters a great deal when considering the consequences that stem from involvement in these types of court proceedings. With an eye towards a baseline of specific

¹⁰ National Disability Navigator, Resource Collaborative. See <https://nationaldisabilitynavigator.org/wp-content/uploads/Materials/Population-Specific-Fact-Sheet-ID.pdf>.

¹¹ Center for Disease Control and Prevention, *Surveillance Report of Traumatic Brain Injury-related Emergency Department Visits, Hospitalizations, and Deaths* (Atlanta: Centers for Disease Control and Prevention, 2014), available at https://www.cdc.gov/traumaticbraininjury/pdf/TBI-Surveillance-Report-FINAL_508.pdf.

¹² Carter Barrett, *Britney Spears Left Her Guardianship, But Others Who Want Independence Remain Stuck*, NPR Shots – Health News, January 9, 2022, available at <https://www.npr.org/sections/health-shots/2022/01/09/1065301762>.

¹³ See e.g. Steve Duin, *The Story of Benjamin Alfano and the Debate About Who Controls End-of-life Decisions (Part 1)*, The Oregonian/OregonLive, February 26, 2012, and Brad Schmidt, *Mother Questions Retaliation After Advocating for Son with Developmental Disabilities*, The Oregonian/OregonLive, June 26, 2019, and others available at [https://www.oregonlive.com/search/?q="guardianship"](https://www.oregonlive.com/search/?q=).

¹⁴ HHS-2021-ACL-AOA-EJIG-0047 Elder Justice Innovation Grants FY2021, Full Announcement, available at <https://www.grants.gov/web/grants/view-opportunity.html?oppId=330615>.

vocabulary, used near constantly throughout this assessment, several distinctions and definitions follow.

At its most basic, a **protective proceeding**¹⁵ in Oregon is a court-approved relationship between one person or entity (the “**fiduciary**”¹⁶) and another person (the “**respondent**”¹⁷) wherein the fiduciary requests to be appointed by a court to assume certain duties with respect to the respondent. A respondent becomes a “**protected person**”¹⁸ when a court finds they lack the ability to make certain decisions for themselves. In Oregon a **guardian** is appointed when the protected person is deemed **incapacitated**, meaning that their ability to receive and evaluate information effectively, or to communicate decisions, is impaired to such an extent that the person *presently*¹⁹ lacks the capacity to meet the essential requirements for the person’s health or safety. A **conservator** is appointed when the protected person is deemed **financially incapable**.²⁰

Within this report “respondent” is used to refer to an individual *before* any appointment of a fiduciary is made. Once either a guardian or conservator has been appointed, the individual is then referred to as the “protected person,” as a **protective order**²¹ would then have been entered. Unless otherwise noted, any statutory citation related to protective proceedings will be found in Oregon Revised Statutes Chapter 125. The Uniform Trial Court Rules, a set of statewide directives applicable to all circuit courts, provide additional direction to counties, with each circuit’s Supplemental Local Rules (SLRs) and Presiding Judges Orders (PJOs) rounding out the most granular policies for cases discussed in this assessment. The contours of these authorities will be discussed more particularly below.

¹⁵ “Protective proceeding” means a proceeding under this chapter. Or. Rev. Stat. § 125.005(9).

¹⁶ “Fiduciary” means a guardian or conservators appointed under the provisions of this chapter or any other person appointed by a court to assume duties with respect to a protected person under the provisions of this chapter. Or. Rev. Stat. § 125.005(2) (2021).

¹⁷ “Respondent” means a person for whom entry of a protective order is sought in a petition filed under ORS 125.055. Or. Rev. Stat. § 125.005(10) (2021).

¹⁸ “Protected person” means a person for whom a protective order has been entered. Or. Rev. Stat. § 125.005(7) (2021). “Protective order” means an order of a court appointing a fiduciary or any other order of the court entered for the purpose of protecting the person or estate of a respondent or protected person. Or. Rev. Stat. § 125.005(8) (2021).

¹⁹ Emphasis added. “Incapacitated” means a condition in which a person’s ability to receive and evaluate information effectively or to communicate decisions is impaired to such an extent that the person presently lacks the capacity to meet the essential requirements for the person’s physical health or safety. Or. Rev. Stat. § 125.005(5) (2021). “Meeting the essential requirements for physical health and safety” means those actions necessary to provide the health care, food, shelter, clothing, personal hygiene and other care without which serious physical injury or illness is likely to occur. *Id.*

²⁰ “Financially incapable” means a condition in which a person is unable to manage financial resources of the person effectively for reasons including, but not limited to, mental illness, mental retardation, physical illness or disability, chronic use of drugs or controlled substances, chronic intoxication, confinement, detention by a foreign power or disappearance. Or. Rev. Stat. § 125.005(3) (2021). “Manage financial resources” means those actions necessary to obtain, administer and dispose of real and personal property, intangible property, business property, benefits and income. *Id.*

²¹ “Protective order” means an order of a court appointing a fiduciary or any other order of the court entered for the purpose of protecting the person or estate of a respondent or protected person. Or. Rev. Stat. § 125.005(8) (2021).

The Oregon Judicial Department (OJD) presently uses the Odyssey²² case management software, which was implemented in different counties on a rolling basis from 2012 to 2016. Oregon Judicial Information Network (OJIN), the antecedent to Odyssey, was a rudimentary command-based management system, dependent on paper case files. Using OJIN, individual courts invented creative workarounds to mitigate the limitations of the software. Despite substantial efforts to thoughtfully convert OJIN cases to Odyssey cases during implementation, the effect of unexpected Odyssey conversion issues still appears in older protective proceeding cases.²³

A Summary of Recent Protective Proceeding Work in Oregon Courts

While the award of grant funds has provided the ability to hire dedicated staff to work on this assessment and interventions aimed at refining the quality and focus of our courts, the process of improving court monitoring of protective proceedings is not new to Oregon. Through foundational work of organizations such as the National Association for Court Management (NACM), the National Association of State Court (NCSC), the State Justice Institute (SJI), the American Bar Association (ABA), and previous support from the ACL, past projects and workgroups in Oregon have been built on widespread academic and practical policy aspirations.

Since 2013 the OJD has supported and facilitated the Oregon Working Interdisciplinary Network of Guardianship Stakeholders (WINGS) to bring stakeholders from various disciplines together for short-term and long-term planning and action. Through an initial WINGS grant and subsequent grants from the ABA Commission on Law & Aging, Oregon WINGS has produced materials and tools for professionals and the public about decision-making options, person-centered planning, alternatives to guardianship, and other curriculum to better understand protective proceedings.

Like WINGS, but more directly court-focused, the State Protective Proceedings Advisory Committee (SPPAC) has existed in some form since 2015. Originally organized as the “Chapter 125 Subcommittee” of the State Family Law Advisory Committee (SFLAC) to focus specifically on protective proceedings, it was chaired by two now-retired judges before being spun off into its own entity in late 2020. SPPAC produced a series of court visitor training videos, worked on a “Decision Making Protocol” bench guide for judges, and crucially developed policy and protocol recommendations regarding COVID and the handling of guardianships. Those recommendations were adopted by the Chief Justice to maintain reliability during the pandemic and notably prescribed remote appearance for protective proceeding hearings.²⁴

²² Odyssey Case Manager by Tyler Technologies, 2018 Version. Copyright Tyler Technologies. Odyssey and all other Tyler Technologies products or service names are registered trademarks or trademarks of Tyler Technologies, Plano, Texas, USA. www.tylertech.com.

²³ For more explanation of the Oregon eCourt implementation process see www.courts.oregon.gov/programs/ecourt/Pages/default.aspx. Last accessed December 2022.

²⁴ Prior Chief Justice Orders regarding COVID-19 restrictions and directions are available at www.courts.oregon.gov/courts/Pages/coronavirus-prior.aspx. Last accessed December 2022.

Most important for its influence on this self-assessment, SPPAC guided OSCA's creation of the Protective Proceedings Data Dashboard, which was an invaluable tool used during the data gathering and analysis phase. The Data Dashboard automatically collects a variety of demographic trend data and presents it graphically through a Power BI²⁵ interface. During the pandemic SPPAC was less active, but without SPPAC's foundational data work and inspiration, this assessment would not contain the breadth of information on which this review has relied.

Lastly, following the full implementation of Odyssey in all courts, OSCA initiated efforts to connect circuit court probate staff with each other to collaborate on standardized business processes using a Process Improvement Team (PIT). PIT meetings connected disparate counties in a way that had not been done before, allowing for conversations about business processes, case monitoring strategies, and provided networking for similarly situated employees.

Methodology

This statewide assessment was guided by a growing body of literature regarding recommended improvements to protective proceeding practices²⁶ and drew inspiration from recent survey-based assessments of court practices performed on a national level.²⁷ Each phase of the assessment was collaboratively reviewed by an advisory committee (AC) comprised of community partners and protective proceeding stakeholders.

Each AC member was solicited to participate in this project to incorporate their experience with our courts and provide individual perspective. The AC membership, in addition to OSCA support staff and judges, included the Oregon Long Term Care Ombudsman, representatives from Oregon AARP and Disability Rights Oregon, a court visitor, a professional fiduciary, a formerly protected person, a private protective proceedings attorney, and two Trial Court Administrators (TCAs).

The data collection phase of this project was comprised of multiple steps designed to gather thorough and accurate information about protective proceeding case management and monitoring. The process included corroborative mechanisms to confirm self-reported behavioral information. It also included methods designed to identify trends in data, both in terms of court practice and of case demographics and circumstances. The six steps implemented to gather data are discussed more thoroughly below, but included:

²⁵ Power BI by Microsoft Corporation © 2022.

²⁶ National Association for Court Management, *Adult Guardianship Guide: A Guide to Plan, Develop, and Sustain a Comprehensive Court Guardianship and Conservatorship Program 2* (Updated 2022). US Senate Special Committee on Aging *Ensuring Trust: Strengthening State Efforts to Overhaul the Guardianship Process and Protect Older Americans* (November 2018).

²⁷ See e.g. Adult Guardianship Monitoring: A National Survey of Court Practices. Robinson et al. 2021 and Karp, Naomi & Wood, Erica. (2007). Guardianship Monitoring: A National Survey of Court Practices. Stetson Law Review.

1. Determining statutory obligations of Oregon courts in their exercise of jurisdiction in protective proceedings through a line-by-line analysis of ORS Chapter 125, the UTCR, and a comparative analysis of courts' Supplemental Local Rules;
2. Issuing a preliminary survey directed to circuit court TCAs to identify the individual judges and staff responsible for protective proceeding case management and to solicit some broader information about the overall monitoring and training activity in their circuit court;
3. Issuing a longer substantive survey to the judges and staff identified by their TCA, asking them to answer questions about court monitoring practices;
4. Corroborate survey responses and study monitoring practices through Odyssey software case review and analysis;
5. Performing follow-up interviews with survey participants²⁸ to clarify their individual responses, to further refine an understanding of local process; and
6. Investigating and analyzing case management metadata for inter-county comparative purposes.

Determining Monitoring Obligations of Oregon Courts

Before any circuit courts were contacted, the analyst performed a thorough review of the Oregon Revised Statutes and UTCR, itemizing each instance where courts “must” or “shall” do a particular thing. Very early in the chapter, ORS 125.025 (titled “Authority of the court in protective proceedings.”) states that “a court having jurisdiction over a protective proceeding shall exercise continuing authority over the proceeding,” and then contextualizes that authority in the broadest sense, stating that “the court may act upon the petition or motion of any person or upon its own authority at any time and in any manner it deems appropriate to determine the condition and welfare of the respondent or protected person and to inquire in the proper performance of the duties of a fiduciary appointed under the provisions of this chapter.”

The list of instances when a court “may” do a particular thing was also included in the itemization under the rationale that if the statute suggests a particular action the legislature is making a recommendation as to performance. The analyst presented the list to the AC for review and discussion. In addition to the gathered opinions of the AC, the OSCA team consulted The

²⁸ Judges and staff participating in surveying efforts during this assessment will be referred to as participants throughout this report. Reference to a “respondent” will only mean a party responding to a petition for appointment of a fiduciary.

National Probate Standards for comparison and juxtaposition.²⁹ The finalized list titled “Oregon Protective Proceeding Court Guidance” was divided into five sections covering different stages of a typical protective proceeding (petition through closing), with individual standards included for various filings or circumstances. The guidance document, which contains citations to statute, UTCR, and other sources, was conferred when reviewing court practices in the Discussion section below.

In addition to the statutory and UTCR review, the analyst completed a comparative SLR analysis. The SLRs are additional rules promulgated by each judicial circuit and allow for clarification or local interpretation of statute or uniform rule. Despite ostensible standardization via ORS and UTCR among circuit courts, SLRs create a wide variation in the practice of protective proceedings, depending on where they are filed. Such variance is a consideration when viewing how courts monitor cases, and what may need to be standardized or changed to improve court supervision. It was likewise considered when analyzing the data gathered during the assessment.

TCA Survey

To identify individuals within the court system that work on protective proceedings and collect preliminary information, OSCA created an online survey that was issued to each circuit’s TCA. The TCA is the administrative head of each court.

The 8-question survey asked TCAs to identify the staff and judges in their court who could be contacted to complete a substantive survey about their county’s methods and practices. It also asked about the types of trainings provided to those individuals, what tools, materials, or trainings would be most desirable, and asked the TCA to score their own court on how well they feel they supervise and manage protective proceedings. A copy of the TCA survey is included in the References.

Statewide Survey

All judges and staff identified in the TCA survey were invited to complete a more substantive 31-question survey about their monitoring practices. The OSCA team in collaboration with the AC developed the content and questions for the “Statewide Survey.” The survey was designed to identify the courts’ monitoring work as it relates to each step of the process, mirroring the structure established in the Court Guidance document.

The questions began with inquiries into petition acceptance and review and continued through notice, visitors, and appointment of fiduciaries before advancing into reporting, accounting, and resolution of objections. Additional questions sought information regarding the courts’ business processes, training, and educational/materials preferences. Finally, the survey asked the user to score their court’s performance on monitoring cases. Inclusion of a self-

²⁹ The National Probate Standards guide explicitly recommends itself for statutory comparative purposes: “A template for state standards, setting forth guiding principles to assist and attempting to “capture the philosophy and spirit of an effective probate court and encourage effective use of limited resources.” National College of Probate Court Judges, *National Probate Court Standards* at 5, 6 (Richard Van Duizend, Reporter & Brenda K. Uekert, Research Director) (2013).

assessment score, both in the Statewide survey and the TCA survey, was included as a method to compare perceived performance before future interventions. At periodic intervals during and after intervention projects, future surveys can be used comparatively to track effectiveness and confidence.

Each court was allowed to provide as many responses to the full survey as they wished to confirm reported practices and identify any ambiguities or conflicts between answers. It also encouraged engagement from participants with different roles in the courts. As will be evident in the graphs in the Results section, the total answers to a particular question are not a one-to-one representation reflecting whole circuits' practices. In some instances, survey answers were better considered on an individual basis, and for others an understanding of the circuits' practice is more meaningful. For those questions in the latter category, the narrative will supplement the data to clarify what the responses reflected as to circuits. A copy of the Statewide Survey is included in the References.

Odyssey Case Sample Review

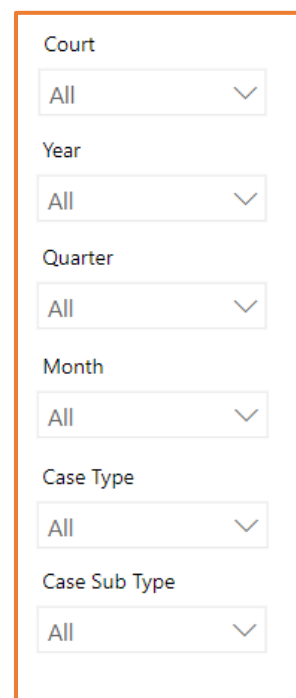
While the statewide survey was underway, the project analyst began a process of Odyssey case sampling to review data entry and case management practices demonstrable in case records. The Data Dashboard allows a user to sort by county, year, case type, and sub-type, among other sorting options.

Case volume precluded a comprehensive review of all cases filed in a particular county but did allow for the analyst to access a sample of cases to confirm survey answers. It also assisted in identifying differing practices between counties and discovering issues for follow-up conversation or clarification. The analyst confirmed survey data using this method, and tracked questions reserved for the next step of the assessment.

One additional purpose of the Odyssey case sampling approach was to review the accuracy of the underlying data that is viewed in the Data Dashboard. Cases that might be characterized as “non-complying” for a certain data query could be checked for specific content to confirm whether they were counted or measured correctly. For instance, if a county had a suspiciously small number of cases involving respondents aged 65 or older at the time of the petition filing, the cases not flagged as “under 65” could be double-checked. In that way the “cleanliness” of the data query could be confirmed, and any data entry concerns could be identified.

Follow-Up Interviews with Survey Participants

After survey completion and case sampling, relevant judges and staff were invited to participate in a follow-up interview. Interviews were intended to be loosely structured, informal conversations about the assessment project with a focus on clarifying discrepancies. Notes from each county's interview were combined with survey response information and Odyssey sampling



The image shows a vertical list of seven dropdown menus, each with a white background and a grey border. The labels for the dropdowns are: Court, Year, Quarter, Month, Case Type, and Case Sub Type. Each dropdown menu currently displays the word "All" and a downward-pointing chevron icon on the right side. The entire list is enclosed in a thin orange border.

Data Dashboard Sort Options

information to produce a data sheet that represented the details of the county’s policies, practices, and preferences. A copy of the data sheet template is included in the References.

Data Dashboard Inter-County Comparison

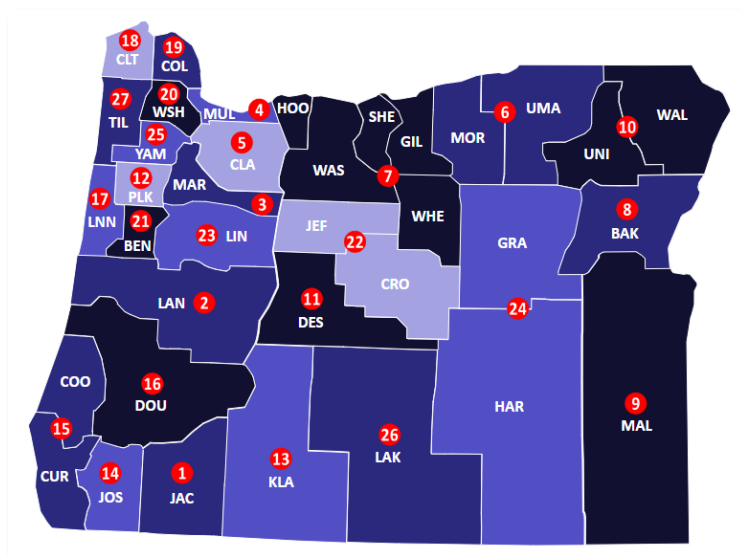
The final component of the data gathering process was a comparison of specific data trends between counties. Various statistics were compared to uncover potential correlation between particular monitoring practices and representative performance. Per OJD Data Use Guidelines, the Data Dashboard cannot be reproduced or published at this time. The data held in the dashboard will be discussed generally.

Results

Before describing the results of the assessment, the following information will be helpful when reviewing the assessment results. First, any representative statistics regarding case counts, numerical information, or circuit courts’ percentage compliance with certain measures were retrieved during the first week of September 2022. Many statistics fluctuate with daily updates from Odyssey, so the numbers presented are a discrete snapshot in time and may have changed slightly since retrieval.

Second, the 36 counties in Oregon are divided into 27 judicial districts. While most judicial districts contain only one county, several more rural counties are combined to form a single judicial district. In districts containing more than one county, efforts were made to determine whether practices vary between district courts within the same county. For instance, Hood River and Wasco, two counties within the same district, completed separate surveys and interviews as practice varies slightly within, but Wallowa and Union counties, making up the 10th judicial district, completed joint responses as the probate work there is centralized in one circuit courthouse.

Third, probate jurisdiction in Oregon was transferred to the circuit courts in 1969 excepting six county courts, which still retain jurisdiction. Probate jurisdiction in Gilliam, Grant, Harney, Malheur, Sherman, and Wheeler Counties vests in the circuit court only when appealed from the county. As a result, those counties only minimally participated in the assessment. Their pending caseload makes up only 19 total cases out of 14,372 active protective proceedings in Oregon. Since the



Oregon Circuit Courts

County Name	Protective Proceedings Pending
Gilliam	2
Grant	7
Harney	2
Malheur	4
Sherman	2
Wheeler	2

Pending Protective Proceeding Cases in Circuit Courts where Probate Retained by County Court

percentage of overall case volume is small, the effect of the absence of their cases should not materially affect the assessment results.

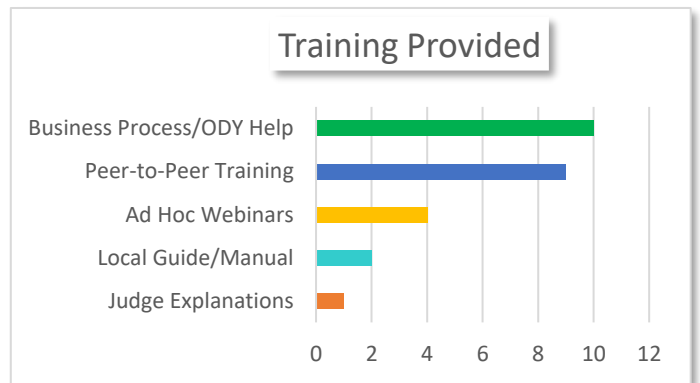
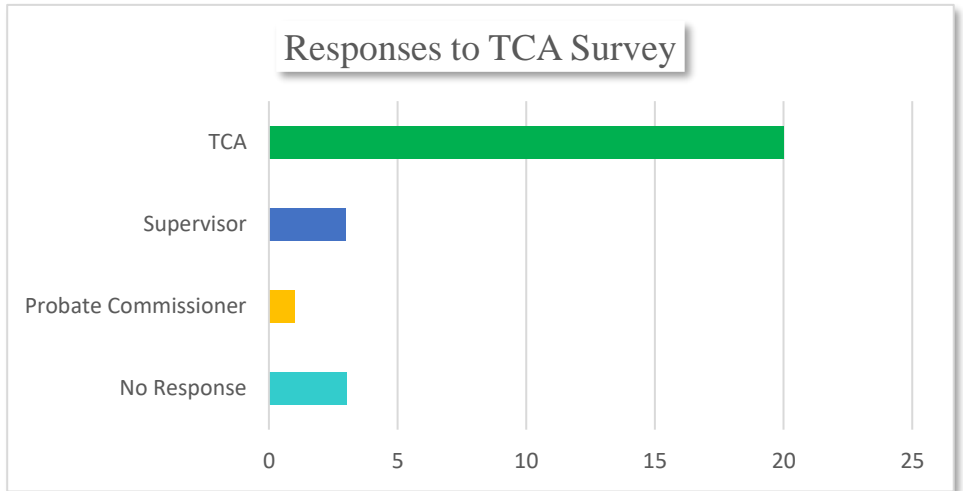
Finally, nothing conveyed in these results will identify specific judges or staff by name, nor does it intend to identify any specific county with their responses. Results will be presented in the aggregate, with data categorized by response type or theme. The focus of this assessment is on trend and pattern of practice and identifying strategic interventions for improvement. If county-specific findings warrant outreach to those counties, this report defers that decision to OJD decisionmakers.

TCA Survey

As the preliminary survey, the TCA data is relatively limited. 24 of 27 counties submitted responses within 15 days, but the three unresponsive districts were not those where county courts retain probate jurisdiction. In four counties, surveys were forwarded to relevant staff, other than the TCA, who

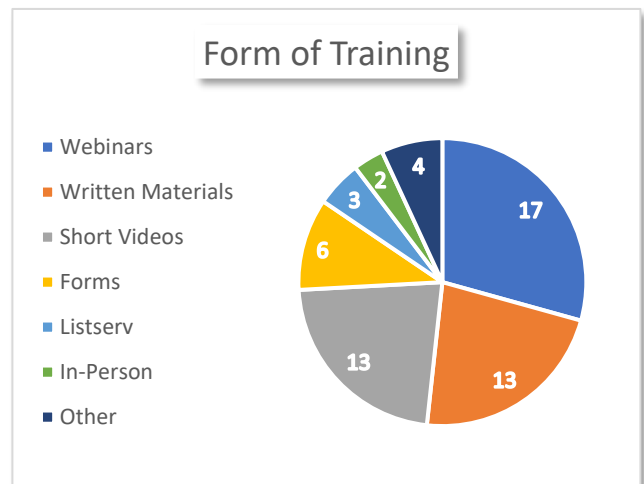
submitted responses on the TCA’s behalf. Additionally, the survey allowed for skipping questions with narrative prompts or offering more than one answer to the prompt. This resulted in varied number of responses used for each question, even if the sampling size of the survey itself was constant (n=24).

There were four substantive TCA survey questions. The first asked: “What protective proceeding training is provided to staff?” The responses were open-ended, allowing for more than one answer, but can be broken down into five types. If more than one form of training was described, both were entered, even if in the same survey response. “Business Process/ODY Help,” the most common training answer, refers to the online Odyssey help system. This guide is focused primarily on the mechanics of accepting filings and entering data, and while it does include statutory reference, it does not discuss any substantive protective proceeding considerations. Peer-to-peer or supervisor-led on-boarding was the next most common training. Four TCAs responded that they provide their staff any webinars or remote training they come across, and two TCAs reported that their circuits maintain local written guides for staff. One court relies only upon what the judge trains clerks on.



In the same way they were asked what training is provided, the survey inquired as to what training topics would be preferred, and in what preferred form that training should take. Notably, more than half of the responses regarding training topics were “I don’t know” or a variation on “Any training would be appreciated.”

The final TCA question asked them to rate (scale 1-10) their court’s ability to effectively monitor proceedings and explain why. Of the 23 survey responses that included a self-score, all responses varied between five and ten with an average statewide score of **7.32**. Counties scoring themselves on the higher end (four gave themselves perfect 10/10 scores) were more likely to explain their score based on the experience or reputation of their court staff (10 - “We have a long-term and highly experienced staff and judges.”). Those counties scoring themselves lowest cited a lack of understanding of what to focus on in their case tracking (5 – “We are in the process of improving how we manage/supervise [protective proceedings], learning as we go.”).

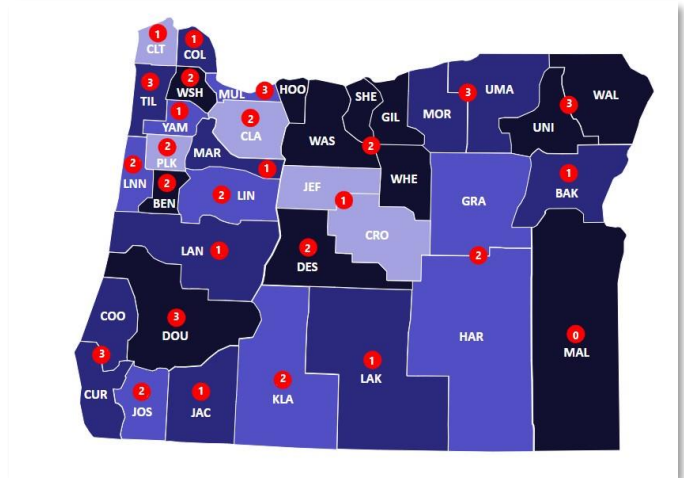


Statewide Survey & Follow-Up Interviews

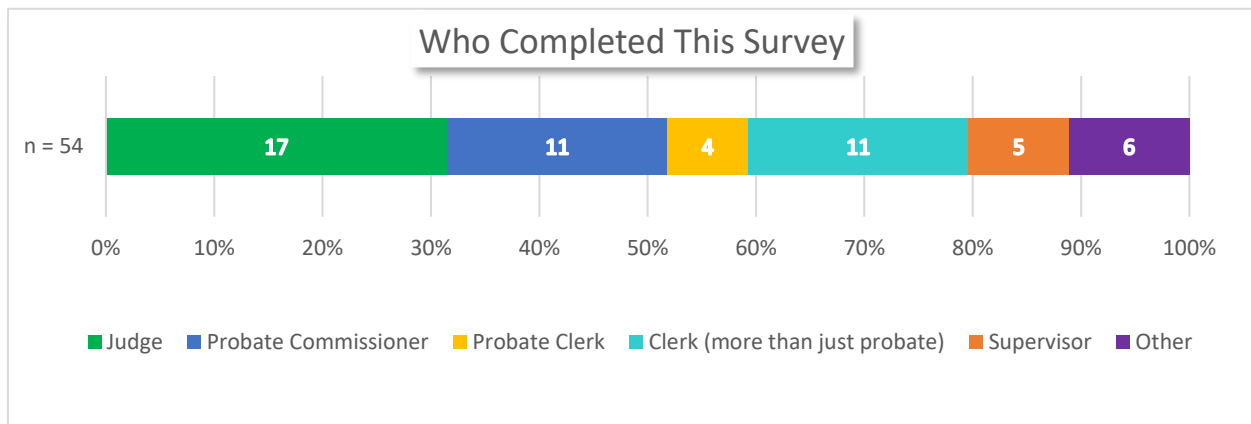
The next three steps of the data collection efforts included the Statewide Survey, Odyssey case sampling, and targeted follow-up interviews with relevant judges and staff. For clarity of reporting, the Odyssey and interview steps are integrated into the results of the statewide survey. The Odyssey review will only be specifically discussed if it conflicted with the survey and interview representations. The interviews provided confirmation of practice and the opportunity to clarify some of the survey answers.

WHO COMPLETED THE SURVEY?

The survey received 54 total responses from 26 of the 27 judicial districts. The average time spent completing the 31-question survey was 33 minutes. Of the survey participants, 17 were judges, 11 were “Probate Commissioner/Probate Coordinator,”³⁰ four were clerks who do only or almost only probate matters, and the remainder were clerks or supervisors who assist with probate but have other primary responsibilities (including all six participants describing their title as “other”). The map shows the number of responses from each judicial district.



Number of responses from each judicial district.



Follow-up interviews were performed with 45 of the survey participants from 25 of the 27 circuits. Ten of the interviewees were judges, two were TCAs, and the remainder were probate commissioners or clerks (both probate and more than probate). Most interviews conducted were 45-60 minutes long.

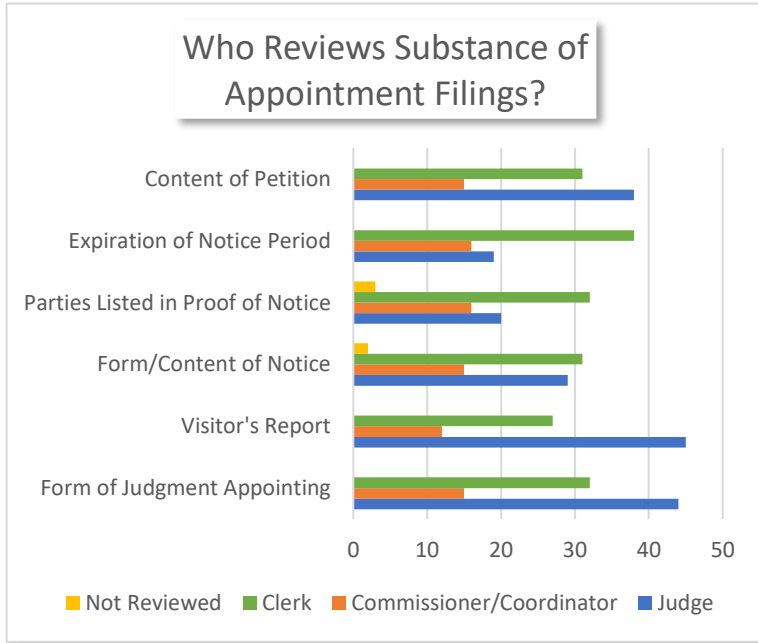
To gauge probate staffing levels, the survey first asked whether each court has either staff or judges dedicated only to probate cases - staff or judges who work *only* on probate matters. Seven responses stated “Yes, we have a judge or judges who do only (or almost only) probate case work,” 22 responses stated that their court has staff or clerks who perform only (or almost only) probate case work. The remaining 29 responses indicated that their circuit has neither judges nor staff focused primarily on probate case work. Only the largest districts have staff solely working on probate matters, and despite the seven responses indicating districts have

³⁰ Per ORS 111.175 a presiding judge of a circuit court may appoint a probate commissioner (and deputies) who may (as prescribed by the order appointing) act upon uncontested petitions for fiduciary appointment, make and enter orders and judgments, and appoint visitors.

dedicated probate judges, all judges participating in the survey stated that they have more than just probate case responsibility, even the chief probate judges in several circuit courts.

WHO IN THE COURT MONITORS CASES?

Following the initial demographic questions, the survey pivoted to questions regarding substantive court practices, by asking who in the participant’s court reviews the *content* of the



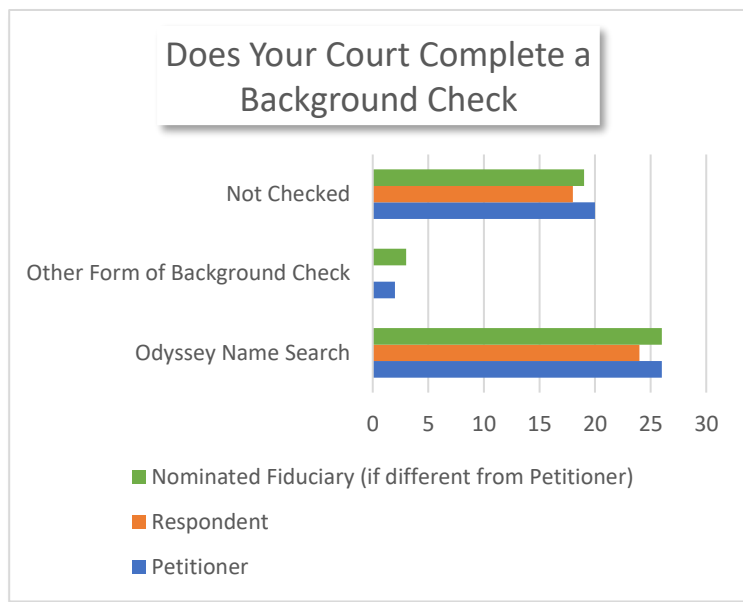
statutorily required pre-appointment filings. Each participant was allowed to choose more than one reviewer for each item. In most circuits, judges review the petition, the visitor’s report, and the form of judgment, while staff is more likely to be responsible for checking notice-related elements. Some elements were reviewed by both staff and judges. In those circuits with probate commissioners, the commissioner states that they review each element. Of additional note was that in two circuits where judge and staff responded separately, there were conflicting

responses as to delegation of checking notice. This suggests that the judge believed the clerk was doing so, but staff believed the judge was.

Follow-up interviews generally confirmed the survey answers but did provide additional context. The most common practice in those courts without a probate commissioner is that the clerk reviews the filing sufficiency (caption, filing fee, signatures, etc.), and will do a cursory content review, noting any concerns for the judge. The judge then reviews the petition, visitor’s report, notice, and form of judgment after the clerk forwards the judgment following expiration of the notice period. In courts with a probate commissioner, the commissioner substantively reviews each pre-appointment filing, sending concerning issues on to a judge. These same circuits are also likely to include a checklist in the case file to confirm each element of a petition was corroborated, with five courts using a locally created checklist.

BACKGROUND CHECKS

As part of the petition phase questions, the survey asked whether the court completes any form of background check on the petitioner, the respondent, or the nominated fiduciary (if different from the petitioner). Though not a statutory requirement, some form of background check may assist the court in determining the appropriateness of the nominated fiduciary. While far more courts were likely to check names of parties within the Odyssey system than perform a different method of background checks, almost a third of participants answered that they do not check backgrounds at all. One county, in addition to an Odyssey name check, asks that nominated non-professional fiduciaries consent to a Law Enforcement Data System (LEDS) check before appointment. The two other participants indicating a different form of background check were judges who said additional checks were on a case-by-case basis and only if there were indications a check would be necessary. They did not clarify the form of that “other type” of background check.



HEARINGS ON UNCONTESTED MATTERS

By statute, courts *may* set a hearing on any petition or motion but *must* set one when the respondent or protected person objects or there is a motion to modify the guardian’s power.³¹ Courts were asked on what pre-appointment, uncontested issues they might require a hearing. Most participants (29) responded “Not required,” however multiple responses and subsequent interviews included instances in which they would set a hearing before appointment. Those responses that identified circumstances in which a hearing may be necessary, despite the absence of an objection, included:

- Judicial concerns with filings in the case, whether on content or background checks (seven responses). Interviews suggest that hearings before appointment but after a judge’s review of the file are more prevalent than the survey suggests. All judges indicated that they would set a hearing if they had unanswered questions about the content of a petition, or any other issue, in a filing.
- Concerns raised by a visitor in the visitor’s report (three responses). All circuits have an SLR³² that requires courts to set hearings when visitors note objections in

³¹ Or. Rev. Stat. § 125.080(1), (2) (2021).

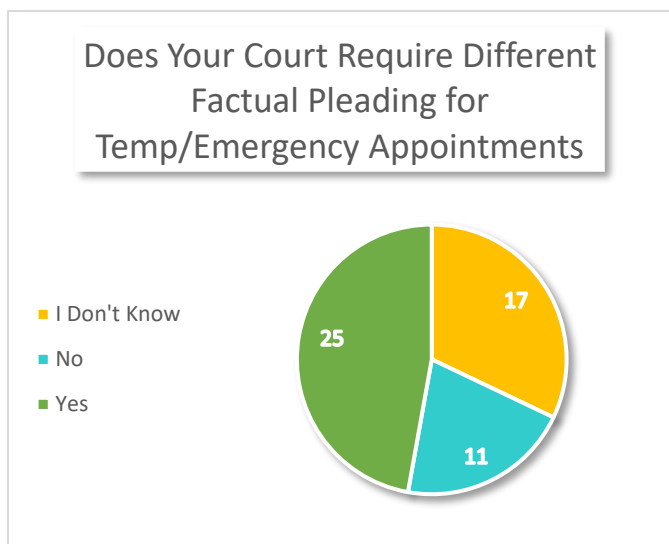
³² SLR 9.081, adopted in all circuits, allows the respondent or protected person to make objections orally to the court visitor, who is required to include any objections in the visitor’s report. The exact language of SLR 9.081 varies slightly between jurisdictions, but the relevant portion regarding visitors is universal.

their report, but these responses indicated the court will set a hearing on a matter if the report indicates concerning information notwithstanding the lack of an objection.

- The competency of an unrepresented petitioner/fiduciary to proceed with the case without counsel (three responses). In cases in which an unrepresented petitioner seeks appointment, the court will set a hearing date to discuss the responsibilities with the petitioner and determine their competency.
- All cases seeking a temporary fiduciary appointment (three responses). One circuit requires a hearing before any temporary appointment. If waiver of notice is requested the petitioner and fiduciary (if different) must appear in court. For 2-day notice cases, the appearance must be set after the expiration of the notice and the notice must include the hearing details such that parties may appear.

TEMPORARY APPOINTMENTS

On the topic of temporary petitions, courts were asked whether they require different factual pleadings in petitions for temporary or emergency appointments. Two judges indicated that they did not know whether there was a difference and two judges said there was no difference. If answering “Yes,”



“For a temporary or emergency appointment, the pleadings must demonstrate an immediate and serious danger to the life/health (for guardianship) or estate (for conservatorship) of the respondent, and that immediate action is required.”
-Survey response

participants were asked to explain what the difference was. 47% responded with some variation quoting or citing to ORS 125.600 et. seq.³³ which does heighten the pleading requirements and requires the court to make specific findings by clear and convincing evidence. Two of the “Yes” answers stated they require supplemental doctors’ information, but one of those two stated attorneys had vocally complained to a judge that notes should not be required. That district has since waived the expectation of doctors’ notes and temporaries have been granted more frequently.

³³ Or. Rev. Stat. § 125.600 – 125.610 cover procedure and expectations for temporary fiduciary appointments.

UNPUBLISHED LOCAL POLICIES

Unwritten or informal policies, such as supplemental doctors' information that might be required, was the focus of the next survey question. It asked whether the participant's court has any special local policies, separate from UTCR or their SLRs, that affect practices or monitoring. Prompts in the question included Presiding Judge Orders (PJOs), practice guides hosted on the court's website, or any unwritten practice expectations. Almost all participants responded with a variation of "No," with only six "Yes" answers, which explained that there are informal rules regarding extensions and PJOs for visitor issues (addressed separately). During the interview phase though, nearly every court identified at least two policies within six discrete categories:

- Tips and policies directed at attorneys filing protective proceedings posted on the court's website or circulated as Continuing Legal Education materials (four Circuits).
- PJOs appointing probate commissioners (or deputies), including the authorities granted to those commissioners (six or seven circuits; One court could not locate the PJO during the pandemic).
- Expectations regarding formatting and the bounds of requests for extensions (13 circuits, addressed in more depth below).
- Informal policies for alerting the court when an attorney plans to file a temporary or emergency petition, to make sure that it is prioritized in workflows (five circuits).
- Pandemic-related practice rules, especially regarding remote appearance hearings (all circuits were required to adopt procedures, and many continued to allow remote appearance in protective proceedings well after the rest of their circuit case types resumed in-person hearings).³⁴ During interviews many staff suggested that parties appreciated the flexibility of remote appearance options.
- PJOs addressing visitor qualifications, procedures, and fees (19 circuits were aware of their PJOs; two believed they had them but could not locate them).

COURT VISITORS

With respect to visitors, the survey asked how the participant's court manages appointment and reporting for their visitors. Per ORS 125.165 each circuit's presiding judge is directed to establish, subject to minimum statutory requirements, qualifications for persons serving as visitors and the standards and procedures to be used by visitors in the performance of their duties. The presiding judge is also directed to establish fees (by PJO) for visitors conducting interviews and preparing their reports.³⁵

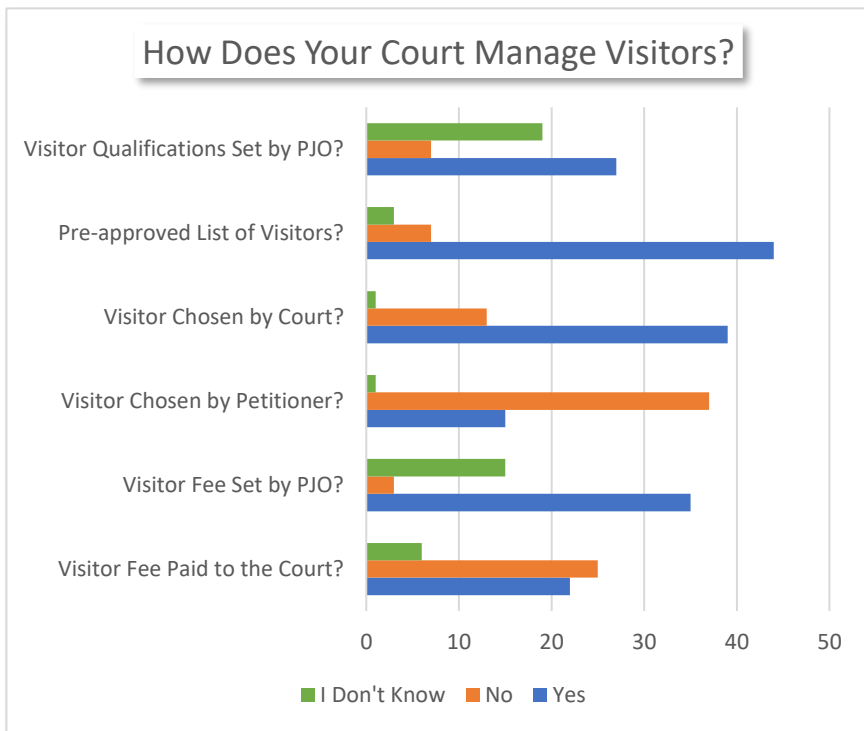
During the data collection process, the analyst collected 14 circuits' PJOs regarding visitors, with 3 additional circuits' interviewees confident that their court had one, but unable to find it. Three circuits do not have any PJOs regarding visitors, 10 circuits are unknown. Six

³⁴ See e.g. Chief Justice Order No. 22-12 signed June 22, 2022 (referencing six prior CJOs regarding COVID protocol).

³⁵ Or. Rev. Stat. § 125.170(2) (2021).

judges and two commissioner participants were unsure as to whether their circuit has a PJO *are* in counties with current PJOs.

In addition to the participant’s awareness of their local PJOs, the survey asked whether the circuit has a pre-approved list of visitors and whether the court chooses the visitor to be appointed or whether the petitioner nominates a visitor. 22 of the 27 circuits maintain a list of court visitors. 11 counties within five judicial districts do not have any visitor list. All 11 are in the smallest third of circuit courts when measuring by the number of cases filed and cases pending. Six of those counties have county-retained probate jurisdiction leaving five counties without any known, qualified visitors. One county responded that they *do* maintain a list, but it presently has nobody on it.



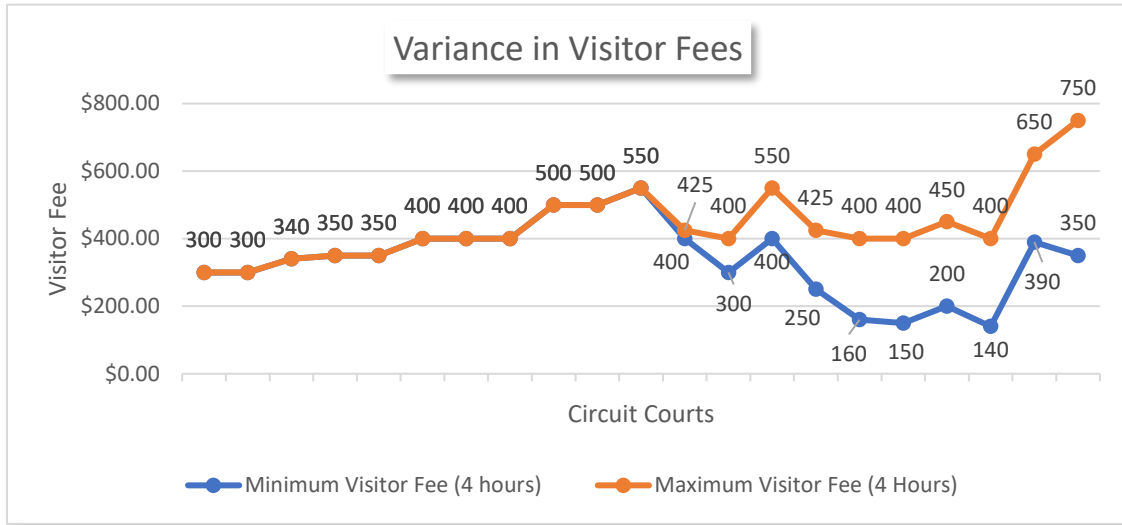
Selection of a court visitor is more commonly done by the court, on a rotation from the list of visitors, but other methods of selecting visitors were shared through survey responses and during interviews. Several circuits maintain a list of visitors but rely on the petitioner, or their attorney, to contact one of the visitors for their consent to appointment. The court then appoints the selected visitor. Lastly, two circuits have no list, rely on the petitioner to nominate a visitor, and leave fee arrangements to be settled between visitor and fiduciary. Visitor qualifications in those counties can only be done on an ad hoc basis, if at all.

The fee due for a court visitor’s appointment is difficult to compare between judicial districts because some PJOs direct visitor fees be by the hour, subject to a potential maximum, but others direct a flat fee. Further complicating fee comparison is that some courts differentiate between the fee for indefinite appointment and the fee for temporary appointment. Still others may assess additional visitors’ fees when that visitor must appear at a contested hearing.³⁶ The chart included on page 22 shows the range of court visitor fee that could be due to the visitor for four hours of their time.³⁷ Those courts with only one data point represent flat visitor fee PJOs.

³⁶ All PJO instances of supplemental court visitor fees in contested matters require the additional fee to be paid by the non-respondent/protected person objector.

³⁷ One prolific and long-serving court visitor commented that four hours is an underestimation of the average time obligation. She believed it was at least 6 hours of work for her average appointment, and “probably closer to 8 hours.”

Courts with variable visitor fees are shown with maximum and minimum fees for four hours of court visitor time. 21 of 27 districts are represented based on their PJO or participants’

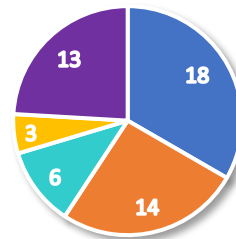


representation of court visitor fee determination. Depending on the district in which a court visitor is appointed, the fee for four hours of work could be as low as \$140 or as high as \$750. If the visitor’s time exceeds 4 hours, the maximum or minimum fee would not change in most districts. There was no observable correlation between the size of a court visitor’s fee and the case volume of the court.

APPOINTMENT OF COUNSEL

As part of earlier work done to improve court monitoring, OSCA assisted all courts with the implementation of SLR 9.081. That rule instructs parties on how oral objections may be made to the court, including the respondent’s oral objections to visitors and the visitor’s obligation to convey objections as part of their report. ORS 125.155, which provides minimum elements of a visitor’s report, also includes the obligation to include any express communication made by the respondent about their desire to be represented by counsel.³⁸ Although appointment of counsel remains permissive in most of Oregon³⁹, Senate Bill 578 (2021), which amended ORS 125.080, made appointment of counsel for respondents and protected persons mandatory under

Can Your Court Appoint Counsel for Respondent/Protected Person When an Objection is Filed?



- We Have a List of Attorneys and Can Usually Appoint
- We Try to Appoint Counsel When Necessary
- We Do Not Have Reliable Counsel to Appoint
- I Don't Know What Our Process Is
- Other (Please Explain)

³⁸ Or. Rev. Stat. § 125.155(2)(g) (2021).

³⁹ Or. Rev. Stat. § 125.080 (2021).

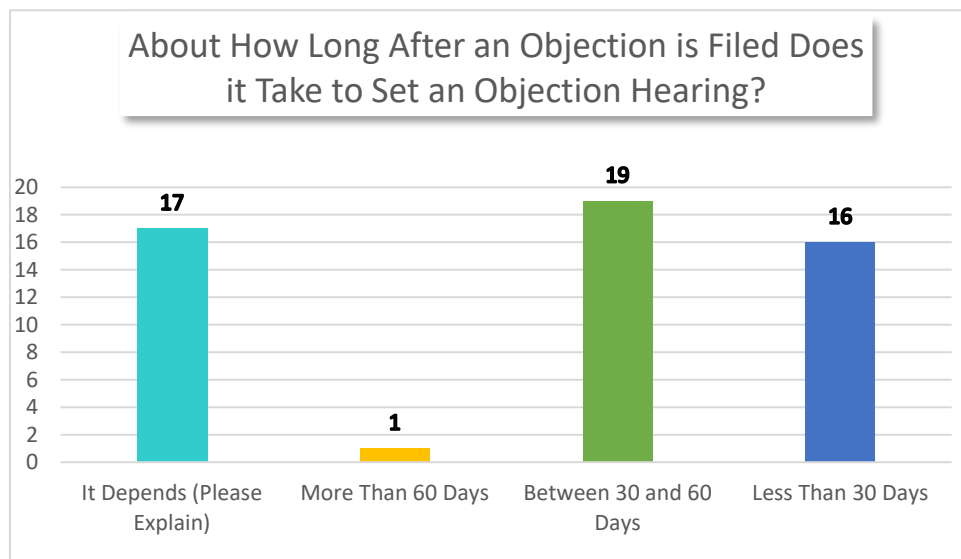
specific circumstances, with a graduated rollout of the change until 2024 when the change applies statewide. Since *all* counties will need to prepare to appoint counsel, participants were asked whether their courts were able to appoint counsel for a respondent or protective person when either that person or another interested person has objected.

Of the 54 participants, 18 (representing 12 judicial districts) indicated that their court has a list or knows of attorneys who they can appoint, and the court can usually find an attorney to appoint. Another 14 participants try to appoint counsel if they can. Six participants representing five judicial districts say they have no reliable counsel to appoint. 11 of the 13 participants chose the “Other” choice option and entered a comment focused on how difficult it is to find counsel for respondents and protected persons when they know there is no money in the estate to pay for a lawyer.

Despite some challenges to appointing counsel, 26 counties across 22 judicial districts have appointed counsel sometime in the last five years, but more than two-thirds of all attorney appointments occurred in just three counties. Appointment of counsel and the effect of Senate Bill 578 are discussed in more detail below.

TIMELINESS OF OBJECTION HEARINGS

Once an objection has been filed, and a case becomes contested, courts are required to set a hearing⁴⁰ even though the statute remains silent as to the timeliness of that hearing. There are only two instances in the statute indicating a timeline on which a hearing must occur. One is when an objection is filed to a temporary appointment⁴¹, and the other is found in ORS 125.323 when a guardian moves to limit an association of the protected person. For the latter motion, the hearing must be scheduled no later than 60 days from filing.⁴² Two circuits, by SLR, require that



⁴⁰ Or. Rev. Stat. § 125.080(2) (2021).

⁴¹ Or. Rev. Stat. § 125.605(5) (2021) which requires a hearing be set within 2 judicial days of the filing of the objection.

⁴² Or. Rev. Stat. § 125.323(d) (2021).

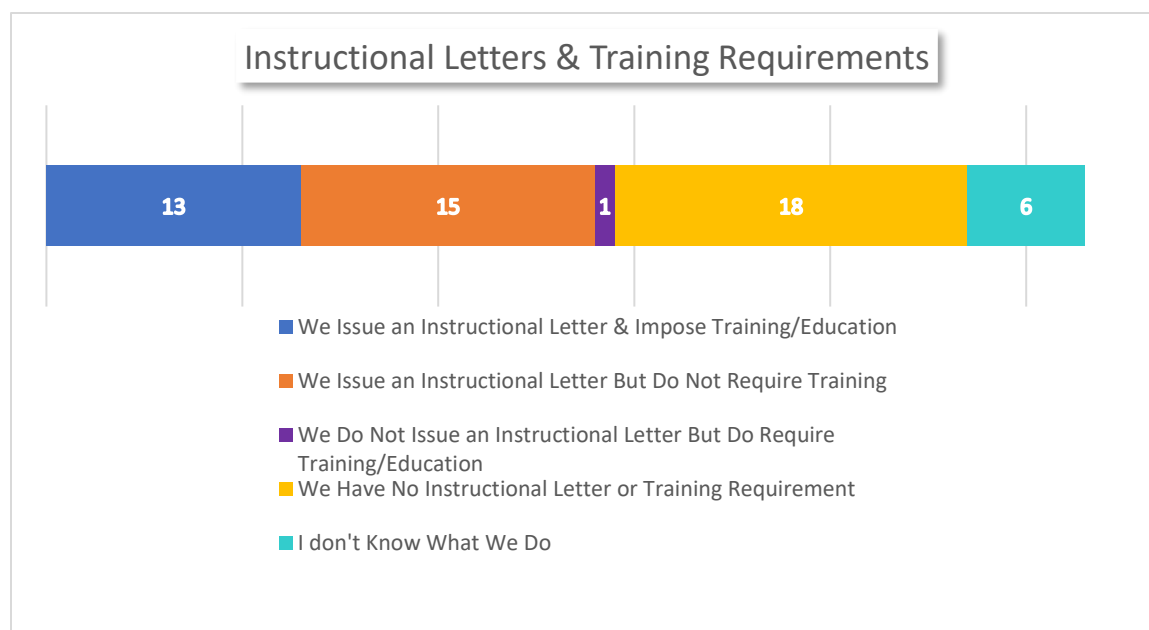
contested cases complete alternative dispute resolution before being heard. That extra requirement would be expected to delay those circuits' setting objection hearings.

Participants were given choices of the general scheduling contours for objection hearings: Less than 30 days from the filing of the objection (16 responses); Between 30 and 60 days from the filing of the objection (19 responses); More than 60 days (1 response); or "It Depends" (17 responses). Selecting "It Depends" allowed the participant to clarify their answer, with 12 of those responses differentiating between contested temporary proceedings set within two court days, and indefinite petitions. Seven of the 17 "It Depends" responses did not know how their circuit scheduled matters. The rest were split between "Less than 30" (4); Exactly 30 days (2), and "Between 30 and 60 days" (4).

Although there is not presently a report or query to track the timeliness of protective proceeding hearings within Odyssey, case sampling reveals many objections to indefinite appointment of a fiduciary led to hearings that occurred well beyond 60 days from the filing of the objection. In some of the largest districts, objections filed during 2020 and 2021 took six to nine months to be held. It is unclear what correlation exists between pandemic-related court restrictions and delay in holding objection hearings.

POST-APPOINTMENT INSTRUCTIONS & EDUCATION

The next survey topic began a series of questions regarding the appointment and post-appointment monitoring phases. Courts were asked about what training or educational requirements are expected of newly appointed, non-professional fiduciaries. Based on the responses to the survey, and confirmed by Odyssey review, 28 participants (representing 15 judicial districts) issue an instructional letter to the fiduciary that includes a general outline of their fiduciary obligations and the due dates for future filings. 14 participants (representing eight judicial districts) require newly appointed non-professional fiduciaries to complete a remote-access education course tailored to the type of appointment the fiduciary holds. The one

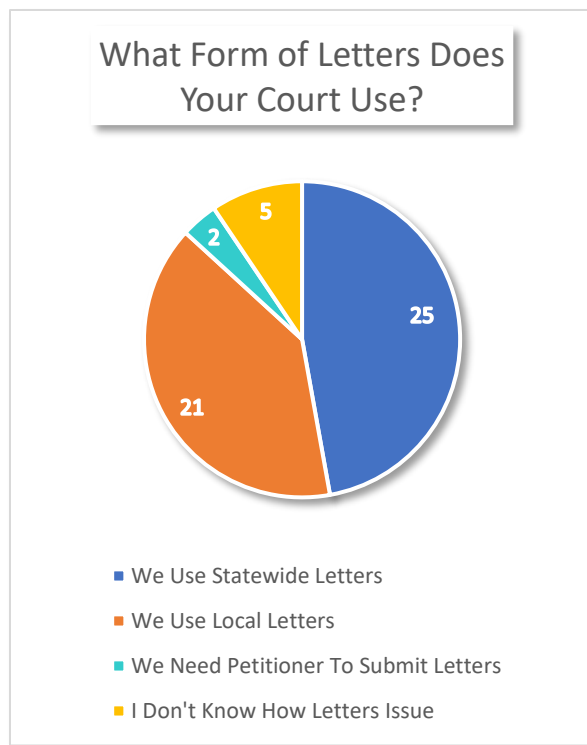


participant who responded that the course is required but no letter issues was mistaken, and their circuit does issue a letter in addition to requiring the course.

The remainder of the responses (less one “I don’t know” response whose circuit issues a letter but does not require the course) do not issue any instructional letter nor do they require any non-professional fiduciary education. All circuits that do require the training course coordinate with a non-profit called Guardian Partners.⁴³

FORM OF LETTERS

Once appointed by judgment, courts are expected to issue letters of guardianship or conservatorship in “substantially the same form” as prescribed by ORS 125.310 (guardianship) or 125.405 (conservatorship). OSCA has established a statewide form available through Odyssey for court use, but not all circuits use the statewide letters template. The participants reporting use of a local form (21 responses), who were later interviewed, cited dissatisfaction with the format of the statewide form and had implemented a local version in Odyssey that better reflected their business processes following a fiduciary’s appointment. Two participants (representing two circuits) reported that their circuits rely on a form of letters to be submitted by the fiduciary, but information in Odyssey suggests that may only be accurate for one circuit. All responses in the “I don’t know how letters issue” choice were from judges whose circuits were represented by either use of the statewide version or their own local version of letters.



DUE DATES & TRACKING

The ORS, UTCRs, and various SLRs prescribe post-appointment filings be submitted by the fiduciary within a certain timeframe following the date of appointment to include a notice of appointment⁴⁴, inventory⁴⁵, annual guardian’s report⁴⁶, and annual accounting.⁴⁷ Courts were asked whether they track these future filings, and if so, how. Odyssey software allows for time standards to be set or for case events to carry due dates, both of which can be set up to

⁴³ www.guardian-partners.org Guardian Partners, their services, and additional discussion can be found below.

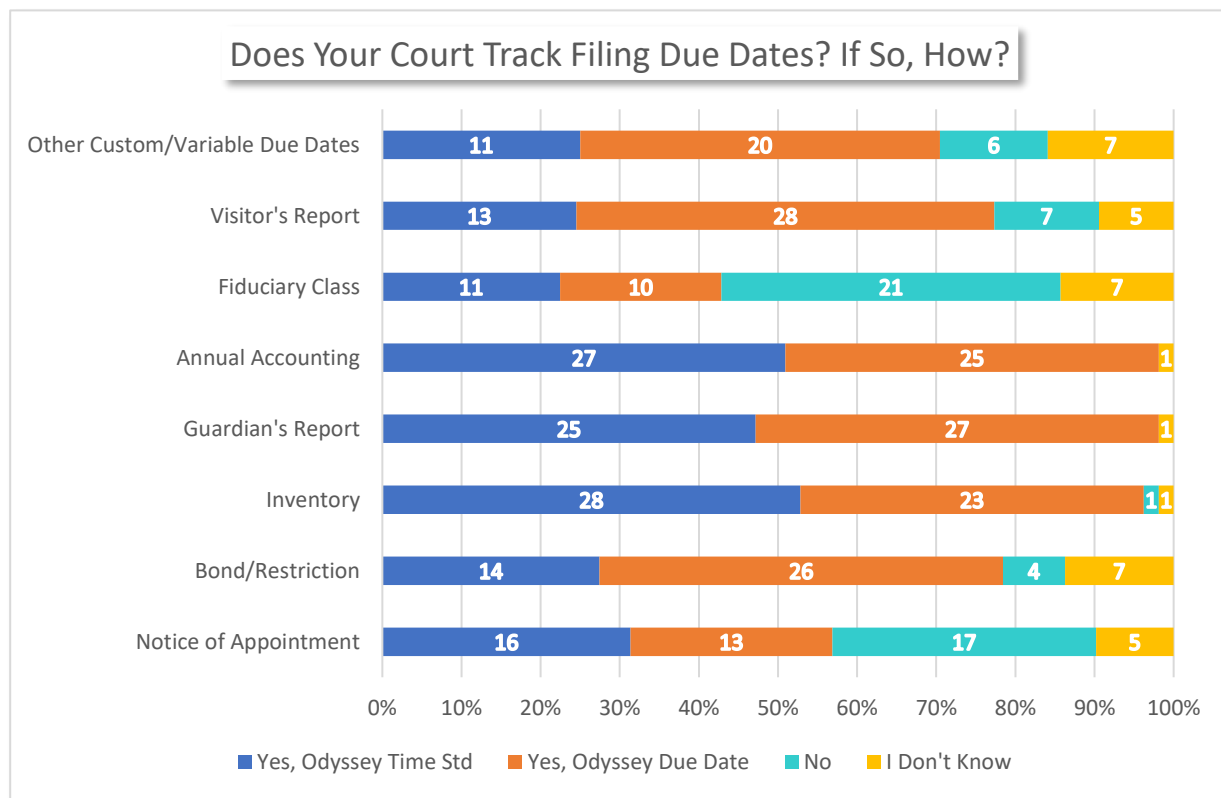
⁴⁴ Or. Rev. Stat. § 125.082 (2021).

⁴⁵ Or. Rev. Stat. § 125.470(1) (2021).

⁴⁶ Or. Rev. Stat. § 125.325(1) (2021).

⁴⁷ Or. Rev. Stat. § 125.475(1) (2021).

automatically fill overdue reports. In addition to the filings required by statute, courts were asked whether they track completion of a fiduciary class (if required in their circuit)⁴⁸, and whether they track submission of bond and/or acknowledgment of restriction.⁴⁹ While asking about due date tracking, the visitor’s report (due 5-15 days after the appointment of a visitor⁵⁰) was included.



The most important piece of the data collected on due dates is whether certain filings are tracked, rather than *how* they are tracked. Through discussion with court staff, many individuals have a strong preference for either “due dates” or for “time standards,” though either can produce functional tracking. Based on survey responses the most-tracked filings are guardians’ reports (all circuits), inventories (all but one circuit), and annual accountings (all circuits). The least likely to be tracked, apart from the fiduciary course which not all circuits require, is the notice of appointment of a guardian. While a relatively recent addition to statute, during the interview

⁴⁸See e.g. Multnomah County SLR 9.076 requiring submission of a certificate of completion of the non-professional fiduciary course within 90 days of the date of appointment.

⁴⁹ An acknowledgment of restriction, permitted under UTCR 9.050, must be submitted within 30 days of the date of the judgment appointing. The acknowledgment of restriction functions in lieu of bond by including a prohibition on the removal of funds from a depository account without express court order. Although the filing of a bond has no fixed or standard due date, ORS 125.405 directs courts to issue letters of conservatorship *after* submission of a bond, but diligent courts would track the submission of a bond as the mechanism of asset protection.

⁵⁰ Or. Rev. Stat. § 125.155(1), 125.605(4) (2021).

portion, almost half of those interviewed were unaware of the requirement or what the due date was.

Participants were asked to describe any additional due dates they may add to a case. Responses included:

- Due date added to petition to appoint fiduciary to follow-up on appointment documents;
- The end of the month in which a minor protected person will turn 18 years old, to terminate a minor guardianship;
- Six-month status reports in conservatorships that initially do not have assets (such as personal injury settlement matters);
- Follow-up ticklers when late document courtesy notices issue to a fiduciary, to take “next steps” if the missing filing has not been submitted; and
- The expiration of any extension granted by letter or motion/order.

EXTENSIONS

The focus of the next survey question regarded parties’ requests for extension. Participants were asked an open-ended question as to whether their courts have a process for handling requests for extension on filings. Two circuits have adopted SLRs addressing their policies for extensions, but most others have an informal set of internal guidelines. These guidelines are typically liberal with the first request for extension, and more stringent with subsequent extensions or those asking for a longer grant of time. Of the 44 participants who explained their court’s considerations, relevant features include:

- Unrepresented parties may make their first (and sometimes subsequent) request for extension by letter. Generally, if a party requests a due date extension for more than 60 days, unrepresented parties must submit a motion, declaration, and order.
- About half of circuits allow attorneys to make their first extension (or sometimes subsequent) request by letter or email.
- Clerks are broadly allowed to grant first extension requests up to 30 days, but judges review almost all requests made past 60 days.
- No circuit will consider anything less than a motion/order if the request extends a due date more than 90 days from the original time due.
- Most courts will use case notes, document notes, or updated time standards to track extensions and the judge’s comments and directions.

ASSET PROTECTION

Except for those cases in which good cause is shown, ORS 125.410(1) bond (or other asset protection) is expected to secure against misappropriation. Participants were asked whether their court requires a bond or other asset protection. Just over half of participants represented that their court requires a bond and/or restriction unless good cause is shown. 12 answered that the court would defer to the request of the petitioner unless the matter was contested. Four said that

bond is not generally required, and nine didn't think the options described their process. Of those nine, six responses were very close to the other options with four of those six noting that it is up to the judge to decide whether a bond will be waived. One judge did not know whether bonds were required in their circuit.

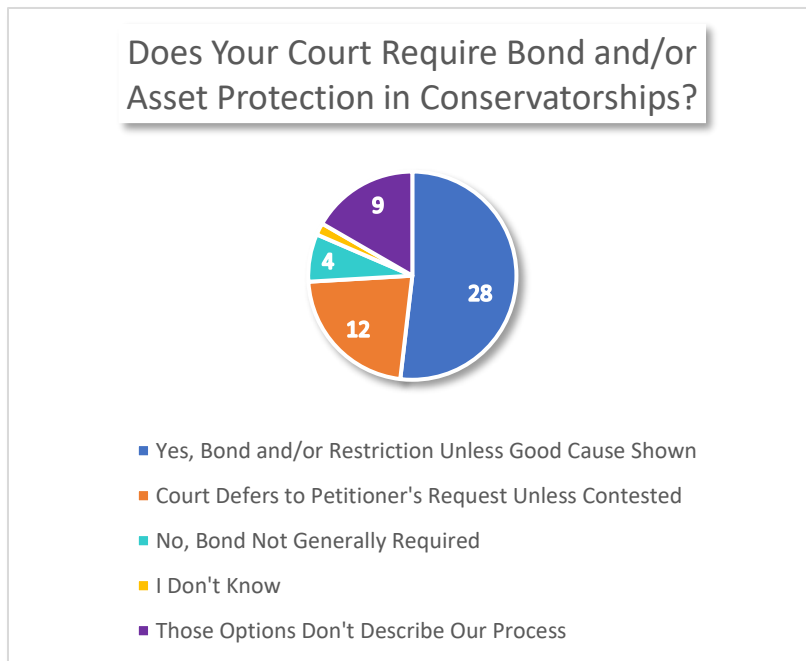
A cursory case sample in Odyssey makes clear that participants generally overstate their courts' requirement for bond or restriction, and when a more

comprehensive count is done, the requirement of bond/restriction is even less likely in any case. Multiple participants who said that bond was required represent circuits where the observed frequency of bond/restriction is less than one in four cases. One commissioner's response may best describe the results with respect to bonds: "Most of the time parties request bond or restrictions be waived. I review the pleadings and note my suggestions before sending it to the judge. I feel like it's half and half whether the bond is waived or not."

REVIEW OF GUARDIAN REPORTS

Question 18 of the survey asked participants to explain their court's process for review of the guardian's report. Five participants skipped this prompt, but the 49 narrative answers received, coupled with extensive discussion in the follow-up interviews, form a general outline of how guardian reports are reviewed. There are three common patterns, largely linked to a circuit court's caseload size, for report review:

- In the smallest circuits, clerks accept the reports and screen them for completeness – has the guardian completed the report form and signed it? The clerk then routes the electronic version of the report to the judge assigned to the case and sets the next due date. If the judge has concerns about the content of the report, they will direct the clerk as to next steps.
- In medium sized circuits, a probate clerk will review the *content* of the report in addition to the filing sufficiency. They will add document notes about their review before routing the electronic version to the assigned judge. That judge will direct the clerk if subsequent action is deemed necessary.
- In the largest circuits, a probate clerk or probate commissioner will review the *content* of the report after a different clerk screened for completeness. Most probate commissioner's survey responses included the specific elements of the



report that they make sure to check, such as the need to continue the guardianship, any money handled by the guardian, and substantial changes from the previous year's report. Based on their review, the probate clerk or commissioner may directly inquire with attorneys or parties about the content of the report, or if satisfactory, direct the due date for the subsequent report. The probate clerk or commissioner will send concerning reports to a judge, but if there are no concerns the judge may not see that year's guardian's report. When sent concerning reports, judges often direct staff to set a hearing.

One notable practice discovered through this assessment, not linked to court size was several circuits' practice of judicially "approving" guardian's reports, either by judicial note of review or by a court-prepared form order. At least four circuits prepare a separate order to approve each guardian's report. Several other circuits' clerks check to find a judge's initials or signatures on the report when it is returned from the judge.

In addition to the survey question regarding review of reports, participants were asked whether their circuit requires guardian reports in minor guardianships. 12 participants representing eight circuits said reports were not required, two participants were unsure, and the remainder said reports were expected. A survey of Odyssey supports that general representation. In minor guardianships in those circuits that do not expect a report, no annual due date is set, instead setting an "age-out" date to track the time at which the court would close the matter on their own motion when the protected minor turns 18.

ACCOUNTINGS

Question 20 led off several inquiries into courts' review of conservatorship accountings by asking whether the participants' circuit requires accountings to be substantially in the form required by UTCR 9.160. Under ORS 125.475, provides the information required to be submitted as part of the conservator's accounting but then allows the Chief Justice to specify by rule the form and contents of that information.⁵¹ UTCR 9.160, with UTCR 9.170 covering fiduciary disclosures, and UTCR 9.180 addressing vouchers and depository statements, are the product of that rulemaking. The form provided by the rules (or substantially in the form provided in the UTCR Appendix of forms) must be accepted by all courts, but the rule is also drafted to allow a court discretion as to what form of accounting they may allow in lieu of UTCR 9.160. UTCR 9.160 reserves SLR 9.161 for any circuit's adoption of a mandatory rule requiring formatting as in UTCR 9.160.

In the survey results nearly every participant stated that the UTCR 9.160 format for accountings is required in their circuit. Seven participants answered that the format is not required. Two participants answered that they do not know what is required in that standard.

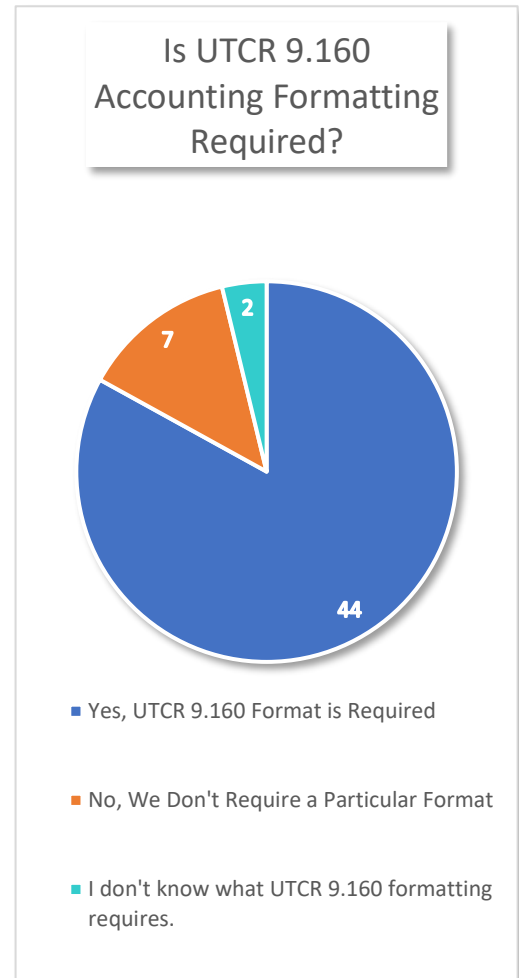
⁵¹ Or. Rev. Stat. § 125.475(2), (3), (7) (2021).

Unfortunately, Odyssey review and consideration of the enacted accounting-related SLRs reveals a disconnect between the survey results and the actual accountings accepted into cases. 14 judicial districts have adopted SLR 9.161 which requires UTCR 9.160 formatting. Of the seven “No” responses in the survey, three were from participants in SLR 9.161 circuits. One of those circuits also adopted an SLR that waives corroborating vouchers. The conflict between an SLR requiring UTCR formatting and an SLR waiving elements of UTCR formatting may be why the participant answered “no.” Seven additional circuits have also implemented an SLR that limits the corroborating documents to be filed with accountings (vouchers waived; only opening/closing depository statements filed; etc.).

Of those participants who said that UTCR 9.160 formatting is required, only one circuit has SRLs both requiring the formatting and explicitly requiring vouchers and depository statements. Odyssey review and interviewing confirmed an additional three circuits that routinely require UTCR 9.160 because they have an auditor or examiner on staff. Most circuits accept the formatting of accounting as the fiduciary files it whether it includes all UTCR 9.160 accounting elements or not.

Four circuits have implemented SLRs allowing for waiver of an annual accounting when all assets in the conservatorship are held in a restricted account, requiring the annual filing of a bank statement showing the balance of the account in lieu of a full accounting. When assets are restricted, any disbursement from the account requires court ordered approval. One circuit only allows this option if the conservatorship was opened for a minor. Based on the survey responses, an additional six circuits follow the same practice of allowing a statement of restricted assets in lieu of an accounting, for both adults and minors, though they do not have a written rule to that effect.

After those questions regarding the formatting of accounting, participants were asked about how accountings are reviewed once they have been filed. Question 22 provided various parts of a UTCR 9.160 accounting and asked who, if anyone, reviews that portion. Those accounting elements included the asset schedule⁵², the list of receipts and disbursements⁵³,

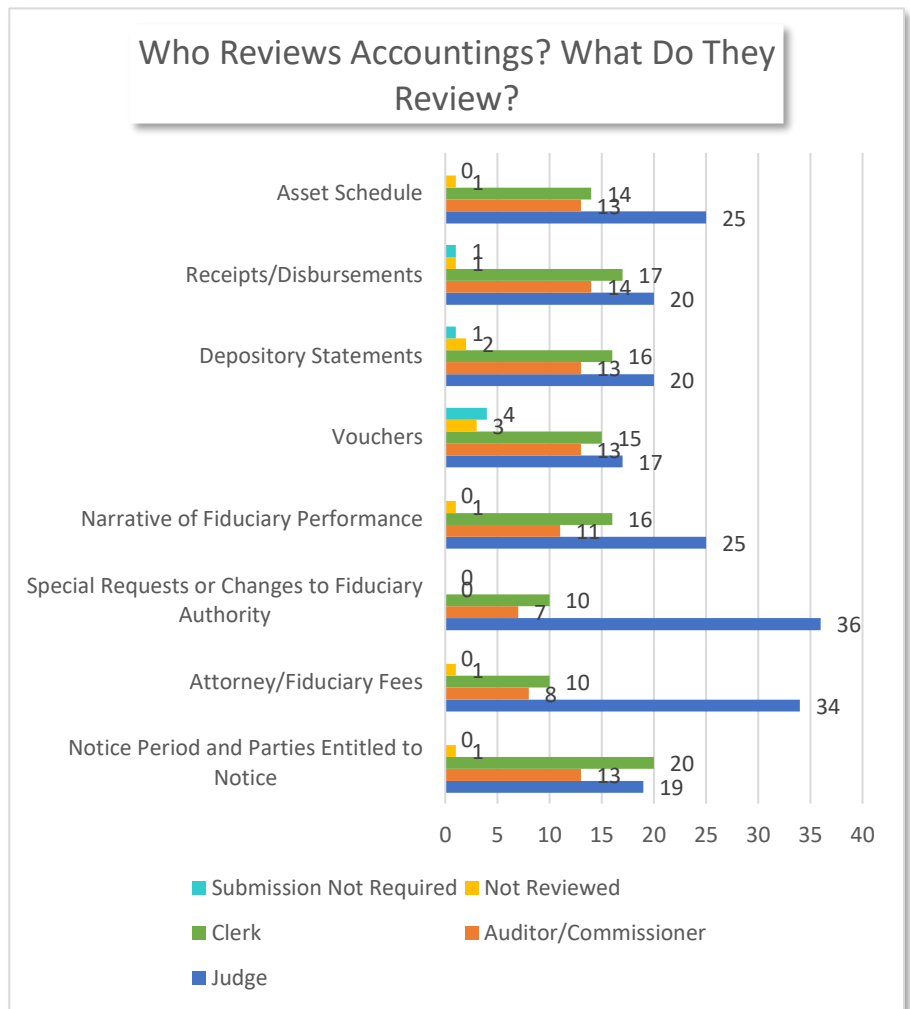


⁵² UTCR 9.160(2).

⁵³ UTCR 9.160(3).

depository statements⁵⁴, vouchers⁵⁵, a narrative of any changes in the assets⁵⁶, any special requests for approval of fiduciary actions or changes to the fiduciary’s authority⁵⁷, any attorney or fiduciary fees requested⁵⁸, and the notice of opportunity to object and proof of mailing notice.⁵⁹ Options for who reviews each included the judge, the auditor/commissioner, the clerk, the element is not reviewed, or the element is not required to be filed.

Based on the answers selected, if the circuit has a commissioner (or auditor), that person will do a substantive review of all parts of an accounting before sending either the accounting or judgment to the judge. In those counties without a commissioner or auditor, judges were most likely to review any narrative portion of the accounting, the attorney fee requested, and the asset schedule. As confirmed by interviews, judges often do not have time to review the content of the receipts and disbursements lists, the depository statements, or confirm that the vouchers match those lists. They are also more likely to have staff check notice and proof.



In those counties without a commissioner or auditor, probate staff may do *some* substantive review of the content of the accountings, but were more likely to review filings only to confirm the elements were filed. They would then send the accountings on to judges for more thorough consideration. Anecdotally, small counties generally rely on objections to accountings or any obvious red flags to trigger the need for a more detailed judicial review.

⁵⁴ UTCR 9.180(2).
⁵⁵ UTCR 9.180(1).
⁵⁶ UTCR 9.160(4).
⁵⁷ Or. Rev. Stat. § 125.320, 125.440 (2021).
⁵⁸ Or. Rev. Stat. § 125.095(2)(b), (c) (2021).
⁵⁹ Or. Rev. Stat. § 125.475(5) (2021).

ADDRESSING CONCERNS, REQUESTING ADDITIONAL INFORMATION, & ISSUING CITATIONS OR SHOW CAUSE

Participants were next asked three related, open-ended questions:

- If anyone reviewing the above-listed items [accounting elements] finds concerning information, what would the reviewer's "next steps" be in addressing the concerns?
- If your court has a standardized process for requesting additional information or amendment of a filing, what is that process and who is responsible for initiating that process?
- Does your court have a local process for issuing citation, show cause, or contempt orders to fiduciaries in protective proceedings? If so, please describe that process.

The responses are best considered in synthesis given the adjacent content of the questions and the overlapping answers provided by participants. Substantial parts of follow-up interviews were dedicated to discussion of who raises case concerns and how they are addressed by the court. Judges and staff were consistent on the first question, distinguishing the severity of the concern and who identified it when describing their courts' response. Where staff identified the concerns, they would customarily add document notes and route the filing to a judge for direction. A judge may then direct that staff person to inquire with the party/attorney, issue a letter themselves, or set a hearing immediately. Where judges identified the concern, they would similarly direct staff, issue correspondence, or direct a hearing to be set.

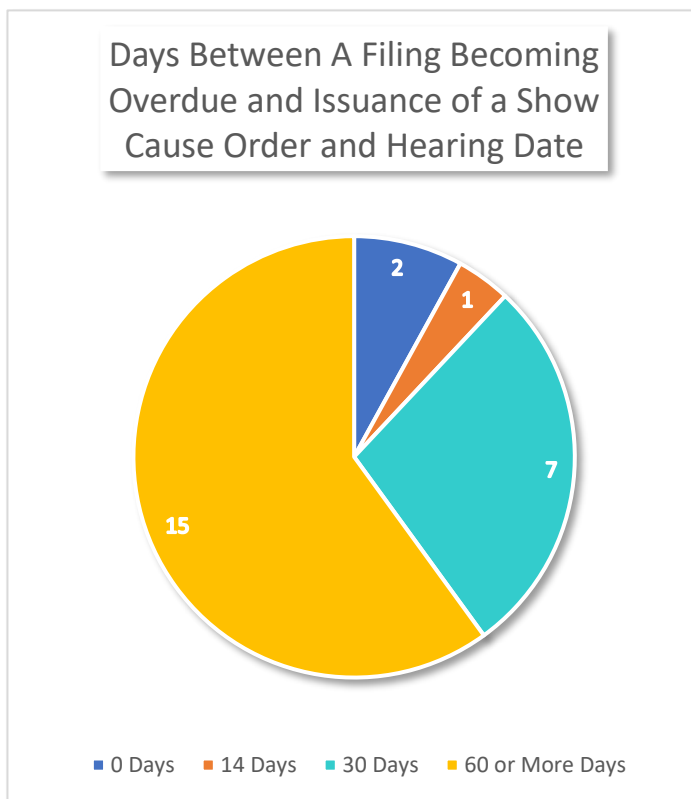
In those circuits with probate commissioners, most would issue a letter or request for additional information when questions might be resolved with additional information or clarification. If the concern was minimal and discretionary, they would note the file and route to a judge for direction. If the concern was unambiguously concerning, commissioners responded that they would set a hearing immediately.

In responding to the second question, participants frequently referred to an escalating system to clarify or supplement filing. Initially courts will correspond with parties (or attorneys when represented). Where the circuit does not have a local form dedicated to requesting additional information, they will use an informal request – either a phone call or an email – to solicit the party or attorney. Five circuits use a locally standardized form, typically referred to as an "audit letter," "courtesy notice," or "request for information." That local form is used for gathering additional information or to alert parties of an overdue filing. Nearly all probate clerks stated they would add a due date to the Odyssey event to keep track of any response filed by the party or attorney. Most judges would direct between 30 and 60 days to respond to the request before considering a hearing on the same question.

While the question did not differentiate between requests for additional information and a notice of overdue documents, most courts treated the failure to file a timely document the same way they treated an informational request. For overdue filings, OSCA has produced a statewide form which courts can use to notify parties which document(s) may be outstanding. That notice,

or the local equivalent, has been used in every circuit within the 12 months preceding this assessment, meaning every circuit has a business process in place to track their overdue filings.

Though each circuit reports a process for escalating overdue filings to hearing, the timelines on which they operate vary substantially. Based on survey answers to the third question in this group, and supplemented with interview follow-up and Odyssey case review, there are three judicial districts that proceed to Show Cause very quickly after the due date has been missed for a report or accounting, setting a hearing within 30 days of the missed due date. Eight judicial districts allow 30 days from their courtesy notice date before they issue a show cause. The remainder (15 judicial circuits) all issue one or more late document notices before issuing an order and setting a hearing. Two of those courts set a preliminary “status hearing” before escalating to a Show Cause order and hearing. One circuit only sets two “Show Cause” hearing dates per year, so they wait to issue all show causes for a 6-month period at the same time. 12 of the 15 circuits issue two, three, or four late notices before setting the matter for show cause, causing 90 days or more to pass before an overdue filing might be addressed by a judge.



TERMINATION OF PROCEEDING

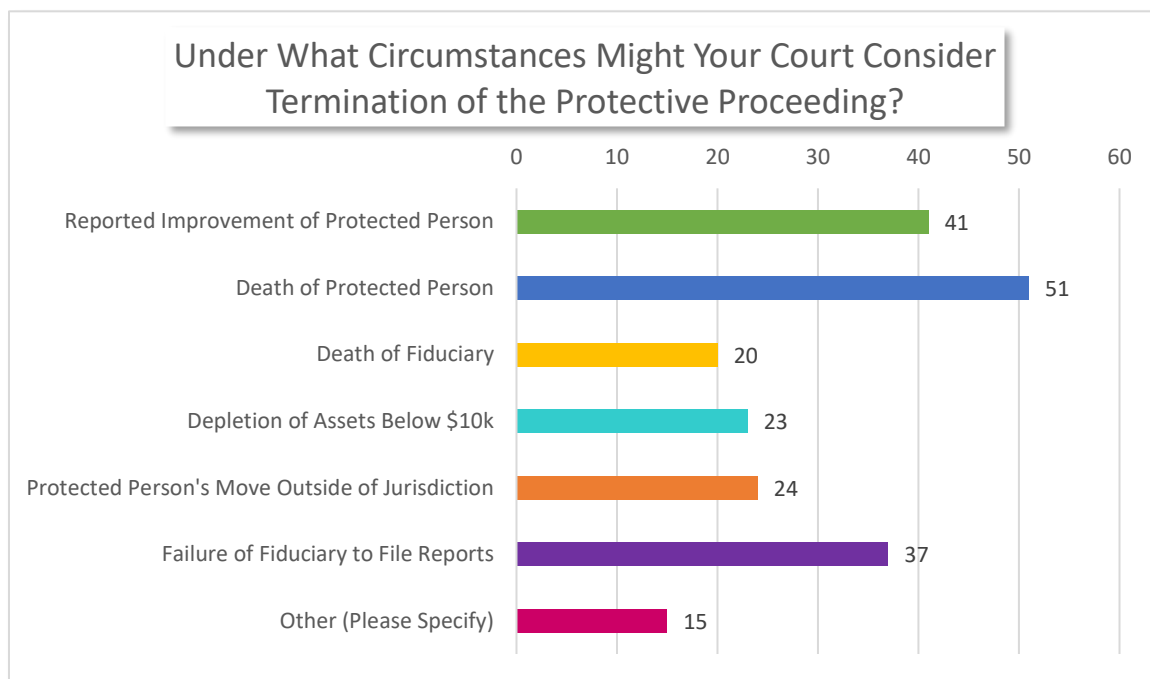
The final substantive court monitoring survey question asked participants under what circumstances their court might consider termination of the protective proceeding. Participants could choose whether, in each of six circumstances, their court might terminate a protective proceeding and could also check “Other” to add additional circumstances by short answer.

Of the 53 participants who answered this question, 51 said they would terminate upon death of the protected person.⁶⁰ 41 participants would consider the protected person’s rehabilitation or reported improvement⁶¹ and 37 would consider the fiduciary’s failure to file reports.⁶² Participants were less likely to choose the protected person’s move outside of

⁶⁰ Or. Rev. Stat. § 125.090(2)(d) (2021).

⁶¹ Or. Rev. Stat. § 125.090(2)(b) (2021).

⁶² Or. Rev. Stat. § 125.225 (2021) allows for removal of a fiduciary for failing to perform their duties but does not explicitly authorize termination of the proceeding. Termination versus appointment of a successor may



jurisdiction of the court⁶³ (24 responses), depletion of the protected person’s assets below \$10,000⁶⁴ (23 responses), or the death of the fiduciary (20 responses).⁶⁵ The participants who chose to specify other answers offered detailed explanations of their courts’ policies regarding termination. Besides the 5 participants who cited a minor’s 18th birthday as reason to terminate⁶⁶, several specific answers are worth including in whole:

- “The completion of the purpose of a limited protective proceeding is one example. In the case of the death of a fiduciary, the termination would be dependent on the specific facts of the proceeding and the protected person’s stability/continuing need for a fiduciary.” – Probate Commissioner
- “Nothing would be done without good cause. There should be no reason to dismiss a guardianship when [the protected person is] out of money; They still need protection. Also, the death of a fiduciary is not a reason to leave a protected person unprotected. If someone moves out of the jurisdiction we don’t require them to close or transfer but we do require regular annual reporting. Sometimes

depend on the judge’s determination of the best interests of the protected person. *See, e.g.* Or. Rev. Stat. § 125.315(1)(i) (2021).

⁶³ Or. Rev. Stat. § 125.090 (2021) allows for termination of the proceedings when it is in the best interests of the protected person, which may be the case when the protected person has permanently relocated, but ORS 125.825, part of Oregon’s Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, directs that a court that has appointed a fiduciary has exclusive and continuing jurisdiction over the proceeding, so the court could keep it active by choice.

⁶⁴ Or. Rev. Stat. § 125.540 (2021) allows for termination of a conservatorship when the net assets of the conservatorship do not exceed \$10,000. That statute does not require termination.

⁶⁵ Or. Rev. Stat. § 125.230 (2021) terminates the fiduciary’s authority upon the fiduciary’s death, but does not explicitly direct termination of the proceeding.

⁶⁶ Or. Rev. Stat. § 125.090(2)(a) (2021).

we might recommend that they would be better served [by transferring] their case but we have a standing policy that protective proceedings are not arbitrarily dismissed.” - TCA

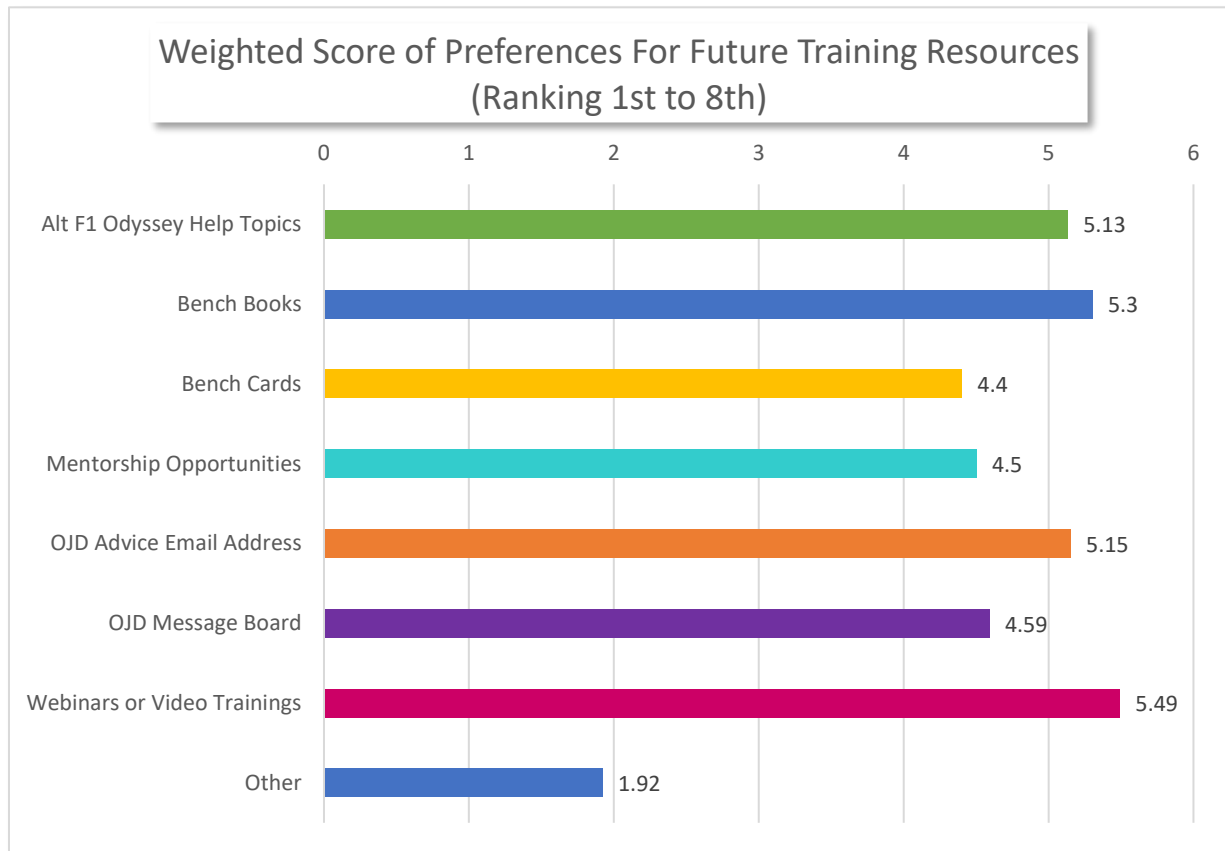
- “For a death [of the protected person], we would make sure probate [is] initiated if needed. If [the protected person is] rehabilitated or improved, we would use a Guardian Partners [volunteer monitor] to check it out and report to the court first. If funds were depleted and the person is in a care facility with a payee, we may terminate. We would not terminate based on a move unless a proceeding was filed in the new location or transfer process completed. If the fiduciary failed to file reports, we would show cause. If [they failed to appear], we would do Guardian Partners and/or adult protective or DHS reporting. If a fiduciary died, we would ensure a new one was appointed if necessary.” - Judge

SELF-RANKING PERFORMANCE, TRAINING PREFERENCES, AUDIT HELP

In the same way that the final TCA Survey inquired as to self-scoring their court’s monitoring efforts and sought preferences on the form and content of future training or resources, the Statewide Survey closed with similar questions. Question 27 asked to rank (on a scale of 1-10) their court’s ability to effectively monitor proceedings and explain why they scored their county the way they did.

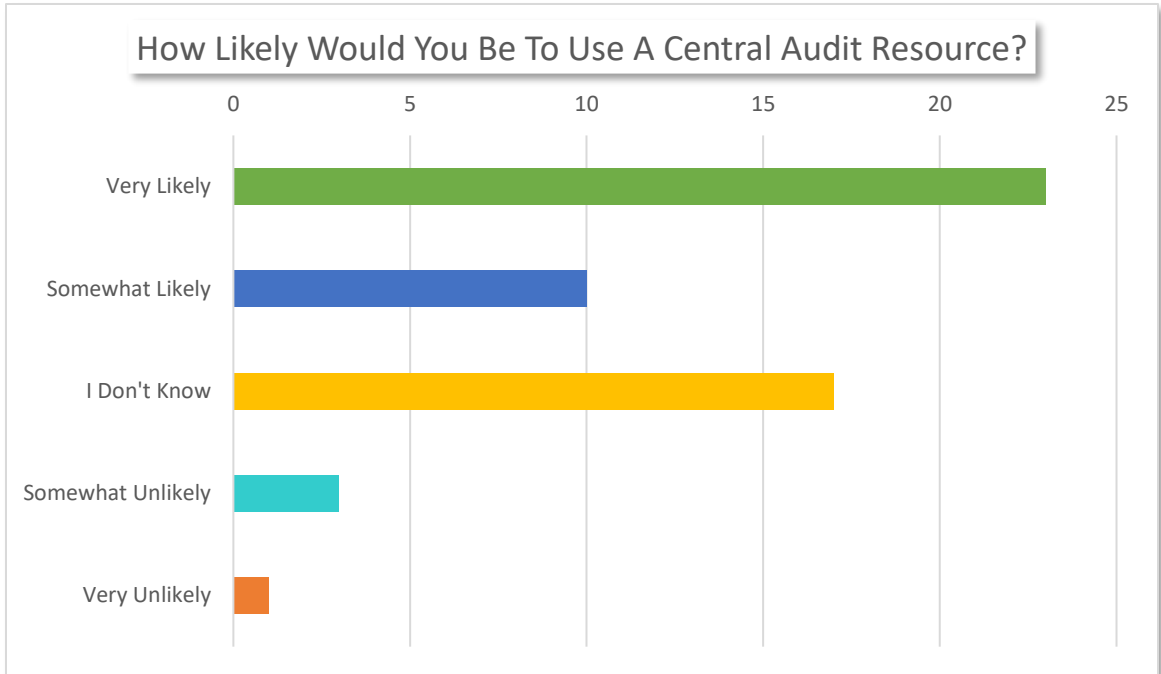
51 participants responded, with an average statewide score of **6.97**. Seven participants, four judges and three staff, gave their courts a perfect score (10/10), all of whom specifically cited the experience of their probate staff as the basis for their score. Nine participants scored their courts at 5/10 or less. Six of these responses cited the lack of staff, training, and dependence on the case filings to evaluate the protected person’s condition, but the other three responses were from judges in larger circuits who appear to have seriously under-scored their circuits representative performance by comparison to other courts.

Question 28 of the survey asked participants to rank from 1st through 8th the resources, materials, or assistance they would be most interested in having access to. Average weighted scores were created. The most preferred answer choice is the choice with the largest average



ranking. Of the survey options presented, “Webinars or Video Trainings” was the most preferred option with a weighted score of 5.49. The next most preferred three options included “Bench Books” (5.30), “OJD Advice Email Address” (5.15), and additional or amended Odyssey Help System Topics (5.13).

The final question asked participants how likely they would be to take advantage of a central auditor who would assist with complex conservatorships and accountings. Only four participants chose either “Very Unlikely” or “Somewhat Unlikely.” 17 participants did not know how likely they would be, with 33 choosing “Somewhat Likely” or “Very Likely.” One judge strongly believed in using a central auditor “so long as decision-making authority remained with the circuit court judge.”



Ongoing Data Collection Efforts

Briefly discussed above, the Data Dashboard developed by SPPAC and OSCA, is a consistently updated, on-demand access tool for various data queries pulled from Odyssey case filings. The dashboard is sorted into tabs holding information of similar type, with a summary of that tab’s statewide data query held at the top. Users with access to the dashboard can view the content of the queries displayed in chart or graph form summarizing the data set on which that chart is based. A user can then right-click on the chart or graph to limit the information by certain measures including county, case type (adult or minor), subtype (guardianship, conservatorship, both, or unknown), or within a certain date range (by year, quarter, or month). Most usefully, a “drill down” feature allows for a user to see a case list on which the query is based. The case list includes relevant data points used in creation of the measurement and also served as an efficient way to find particular case types to confirm reported circuit court practices.

At the time of this assessment, there were 12 tabs containing the following summarized data, with notes on how the data is sorted:

1. **Cases Filed** – By default, cases are sorted by filing year of the petition (2017 through present). The tab also displays the percentage of cases filed by case type and subtype.
2. **Timely Disposition & Clearance Rate** – By default, cases are sorted by filing year (2017 through present) into two measures: The percentage of adult protective proceedings with a determination on appointment made within 90 days and the percent clearance rate. For the former, “disposition” means either appointment of

a fiduciary or dismissal of the petition. The “drill through” case list shows the number of days between petition and disposition. Clearance rate is measured by the number of cases closed divided by the number of cases filed.

3. **Pending Cases by Case Type & Subtype** – Pending cases, which are open and active at the time of measure, are tracked by case type and subtype, with the number of pending cases tracked over time from 2020 to present.
4. **Pending Cases by Years Since Filing** – Pending cases sorted into “age brackets” since filing (less than 1 year, 1-5 years, 5-10 years, 10-15 years, 15-20 years, 20-25 years, 25 years or more), and also the median years since filing for each case type and subtype. This is a snapshot tab, so not sortable by past time periods. Over 5% of open Oregon protective proceedings are over 25 years old.
5. **Judge and Staff Workload** – Estimated annual judicial FTE and staff FTE necessary per NCSC Workload Assessment Model Documentation⁶⁷ (though only for one time period 2017-2019).
6. **Assets Under Conservatorship, Over Time** – Displays the total known assets under conservatorship (as based on the most recent value entered in Inventory or Accounting event type) and the percentage of cases with known asset value, shown over time. Also shows the estimated total value of assets under conservatorship, extrapolated using the value of the known percentage, applied to the total pending case number.
7. **Assets Under Conservatorship, by Court** – Displays a snapshot of the total known assets under conservatorship by county, the percentage of cases with known asset values, and the extrapolated number based on the known-value applied to the total pending number of cases. Known assets under conservatorship are measured from the most recent Inventory or Accounting data value entered.
8. **Timeliness of Accountings, Over Time** – shows two percentage measures and the change over time from 2020 to present: (a) the percentage of conservatorship cases open for at least two years with an inventory or accounting filed within the past 12 months; and (b) the percentage of conservatorship cases open for at least two years with an inventory or accounting filed within the past 18 months.
9. **Timeliness of Accountings, by Court** – Shows two percentage measures, sorted by county: (a) the percentage of conservatorship cases open for at least two years with an inventory or accounting filed within the past 12 months; and (b) the percentage of conservatorship cases open for at least two years with an inventory or accounting filed within the past 18 months. Both have options to “drill down” to a case list displaying the conservatorship cases, the date of the most recent Inventory or Accounting, and whether they have hit 12-month, 15-month, or 18-month benchmarks.
10. **Timeliness of Guardian Reports, Over Time** - shows two percentage measures and the change over time from 2020 to present: (a) the percentage of guardianship

⁶⁷ Suzanne Tallarico, Alicia Davis, & Daniel Hall, *Oregon Circuit Court Judicial Officer Workload Assessment Study*, 2016 Final Report. (2016).

cases open for at least two years with a guardian report filed within the past 12 months; and (b) the percentage of guardianship cases open for at least two years with a guardian report filed within the past 18 months.

11. **Timeliness of Guardian Reports, by Court** - Shows two percentage measures, sorted by county: (a) the percentage of guardianship cases open for at least two years with a guardian report filed within the past 12 months; and (b) the percentage of guardianship cases open for at least two years with a guardian report filed within the past 18 months. Both have options to “drill down” to a case list displaying the guardianship cases, the date of the most recent report, and whether they have hit 12-month, 15-month, or 18-month benchmarks.
12. **Cases Filed – Respondent 65 or Older at the Time of Filing** – Displays the number and percentage of adult protective proceedings where the respondent was age 65 or older at the time of filing the petition, shown over time from 2020 to present. Additionally shows the percentage of adult protective proceedings where the respondent was age 65 or older at the time of filing the petition, sorted by county.

Using the data from the dashboard, OJD can make useful comparisons to identify trends that warrant investigation or intervention. Accessible, meaningful, and accurate data is a way to find patterns in case filings and identify concerns with monitoring practices in order to target intervention and improvement at a local and statewide level.

ANALYSIS & RECOMMENDATIONS

This statewide self-assessment was undertaken to better understand the local processes of each of Oregon’s circuit courts to identify opportunities to enhance fairness, effectiveness, timelines, safety, and integrity of protective proceedings. Based on the results of the data gathering process, there are a range of concrete opportunities to strengthen court approach and process. The following are self-assessment recommendations.

RECOMMENDATION 1: Statewide Standardized Fiduciary Expectations

A common theme of the findings presented in this assessment is that monitoring practices and court expectations of fiduciaries vary greatly from circuit to circuit. Court staff interviewed in multiple circuits reported that fiduciaries’ attorneys and community stakeholders had frequent and specific criticism about inter-circuit variance. Variance of practice across the state was also a notable and particular concern expressed by multiple Advisory Committee members.

In some instances, these differences in practice have been an unavoidable result of the limitations of smaller county resources. In others, they may stem from an influential judge’s opinions on the policies of their circuit. Finally, some courts may deal with a certain case fact pattern so rarely that they have no specific policy or plan for monitoring or management, so the way that they decide to deal with a new-to-them circumstance takes on an ad-hoc appearance with unpredictable results. There are at least two discrete ways to facilitate better uniformity of

practice, to standardize expectations of parties, and promote predictability of similarly situated cases. This would enhance the fairness and integrity of the system.

The first would be to systematically look at UTCR and SLR provisions and eliminate inconsistencies and ambiguities through amendment while maintaining the ability of courts to craft unique rules specific to their particular circumstances.⁶⁸ Without presuming to identify all potential conflicts between these sets of rules, one of the most obvious is the form and content of conservatorship accounting. The variance of what constitutes an accounting can lead to drastically different acceptable fiduciary behavior, depending on what county the conservatorship exists in. A conservator's management of assets under one set of rules might cause them to be removed as a fiduciary in one county but never be identified as a problem in another. Fundamentally, there should be predictable community standards by which fiduciaries manage assets, paralleling statutory guidelines where provided. The location of a protected person's case doesn't bear on the likelihood of mismanagement.

A brief hypothetical situation can demonstrate the disparate outcome from variance in accounting formats. Consider a conservator, Conservator Alvin, who diligently visits the protected person and takes them shopping every month, purchasing medicine and groceries out of the conservator's own money because they forgot to bring the conservatorship checkbook. They reimburse themselves when they get home with a check "grocery reimbursement." When they prepare the annual accounting, they note the reimbursement was for groceries, so describe the expense in the disbursements list as "groceries." Conservator Bob, who doesn't visit or take the protected person shopping, writes himself a check for \$100 each month. He characterizes each as "groceries" in his annual accounting.

If the accounting is filed in a county that bars vouchers and interim depository statements by SLR, directing conservators only to list the disbursements and a description of the purpose, how would a court distinguish between the two situations? If fiduciaries are required to file corroborating documents⁶⁹, as at least contemplated in the UTCR⁷⁰ before modification by SLR, a court could identify Bob's pattern of undocumented self-dealing and determine if Alvin's single transaction was a concern. Requiring adequate corroborating information supports transparency and fairness to interested parties and aids courts in exercising their oversight functions.⁷¹

A second way in which fiduciary expectations could be standardized is with thorough education for judges and staff. Nearly every Statewide Survey question included multiple "I don't know" answers. Simply put, there is a portion of judges and staff throughout the state that

⁶⁸ Rulemaking and standardization are encouraged by the National Probate Standards in Standard 2.1.2, the commentary of which cites inconsistency between intra-state jurisdictions as a hinderance to legal practice, but acknowledges the utility of specific local rules to address specific needs.

⁶⁹ Probate National Standard 3.1.5 suggests that probate courts should require fiduciaries to provide detailed accountings that are complete, accurate, and understandable.

⁷⁰ UTCR 9.160, 9.170, 9.180.

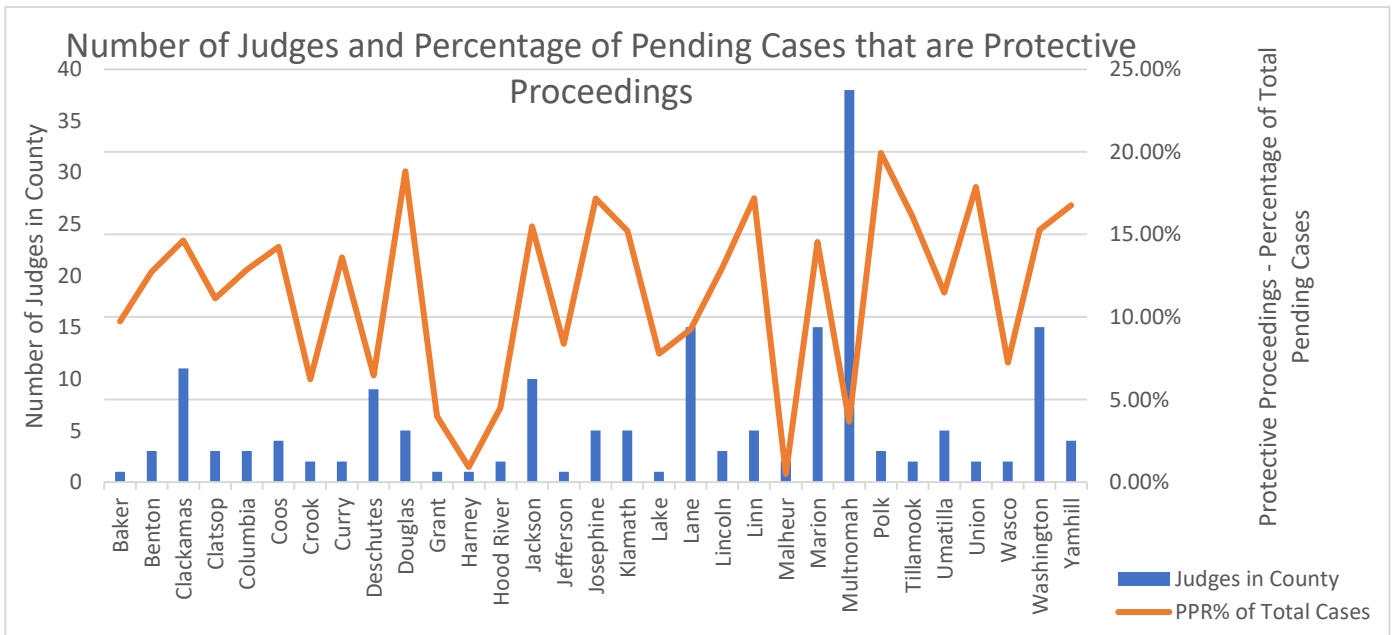
⁷¹ A responsibility implied in ORS 125.025(1), 125.450 and directly stated in National Probate Standard 3.1.5 and 3.3.17.

are unsure on what standard of practice should be. This is especially evident if they are in a smaller volume circuit that gets infrequent protective proceeding filings. Less than half of participants said that a temporary fiduciary appointment required a different level of factual pleading than for a longer notice period indefinite appointment, and a fair proportion of participants responded that their circuit requires UTCR 9.160 accounting format when it doesn't.

OJD should implement a uniform and systematic training module for judges and staff whose responsibilities include managing protective proceedings.⁷² At the initiation of the self-assessment period the only statewide resource available to courts was the Odyssey Alt-F1 Help Guide. While the help guide is directly instructive to staff processing case filings, and does contain hyperlinked citations to statutory provisions, there is no substantive training on a court's responsibility. During the interview phase it was clear that judge and court staff universally care about the individuals involved in protective proceedings and wanted to better monitor them. Unfortunately, there were no established resources for some of them to find more information about how to better do so. Creation of training and tools would support efforts to improve the scrutiny of fiduciaries throughout the lifespan of a case, and foster consistency among circuits. Webinar or video-based trainings were also the highest weighted preference in the future resources survey question 28.

RECOMMENDATION 2: Centralized Resources for Smaller Counties

A simple, and likely obvious fact is that larger counties have greater resources and are more likely to have judges who specialize in specific cases or practice areas. Smaller counties have fewer judges and staff, who must manage a more diverse set of customers and cases. Even if their overall caseloads are smaller, judges and staff in more rural and smaller-volume circuits will individually manage more varied types of cases, as there are fewer others to divide



⁷² Continuing professional education programs are encouraged and supported in the National Probate Standards in Standard 2.3.4.

specializations. Smaller counties also have less developed protective proceeding business process, which may be correlated to their smaller case numbers, reflecting calculated time and resource cost-benefit considerations of developing more extensive practices. This is not in any way to say that these counties ignore these cases. In fact, some were acutely aware of their self-assessed limitations. Several judges plainly stated that they do not have adequate resources to support comprehensive auditing:

“We are a small court without the resources to do intensive evaluation and oversight of complicated conservatorship accountings.” – Judge

“We try our best with what we have, but we don’t really have the ability to verify all the information we receive in an accounting, other than what gets submitted.” – Judge

Five counties account for over half of the pending protective proceedings in Oregon, each of which have a judge who dedicates a substantial portion of their judicial work specifically to estate and protective proceedings. Seven of the ten largest circuits (by pending cases and average cases filed per year) each have a full-time probate commissioner (or equivalent) who has been issued authority to approve certain requests by appointment of a presiding judge.⁷³ Those probate commissioners work exclusively on probate case types with dedicated probate clerks (two to four full-time clerks, depending on the circuit) supporting case management. By comparison, there are only nine individuals who identified as a “probate clerk” in the rest of the state. All other staff who participated manage probate cases less than half time, with other case types and responsibilities assigned to them as well.

One notable pattern, identified during the survey and follow-up interviews, was that in smaller-sized circuits there was less likely to be a clear business process and assignment of responsibility for reviewing the content of petitions for appointments and notice documents. The same held true for annual accountings. Some portion of the centralized service developed for all courts could be in the form of uniform training and statewide consulting on how best to set up local workflows and responsibilities.

A more directly useful tool for many circuit courts would be an auditing referral service where courts could tap a centralized expert to assist with review. Most survey participants responded that they would be likely to use an accounting audit option, and the appointment of investigators and experts is well within the court’s authority under ORS 125.025.⁷⁴ A centralized

⁷³ At least two additional circuits would likely warrant appointment of a probate commissioner based on their caseloads, with two additional that could also benefit from formalization of such a position. One lower-volume circuit court does have a probate commissioner, despite the smaller caseload, but based on the recorded value of assets held by conservatorships in that circuit, the commissioner appointment is merited. That circuit was also found to have some of the highest scrutiny of accounting filings and audit processes in the state.

⁷⁴ The court may act upon its own authority at any time and in any manner it deems appropriate to determine the condition and welfare of the respondent or protected person and to inquire into the proper performance of the duties of a fiduciary (Or. Rev. Stat. § 125.025(1)) including appointment of investigators, visitors, and experts to aid the court in the court’s investigation. Or. Rev. Stat. § 125.025(3)(d) (2021).

auditor should not make decisions on behalf of the court but aid the court in their exercise of oversight by reviewing information and presenting opinions and findings.

RECOMMENDATION 3: Advocates to Assist with Guardianship Monitoring

Although many smaller courts report to struggle with accounting review, most have developed systematic methods of tracking and checking guardian reports. Statewide, 94% of all adult guardianship cases that have been open for at least two years have had a guardian's report filed in the previous 18 months, with 14 counties at 98% or better. Further, all circuits that participated in the survey and interviews described a known process for reviewing the content of the guardian reports as they are filed. In all but the largest courts every guardian's report is routed to a judge for substantive review, with all circuits confirming a process for escalating concerns to a judge for direction. In at least seven circuits the judge confirms substantive review either by initialing the report, signing the report, or entering a court-generated order that approves the annual guardian's report. Formal approval of guardian reports is not required by statute but demonstrates judicial attention to and the importance of reporting requirements.

Despite processes for collecting and reviewing reporting, several staff and judges expressed frustration with the limitations of the annual report. As one judge stated:

"We really have to rely on court filings to evaluate the situation. Evaluation is only as good as the filings we get." – Judge

A related source of frustration was also what a court is to do when parties are unresponsive. Nearly all survey participants reported methods employed to solicit additional information from parties or issue late notices if reports were overdue, but there is a disconnect between the court's concerns and the ability to address those concerns with the parties at hearing. A repeated question from both judges and staff was "What do we do with 'cases in limbo' where the parties don't respond but we can't figure out whether legitimate concerns warrant removal or termination?".

One option is the re-appointment of a court visitor, who may be appointed at any time after the appointment of a fiduciary and can be directed to perform any duty the visitor could have performed at the time of the initiating petition. Despite that option, many judges are reticent to appoint a visitor when guardians are unresponsive, especially in those cases where the court may be aware of the protected person's limited resources to pay the visitor. A similar option at no cost to the protected person is to appoint a protected person special advocate.⁷⁵ In Oregon, a special advocate serves a different function than the court visitor, focusing on advocacy for the

⁷⁵ See Erica Wood & Ellen Klem, ABA Commission on Law and Aging, *Volunteer Guardianship Monitoring and Assistance: Serving the Court and Community* (2011) discussing the creation and maintenance of volunteer monitoring programs. Available at https://www.americanbar.org/content/dam/aba/administrative/law_aging/2011/vol_gship_intro_1026.pdf.

protected person rather than determination of capacity and the appropriateness of the nominated fiduciary.⁷⁶

ORS 125.120, added to statute in 2014, provides an option to appoint a volunteer advocate⁷⁷ on behalf of the protected person whose task is to “investigate and evaluate the protected person’s circumstances to establish whether the fiduciary is fulfilling [their duties].⁷⁸” The advocate informs the fiduciary of support services available in the community and provides a written report of their findings to the court and all interested persons.⁷⁹ The caveat to this option is that the presiding judge must establish qualifications, standards, and procedures for the program by order⁸⁰, and find volunteer advocates to appoint.

Originally “Special Advocates for Vulnerable Oregonians”, a non-profit now known as Guardian Partners was founded with the express goal of providing courts with trained volunteers (guardian monitors) to fill that role of special advocate. As of the date of this report, Guardian Partners was serving eight counties in Oregon, covering an estimated 58% of the state’s population.⁸¹ At no costs to courts, a judge can direct the appointment of a guardian monitor who completes the investigation, talks to the parties, and reports back with findings. The form of report typically includes updated contact information for the parties, a narrative of the case status, and recommendations regarding possible court action necessary. As described by one judge, monitor appointment “Reminds them of their obligations as an appointed fiduciary.”

Some courts appoint monitors only on concerning cases, but others have implemented a method of “random monitoring” as an extra level of precautionary oversight meant to address the possibility that some guardians may not file accurate reports. Whether the appointment is reactive or proactive though, it provides a judge with a method of gathering evidence about the protected person apart from the fiduciary’s reporting. With the self-reported delays on setting hearings, appointment of a monitor also serves as an indicator of urgency on evaluating the proceeding. If before a hearing the judge knows that the monitor has concerns, whether as to the continuing need for protection or inadequacies of the proceeding, hearing time can be used most effectively. All circuit courts are encouraged to implement a special advocate program, whether through Guardian Partners or independently.

RECOMMENDATION 4: Court Visitor System Revision

The statewide court visitor system as it currently exists – a patchwork of local orders with varying visitor policies, varying flat or hourly fees, and some courts with no policies or known

⁷⁶ Or. Rev. Stat. § 125.120(2) (2021) establishes different responsibilities of the special advocate than those listed of a court visitor, including providing information to the fiduciary regarding community support services to assist with the protected person’s care and ensure their welfare.

⁷⁷ Or. Rev. Stat. § 125.120(3)(a) (2021).

⁷⁸ Or. Rev. Stat. § 125.120(2)(a) (2021).

⁷⁹ Or. Rev. Stat. § 125.120(2)(b), (c) (2021).

⁸⁰ Or. Rev. Stat. § 125.120(5) (2021).

⁸¹ www.guardian-partners.org.

visitors to appoint – is unlikely to be a sustainable model for ensuring access to qualified and capable visitors who can reputably fulfil their obligations, especially in smaller or rural counties.

Based on the information gathered during this self-assessment, there are several straightforward recommendations regarding visitors.

1. Jurisdictions should ensure PJOs are current and accessible regarding visitor qualifications, process, and fees as required under ORS 125.165. The SPPAC prepared visitor training videos⁸² explaining customary expectations and process can be used as guidance for those jurisdictions without a current PJO.
2. Courts that maintain lists of qualified court visitors should be encouraged to select the visitor to be appointed on each case, rather than directing the petitioner or their attorney to nominate one. Establishing a visitor rotation or pre-selection process helps in several ways including:
 - a. Reducing perceived or actual bias or favoritism between visitors and parties; and
 - b. Discouraging attorneys from selecting the same visitor repeatedly.
3. Encourage courts to use a standardized statewide or local order of appointment and visitor’s report form. Establishing uniform authority and formatting provides familiarity and predictability when visitors are engaging with medical providers, community partners, and other outside stakeholders.

All three recommendations, if adopted, would promote fairness, effectiveness, and integrity of the circuit’s visitor system.

There remains an even more alarming issue with the current visitor system: Available, dependable, visitors. When discussing the visitor system generally during interviews, the primary concern regarding the process has been the recruitment and longevity of visitors in all sizes of counties.

To illustrate the issue, consider the situation of a prolific visitor in the largest volume county. In 2021 that county had 188 adult guardianship petitions requiring appointment of a visitor, with three visitors on their list. None were court employees, meaning that multiplying one visitor’s one third share of cases by a \$550 flat fee appointment would yield less than \$35,000 in gross income. This doesn’t take into consideration any self-withholding or fee waiver cases that the visitor might take pro bono. Court visitor appointment in most counties would be a supplemental source of income at best.

⁸² Available at: <https://www.courts.oregon.gov/programs/family/guardianship-conservatorship/Pages/Court-Visitor-Training.aspx>.

Despite several counties' attempts to increase visitor fees to attract skilled court visitors, raising fees makes guardianship more expensive. Since court visitor fees are reimbursed from protected persons' assets, a large visitor fee can be a significant burden. Given these considerations, some circuits' inability to maintain a list of visitors appears unavoidable. One strategy in these courts has been to solicit visitors from neighboring counties, but in geographically large but population sparse counties, the visitor can face substantial travel and unfamiliarity within communities. Courts, visitors, and guardianship stakeholders should convene, via WINGS or the SPPAC, to strategically address the structural limitations of the visitor system, and collaboratively develop improvements and changes.

RECOMMENDATION 5: Systematic Appointment of Counsel

On January 2, 2022, Senate Bill 578 (SB 578) took effect in two counties: Lane & Multnomah, with Columbia County starting January 2023, and statewide in 2024. The bill implemented statutory changes requiring court appointment of counsel for respondents and protected persons when (a) the respondent or protected person requests counsel be appointed; (b) an objection to a petition or motion is made or filed by any person; (c) the visitor recommends appointment of counsel; or (d) the court determines that the respondent or protected person is in need of counsel. Unless the respondent or protected person is already represented or has objected to appointment of counsel, the court shall appoint.⁸³

There is substantial work to do to prepare counties for this obligation. Despite 12 circuits reporting that they can usually find counsel to appoint, the frequency with which they currently appoint counsel is much lower than the number of appointments needed under SB 578's requirements. To appoint counsel in the circumstances contemplated by the bill, most of these 12 circuits would need two to five times as many attorney appointments as they have made over the last five years. Anecdotally, multiple judges and probate commissioners from counties that do appoint lawyers convey that finding willing counsel to appoint for respondents and protected persons is the single hardest part of their job. Provisions of SB 578, which direct Oregon Public Defense Services to pay a reduced-rate hourly attorney fee to counsel appointed to eligible respondents and protected persons, may encourage attorneys to take on appointments that might otherwise be pro bono, but substantial efforts need to be made to educate circuit courts about the new contours of attorney appointment. Stakeholders need to convene and form a plan for locating willing appointees and maintaining reliable appointment on potentially urgent case facts.

RECOMMENDATION 6: Fiduciary Training

There is no statutory requirement that courts require, provide, or facilitate any form of fiduciary orientation, education, or assistance. Nor is there a minimum test of experience or knowledge of fiduciary responsibility before an appointee assumes important and serious responsibilities for a protected person. Nevertheless, fiduciary training and education is a commonly recommended element of strong protective proceeding programs.⁸⁴ As one clerk

⁸³ Or. Rev. Stat. § 125.080(6) (2021).

⁸⁴ National Probate Standard, Standard 3.3.14 recommends development and implementation of programs for orientation, education, and assistance of fiduciaries. *See also* U.S. Senate Special Committee on Aging, *Ensuring*

explained, “A newly appointed guardian will ask me what they’re supposed to do now that they’re the guardian. They don’t know what they signed up for, and they don’t know what to do next. I’m not allowed to give them legal advice.”

That clerk works in a court that neither requires any form of education nor offers an introductory letter to newly appointed guardians and conservators. But in five of the six largest volume courts non-professional fiduciaries⁸⁵ are required to complete a training course and are issued an introductory letter with brief explanations of future expectations in their role. 14 separate jurisdictions issue some form of introductory or orientation letter that includes relevant due dates for future court filings, with most including some brief explanations of fiduciary duties. At minimum, every court should issue some form of explanatory document laying out information for new fiduciaries. A state-standardized version should be prepared and made available to circuit courts, along with more comprehensive explanations of protective proceedings.

While no comparative evidence has been gathered, judges and staff in counties that require educational courses believe an educational requirement has improved fiduciary compliance and behavior, therefore reducing the incidence of fraud and abuse, and lowering the number of show cause hearings related to mistaken understanding about performance.⁸⁶ Guardian Partners, the same non-profit that arranges for special advocate appointments, also has recorded classes available to fiduciaries in both English and Spanish, and upon confirmation that the class was attended, file into the case a certificate of completion. Minimum education standards would improve the knowledge base of non-professional fiduciaries, improving their understanding of the responsibilities and expectations involved in their appointment to better serve protected persons.

RECOMMENDATION 7: Encourage Use of Remote Appearance Hearings and Cost-Free Record Access

In June 2022, Chief Justice Martha Walters issued Chief Justice Order 2022-12 which addressed the statewide policy regarding remote appearances by summarizing the development of remote appearance hearings:

“Since May 2020, our courts have gained significant experience and expertise in conducting remote proceedings. More importantly, we have learned that remote proceedings are a key element in providing access to justice. The flexibility provided by remote hearings has

Trust: Strengthening State Efforts to Overhaul the Guardianship Process and Protect Older Americans, at 7, (Nov. 2018), available at <https://www.aging.senate.gov/imo/media/doc/Guardianship%20Report.pdf>.

⁸⁵ Defined in Or. Rev. Stat. § 125.240(5), a “professional fiduciary” means a person nominated as a fiduciary or serving as a fiduciary who is acting at the same time as a fiduciary for three or more protected persons who are not related to the fiduciary. Professional fiduciaries in Oregon carry additional licensure, reporting, background check, and fee request obligations. *See* Or. Rev. Stat. §§ 125.240(5), 125.095(2)(b). (2021).

⁸⁶ Several publications have noted lack of training as a particular problem “in cases where family or friends are assigned as guardians with little guidance on the boundaries of their authority or knowledge of appropriate actions.” B.K. Uekert & T. Dibble, *Guardianship of the Elderly: Past Performance and Future Promises*, Court Manager 23, no. 4, (2008) at 11.

enabled court proceeding participants and other members of our communities across the state to participate in and engage with our courts, notwithstanding work and childcare schedules that conflict with courthouse hours; **limited access to public transit** in some communities; **disabilities that make travel to the courthouse difficult**; **safety concerns in certain cases**; and **health vulnerabilities that require limited contact with others**. The flexibility that we have gained from conducting remote proceedings has **increased court participation and furthered fairness and equity.**” [Emphasis added].

Developed during a time when trepidation of in-person appearance was universal, probate courts should ensure all protective proceedings hearings include a remote appearance option, if possible.⁸⁷ Courtrooms are now equipped with technology allowing for simultaneous in-person and remote appearance. Judges and staff, offering their perception of objection hearings during survey follow-up interviews, believed that respondents and protected persons were more likely to participate in conversations regarding their case, and had an easier time calling in to a hearing than coordinating transportation or managing public transportation. So too they believed attorneys preferred the ease of telephonic or video appearance, because scheduling remote hearings drew fewer rescheduling requests. Although generally positive about remote hearing options, several judges did note that some parties do not have access to the technology required to participate remotely, which is also a valid and important consideration.

Besides the conditions noted by the Chief Justice, several additional considerations were highlighted by a probate commissioner: Protective proceedings frequently involve a hospitalized party who cannot attend in-person and some courtrooms are questionably accessible to those with mobility issues. If remote hearings are easier to schedule and preferred by all involved, there may be opportunity for additional courts to consider setting remote hearings before appointment of temporary fiduciaries. Resources, especially judicial time, is limited, but the addition of a brief appearance before appointment allows for conversation about the urgency and risk requiring action.

Separate from remote hearings, but no less important for respondents’ and protected persons’ access to courts, an advisory committee member noted that many respondents and protected persons do not have access to their funds and may have difficulty confirming or obtaining copies of court filings in their case. In contentious, contested proceedings the fiduciary may not be trusted to deliver complete records and the respondent or protected person needs to obtain their own copies. A TCA suggested that courts develop policy for providing copies of court records to respondents and protected persons via phone or letter request, without charge. In most circumstances the copy and postage costs would likely be minimal, but if courts are concerned with runaway requests, reasonable limits could be developed. Nevertheless, access to hearings and access to records is a vital consideration for participation, fairness, and equity and policy regarding both should be developed and prioritized.

⁸⁷ National Probate Standard, Standard 3.3.8.C recommends all reasonable accommodations to enable attendance and participation at all stages of the proceeding.

RECOMMENDATION 8: Background Checks & Bonds

Neither a background check nor requiring a bond will prevent all potential abuse or theft in protective proceedings, but both are effective tools for confirming the appropriateness of the appointed fiduciary and safeguarding the assets that the fiduciary is charged with managing.

With respect to background checks, more survey participants than not reported that they do an Odyssey name search on the petitioner, the respondent, and the nominated fiduciary (if different than the petitioner). An Odyssey name search is not as comprehensive of a background check as might be recommended to confirm the integrity of the nominated fiduciary, but it is quick and provides a measure of confidence in the nomination.⁸⁸ Several courts have notably enhanced their background check process, including two that require nominated fiduciaries to consent to more thorough checking, and one that completes a LEDS check on the nominee. These practices are notable and could be shared with other circuits as a more diligent effort to ensure the nominee is appropriate.

Despite the statutory requirement that the petition disclose any of the nominee's potentially disqualifying circumstances, there are legitimate purposes for confirming the content of the disclosure. By using Odyssey to check for a nominee's past Oregon convictions, the court is quickly confirming the fiduciary's honesty, an important factor when the appointee holds a position of trust. Disclosure of a conviction, bankruptcy, or license revocation should not be an automatic bar to appointment but is one factor a judge can weigh when deciding the appropriateness of the fiduciary's appointment. Annual Odyssey checks performed at the time of the annual report or accounting can confirm a fiduciary's continued appropriateness, especially given that the obligation to inform the court of convictions, bankruptcies, and license revocation is an ongoing duty.⁸⁹

Running an Odyssey name search for the respondent is also recommended to screen for potentially conflicting cases. A protected person should have only one protective proceeding case open to avoid the possibility of conflicting orders. A clerk taking the time to double-check that there are no other Oregon protective proceedings for *this* respondent can save unnecessary time, costs, and corrective action later.

Bonds or some other form of asset protection is generally required by statute unless good cause has been shown.⁹⁰ Despite most participants responding that their circuit required bond, very few case samples confirm that representation. The lack of bond or acknowledgments of

⁸⁸ While acknowledging the lack of empirical data showing background checks reduce instances of abuse and exploitation, the National Probate Standard 3.3.12 recommends a national criminal background check for non-professional fiduciaries, but not those who have been licensed or certified. The commentary recommends court consideration of potentially disqualifying information, weighing the seriousness of the offense or misconduct, its relevance to the responsibilities of the fiduciary, how recently the offense or misconduct occurred, the nominee's record since the offense, and the vulnerability of the respondent. National College of Probate Court Judges, *National Probate Court Standards* at 62, 63 (Richard Van Duizend, Reporter & Brenda K. Uekert, Research Director) (2013).

⁸⁹ Or. Rev. Stat. § 125.210(2) (2021).

⁹⁰ Or. Rev. Stat. § 125.410(1) (2021). Bond is also recommended by the National Probate Court Standards in Standard.

restriction found in most counties (six counties *do* require bond or acknowledgment in nearly every case), suggests that good cause may be a formality in most circuits. The National Probate Court Standards emphasize that the bond should not be considered punitive or an unnecessary expense.⁹¹ Bonds serve as insurance against the protected person’s loss and it, or some equally protective alternative such as restricted accounts, also acts to benefit the court.⁹² Security for conservatorship assets serves to guard the court against public criticism should loss, misappropriation, or malfeasance by the fiduciary occur.⁹³ Judges should be encouraged to require asset protection and educated on its purpose.

RECOMMENDATION 9: Standardize Data Entry Processes and Develop Additional Data Measures

The Data Dashboard created by SPPAC holds an impressive wealth of information about the protective proceedings filed in Oregon. Queries that retrieve details of cases and event entries were built to capture data entered under established business processes. These queries are correctly retrieving the information they were designed to collect, provided it was entered according to the business process. Where data entry does not match existing business processes, the dashboard may misrepresent a county’s data trends. Though the non-conforming data across different queries appears minimal, correcting mis-entered case events would provide cleaner data that would better reflect courts’ actual performance. OJD should make efforts to emphasize the importance of data entry business processes, clean up inaccurate data, and standardize as many data entry processes as possible.

One concrete example of the latter problem can be found in one circuit’s “case disposition” timeliness data. Overall, that circuit is reporting 67% of their cases have either an appointment or a dismissal within 90 days of the filing of the petition. But when the “case age at disposition” column is viewed the times to disposition range from 158 days to 1,480 days. The appointment of a fiduciary in the latter case occurred well before the 90-day mark, but because the appointment was entered as an order rather than a judgment, the query could not find the true appointment date.

Data measures are a useful way for tracking not only fiduciaries’ compliance with their obligations, but also the way courts monitor cases, understand the demographics of Oregon’s protective proceedings, and identify outlying counties and cases for corrective attention. Trial Court Administrators and Presiding Judges, with support from OSCA subject matter experts, can

⁹¹ National College of Probate Court Judges, *National Probate Court Standards* at 62, 63 (Richard Van Duizend, Reporter & Brenda K. Uekert, Research Director) (2013) at 67.

⁹² *Id.*

⁹³ *Id.*

track ongoing compliance with outcome measurements and work to address processes that might be impacting a particular measure.

Following are some recommendations for supplementing the Data Dashboard, using existing data entry business process, with a brief explanation of why they would be useful. These additions to the Data Dashboard would require query development and coding but would not change any local business processes:

Average & Median Time to Appointment – Similar to the “Timely Disposition” measure, which tracks what percentage of cases have appointment or dismissal within 90 days, an average and median measure would more directly represent trends regarding appointment.

Timeliness of Visitor Appointment & Timeliness of Visitor Report – ORS direct a specific timeliness for both the appointment of a court visitor and the timeliness of their court reports. The data entry codes for both visitor appointment and their court report are unique and standardized statewide, so implementing measurement of the timeliness between petition and visitor appointment, and then appointment and report, with median and average measures, will reflect counties and visitors’ adherence to statutory timelines.

Objection Measurement – Understanding the number of objections filed, and the percentage of cases where objections have been filed would be a highly useful data measurement. Not only would there be a way to gauge the “contested-ness” of protective proceedings by county, case type and subtype, etc., but it would be a useful data point in future obligations for court-appointed counsel under SB 578.

Appointment of Counsel in Protective Proceedings – Tracking the number of cases in which counsel has been appointed is an immediate need for future legislative reporting under SB 578.⁹⁴

Asset Protection Tracking in Conservatorships – Adding a measure or percentage of cases where no bond or acknowledgment of restriction has been filed into the case could provide circuit courts a metric to identify when and how particular courts are ordering bond protection and identify opportunities to increase use when appropriate.

In addition to the Dashboard recommendations, there are two further measures that would be useful to collect but would require prospective collection after data entry business process development:

Tracking Temporary Appointments – A business process should be developed to capture an accurate count and percentage of temporary appointments. Through Odyssey review, some circuits appear to make temporary fiduciary appointments at rates substantially higher than many other counties. There is no intention in this assessment to second-guess decisions made in past cases, but prospectively gathering information about these unique matters would assist future analysis. Acknowledging that many petitions for temporary appointment also seek

⁹⁴ Or. Rev. Stat. § 125.035(3) (2021).

indefinite appointment, creation of a separate data entry code or case flag to identify those proceedings where a temporary appointment has been granted may be the best method of collection. This is a recommended data element for protective proceeding monitoring.⁹⁵

Case Termination Categorization – Perhaps the highest interest data demographic in the SPPAC’s initial data work, and to the members of the grant advisory committee, categorizing the reasons for case termination is a priority. This is also a recommended data element for protective proceeding monitoring.⁹⁶

Conclusions

Throughout the surveying and interviewing process of this assessment, nearly all circuits’ judges and staff were eager to participate and engage in discussion of their local practices and were demonstrably invested in considering ways to improve monitoring. Judges were especially likely to credit the effectiveness of their monitoring of these cases to the diligence and dedication of their support staff, which was reflected in their explanations justifying their self-evaluation scores. Connecting the individuals performing this work through collaborative opportunities to share their strategies and approaches will reinforce the importance of their efforts.

Based on the findings of this assessment, some general conclusions regarding monitoring can be drawn:

1. Circuits of smaller caseloads, especially rural circuits, cannot allocate resources to judges and staff to become specialized subject matter experts in these cases. They need centralized support and direction in the form of specialized training and direct referral services.
2. Standardizing court practices, especially with respect to accountings and substantive review of filings, will help raise expectations of the fiduciaries appointed in these cases, which will improve the quality and reliability of these proceedings for protected persons.
3. Support of longer-term projects to amend conflicting local rules and unify business process for prospective data gathering will allow for development of additional, evidence-based interventions that target known structural problems in protective proceedings.
4. Systems to recruit and retain court visitors and appointed counsel need to be considered immediately.

⁹⁵ Diane Robinson, Kathryn Holt, & Cate Boyko, *Guardianship/Conservatorship Monitoring: Recommended Data Elements*. State Justice Institute & National Center for State Courts (October 2020) at 12.

⁹⁶ *Id.* at 8.

Glossary

AC – The EJIG advisory committee formed to consult on the work of the self-assessment and any subsequent grant-funded interventions or improvements.

ACL – The Administration for Community Living funds services and supports provided primarily by networks of community-based organizations, investing in research, education, and innovation.

Conservator – A court-appointed fiduciary responsible for the financial decision-making of a protected person when the protected person has been determined financially incapable.

EJIG – The Elder Justice Innovation Grants program supports work to create credible benchmarks for adult maltreatment prevention and for program development and evaluation.

Fiduciary – A guardian or conservator appointed under ORS Chapter 125, or any other person appointed by a court to assume duties with respect to a protected person under the provisions of Chapter 125.

Financially Incapable – A condition in which a person is unable to manage financial resources of the person effectively for reasons including, but not limited to, mental illness, mental retardation, physical illness or disability, chronic use of drugs or controlled substances, chronic intoxication, confinement, detention by a foreign power or disappearance. “Manage financial resources” means those actions necessary to obtain, administer, and dispose of real and personal property, intangible property, business property, benefits, and income.

Guardian – A court-appointed fiduciary responsible for the health and welfare decision-making of a protected person when the protected person has been determined to be incapacitated.

IA – The Internal Audit Program, a section of OJD which provides independent and objective assurance consulting.

Incapacitated – A condition in which a person’s ability to receive and evaluate information effectively or to communicate decisions is impaired to such an extent that the person presently lacks the capacity to meet the essential requirements for the person’s physical health or safety. “Meeting the essential requirements for physical health and safety” means those actions necessary to provide the health care, food, shelter, clothing, personal hygiene, and other care without which serious physical injury or illness is likely to occur.

JFCPD – Juvenile and Family Court Programs Division, a section of OJD, which provides support and technical assistance for a variety of statewide efforts related to family law self-representation, child support, probate, guardianship, conservatorship, and protective proceeding matters.

LEDS – Law Enforcement Data System is a database created for law enforcement records such as warrants, protection orders, stolen property, criminal histories, and other vital investigative files.

NACM – National Association for Court Management fosters innovative practices and professional development to enhance public trust and confidence in courts.

NCSC – National Center for State Courts, an independent non-profit created to gather information about, and produce innovations for the benefit of all courts.

ODY – An abbreviation for the Odyssey case management software.

OJD – The Oregon Judicial Department.

ORS – The Oregon Revised Statutes.

OSCA – The Office of the State Court Administrator oversees Oregon’s statewide, state-funded court system.

PIT – Process Improvement Team, an OSCA-initiated group of state court judges and staff to collaborate on business process standardization and improvement.

PJO – Presiding Judge Order, a form of local circuit court order issued by the presiding judge of that circuit, affecting policy and business practice in that circuit.

Protected Person – A person for whom a protective order has been entered.

Protective Order – An order of a court appointing a fiduciary or any other order of the court entered for the purpose of protecting the person or estate of a respondent or protected person.

Protective Proceeding – A proceeding under ORS Chapter 125.

Respondent – A person for whom entry of a protective order or for whom appointment of a fiduciary is sought in a petition filed under ORS Chapter 125.

SFLAC – The State Family Law Advisory Committee advises OSCA on family law issues affecting the state courts.

SJI – The State Justice Institute, which awards grants to improve the quality of justice in state courts and foster innovative, efficient solutions to common issues faced by all courts.

SLR – Supplemental Local Rules are local circuit court rules applicable to policy and business process in the judicial district in which they are adopted.

SPPAC – The State Protective Proceeding Advisory Committee, a group of stakeholders interested in developing court programs and measures meant to improve protective proceeding outcomes for Oregon’s protected persons.

TCA – Trial Court Administrator, the administrative head of each Oregon judicial district.

UTCR – The Uniform Trial Court Rules, a set of standardized rules regarding trial court practice in Oregon.

WINGS – Oregon Working Interdisciplinary Network of Guardianship Stakeholders, a group of stakeholders from various disciplines with interest in the guardianship/conservatorship system for short-term and long-term planning and action.

References

EJIG TCA INTRO SURVEY

To ensure future services are the most helpful to you and your staff, we are asking you to provide responses to several questions below. The judges and staff you identify in questions 2 through 4 will be contacted in the coming weeks with additional questions specific to their work with these cases.

1. Please enter your name and your Judicial District.

Name

Judicial District

2. Which judge or judges handle most of the protective proceeding casework in your court?

3. Which staff member or members perform a review of protective proceeding filings?

4. Are there any additional individuals we should invite to any future feedback or educational meetings for probate judges or staff?

5. What protective proceeding training or education is provided to staff working on these cases, if any?

6. Are there particular issues or training topics you think would be especially helpful to share with your judges and staff?

7. What format of supplemental training materials are most likely to be used by your judges and staff? Examples might include webinars, short videos, or written materials or forms.

8. On a scale of 1 to 10, how would you score your court on its ability to effectively supervise and manage guardianship and conservatorship cases, and why did you choose the score you did?

Score

Why?

Done

EJIG PROTECTIVE PROCEEDING SELF-ASSESSMENT SURVEY

Thank you for participating in this survey questionnaire. OJD was awarded a grant to perform a comprehensive self-assessment of how our state circuit courts review and monitor protective proceedings like **guardianships** and **conservatorships**. You were designated by your TCA as someone who could best answer the types of questions below. In addition to this survey, you may be contacted directly later with follow-up questions. The goal of this project is to improve case management and develop training materials, educational opportunities, and connections among counties.

The questions below cover a variety of different issues you might deal with between case initiation and case administration, but the questions only pertain to protective proceedings. We're asking about **guardianships** and **conservatorships** only, not decedent's estate cases, juvenile dependency, or mental health cases.

There are no wrong answers to this survey, and it is possible you won't know how your court may handle certain issue that are asked about. Any additional context or explanation is certainly welcome and appreciated. If you have any questions, concerns, or comments about this survey or the self-assessment generally, please email **Jeff Petty** at **jeffrey.m.petty@ojd.state.or.us**.

* 1. Who is completing this survey? Please enter your name and email address.

Name

Email Address

2. What is the job title that most closely matches your job responsibilities?

Judge

- Probate Commissioner or Coordinator
- Probate Clerk (only or almost only probate work)
- Clerk (more than just probate case types)
- Supervisor
- Other (please specify)

3. Does your court have staff or judges dedicated only to probate cases? Check any that apply.

Yes, we have a judge or judges that do only (or almost only) probate case work.

Yes, we have staff or clerks that perform only (or almost only) probate case work.

No, we have neither judges nor staff that perform only (or almost only) probate case work.

4. Who in your court reviews the following items prior to the appointment of a fiduciary in a protective proceeding case?

	The Judge	Commissioner/Coordinator	Clerk	Not reviewed/not checked
The content of the petition, including any information expected to be included under ORS 125.055?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The form/content of notice, both to the respondent and other interested persons?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The expiration of any notice period?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The parties listed in the proof of notice?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
A visitor's report, if a visitor was appointed?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The form of judgment of appointment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Any comments?

5. Does your court do any kind of check or search on (non-professional) parties involved in protective proceedings?

	Petitioner	Respondent	Nominated fiduciary (if different from Petitioner)
Not checked	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Odyssey name search	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other form of background check	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

6. Are hearings required on any uncontested protective proceeding petitions? If so, please explain which petitions might be required to have a hearing.

7. Does your court require different factual pleading requirements for temporary or emergency fiduciary appointments than petitions for indefinite appointment?

- No, we do not require different factual pleading requirements.
- I don't know whether different factual pleading requirements are expected.
- Yes, we expect different factual pleading. The difference is:

8. Other than UTCR or Supplemental Local Rules (SLRs), does your court have any special local rules, whether published as Presiding Judge Order, posted anywhere like the court's website, or informal practice expectations? If so, please explain.

9. The next few questions relate to court visitors. Please check the answer that most closely matches the way your court handles visitor issues:

	Yes	No	Don't Know/Unsure
Does your court have a pre-approved list of visitors?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Is the court visitor to be appointed chosen by the court (either judge or staff)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Is the court visitor to be appointed chosen by the petitioner (or their attorney)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Is the visitor fee set by a Presiding Judge Order (whether hourly or fixed rate)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Is the visitor fee paid directly to the court?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Are the qualifications of your court visitors set by a Presiding Judge Order?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

10. If either the respondent/protected person or an interested party objects in the proceeding and the respondent/protected person does not already have counsel, does your court consider appointment of counsel? Please choose the answer that best describes your court.

- We do not have reliable counsel to appoint for the respondent/protected person.
- If the respondent/protected person requests counsel (directly or in the visitor report) we try to appointment counsel if we can.
- We have a list or know of attorneys who we can appoint as counsel for the respondent/protected person and we can usually find an attorney for them.
- I don't know what our process is.
- Other (please specify)

11. Acknowledging that the pandemic has affected court scheduling, about how far out are objection hearings being scheduled in protective proceedings?

- Less than 30 days from the filing of the objection.
- Between 30 and 60 days from the filing of the objection.
- More than 60 days from the filing of the objection.
- It depends. (Please explain)

12. After a fiduciary is appointed, does your court issue any instructional letter or impose any training or educational requirement?

- We do not issue any instructions to the fiduciary and do not require any training or education.
- We issue an instructional letter but do not require any training or education.
- We do not issue an instructional letter but do have a training/education requirement.
- We issue an instructional letter and do impose a training/education requirement.
- I don't know whether we have any instructions or educational requirement.

13. Does your court use a standard form for issuing Letters of Appointment?

- We need the petitioner or their attorney to submit their form of Letters of Appointment, which we approve.

- We use the statewide Odyssey form for issuing Letters of Appointment.
- We use a local form in Odyssey to issue Letters of Appointment.
- I don't know how Letters of Appointment are issued in our court.

14. When a guardian and/or conservator is appointed, does your court set due dates or use time standards for tracking the following subsequent filings?

	No.	Yes, the Odyssey Time Standard.	Yes, an Odyssey Due Date.	I don't know whether this is set or tracked.
Notice of Appointment	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Bond/Restriction	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Inventory	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Guardian's Report	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Annual Accounting	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Fiduciary Class	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Visitor's report	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other custom or variable due dates	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

15. If you track custom or variable due dates that were not listed in Question 12, please describe or explain the tracking.

◀
▶

16. Does your court have a local process for requesting extensions on filings? If so, please describe that process.

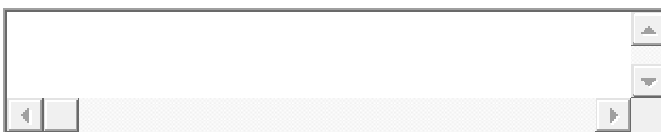
◀
▶

17. Is asset protection, whether bond or restriction, required in **conservatorship** cases?

- Yes, a bond and/or restriction is required unless good cause is shown.
- The court defers to the request of the petitioner unless the proceeding is contested.
- No, bond and/or restriction is not generally required.
- I don't know whether bond and/or restriction is checked or required.
- Those options do not describe our process. Please describe.



18. If your court reviews guardian's reports, what is the process for review?



19. Does your court require an annual guardian's report in **minor guardianships**?

- Yes.
- No.
- I don't know or I'm unsure.

20. Does your court require annual accountings to be substantially in the form required by UTCR 9.160?

- Yes, the UTCR 9.160 format for accountings is required.
- No, we do not require a particular format for annual accountings.
- I don't know what the UTCR 9.160 format for accountings requires.

21. If **all assets** in a conservatorship are restricted does your court allow the fiduciary an alternative to a full accounting? Please check each box that applies.

- No, an annual accounting is still required.
- If all assets are restricted we allow for an annual statement of restricted funds or for the filing of a bank statement showing the balance of the account.
- If all assets are restricted we waive accountings and do not require any annual filing regarding the funds.
- I don't know whether we have an alternative to accounting.
- Minor conservatorships with only restricted assets are handled the same as adult conservatorships.
- Minor conservatorships with only restricted assets are handled differently than adult conservatorships. Please explain.



22. What is your court process for reviewing **annual accountings**, if any? Below are several common parts of annual accountings. Please check who, if anyone, checks or reviews these items.

	Judge	Auditor/Commissioner/Coordinator	Clerk	Not reviewed	Submission not required
Asset Schedule	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Receipts and Disbursements	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Depository Statements	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Vouchers	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Narrative of Changes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Special requests for approval or changes to the fiduciary's authority	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Attorney or fiduciary fees	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Notice period and the parties entitled to notice	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>


23. If anyone reviewing the above-listed items finds concerning information, what would that reviewer's "next steps" be in addressing the concern?

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▶

24. If your court has a standardized process for requesting additional information or amendment of a filing, what is that process and who is responsible for initiating that process?

◀
▶

25. Does your court have a local process for issuing citation, show cause, or contempt orders to fiduciaries in protective proceedings? If so, please describe that process.




26. Please check in which of the following circumstances your court might consider termination of a protective proceeding:

















- Reported improvement or rehabilitation of the protected person.
- Death of the protected person.
- Death of the fiduciary.
- Depletion of assets below a designated threshold.
- Protected Person's reported move outside of court jurisdiction.
- Failure of the fiduciary to file reports, file accountings, or respond to court correspondence or orders.
- Other (please specify)



27. On a scale from 1-10, how would you rank your court's ability monitor and manage protective proceedings, and why did you choose the score you did?









28. Of the options listed below, what resources, materials, or assistance would you be most interested in having access to? Please rank them in preference order, with 1 being your first choice and 8 being your last choice.

		Alt F1 Odyssey help topics
		Bench books
		Bench cards
		Mentorship
		OJD advice email address
		OJD message board
		Webinars or short form video training
		Other

29. OJD is developing a centralized auditing office for conservatorship accountings. How likely would you or your court be to take advantage of a central auditor to assist with complex conservatorships and/or concerning accountings?

- Very likely
- Somewhat likely
- I don't know.
- Somewhat unlikely
- Very unlikely

30. We will be checking back in with you after survey results have been collected to ask some follow-up questions and make sure your court is getting the best support we can provide. Please rank how would you prefer to continue the conversation, with 1 being your top choice and 3 being your last choice?

		In-person visit to your courthouse.
		Teams video/audio call or conference video/audio call.
		Email correspondence

31. Is there anything else we should know that we missed? Any concerns, comments, or questions will be very helpful.



STATEWIDE SELF-ASSESSMENT DATA COLLECTION SHEET

COUNTY:

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TCA SURVEY COMPLETED BY:

--

SUBSTANTIVE SURVEY COMPLETED BY:

--	--

FOLLOW-UP INTERVIEW PROVIDED BY:

--	--

JUDGES:

--	--

STAFF:

--	--

NOTES:

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CASE STATISTICS:

Average cases filed per year	
Current pending cases	
Adult/minor split	% adult % minor
% adult cases w/ appt w/in 90 days of petition	% since 2017
Case subtype split	% Guardianship % Conservatorship % Guardianship/Conservatorship % Unknown
Median years since filing	years
Mean (Avg) years since filing	years
Estimated assets under conservatorship	\$M
% of cases w/ RSP over 65 at time of filing	%

SLRS OF NOTE:⁹⁷

OTHER LOCAL PRACTICES:

--

BUSINESS PROCESS GENERALLY:

File & Serve:

--

How are local queues set up?

--

Appointment of counsel:

--

Communication between staff and judges:

--

PETITION PHASE:

Petition intake process:

--

Temporary petitions:

--

Visitor appointment and process:

Process	
Fee	
Other comments	

Bonds:

--

Use of local or statewide letters? Yes No

General Comments:

--

⁹⁷ SLRs listed here are not *all* SLRs applicable to protective proceedings, but applicable for self-assessment purposes.

MONITORING & SUPERVISION:

Training & instruction:

--

Review of guardian reports:

--

Guardian reports in minor proceedings? Yes No

Review of accountings:

--

Form of accountings:

--

Tracking systems:

--

Process for extensions:

--

Process for late filings:

--

Process for additional information:

--

Hearings:

--

Use of Guardian Partners? Yes No

Termination of proceeding:

--

ODYSSEY OBSERVATIONS:

--

SELF-SCORE & COMMENTS:

TRAINING:

NOTABLE PRACTICES:

OPPORTUNITY FOR IMPROVEMENT:

PREFERRED COMMUNICATION AND TRAINING: