

New York State Stakeholder Needs Assessment for the Improvement of Article 81 Guardianship Matters and Proceedings*

Please note that this is a preliminary report to aid a follow-up discussion with stakeholders on October 25, 2023. A final report will be published and disseminated in the months following.

^{*}This preliminary report was supported by the Administration for Community Living (ACL), U.S. Department of Health and Human Services (HHS). The contents are those of the author(s) and do not necessarily represent the official views of, nor an endorsement, by ACL/HHS, or the U.S. Government.

Elder Justice Innovation (EJI) Project of the New York State Unified Court System (UCS)

In 2022, UCS received a grant from the U.S. Administration of Community Living (ACL), Administration on Aging, to conduct an EJI Project to improve guardianship in NYS. With ACL's support, UCS, in partnership with Project Guardianship, JASA, and other key stakeholders, seeks to fundamentally reassess and, where necessary, overhaul New York's guardianship case operations. The three main goals of this project are: (1) to improve outcomes for every New Yorker who is the subject of a guardianship case; (2) to increase access to court services for those who are low-income, disabled, and/or with limited English proficiency (LEP); and (3) to modernize guardianship case operations.

Statewide Stakeholders' Assessment Subcommittee

The Statewide Stakeholders Assessment subcommittee of the EJI Project has been assigned the task of conducting a comprehensive statewide assessment of the current guardianship system in New York State. The first step involved reaching out to several stakeholder groups, including the NYS Working Interdisciplinary Network of Guardianship Stakeholders (WINGS), the NYS Guardianship Roundtable, and the NYS Judicial Committee on Elder Justice. The goal was to inform the stakeholders about the grant and gather initial information and ideas about the current state of guardianship and priorities for change. The task force then collaborated with UCS's Department of Technology to develop an online statewide survey that was comprehensive and included both general and stakeholder-specific questions and provided an opportunity for written feedback.

This preliminary report contains the results, which will guide and assist UCS in revamping the NYS guardianship process.

Statewide Stakeholder Assessment Subcommittee Members

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Executive Summary

In New York State, under Article 81 of the Mental Hygiene Law, a court may appoint a guardian to make decisions on behalf of an "incapacitated" person and/or their property to ensure their safety and wellbeing. Despite efforts to respond to the needs of this population, predominantly older adults and people living with disabilities and mental illness, challenges remain.

UCS and their partners, therefore, conducted a survey to assess NYS' current guardianship system. The goal of the survey was to gain a clearer idea of the challenges experienced by all stakeholders and recommend changes necessary to allow people involved in guardianship proceedings and their families to navigate (and potentially avoid) this path in an informed, knowledgeable, efficient, and dignified manner while modernizing guardianship case operations and supporting court efforts to ensure access to justice.

This statewide assessment survey was conducted between October 2022 and March 2023 to evaluate the fairness, effectiveness, timeliness, safety, and integrity of guardianship proceedings in New York State so that necessary changes can be made to improve outcomes for every New Yorker who is the subject of a guardianship case. Preliminary survey results revealed:

- 74% of stakeholders viewed themselves as knowledgeable or very knowledgeable about guardianship and its associated proceedings.
- 69% believe that people considering filing for guardianship lack knowledge and/or understanding about Article 81 guardianship or its alternatives.
- 40% of court and 50% of non-court stakeholders believe volume and time it takes to complete guardianship proceedings in court are the absolute biggest challenges in guardianship proceedings.
- The lack of knowledge among court users seeking to file a guardianship petition, coupled with the necessary assistance given to these users, is a major challenge for court-related staff.
- Stakeholders refer people seeking information on and help with guardianship to private attorneys far above any other resource.
- 31% of stakeholders believe the most important resources needed to improve guardianship proceedings revolve around the training of guardians.
- 65% of stakeholders believe that creating and implementing uniform statewide court forms for Article 81 guardianship would be extremely helpful.
- 75% of court-related stakeholders believe a uniform data tracking system would also be beneficial.
- Only 2% of stakeholders are already part of a group that meets to discuss guardianship issues and best practices.

Survey

The Elder Justice Stakeholder Survey was open for responses from October 2022 to March 2023. Some questions were striated based on stakeholder group. The survey consisted of 21 questions, outlined in **Table 1**.

Sample

A total of 985 legal guardianship stakeholders located throughout the state of New York participated in the survey, representing 26% of the individuals who received the survey. Participants spanned many groups, but were stratified into two: "Court Staff" (n=382), which consisted of judges, court examiners/evaluators, court clerks, and attorneys, and "Non-court Staff" (n=603), including lay guardians, part 36 guardians, family/friends, institutions, non-profits, and others. There is also a pseudo-third group of "Court-related Staff," which includes all court staff as well as the family/friends and community guardian program groups. Only the court-related stakeholders were asked questions 13 - 19. The sample is further described in **Table 2**.

Key Insights

Knowledge

Nearly two-thirds (74%) of stakeholders viewed themselves as knowledgeable or very knowledgeable about guardianship and its associated proceedings (**Chart 1**). 69% believe that people considering filing for guardianship lack knowledge and/or understanding about Article 81 guardianship or its alternatives (**Chart 2**). Only 8% of court-related staff believe that people who consider filing for guardianship are knowledgeable on the topic (**Chart 3**).

Chart 1.

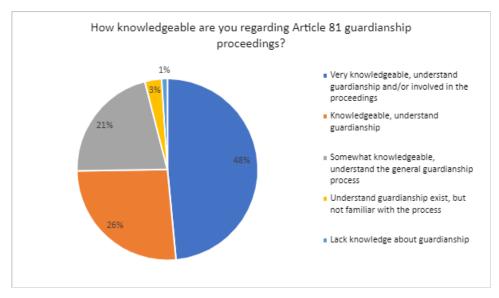


Chart 2.

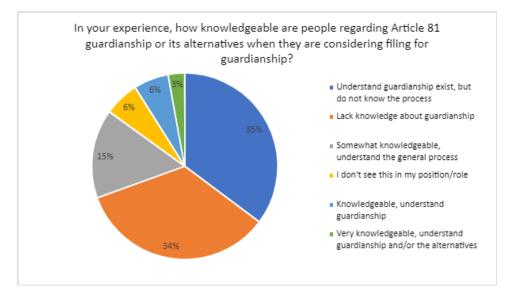
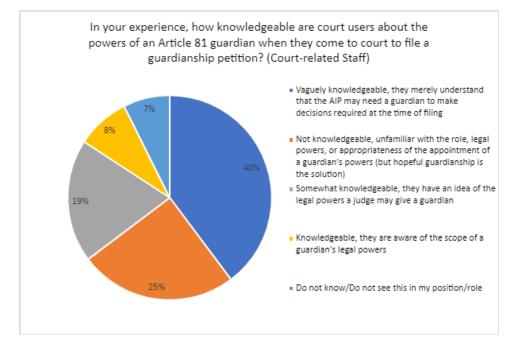


Chart 3.



Challenges in Guardianship

Across the board, stakeholders identified the volume and time it takes to complete guardianship proceedings in court as a top challenge, with 40% of court and 50% of non-court stakeholders labeling it the absolute biggest challenge (**Chart 4**). Stakeholders face other challenges, too, namely helping someone understand the process and complete the steps required for guardianship (34% of court staff), the costs and fees associated with guardianship (19% of the non-court group), inadequate resources (18% of the non-court group), and how guardianship will proceed following the appointment of a guardian (18% of non-court group; See **Chart 5**).

The lack of knowledge among court users seeking to file a guardianship petition, coupled with the necessary assistance given to these users, is a major challenge for court-related staff (court staff with the addition of family/friends and community guardian programs). **Chart 6** displays more detail. Also of note, 11% of respondents in this group believe that all of the following are the biggest challenges: lack of familiarity with subject matter/what guardianship will accomplish, helping court users understand the appropriateness of an Article 81 application, helping court users understand and complete the legal forms, and the amount of time it takes to assist people seeking help.

Chart 4.

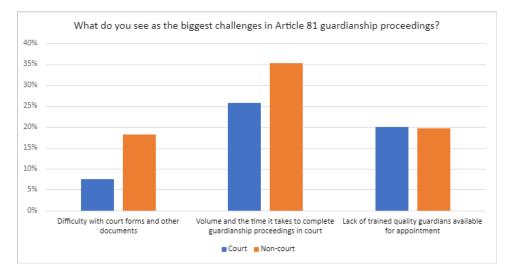


Chart 5.

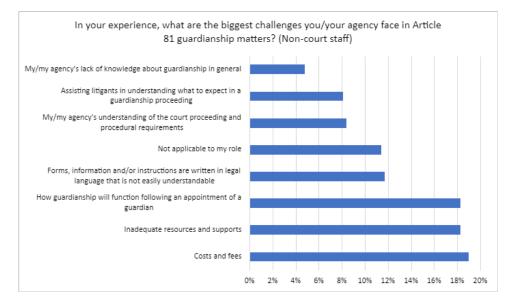
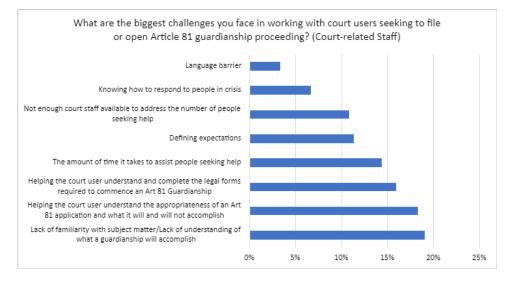


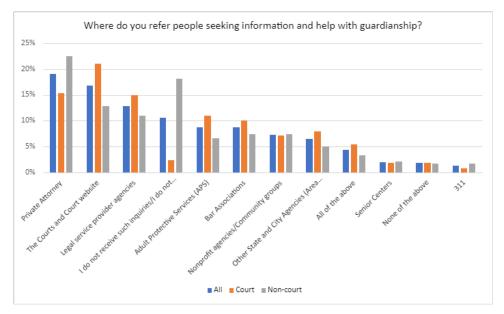
Chart 6.



Referrals

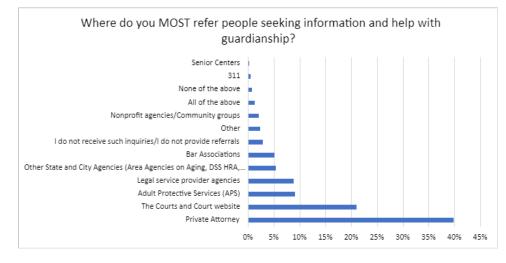
Stakeholders refer people seeking information on and help with guardianship to private attorneys far above any other resources, such as APS, legal service provider agencies, and nonprofit organizations. 40% of participants reported that they refer people to private attorneys the most, with the courts and court websites at a distant second place (both at 21%). For all referral destinations, see **Charts 7 and 8**.

Chart 7.



This is a preliminary report. Please email <u>info@projectguardianship.org</u> for the final report.

Chart 8.



Supports and Resources

Several strong themes became evident in stakeholders' opinions of necessary supports and resources to improve the guardianship system. When asked about the challenges they'd like to see addressed and the supports needed to be put in place to improve their ability to assist in guardianship matters, an open-ended question and thematic analysis revealed that training and education about, increased guidance during and technical improvements to the guardianship process were the most prominent needs.

Approximately one-third of stakeholders believe the most important resource needed to improve guardianship proceedings is dedicated training for guardians. Specifically, 17% desire more trained guardians and guardian supports and 13% desire ongoing training and education for lay guardians (**Chart 9**). When asked to choose just one absolute most needed resource, ongoing training for lay guardians was the top choice (18%). Interestingly, the next most frequently chosen response was more court staff to support the volume of cases (13%). The importance of training was not only emphasized for guardians, but for those working within the court system as well. 18% of the court staff group believe ongoing training would be the single most effective resource in their ability to provide guidance to court users involved in Article 81 proceedings.

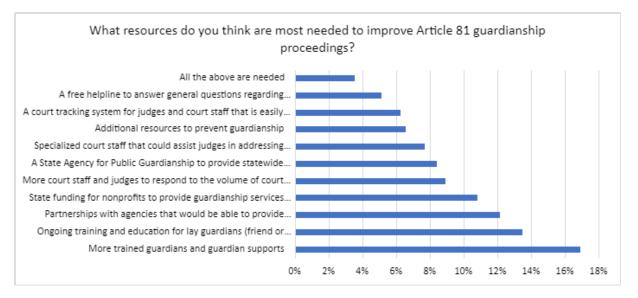
A significant number of court-related staff (28%) noted that partnerships with agencies that can provide help would render them more effective in their own work to provide guidance and information to court users. User-friendly court forms are also a very important resource according to this group (29%).

When asked what resources already exist that play a crucial role in enabling stakeholders to assist court users in navigating the court system, 13% of participants stated that there were no resources currently in place. For those that did name resources they find helpful, most relied on the court and online resources (including the court website). Many also mentioned how useful

private attorneys are, but the usually high cost is extremely prohibitive. Excerpts from responses are below.

- "The [court] website has most of the answers for your procedure."
- "The online training manual was very helpful and was my go-to, but not enough to answer every question and concern that came up during the guardianship process. When I called the Guardianship Department for information, was told to consult with my attorney (who unfortunately did not seem to know answers either)."
- "We do refer people to surrogate court, we tell them to call Legal Aid (if they have the capacity to help), private attorneys, the state court website, we as OFA help with whatever we can, sometimes we refer to APS."
- "The local Bar Association, the CourtHelp desk, that's about it. There are basically no resources in place to help us address the needs of court users trying to navigate Guardianship proceedings."
- "We only have a lawyer willing we have to pay every time we have a question."
- "Unfortunately, there are limited agencies that can guide persons who need to constitute guardianship proceedings. The private bar is the primary resource, and costs are a limiting factor for many most low-income families, and this to a large extent affects minority communities."

Chart 9.



Uniformity - Forms and Data Tracking

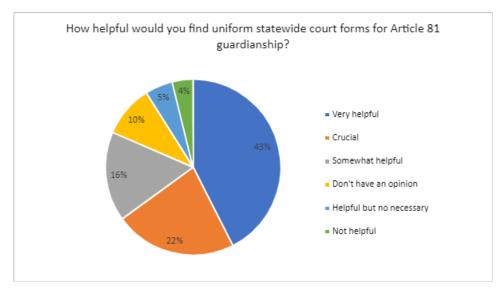
Increased uniformity within the court guardianship system is a priority for most stakeholders. Currently, court forms for guardianship matters vary from county to county. An impressive 65% of stakeholders believe that creating and implementing uniform statewide court forms for Article 81 guardianship would be extremely helpful. In contrast, only 4% do not believe uniformity of court forms would be helpful (**Chart 10**). In addition to the high heterogeneity of court forms,

they are also difficult for court users to complete. Almost two-thirds of court-related stakeholders noted that court users require step-by-step guidance on how to complete the forms and often return for additional assistance (**Chart 11**). Some comments from stakeholders regarding court forms are listed below.

- "Updated easy to use standardized forms."
- "The online forms available in the different departments are inconsistent, and full sets of all forms are not available in all departments."
- "I think there needs to be a clear online system that tells you exactly the status of the process and has clear, updated forms available on one site."
- "Form completion is intimidating. Sample forms would be helpful."

The majority (75%) of court-related stakeholders believe that a uniform data tracking system would also be beneficial (**Chart 12**). This system would provide information about guardianship cases at-a-glance and centralize data that is dispersed and can be difficult from which to glean aggregate information.

Chart 10.





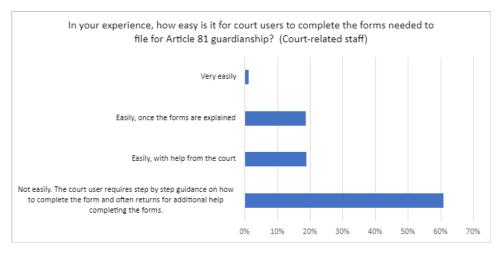
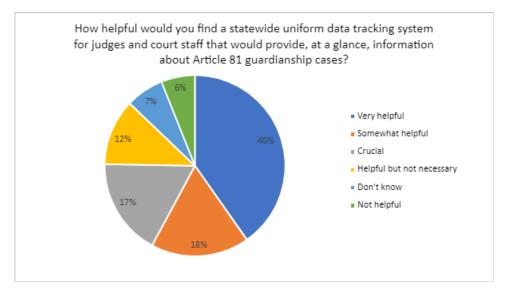


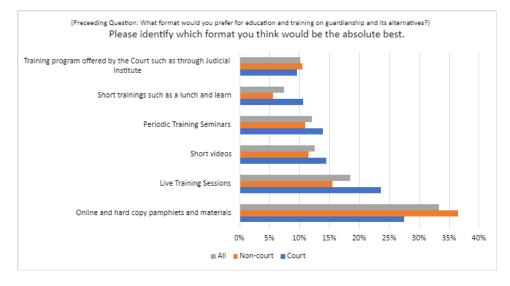
Chart 12.



Collaboration preferences

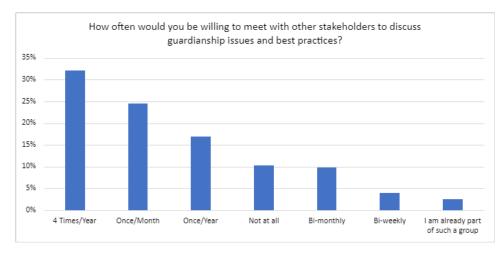
Consistent with stakeholders' reliance on online and court resources, one-third believe that online and hard copy pamphlets and materials are the absolute best format for education and training on guardianship and its alternatives. Live trainings (18%) and short videos (13%) also garnered a lot of support as the best formats (See **Chart 13**).

Chart 13.

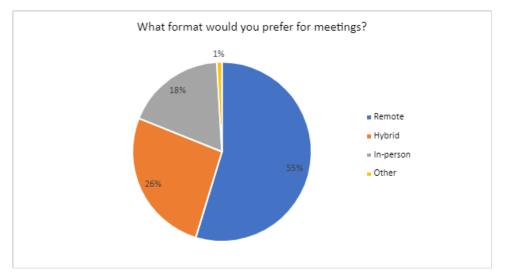


Only a tiny percentage (2%) of stakeholders are already part of a group that meets to discuss guardianship issues and best practices. Many would be willing to meet in such a way regularly, either quarterly (32%) or monthly (25%; See Chart 14). Most stakeholders prefer to meet remotely, followed by a hybrid model (see Chart 15).

Chart 14.







Conclusion

Using the information gathered from this survey, we will next conduct structured conversations to gain more insight into what stakeholders believe should be done to address the identified challenges and what resources may be necessary to do so.

		Questio	Response Scale/# of responses	Response
1	With regard to Article 81 guardianship, which stakeholder group do you MOST identify with?	n type Multiple choice	Judges, Court Examiners/Evaluators, Court Clerks, Court Attorneys, Other Court Staff, Lay Guardian, Part 36 Guardian or another Professional Guardian, Community Guardian Programs, Family/Friends Hospitals/Nursing Homes/Institutionalized Setting, Private Attorney, Bar Association, Legal Services Provider/Public Defenders/Prosecutors, Law School/University/Academic Setting, Non-profit Organizations/community or social services group, Geriatric Care Provider, Other (please specify)	Group(s) All
2	How knowledgeable are you regarding Article 81 guardianship proceedings?	Scale	Very knowledgeable, understand guardianship, and/or are involved in the proceedings Knowledgeable, understand guardianship Somewhat knowledgeable, understand the general guardianship process Understand guardianship exist but do not know the process Lack knowledge about guardianship	All
3a	What do you see as the biggest challenges in Article 81 guardianship proceedings?	Multi- select	Volume and the time it takes to complete guardianship proceedings in court Helping someone understand the process and complete the steps required for guardianship The court being able to access or track information regarding guardianship cases. Lack of trained quality guardians available for appointment Difficulty with court forms and other documents Other, please specify	Court Staff
3b	<i>(If more than one choice chosen for 3a)</i> Please identify which challenge is the absolute biggest.	Multiple choice	Volume and the time it takes to complete guardianship proceedings in court Helping someone understand the process and complete the steps required for guardianship The court being able to access or track information regarding guardianship cases	Court Staff

Table 1. Survey Questions

3aa	What do you see as the biggest challenges in Article 81 guardianship proceedings?		Volume and the time it takes to complete guardianship proceedings in court Difficulty accessing the guardianship courts due to language issues, including having court interpreters, courts 'physical location and inadequate transportation, ADA accommodations Difficulty understanding what a judge will consider in deciding whether to appoint a guardian Difficulty understanding how to get help in court regarding a guardianship case Lack of trained quality guardians available for appointment Difficulty with court forms and other documents Other (please specify)	Non-court Staff
3bb	<i>(If more than one choice chosen for 3aa)</i> Please identify which challenge is the absolute biggest.		Volume and the time it takes to complete guardianship proceedings in court Difficulty accessing the guardianship courts due to language issues, including having court interpreters, courts 'physical location and inadequate transportation, ADA accommodations Difficulty understanding what a judge will consider in deciding whether to appoint a guardian Difficulty understanding how to get help in court regarding a guardianship case	Non-court Staff
4a	In your experience what are the biggest challenges you/your agency faces in Article 81 guardianship matters?	Multi- select	Forms, information, and/or instructions are written in legal language that is not easily understandable. My/my agency's lack of knowledge about guardianship in general My/my agency's understanding of the court proceeding and procedural requirements Inadequate resources and supports Costs and fees Assisting litigants in understanding what to expect in a guardianship proceeding How guardianship will function following an appointment of a guardian Not applicable to my role	Non-court Staff

4b	<i>(If more than one choice chosen for 4a)</i> Please identify which challenge is the absolute biggest.		Forms, information, and/or instructions are written in legal language that is not easily understandable. My/my agency's lack of knowledge about guardianship in general My/my agency's understanding of the court proceedings and procedural requirements Lay guardians understanding their role guardians (friend or family member of a person who the court appoints to be that person's guardian)	Non-court Staff
5	In your experience, how knowledgeable are people regarding Article 81 guardianship or its alternatives when they are considering filing for guardianship	Multiple choice	Very knowledgeable, understand guardianship and/or the alternatives Knowledgeable, understand guardianship Somewhat knowledgeable, understand the general process Understand guardianship exists but do not know the process Lack knowledge about guardianship I don't see this in my position/role	All
6a	Where do you refer people seeking information and help with guardianship?	Multi- select	311 Adult Protective Services (APS) Other State and City Agencies (Area Agencies on Aging, DSS, HRA, NYC Mental Health and Hygiene, etc.) The Courts and Court website Senior Centers Bar Associations Private attorney Legal service provider agencies Nonprofit agencies/Community groups All of the above None of the Above I do not receive such inquiries/I do not provide referrals Other (please specify)	All
бb	Where do you MOST refer people seeking information and help with guardianship?	Multiple Choice	311 Adult Protective Services (APS) Other State and City Agencies (Area Agencies on Aging, DSS, HRA, NYC Mental Health and Hygiene, etc.) The Courts and Court website Senior Centers Bar Associations Private attorney	All

	1			,
			Legal service provider agencies Nonprofit agencies/Community groups All of the above None of the Above I do not receive such inquiries/I do not provide referrals	
			-	
7a	What resources do you think are most needed to improve Article 81 guardianship proceedings?	Multi- select	Other (please specify) Ongoing training and education for lay guardians (friend or family member of a person who the court appoints to be that person's guardian) Additional resources to prevent guardianship More court staff and judges to respond to the volume of court users seeking help Partnerships with agencies that would be able to provide substantive help, upon referral Specialized court staff that could assist judges in addressing social service concerns A court tracking system for judges and court staff that is easily accessible to view case information, and data More trained guardians and guardian supports A State Agency for Public Guardianship to provide statewide guardianship services and information to the public State funding for nonprofits to provide guardianship services throughout the state More trained guardians and guardian supports A free helpline to answer general questions regarding guardianship All the above are needed Other	All
76	Please identify which resource is the absolute most needed.	Multiple Choice	Ongoing training and education for lay guardians (friend or family member of a person who the court appoints to be that person's guardian) Additional resources to prevent guardianship More court staff and judges to respond to the volume of court users seeking help Partnerships with agencies that would be able to provide substantive help, upon referral Specialized court staff that could assist judges in addressing social service concerns A court tracking system for	All

			judges and court staff that is easily accessible to view case information, and data More trained guardians and guardian supports A State Agency for Public Guardianship to provide statewide guardianship services and information to the public State funding for nonprofits to provide guardianship services throughout the state All the above are needed Other	
8	How helpful would you find uniform statewide court forms for Article 81 guardianship?	Scale	Crucial Very helpful Somewhat helpful Helpful but not necessary Not helpful Don't have an opinion	All
9a	What format would you prefer for education and training on guardianship and its alternatives?	Multi- select	Online and hard-copy pamphlets and materials Short videos Short trainings such as a lunch and learn Periodic Training Seminars Live Training Sessions Training programs offered by the Court, such as through the Judicial Institute Other (please specify)	Court- related Staff
9b	Please identify which format you think would be the absolute best.	Multiple Choice	Online and hard-copy pamphlets and materials Short videos Short trainings such as a lunch and learn Periodic Training Seminars Live Training Sessions Training programs offered by the Court, such as through the Judicial Institute Other (please specify)	Court- related Staff
9aa	What format would you prefer for education and training on guardianship and its alternatives?	Multi- select	Online and hard-copy pamphlets and materials Short videos Short trainings such as a lunch and learn Periodic Training Seminars Live Training Sessions Trainings offered by Community Agencies and Legal Services Providers Trainings offered through Law schools Training program offered by the Court Other (please specify)	Non-court Staff

9bb	Please identify which format you think would be the absolute best.	Multiple Choice	Online and hard-copy pamphlets and materials Short videos Short trainings such as a lunch and learn Periodic Training Seminars Live Training Sessions Trainings offered by Community Agencies and Legal Services Providers Trainings offered through Law schools Training program offered by the Court Other (please specify)	Non-court Staff
10a	What formats would you prefer for education and training?	Multi- select	In-person Remove Live (Zoom, TEAMS, Webex, etc.) Hybrid Live Pre-recorded Other	All
10b	Please identify which format you would prefer most.	Multiple Choice	In-person Remove Live (Zoom, TEAMS, Webex, etc.) Hybrid Live Pre-recorded Other	All
11	How often would you be willing to meet with other stakeholders to discuss guardianship issues and best practices?	Multiple Choice	Bi-weekly Once/month Bi-monthly 4 Times/year Once/Year Not at all I am already part of such a group (please specify)	All
12	What format would you prefer for meetings?	Multiple Choice	In-person Remote Hybrid Other (please specify)	All
13	How helpful would you find a statewide uniform data tracking system for judges and court staff that would provide, at a glance, information about Article 81 guardianship cases?	Scale	Crucial Very helpful Somewhat helpful Helpful but not necessary Not helpful Don't know	Court Staff (beginnin g of "additiona l questions" for court staff)

14a	What are the biggest challenges you face in working with court users seeking to file or open Article 81 guardianship proceedings?	Multi- select	Not enough court staff available to address the number of people seeking help The amount of time it takes to assist people seeking help Helping the court user understand and complete the legal forms required to commence an Art 81 Guardianship Helping the court user understand the appropriateness of an Art 81 application and what it will and will not accomplish Lack of familiarity with subject matter/Lack of understanding of what a guardianship will accomplish Defining expectations Language barrier Knowing how to respond to people in crisis Other (specify?)	Court Staff
14b	Please identify which challenge is the absolute biggest.	Multiple Choice	Not enough court staff is available to address the number of people seeking help The amount of time it takes to assist people seeking help Helping the court user understand and complete the legal forms required to commence an Art 81 Guardianship Helping the court user understand the appropriateness of an Art 81 application and what it will and will not accomplish Lack of familiarity with subject matter/Lack of understanding of what a guardianship will accomplish Defining expectations Language barrier Knowing how to respond to people in crisis Other (please specify)	
15a	What resources would make you more effective in providing guidance and information to court users involved in Article 81 guardianship proceedings?	Multi- select	More ongoing training and specific guidance for court staff as it relates to interaction with the public More court staff to respond to the volume of court users seeking help Partnerships with agencies that would be able to provide substantive help upon referral User-friendly legal guardianship forms and directions for pro se litigants	

			Language Services for lay guardians Other (please specify)
15b	Which resource would enable you to be MOST effective in providing guidance and information to court users involved in Article 81 guardianship proceedings?	Multiple Choice	Ongoing training More court staff to respond to the volume of court users seeking help Partnerships with agencies that would be able to provide substantive help upon referral User-friendly legal guardianship forms and directions for pro se litigants Language Services for lay guardians Other
16	In your experience, how knowledgeable are court users about the powers of an Article 81 guardian when they come to court to file a guardianship petition?	Scale	Knowledgeable, they are aware of the scope of a guardian's legal powers. Somewhat knowledgeable, they have an idea of the legal powers a judge may give a guardian Vaguely knowledgeable, they merely understand that the AIP may need a guardian to make decisions required at the time of filing. Not knowledgeable, unfamiliar with the role, legal powers, or appropriateness of the appointment of a guardian's powers (but hopeful guardianship is the solution) Do not know/Do not see this in my position/role
17	In your experience, how easy is it for court users to complete the forms needed to file for Article 81 guardianship?	Scale	Very easily Easily, once the forms are explained Easily, with help from the court Not easily. The court user requires step- by -step guidance on how to complete the form and often returns for additional help completing the forms.
18	How much time do you spend with each court user seeking to file a petition?	Multiple Choice	0-15 minutes 15-30 minutes 30-45 minutes 45-60 minutes Not part of my role
19a	What are the biggest challenges court users face in attempting to complete the forms?	Multi- select	Understanding the Legalese Subject matter knowledge Understanding how the court proceeding will unfold Understanding procedural requirements Understanding their role and that of all others involved

19b	Which challenge is the absolute biggest?	Multiple Choice	Language Barriers Other please specify Understanding the Legalese Subject matter knowledge Understanding how the court proceeding will unfold Understanding procedural requirements Understanding their role and that of all others involved Language Barriers Other please specify	
20	What challenges would you like to see addressed? What supports need to be put in place to enhance your ability to render quality and impactful help? What services, resources, or supports may the court put in place to enable you to provide meaningful access to justice?	Open- ended	N/A	
21	Name resources that are currently in place that play an instrumental role in helping you address the needs of court users seeking to navigate the court system in relation to guardianship proceedings.	Open- ended	N/A	

Court Staff		Non-court Staff	
Attorney for AIP	N=63	Bar Association	N=4
Court Attorneys	N=30	Family/Friends**	N=33
Court Clerks	N=51	Community Guardian Programs**	N=14
Court Examiners/Evaluators	N=162	Geriatric Care Provider	N=2
Judges	N=52	Hospitals/Nursing Homes/Institutionalized Setting	N=11
Other Court Staff	N=24	Law School/University/Academic Setting	N=3
		Lay guardian (family and/or friend)	N=167
		Legal Services Provider/Public Defenders/Prosecutors	N=17
		Non-profit Organizations/Community or Social Services group	N=27
		Part 36 Guardian or another Professional Guardian	N=99
		Part of Government/Municipal Agency	N=47
		Private Attorney	N=169
		Other	N=10
All Court Staff	N=382	All Non-court Staff	N=603

Table 2. Stakeholder Sample

**Family/friends and community guardian programs are considered non-court staff until questions 9 and 13 – 19, upon which they are grouped with court staff to become court-related staff.