



## **THE DADS GUARDIANSHIP SERVICES PROGRAM**

**2010 Judicial Partner Survey**

**November 2010**

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## 2010 Guardianship Services Judicial Partner Survey Summary Report

### EXECUTIVE SUMMARY

The DADS Guardianship Services Program developed a judicial partner survey for the purpose of evaluating the effectiveness of the program's relationship with the courts responsible for probate and guardianship matters. This report contains the findings of the survey completed during the summer of 2010; a previous survey was completed in the summer of 2009. Beginning with fiscal year 2010, a judicial survey will be completed biennially before the upcoming legislative session. Significant findings of the survey include:

- Court perceptions of interactions with DADS were found to be agreeable in cases in which DADS appeared before the court.
- DADS responds to court requests in a timely manner and DADS staff and attorneys are prepared for court. Only one court reported a concern in this area.
- DADS scored high on a 6.0 rating scale on questions specific to operations and interactions with the courts. The highest rating was a 5.72 and the lowest rating was 5.21; the average was 5.35.
- A small number of courts reported concerns about matters specific to their court.
- Nine courts requested face-to-face contact with DADS guardianship and/or legal staff; when contacted, four of those requests were withdrawn.
- Concern exists about furthering court and public knowledge of guardianship. It appears there is a belief DADS is responsible to provide training to the greater guardianship community including the courts and court personnel.
- Approximately 48 percent of the respondents reported minimal interaction with DADS.

Staff were commended by many courts for their timeliness, professionalism and the "great" job they were doing. Some comments indicate an opportunity for DADS to be more responsive to a few of the respondent courts as indicated by the survey data. All comments are considered valuable by the DADS guardianship management team and were reviewed for further action and improvement.

## **I. INTRODUCTION AND PURPOSE**

The Guardianship Services Program of the Texas Department of Aging and Disability Services (DADS) provides guardianship services, either directly or through contracts, to persons referred by the Adult Protective Services (APS) and Child Protective Services (CPS) divisions of the Texas Department of Family and Protective Services, who are found to lack capacity by a court with probate jurisdiction and for whom it is determined DADS guardianship is appropriate. Courts may also make direct referrals to the program in certain limited circumstances outlined in statute.

As guardian, DADS assumes responsibility for arranging services and placement for the wards, managing their estates, and making medical and other decisions on their behalf as necessary and appropriate. One of the key responsibilities of the Guardianship Services Program is to work in cooperation with consumers, service providers, and other stakeholders including the judiciary to provide efficient, quality and effective services which promote and enhance individual well-being, dignity and choice of those we serve.

The Guardianship Services Program developed the judicial partner survey to be sent to courts with probate jurisdiction most likely to interact with the program in guardianship proceedings in an effort to measure performance and obtain feedback. The survey will be carried out biennially beginning in 2010 just prior to the next scheduled legislative session. A written report will be furnished to DADS executive management.

## **II. BACKGROUND**

The DADS Guardianship Services Program currently serves as guardian for wards located throughout Texas. When appropriate, the program seeks appointment as guardian of the person, guardian of the estate, or both by filing an application for guardianship in courts with probate jurisdiction.

The program recognizes the value of maintaining positive, responsive and open relationships with mutual stakeholders and welcomes their comments and involvement. In order to reach out to judicial partners, DADS executive staff authorized the guardianship program to develop and administer the judicial survey.

## **III. METHODOLOGY**

In preparation for the 2010 Judicial Partner Survey, state office staff verified and updated data from a list of courts with probate jurisdiction provided by the Guardianship Certification Board. This verification included names, addresses, telephone numbers, and e-mail addresses for courts with whom the program interacts on a regular basis. Once the list was verified, the 2010 survey was sent to approximately 455 individuals representing 343 courts with probate authority in Texas. The judiciary list included constitutional county judges, county court-at-law judges, statutory probate judges, court administrators and other court personnel.

The 18 statutory probate courts are included in the total of 343 courts. Statistics represented within this report are presented on the overall total number of surveys sent out with selected responses from the statutory probate courts being extrapolated and reported separately as well. Judges and court personnel from 71 courts responded to the survey. This represents a 16 percent response rate of the overall survey population and a 21 percent response of the number of courts surveyed. Responses were received from seven of the 18 statutory probate courts (32 percent) in Texas.

The program administered the survey on-line via a web-based survey application from July 15, 2010 through August 24, 2010. Judges and court personnel initially received an electronic mail message with instructions on how to access and complete the survey. This information was sent a second time during the course of the survey to encourage participation. Upon request, one judge received a paper survey via facsimile. The responses from this judge were manually entered into the electronic survey data.

The survey included a total of 15 questions which encompassed the following:

- Demographic information about the court and person completing the survey (questions 1–5):
  - information on title of person completing the survey, contact information on person completing the survey, and counties served (questions 2–5);
  - number of guardianship cases heard and types of guardianships, other legal proceedings (question 8);
  - DADS legal representation before the court (question 9).
- Perceptions of the court regarding the capability, effectiveness and professionalism of DADS staff:
  - a combination of Likert scale statements (question 10); and
  - open-ended questions (questions 11–15).

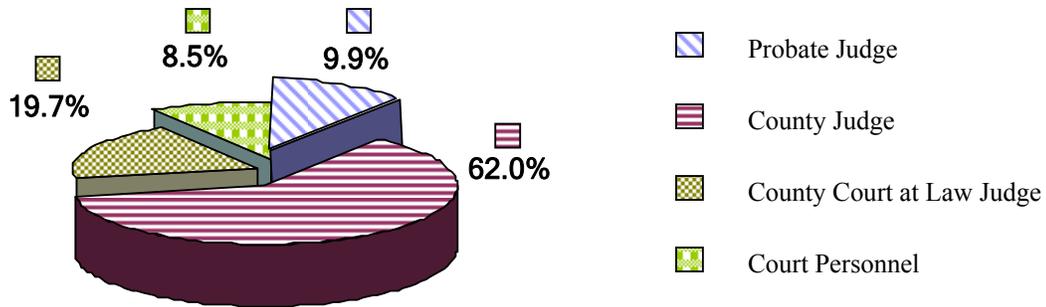
## **IV. SURVEY RESULTS**

Responses to the 2010 survey are displayed in the Appendix. Significant results include:

- Court perceptions of interactions with DADS were found to be agreeable in cases in which DADS appeared before the court (see Figure 3).
- DADS responds to court requests in a timely manner and staff and attorneys are prepared for court. Only one court indicated slight disagreement regarding the timely response to court requests and the preparedness of DADS staff and attorneys.
- The highest rating received on a Likert scale for 10 specific questions designed to gauge the relationship between the courts and DADS was 5.72 on a scale where 6.0 was the highest, indicating an overall positive relationship. The lowest rating was 5.21. The average was 5.35.
- Depending on the question asked, 7-12 respondents indicated they did not know the answer to the question.
- Approximately half (48 percent) of the respondent courts had either little interaction with DADS or no interaction which made for few or no substantive comments by these courts.

Respondents to the survey by category (see Figure 1) include statutory probate judges, county court at law judges, county judges and court personnel.

**Figure 1 (2010) - Respondents to the Survey**



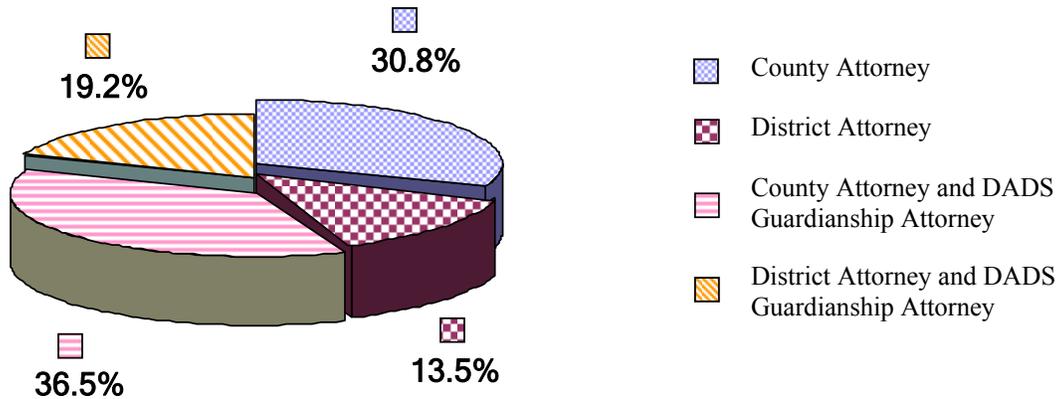
### **Respondents by Probate Courts**

There are 18 statutory probate courts in Texas. Responses were received from seven of the judges for those courts, resulting in a 32 percent response rate for the probate courts.

### **Other Findings:**

- Number of guardianship cases heard annually by the respondent courts ranged from a low of 0 to a high of 300.
- Number of DADS guardianship cases heard annually by the respondent courts ranged from a low of 0 to a high of 25.
- DADS legal representation in respondent courts is indicated in Figure 2:

**Figure 2 (2010) - DADS Legal Representation**



The responses of judicial partners to Likert scale statements in question 10 are displayed in the Appendix. Figure 3 represents a rating average for the statements which judges responded to on a scale from “strongly agree” to “don’t know.” Judges were asked to identify their level of agreement with each statement in the survey.

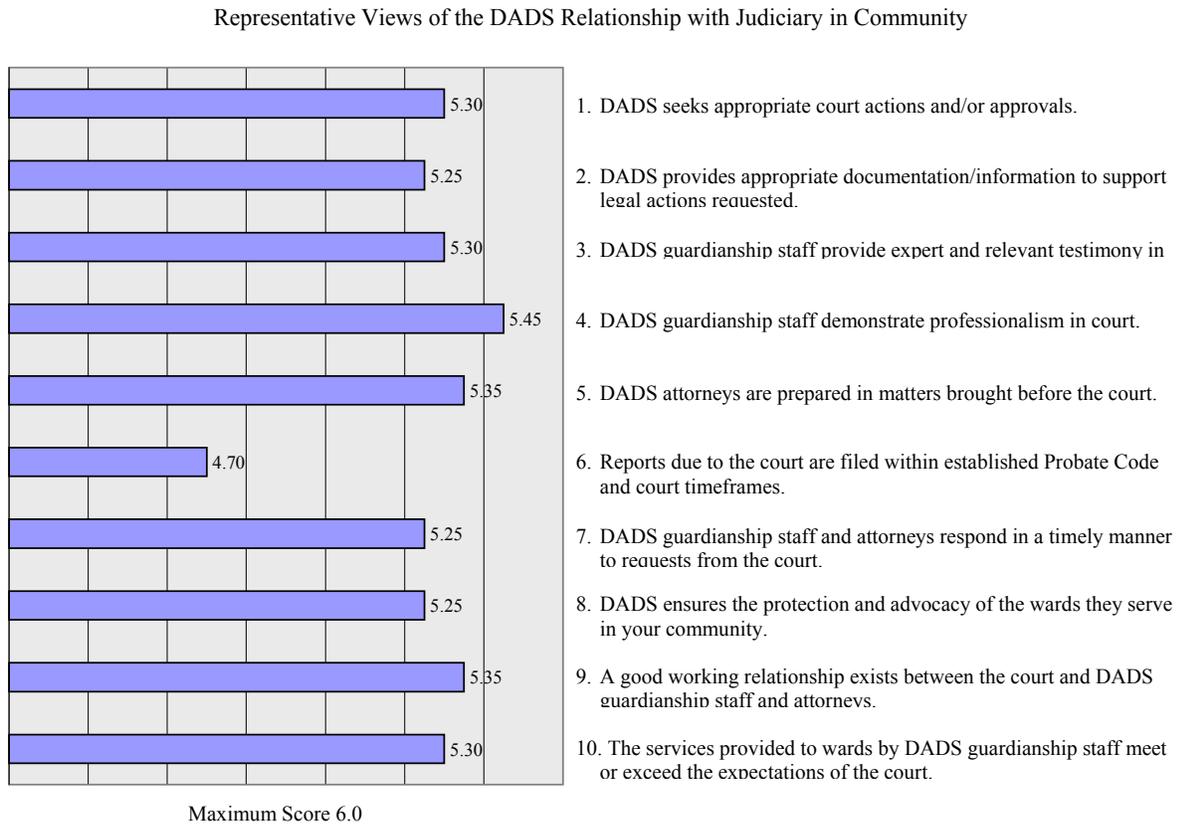
In computing the rating average for each statement, weighted values were given to each ratings scale choice as follows:

- Strongly Agree (6)
- Agree (5)
- Slightly Agree (4)
- Slightly Disagree (3)
- Disagree (2)
- Strongly Disagree (1)
- Don’t Know (0)

A higher rating average for a specific statement is indicative of more agreement by the respondents with the statement. For this survey, rating averages fell between “strongly agree” and “agree” choices (actually closer to the “agree” value).

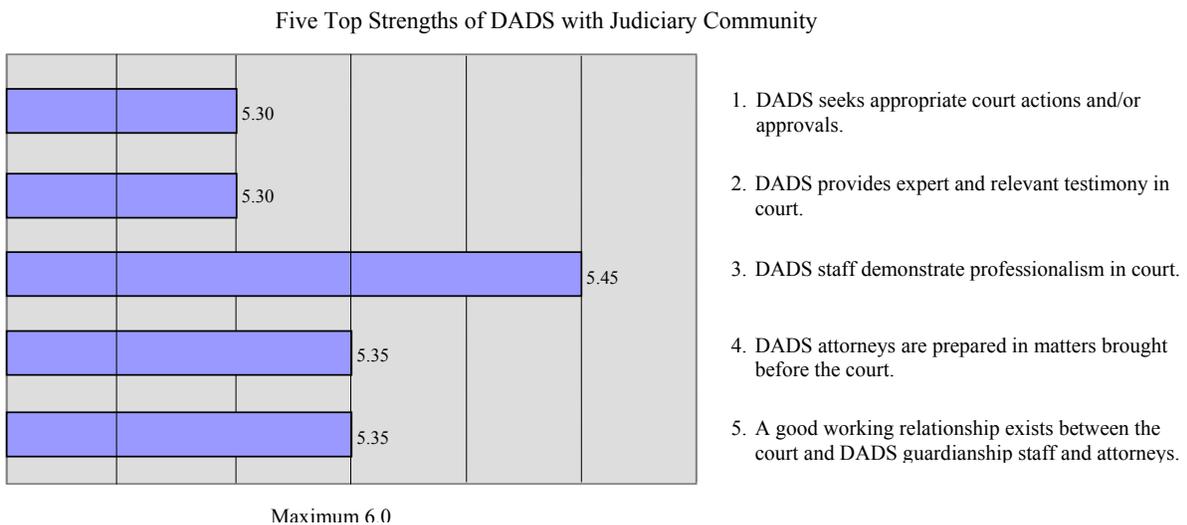
Analysis of survey data indicate the views of DADS relationships with the judiciary in the community are positive as shown in Figure 3.

**Figure 3 (2010) - DADS Relationships with the Judiciary**



Analysis of survey data indicates the top five perceived strengths of the DADS relationship with the judiciary community as shown in Figure 4 below:

**Figure 4 (2010) - Top Five Perceived Strengths**



Respondents agree the level of services provided by DADS to wards meets or exceeds court expectations. The rating average for this statement was 5.3, an increase from the prior year (2009) which was 4.03.

## V. QUALITATIVE SURVEY RESPONSES

A small number of individuals remarked on various aspects of the relationship and interaction between DADS and the courts. Their comments are provided below as they relate to particular activities or questions. Each statement presents the opinion of only the court or individual who responded. The statements are not reflected in the general opinion regarding how DADS performs on the issues identified. It appears the opinion expressed more accurately reflects a specific problem or issue which may have occurred in a particular court.

Sixteen individuals (22 percent of total respondents) made statements to the question designed to determine how DADS could improve the quality of protection and advocacy for wards served through the courts. Four of those statements did not address the question; however, the comments were positive and included such comments as, “Keep up the good work,” and “Doing great work.” Twelve of the sixteen statements contained suggestions for improvement and advocacy. The statements are reprinted below.

- “Better communication with the court.”
- “Maintain consistency and enhance communication with court staff by retaining DADS specialists on cases with less rotation and turnover. Court staff believes choice of DADS contractors should be reviewed and closely monitored. Contractor expertise should be more closely evaluated.”
- “Move faster from Guardianship cases when the Guardianship case emanates from a Chapter 48 intervention case.”
- “Improve the time-frame from referral for guardianship to filing of the Application.”
- “As I understand it, since Harris County has its own Guardianship program, DADS is not acting as an advocate in the Probate Courts of Harris County.”
- “Move faster to have Temporary Guardianships in place to protect the persons and their estates. There is too much red tape.”
- “There seems to be difficulty in determining whether or not a case is eligible for DADS. I think more training is needed for APS, guardians ad litem and court personnel to determine when a case may be pursued by DADS.”
- “My staff indicates that DADS can be slow with regard to estates and getting wards qualified for Medicaid.”
- “Just to continue to do whatever may be in the best interest of the proposed ward.”
- “By not rejecting cases it should take.”
- “DADS will only do guardianships in this court for cases in which CPS has custody and the child is aging out. DADS is guardian of only two wards in this court at this time. I think they are doing a relatively good job.”
- “Do not have experience except for one case which was handled very professionally by DADS.”

Approximately 22 of the 71 respondents (31 percent) offered comments on how DADS could further enhance working relationships with the court. Numerous judges and court personnel pointed out they had never worked with DADS and could not provide comment. Other judges and court personnel indicated having a good working relationship with DADS. Eight judges and court personnel provided responses with specific suggestions on ways DADS could improve its interaction with the court. Their responses are provided below:

- “Improve response time to court requests.”
- “Continue presence.”
- “Improve time-frame from referral for guardianship to filing the Application.”
- “Supply an updated chart of the hierarchy/staff in this area and contact information. I personally would like a tour of their office and maybe a brief presentation of what they do. I would like to hear what their mission statement is.”
- “DADS should be available to help the Court with problem cases on an as needed basis with a written explanation when they decline to assist. However, court realizes that DADS could limit help if a court is abusing the system with too many requests.”
- “Not so much with my office, but try to file any necessary paperwork in the County Clerk’s Office before closing time. In other words, file during the morning or mid-afternoon not just before closing.”
- “By not rejecting cases it should take.”
- “Accept indigent guardianships when there is no family member to serve.”

Fourteen of the 71 respondents (20 percent) of the judges and court personnel offered comments on how DADS and Adult Protective Services coordinated effectively and timely in their court. Examples of the responses include:

- “Court staff opinion is that the cooperation and coordination between APS and DADS has substantially improved.”
- “Things worked very smoothly years ago before the APS reform. There is a double investigation that is not necessary. DADS needs authority to access bank accounts and financial information through a court order.”
- “It is getting better, I think. I still think there is duplication of effort and I am not sure that DADS’ filings are timely enough. Once filed though, they seem to be processed reasonably.”
- “I have found APS to be slow and passive.”

Nine of the 71 respondents (13 percent) indicated a desire for further contact with local DADS guardianship staff to obtain more information about DADS or to address individual concerns. One court expressed concerns about the certification laws and the requirements for guardians. This issue is outside the scope and authority of the DADS Guardianship Services Program.

## **VI. MANAGEMENT RESPONSE**

The DADS Guardianship Services Program management team reviewed the responses and findings of this survey. Guardianship supervisors and regional guardianship attorneys (as appropriate) were asked to meet and/or follow-up with the nine judges who indicated a desire for

further information. Those meetings were completed by September 15, 2010. Four of the judges who initially requested a meeting or follow-up withdrew their request when contacted to set-up the appointment.

Individuals responded on various aspects of DADS operations and the Guardianship Services Program in particular. The analysis of the individual comments focused on responses which indicated a level of dissatisfaction or concern with program policies and operations. Analysis indicates the less than favorable comments are related to operational issues in particular counties and courts, expectations which exceed DADS statutory authority and/or relate to specific issues or cases.

Three comments related to the timelines from referral to filing of an application. In 2009, the 81<sup>st</sup> Texas Legislature established a 70-day timeframe for filing an application for guardianship after DADS receives a referral from APS. This timeframe is applicable to those referrals where an assessment indicates a DADS guardianship is appropriate and a licensed physician has furnished a Certificate of Medical Examination indicating the person lacks capacity. In fiscal year 2010, DADS filed on 215 APS cases. The filing timeframe was reduced for all referrals from an average of 59 days per year in fiscal year 2009 to an average of 41 days in fiscal year 2010 for all APS referrals including those pending from the previous fiscal year. For referrals received during the fiscal year 2010, the average amount of time from referral to filing was 35 days. This improvement in timeframes may not yet be recognized in all courts. A guardianship assessment is completed within 14 calendar days or sooner when a referral initiates from an Emergency Order of Protective Services (EOPS). Statistics indicate the average amount of time from referral to filing in an EOPS case is 28 days.

One individual indicated there is “too much red tape” required in temporary guardianships. The requirements when filing a guardianship application, whether temporary or permanent, are established by statute. Reducing the requirements and eliminating “red tape” would require changes to Probate Code §875 regarding notice, appointment of representation and a hearing.

One comment received indicated DADS staff are too slow to get individuals qualified for Medicaid. Eligibility for Medicaid is a determination made by HHSC staff; however, guardianship supervisors and staff have been reminded to ensure Medicaid applications are filed as expeditiously as possible.

One response recommended DADS be available to help the court with problem cases on an as needed basis with a written explanation when DADS declines to assist. Many courts perceive DADS as the authority on all guardianship cases. By statute, DADS serves a limited population and does not have sufficient staff to assist with problem cases for which DADS has no jurisdiction or to respond to such requests in writing. DADS stands ready to act as a resource to court staff to give general non-case specific suggestions and information upon request.

A court expressed a desire for DADS to improve response time to court requests. Detailed information was not given on this comment. However, guardianship supervisors were reminded and encouraged to facilitate timely responses to all referrals and court requests. Two courts want DADS to take more cases which have been presented to the court. In one instance, the court

would like DADS to accept indigent guardianships when there is no family member to serve. In another, the court indicates DADS rejects cases it “should” take. DADS is not authorized to accept indigent cases outside the scope of statute nor does the agency knowingly decline to serve as guardian for individuals appropriate for the program; however, subsequent to this concern, staff have been reminded of their responsibility to ensure individuals appropriate for the program are accepted in accordance with program policy, rule and statute.

A comment was received about APS and DADS duplicating efforts and investigations in the guardianship process. There remains a misperception of the roles of APS and DADS which are different. APS investigates allegations of abuse, neglect or exploitation of an older individual or adult person with a disability. In valid cases which involve an individual who appears to have diminished capacity, a referral is made to the DADS guardianship program for assessment. DADS completes a comprehensive assessment of the conditions and circumstances of the proposed ward (APS referred client) to establish the appropriateness of guardianship and to ensure all other means to protect the individual are exhausted. This includes identifying all less restrictive alternatives to guardianship or identifying an alternate guardian.

In response to one court requesting DADS staff to file necessary paperwork in the county clerk’s office in the morning or mid-afternoon and not just before closing time, DADS has incorporated a discussion in the guardianship basic training to be mindful of the timing of filings. Due to the distance of the courts from staff offices and the sometimes urgent nature of the cases, court filings may, by necessity, be completed at any point in the day a county clerk’s office is open.

One court believes there is a need for DADS to provide training to APS, guardian and attorney ad litem and court personnel to determine when a case may be pursued by DADS. DADS and APS work together on policies and procedures and are working to schedule cross-training initiatives. Training court personnel and ad litem is a more difficult task. However, DADS is preparing a guardianship brochure which will be made available to courts, ad litem and the general public. This brochure is scheduled for release in spring 2011 and will be available on the DADS website.

## VII. ACTION ITEMS

- Management review of survey findings at State Office and local level. – **Complete**
- Contact and set meetings with courts requesting meetings. – **Complete**
- Review the process and outcomes of the survey to improve the next survey which will be completed in the summer of 2012.
- Make guardianship brochure available on DADS website and notify courts when it is available. – **spring 2011**
- Review DADS operation policies regarding referrals from counties operating a county-based guardianship program. – **On-going**
- Continue and enhance participation in on-going discussions with APS and CPS to address processing of referrals, locating less restrictive alternatives, and completing assessments – **On-going**
- Post the final judicial survey report on the DADS website. – **December 2010**

## **VIII. CONCLUSIONS**

The results of the survey indicate DADS interactions with the courts in which guardianships are filed and heard are generally positive. Staff were commended by many courts for their timeliness, professionalism and the “great” job they were doing. Some comments highlight an opportunity for DADS to increase the program’s responsiveness to individual courts. A number of the issues raised by the courts are outside the control of DADS or cannot be resolved without legislative action. All comments are considered valuable by the DADS management team and are being reviewed for further action and improvement. As part of on-going outreach opportunities an e-mail notification will be sent to all courts with probate authority when the guardianship brochure is made available on the DADS website.

## IX. APPENDIX

### Survey Questions and 2010 Judicial Survey Responses

Question	Response Count (Percent)	Response(s)
1. Name	71 (100%)	
2. County / Counties your court serves	70 (98.6%)	
3. E-mail address	68 (96%)	
4. Telephone number	68 (96%)	
5. What is your title?	71 (100%)	See Figure 1
6. Approximately how many guardianship cases do you hear annually?	57 (80%)	
7. Of these cases, how many are DADS guardianship cases?	56(79%)	
8. Indicate the type(s) of legal proceedings that your court hears (please select all that apply): <input type="checkbox"/> Temporary Guardianship <input type="checkbox"/> Permanent Guardianship <input type="checkbox"/> Emergency Detention under the Mental Health Code <input type="checkbox"/> Protective Custody under the Mental Health Code <input type="checkbox"/> Court Ordered Mental Health Services under the Mental Health Code	54 (76%)	
9. Indicate who typically represents DADS in your court for guardianship proceedings. <input type="checkbox"/> County Attorney <input type="checkbox"/> District Attorney <input type="checkbox"/> County Attorney and DADS guardianship attorney <input type="checkbox"/> District Attorney and DADS guardianship attorney	52 (73%)	See Figure 2
10. In the section below, please place a check in the column that best reflects your views of current DADS and judicial relations in your community. (Please select only one response per item.)	56 (79%)	See Questions and Survey Results on Page 12
11. How can DADS further improve the quality of protection and advocacy for wards they serve through your court?	22 (31%)	See Survey Results section
12. How can DADS further enhance its working relationship with your office?	22 (31%)	
13. Would you like a local DADS guardianship staff member to contact you to provide information about DADS or to address any individual concerns?	68 (96%)	
14. Adult Protective Services and the DADS Guardianship Program coordinate effectively and timely in your court?	Agree 45 (86.5%) Disagree 7 (13.5%)	
15. What specific issues would you like to address?	20 (28%)	

## Question 10 \*

In the section below, please place a check in the column that best reflects your views of current DADS and judicial relations in your community. (Please select only one response per item)

Answer Options	Strongly Agree	Agree	Slightly Agree	Slightly Disagree	Disagree	Strongly Disagree	Don't Know	Rating Average	Response Count
A. DADS seeks appropriate court actions and/or approvals.	18	27	2	0	0	0	9	5.48	56
B. DADS provides appropriate documentation/information to support legal actions requested.	18	27	1	1	0	0	9	5.46	56
C. DADS guardianship staff provide expert and relevant testimony in court.	20	22	2	2	0	0	10	5.36	56
D. DADS guardianship staff demonstrate professionalism in court.	24	21	2	0	0	0	9	5.59	56
E. DADS attorneys are prepared in matters brought before the court.	20	21	2	1	0	0	12	5.21	56
F. Reports due to the court are filed within established Probate Code and court timeframes.	24	19	4	0	0	0	7	5.72	54
G. DADS guardianship staff and attorneys respond in a timely manner to requests from the court.	19	24	4	0	0	1	8	5.48	56
H. DADS ensures the protection and advocacy of the wards they serve in your community.	17	23	5	0	0	0	11	5.23	56
I. A good working relationship exists between the court and DADS guardianship staff and attorneys.	22	22	3	0	1	0	8	5.57	56
J. The services provided to wards by DADS guardianship staff meet or exceed the expectations of the court.	18	24	5	0	0	0	9	5.43	56

*answered question*

**56**

\* Responses received to question 10 which indicated “don’t know” were not factored into the rating averages.