



**Audit of the Orange County
Clerk of Court's
Administration of the
Guardianship Program**



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**Report 489
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The vision of the Orange County Comptroller's Office is to be recognized as a highly competent, cohesive team leading the quest for continuing excellence in the effective safeguarding and ethical management of public funds, assets, and documents.



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OFFICE OF THE COMPTROLLER

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March 1, 2020

Tiffany Moore Russell
Orange County Clerk of Courts

We have conducted an audit of the Orange County Clerk of Court's administration of the guardianship program. The period audited was January 2015 through December 2016, with additional testing performed of cases initiated through July 2017.

We conducted this audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

A response to our recommendations was received from your office and is included as Appendix A. Our auditor's comment which includes our statements countering the elements of your response that we consider misleading or inaccurate is attached as Appendix B.

Phil Diamond, CPA
County Comptroller

c: Jared Brooks, General Counsel, Orange County Clerk of Courts
Board of County Commissioners



EXECUTIVE SUMMARY

Why This Audit Is Important

Judicially supervised guardianship provides protection to incapacitated adults, minor wards, and developmentally disabled individuals. The Clerk of Courts (Clerk) plays an important role in the guardianship process as the first line of defense in protecting Orange County's vulnerable citizens. Some of the critical roles performed by clerks includes reviewing and auditing filed reports and notifying the Court of any discrepancies. The number of guardianship cases has steadily increased over time. This has also increased the importance of the Clerk's review process. In 2018, 464 guardianship cases were initiated in Orange County.

The Objectives of Our Audit

The audit objective was to determine whether the Clerk complied with the requirements of Chapter 744, Florida Statutes. Specifically, we determined whether the Clerk:

- 1) Maintains all required documentation for private and professional guardians;
- 2) Reviews Verified Inventories and Annual Accountings to identify any deficiencies;
- 3) Reviews Initial Plans and Annual Plans to identify any deficiencies;
- 4) Notifies the Court of all potential non-compliance with statutory requirements; and,
- 5) Notifies the Court of required guardianship filings that have not been timely filed.

What We Found

Active Cases Cannot be Identified in the Case Management System. (Page 15)

The Clerk cannot identify the number of active cases in the system or systematically identify the cases that should be monitored. As a result of the current limitations in the system, numerous open cases were not monitored for years.



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Inaccurate Data Recoded in the Case Management System. (Page 16)

As part of the audit, we identified numerous cases where inaccurate data was recorded in the system. Some of the errors included mis-docketing filed documents, inconsistent recording between clerks due to a lack of documentation and training, and inaccurate data entry.

The Court Was Not Consistently Notified When Professional Guardians Were Not in Compliance With Statutory Requirements. (Page 18)

Files for 19 of 24 professional guardians were missing at least one statutorily required document such as a credit history investigation, a criminal background investigation, or a fiduciary bond. In addition, one professional guardian still had five active cases when they were suspended and a replacement was not timely appointed. In one case, a replacement was not assigned for 16 months after the guardian was suspended. In another case, we notified the Clerk that the ward had died 33 months prior. The Clerk was unaware the ward had died almost three years earlier.

Non-professional Guardians Were Appointed Without Meeting All Statutory Requirements. (Page 25)

In addition to professional guardian non-compliance, we also identified non-professional guardians who did not satisfy all the requirements before appointment where the clerks did not notify the Court. Some of the omitted documents were parental consents from both parents in minor guardianship cases, credit history investigations, and guardian oaths.

There Are No Procedures to Document Identified Conflicts of Interest (Page 28)

The clerks were aware of several conflicts of interest between professional guardians assigned and other parties involved in cases; including, examining committee members, attorneys, a trust director, and service providers. Although some clerks were aware of the conflicts, it was not documented so that the Judge and other clerk staff reviewing cases would be aware of these conflicts.



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The Clerks Did Not Notify the Court of Unauthorized Attorney and Guardian Fees (Page 31)

According to Annual Accountings reviewed from 31 cases, fees totaling over \$59,000 from nine cases were paid from wards' funds without Court approval. In four of these cases, attorney fees were paid without invoices supporting the payments. We also noted that a professional guardian was paid outside of the guardianship by a hospital group in 117 of 204 cases. The total fees paid by the hospital to the professional guardian for guardianship services was over \$2.5 million. The hourly rate charged to the hospital was about twice the approved Orange County rate.

The Clerks Did Not Notify the Court or Follow-Up with Guardians Regarding Inventory Discrepancies (Page 34)

We found that adequate support was not provided for account balances in eight of 16 Inventories listing financial accounts. In two additional cases, the clerks did not advise the Court that Inventories omitted accounts listed on guardianship petitions. In addition, the clerks did not always follow-up with guardians to ensure issues identified on Observations were corrected.

Clerks Have Limited Training and Job Requirements Are Not Sufficient For Duties Performed (Page 35)

Clerks are not required to have any financial expertise or knowledge of Generally Accepted Accounting Principles even though they audit Verified Inventories and Accountings. There is no formal training program for clerks with only limited training received from existing staff. In addition, clerks perform additional duties unrelated to guardianship which distracts them from their primary duties and increases the risk of errors.

The Clerks Did Not Notify the Court Regarding Accounting Discrepancies or Follow-Up with Guardians about Noted Deficiencies (Page 39)

Adequate support was not provided for numerous income, expense, and account balances reported on Accountings. For the 14 cases reviewed, approximately \$1.25 million in disbursements had no support. This included



EXECUTIVE SUMMARY

\$809,000 for living facilities, \$81,924 in medical expenses and \$370,476 in other expenses. In addition, 14 of 82 Accountings reviewed did not cover the correct period. The clerks did not ensure that the guardian complied with eight of the 19 Observations filed.

The Clerks Did Not Request Required Documentation for Trust Filings (Page 45)

For trusts established with the ward's funds, required documentation was not always filed and the clerks did not notify the Court of the incomplete documents. The clerks did not request executed trust agreements in 11 of 13 cases reviewed. In addition, none of the Annual Accountings in 10 cases we identified where trusts were established with guardianship funds included amounts spent and remaining balances.

Review and Approval of Reports Is Not Always Timely Completed (Page 49)

The Clerk is required to review reports within specific timeframes. Although a "Report of Clerk" is filed, it only indicates that documents were filed and does not assure that a review was performed. There are only limited documented procedures for the clerks to follow to ensure that reports are adequately reviewed.

The Clerks Did Not Timely Notify the Court of Delinquent Filings (Page 51)

Clerks are required to notify the Court of delinquent reports. We identified instances where Initial Inventories, Plans, and Accountings were not filed by the due date and the clerks did not notify the Court in a timely manner. Some delinquent reports were never reported to the Court. In addition, we found 29 cases with periods of inactivity ranging from one to nine years that were never reported to the Court, and therefore, were unmonitored.



EXECUTIVE SUMMARY

The Clerk Does Not Have Written Procedures for the Discharge Process and the Review of Final Documents (Page 55)

The Clerk does not have written procedures regarding the discharge process. We noted that of 48 Final Accountings reviewed, 38 did not have a docket event indicating that they were reviewed. We also noted that three of 10 Final Reports were not filed within the required 45 days after Letters of Administration were issued.

The Clerks Did Not Timely Initiate the Attorney Appointment Process for Guardian Advocate Cases (Page 58)

An attorney must be appointed for the ward within three days for all Guardian Advocate (GA) cases. The clerks did not timely initiate the attorney appointment process in 20% of the GA cases. No proposed order was docketed by the clerks in 66% of these cases. In addition, there was no evidence that an attorney was ever appointed in nine cases.

The Clerks Did Not Notify the Court When Statutory Requirements for Initial and Annual Plans Were Not Met (Page 59)

The Clerk is statutorily required to review all Initial and Annual Plans to ensure that required information is included. After reviewing 51 Plans, we determined that 12 did not meet one or more requirements and the clerks did not notify the Court. In addition, a physician's examination report dated within 90 days of the Annual Plan must be filed. Of the Plans reviewed, 24% did not include a report dated within the 90 day period.

Overall Evaluation (Page 13)

Based on the results of our testing, the Orange County Clerk of Courts needs to improve controls over their administration of the guardianship program. We noted multiple areas for improvement in the Recommendations section of this report.

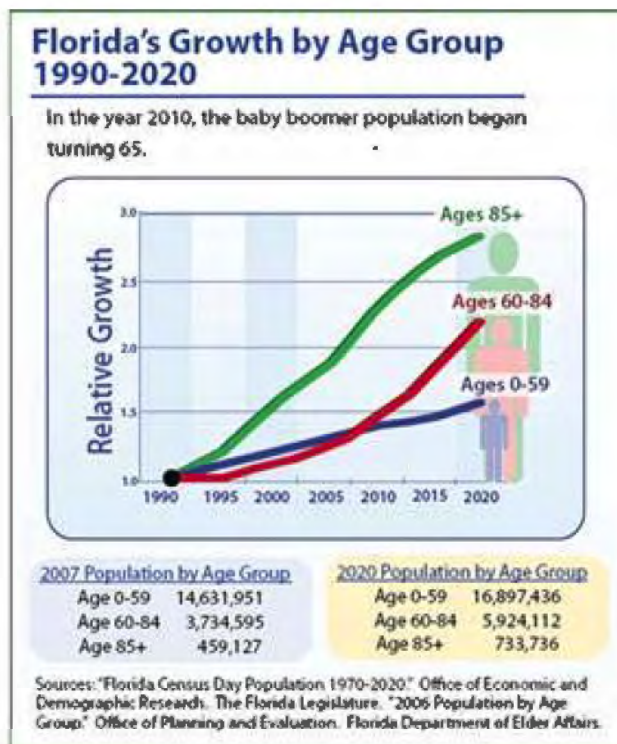
After bringing these issues to the attention of management, the Clerk advised us that it has made numerous changes to guardianship administration procedures. However, we have not evaluated these process changes.

INTRODUCTION

Background

Every year, thousands of Floridians become unable to handle their own affairs. These Floridians can lose their civil rights, the ability to make personal and medical decisions, and the authority to control their own money and assets. Each of those rights can be entrusted to a guardian by Courts through the guardianship process. Entrusting a guardian with those rights could expose the ward to exploitation and neglect if the guardian is not adequately monitored. The Clerk provides an essential service in safeguarding people under a Court ordered guardianship. The Clerk's compliance monitoring and document reviews help ensure that guardians act only in the best interest of wards.

As the "Silver Tsunami" is rapidly approaching with the increasing number of people over age 65, the number of guardianship cases is also increasing. As illustrated on the right, the fastest growing segment of the Florida population is people 85 and older. Florida has an increasing population of older citizens enjoying greater longevity.



In addition to Florida's aging population, many individuals with developmental disabilities and minors require guardianships and Court supervision.

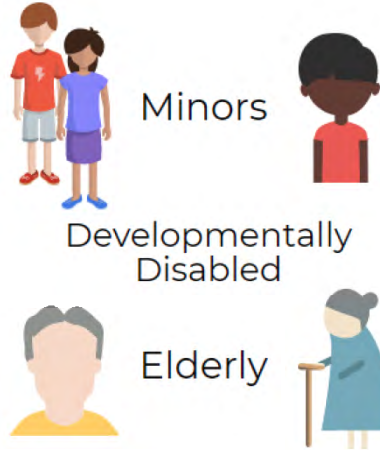
INTRODUCTION

Clerk of Courts Guardianship Role

Guardianship involves complex financial, legal, and medical considerations that make a material difference in the wards' quality of life. Effective monitoring of guardianship cases by the Clerk's Office is a critical function of each guardianship case.

The guardianship process begins when a Petition for Guardianship is filed in the ward's county of residence. If the Court determines that a potentially incapacitated adult meets the requirements (based on the recommendation of a three member examining committee) a guardian is appointed.

Citizens under guardianship include:



A guardian can be appointed for:



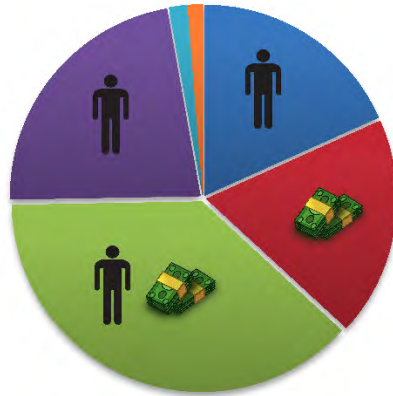
Depending on the Court's determination of the ward's needs, the Court can appoint a guardian of the person only, a guardian of the property only, or a guardian of both the person and property.

The following chart identifies the types of cases initiated in Orange County from May 2007 through April 2017.¹ During this time, 3,302 cases were initiated.

¹ Minor settlement cases were not included in the scope of this audit.

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Number of Cases By Type



- Guardianship of the Person - 604 Cases
- Guardianship of the Property - 613 Cases
- Guardianship of the Person & Property - 1250 Cases
- Guardian Advocate of the Person - 742 Cases
- Guardian Advocate of the Person & Property - 51 Cases
- Other Guardianship Type - 42

Guardianship of Person

The Clerk is required to review each Initial and Annual Plan within 30 days to ensure that the ward's needs are being addressed. This review should ensure the plan addresses:

- ✓ The medical and mental health care of the ward;
- ✓ The residence of the ward;
- ✓ Personal and social services of the ward; and,
- ✓ Annual determination of capacity and any rights that can be restored.

Florida law also requires a report from a physician who examined the ward to be submitted with the plan.

Guardianship of Property

The Clerk is required to audit the Verified Inventory (Inventory) and the Annual Accountings within 90 days. The Clerk is required to advise the Court of the results of the audit.

An **Audit** is defined as, "**systematic review of financial and all other documents** to ensure compliance with s. 744.368, rules of court, and local procedures using generally accepted accounting principles."



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Florida law details the Clerk's specific guardianship responsibilities.² In addition to being the custodian of guardianship records, the Clerk is also required to monitor active guardianships to ensure all required reports are timely filed. The Clerk is required to notify the Court when a report is not timely filed.

The Current Guardianship Environment

Wards in guardianships have often been the target of abuse by criminals and predators. There have been numerous identified instances of guardians taking advantage of these vulnerable persons. However, these issues continue; in part, because of limited resources available to monitor guardians.

During the course of this audit, we became aware of acts committed by a professional guardian in Orange County that were not in the best interest of the wards and potential violations of Florida law. We brought our concerns to the Court and law enforcement. As a result, we worked concurrently with multiple law enforcement agencies during this audit.

At the request of the Court, we conducted two separate investigations of professional guardian, Rebecca Fierle. These investigations found that the guardian had received approximately \$4 million in fees without Court approval. They also found that the guardian's hourly fees greatly exceeded amounts determined to be reasonable by the Court and that she double-billed clients for identical services and fees. The investigations also found that the guardian maintained business relationships that were not approved (or even disclosed) to the Court. This created conflicts of interest in the performance of the guardian's fiduciary duties. We also identified:

- Employees working for the professional guardian with fiduciary responsibilities that were not disclosed or had the required investigations performed;
- Prior relationships with wards that were not disclosed on the petition;
- Assets sold below value or seized because the guardian did not perform fiduciary responsibilities;
- Assets sold for less than the fair value approved by the court;
- Service providers with a conflict of interest; and,
- Failing to identify and notify next of kin.

² F.S. 744.368



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The professional guardian was removed from all cases in Orange County and the State of Florida.

The Florida Legislature passed SB 994 during the 2020 legislative session. This landmark legislation reformed Florida guardianship law. Our investigative work was referenced during committee discussions and cited in the bill's legislative analysis.

Due in part to the efforts of this office, real results have already been achieved and additional protections for vulnerable people have been enacted into Florida law.

Audit Scope

The scope of this audit was limited to the Orange County Clerk of Court's administration of the guardianship program according to Florida Statutes. The audit period was primarily January 2015 through December 2016. Some samples included additional cases initiated through July 2017.

Due to the complexity of guardianship proceedings and the number of guardianship filings, incapacity cases and minor settlement cases were excluded from testing.



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Audit Objectives

The audit objective was to determine whether the Clerk complied with the requirements of Chapter 744, Florida Statutes. Specifically, we determined whether the Clerk:

- 1) Maintains all required documentation for private and professional guardians;
- 2) Reviews Verified Inventories and Annual Accountings to identify any deficiencies;
- 3) Reviews Initial Plans and Annual Plans to identify any deficiencies;
- 4) Notifies the Court of all potential non-compliance with statutory requirements; and,
- 5) Notifies the Court of required guardianship filings that have not been timely filed.

Audit Methodology

In order to review the Clerk's administration of the guardianship program we performed the following testing:

We reviewed the monitoring process for professional and public guardians by verifying:

- 1) The professional guardian was registered with the Office of Public & Professional Guardians.
- 2) Files are maintained for all registered professional guardians to ensure they meet statutory requirements.
- 3) Copies of all required documents were filed for professional guardians and any employees.
- 4) For a sample of professional guardian cases, the active case lists on the Application for Appointment were complete.
- 5) Professional guardian names were accurately entered in the case management system.
- 6) Public Guardian filed statutorily required reports.

For new cases initiated in the audit period, we performed the following testing:

- 1) Ensured Orange County was the appropriate venue based on the wards' residence.



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- 2) Reviewed circumstances stated in the petitions to determine correct case types were established.
- 3) Verified proper consents were provided for cases involving minor wards.
- 4) Verified proposed guardians met statutory requirements prior to Letters of Guardianship (LOG) issuance.
- 5) Ensured correct filing fees were paid or an Application for Determination of Civil Indigent Status was filed and approved to waive fee.

For Guardianship of Person cases, we sampled Initial and Annual Plans to ensure:

- 1) Data entered in the case management system was accurate.
- 2) Plans covered the correct period.
- 3) All required items were completed on Plans.
- 4) A physician's report dated within 90 days of the reporting period was filed with the Annual Plans.
- 5) Plans were timely reviewed.
- 6) Timely follow-up was performed by the clerks for all reported deficiencies.

For Guardianship of Property cases, we sampled Verified Inventories and Annual Accountings to verify:

- 1) Ward and guardian information on Verified Inventory was accurate in the case management system.
- 2) All assets listed on Petitions for Guardianship were accurately included on the Verified Inventories.
- 3) Beginning balances on Schedule A were carried over from previous year's Inventory or Accounting.
- 4) Annual Accountings covered correct periods.
- 5) Appropriate fees were paid based on the reported value of assets.
- 6) All schedules were mathematically accurate.
- 7) Transactions and account balances were adequately supported.
- 8) Disbursements requiring prior Court approval were approved prior to disbursement.
- 9) Audits were timely performed.
- 10) The Court was notified of clerks' reviews and any deficiencies that were identified.
- 11) Timely follow-up was performed by the clerks for all reported deficiencies.

We sampled attorney and guardian fees paid with wards' funds to confirm:

- 1) All fees paid on the Annual Accountings were appropriately petitioned and approved prior to payment.



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- 2) Filed Invoices did not include overlapping service dates.
- 3) Invoices were mathematically accurate.
- 4) Value of the ward's property, income earned, and potential liabilities were included on the petitions.

We calculated the due dates for required filings to identify delinquent reports. For any delinquent filings, we verified the Court was notified.

We verified that docket codes and comments were recorded accurately.

We sampled discharged cases to verify all required documents were timely filed, and the audit was performed and reported to Court.

For Guardian Advocate cases, we verified that clerks initiated the attorney appointment process within three days and wards met developmental disability requirements.

Overall Evaluation

Based on the results of our testing, the Orange County Clerk of Courts needs to improve controls over their administration of the guardianship program. We noted multiple areas for improvement in the Recommendations section of this report.

After bringing these issues to the attention of management, the Clerk advised us that it has made numerous changes to guardianship administration procedures. However, we have not evaluated these process changes.

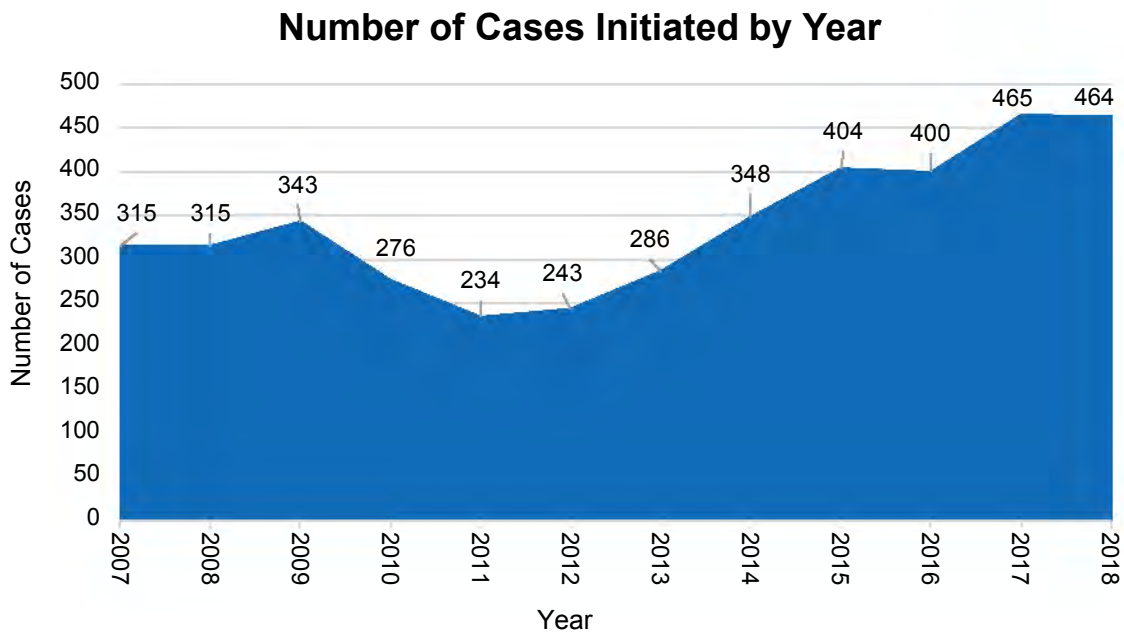


1. The Case Management System Used to Administer the Guardianship Program Should be Improved

It is essential for the Court to have complete and accurate information about guardianship cases and recorded docket activity. Technology is a vital component of guardianship monitoring. Guardianship cases are complex and require detailed system data.

According to Florida law, "Each clerk of court shall implement an electronic filing process. The purpose of the electronic filing process is to reduce judicial costs in the office of the clerk and the judiciary, increase timeliness in the processing of cases, and provide the judiciary with case-related information to allow for improved judicial case management."³

The number of guardianship cases initiated has increased since 2011.



Some guardianship cases continue for years — even decades. All this has increased the amount of effort required by the Clerk to administer guardianship

³ F.S. 28.22205



cases. Given the increasing demands on the Clerk and the Court to administer guardianship cases, it is critical that the case management system used by the Clerk and the Court function at the highest level.

Active Case Volume is Unknown

The case management system enables Clerk and Court personnel to identify the number of cases initiated every year. However, both informed us that they cannot identify the number of active cases in the system. We identified numerous unmonitored cases.⁴ Neither the Court nor the Clerk were aware of these unmonitored cases.⁵

The Clerk processed 3,302 guardianship cases between 2007 and 2017.⁶ The case status listed in the case management system is shown on the right. As noted, there are only 11 reopened cases and 241 pending cases.

Of the 241 pending cases:

- Only 40 cases had LOG issued
- 76 cases had no activity since 2015
- Of those 76 cases, 10 cases had no activity since 2011

Cases Initiated 2007 - 2017

Case Status	Number of Cases
Closed	200
Closed - SRS	385
Incoming Transferred Cases	2
Pending	241
Re-Closed	2,463
Reopened	11
Totals	3,302

It is important that this information is available to Clerk and Court personnel so that they can properly monitor cases and make decisions regarding caseload management.

⁴ Cases with no activity for years that have not been discharged

⁵ Details of cases with no activity are listed in [Recommendation 10 - Delinquent Reports](#)

⁶ Cases Initiated January 1, 2007 – May 16, 2017 excluding 494 Minor Settlement cases that were not tested as part of this audit.



Inaccurate System Data

Recording complete and accurate information in the case management system is critical for the Court to make informed decisions.⁷ The quality of system data needs to be improved. We noted numerous errors in system data. For example:

- A) There were multiple instances where the docket code used for a filing did not match the actual filing. For instance:
- Notice of Change of Address docketed as Notice of Filing Final Accounting;
 - Order for Attorney's Fees docketed as Order Approving Annual Plan Report;
 - Order for Guardian Fees docketed as Order for Attorney Fees;
 - Order Approving Initial Inventory docketed as Order Approving Initial Plan; and,
 - Inventory docketed as Acceptance. According to Florida law, the Inventory is confidential and should not be viewable by the public. However, it is currently viewable on the docket because of the error.

The case management system includes "time standards" that are system generated reminders based on the coding of documents filed. Time standards are important because they are used to calculate due dates. In order to identify documents that are not submitted by due dates, docket codes and filings must be correctly entered into the system. If not, the time standards will be incorrect and, decision makers will not get accurate and timely information about late or unfiled documents.

- B) Guardians' names were not entered accurately in the system. Accurate data would help the Court identify how many cases are assigned to a particular guardian to ensure that guardian is able to handle additional cases. For example, multiple spellings were used for the same guardian:
- Orange County's public guardian — Seniors First, Inc. — was entered in the system six different ways.
 - One guardian's name was spelled four different ways.
 - Seven other guardian's names were entered three different ways.
 - Five guardian names were spelled two different ways.

⁷ F.S. 28.211



C) Data was entered inconsistently within cases. One example of inconsistency was the coding of LOG in GA cases. These cases have unique requirements under Florida law. Of the 707 GA cases with LOG, only 62 were correctly coded. The other 645 (91%) were incorrectly coded.

The docket filings are used to ensure that required documents are timely submitted and reviewed. Accurate data is critical for effective case management. Many of these errors identified could have been prevented with adequate procedures and additional training of clerks assigned to guardianship.⁸

Judicial Access to Relevant Data

During the audit, we worked with two judges. Judges typically handle guardianship cases for a two year rotation. Experience with guardianship matters varies from judge to judge. Neither judge received information regarding the Clerk's responsibilities in this area and more specifically what the clerks' review of guardianship filings/proposed orders entailed. Due to the limitations of the case management system, one of the judges assigned to the guardianship division during the audit was unable to determine whether guardianships were active or permanently closed, as, case information cannot be easily identified. Some of the information that is available within the documents but only readily available in the Judge's spreadsheet includes:

- Date LOG was issued
- Living facility
- Date of birth
- Date of death
- Guardian appointed
- Attorney
- Date of discharge

Numerous instances are noted throughout the report where improved documentation could help eliminate inaccurate information. Given the complexity of the guardianship area, the judges and clerks should be provided full documentation of procedures performed by the clerks processing and reviewing guardianship filings. Communication of expectations between the clerks and the

⁸ Recommendation for additional training for Clerks addressed in [Recommendation 6-Audit of Verified Inventories](#)



Judge will help eliminate any misunderstandings regarding the scope and level of review performed by the clerks. During the audit, we identified multiple instances where the Court believed certain information was reviewed by the clerks; however, the clerks were unaware of those expectations.

Recommendation No. 1:

The Clerk's Office should:

- A) Implement system changes that will allow clerks and the Court to access relevant data for active cases; and
- B) Develop additional procedures documenting processes including appropriate docket codes to prevent data entry errors.

Management's Response:

Partially Concur. See [Appendix A](#) for full response.

2. The Court Should Be Notified of Professional Guardians That Do Not Meet and Maintain Statutory Requirements for Appointment

When more traditional candidates, such as family members or friends, are unwilling or unable to serve as guardians, the Court can appoint professional guardians. Professional guardians provide services to three or more wards at any one time. Professional guardians must register and maintain their registration with the Office of Public and Professional Guardians (OPPG).⁹

Suspended Professional Guardian Was Still Assigned to Five Cases

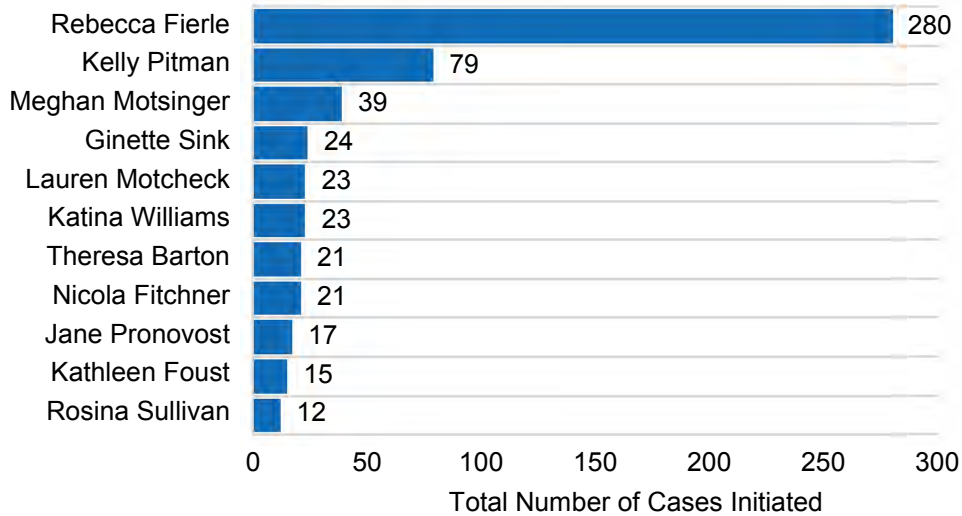
The clerks do not verify that professional guardian registrations are active with OPPG when petitions for guardianship are filed. In addition, when professional guardians are suspended, there are no procedures in place to identify and reassign their cases.

⁹ F.S. 744.2002(1)&(2)



We compiled a listing of professional guardians who had been appointed to 10 or more cases.

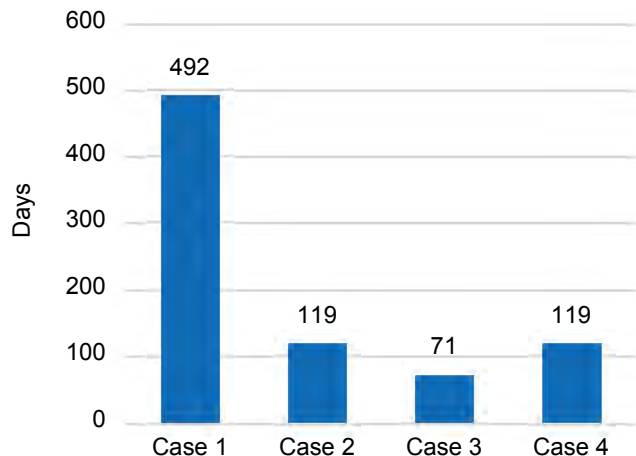
Professional Guardian Cases Initiated 2008 - 2016



We then compared that list to OPPG's registered professional guardian listing. We noted that OPPG suspended one guardian on July 6, 2016 after the guardian failed to renew his/her registration. A suspension letter from the Department of Elder Affairs was received by the Clerk on October 4, 2016 and filed in the guardian's case.

We identified five active cases still assigned to the professional guardian after she was suspended. A replacement professional guardian was not timely appointed in four of the five cases. The table on the right shows the time that passed before replacement guardians were appointed.

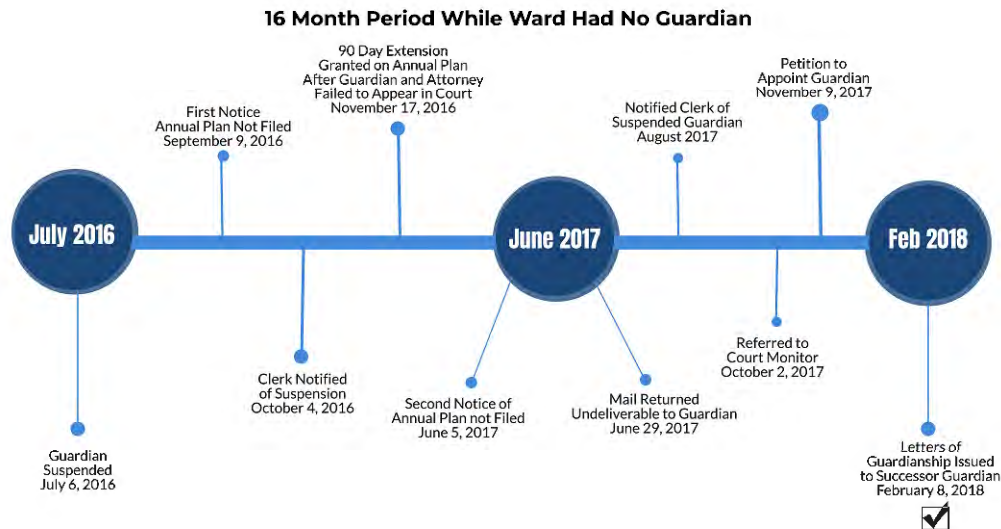
Days to Appoint New Guardian After Suspension Letter Received





Two of the five cases assigned to the suspended professional guardian were not addressed until we notified the Clerk as part of this audit.

- Case 1 not timely reassigned — On 9/9/16 the clerks issued an Order to Appear in Court on 11/16/16 to the guardian due to the guardian's failure to file the Annual Plan. Neither the guardian nor her attorney appeared in court on 06/28/17. Mail addressed to the professional guardian was returned undeliverable on 06/29/17. We notified the Clerk in August 2017 that the case had not been reassigned to a successor guardian. The replacement guardian was appointed on 02/08/18, 16 months after the Clerk was notified of the guardian's suspension. During this time, no one was looking out for the personal or financial interests of the ward.



- Case never reassigned — A replacement guardian was not required because we determined the ward passed away 564 days prior to the professional guardian's suspension. In this case, the most recent Annual Plan was filed on 01/21/14. On 01/22/15, an Order to Appear in Court on 03/11/15 was issued for not submitting the Annual Plan. Neither the professional guardian nor the attorney showed up for Court. However, they were given a 30 day extension. The ward passed away on 03/20/15 and the Clerk and the Court were unaware that the ward had died until we provided a copy of the death certificate on 12/08/17, 33 months after the ward died.

Professional Guardians Did Not File Required Documents

When professional guardians register with OPPG, they are required to provide the following documents to both OPPG and the Clerk:

- A) Credit history investigation — including payment history and credit rating for the applicant and any employees with fiduciary responsibilities. The credit investigation must be updated every two years;
- B) Level 2 criminal background investigation with electronic fingerprints for the applicant and any employees with fiduciary responsibilities. The investigation must be updated every five years; and,
- C) Proof of \$50,000 blanket fiduciary bond.

OPPG retains these documents for each professional guardian. However, the Clerk is statutorily required to maintain a file for each appointed professional guardian. The Clerk's file should include copies of credit investigations, criminal background investigations, and proof of the guardian's blanket fiduciary bond.¹⁰

In order to test whether the required documentation was submitted, we identified 24 professional guardians with at least one active Orange County case during the audit period. After reviewing the Clerk's professional guardian files, we determined that 19 of the 24 guardians failed to provide one or more statutorily required documents.



19 of 24 Professional Guardians failed to provide one or more statutorily required documents

The missing documents and items included:

- A) A credit history investigation conducted within the last two years for 11 of the 24 professional guardians and the 15 fiduciary employees working for those guardians.

¹⁰ F.S. 744.3135(1) 744.3135(3) and 744.2003(2)



- B) A criminal background investigation conducted within the last five years for 12 of 24 guardians and all 15 of their fiduciary employees.
- C) One professional guardian did not list any employees on the application. However, based on documents filed in case records, she used several employees. As such, there was no proof that credit or criminal background investigations were ever performed with respect to these employees.
- D) An active fiduciary bond of \$50,000 was not filed for 15 of 23¹¹ professional guardians. One professional guardian had an active bond but, it was issued to the guardian's business rather than the guardian individually.

The Clerk does not have procedures for professional guardian registration or verifying that documents are submitted according to the required schedules. The following table summarizes the missing documents and items by guardian.

¹¹ One professional guardian was an attorney so he/she was exempt from the bond requirement.

RECOMMENDATIONS FOR IMPROVEMENT



Guardian Number	Credit Investigation		Level 2 Criminal Background Investigation		Active Bond
	Professional Guardian	Employee(s)	Professional Guardian	Employee(s)	Professional Guardian
1	✗	✗	✗	✗	✓
2 ¹²	✓	✗	✓	✗	✗
3	✗	N/A	✗	N/A	✗
4	✓	N/A	✓	N/A	✓
5	✓	N/A	✓	N/A	✗
6	✓	N/A	✓	N/A	✗
7	✓	N/A	✗	N/A	✗
8	✗	✗	✗	✗	✗
9	✓	✗	✓	✗	✗
10	✓	✗	✓	✗	✓
11	✓	N/A	✓	N/A	✗
12	✗	✗	✗	✗	✗
13	✓	N/A	✓	N/A	✗
14	✗	N/A	✗	N/A	✗
15	✗	N/A	✓	N/A	✗
16	✓	N/A	✓	N/A	✓
17	✗	N/A	✗	N/A	N/A
18	✓	N/A	✓	N/A	✗
19	✓	N/A	✓	N/A	✗
20	✓	N/A	✓	N/A	✓
21	✓	N/A	✓	N/A	✓
22	✓	N/A	✗	N/A	✓
23	✓	N/A	✓	N/A	✓
24	✗	N/A	✗	N/A	✗

¹² No employees were listed on the application. However, we determined that the professional guardian had numerous employees.



Professional Guardian Applications Are Not Accurate

In addition to the above requirements, professional guardians are required to file an Application for Appointment as Guardian (application) in each case.¹³ The application must list all cases currently and previously assigned to the guardian. We reviewed seven applications submitted by three professional guardians during the audit period and noted the following:

- A) One application stated that a list of active wards was attached. However, the list was not attached.
- B) Another application did not include all active Orange County cases (or cases from other counties) that were assigned to the professional guardian.
- C) Five applications reviewed were submitted by the same professional guardian. We analyzed the cases listed on one of the applications and found that over 70 assigned cases were omitted from the list. In addition, cases were listed with incorrect names and, case numbers were listed multiple times with different names.

Although not specifically required by Florida Statute, the clerks do not review filed applications. If the clerks reviewed the lists of active cases reported by professional guardians, it would assist the Court in verifying the accuracy of the application. Additionally, if the Court had an accurate list of cases, it could consider the number of cases already assigned to a professional guardian before assigning additional cases.

Recommendation No. 2:

The Clerk should document and implement procedures for reviewing professional guardian files annually to verify that all required documents are filed and notify the Court of any deficiencies. The procedures should also ensure that clerks are notifying the Court of any suspended guardians. The Clerk should implement procedures to review professional guardian applications.

¹³ F.S. 744.3125



Management's Response:

Do Not Concur. See [Appendix A](#) for full response.

3. The Court Should Be Notified of Non-Professional Guardians That Do Not Meet Statutory Requirements Before Letters of Guardianship are Issued

When a Petition for Guardianship is filed, the Clerk is responsible for reviewing the petition and documentation to ensure the proposed guardian has submitted all required documents. Required documents include:

- Application for appointment;¹⁴
- Credit history investigation;¹⁵
- Level 2 criminal background investigation;¹⁶
- Guardian's oath to faithfully perform guardian duties;¹⁷ and
- Proof of bond for all Guardianship of Property cases.¹⁸

Additionally, the appointed guardian must complete eight hours of guardianship training within four months after the issuance of LOG.¹⁹

The clerks report any deficiencies identified on an Observation Sheet (Observation) filed in the case file. The petitioner is required to respond to the Observation by providing appropriate documentation to the clerks.

In order to test this process, we selected a sample of 12 non-professional guardians²⁰ whose cases were initiated during our audit period. We reviewed the documents submitted to determine whether the guardian met the statutory requirements before the LOGs were issued. We identified the following instances where an Observation hadn't been filed by the clerks:

¹⁴ F.S. 744.3125

¹⁵ F.S. 744.3135

¹⁶ F.S. 744.3135

¹⁷ F.S. 744.347

¹⁸ F.S. 744.351

¹⁹ F.S. 744.3145(2)

²⁰ 11 guardianship cases were reviewed- One of the cases had two guardians.



- A) Credit history investigation for one guardian hadn't been provided.
- B) Oaths for one permanent guardian and two emergency temporary guardians hadn't been signed.²¹
- C) Five guardians did not complete the required guardianship training (or receive a waiver) within four months after the issuance of their LOGs. Two of the five guardians satisfied the training requirement after the four-month period expired. The other three never completed the training.
- D) Two guardians who would have been required to file bonds did not file bonds (or receive a waiver of bond from the Court). One ward had cash assets of \$24,530. The other ward had cash assets of \$47,153. The guardian's bond must be an amount greater than the cash on hand. Florida law requires the guardian to file the bond, "before exercising his or her authority as guardian."²² However, the clerks do not verify the required bonds were filed until after the Inventory is filed.

Minor Guardianships

In addition to the requirements listed above, guardians of minors are required to provide consent from the wards' parent(s).²³ If the petitioner is unable to locate the parents, the petitioner must file a Proof of Informal Notice as evidence that an adequate search for the natural parent(s) was conducted. If either (or both) of the parents are deceased, the petitioner should file a death certificate as evidence.

During our review of six minor guardianship cases, we noted the following:

- A) A mother filed a petition stating that she was the only living parent of the minor. The clerks filed an Observation requesting the death certificate for the ward's father. However, the petitioner never responded to the Observation or provided a copy. The clerks did not follow-up on the Observation to ensure the missing death certificate had been filed or notify the Court of non-compliance.
- B) A petition was filed for a minor whose maternal grandfather passed away. Although the mother's consent was provided, there was no evidence that the father either consented to the guardianship or was deceased.

²¹ Two emergency temporary guardianship cases were reviewed in addition to the sample of 12 permanent guardians

²² F.S. 744.351

²³ F.S. 744.3371(2)



- C) Another minor moved from Texas after the ward's step-grandfather died. The petition stated that the mother was incapacitated and had been institutionalized since the ward's birth. However, the documentation included a guardianship consent form signed by the incapacitated mother. The clerks did not question how an incapacitated person could consent to the guardianship. In addition, the clerks filed an Observation requesting the father's consent or proof of his death. The petitioner never responded to the Observation or provided a copy. The clerks did not follow-up on the Observation to ensure that the missing documents had been filed or notify the Court of non-compliance.

In addition, the clerks did not obtain evidence confirming that the persons reported to be the parents were, in fact, the wards' biological parents or have legal custody of the wards. Although not required by statute, the minor's birth certificate or applicable legal documents would confirm the identity of the parties required to provide consent.

The clerks should notify the Court whenever required documents are not filed. Otherwise, individuals could obtain guardianship of a minor without the consent of the parents or, individuals with legal custody of the ward.

Recommendation No. 3:

The Clerk should verify and notify the Court of any deficiencies regarding the following requirements:

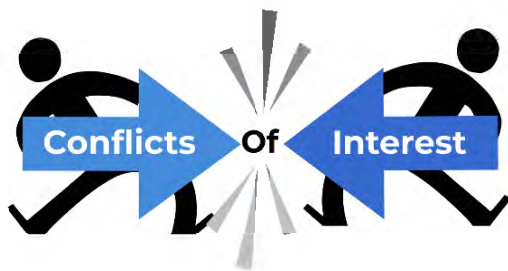
- A) Statutorily required documents are submitted by the potential guardian prior to Letters of Guardianship being issued;
 - B) Bond requirements are met before the Letters of Guardianship are issued;
 - C) Guardians complete required training within four months after appointment;
 - D) Birth Certificates are filed for all minor guardianships to verify consent is obtained from the appropriate parties;
 - E) Guardianship cases involving minors include the consent of all parents or individuals who have legal custody; and,
 - F) Appropriate follow-up actions are taken for all missing documents identified on Observations.
-

Management's Response:

Do Not Concur. See [Appendix A](#) for full response.

4. Controls Should Be Implemented to Prevent Conflicts of Interest Within Guardianship Cases

To help ensure the integrity of the guardianship process, guardians must avoid even the appearance of a conflict of interest or impropriety when dealing with the needs of the ward. Conflicts of interest arise when the guardian has personal or business interests that could be adverse to the ward's best interests.



Conflicts of interest can arise in a multitude of ways in the guardianship process. For example, conflicts of interest can occur if related parties are selected to provide services in the same case. These conflicting roles could include the guardian, examining committee members, the ward's attorney, and the guardian's

attorney. The Clerk does not select guardians or guardians' attorneys. However, wards' attorneys and examining committee members are selected by the clerks.

Conflicts Relating to Attorneys and Examination Committee Members

Examining committee members are a vital part of the guardianship process. Each member provides a report evaluating an alleged incapacitated person's ability to retain his or her rights. The Court uses these reports to make capacity and guardianship decisions. According to Florida law, "Members of the examining committee may not be related to or associated with one another, with the petitioner, with counsel for the petitioner or the proposed guardian, or with the person alleged to be totally or partially incapacitated."²⁴

²⁴ F.S. 744.331(3)(a)



We did not review examination reports as part of the audit. However, we identified the following potential conflicts of interest:

- A) An examining committee member was previously a member of a law firm where his spouse, daughter, and son-in-law are currently partners. We identified an examining committee report where this individual examined a ward who was determined to be incapacitated. A professional guardian was appointed for this ward. The professional guardian had been represented by the same attorney (the examining committee member's son-in-law) in 275 cases between 2007 and 2017. A different attorney represented the guardian in this case. However, the significant number of cases where the professional guardian had hired this law firm indicated a relationship between the guardian and related attorney.
- B) In another case, the attorney representing the guardian was the son-in-law of the attorney representing the ward. One of the major procedural safeguards incorporated into the guardianship process is the appointment of an independent attorney to protect the interests of the ward.

Related Party Service Providers

A guardian should also be independent of individuals who provide services to the guardianship and, make decisions that are in the ward's best interests. If the guardian has a personal relationship with service providers involved in the guardianship case, the guardian could have financial motives to make decisions that are contrary to the wards' best interests.²⁵

We identified the following potential conflicts of interest regarding guardianships based on our limited knowledge of relationships between guardians, attorneys, wards and other parties:

- A) A professional guardian's husband is the executive director of a Florida not for profit corporation (NFPC) that "provides administration and trustee services for pooled special needs trusts." The NFPC's filed IRS Form 990 lists the professional guardian's corporation as an interested person that had transactions with the NFPC for "Guard Svs."
- B) We identified three cases where the professional guardian noted above transferred wards' assets to a pooled trust administered by this NFPC. Only one of the three included an executed Joinder Agreement. The one Joinder

²⁵ F.S. 744.446



- Agreement provided specified that all remaining funds of the ward held by the trust at the ward's death will be retained by the trust. The guardian filed documents with the Court stating that Annual Accountings did not need to be filed with the Court because all funds were controlled by a trust that she did not control. However, the NFPC managing the trust that held the ward's assets was controlled by the guardian's husband.
- C) A professional guardian hired an individual to perform services in numerous guardianship cases where the guardian also served as guardian for the service provider's mother. Additionally, the guardian (as trustee) co-owns real estate with the service provider. This relationship was not disclosed to the Court for evaluation to ensure any transactions were in the wards' best interests. In addition to payments for services, the service provider also purchased a ward's vehicle for less than the value approved by the Court.
 - D) A professional guardian paid for vehicle repairs in multiple cases at a business owned by the guardian's father. The relationship to the owner was not disclosed to the Court to ensure competitive pricing was obtained.
 - E) Assets owned by a ward were sold to an employee of the professional guardian.

During our initial audit fieldwork, the clerks informed us that they were aware of the related party transactions and relationships. The clerks attempt to monitor these relationships when assigning parties. Although the clerks will not be able to identify all conflicts of interest, any conflicts identified should be documented and reported to the Court. Although documenting the conflicts is not required by Florida law, these related parties should be documented to ensure that the Court and all employees assigned to review guardianship filings are aware of potential conflicts.

Recommendation No. 4:

The Clerk should develop and implement guardianship and incapacity procedures to document identified conflicts of interest. This should include a list of potential conflicts that clerks can reference while administering assigned cases. Procedures should also be implemented for the clerks to notify the Court when conflicts of interest have been identified.



Management's Response:

Do Not Concur. See [Appendix A](#) for full response.

5. Attorney and Guardian Fees Should Be Adequately Reviewed

Guardians are required to be represented by an attorney in all guardianship cases, except GA cases. Guardians and attorneys may petition the Court for reasonable fees and expenses to be paid from wards' assets. The petition should be accompanied by an itemized description of the services performed for the fees. The Court should consider a number of factors in reviewing the petition including hours required, fees customarily charged, and the results obtained.²⁶ The Court should also consider the value of the ward's property, income earned, and potential liabilities assumed by the guardian when evaluating fees.²⁷

The Clerk currently has written procedures outlining the attorney and guardian fee petition review process. In addition, Court Administration provided the Clerk with further guidelines for guardian and attorney fees. The guidelines identify information required on all petitions. They also specify charges that are not reimbursable or that may be reduced.

We reviewed 71 attorney and 40 guardian fee petitions as part of the audit. We also reviewed Annual Accountings associated with 31 cases to identify fee payments paid from wards' funds without Court approval.

Attorney Fees Paid without Approval

Attorney fees were paid without Court approval in nine of the 31 cases reviewed. The Annual Accountings listed payments totaling \$43,728 for 38 invoices that were not approved. In addition, attorney fees were paid from the ward's funds in four cases where there was no petition and no invoice supporting the fees.

²⁶ F.S. 744.108

²⁷ F.S. 744.108(2)(e)



Case	No Petition Filed but Invoices Submitted with Accounting	Amount	No Petition or Detailed Invoices	Amount
1	18	\$6,675	4	\$9,371
2	N/A	\$0	2	\$1,695
3	9	\$32,654	1	\$2,690
4	N/A	\$0	6	\$2,409
5	1	\$1,474	N/A	\$0
6	1	\$100	N/A	\$0
7	4	\$1,447	N/A	\$0
8	2	\$132	N/A	\$0
9	3	\$1,246	N/A	\$0
Total	38	\$43,728	13	\$16,165

One Annual Accounting listed above included a payment to an attorney with the comment, “attorney’s fees court order dated 01/14/13” for \$5,413. However, the attorney was not listed as attorney of record in the case. There was also no petition or court order supporting the fees.

Inappropriate payments could be made from guardianship assets if fees for services are not properly petitioned and reviewed by the clerks.

Clerk’s Review of Petitions

The Court is required to consider several criteria when reviewing fee petitions. Some information is submitted on the petition. However, other criteria must be obtained from other sources within the case file. For example, the following are rarely provided on fee petitions:

- 93% of petitions reviewed did not include the nature and value of the ward’s property; and,
- None of the petitions reviewed included income earned or potential liabilities.

The Clerks’ fee petition review is currently not documented. Developing a standard petition review form would help ensure that all necessary information is reviewed by the clerks and available to the Court.

Professional Guardian Fees Paid Outside of Guardianship Process

Professional guardian fees should be reported to the Court for approval. They should be paid at the rate customarily charged in Orange County for similar services. In an investigation that we released on September 10, 2019, we noted that a professional guardian failed to report guardianship fees that she received from a local hospital to the Court. We also noted that the rate she charged for these fees ranged from \$120 - \$130 per hour while the approved Orange County guardian fee was \$62 - \$64 per hour. The total fees paid to her outside of the guardianship process for guardianship services from one hospital group was over \$2.5 million.

This guardian did not notify the Court that she was receiving these fees. However, there were indications that should have alerted the clerks reviewing her files that she was receiving fees from other source(s). For example:

- The guardian never submitted fee petitions in 204 of her property guardianship cases. It is not common for property guardians to work for free.²⁸ Additional reporting could have identified cases without fee petitions as an indicator that fees were being paid from another source.
- Invoices submitted to the Clerk were actually addressed to a hospital.
- The hourly rates on some invoices submitted to the Clerk were almost double the approved Orange County hourly rate. The clerks filed Observations for invoices we reviewed identifying the billing errors. However, this reoccurring billing error could have been used to identify recurring billing errors with the same professional guardian.

The guardian was paid by the hospital in 117 of the 204 cases. This indicates there may be another 87 cases where the guardian received fees from other sources that have not been identified. That said, we identified one case where \$53,988 in guardian fees were paid to a guardian from a trust account. Although trust accounting information is generally not submitted with Accountings, guardian fee payments from trust accounts should still be submitted to the Court for approval.

²⁸ Only six guardians in Orange County had 10 or more cases without fee petitions since 2007. The guardian with the next highest number of property cases without fees only had 30 cases with no fee petitions.



Recommendation No 5:

The Clerk Should:

- A) Consider developing a guardian and attorney fee petition checklist to ensure required information is submitted with the petition and additional data necessary for judicial review is readily available to the Court. The checklist could also be used to document petition review;
- B) Notify the Court if the hourly rate charged by guardians exceeds the maximum rate; and
- C) Ensure that all attorney and guardian fee related disbursements listed in the Accountings are reviewed and any fees not approved by the Court should be reported to the Court.

Management's Response:

Partially Concur. See [Appendix A](#) for full response.

6. The Clerk Should Ensure an Adequate Audit of Inventories is Performed and Issues Identified are Corrected

A guardian of property must file an Inventory within 60 days after the LOG were issued. The Inventory must include:²⁹

- All property of the ward, real and personal, that has come into the guardian's possession or knowledge, including a statement of all encumbrances, liens, and other secured claims on any item, any claims against the property, any cause of action accruing to the ward, and any trusts of which the ward is a beneficiary;
- The location of the real and personal property; and,
- A description of all sources of income, including, without limitation, Social Security benefits and pensions.

The Inventory provides an initial snapshot of the ward's financial affairs at the time the guardian is appointed. Florida law only requires the guardian to maintain

²⁹ F.S. 744.365; Rule 5.620(a)



records for three years after discharge and does not require support to be submitted with the Inventory. However, Orange County guardians are currently required to submit documentation verifying all account balances on the Inventory. All items listed on the Inventory should be substantiated with statements from the corresponding financial institutions or agencies verifying the amounts reported. The statement(s) should include the LOG issuance date to verify the balances on that date.

One of the Clerk's duties is to audit Inventories and Annual Accountings.

An **Audit** is defined as, "**systematic review of financial and all other documents** to ensure compliance with s. 744.368, rules of court, and local procedures using **generally accepted accounting principles.**"

Clerk's Assigned Duties and Training

A report based on a survey of judges and court administrators found that guardianship monitoring was often neglected due to a shortage of staff and resources.³⁰ Although the study was performed ten years ago, the issues are still relevant today. According to the National Association for Court Management, "most states and jurisdictions have not devoted sufficient resources to hire and train court staff to actively monitor guardianship cases."³¹

During the audit, four Deputy Clerks from the Probate Mental Health Division were assigned to monitor guardianships. In addition to their guardianship duties, these four clerks were included in the phone rotation and answered questions at the front counter. We also observed them performing other unrelated duties, as needed, including foreign language translation and performing weddings. These distractions while auditing filings increases the risk of errors.

³⁰ National Center for State Courts. 2010. Center for Elders and the Courts: *Adult Guardianship Court Data and Issues*: Brenda K. Uekert, PhD.

³¹ National Association for Court Management: *Adult Guardianship Guide*. Available at http://nacmnet.org/sites/default/files/publications/AdultGuardianshipGuide_withCover.pdf



Based on the Deputy Clerk job description, the position requires the following skills:

- High school diploma or equivalent, one (1) year general office experience and effective verbal and written communication skills are required. Must be able to pass general clerical testing.
- The position requires the ability to work with a personal computer in a Windows environment.
- The ability to utilize word processing, spreadsheet and e-mail applications is necessary. Use of specified computer applications to include case management and data entry programs may be required.
- Operate a variety of office equipment, including, but not limited to, computer keyboard, scanning equipment, printer, fax machine, copying machine, telephones, typewriter, calculator, etc.

The job description does not require any financial expertise or knowledge of generally accepted accounting principles. Based on this definition of audit noted above, some financial training and expertise would be required to perform job duties. The clerks do not receive specialized training to administer guardianship cases. Instead, all training for clerks is currently performed internally by existing staff. Without formalized training programs, training could be inconsistent and result in gaps with the skills and knowledge necessary to perform the job duties.

Assets Were Not Included on the Inventory in Two Cases

We reviewed a sample of 36 Inventories to ensure they were timely filed, identified assets were accurately reported, and adequate support was provided to verify balances.

The Clerk is required to audit the Inventory within 90 days after filing and advise the Court of the results.³² In two cases, the clerks did not report that accounts listed on the petition were not included on the Inventory. The Inventory included a statement from the guardian in one of the two cases stating that they never took possession of any assets because the ward passed away within nine days. However, the guardian is required to report and amend, if necessary, any accounts and balances they have knowledge of after the LOG is issued. The guardian had access to all accounts and should provide an accurate accounting of the balances on the date the LOG was issued.

³² F.S. 744.368(3)

In an additional case, the guardian reported that the ward had no assets or income. However, the case involved a qualified income trust established by the guardian's attorney and approved by the Court prior to filing the Inventory. The trust and income received were not reported on the Inventory. The clerks that reviewed the Inventory did not file an Observation notifying the Court of the issue.

Inadequate Support Provided

Of the 36 Inventories reviewed, only 16 had income or accounts that required supporting documentation to confirm the amounts. Of the 16 Inventories that required support, eight had inadequate support. No support was submitted for one or more income and/or property items listed for seven of the Inventories.



Although some support was included with one Inventory, the account balances could not be verified because the period included in the support did not include the date the LOG was issued. Specifically, LOG issued 06/01/16 — A statement showed a balance of \$28,218 on 07/06/16. Therefore, the guardian had access to the funds for a five week period prior to the date reported on the statement. The guardian could have withdrawn funds during that period prior to the first statement.

Deficiencies Identified by the Clerks Were Not Resolved in a Timely Manner

The clerks report deficiencies identified in their Inventory reviews by issuing Observations. The Observations are emailed to the guardians' attorneys specifying deadlines to address any deficiencies. The Observations are then attached to a proposed Order Approving Inventory that the clerks prepare for the judge's review. The proposed orders are placed in a filing cabinet for the 30 day objection period. The manual process does not alert clerks of unresolved



Observations after the due date. After the due date, graduated sanctions should be initiated.

The clerks filed nine Observations with respect to the 36 Inventories that we reviewed. Three observations related to the same case. After reviewing the documents subsequently filed by the guardians, we found that the clerks did not adequately follow-up on seven of the nine Observations to ensure compliance. Details on four of the seven outstanding Observations are listed below:

- A) In the first case, three separate Observations were filed regarding the Inventory and the amended Inventory:
- The first Observation was filed on 08/26/16—requesting documentation for two accounts.
 - The second Observation was filed five months later on 02/17/17. It requested an amended Inventory to include additional accounts that were not included on the original Inventory. The issue from the first Observation was included again in this Observation.
 - The third Observation was filed on 05/02/17 for the documents requested in the first Observation. Those documents were originally due nine months earlier. No additional enforcement procedures were utilized. Documentation for one account was provided on 01/11/18—sixteen months after the due date. Support for the other account was never provided.
- B) Another case involved an Observation requiring correction of seven items. Only four items were ever corrected. The other three items were never corrected. The uncorrected items included the lack of documentation for a \$25,000 withdrawal and one account with a \$100,000 balance.

Recommendation No. 6:

The Clerk should:

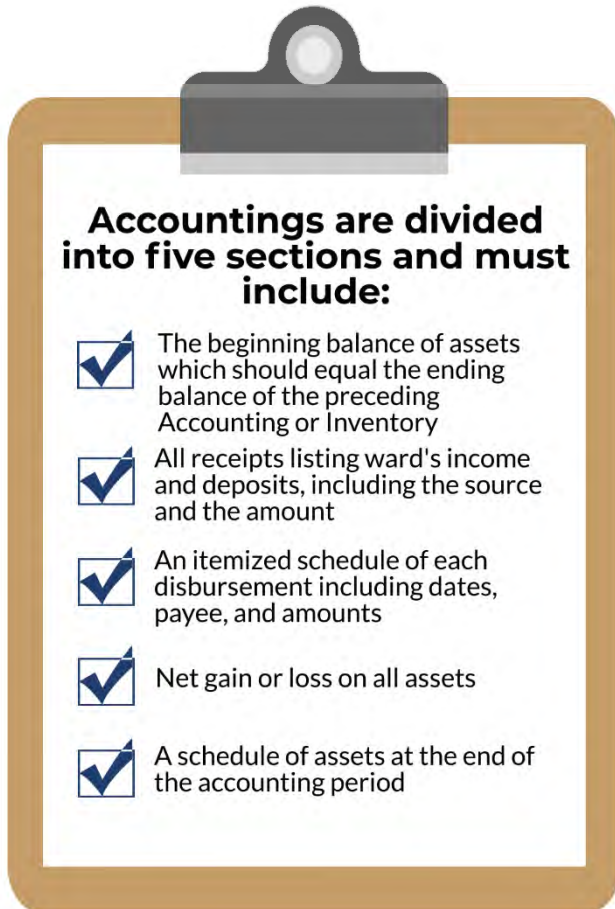
- A) Develop and implement procedures documenting the items that should be reviewed as part of the audit of Inventories. These procedures should include required documentation, support criteria, and verification procedures;
- B) Develop systematic monitoring of deficiencies noted to ensure guardians comply with filing requirements; and,
- C) Develop a formal training program for Deputy Clerks assigned to guardianship that includes financial and guardianship specific training.
-

Management's Response:

Partially Concur. See [Appendix A](#) for full response.

7. The Procedures for Auditing Annual Accountings Should be Improved

Guardians of property are required to file an Annual Accounting every year. The Accounting provides a reconciliation of the ward's assets during the year. It shows the assets the ward owns, plus all income and disbursements during the year.³³



We selected a sample of 33 property guardianship cases. From these cases, we reviewed 84 Accountings to ensure all receipts, disbursements, and capital transactions were accurately reported and adequately supported.

In order to support the disbursements, guardians are required to obtain a receipt or other proof of payment for all expenditures made on the ward's behalf. The support must be kept for three years after the guardian has been discharged. Although Florida law does not require support to be submitted with the Accountings, Orange County guardians are currently required to submit all bank statements and receipts for the entire accounting period.

³³ F.S. 744.3678



After the Accountings are submitted, the Clerk is required to audit the Accountings within 90 days and report the findings to the Court.

The clerks report identified deficiencies by issuing Observations. The Observations are emailed to the guardians' attorneys specifying deadlines to address any deficiencies. However, after Observations are filed, there are no systematic controls to alert the clerks of any Observations that remain unresolved after the due date. After the due date, graduated sanctions should be initiated. The clerks didn't file Observations for any of the deficiencies identified in this section except those in the Unresolved Observations section below.

Schedule A - Income Discrepancies

According to the Clerk's operating procedures, all income items listed on the Accounting should be compared to the prior Inventory or Accounting. Each entry is also traced to supporting statements or deposit slips. We reviewed 52 Accountings that included income requiring documentary support. The following are examples of income reporting issues that we identified that were not reported to the Court:

- A) In one case, \$21,205 in deposits were listed on the bank statements but were not listed on the Accounting. Of the \$21,205, the guardian's attorney stated that \$9,000 was deposited in error because the guardian deposited her personal funds in the ward's account. The remaining \$12,205 remains unexplained.
- B) The Inventory in another case reported that the ward received monthly Social Security and pension income totaling \$988 per month. The first and second Annual Accountings reported no income. Instead, they stated that all income went to care for the ward. The third Annual Accounting reported one month's income of \$988 and no other income. The fifth Accounting covered three years — two years of which were delinquent. It only reported income of \$11,856; one year of income-not three. In total, it appears that there was over \$58,000 in income that was not reported on the Accountings or deposited in the ward's bank account.

C) Twenty-nine of 52 Accountings (56%) did not include support for all receipts listed on the Accountings. The unsupported deposit amounts included Social Security payments which should be a consistent monthly amount. However, some of the Accountings included Social Security deposits that varied by month. In addition, some of the Social Security payments were deposited by the guardian rather than EFT so the actual amount received cannot be confirmed.



Schedule B Disbursement Discrepancies

Schedule B on the Annual Accounting is used to report disbursements from the ward's assets during the accounting period. According to the Clerk's operating procedures, each disbursement should be compared to the prior year amounts and verified with orders approved by the Court, if applicable. Finally, the disbursements should be compared to the bank statements and receipts attached as support. The following are examples of disbursement issues that we identified that were not reported to the Court:

- A) In one case, five cash withdrawals totaling \$914 were listed on the bank statements. The guardian stated that the withdrawals occurred before she had control of the assets. However, the withdrawals all occurred after LOG issuance. The same Accounting listed over \$128 in bank fees for an account with a balance of less than \$1,400. The reported bank fees mistakenly included a \$67.25 charge for bank fees. This amount was actually a check written according to the bank statement.
- B) Another case showed over \$3,000 in moving and storage fees included on five Annual Accountings. However, there were no assets listed on the Inventory or Accountings.
- C) An Annual Accounting omitted approximately \$20,000 worth of payments or withdrawals listed on the bank statements with no support. However, a note was included on the Accounting that "the Guardian is responsible for over \$2,900 in disbursements that were to be offset against Guardian Fees to be approved by the Court." However, the fees were never offset and the amount was never repaid.



- D) The Accountings for two other wards only listed generic descriptions for disbursements. The first six Accountings, totaling over \$73,000, stated that Social Security income received was being disbursed in an amount equal to that income. In the second case, total monthly disbursements exceeding \$30,000 were listed on eight Accountings as "Care and Maintenance of Ward." However, no other description or support was provided.

Living Facility and Medical Expense Disbursements

In addition to the disbursement issues identified above, we noted two issues applicable to many of the property guardian cases. Currently, the Clerk does not require documentation for any fees paid to living facilities or medical expenses—regardless of amount.

After reviewing the 26 Accountings with living facility expenses, we identified numerous potential problems with payments to living facilities. However, we are unable to verify the payment information because no support is provided.

Examples from three cases were:

- A) The amounts paid monthly varied greatly for the same ward from month to month. For example, three Accountings listed disbursements ranging from \$565 to \$3,000 monthly.
- B) Accounting where it appeared the living facility was paid multiple times for the same month —three times in one month.
- C) Another Accounting listed a \$15,000 payment to a living facility without adequate documentation. After reviewing the bank statements, the only transaction occurring close to the date and amount was a cash withdrawal of \$16,000.

The Clerk's procedures also do not require documentation for medical expenses. During our review of the invoices paid by AdventHealth to one professional guardian, we identified five checks totaling \$41,716 that were paid to AdventHealth for reimbursement according to the support provided by AdventHealth. We reviewed the Annual Accountings of the wards associated with four of the five checks and found that the wards' funds were used to reimburse AdventHealth. The other check was paid from the ward's trust account. The Accounting entries listed Florida Hospital Medical as the payee. The clerks didn't require any support because the amounts appeared to be related to medical expenses.



The ward's living and medical expenses are typically the largest expenses reported on Annual Accountings. If receipts are not provided, there is no assurance that the largest amounts paid represent expenses for the benefit of the ward. The total amount of unsupported expenses related to living facilities from the 14 cases we reviewed totaled over \$809,000. Additionally, \$81,924 was spent for medical expenses.

More than
\$1.25 Million
in unsupported
expenses

In addition to expenses for living facilities and medical expenses, we identified \$370,426 in other expenses without support. The total amount of unsupported expenses for these 14 cases exceeded \$1.25 million.

Schedule D-Unsupported Account Balances

Schedule D lists account balances at the end of the reporting period. According to the Clerk's operating procedures, ending asset balances should be traced to support filed and the clerks should "reconcile each asset independently." Of the 18 property guardianship cases reviewed with a Schedule D, we identified issues with the support or reported balances in nine cases (50%). The issues identified included:

- A) Preneed funeral expenses must be approved by the Court before purchase. Once purchased, the preneed funeral expenses become an asset of the ward and should be listed at the contract purchase price. One guardian failed to obtain Court approval prior to purchasing a funeral contract. Some cases list the funeral contracts at \$0 or \$1 instead of the purchase price. We also identified multiple instances where the cost estimate was used to obtain Court approval and the executed contract was never provided to substantiate the amount paid.
- B) No support was filed to verify the ending account balances in two cases. An additional two cases included support but the amounts reported did not match the amounts on the supporting documentation.
- C) The carrying value of a trust established within the guardianship should be the current value. We identified three cases where the trust account was listed at \$1 rather than the current value. No statements were submitted to verify the trust value or support any disbursements.



Gaps in Reporting Periods

Guardianship accounting periods should cover the year beginning with the date of LOG issuance.

- A) Fourteen of the 82 Accountings did not cover the correct periods. One Accounting ran from March 23 through March 1. The ward's next Accounting ran from May 1 through April 30. As a result, two months were not reported.
- B) Two of the Accountings for different wards covered periods ending before the LOGs of the successor guardian were issued. This resulted in reporting gaps.

In addition, we identified two cases with no transactions listed for periods of five months or longer. Both wards had the same professional guardian.

- A) One Accounting did not list any activity from May 28 through December 16. Social Security Income was not included from June through November. The guardianship bank account was not opened until December 2 although the reporting period began on May 28. The records don't show what happened with the Social Security income from June to November.
- B) The other Accounting also failed to list any activity for over five months. The guardianship bank account was closed in November and was not reopened until the following June. Living facility payments and Social Security income were listed before and after the gap. However, there is no record showing what happened to any income or expenses during the gap period.

Unresolved Observations

After reviewing Accountings, the clerks prepare Observations to identify any deficiencies that need to be corrected. We identified 19 Observations that the clerks prepared based on their review of the 84 Accountings. The clerks did not follow-up with the guardians in 42% (eight of 19) of delinquent, uncorrected Observations. Some of the uncorrected Observations in three separate cases included:

- A) Monthly income was listed on the Inventory. However, the income was never reported on an Accounting or deposited in the ward's bank account. This issue was reported by the clerks the first year. However, the guardian never responded and no action was taken by the clerks in any of the following seven years.



- B) A request for confirmation of pension receipts because only one payment was listed on the Accounting. The guardian responded with a letter addressed to the pension company, but there was no follow-up. Support for the pension income was never filed. The same Observation requested support for a credit card transaction and insurance and grocery purchases. These were also never provided to the clerks.
- C) Bank statements for May 7 through March 1 were missing and the ending balances could not be verified. The ending balance was reported as \$0 for total assets. However, we noted a CD and money market account that the ward owned and should have been included.

In order to reduce the risk of guardianship misappropriation, the Clerk should audit each accounting to ensure all support is filed to verify disbursements, receipts, and account balances reported on each Accounting.

Recommendation No. 7:

The Clerk should:

- A) Consider developing standardized forms to document the clerks' review of Annual Accountings to ensure consistency;
- B) Ensure all Accountings are reviewed and the Court is notified of any missing support and/or errors in the Accountings; and,
- C) Develop systematic monitoring of Observations to ensure guardians comply with filing requirements.

Management's Response:

Concur. See [Appendix A](#) for full response.

8. Trust Accountings and Other Trust Documentation Should be Regularly Reviewed to Ensure Accuracy and Compliance with the Law

Wards and guardians establish trusts for many reasons. Some trusts are established prior to guardianship. Some are established during a guardianship.



If a trust is established prior to guardianship and the trustee is not the guardian, the trust's value is listed as \$1 on the Inventory. Expenses and income of these trusts are not reported to or monitored by the Court. However, expenses and income of trusts established with the ward's assets after LOG issuance should be reported in the Annual Accountings.

Adequate Documentation for Trusts Established by Guardians

A guardian must obtain Court approval to establish a trust with a ward's guardianship assets.³⁴ A copy of the completed trust agreement (and any Joinder Agreements) should be filed with the petition.³⁵ After Court approval, an executed copy of any agreements should be filed.

Although the clerks do not typically have the legal expertise to evaluate trust agreements or Joinder Agreements, they should ensure that completed agreements are filed with the petition. We found that in 11 of 13 cases reviewed with Court approved trusts, only a blank agreement was filed. The clerks did not file an Observation requesting a completed copy of the agreements.

We reviewed two cases where the same professional guardian was appointed for both a father and his disabled daughter. The guardian petitioned the Court to divide over \$169,000 in assets on a 70%/30% basis between the father and daughter and then establish separate trusts for each ward to hold the funds.

The petition for the father's guardianship specified that when the father dies, "trust assets will pour over into his disabled daughter's pooled trust." An executed Joinder Agreement was never filed that would specify where the father's trust's assets would be distributed after death. The father's funds were supposed to be deposited in the related party trust. However, trust Accountings were never filed to confirm that his disabled daughter's trust ever received the funds.

³⁴ F.S. 744.441

³⁵ Some trust agreements are pooled trust agreements where a number of different people participate in the trust by pooling their assets. A trust participant will become part of this trust by signing a Joinder Agreement with the trustee who manages the pooled trust. The Joinder Agreement outlines the terms of the trust, beneficiary information, contribution amounts, and distribution details.



Trust Accounting Issues

When a trust is established with guardianship assets as part of a guardianship case, the Court retains oversight of the assets transferred to the trust.³⁶ The trust's financial activities must be included on the guardianship's Annual Accountings.

We identified 10 cases where guardianship assets were used to fund trusts. None of the Annual Accountings for any of these 10 cases included trust financial information.

Six of these 10 cases were assigned to one professional guardian. The guardian's husband is the Executive Director of a Not For Profit Corporation (NFPC) that manages a pooled trust. In three of the six cases reviewed, the guardian deposited the ward's funds in that pooled trust. In addition, an executed trust Joinder Agreement was only filed in one of the six cases.

The following examples demonstrate the necessity for filing Annual Accountings for trust assets:

- A) A professional guardian filed a petition to liquidate a ward's monies and deposit the funds in a pooled trust managed by an unrelated trustee. However, the total amount of the ward's assets is in question based on a family member's statement that "the Ward was hiding cashier's checks and cash funds totaling in excess of \$154,000 when the guardian was appointed." The petition listed approximately \$87,100 in cash assets. Approximately \$77,000 was deposited into the trust one month later. The guardian resigned about 16 months after LOG issuance. At the time of resignation, less than \$5,000 remained. The Court approved guardian fees of \$61,871 with \$23,220 paid to the guardian from the ward's assets and an additional \$53,988 from the trust account for a total of \$77,208 in guardian fees. In less than six months, the trust account was reduced from \$77,000 to \$4,518. No trust Accountings were ever filed.
- B) In another case, a professional guardian filed a Petition for Guardianship stating that a ward's grandmother died and, the ward was now "vulnerable to all types of exploitation due to his lack of judgement or filters." His grandmother's estate included cash of \$108,045 for the benefit of the ward and one other beneficiary. This ward had established a trust managed by

³⁶ F.S. 744.441



the professional guardian's husband five months before the guardianship petition was filed. A petition to fund the existing trust with funds from the grandmother's estate was filed one year later. The guardian later petitioned to waive annual and future Accountings. The guardian was also the personal representative in the estate case. However, this prior relationship was not disclosed to the Court.

- C) Another ward received a settlement of \$130,000 after a professional guardian had been appointed. The Court approved the transfer of funds to a trust. Trust Accountings were never filed although the funds were received as part of the guardianship.

Guardianships of the Person Where Assets are Later Discovered

We identified two cases where orders were issued approving the establishment of trusts. However, these cases were Guardianships of Person only — not Guardianships of Person and Property. Two different professional guardians were appointed to the cases. LOG for property were never issued granting control of assets in either case. Guardianships of Person are not required to file Annual Accountings. However, the clerks should have noted that guardians of the person were exercising control over wards' assets in person only cases and filed Observations notifying the Court of these issues.

Recommendation No. 8:

The Clerk should:

- A) Provide specialized training regarding trusts and trust related requirements for all clerks assigned to guardianship;
- B) Develop and implement additional procedures to ensure that trust Accountings are filed for all cases where a trust was established with guardianship assets; and
- C) Develop and implement procedures for reviewing trust documents to ensure that all required documents (including executed agreements) are filed.



Management's Response:

Partially Concur. See [Appendix A](#) for full response.

9. Reports Should Be Reviewed and Approved in a Timely Manner

The Clerks are statutorily required to review guardianship filings before forwarding them to the Court for approval. Many of the filings must be reviewed within specific timeframes, including:

- Guardianship of Person reports (Initial and Annual Plans) within 30 days of filing.³⁷
- Guardianship of Property reports (Inventories and Accountings) within 90 days of filing.³⁸

When an issue is identified in a filing, the Clerks issue an Observation notifying the Court, the Guardian, and the Guardian's attorney of issues that need to be corrected.

Report of Clerk

When a guardianship report³⁹ is filed, the Clerk prepares a "Report of Clerk of Circuit Court Regarding Guardianship Report" (Report of Clerk — shown to the right). Although the Report of Clerk indicates that the Clerks have reviewed the filings, it is only used to verify that information is present or absent. This report is not intended to indicate that the Clerks have reviewed the content in detail. However, as presented, the

1/26/2018 9:06 AM FILED IN OFFICE OF TIFFANY M. RUSSELL CLERK OF COURT ORANGE COUNTY FL

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT, IN AND FOR ORANGE COUNTY, FLORIDA

IN RE: GUARDIANSHIP
WARD

PROBATE MENTAL HEALTH DIVISION
CASE NUMBER:
DIVISION 1

REPORT OF CLERK OF CIRCUIT COURT REGARDING INITIAL GUARDIANSHIP REPORT

To: The Honorable Circuit Judge

Pursuant to Section 744.368 (1) and (2), Florida Statutes, you are advised that the undersigned deputy clerk has reviewed the initial guardianship report filed in this case to determine whether such report meets the requirements of section 744.368. The undersigned hereby reports the following findings:

- The information about the ward contained in the initial report is as follows:

<u>Required information</u>	<u>Present</u>	<u>Absent</u>
Physical and mental health care		
Personal and social services		
Residential setting		
Application of insurance, etc.		
Physical/mental health examinations		
Service	N/A	
Verified inventory	X	
Audit fee	X	
- The initial guardianship report was timely filed. Respectfully submitted on this the 26th day of January, 2018.

TIFFANY MOORE RUSSELL
ORANGE COUNTY CLERK OF COURTS

/Samya Azizi
DEPUTY CLERK

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³⁷ F.S. 744.368(2)

³⁸ F.S. 744.368(4)

³⁹ Initial Plan, Annual Plan, Inventory, or Annual Accounting



Report of Clerk could be misinterpreted by the Court and others to imply that a detailed review has been performed since it states that the filed report meets the requirements of section 744.368.

Timely Review of Reports

As noted above, the reports must be reviewed by the Clerks within 30 days for Guardianship of Person filings and 90 days for Guardianship of Property filings. We analyzed the number of days that elapsed between the guardian filing the report and the Clerks docketed review. The following issues were identified:

- A) Five of 33 (15%) Inventories were not reviewed within 90 days. Two were reviewed 99 and 123 days after filing. There is no indication that the three others were ever reviewed. In addition, an observation was filed with respect to one Inventory indicating that the Clerk reviewed the document. However, a Proposed Order Approving the Inventory was never filed. So, it is not clear whether the issues raised in the Observation were ever addressed and the Inventory should have been approved.
- B) Sixteen of 73 (22%) Annual Accountings were not reviewed within 90 days. Twelve of the sixteen were reviewed between 91 and 334 days after filing. There is no indication that the other four were ever reviewed. There was one additional Accounting where the Clerks prepared and filed an Observation indicating that the Clerk reviewed the Accounting. However, a Proposed Order Approving the Accounting was never sent to the Court and the Accounting was never approved.⁴⁰
- C) Two of 26 (8%) Initial Plans were not reviewed within 30 days. One was reviewed after 47 days and the other one was not reviewed until 394 days after filing.

Documentation of Review and Approval

After the Clerks review a report, they advise the Court that it is in compliance and ready for approval by sending a Proposed Order of Approval to the Judge for signature.

⁴⁰ It is not clear whether the issues raised in the Observations were ever addressed and the Accountings should have been approved.



However, there is no assurance that the Clerks' review met specific standards or advised the Court of any audit results because of the lack of guidelines. In addition, the Clerks could send a Proposed Order of Approval to the Judge without actually performing a review or before all items are in compliance.

The Clerk should develop standardized forms that more accurately document the review performed. The forms should include each item that needs to be reviewed and the results of the review. With a documented review, the Court would have a clear understanding of the items actually reviewed by the Clerks and any issues to be addressed before approving an order.

Recommendation No. 9:

The Clerk's Office should:

- A) Improve written procedures for reviewing Inventories, Accountings, and Plans to ensure that comprehensive reviews are consistently performed. In addition, the Clerk should consider standardized forms documenting reviews performed;
- B) Ensure all Inventories or Accountings are reviewed within 90 days and Plans within 30 days of filing; and,
- C) Develop policies and procedures to communicate results of reviews with the Court.

Management's Response:

Partially Concur. See [Appendix A](#) for full response.

10. The Court Should Be Timely Notified of all Delinquent Reports

Guardians must file reports such as Inventories, Annual Accountings, Initial Plans and Annual Plans based on schedules provided in Florida law.



The Clerk's Office is responsible for notifying the Court when reports are not timely filed.⁴¹ The Clerk's Office currently runs a monthly report to identify delinquent filings. If a filing is delinquent, the Clerks prepare an Observation or an Order to Appear and/or Show Cause form. This Order specifies the delinquent filing and sets a hearing date if the delinquent documents are not filed before the deadline.

Delinquent Initial and Annual Plans

The filing requirements for Initial and Annual Plans are outlined below:

- The Initial Plan — due 60 days after LOG are signed.⁴²
- Annual Plans filed before July 1, 2015 — due within 90 days after the last day of the anniversary month in which the LOG were signed.⁴³
- Annual Plans filed after July 1, 2015 — due at least 60 but no more than 90 days before the last day of the anniversary month in which the LOG were signed.

We selected a sample of Guardianship of Person cases to review whether required plans were timely filed. If the reports were not filed by the due dates, we determined whether the Clerk's Office prepared an Observation or Order to Appear and/or Show Cause within 30 days of the delinquency. The sample included 27 Initial Plans and 31 Annual Plans. We found the following:

- A) Six of the 27 Initial Plans were not filed by the due date. The clerks did not timely notify the Court or at all about three of six delinquent Initial Plans.
- B) Seventeen of the 31 Annual Plans were not filed by the due date. The clerks did not timely notify the Court or at all about 15 of 17 delinquent Annual Plans.

Delinquent Plans Not Timely Reported		
Days for Clerk to Report	Initial Plans	Annual Plans
46-60	0	1
61-90	1	4
91-120	1	2
>120 ⁴⁴	1	3
Never Reported	0	5
Totals	3	15

⁴¹ F.S. 744.368(4)

⁴² F.S. 744.362

⁴³ F.S. 744.367

⁴⁴ The actual numbers of days for the clerks to report to the Court were 179, 199, 218, and 264.



Delinquent Inventories and Accountings

Property guardians must file Inventories within 60 days after LOG are issued.⁴⁵ Annual Accountings are due by the first day of the fourth month after the end of the fiscal year. In Orange County, the fiscal year end is determined by the month in which the LOG are issued. For example, if LOG issuance occurred in January, the Annual Accountings would be due by May 1 each year.

We selected a sample of 359 Inventories and 344 Accountings to verify that they were filed by the applicable due dates or reported by the Clerks within 60 days.

We noted the following:

- A) Ninety-seven Inventories were not filed by the due date. The Clerk's Office did not timely notify the Court of 53 (55%) of the delinquent Inventories.
- B) One hundred twelve Annual Accountings were not filed by the due date. The Clerk's Office did not timely notify the Court of 59 (53%) were not reported to the Court in a timely manner.

Delinquent Filings Not Reported Timely		
Days	Inventories	Accountings
46-60	12	12
61-100	12	6
101-200	3	12
201-300	1	2
>300	3	6
Never Reported	22	21
Totals	53	59

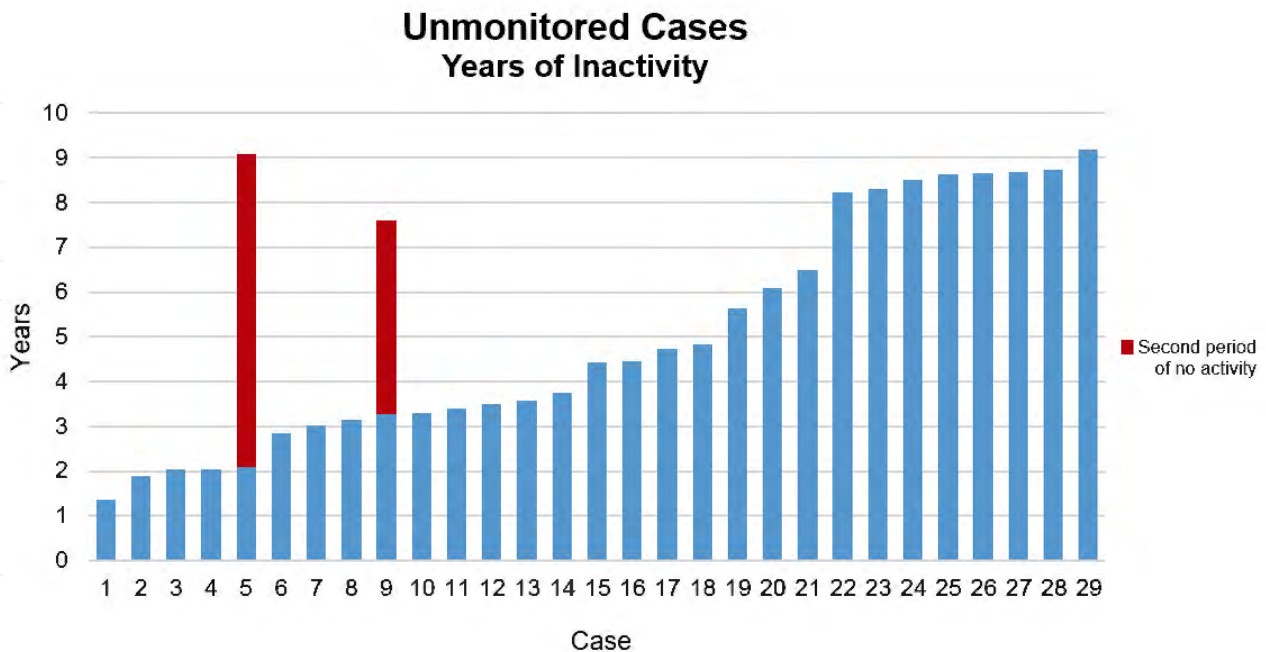
In addition, one of the 112 delinquent Accountings covered three years. The Clerk reported the first delinquent Accounting but not the following delinquent Accounting. As a result, the first Annual Accounting was over 750 days late.

⁴⁵ Final Reports of emergency temporary guardians — Including Verified Inventory, Final Accounting, and Statement of Property on hand at end of ETG due within 30 days after the expiration of the ETG guardianship.



Unmonitored Cases

During the audit, we identified 29 cases with no activity for an extended period of time. The period of no activity ranged from one to nine years. For various reasons, the Clerk no longer monitored these cases. There was no indication in any of the cases that the guardian should have been discharged or that the need for guardianship no longer existed.



Additional details for some of the unmonitored cases included:

- An Order to Appear and/or Show Cause was filed in July 2013 noting the 2012 Annual Plan and Physician Reports were not filed for a ward with advanced cerebral palsy. No plans or physician reports were filed after March 2012.
- The last docket event for another case was an Order on Motion to Withdraw as Counsel in September 2009 requiring the guardian to obtain counsel by 10/05/2009. No documentation was ever filed indicating new counsel was obtained. Additionally, no Annual Plans were ever filed after October 2008 or Annual Accountings after December 2008.
- The guardian of the property of two siblings indicated that they did not have access to funds from Certificate of Deposits worth over \$22,000. Both cases had orders compelling the release of funds from the Certificates of



Deposit to the guardian. The last docket event for one of the cases was to release \$5,000 to purchase a car in March 2015. Additionally, we noted the Orange County Property Appraiser's website reported that a home owned jointly by the siblings was sold in May 2015. No Annual Accountings were ever filed in the cases.

The Court may not be aware of cases with delinquent required reports. These reports provide a level of confidence and assurance that the interests of the ward are being protected. Specifically, timely reviewed reports are an indication that the guardian is actively caring for the needs of the ward and adequately managing the ward's property.

Recommendation No. 10:

The Clerk's Office should ensure all delinquent filings are timely reported to the Court so appropriate action may be taken. In addition, monitoring procedures should be developed for all open cases to identify any cases with no activity over one year.

Management's Response:

Partially Concur. See [Appendix A](#) for full response.

11. Procedures Should Be Developed for Discharging Guardians

A guardian can be discharged from a guardianship case for several reasons, including:

- The ward's capacity has been reinstated;
- The ward dies;
- A minor ward turns 18;
- The case is transferred to another jurisdiction;
- The ward cannot be located after a diligent search;
- A property guardianship's assets are exhausted; or,
- The guardian resigns.



After a ward dies, a guardian of the person can be discharged after filing a copy of the death certificate. A guardian of the property is required to file a Final Report (including a Final Accounting of the ward's assets) to be discharged. The Court will typically approve a Proposed Order of Discharge after the property guardian has distributed all amounts to the persons entitled to them.

The Clerk is required to audit the Final Accounting and report the results within 90 days.⁴⁶ Additionally, according to the Clerk's staff, the clerks should not file a Proposed Order of Discharge until the guardian has filed all necessary documents demonstrating that he or she has met the requirements to be discharged.

Clerks Review of Discharge Documents

The Clerks informed us that a Judicial Review is docketed as evidence that the Final Accounting has been audited and is in compliance. We identified the following issues in the Clerk's discharge process:

- A) Of the 48 Final Accountings tested, no Judicial Reviews were docketed evidencing the Clerks reviewed 38 Final Accountings.
- B) Three of 10 Final Accountings were not timely reviewed by the Clerks. The average time to review the Final Accountings in those cases was approximately four months.

Timely Discharge of Guardianship Cases

The guardian must file a Final Report (including Final Accounting) within 45 days after being served the Letters of Administration in the estate case if the ward dies.⁴⁷

We reviewed 36 cases where the ward died during the guardianship. Only 10 had a subsequent estate case. Three of the 10 Final Reports were not filed within the required 45 days.

In addition, the Clerk's Office does not consistently monitor cases during the discharge process. We noted 22 cases where the discharge process was not completed. In each of these cases there was over one year of inactivity after the

⁴⁶ F.S. 744.368(3)

⁴⁷ F.S. 744.527(1)



discharge process was initiated. The Clerk should monitor and ensure all required documents are received prior to discharging the guardian.

Guardianship of Person Discharged Without Adequate Documentation

A minor Guardianship of Person case had no activity after an Order Approving the Annual Plan was filed on September 30, 2014. An Order to Appear and/or Show Cause was docketed and a hearing was scheduled for February 10, 2016 because the guardian failed to file the Annual Plan. On February 9, 2016, the guardian filed a Petition for Discharge. The petition stated the minor was moving back to Mexico to be with her biological mother. Two days later, the Clerk sent the Proposed Order to the Judge without requesting any documentation to support the claim.

The Clerk's Office does not have written procedures for reviewing Final Reports and Petitions for Discharge.

Recommendation No 11:

The Clerk's Office should develop and implement comprehensive policies and procedures for the guardian discharge process. These procedures should provide that:

- A) Audits of Final Accountings occur within 90 days;
- B) Guardianship filings are monitored after a Petition for Discharge is filed to notify the Court when required filings are not timely submitted; and,
- C) The Court is notified when Final Accountings are not submitted within 45 days after Letters of Administration are issued.

Management's Response:

Concur. See [Appendix A](#) for full response.



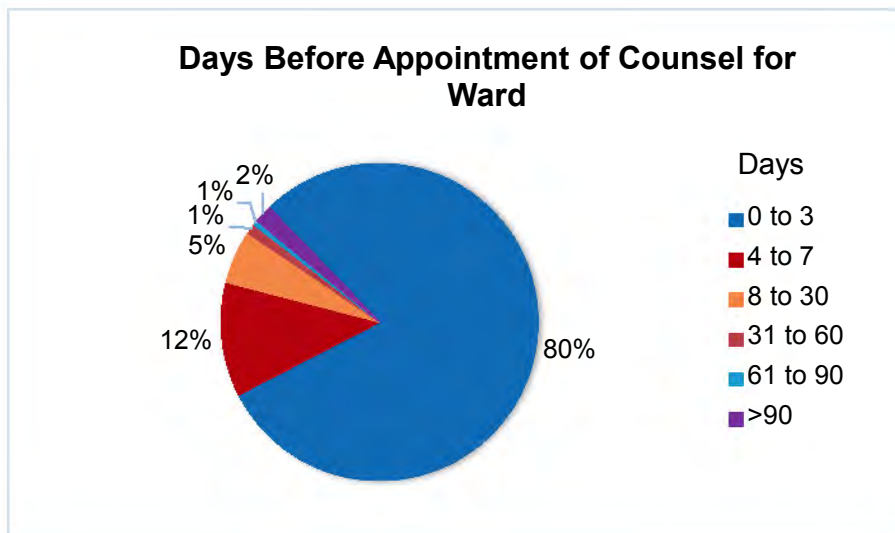
12. Guardian Advocate Cases Should Be Monitored for Compliance

Appointment of a GA is a less costly and restrictive alternative to full guardianship. Florida law requires Courts to consider appointing a GA rather than ordering plenary or full guardianship.⁴⁸

Appointment of a GA is available for wards with Developmental Disabilities diagnosed before the age of 18. The Court does not have to determine incapacity before appointing a GA. GA petitioners are not required to hire attorneys. However, the Court must appoint an attorney for the ward within three days after a petition is filed.⁴⁹ The Clerk's Office initiates attorney appointment with a Proposed Order Appointing Counsel sent to the Court for approval.

There were 793 GA cases initiated between January 2007 and April 2017. During our review, we noted the following:

- A) The Clerk's Office did not timely initiate the attorney appointment process in 20% (161 of 793) of the GA cases. In 66% (107 of 161) of those cases, a Proposed Order was not docketed.



In addition, we found no evidence that an attorney was ever appointed for the ward in nine GA cases. One case included an Observation instructing the guardian's attorney to provide services to the ward's attorney. At the

⁴⁸ F.S. 744.1012(2)

⁴⁹ F.S. 393.12



- time that the Observation was filed, the Clerk did not realize that an attorney for the ward had never been appointed. The guardian's attorney responded informing the Clerk's Office the ward's attorney was never appointed.
- B) After the Order Appointing Counsel, a hearing should be scheduled to issue LOG. We found that 41 cases had no activity for over 12 weeks after the Order Appointing Counsel. In addition, 25 of these cases had no activity for over one year, and three did not have any activity for over five years. The Clerk's Office should develop systematic monitoring of GA cases after the court appointed attorney is assigned to ensure an initial hearing is scheduled.

Recommendation No. 12:

The Clerk's Office should:

- A. Ensure wards are assigned a court appointed attorney within the statutorily required three days for all Guardian Advocate cases; and
- B. Systematically monitor Guardian Advocate cases after the court appointed attorney is assigned to ensure an initial hearing is scheduled within an appropriate amount of time.

Management's Response:

Do Not Concur. See [Appendix A](#) for full response.

13. The Court Should be Timely Notified When Plans Do Not Satisfy Statutory Requirements

The Court appoints a guardian of the person to make personal decisions for a minor child or incapacitated adult. Some of the decisions include living arrangements, health care, education, and other matters related to the ward's comfort and well-being.

Guardians are required to develop written guardianship plans to address the ward's needs. The plan should address the ward's medical, psychiatric, social,



vocational, educational, training, residential, and recreational needs, as applicable. Each Annual Plan for an adult ward must include a determination of whether any of the ward's rights can be restored.⁵⁰ All guardianship plans must also include an oath or affirmation of the following statement, "Under penalties of perjury, I declare that I have read the foregoing, and the facts alleged are true to the best of my knowledge and belief."⁵¹

We reviewed 26 Initial Plans and 25 Annual Plans filed with the Court. We noted the Clerk did not notify the Court of the following issues:

- A) Seven plans did not cover the correct reporting period;
- B) Two plans did not have a "penalties of perjury" oath;
- C) One plan was missing the attorney's signature; and,
- D) Two plans omitted the address of each residence of the ward.

Physician's Report Not Filed with Annual Plan

Physician's examination reports must be filed with the Annual Plans. Examinations must occur within 90 days of the applicable reporting period for adults or 180 days for minors.

The examination dates of six of 25 reports reviewed were not within the applicable timeframes. We could not determine the examination date on another report because the date was blank. Although a physician is required to examine the ward annually, one ward had not been examined in almost three years according to the date of the report.

In addition, we identified seven cases where the examination was not performed until after the start of the reporting period. In three cases, an examination was not performed for over 170 days after the start of the reporting period.

⁵⁰ F.S. 744.3675

⁵¹ F.S. 744.104



Recommendation No. 13:

The Clerk's Office should ensure filed Initial and Annual Plans filed are reviewed for accuracy and include all required information. The clerks should also notify the Court when medical examinations are not completed within applicable timeframes.

Management's Response:

Partially Concur. See [Appendix A](#) for full response.



ACTION PLAN

NO.	RECOMMENDATIONS	MANAGEMENT'S RESPONSE		
		CONCUR	PARTIALLY CONCUR	DO NOT CONCUR
1.	<p>The Clerk's Office should:</p> <ul style="list-style-type: none"> A) Implement system changes that will allow clerks and the Court to access relevant data for active cases; and B) Develop additional procedures documenting processes including appropriate docket codes to prevent data entry errors. 		✓	
2.	<p>The Clerk should document and implement procedures for reviewing professional guardian files annually to verify that all required documents are filed and notify the Court of any deficiencies. The procedures should also ensure that clerks are notifying the Court of any suspended guardians. The Clerk should implement procedures to review professional guardian applications.</p>			✓
3.	<p>The Clerk should verify and notify the Court of any deficiencies regarding the following requirements:</p> <ul style="list-style-type: none"> A) Statutorily required documents are submitted by the potential guardian prior to Letters of Guardianship being issued; B) Bond requirements are met before the Letters of Guardianship are issued; C) Guardians complete required training within four months after appointment; D) Birth Certificates are filed for all minor guardianships to verify consent is obtained from the appropriate parties; E) Guardianship cases involving minors include the consent of all parents or individuals who have legal custody; and, F) Appropriate follow-up actions are taken for all missing documents identified on Observations. 			✓
4.	<p>The Clerk should develop and implement guardianship and incapacity procedures to document identified conflicts of interest. This should include a list of potential conflicts that clerks can reference while administering assigned cases. Procedures should</p>			✓



ACTION PLAN

NO.	RECOMMENDATIONS	MANAGEMENT'S RESPONSE		
		CONCUR	PARTIALLY CONCUR	DO NOT CONCUR
	also be implemented for the clerks to notify the Court when conflicts of interest have been identified.			
5.	<p>The Clerk Should:</p> <ul style="list-style-type: none"> A) Consider developing a guardian and attorney fee petition checklist to ensure required information is submitted with the petition and additional data necessary for judicial review is readily available to the Court. The checklist could also be used to document petition review; B) Notify the Court if the hourly rate charged by guardians exceeds the maximum rate; and C) Ensure that all attorney and guardian fee related disbursements listed in the Accountings are reviewed and any fees not approved by the Court should be reported to the Court. 		✓	
6.	<p>The Clerk should:</p> <ul style="list-style-type: none"> A) Develop and implement procedures documenting the items that should be reviewed as part of the audit of Inventories. These procedures should include required documentation, support criteria, and verification procedures; B) Develop systematic monitoring of deficiencies noted to ensure guardians comply with filing requirements; and, C) Develop a formal training program for Deputy Clerks assigned to guardianship that includes financial and guardianship specific training. 		✓	
7.	<p>The Clerk should:</p> <ul style="list-style-type: none"> A) Consider developing standardized forms to document the clerks review of Annual Accountings to ensure consistency; B) Ensure all Accountings are reviewed and the Court is notified of any missing support and/or errors in the Accountings; and, 	✓		



ACTION PLAN

NO.	RECOMMENDATIONS	MANAGEMENT'S RESPONSE		
		CONCUR	PARTIALLY CONCUR	DO NOT CONCUR
	C) Develop systematic monitoring of Observations to ensure guardians comply with filing requirements.			
8.	The Clerk should: A) Provide specialized training regarding trusts and trust related requirements for all clerks assigned to guardianship; B) Develop and implement additional procedures to ensure that trust Accountings are filed for all cases where a trust was established with guardianship assets; and C) Develop and implement procedures for reviewing trust documents to ensure that all required documents (including executed agreements) are filed.		✓	
9.	The Clerk's Office should: A) Improve written procedures for reviewing Inventories, Accountings, and Plans to ensure that comprehensive reviews are consistently performed. In addition, the Clerk should consider standardized forms documenting reviews performed; B) Ensure all Inventories or Accountings are reviewed within 90 days and Plans within 30 days of filing; and, C) Develop policies and procedures to communicate results of reviews with the Court.		✓	
10.	The Clerk's Office should ensure all delinquent filings are timely reported to the Court so appropriate action may be taken. In addition, monitoring procedures should be developed for all open cases to identify any cases with no activity over one year.		✓	
11.	The Clerk's Office should develop and implement comprehensive policies and procedures for the guardian discharge process. These procedures should provide that: A) Audits of Final Accountings occur within 90 days;	✓		



ACTION PLAN


NO.	RECOMMENDATIONS	MANAGEMENT'S RESPONSE		
		CONCUR	PARTIALLY CONCUR	DO NOT CONCUR
	<ul style="list-style-type: none"> B) Guardianship filings are monitored after a Petition for Discharge is filed to notify the Court when required filings are not timely submitted; and, C) The Court is notified when Final Accountings are not submitted within 45 days after Letters of Administration are issued. 			
12.	<p>The Clerk's Office should:</p> <ul style="list-style-type: none"> A) Ensure wards are assigned a court appointed attorney within the statutorily required three days for all Guardian Advocate cases; and B) Systematically monitor Guardian Advocate cases after the court appointed attorney is assigned to ensure an initial hearing is scheduled within an appropriate amount of time. 			✓
13.	The Clerk's Office should ensure filed Initial and Annual Plans filed are reviewed for accuracy and include all required information. The clerks should also notify the Court when medical examinations are not completed within applicable timeframes.		✓	



Tiffany Moore Russell
Clerk of the Circuit and County Courts
Orange County • Florida

Administrative Services

Memorandum

To: Phil Diamond, Orange County Comptroller 
From: Tiffany Moore Russell, Clerk of Courts
Date: January 20, 2021
Re: Guardianship Audit Management Response

The Orange County Clerk of Courts Office welcomes the oversight of your office and is committed to ensuring that our Guardianship program fully complies with statutory requirements. Thank you for the opportunity to respond to the draft audit report of our Guardianship program.

The timing of the audit spanned two different Operations Managers in the Clerk’s office, three Judges in Ninth Circuit, several changes in Statutes by the Legislature, and many process changes. When the current Operations Manager began leading the team in February 2018, she performed an internal review of various processes. While we were fully aware that the audit was still in progress, it was prudent to evaluate processes and implement process improvements in accordance with our goals for continuous improvement. In fact, our Management teams had specific performance goals around process improvements at the time. This internal review led to several process improvements that were implemented during the audit period. My office is also very engaged in statewide Best Practice discussions and forums related to the Guardianship Program that led to specific process improvements. Therefore, you will find that many of our responses indicate that process changes were implemented since this audit was initiated.

Upon receiving the draft report on December 19, 2019, we began a review of the report for response, but like other essential workers in the community, the pandemic brought about other priorities. Overall, we believe that there are valuable recommendations included in the report. However, we find that some of the findings and a few of the recommendations include tasks that are *outside of the scope of the audit and/or the Clerk’s responsibility, per Florida Statutes*. We have noted such exceptions in our responses.

In the Ninth Circuit, the Professional Guardian, assigned attorney, The Orange County Clerk of Courts and the Court all have unique duties and obligations during the life of a guardianship case. Some of the audit recommendations are duties and obligations of the Court, attorney and/or the Professional Guardian, and not the Clerk.

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Tiffany Moore Russell
Clerk of the Circuit and County Courts
Orange County • Florida

While we fully understand the recommendations suggest additional steps in the furtherance of improving communications or closing process gaps, some of the findings imply that the Clerk is not in compliance with Chapter 744 of the Florida Statutes and/or that the Clerk is the final decision maker. We have noted these areas in our audit responses as well. In addition, without the benefit of a full audit review of all the case numbers corresponding to the findings, we cannot effectively evaluate whether we concur with some of the findings or not.

In conclusion, we find that we are complying with our statutory responsibilities outlined in Chapter 744 of the Florida Statutes. You will find our detailed responses to the findings and recommendations in the Management Response to the audit. Out of the thirteen (13) recommendations, we concur with two (2), partially concur with seven (7), and do not concur with four (4).

Consistent with our culture of continuous process improvement, we will continue to look at Best Practices provided by the Florida Court Clerks and Comptrollers and perform periodic reviews of our internal processes and procedures.

Attached:

Audit Engagement Letter from Comptroller Haynie (12/15/2016)
Audit Response Summary Matrix

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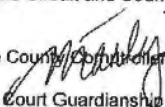
OFFICE OF THE COMPTROLLER

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DATE: December 15, 2016

TO: Tiffany Moore Russell, Clerk of the Circuit and County Courts,
Orange County Florida

FROM: Martha O. Haynie, CPA, Orange County Comptroller 

SUBJECT: Audit of Orange County Clerk of Court Guardianship Administration

I wanted to thank you for meeting with my Audit staff on November 30, 2016 to discuss our audit of the Guardianship Program. As mentioned at this meeting, we anticipate the audit scope to focus on the administration of the program.

If you have any questions, or specific areas you would like us to include in this review, please contact my Director of Audit, Chris Dawkins, at 407-836-5775. Your cooperation is greatly appreciated.



The Orange County Clerk of Courts
Management Response Summary Matrix

	Recommendation	Concur	Partially Concur	Do Not Concur
1	A) Implement system changes that will allow clerks and the Court to access relevant data for active cases; and B) Develop additional procedures documenting processes including appropriate docket codes to prevent data entry errors.		✓	
2	The Clerk should document and implement procedures for reviewing professional guardian files annually to verify that all required documents are filed and notify the Court of any deficiencies. The procedures should also ensure that the clerks are notifying the Court of any suspended guardians. The Clerk should implement procedures to review professional guardian applications.			✓
3	The Clerk should verify and notify the Court of any deficiencies regarding: A) Statutorily required documents are submitted by the potential guardian prior to Letters of Guardianship being issued; B) Bond requirements are met before the Letters of Guardianship are issued; C) Guardians complete required training within four months after appointment; D) Birth Certificates are filed for all minor guardianships to verify consent is obtained from the appropriate parties; E) Guardianship cases involving minors include the consent of all parents or individuals who have legal custody; and, F) Appropriate follow-up actions are taken for all missing documents identified on Observations.			✓



The Orange County Clerk of Courts
Management Response Summary Matrix

	Recommendation	Concur	Partially Concur	Do Not Concur
4	The Clerk should develop and implement guardianship and incapacity procedures to document identified conflicts of interest. This should include a list of potential conflicts that clerks can reference while administering assigned cases. Procedures should also be implemented for the clerks to notify the Court when conflicts of interest have been identified.			✓
5	The Clerk Should: A) Consider developing a guardian and attorney fee petition checklist to ensure required information is submitted with the petition and additional data necessary for judicial review is readily available to the Court. The checklist could also be used to document petition review; B) Notify the Court if the hourly rate charged by guardians exceeds the maximum rate; and C) Ensure that all attorney and guardian fee related disbursements listed in the Accountings are reviewed and any fees not approved by the Court should be reported to the Court.		✓	
6	The Clerk should: A) Develop and implement procedures documenting the items that should be reviewed as part of the audit of Inventories. These procedures should include required documentation, support criteria, and verification procedures; B) Develop systematic monitoring of deficiencies noted to ensure guardians comply with filing requirements; and, C) Develop a formal training program for Deputy Clerks assigned to guardianship that includes financial and guardianship specific training.		✓	



The Orange County Clerk of Courts
Management Response Summary Matrix

	Recommendation	Concur	Partially Concur	Do Not Concur
7	<p>The Clerk should:</p> <p>A) Consider developing standardized forms to document the clerks review of Annual Accountings to ensure consistency;</p> <p>B) Ensure all Accountings are reviewed and the Court is notified of any missing support and/or errors in the Accountings; and,</p> <p>C) Develop systematic monitoring of Observations to ensure guardians comply with filing requirements.</p>	✓		
8	<p>The Clerk should:</p> <p>A) Provide specialized training regarding trusts and trust related requirements for all clerks assigned to guardianship;</p> <p>B) Develop and implement additional procedures to ensure that trust Accountings are filed for all cases where a trust was established with guardianship assets; and</p> <p>C) Develop and implement procedures for reviewing trust documents to ensure that all required documents (including executed agreements) are filed.</p>		✓	
9	<p>The Clerk's Office should:</p> <p>A) Improve written procedures for reviewing Inventories, Accountings, and Plans to ensure that comprehensive reviews are consistently performed. In addition, the Clerk should consider standardized forms documenting reviews performed;</p> <p>B) Ensure all Inventories or Accountings are reviewed within 90 days and Plans within 30 days of filing; and,</p>		✓	



The Orange County Clerk of Courts
Management Response Summary Matrix

	Recommendation	Concur	Partially Concur	Do Not Concur
	C) Develop policies and procedures to communicate results of reviews with the Court.			
10	The Clerk’s Office should ensure all delinquent filings are timely reported to the Court so appropriate action may be taken. In addition, monitoring procedures should be developed for all open cases to identify any cases with no activity over one year.		✓	
11	The Clerk’s Office should develop and implement comprehensive policies and procedures for the guardian discharge process. These procedures should provide that: A) Audits of Final Accountings occur within 90 days; B) Guardianship filings are monitored after a Petition for Discharge is filed to notify the Court when required filings are not timely submitted; and, C) The Court is notified when Final Accountings are not submitted within 45 days after Letters of Administration are issued.	✓		
12	The Clerk’s Office should: A. Ensure wards are assigned a court appointed attorney within the statutorily required three days for all Guardian Advocate cases; and B. Systematically monitor Guardian Advocate cases after the court appointed attorney is assigned to ensure an initial hearing is scheduled within an appropriate amount of time.			✓
13	The Clerk’s Office should ensure filed Initial and Annual Plans filed are reviewed for accuracy and include all required information. The clerks should also notify the Court when medical examinations are not completed within applicable timeframes.		✓	



Clerk Response to Recommendation #1: Partially Concur

1. The Case Management System used to administer the Guardianship Program should be improved.

Active Case Volume is Unknown

The Clerk partially concurs that changes could be made to improve access to relevant data for active cases during the audit dates. It is important to note that the Clerk uses the Case Management System, Odyssey by Tyler Technologies, for tracking and reporting cases while the Judiciary uses the Case Management System to track cases.

A case is active when it is first filed until the Final Order of Discharge for the Guardian is entered, at which point the file would be considered inactive. Case reports were run for each calendar year going back to 2000.

Some of the criteria utilized:

- current case status
- last case event type entered
- the description of the last case event type entered

Time standard and case event type reports were audited between March 2019 and January 2020 to find cases prior to the year 2000. Due to a system conversion in 2007, if a case was inactive at that time the case was not converted, other than the name and case number. All inactive cases for more than 18 months and the last event was not associated with a case disposition was manually reviewed. In July 2019, it was determined that there were approximately 3,541 "Active" cases. Portions of these case lists were shared with the Judge assigned to the division at the time. Ongoing reports with guardianships have been monitored for inactivity on cases and reported for manual review.

Judicial Access to Relevant Data

The Clerk does not concur with this finding. In August 2020, we linked all Professional Guardian (PG) files to the cases to which they are assigned. This enables court administration to verify the accuracy of the information on their application and have an awareness of their case load. It should be noted, the Clerk is not statutorily required to perform this task. This is meant to serve as a tool to aid in the visibility of those assignments. It is the responsibility of the guardian to disclose the cases to which they are assigned. Furthermore, the manner in which a Judge manages their caseload is beyond the purview of the Clerk. Utilization of spreadsheets or other preferred methods of case management is solely within the discretion of the Judge and isn't indicative of any violation of the Clerk's statutory responsibilities nor an issue with the case management system. It is customary for the Clerk's office to provide overview and /or training for new judges, judicial assistants, managers and other employees as a part of our onboarding process.



Clerk Response to Recommendation #2: Do Not Concur

2. *The Court Should Be Notified of Professional Guardians That Do Not Meet and Maintain Statutory Requirements for Appointment (added by Audit)*

The Comptroller's audit objective was to determine whether the Clerk complied with the requirements of Chapter 744, Florida Statutes. When the Clerk recognizes discrepancies with case assignments, documents filed by the Professional Guardians, and the accuracy of the application, the Clerk creates a note in the Case Management System for the court to take under consideration. Therefore, the Clerk's current process complies with the applicable Florida Statutes.

Clerk Response to Recommendation #3: Do Not Concur

3. The Clerks should notify the court of nonprofessional Guardians that do not meet the statutory requirements before Letters of Guardianship are issued.

The Comptroller's audit objective was to determine whether the Clerk complied with the requirements of Chapter 744, Florida Statutes. The Clerk's current process complies with the applicable Florida Statutes. Throughout the audit, the Comptroller provided specific cases numbers to support the findings, but our review of some of the cases indicated that the Clerk had in fact fulfilled her obligation. Without time and resources to perform a full review of all cases referenced in this finding, the Clerk is unable to concur with this recommendation.

Minor Guardianship

The Comptroller's audit objective was to determine whether the Clerk complied with the requirements of Chapter 744, Florida Statutes. As the Comptroller acknowledged above, Clerks are not statutorily required to obtain the minor's birth certificate or applicable legal documents. Therefore, the Clerk's current process complies with the applicable Florida Statutes.

Clerk Response to Recommendation #4: Do Not Concur

4. *Controls Should Be Implemented to Prevent Conflicts of Interest Within Guardianship Cases (added by Audit)*

The Comptroller's audit objective was to determine whether the Clerk complied with the requirements of Chapter 744, Florida Statutes. The Auditor was not able to provide documentation of the conflict of interest noted in the finding and therefore we are unable to provide a response to that specific finding. In the rare event that the Clerk is made aware of a conflict of interest, it is noted as a Clerk Note in our Case Management System which allows anyone reviewing the case to view the documentation. Therefore, the Clerk's current process complies with the applicable Florida Statutes. In fact, Florida Statutes places the responsibility of disclosing any conflict of interest on the professional guardian.



Clerk Response to Recommendation #5: Partially Concur

5. The Clerk should ensure Attorney and Guardian fees are adequately reviewed

As required by Chapter 744 of the Florida Statutes, the Clerk complies with her statutory responsibility to review Guardian fees when submitted to the case. Throughout the audit, the Comptroller provided specific cases numbers to support the findings, but our review of some of the cases indicated that the Clerk had in fact fulfilled her obligation. Without time and resources to perform a full review of all cases referenced in this finding, the Clerk is unable to concur with this recommendation.

Our current process begins when a fee petition is submitted to the case. The clerk will first check to see if an Inventory was filed. A fee petition may only be approved once an Inventory has been submitted to show there are adequate assets to compensate. Once confirmed, the clerk then reviews the fee petition. The fee petition should list the date range of service, how much they have been paid prior in this case, how much in fees and costs they are seeking, and there should be a billing statement attached or submitted in conjunction with this petition. The clerk would check to see how much they are charging, confirming the amount asked for by calculation.

For attorney's fee petitions, the clerk would check for duplicated entries, anything outside of the period they are stating on the petition, or anything that may not have been notated on the petition that is on the billing statement. The clerk would also notate any "exorbitant" fees. These are fees that are well outside the normal range of fees, normally \$250-350/hour is the average rate.

For guardian's fee petitions, the clerk checks for roughly the same things as an attorney's petition. They check for duplicated entries, anything outside of the stated period and anything that may not have been notated on the petition that is on the billing statement. For guardian's, the maximum amount allowed by the Court is currently \$65/hour.

If the clerk notices any discrepancies, they would notate the discrepancy as a clerk note and refer to the note in the comments section of the fee petition so the judge may be properly informed of the findings and may rule appropriately. If an attorney or guardian fees were paid without prior court approval, that is also brought to the judge's attention to be addressed.

It is important to note that Attorney's fees are no longer permitted to be submitted as part of an accounting. However, attorneys present their petitions directly to the judiciary for consideration first. In those scenarios, the Clerk reviews the fees after the Court ruling and provide clerk notes in the Case Management System.

Clerk Response to Recommendation #6: Partially Concur

6. The Clerk should ensure an adequate audit of verified Inventories is performed and issues identified are corrected

The Clerk audits verified inventories. Throughout the audit, the Comptroller provided specific cases numbers to support the findings, but our review of some of the cases indicated that the Clerk had in fact fulfilled her obligation. Without time and resources to perform a full review of all cases referenced in this finding, the Clerk is unable to concur



with this recommendation. Additionally, there may be additional documentation unknown to the Auditor that was available in the Case Management System to support our compliance. The Guardianship Area has gone through an extensive review which included Inventories and required supporting documentation. It is important to note that in instances where observations were filed, now called Report of Auditors, the statutory requirement to advise the court has been met. Chapter 744 of the Florida Statutes does not require a specific education level or training requirements for clerks responsible for working in the guardianship area and thus, this recommendation is not within the scope of the audit. However, clerks are trained in the Guardianship area.

Clerk Response to Recommendation #7: Concur

7. The Clerks auditing procedures for annual accountings should be improved.

The Clerk concurs with the recommendations that the findings were valid during the audit time period.

The Clerk is committed to continuous process improvement and relies on Best Practices from the Florida Court Clerks and Comptrollers and other information acquired at conferences. One major accomplishment in the guardianship area was the production of work instructions for our accounting audit to include annual and final accountings. The team also changed the work output to utilize only Report of Auditor (ROA) for all scenarios, instead of Observations and ROA. We have also contracted with a local CPA firm to provide case consultations and training for the team.

We have also recently added work instructions to the procedures for the Guardianship team to issue a subpoena duces tecum, pursuant to Section 744.368, Florida Statutes. This helps us obtain records and documents that have been previously requested from the Guardian but not produced due to the Guardian's unwillingness or inability to produce the documents.

Clerk Response to Recommendation #8: Partially Concur

8. Trust Accounting and Other Trust Documentation should be regularly reviewed by the clerks to ensure accuracy and compliance with the law.

In cases where the Guardian is the trustee, our current practice is to conduct a standard audit. Despite the very small volume of cases, the Clerk will take under advisement the recommendation for additional training in this very specialized area regarding trusts.

Clerk Response to Recommendation #9: Partially Concur

9. The Clerk should review and approve reports in a timely manner

The Clerk complies with Chapter 744 of the Florida Statutes in reviewing Inventories and Accountings within the required time frames. The Clerk also has processes and procedures to communicate results of reviews with the court. Throughout the audit, the Comptroller provided specific cases numbers to support the findings, but our review of some of the cases indicated that the Clerk had in fact fulfilled her obligation. Without time and resources to perform a full review of all cases referenced in this finding, the Clerk is unable to concur with this finding.



With the restructuring of the Guardianship Area beginning in 2019, one of the changes that was addressed is reports. When a Plan or Accounting has not been filed, it appears on a report once it is five (5) days past due. The parties immediately receive an Order to Show Cause. If the documents are filed, the hearing is cancelled, and the documents are audited. In any scenario, if the documents are deficient, a Report of Auditor is served and the party has 20 days to comply. If the party is noncompliant, they are given another Report of Auditor and 10 additional days. At that point, if there is still not compliance, an Order to Show Cause is issued and the matter is beyond the scope of the Clerk's statutory authority.

Clerk Response to Recommendation #10: Partially Concur

10. The Clerk should timely notify the Court of all delinquent reports

The Clerk currently has a process for notifying the Court to ensure all delinquent filings are timely reported. Throughout the audit, the Comptroller provided specific cases numbers to support the findings, but our review of some of the cases indicated that the Clerk had in fact fulfilled her obligation. Without time and resources to perform a full review of all cases referenced in this finding, the Clerk is unable to concur with this finding.

When a Plan or Accounting has not been filed it appears on a report once it is five (5) days past due. The parties immediately receive an Order to Show Cause. If the documents are filed, the hearing is cancelled, and the documents are audited. The Clerk has developed monitoring procedures for all open cases with no activity over one year.

Clerk Response to Recommendation #11: Concur

11. The Clerk should develop procedures for discharging guardians

The Clerk concurs with this recommendation. As a result of our ongoing internal review, this process was revised and currently the Final Accountings follow the same process as an Annual Accounting in that a Report of Auditor is completed. The event code for Judicial Review was obsoleted to ensure it would not be misused. It is important to note that petitions for discharge can be approved by the Court without Clerk review. Therefore, it may appear the Clerk is not properly monitoring a case. Throughout the audit, the Comptroller provided specific cases numbers to support the findings, but our review of some of the cases indicated that the Clerk had in fact fulfilled her obligation. Without time and resources to perform a full review of all cases referenced in this finding, the Clerk was unable to determine the extent to which cases were properly monitored.

Clerk Response to Recommendation #12: Do Not Concur

12. The Clerk should ensure Guardian Advocate cases are monitored for compliance

The Clerk complies with her statutory responsibilities outlined in Chapter 744 of the Florida Statutes. The Clerk assigns a court appointed attorney within the statutorily required three days for all Guardian Advocate cases. At the initiation of a Guardian Advocate case, Regional Conflict Counsel is often times appointed as the assets are



unknown. The proposed orders are evented in these cases; however, the event code is not a docketable event code. This means that the only way to view a nondocketable event code is to be logged into the case management system. If the case is viewed online, the viewer would not see this entry.

The setting of hearings for Guardian Advocate cases is beyond the purview of the Clerk's statutory responsibilities as outlined in Chapter 744 of the Florida Statutes.

Clerk Response to Recommendation #13: Partially Concur

13. The Clerk should timely notify the court when plans do not satisfy the statutory requirements

Throughout the audit, the Comptroller provided specific cases numbers to support the findings, but our review of some of the cases indicated that the Clerk had in fact fulfilled her obligation. Without time and resources to perform a full review of all cases referenced in this finding, the Clerk is unable to concur with this recommendation. The Clerk reviews filed and Annual Plans for accuracy and completeness. When a Plan or Accounting has not been filed it appears on a report once it is five (5) days past due. The parties immediately receive an Order to Show Cause. If the documents are filed, the hearing is cancelled, and the documents are audited.



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**AUDITOR’S COMMENTS TO THE CLERK’S RESPONSE REGARDING THE AUDIT
OF THE ORANGE COUNTY CLERK OF COURT’S ADMINISTRATION OF THE
GUARDIANSHIP PROGRAM**

After reviewing the Clerk’s response, we disagree with numerous statements that were made in both the cover memo and the responses to our recommendations.

By way of background, every audit this office conducts follows a deliberative safeguarded process to ensure that facts, conclusions, and recommendations included in the audit report are supported and reasonable. That process was especially important here because of the complexity and difficulty associated with guardianship issues in general.

Additionally as part of that process, we review data, ask questions, and share information with auditees. We welcome comments and the flow of information as part of our own checks and balances. Unfortunately, despite the auditors’ openness and transparency in sharing and discussing ongoing audit results, after April 2018, Clerk’s management advised us on numerous occasions that they no longer wanted detailed case information and only wanted a final report.

After completing our fieldwork, the next part of the audit process includes providing a draft report to the auditee. With this report, we again request and welcome responses to our audit findings. In fact, after we received the Clerk’s response to our audit report, we initiated a review of additional information so that we could best evaluate those comments. Based on our evaluation of the Clerk’s response, we noted several statements that we believe to be inaccurate or misleading.



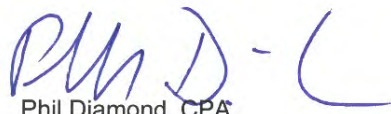
Auditor’s Comments To The Clerk’s Response
Phil Diamond, CPA, Orange County Comptroller
March 1, 2021

Our comments to the Clerk’s responses included in the cover memorandum are detailed below. Our comments to the Clerk’s responses regarding our recommendations are in the attached table.

- *“Some of the audit recommendations are duties and obligations of the Court, attorney, and/or the Professional Guardian, and not the Clerk.”* The Clerk’s responses to recommendations 1 and 4 refer to professional guardian duties. The Clerk misunderstands our recommendation in both instances. We are well aware it is the professional guardian’s responsibility to submit this information. However, it is the Clerk’s responsibility to ensure the information submitted is complete, accurate, and identified issues are reported to the Court;
- *“In conclusion, we find that we are complying with our statutory responsibilities outlined in Chapter 744 of the Florida Statutes.”* The audit identified multiple instances where Chapter 744 requires the Clerk to perform specific duties and notify the Court of guardian noncompliance. In each instance where we noted a deficiency under Chapter 744, the Clerk was not in full compliance. Our testing evaluated whether the Court was notified in these instances; and,
- *“Some of the findings imply ... that the Clerk is the final decision maker.”* Our recommendations were always to notify the Court of deficiencies. We are fully aware — and never suggested — that the Clerk was the final decision maker with respect to individual cases.

Although the Clerk only fully concurs with two of our 13 recommendations for improvement, we hope that the Clerk will ultimately decide to implement all these recommendations in order to help protect our most vulnerable citizens.

In summary, I stand behind our audit process and unequivocally support each of the auditors’ findings and recommendations.


Phil Diamond, CPA
Orange County Comptroller

**APPENDIX –
AUDITOR’S COMMENTS**



Report Reference	Clerk's Statement	Auditor's Comments
<p>Rec # 3, 5, 6, 9, 10, 11, 13</p>	<p><i>"Throughout the audit, the Comptroller provided specific cases numbers to support the findings, but our review of some of the cases indicated that the Clerk had in fact fulfilled her obligation."</i></p>	<p>Prior to April 2018, Clerk's staff reviewed and corrected many guardianship case issues that we provided to them during the audit. Clerk's staff also made process improvements that we brought to their attention during this time. This collaborative process was productive and confirmed some audit findings in the audit report.</p> <p>Unfortunately after April 2018, Clerk's management advised us on numerous occasions that they no longer wanted detailed case information and only wanted a final report. Without detailed information about issues we discovered later in 2018 and 2019, it would have been impossible for Clerk's staff to review that detailed information because Clerk's staff told us not to send them that information. Therefore, this statement is misleading for the period after April 2018.</p> <p>We do not know what cases the Clerk reviewed where she believes that she has fulfilled her obligations. We asked Clerk's staff to provide us specific report sections that they believed to be wrong. However, Clerk's staff did not respond to our request.</p> <p>That said, we noted that Clerk's staff mistakenly believed that certain issues did not require correction — even though additional action was necessary. For example, we noted six cases where the required filings had not been made for extended periods of time — ranging from 6 to 10 years. In one case with no filings since 2009, the Clerk's Operations Manager hired in February 2018 responded, <i>"Last plan filed was 8/21/09 an order to show cause was issued 11/9/09 and 12/17/09 because the plan was never filed the time standards stop, now on this case the Judge never enforced anything so the case has stopped. The clerk has done all they could to move this case waiting on Judge."</i> This statement is inaccurate because the Clerk should have notified the Court each year between 2010 and 2020 when required documents were still not being filed.</p>

**APPENDIX –
AUDITOR’S COMMENTS**



Report Reference	Clerk's Statement	Auditor's Comments
Rec. 1	<i>"It should be noted, the Clerk is not statutorily required to perform this task."</i>	<p>F.S. 28.22205 provides that, "Each clerk of court shall implement an electronic filing process. The purpose of the electronic filing process is to reduce judicial costs in the office of the clerk and the judiciary, increase timeliness in the processing of cases, and provide the judiciary with case-related information to allow for improved judicial case management."</p> <p>This statute does not specifically state that the Clerk is required to link all PG files to cases. However, that was not our recommendation. The recommendation was to implement system changes that will allow clerks and the Court to obtain relevant data for active cases. This will help meet the statutory direction to reduce costs, increase timeliness and provide for improved case management.</p>
Rec 1	<i>"Utilization of spreadsheets or other preferred methods of case management is solely within the discretion of the Judge and isn't indicative of any violation of the Clerk's statutory responsibilities nor an issue with the case management system."</i>	<p>Both judges assigned to guardianship cases during the audit advised us that they could not access necessary data to timely review and process case filings.</p> <p>F.S. 28.22205 provides that "Each clerk of court shall implement an electronic filing process. The purpose of the electronic filing process is to reduce judicial costs in the office of the clerk and the judiciary, increase timeliness in the processing of cases, and provide the judiciary with case-related information to allow for improved judicial case management."</p> <p>If judges cannot access relevant case information in a timely manner with the electronic filing process provided by the Clerk, the system does not meet its statutory goals.</p>

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Report Reference	Clerk’s Statement	Auditor’s Comments
Rec # 2	<p><i>“When the Clerk recognizes discrepancies with case assignments, documents filed by the Professional Guardians, and the accuracy of the application, the Clerk creates a note in the Case Management System for the court to take under consideration. Therefore, the Clerk’s current process complies with the applicable Florida Statutes.”</i></p>	<p>After reviewing the Clerk’s response in February 2021, we reviewed the Case Management system notes for each of the 19 professional guardian files where we noted deficiencies.</p> <p>We found that only one case note had been created by Clerk’s staff in any of the 19 cases. This note was created in 2008 and related to receipt of a \$15 check — not any defects with professional guardian filings. As such, none of the deficiencies noted in 19 of 24 professional guardian filings were ever documented in case notes.</p> <p>Additionally, the Judge is not notified when a case note is created. Instead, in order to notify the Court, an Observation would need to be filed in the case. As a result, the Clerk’s current process does not comply with Florida law.</p>
Rec # 4	<p><i>“The Auditor was not able to provide documentation of the conflict of interest noted in the finding and therefore we are unable to provide a response to that specific finding.”</i></p>	<p>We informed Clerk’s management of potential conflicts of interest in professional guardian cases seven times during the audit. Not only did we inform management of these potential conflicts, but Clerk’s staff initially informed our auditors of conflicts that existed in Rebecca Fierle and another professional guardian case. Our office later provided that information to the Court and law enforcement.</p>
Rec # 4	<p><i>“In the rare event that the Clerk is made aware of a conflict of interest, it is noted as a Clerk Note in our Case Management System which allows anyone reviewing the case to view the documentation.”</i></p>	<p>In cases where we noted a conflict — including cases brought to our attention by Clerk’s staff — no case notes were created.</p> <p>Additionally, case notes are not an effective way to notify Judges or other clerks involved with other cases involving the same professional guardian.</p>

**APPENDIX –
AUDITOR’S COMMENTS**



Report Reference	Clerk’s Statement	Auditor’s Comments
Rec # 5	<p><i>“As required by Chapter 744 of the Florida Statutes, the Clerk complies with her statutory responsibility to review Guardian fees when submitted to the case.”</i></p> <p><i>“If the clerk notices any discrepancies, they would notate the discrepancy as a clerk note and refer to the note in the comments section of the fee petition so the judge may be properly informed of the findings and may rule appropriately. If an attorney or guardian fees were paid without prior court approval, that is also brought to the judge’s attention to be addressed.”</i></p>	<p>After reviewing a sample of attorney and guardianship fees, we found that the Court was only notified of approximately 50% of the issues with fees. However, the Court was never notified of the other 50%. Based on this error rate, the clerks either did not notice the deficiencies or procedures are not adequate for notifying the Court.</p>
Rec # 6	<p><i>“Additionally, there may be additional documentation unknown to the Auditor that was available in the Case Management System to support our compliance.”</i></p>	<p>The auditors met with Clerk’s staff to document the process followed for reviewing Verified Inventories. The Clerk’s procedures were also reviewed to identify any other documentation to review. The auditors reviewed documents, observations, and reports of auditor to confirm that the Court was not notified of any of the identified deficiencies. Finally, if the Clerk’s staff was aware of any additional relevant documentation, they should have provided it to the auditors.</p>

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Report Reference	Clerk’s Statement	Auditor’s Comments
Rec # 6	<i>“It is important to note that in instances where observations were filed, now called Report of Auditors, the statutory requirement to advise the court has been met.”</i>	<p>This statement is misleading because the auditors considered both observations and reports of auditors in their testing. If either of these documents were filed noting a deficiency, we agree that the Clerk’s statutory requirement would have been met.</p> <p>However, neither an observation nor report of auditor was filed in any of these instances.</p>
Rec # 9	<i>“The Clerk complies with Chapter 744 of the Florida Statutes in reviewing Inventories and Accountings within the required time frames.”</i>	<p>Although Annual Accountings are required to be reviewed within 90 days, some took as long as 334 days to review which is significantly higher than the required 90 days. During the audit, we found that 15% of Inventories and 22% of Accountings sampled were not reviewed within 90 days as required by Florida Law.</p> <p>As such, the Clerk did not comply with Chapter 744 of the Florida Statute in reviewing Inventories and Accountings within the required timeframes.</p>

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Report Reference	Clerk’s Statement	Auditor’s Comments
Rec # 10	<i>“The Clerk currently has a process for notifying the Court to ensure all delinquent filings are timely reported.”</i>	<p>The process the Clerk used to ensure Court notification of delinquent filings was based on time standards in the system. However, the time standards were not operating as designed.</p> <p>For example, if an annual accounting was filed and, an amended accounting was filed the time standards would be satisfied in the system for two years instead of one year. If the annual accounting was not filed the subsequent year, the Clerk would not be aware of this because of errors in the application of time standards. We identified numerous errors in the time standards that affected reporting accuracy.</p>
Rec # 10	<i>“When a Plan or Accounting has not been filed it appears on a report once it is five (5) days past due.”</i>	<p>Unfortunately, that report is based entirely on time standards. The time standards are inaccurate. (See previous note) The inaccuracy of the report was evidenced by noting that 31% of delinquent plans were not reported within 45 days of being delinquent. In addition, 112 delinquent Inventories and Accountings were not reported to the Court within 45 days. Of the 112 delinquent documents, 43 were never reported to the Court.</p>
Rec # 12	<i>“The Clerk complies with her statutory responsibilities outlined in Chapter 744 of the Florida Statutes. The Clerk assigns a court appointed attorney within the statutorily required three days for all Guardian Advocate cases.”</i>	<p>The Clerk did not initiate attorney appointments within 3 days in 161 of 793 (20%) Guardian Advocate cases. As a result, attorneys were not appointed within three days as required by Florida law.</p>