

CLERK & COMPTROLLER PALM BEACH COUNTY

GUARDIANSHIP REVIEW



SHARON R. BOCK
Clerk & Comptroller
Palm Beach County

Division of Inspector General
Audit Services Unit
September 17, 2009



SHARON R. BOCK
Clerk & Comptroller
Palm Beach County

September 17, 2009

The Honorable Sharon R. Bock, Esq.
Clerk & Comptroller

We conducted a review of the Clerk's Guardianship function. Our objectives were to, 1) perform a risk assessment to identify risks and vulnerabilities; 2) design and execute audit work to evaluate the adequacy of procedures and internal controls for core processes including inventories, plans, accountings, and professional guardian files; and, 3) survey other counties to evaluate their guardianship processes, and identify best practices and opportunities for improvement.

Our review was neither designed nor intended to be a detailed study of every process, procedure, transaction or system in each area. Accordingly, the observations and recommendations included in this report are not all-inclusive.

The review found that the Guardianship program is supported by civil court operations in multiple locations under separate reporting lines, without one individual designated as having overall responsibility. This has created challenges in ensuring the appropriate coordination, thoroughness, consistency, and timeliness of execution of processes.

We appreciate the cooperation of Court Operations management and staff during the course of this audit.

Respectfully submitted,

Roger Trca
Inspector General & Audit Director
Clerk & Comptroller Office
Palm Beach County

**Division of
Inspector General
Audit Services Unit**
301 N. Olive Avenue
9th Floor
West Palm Beach, FL 33401

Phone: 561-355-2722
Fax: 561-355-7050

www.mypalmbeachclerk.com

Table of Contents

Introduction.....	1
Background.....	1
Scope and Methodology	3
Conclusion	4
Observations & Recommendations.....	5
1. Opportunities exist to improve the coordination and consistency of processes in the guardianship auditing function	5
2. Check sheets used for auditing plans, inventories and accountings provide limited guidance to guardianship auditors.....	9
3. Guardianship auditors do not always receive or review key documents impacting the ward’s assets.....	10
4. Questionable and missing items are not always identified and followed up for resolution	12
5. Guardianship plans and accounting audits are not always completed within the time frame mandated by state statute and internal targets.....	14
6. Opportunities exist to conduct more detailed audits of guardianship cases posing significant risk.....	16
7. Non-professional guardians do not always complete required education	19
8. The process for notifying guardians of delinquent reports does not allow timeliness requirements to be met	20
9. Annual plans are not reviewed to identify those professional guardians who fail to visit their wards at least once each calendar quarter	21
10. Policies and procedures have not been completed in some areas.....	22
11. Opportunities exist to improve performance measures and reporting in guardianships	24
12. Opportunities exist to enhance training.....	26
13. Opportunities exist to improve the collection of professional guardian information	27

14. Opportunities exist to increase guardianship revenues from verified inventory fees28

15. Opportunities exist to incorporate best practices adopted by other Florida counties into the guardianship audit function.....29

Introduction

Background

The guardianship program within the State of Florida is regulated by Florida Statute Title XLIII Domestic Relations, Chapter 744 Guardianships, State Probate Rules Part III – Guardianships and Local Rule No. 5 for the 15th Judicial Circuit.

The intent of the State’s guardianship program is to:

- Ensure that guardianships are established when needed, but only when less restrictive alternatives are not appropriate.
- Protect the well-being of individuals designated as wards in need of guardianship.
- Protect the assets of those individuals.

The specific guardianship responsibilities of the Clerk’s office (expressed in FS 744.368) are to:

- Serve as custodian of the guardianship files.
- Ensure initial and annual guardianship reports contain required information about the ward.
- Complete reviews of initial and annual guardianship reports of the person within 30 days of their filing.
- Complete audits of verified inventories and annual accountings submitted by guardians of the property within 90 days of their filing.
- Advise the court of the results of such reviews and audits.
- Report to the court when reports are not timely filed.

Guardianship processing is performed within the Unified Family Court in the Main Courthouse and civil court operations at North and South county branches. File maintenance and guardianship auditing are performed at each location. Guardianships may be established to: protect only assets (guardian of property), protect only the individual (guardian of person), or protect both (known as a plenary guardian).

Guardianship cases are processed by guardianship auditors and docketing clerks, totaling six in all three locations, who are assisted in varying degrees by front-counter intake clerks and a Probate Mental Health Clerk in South County. Docketing clerks receive guardianship petitions and other filings, and process and forward the documents along with files to the court for action. Guardianship auditors audit initial plans, annual plans, verified inventories and annual accounting submissions for adherence to Florida Statute. These audits verify the mathematical accuracy of the forms and ensure completeness of the basic information required by statute.

The Clerk’s guardianship responsibilities are one part of a complex system of processing, which also involves Court Administration, the Elder Justice Center, magistrates, and judges assigned guardianship case responsibility for the 15th Circuit. The courts have case managers and administrative assistants that review guardianship cases as directed by judges. The Elder Justice Center serves as a source for court-appointed monitors when judges deem necessary.

The number of guardianship case filings initiated for each of the past four years is summarized below. The number of cases initiated has declined by 18 percent between 2005 and 2008.

Calendar Year	Number of Cases Initiated*
2008	636
2007	668
2006	728
2005	773

Source: Extracted from Banner Courts CDBCASE Table by Audit Services

** Cases initiated do not always require appointment of guardian and related reports*

The number of open cases as of December 31, 2008 as well as the number of inventories and accountings audited in calendar year 2008, by location, is summarized below.

Location	Open Cases @ 12/31/08 ¹	Inventories Audited ²	Accountings Audited ²
Main Branch	1,444	145	672
South County	1,264	60	177
North County	361	160	697
Total	3,069	365	1,546

Source: Extracted from Banner Courts CDBCASE and CDRDOCT Tables by Audit Services

¹ Data was taken from Banner Courts at December 31, 2008, which represents all guardianship cases (type GA) that do not carry disposition code GC (closed). Data includes cases closed by Court Operations during their case review project in January 2009. Pre-need cases are not included, which represent filings that have not risen to the level of cases with guardians appointed.

² Data was taken from Banner Courts for calendar year 2008, which represents all guardianship docket codes indicating either an inventory or an annual accounting was audited during the time period.

Scope and Methodology

The Clerk's Audit Services Unit conducted a review of guardianship functions of the Clerk's office. The objectives of the review were to:

- Perform a risk assessment to identify risks and vulnerabilities impacting the functions.
- Design review work to evaluate the adequacy of procedures and internal controls for all core processes and areas deemed high risk. Execute testing of select areas including, but not limited to, inventories/plans/accountings, attorney correspondence, and professional guardian files.
- Determine if goals and performance measures are developed and utilized to assess the success of operations.
- Survey other counties to evaluate their guardianship processes. Identify best practices and opportunities for improvement.

In order to meet these objectives, we conducted interviews, reviewed procedures, evaluated legislative requirements, evaluated performance measures and reporting, and evaluated the internal control environment. Testing of guardianship processes included sampling of case files with annual accountings or verified inventories filed and audited during calendar year 2008. We performed other procedures that were deemed necessary under the circumstances.

Conclusion

The Clerk & Comptroller's Guardianship program is supported by Unified Family Court and civil court operations in multiple branch locations under separate reporting lines, without one individual designated as having overall responsibility. This has created challenges in ensuring the appropriate coordination, thoroughness, consistency, and timeliness of execution of processes.

Opportunities exist to strengthen the forms and processes used to conduct audits of guardianship plans and accountings, enhance communication and monitoring practices with the court and other key partners, and ensure adherence to processing timeframes established by state statutes. Establishing centralized oversight of the guardianship function and standardizing processes will create efficiencies and have a positive impact on the operations.

Review Team:

Alan Bray, Deputy Inspector General & Audit Manager

Mike Bodle, Senior Auditor

Stuart Grifel, Senior Auditor

Observations & Recommendations

The Clerk's review identified certain policies, procedures and practices that could be improved. The review was neither designed nor intended to be a detailed study of every relevant system, procedure or transaction. Accordingly, the observations and recommendations presented in this report may not be all-inclusive of areas where improvement may be needed.

1. Opportunities exist to improve the coordination and consistency of processes in the guardianship auditing function

Guardianship auditors in the Main Courthouse and two branches report to different supervisors at each location. The current Clerk's organization structure has not designated one individual with responsibility for the overall guardianship functions within the branches and Main Courthouse. From an overall perspective, this structure has resulted in a lack of coordination, consistency of processes, and communication across the three locations.

While standardization exists in many respects among the three locations, certain differences were noted in the processing of guardianship cases, responsibilities of guardianship auditors and docketing clerks, and use of management tools. None of the differences, summarized below, are based on a written directive from the courts.

- The North County guardianship auditor only checks for guardianship education if it has been specifically ordered by the court. This is contrary to Florida Statute that requires all guardians to undergo appropriate education unless granted explicit waiver by the courts. The Main Courthouse and South County auditors verify receipt of education even if not court ordered and inform the court if not received.
- Both North County and the Main Courthouse hold audited plans and accountings for 30 days before forwarding the documents to their

respective judges for approval. South County forwards these documents immediately. Florida Statute does not require that plans and accountings be held for 30 days but does allow any interested party 30 days from the filing date to object to any element of the annual report.

- A South County clerk responsible for mental health/incapacity cases selects a conflict attorney based on the individuals' availability rather than random selection. This same clerk chooses examining committee members for incapacity hearings instead of allowing the judge to appoint them. In both North County and Main Courthouse, conflict attorneys are randomly selected, and the judge appoints the examining committee members.
- The North and South County guardianship auditors attend the monthly contempt hearing held by the magistrate in their locations while the Main Courthouse guardianship auditor does not.
- South County does not generate daily auditor workload statistic reports as provided by Main Courthouse and North County.
- Guardianship auditors in South County and Main Courthouse do not receive all documents related to each case. The docketing clerk in these two locations receives certain documents (e.g., petitions for fees or settlements) that are not provided to or reviewed by the guardianship auditors. Therefore, information included in these documents may not be considered in the audits conducted by the guardianship auditors.

Establishing centralized oversight of the guardianship function would help ensure a consistent and complete review process for guardianship inventories and accountings and thorough communication among the three locations.

Recommendations:

- A. Consider centralizing the guardianship function to enable consistency of processes and procedures. If the current three location structure is determined to best meet the Clerk's office needs, designate an individual to oversee the guardianship auditing function. This individual should ensure

comprehensive, consistent auditing at all locations guided by uniform policies and procedures and periodic performance reports.

- B. Management should consider designating the guardianship auditing function as a program with specific program-related goals and performance measures. The resource workload measures currently in place could be leveraged.
- C. Determine what, if any, differences in processing guardianship cases should exist between locations. Differences between locations should be documented in the guardianship auditing policies and procedures.
- D. Direct the guardianship auditor in North County to check for guardian education even if there is no court order. Those guardians who fail to complete the training within four months should be reported to the court.
- E. Generate daily guardianship auditor workload statistics in South County.
- F. Consider providing guardianship auditors in the Main Courthouse and South County with responsibility for processing guardianship cases from the time that the initial application is received until the case is closed. This responsibility should include all of the guardianship-related activities currently performed by the docketing clerks in these locations.

Management Responses:

- A. Agree. Management concurs that oversight of the guardianship function should be centralized. While we are currently complying with our statutorily mandated guardianship duties, it would be in the best interest of the ward to expand the clerk's role and perform more in-depth audits. To do this, however, additional costs will have to be incurred. At a minimum, a Guardianship Auditor with the appropriate professional expertise and training will have to be hired to lead the guardianship team. This Guardianship Auditor will provide oversight of the audit process, develop the necessary standardized policies and procedures, and handle those individual cases that are recognized as posing a significant risk. Guardianship audit clerks will remain in the three locations (Main Courthouse, North and South County) and report to, for guardianship issues only, this individual with the appropriate professional expertise noted above.

This new Guardianship Auditor position can be placed under Operations or, in the alternative, the entire guardianship audit process can be turned over to the Division of Inspector General, with roles and responsibilities to be determined.

Target Completion Date: 01/15/10

- B. Agree. The guardianship auditing function should be run as a separate program; related goals and performance measures will be developed.

Target Completion Date: 01/15/10

- C. Agree. More robust policies and procedures in conducting guardianship audits will be established.

Target Completion Date: 01/15/10

- D. Agree. Guardian education and non-compliance reporting will be better monitored.

Target Completion Date: 01/15/10

- E. Agree. Daily guardianship workload statistics will be generated.

Target Completion Date: 01/15/10

- F. Agree. Refer to Response #1.A above.

Target Completion Date: 01/15/10

2. Check sheets used for auditing plans, inventories and accountings provide limited guidance to guardianship auditors

Guardianship auditors currently utilize one-page check sheets to audit the inventories, plans, and accountings submitted to the Clerk's office. Completed check sheets are forwarded to the guardianship judge in each location. Check sheets include a limited number of items to be verified and reflect a minimum level of auditor review to satisfy requirements of Florida Statutes.

We observed instances in which the auditors noted deficiencies and requested additional information or clarification, as appropriate. However, we also noted questionable items were not identified by guardianship auditors during their audits. These items may have been identified and followed up on if a more detailed check sheet had been utilized. In addition, detailed check sheets help ensure consistency of the audit process across the locations. To facilitate the review process, the Florida Association of Clerks and Comptrollers (FACC) provides best practice model check sheets that can serve as guides for more detailed reviews of plans, inventories and accountings.

Recommendation:

- A. Develop comprehensive check sheets for guardianship auditing using the FACC best practices check sheets as a guide. These check sheets should help guardianship auditors conduct more detailed audits of guardianship plans and accountings.

Management Response:

- A. Agree. The FACC checklists in conducting guardianship audits have been implemented.
Target Completion Date: Completed

3. Guardianship auditors do not always receive or review key documents impacting the ward's assets

Guardianship auditors are responsible for reviewing documents received and raising questions or objections whenever assets of the ward seem incompletely or incorrectly reported, or where transactions are not in the ward's best interest. Certain documents are not received or reviewed by auditors, making it difficult to identify potential concerns that may impact the ward's assets.

Guardianship auditors do not receive or review key documents. Instead, these documents are sent directly to a docketing clerk and scanned into the Banner Court system. Such documents often have information that could impact the accuracy of the inventories or accountings being audited.

In testing of 30 guardianship case files, we found ten instances within eight case files where guardianship auditors did not receive or review key documents that included questionable items requiring follow up. Examples included the following:

- One guardian's application referred to managing the ward's rental property, but the inventory did not include rental property assets or rental income. If reviewed, this application would have brought the inventory valuation into question.
- No process is in place in the Clerk's office to review petitions for payment of attorney fees prior to being submitted for approval by the Court. The Clerk's office relies upon the Court to review and approve the attorney's petition for payment. In two cases, the attorney billings of charges were not allocated to those activities performed by a paralegal and those performed by an attorney. The hourly rates were \$325 and \$400. In one case, with fees totaling \$29,657 in 2008, the services listed included making copies and phone calls, and gathering costs for a Disney trip and carpeting at the ward's residence. Further review would allow the guardianship auditor and Court to verify that these services were performed by the attorney rather than a paralegal.
- In one case, attorney's fees were ordered by the court to be paid while a pending contempt order issued by the same court had not been satisfied. The court magistrate had issued a contempt order on December 4 for failure to file required documentation. The attorney's petition for payment of fees was

approved on December 12, although the contempt order was not satisfied until January 7. If the petitions for fees were reviewed by the auditor, the court's attention could have been drawn to the outstanding contempt order. The court could have noted the pending contempt order when considering the fees, but an auditor's comment regarding the issue would have served as a reminder to the court that the fee petition should have been deferred.

Benchmarking conducted in our review found that four of the five counties surveyed receive and review these types of petition documents. These documents are often reviewed by guardianship auditors at different times than when the initial and annual plans and accountings are reviewed.

Recommendation:

- A. Guardianship auditors should receive and review key documents related to guardianship cases (e.g., petitions for payment of attorney fees, rental property information when it may be mistakenly absent from inventory) before these documents are submitted to the court.

Management Response:

- A. Disagree. Management stated that the current guardianship audit review complies with statutory requirements. Section 744.368 delineates the clerk's role and it does not state that the clerk is to undertake a review of documents such as petitions for attorney's fees. However, it would be prudent to review other documentation submitted regarding assets/liabilities, such as information regarding rental property or other rental income, and to compare such information to the information provided in the inventory.

Target Completion Date: 10/31/09

4. Questionable and missing items are not always identified and followed up for resolution

Guardianship audits are performed to identify questionable and missing items on the initial inventories and annual accountings. The review indicated that instances occurred when such items were not identified and follow up inquiries or verifications were not performed as needed.

Our testing of 30 files noted seven instances where questionable items or “red flags” were not identified, including:

- Assets were not clearly identified or valued on the inventory or accounting (2).
- Missing checks shown on supporting papers were not questioned (2).
- Multiple checks for cash to a ward were not questioned on one occasion, although the ward was deemed vulnerable to attempts to divert assets by the ward’s guardians (1).
- A transfer to a ward’s bank account was questioned for lack of court order, but no question was raised as to why the account was not previously identified as an asset under the guardianship (1).
- Unexplained differences listed for intangible items were questioned, but the guardianship auditor did not provide a comment to the court when the attorneys and guardian couldn’t further explain it (1).

To comply with F.S. 744.102 and ensure the protection of the ward’s physical and financial well being, a comprehensive examination must be performed and attempts must be made to verify all significant items. Concerns identified should be communicated to the court.

Recommendations:

- A. Strengthen the audit process by consistently following up on questionable and missing items. To do so, management should adopt the FACC recommended best practice audit check sheets. Detailed check sheets would help ensure that all items that affect the physical and financial well being of the ward will be reviewed by the guardianship auditors.
- B. Supplement the detailed check sheets (in A above) with a list of common red flags for which guardianship auditors should be aware as they review and question the information submitted and document concerns for follow up.

Court Operations should also ensure that higher risk guardianships, such as those with large assets and habitually delinquent reporting, receive greater attention than the routine small filings.

Management Responses:

A. Agree. The FACC checklists are now utilized in conducting guardianship audits.

Target Completion Date: Completed

B. Agree. A follow-up process and red flag list will be developed and included in the policies and procedures.

Target Completion Date: 01/15/10

5. Guardianship plans and accounting audits are not always completed within the time frame mandated by state statute and internal targets

Florida Statute 744.368 requires that the Clerk shall audit the verified inventory and the accountings within 90 days after they have been filed by a guardian of the property.

Our review disclosed that 3 of 15 annual accounting audits and 5 of 15 audits of initial inventories were not completed within 90 days of receipt in the Clerk's office. North County accounted for the majority of the exceptions (6 of 8). The causes for the delays varied but were often related to failure of guardians or their attorneys to respond to questions raised by the auditors.

Court Operations has set an internal time standard that allows attorneys 20 work days to respond to guardianship auditor correspondence that directs attorneys or guardians to submit missing documentation or clarify submitted information. Attorneys often provide incomplete responses or respond after the 20-day deadline. Incomplete responses generate additional correspondence, with an additional 20 days allowed for response. These delays contribute to the inability to complete audits within the required 90 days. In addition, magistrates may allow attorneys or guardians additional time at the contempt hearing, resulting in a cases being rolled over to the following month.

Recommendations:

- A. Track guardianship audit correspondence for timely response and report untimely (beyond 20 days) and inadequate responses to the court. Supervisors should monitor these delays. Common causes should be identified and addressed as deemed necessary.
- B. Implement steps to strengthen the communication and collaboration between Court Operations and guardianship attorneys. Improved communication may help to reduce delays and inadequate responses.
- C. The Court's Elder Justice Center (EJC) has recently begun a pilot program in the Main Courthouse in which the EJC is appointed as court monitor for any guardian who does not appear at contempt hearings scheduled as a result of

the Clerk's audit efforts. Court Operations should encourage the Court to expand this program to the North and South County locations.

Management Responses:

- A. Agree. Guardianships will work with the court to develop standards to ensure guardianship plans and accounting audits are performed timely.
Target Completion Date: 01/15/10

- B. Agree. Guardianships will implement steps to strengthen communication between Court Operations and guardianship attorneys.
Target Completion Date: 01/15/10

- C. Agree. Guardianships will pursue the expansion of the EJC pilot court monitor program to the North and South County locations.
Target Completion Date: 01/15/10

6. Opportunities exist to conduct more detailed audits of guardianship cases posing significant risk

Guardianship in the State of Florida is governed by Chapter 744 of the Florida Statutes. Prior to legislative changes in 2006, the legislative intent of the term “audit” indicated that the Clerk’s role was to check off the required guardianship forms. However, in 2006, legislation amended the guardianship statute. Subsection 744.102 states that “audit” means a systematic review of financial and other documents to ensure compliance with s. 744.368 (Responsibilities of the Clerk of the Circuit Court), rules of court, and local procedures using generally accepted accounting principles.” The Clerk’s “audit” responsibility under s. 744.368 is defined as “within 90 days after the filing of the verified inventory and accountings by a guardian of the property, the clerk shall audit the verified inventory and the accountings. The clerk shall advise the court of the results of the audit.”

While clear guidance was not provided in the legislation to ensure adherence when conducting audits, it is prudent to ensure clerks utilize due care and methods that are consistent with the intent of the legislation. In guardianship cases posing significant risk, more detailed audits may be warranted.

The FACC Best Practices Committee on Guardianships recommended several guidelines that Clerk’s offices in Florida could follow in trying to exhibit the due care contemplated in the legislation. For example, it recommended that varying degrees of audits should be conducted, with consideration given to involving Clerk audit staff, as follows:

- Level 1 Audit: Consists of desk review of the guardianship reports in conjunction with the supporting documentation filed therewith.
- Level II Audit: Consists of the examination of the guardianship report, and the attempted verification of selected questionable items. Limited inquiries and/or requests for supporting documentation may be necessary to resolve issues.
- Level III Audit: Consists of a comprehensive examination and attempted verification of all significant items pertinent to the guardianship report. Detailed review of accounts and attendant transactions is common, which may include third party confirmations as necessary.

Currently, the Clerk's office only conducts less detailed audits, consisting of desk reviews of the guardianship reports and supporting documentation as well as attempted verifications of selected questionable items. These actions are indicative of Level I and II audits (as defined above). Guardianship auditors are experienced individuals though none have accounting degrees or accounting backgrounds. Audit Services solicited an opinion from the Clerk's Legal Counsel as to the level of audit contemplated by the 2006 legislation. The legal opinion is that Level III audits are not required to satisfy the current legislation.

Testing indicated that certain guardianship cases represented higher risk based on various factors that may include: significant asset values, inability to substantiate assets or large changes in asset values, and questionable actions taken by a particular guardian. In such cases, exercising due care may require more in-depth audits, as described above in Level III audits.

We are aware that three Clerk offices (Broward, Pasco and Pinellas) perform more detailed Level III audits. These audits are performed using staff within the Clerk's internal audit office (Pinellas) or within the guardianship audit function, many of whom have accounting degrees and accounting backgrounds.

Recommendation:

- A. Re-evaluate the current audit practices. We recommend that more detailed examinations be conducted by performing Level III audits for guardianship cases posing significant risk. Determine the required staffing and skill sets and formulate action plans. Management may consider enhancing the skills sets within the guardianship auditing function and coordinating with Audit Services.

Management Response:

- A. Management stated that Florida Statutes do not require the clerk to conduct a level III audit and they are currently conducting audits in compliance with Florida Statutes.

Although the FACC does designate three audit levels that are recommended as a "best practice," it appears that only a few counties have adopted and implemented this entire recommendation. While this "best practice" allows for more in-depth audits to be done, such practices are not required and no additional funding has been provided to support such practices.

With that being said, however, doing more with regard to conducting our guardianship audits would be in the best interest of the ward. To do this, however, additional costs will have to be incurred. At a minimum, a Guardianship Auditor, possessing the appropriate professional expertise and training, will have to be hired to lead the guardianship team. This Guardianship Auditor will provide oversight of the audit process, develop the necessary standardized policies and procedures, and handle those individual cases that are recognized as posing a significant risk.

This new Guardianship Auditor position can be placed under Operations or, in the alternative, the entire guardianship audit process can be turned over to the Division of Inspector General, with roles and responsibilities to be determined.

Target Completion Date: 01/15/10

7. Non-professional guardians do not always complete required education

According to F.S. 744.3145, all non-professional guardians must complete eight hours of education within the first four months of their appointment. Unless waived by the court, it is the responsibility of the guardianship auditor to ensure that they receive documentation of training completion from non-professional guardians and report any non-compliance to the court.

We performed testing of 22 cases to verify that education requirements were met by the non-professional guardians. Our review disclosed that 13 of 22 non-professional guardians did not complete their required educational requirements. Of the nine individuals that did complete their training, five did not do so within the first four months of their appointment.

Recommendation:

- A. Establish procedures to verify education requirements are completed by non-professional guardians within four months from the inception of the guardianship. Notify the court when instances of non-compliance are identified immediately after the four month filing period, rather than providing it with the annual accounting.

Management Response:

- A. Agree. Procedures will be updated to include verification of education requirements for non-professional guardians and notification to the court.
Target Completion Date: 10/31/09

8. The process for notifying guardians of delinquent reports does not allow timeliness requirements to be met

Orders to Show Cause are prepared by guardianship auditors when guardians fail to submit plans or accountings (filings) when due, or fail to respond to correspondence sent by the guardianship auditor. F.S. 744.3685 requires the court to order an attorney or guardian to file a missing guardianship report within 15 days of service of the order.

In North County and Main Courthouse, guardians are allowed up to six weeks to respond to contempt orders due to the timing in processing contempt orders. In South County, cases are assigned to magistrates who meet for contempt hearings every other month, which results in response requirements that routinely exceed ten weeks. Therefore, the process builds in a minimum response window of more than double the maximum time permitted under the Florida Statute.

Recommendation:

- A. Court Operations should coordinate with the Court to revise the timing of the monthly delinquency reports and orders setting contempt hearings to ensure compliance with state statute. Orders should be signed and transmitted to allow enough time for service and then 15 days for response.

Management Response:

- A. Agree. Regular meetings with court will be established to ensure compliance with guardianship statute.

Target Completion Date: 01/15/10

9. Annual plans are not reviewed to identify those professional guardians who fail to visit their wards at least once each calendar quarter

Florida Statute 744.361 requires that professional guardians, or one of their professional staff, visit their wards at least once per quarter. The statute applies to all professional guardians except for those appointed only as guardian of the property.

The current annual guardianship plan form created by the Florida Bar Association does not request professional guardians to indicate if the required quarterly visits were conducted. Guardianship auditors do not follow up with professional guardians who fail to provide this information to verify that the quarterly visits were performed.

Recommendation:

- A. Coordinate efforts with the Court to revise the annual guardianship form to include reporting of quarterly visits by professional guardians. Direct guardianship auditors to follow up when information is not provided and report annually to the judge those instances in which visits are not conducted quarterly.

Management Response:

- A. Agree. Procedures will be updated to annually report instances in which professional guardians fail to make quarterly ward visits.
Target Completion Date: 10/31/09

10. Policies and procedures have not been completed in some areas

Standardized procedures are in place in some areas though opportunities exist to finalize and unify policies and procedures for the guardianship processes in the three locations.

Best practices in internal controls indicate that written policies and procedures should be in place within an organization. Such guidance helps to ensure accuracy and consistency in the quality of work and application of laws and regulations when conducting audits of plans and accountings.

Procedures are in various stages of completion in the various locations. Some procedures are in place in the Main Courthouse and North County to guide staff on the use of the Banner Courts system. However, these procedures do not contain all of the steps to conduct an audit from the time the accounting, inventory or plan is received by the auditor to the time each is approved and placed in the case file. No procedures are in place at South County.

Further, the current procedures do not incorporate many of the changes (10 of 14) made in 2006 to the guardianship state statute as identified by Court Operations.

Given the multiple locations where the guardianship function is performed and varying levels of supervisory oversight by location, it is important that policies and procedures be clearly defined and available.

Recommendations:

- A. Develop a policy that provides overall direction to the guardianship auditing function. The policy should include processing timeframes prescribed by state statute and required communication to management when branches deviate from written procedures.
- B. Develop procedures that contain all of the steps to conduct audits of accountings and plans from the time of receipt to approval and filing. Procedures should be sufficiently detailed so that guardianship auditors are alerted to questionable items or red flags. The procedures should utilize a

standard format and be placed on the Court Operations intranet for easy access by all locations.

Management Responses:

A. Agree. Policies and procedures will be improved to address the recommendations.

Target Completion Date: 01/15/10

B. Agree. See response in #10.A above.

Target Completion Date: 01/15/10

11. Opportunities exist to improve performance measures and reporting in guardianships

The guardianship function collects workload performance data related to the number of plans and accountings received and processed. Some reports are generated related to workload data. Opportunities exist to implement performance measures and improve reporting for the guardianship function. Without measurement data and comprehensive reporting, it is difficult for internal management and external stakeholders to assess performance.

Expanded performance data and corresponding performance targets would enable management to track trends over time by branch and in total. This will enable the necessary actions to be taken to enhance the efficiency, effectiveness and quality of the guardianship activities. Information from a performance measurement system is also useful in conducting benchmarking, evaluating best practices, and identifying areas in need of improvement. Performance measures are especially useful when they are linked to the goals of an organization.

Examples of performance measures that could be established include:

- number and percentage of filings that require additional information or clarification (completeness)
- number and percentage of cases where excess time is required to obtain requested information and/or clarification
- number and percentage of all expected annual accountings that are not received by their due dates
- number and percentage of cases completed within mandated state and internal time standards

Once performance measures are implemented and data is collected on a regular basis, reports can be created that allow management to monitor the status of key performance measures and provide the information necessary for more effective decision-making. Such reports may include late or incomplete annual plans and accountings, open and closed guardianship cases in total and by auditor, and open correspondence requests. Limitations exist within the Banner Court system as this information is not available or not easily extracted. In addition, the asset values of cases are not maintained in the system. Such information would allow comparison to the annual accountings and could be used in selecting cases for comprehensive audits and other analyses.

Recommendations:

- A. Develop a set of performance measures with related goals and targets for the guardianship auditing function. Time standards could be established for auditing initial inventories and accountings based on the value of the ward's assets.
- B. Develop reports that capture performance measurement results and allow management to monitor cases and track pending items. In addition, location specific and consolidated data could provide useful data for decision making.

Management Responses:

- A. Agree. Performance measures and related reporting will be developed to address the recommendations.
Target Completion Date: 01/15/10
- B. Agree. See response in #11.A. above

12. Opportunities exist to enhance training

Opportunities exist to strengthen the training provided to guardianship auditors. Staff does not receive ongoing training on auditing guardianship plans and accountings. Training will allow a consistent approach in addressing questionable items that may arise. Also, any changes in legislation should result in a unified approach in handling and reviewing plans and accountings.

Recommendation:

- A. Provide guardianship auditor training on an ongoing and as-needed basis. Training will take on added importance if guardianship auditors conduct more detailed reviews of plans and accountings.

Management Response:

- A. Agree. Training will be provided as needed.
Target Completion Date: 01/15/10

13. Opportunities exist to improve the collection of professional guardian information

Florida Statute F.S. 744.3135 requires the Clerk's office to maintain documentation for each professional guardian's periodic criminal background investigation, credit check, and training attendance. The Clerk's office must provide this information to the Statewide Office of Public Guardianship on request. Given the current procedures, the Clerk's office may not be able to properly respond should such a request be received.

Currently, the docketing clerk in the Main Courthouse collects documents from the professional guardians along with a one-time fee of \$7.50. However, the Main Courthouse does not actively track receipt of the documents. Staff does not determine whether periodic updates of criminal background investigation and/or credit checks have been received nor distinguish whether professional guardians are active or inactive.

Our review of eight professional guardian folders disclosed that four guardians had not provided criminal background investigations or credit check results for the past three calendar years. In addition, six professional guardians had not submitted evidence of completed continuing education within the past four calendar years.

Recommendation:

- A. Maintain and periodically review (at least annually) professional guardian files to ensure missing documents are identified and reported to the court.

Management Response:

- A. Agree. Procedures will be updated to maintain and review professional guardian files and report missing documents to the court.
Target Completion Date: 10/31/09

14. Opportunities exist to increase guardianship revenues from verified inventory fees

Florida Statute 744.365(6)(b) states that no fee will be charged for verified inventories in guardianship cases when the property of the ward has a value less than \$25,000. However, fees have been waived in instances where additional information indicated that the valuations exceeded \$25,000.

Inventories are procedurally structured to identify the values as of the date of the appointment of the guardian. Florida statutes do not specifically limit the inventories to such valuations as of the date of the appointment of the guardian; rather, valuations must include all property of the ward, real and personal, that has come into the guardian's possession or knowledge.

In 5 of 15 waived fee cases reviewed during our audit, the fee for the audit of the verified inventory was waived because the inventory reported no assets or assets less than \$25,000. In all five cases, the basis for waiver was that assets did not exist at the date of the inventory; however, assets were anticipated in amounts ranging from \$46,000 through \$1.5 million. In four of these cases, documents were available prior to the date the inventory was filed (ranging from 3 to 120 days), indicating that value had been established for those settlements.

Recommendation:

- A. Moving forward, review all documents available, either in hard copy or as docketed in guardianship files in the Banner Court system, to validate inventories which indicate no value for the ward's property. Fees should be recorded as pending when there are indications of sufficient assets available or due to the ward to allow collection of the fees.

Management Response:

- A. Agree. Procedures will be updated to validate inventories which indicate no value for the ward's property and ensure fees are based on the recorded assets.

Target Completion Date: 01/15/10

15. Opportunities exist to incorporate best practices adopted by other Florida counties into the guardianship audit function

During our review, five large Florida counties (Pasco, Hillsborough, Broward, Orange and Collier) were contacted and benchmarked to identify best practices within the guardianship audit processes. Information was also obtained from Pinellas County though was not included in the complete survey. The best practices are summarized below, which include additional revenue generation opportunities. In addition, the FACC has provided guardianship audit best practices on their website.

- A. Broward and Pinellas counties have adopted the FACC recommended best practice audit check sheets. As discussed in Observation #1, check sheets serve as guides for detailed auditing of plans, inventories and accountings and help to identify red flags that could otherwise be missed. Also, the FACC recommends that Clerk offices coordinate and cooperate with the local court to agree on a uniform set of procedures and audit forms.
- B. In three of the five counties surveyed, guardianship auditors have accounting degrees. In addition, two counties have developed job descriptions that are specific to the guardianship auditing position.
- C. Guardianship auditors with an accounting degree or an accounting background can help facilitate audits in accordance with generally accepted accounting principles and assist in performing level three audits required in selected cases.
- D. Guardianship information on the Palm Beach County Clerk's office website is limited to the Unified Court Director's name and phone number. In contrast, three of the five counties surveyed have public websites that provide useful information to guardians and their attorneys. This information includes, but is not limited to, guardian handbooks, blank guardianship forms, frequently asked questions, and checklists that provide guardians and attorneys with information that can help to reduce the number of incomplete and incorrect filing of plans and accountings.

- E. Broward County's website has blank forms that guardianship attorneys are required to download and complete for verified inventories, initial and annual plans, and annual accountings. These forms help ensure consistency in the types of guardianship information currently submitted. In addition, Broward County has developed a probate and guardianship case management system to work in conjunction with their e-filing system.
- F. Pinellas County Clerk encourages individuals who suspect guardianship fraud, waste and abuse to contact their Internal Auditor's hotline.
- G. Four of the five counties surveyed require that non-professional guardians undergo criminal background and credit checks when first appointed. In addition, some of these counties also require annual criminal background and credit checks for non-professional guardians.
- H. Three of the five counties surveyed have administrative orders issued by their courts describing specific roles and responsibilities for guardians, guardian attorneys, guardianship auditors, and the courts that hear guardianship cases. The FACC recommends that Clerk Offices seek a Guardianship Administrative Order from the Court.
- I. Some of the counties surveyed provided examples of cooperation between the Clerk's offices and their courts regarding the guardianship function. For example:
- In Hillsborough County, extensive cooperation exists between the Clerk's office and their Elder Justice Center in the auditing of plans and accountings.
 - In Broward County, a Program Attorney in the Court's Probate Division serves as a liaison between the Clerk's guardianship auditing function, the court, and guardianship attorneys.
 - In Orange County, monthly meetings are held between the Probate Court Judge and the Clerk's Probate Division to discuss common issues and ways to streamline operations in guardianship and other Probate areas.

Best practice opportunities to generate new and incremental revenues from guardianship related audit activities are detailed below.

- J. Three of the counties surveyed charge a fee, ranging from \$22.50 to \$50, to conduct initial and annual criminal background investigations and credit checks for non-professional guardians. In all three counties, the court monitor

conducts the investigations. In Pasco and Pinellas counties, the Clerk is authorized to deduct a 10% administrative fee from the fees collected.

- K. Three of the counties surveyed charge a fee, ranging from \$22.50 to \$50, to conduct initial and annual background investigations and credit checks for professional guardians.
- L. Broward County charges a fee for having their guardianship auditors conduct an audit of simplified accountings. Broward's fee is based on the same asset valuation levels that are utilized for regular accountings.
- M. Broward County charges a fee of \$117 for all pre-need guardianships. In such cases, filers submit a document naming the person who they desire to become their guardian in the event they become incapacitated. Or, filers may designate the guardian of their children in the event of their death.
- N. Broward County is considering the implementation of a fee for auditing all final accountings, regardless of the timeframe in which the final accounting is submitted. Palm Beach County charges a fee for a final accounting only if the period of the guardianship exceeds one year. Regardless of when it is submitted, the auditing of a final accounting requires the same amount of work as auditing an annual accounting.

Recommendation:

- A. Review the various best practices provided and determine the actions deemed appropriate to strengthen the guardianship function and processes.

Management Response:

- A. Agree. The review of other counties for guardianship audit best practices appears to be somewhat narrow. While the small group surveyed appears to offer a broader audit program, the vast majority of clerks appear to take a more limited approach. This is likely due to liability concerns (taking on enhanced responsibilities when not specifically authorized by statute) or due to a lack of resources and proper funding.

With that being said, however, incorporating the best practices from other counties that take an expanded view of their guardianship audit responsibility would be in the best interest of the ward.

To incorporate such best practices, however, additional costs will have to be incurred. At a minimum, a Guardianship Auditor, possessing the appropriate professional expertise and training, will have to be hired to lead the guardianship team. This Guardianship Auditor will provide oversight of the audit process, develop the necessary standardized policies and procedures, and handle those individual cases that are recognized as posing a significant risk.

This new Guardianship Auditor position can be placed under Operations or, in the alternative, the entire guardianship audit process can be turned over to the Division of Inspector General, with roles and responsibilities to be determined.

Target Completion Date: 01/15/10