



# Statewide Investigation Alliance

*A Statutory and Agreed Partnership with the Florida Department of Elder Affairs, Office of Public and Professional Guardians and select Clerk of Circuit Court and Comptroller, Office of Inspector Generals .*

Adopted X/X/XX

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## **1. POLICY STATEMENT**

The Clerks' Statewide Investigations Alliance ("Alliance"), in order to effectively fulfill the Memorandum of Understanding ("MOU") with the Florida Department of Elder Affairs, Office of Public and Professional Guardians ("OPPG") and statutory responsibilities for investigations of professional guardians pursuant to Florida Guardianship Law, Chapter 744, Fla. Stat., have jointly and severally adopted the following policies and procedures. The professional and independent auditors and investigators ("staff members") of the Alliance members, both individually and organizationally, assigned to the Alliance buttress the Florida Judicial Circuit Court's ("Court") duties of oversight and protection of the wards', the Clerks of the Circuit Court and Comptroller's ("Clerk") duties to audit and investigate guardianships and advise the Court, and the OPPG duties of monitoring, educating and disciplining professional guardians. In cooperation with the Court, Clerk, and OPPG, the Alliance will conduct investigations involving legally sufficient complaints about professional guardians.

**GUIDING PRINCIPLE: All investigations of professional guardians start with a legally sufficient complaint reported to the OPPG and then referred to the Administrative Coordinator and an Alliance member.**

**GUIDING PRINCIPLE: The Clerks have had the permissive duty to perform enhanced audits and investigations since the enactment of the "Clerk's Guardianship Auditing Bill", codified into Florida Guardianship Law on July 1, 2014; however, no financial resources were allocated by the legislation.**

**STATUTE: Pursuant to Section 744.368, Fla. Stat., in addition to the duty to serve as the custodian of the guardianship case files, the Clerk has the duty to audit guardianship reports, including all financial information about wealth, disbursements, fees, real property, future interests, settlements, and benefactors, and all person information, and including all medical plans, drugs, residency settings, and social interactions. Pursuant to Section 744.102, Fla. Stat., the Clerk's audits can include investigations, reviews of substantiating papers and accounts, inspections, verifications, and interviews.**

## **2. PURPOSE OF POLICY**

This policy will ensure a documented and consistent approach to investigations of legally sufficient complaints about professional guardians by the Alliance. When allegations of abuse, neglect, or exploitation against a vulnerable person is reasonably suspected, the Alliance will contact the Florida Abuse Hotline, administrated by the Florida Department of Children and Family, Adult Protective Services. Once the alleged criminal act is fully investigated, the Alliance will contact an appropriate law enforcement agency and coordinate efforts with them throughout the entire criminal justice system of charging, convicting, and sentencing.

**GUIDING PRINCIPLE: Reasonable suspicions about physical abuse, neglect, and exploitation of vulnerable persons should be reported to the Florida Abuse Hotline at 800-96-ABUSE (2-2873) and can be anonymous. If there is doubt or uncertainty, report reasonable suspicions of abuse, neglect, or exploitation of vulnerable persons immediately.**

Findings or issues identified in court proceedings involving professional guardians, encompassing both the Clerk's audits and investigations of guardianships and the Alliance's investigations of professional guardians, could potentially lead to civil sanctions, criminal prosecution, and administrative discipline. Professional guardians are morally and ethically accountable to the ward and statutorily accountable to the Court and the OPPG. Professional guardians could face civil, criminal, and administrative penalties for failing to carry out their fiduciary and protection duties to persons under guardianship. Failure of the professional guardian to fulfill their duties may be egregious, intentional, willful, or wanton, and is to be considered a criminal act, especially in regards to guardianship income, assets, disbursements, health, and safety.

The Alliance is a fact finder, observer, inspector, consultant, investigator and auditor. The Alliance will investigate, report, advise, and make recommendations, if necessary, to the Court, Clerk, and OPPG.

The Alliance is never the trier of facts; the trier of facts is always reserved for a Court with jurisdiction. The Alliance should never give legal advice or legal opinion to any person, except to make a recommendation that the person should seek legal advice or a legal opinion.

**GUIDING PRINCIPLE: The purpose of policies and procedures is to ensure a consistent approach to investigations of professional guardians.**

**GUIDING PRINCIPLE: The Alliance has a professional and ethical duty to refer all criminal matters to the appropriate law enforcement agency.**

### **3. ETHICS**

The Code of Ethics adopted by the Institute of Internal Auditors ("IIA"), the United States General Accountability Office ("GAO") Government Auditing Standards, the Association of Inspectors General ("AIG"), and/or Commission for Florida Law Enforcement Accreditation for IG offices ("CFA") will apply. The Florida Inspectors General Standards Manual ("Standards") will apply in the performance of investigations by Alliance staff

members. The Standards of Conduct and statements about its interpretation are as follows:

## **Principles**

### **Integrity**

- The integrity of Alliance staff members shall establish trust and thus provides the basis for reliance on their judgment.

### **Objectivity**

- Alliance staff members shall exhibit the highest level of professional objectivity in gathering, evaluating, and communicating information about the activity or process being examined.
- Alliance staff members shall make a balanced assessment of all the relevant circumstances and are not unduly influenced by their own interests or by others in forming judgments.

### **Confidentiality**

- Alliance staff members shall respect the value and ownership of information they receive and shall not disclose information without appropriate authority, unless there is a legal or professional obligation to do so.

### **Competency**

- Alliance staff members shall apply the knowledge, skills, and experience needed in the performance of auditing and investigation services.

## **Rules of Conduct**

### **Integrity**

- Shall perform their work with honesty, diligence, and responsibility.
- Shall observe the law and make disclosures expected by law and the profession.
- Shall not knowingly be a party to any illegal activity or engage in acts that are discreditable to the profession or to the organization.
- Shall respect and contribute to the legitimate and ethical objectives of the organization.

### **Objectivity**

- Shall not participate in any activity or relationship that may impair or be presumed to impair their unbiased assessment (including those activities or relationships that may be in conflict with the interests of the organization).
- Shall not accept anything that may impair or be presumed to impair their professional judgment.

- Shall disclose all material facts known to them that, if not disclosed, may distort the reporting of activities under review.

### Confidentiality

- Shall be prudent in the use and protection of information acquired in the course of their duties.
- Shall not use information for any personal gain or in any manner that would be contrary to the law or detrimental to the legitimate and ethical objectives of the organization.

**STATUTE: Pursuant to Section 119.0713(2), Fla. Stat., the audit report of an internal auditor and the investigative report of the inspector general prepared for or on behalf of a unit of local government becomes a public record when the audit or investigation becomes final. An audit or investigation becomes final when the audit report or investigative report is presented to the unit of local government. Audit work papers and notes related to such audit and information received, produced, or derived from an investigation are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the audit or investigation is complete and the audit report becomes final or when the investigation is no longer active.**

**STATUTE: Pursuant to Section 744.3701(2), Fla. Stat., the court may direct disclosure and recordings of parts of an initial, annual, or final report or amendment thereto, or a court record relating to the settlement of a claim, including a petition for approval of a settlement on behalf of a ward or minor, a report of a guardian ad litem relating to a pending settlement, or an order approving a settlement on behalf of a ward or minor, in connection with a real property transaction or for such other purposes as the court allows.**

### Competency

- Shall engage only in those services for which they have the necessary knowledge, skills, and experience.
- Shall perform auditing services in accordance with the Standards.
- Shall continually improve their proficiency and the effectiveness and quality of their services.

### Interpretation of Principles

The provisions of this Code of Ethics cover basic principles in the various disciplines of internal auditing and investigating practice. Alliance staff members must realize that individual judgment is required in the application of these principles. They have a responsibility to conduct themselves so that their good faith and integrity is not open to question. While having due regard for the limit of

their technical skills, they will promote the highest possible internal auditing and investigating standards to the end of advancing the interest of their organization and as a result, the OPPG, incapacitated wards, and minor children in adjudicated guardianships.

**GUIDING PRINCIPLE: The Alliance will utilize professional standards for auditing and investigating legally sufficient complaints about professional guardians.**

**GUIDING PRINCIPLE: There are two public records exemptions to Florida's liberal public records laws related to professional guardian investigations; the Alliance investigation, in whole or part, is protected by Sections 744.3701(1) and (2), Fla. Stat., and Section 119.0713(2)(b), Fla. Stat.**

**GUIDING PRINCIPLE: The Alliance values transparency in guardianship proceedings but also recognize that the person under guardianship and interested persons have privacy rights as well. The Alliance will strive for a balance between transparency, privacy rights, local orders, and Florida statute.**

**Each Alliance task force staff member will annually attest to acceptance and compliance with the Annual Independence Statement, Conflicts of Interest Statement, Code of Ethics, and Confidentiality Agreement (Form 010).**

#### **4. INDEPENDENCE AND OBJECTIVITY**

The investigation activity of the Alliance should be independent, and Alliance staff members should be objective in performing their work.

Professional standards adopted by the American Institute of Certified Public Accountants ("AICPA"), the IIA, the GAO, the AIG, the CFA, and the Comptroller General of the United States all emphasize the necessity for independence of the Alliance staff members from those being audited and investigated, both organizationally and personally, and not only in fact, but also in appearance, in order to assure objectivity by the Alliance staff member.

**GUIDING PRINCIPLE: The Clerks are constitutionally elected county officials, a branch of the judiciary, but are not beholden to the Court or the State of Florida; therefore, the Clerks are independent. Independence is a hallmark for professional auditing and investigating. Pursuant to Section 28.06, Fla. Stat., the Clerk may appoint a deputy, and the deputies shall have and exercise each and every power of whatsoever nature and kind as the Clerk may exercise, except the power to appoint a deputy. Deputy Clerks are independent and not beholden to the Court or the State of Florida.**

**Each Alliance task force staff member will annually attest to acceptance and compliance with the Annual Independence Statement, Conflicts of Interest Statement, Code of Ethics, and Confidentiality Agreement (Form 010).**

## **5. INVESTIGATION SCOPE**

Investigations will generally be limited in scope to obtaining supporting information or documentation to determine the validity of a legally sufficient complaint. Investigations will yield information to assist the OPPG in executing disciplinary proceedings, hearings, and other administrative actions. However, since the Clerk has the statutory duty to audit and investigate guardianship reports and advise the Court; and the permissive duty to perform enhanced audits and investigations, the scope of the investigation may be expanded at the sole discretion of the Alliance. Individual Clerks' offices have the permissive authority to expand the scope for their jurisdictions.

In addition to documentation and statements provided by the professional guardian, ward, family members, or interested parties, the Alliance may interview (using Form 720) the professional guardian, the professional guardian's attorney, the parties' attorneys, caregivers, and any other persons relative to the guardianship. There is a preference to interview parties face-to-face and in-person opposed to by telephone or other communicative means. However, the cost of interviewing a party or non-party face-to-face and in-person should be carefully weighed; the Alliance should consider whether an in-person interview is more likely to yield evidence to prove or disprove an allegation or a disputed fact compared to a telephone interview.

The investigation may include an examination of receipts and disbursements, statements of account, and other relevant documentation. The investigation may include observations, surveillance, and inspections. In total, the investigation may include any sound, legal, and ethical technique that will reasonably yield sufficient documentation and findings, with the decision squarely rooted in the Alliance investigators' professional judgment.

At times, the Alliance will receive complaints from the OPPG about impropriety by professional guardians. In order to protect the ward's assets, the Court may be notified and a special set hearing, emergency hearing, evidentiary hearing, show cause hearing, or other court action may be requested by the Alliance (Form 450). In such cases, the Alliance will notify the Court by providing details of the allegations or nature of the concerns.

**GUIDING PRINCIPLE: The Clerks have the statutory duty to audit the guardianship reports and advise the court; the Clerks have the permissive duty to perform investigations. The Alliance investigation will be limited in scope and centered on legally sufficient complaints about professional guardians.**

Communication sent to the Court by the Clerk and the Alliance is not impermissible ex parte communication. The Clerk, and therefore the Alliance, is independent and not a party or an interested party in any guardianship proceeding. The Black's Law definition

of ex parte is, “On or from one party only, usually without notice to or argument from the adverse party”. Even if it could be argued that the Clerk is a party or an interested party, there is an exception to Florida Judicial Code of Conduct when ex parte communication is expressly authorized by law to do so [see Fla. Code Jud. Conduct, Canon 3(B)(7)(e)]. See Appendix E for Policy Statement on Ex Parte Communications.

**GUIDING PRINCIPLE: Memorandums and reports, both written and verbal, to the Court by the Alliance are not ex parte communication because the Clerk is not a party to any guardianship proceeding and it is permissible pursuant to statute and judicial canon.**

## **6. DUTIES OF THE OPPG, ADMINISTRATIVE COORDINATOR, AND ALLIANCE MEMBERS**

### **A. UNDERSTANDING OPPG’S ROLE**

1. The OPPG will receive complaints lodged to a state-operated professional guardian complaint hotline.
2. The OPPG will determine whether a complaint is legally sufficient or not legally sufficient to investigate.
3. The OPPG will refer legally sufficient complaints and non-legally sufficient complaints to the Administrative Coordinator (“AC”).
4. The OPPG will determine if a complaint is legally sufficient and appropriate for an investigation within 3 business days.

**GUIDING PRINCIPLE: The OPPG will receive complaints about professional guardians. The OPPG will determine if the complaints are legally sufficient to investigate. The OPPG will refer all complaints to the Administrative Coordinator.**

5. The OPPG will receive the Investigative Memorandum (Form 400) from the AC, which will provide initial investigative findings, if any, and recommendations, if any, within 60 days from the complaint date.
6. The OPPG will consult with the AC on all initial findings and recommendations.
7. The OPPG will receive a Investigation Report (Form 500) from the AC.
8. The OPPG may provide the professional guardian and the complainant with a copy of the Investigation Report if the investigation is “closed” by the AC.
9. The OPPG will consult with the AC on all final findings and recommendations.
10. The OPPG will consult with the AC on all administrative hearings, disciplines, and appeals.

**STATUTE: Pursuant to Section 744.2004(1)(b), Fla. Stat., an investigation of a legally sufficient complaint must be initiated no later than 10 business days after the OPPG receives a complaint.**

**STATUTE: Pursuant to Section 744.2004(1)(c), Fla. Stat., the initial investigative findings and recommendations, if any, shall be provided to the professional guardian and the complainant within 60 days after receipt.**

## B. UNDERSTANDING THE AC's ROLE

1. The AC will receive all complaints from the OPPG.
2. The AC will refer non-legally sufficient complaints to the Clerk with jurisdiction for possible audit and investigation pursuant to Section 744.368, Fla. Stat. (Form 920). The referral will be logged (Form 020).
3. Upon request by the OPPG, the AC may resolve issues involving non-legally sufficient complaints in which no Clerk of Court would have jurisdiction (non-guardianship proceedings for example); the AC will consult with the Alliance member assigned to the geographic area.
4. The AC will verify that the reported complaint to OPPG is legally sufficient to investigation by the Alliance (Form 100). If the AC determines that the complaint is not legally sufficient, the AC will forward comments to the OPPG for reconsideration (Form 120). The referral will be logged (Form 020).
5. The AC will initiate and open an investigation case. The AC will complete the "Investigation Assignment" (Form 200).

**GUIDING PRINCIPLE: The AC is the Administrative Coordinator for the Alliance and its purpose is to ensure efficiency and consistency between the Alliance agencies. The AC will be the sole point of contact with the OPPG.**

6. The AC will assign the investigation case to the Alliance member. The referral will be logged (Form 020). In general, the Alliance member assignment will be based on geographic location (Regions).
  - a. Region 1: Clerk of Circuit Court and Comptroller, Okaloosa County: Baker, Bay, Bradford, Calhoun, Columbia, Dixie, Escambia, Franklin, Gadsden, Gilchrist, Gulf, Hamilton, Holmes, Jackson, Jefferson, Lafayette, Leon, Liberty, Madison, Okaloosa, Santa Rosa, Suwannee, Taylor, Union, Wakulla, Walton, Washington
  - b. Region 2: Clerk of the Circuit Court, Lake County: Clay, Duval, Flagler, Lake, Marion, Nassau, Putnam, Seminole, Saint Johns, Sumter, Volusia
  - c. Region 3: Clerk of the Circuit Court and Comptroller, Pinellas County: Alachua, Citrus, Hernando, Hillsborough, Levy, Manatee, Pasco, Pinellas
  - d. Region 4: Clerk of Courts & Comptroller, Polk County: Brevard, Hardee, Indian River, Orange, Osceola, Polk

- e. Region 5: Clerk of the Courts and Comptroller, Lee County: Charlotte, Collier, Desoto, Glades, Hendry, Highlands, Lee, Okeechobee, Sarasota
  - f. Region 6: Clerk & Comptroller, Palm Beach County: Martin, Monroe, Palm Beach, Saint Lucie
  - g. Region 7: Clerk & Comptroller, Palm Beach County and all other Clerks: Broward, Miami-Dade
7. If a professional guardian has multi-jurisdictional guardianship cases in different Alliance regional territories, the AC will assign the Alliance member based on current workload and consultation with Alliance members.
  8. Based on the “Investigative Plan”, the AC may suggest the assignment of certain aspects of an investigation to different Alliance members based on subject matter expertise or other considerations (Form 100) with consensus of the Alliance member and/or the Alliance group.
  9. The AC will perform assessments of the legal sufficiency complaints, initiate, and open investigation case file, and assign Alliance members within 10 business days of the OPPG referral.
  10. Within 10 business days of the OPPG referral, the AC will initiate (open) an investigation and notify the OPPG.
  11. The AC will contact the proposed Alliance member to accept the “Investigator In-Charge” role.
  12. The AC will monitor progress of the investigation through a periodic review of the “Investigation Journal” (Form 325) and supporting documentation.
  13. The AC may periodically give updates to the OPPG and provide those updates to the Alliance member.
  14. The AC will review draft “Investigative Memorandum” to ensure reporting consistency, proofreading, and quality assurance. Any inconsistencies or uncertainties will be discussed and consulted with the Alliance member prior to submission.
  15. If the AC does not receive draft “Investigative Memorandum” (Form 400) from the Alliance member, the AC will draft a brief memorandum stating there are no initial findings to report and the investigation is open and on-going.
  16. The AC will submit the “Investigative Memorandum” to the OPPG on or before the 60<sup>th</sup> day and copy will be placed in the FTP repository. .
  17. The AC will consult with the OPPG on all initial findings and recommendations and will update the Alliance member of the consult outcome.
  18. The AC will receive notification from the Alliance member that a draft Investigation Report (Form 500) is completed.
  19. The AC will review the draft Investigation Report (Form 500) to ensure reporting consistency, proofreading, and quality assurance. Any inconsistencies or uncertainties will be discussed and consulted with the Alliance member prior to submission.

20. The AC will submit the Investigation Report (Form 500) to the OPPG within a reasonable time. If no Investigative Memorandum (Form 400) was filed, the Investigation Report (Form 500) should be submitted before 60 days.
21. The AC will consult with the OPPG on all final findings and recommendations and will update the Alliance member on the consult outcome.
22. The AC will consult with the OPPG on all administrative hearings, disciplines, and appeals and will update the Alliance member on the consult outcome.
23. The AC will complete the "Complaint Log" (Form 020) with information from the Investigation Report (Form 500).
24. The AC will "close" the "Complaint Log" (Form 020) when the investigation is completed and no additional follow up is necessary, in consultation with the OPPG.

### **C. UNDERSTANDING THE ALLIANCE MEMBERS ROLE**

25. The Alliance members will receive notification from the AC about an investigation.
26. The Alliance members shall have the right of first refusal of the assignment of the guardian investigation by the AC.
27. Upon acceptance of the investigation, the Alliance member shall complete an "Preliminary Investigative Plan & Budget" (Form 300)
28. The Alliance members shall maintain an "Investigation Journal" (Form 325) and shall thoroughly investigate the complaint to determine if a complaint should be dismissed or if the ultimate facts show that a violation of a Florida Guardianship Law, Florida Criminal Code, or an OPPG Standard of Practice by a professional guardian has occurred.
29. The Alliance members shall utilize the File Transfer Protocol (FTP) electronic work paper repository to sufficiently documenting ultimate facts; the repository shall be accessible by the AC and the Alliance members.
30. No later than 55 days from the complaint, the Alliance members shall forward a draft Investigative Memorandum (Form 400) or a draft Investigation Report (Form 500) to the AC.
31. The Alliance members will work cooperatively with the AC in finalizing the Investigative Memorandum (Form 400).
32. If the 60 days mark from the complaint passes, the Alliance members will continue working on the investigation until a Investigation Report (Form 500) is completed.

**GUIDING PRINCIPLE: The majority of investigations should be completed and a Investigation Report should be forwarded to the AC within 55 days. Investigations must be performed efficiently and with proper supervision and quality assurance. It is recognized that complex investigations, involving multiple complaints, subpoenas, surveillance, inspections, and overly general or broad complaints may take additional time. The importance of thoroughness, accuracy, and professionalism always outweighs time considerations. If there is an emergency situation, the OPPG, the AC, and/or the Alliance should immediately contact Law Enforcement/First Responders (Emergency 911) and then the Florida Abuse Hotline at (800) 96-ABUSE.**

## **7. OBTAINING DOCUMENTS OF ULTIMATE FACTS**

To obtain books, papers, and other documentary evidence from a professional guardian, a “Request for Information” (Form 350) should be utilized.

**GUIDING PRINCIPLE:** The Alliance members should consider the cost to the person under guardianship when determining what books, papers, and other documentary evidence is being requested. Exigent of other circumstances, the guardian has a right to request compensation for services provided to the ward.

The Alliance members can obtain books, papers, and other documentation evidence through a nonparty subpoena; utilizing the Clerk of Court's statutory authority to obtain nonparty records by subpoena after application to the court and notice. The Alliance members should be deputized by the Clerk of Court in the county that the subpoena is sought. Pursuant to Section 28.06, Fla. Stat., the Clerk may appoint a deputy or deputies, for whose acts the Clerk shall be liable, and the said deputies shall have and exercise each and every power of whatsoever nature and kind as the Clerk may exercise, excepting the power to appoint a deputy or deputies.

In general, the steps for utilizing a nonparty subpoena are:

- 1) Filing an application affidavit with the court (Form 600), see Section 744.368(6) and (7), Fla. Stat.
- 2) Serving notice on the guardian and the ward (Form 610), see Section 744.368(7), Fla. Stat.
- 3) Attaching a proposed subpoena (Form 620).
- 4) If more than 10 days after service of the notice by email, or 15 days after service of the notice by U.S. mail, the Clerk may issue the subpoena to the nonparty.

**STATUTE:** Pursuant to Section 744.368(7), Fla. Stat., upon application to the court, supported by an affidavit identifying the records and documents requested and showing good cause as to why the documents and records requested are needed to complete the audit, the clerk may issue subpoenas to non-parties to compel production of books, papers, and other documentary evidence.

## **8. OBTAINING STATEMENTS**

The Alliance members can request from the guardian or any other party to make a full, complete, and truthful written statement. Alliance members are permitted to conduct voluntary interviews (Form 700) with guardians or any other party. It is highly encouraged to memorialize oral statements into written statements (Form 700) and memorialize the interview/meeting (Form 730). When requesting a written statement, the following instructions should be given to the affiant.

- 1) The affidavit should be written in the first person. In other words, use "I" statements (e.g., "I am a professional guardian").
- 2) The sections of the affidavit should continue the numbering that began with the first two introductory sentences.
- 3) The early paragraphs should provide background information about the affiant including the full name, address, age, occupation and other identifying information.
- 4) Each separate line of the document should provide a separate fact or statement.

- 5) There are a number of ways to organize an affidavit, and the affiant should choose the manner that works best for their situation. Some common methods are chronological (working towards the present day) and in order of importance (highlighting the most important things first and leaving the rest for the end).
- 6) The affiant should not sign the document until in the presence of a notary public or deputy clerk pursuant to section 92.50, Fla. Stat. This is an essential element of the affidavit. The affiant should bring photo identification to the notary or clerk.

## **9. GUARDIAN COOPERATIVE**

When the Alliance encounters an uncooperative professional guardian, professional guardian's attorney, or any other interested party deemed necessary for the completion of an investigation, the Alliance will report the noncompliance to the OPPG and possibly recommend an emergency suspension of the professional guardian registration along with notification to courts where the professional guardian is an appointed guardian or practicing.

Should the professional guardian continue to be uncooperative, and the investigation involving guardianship reports in which clerks of court have a statutory duty to audit and investigate and advise the court, the Alliance will request the Court to set a show cause hearing to determine if the professional guardian should be held in contempt of court for failing to comply with the investigation. The Alliance members should be deputized by the Clerk of Court in the county that the professional guardian is being uncooperative. Pursuant to Section 28.06, Fla. Stat., the Clerk may appoint a deputy or deputies, for whose acts the Clerk shall be liable, and the said deputies shall have and exercise each and every power of whatsoever nature and kind as the Clerk may exercise, excepting the power to appoint a deputy or deputies.

**STATUTE: Section 744.474(21), Fla. Stat., states, "A bad faith failure to submit guardianship reports during the audit pursuant to Section 744.368" is a reason a guardian may be removed by the court, and the removal shall be in addition to any other penalties prescribed by law.**

The professional guardian's acts of being uncooperative should be thoroughly documented and reported to the OPPG via the AC.

## **10. INVESTIGATION PLANNING**

Alliance investigation documentation should be carefully planned so as to produce only the necessary and pertinent information in an appropriate form for use in the report.

The investigation shall be performed efficiently and economically as possible to obtain the highest level of accuracy, balance, and thoroughness.

## **11. DOCUMENTATION OF INVESTIGATIONS**

Documentation for each investigation should be prepared by the Alliance members' staff and reviewed by the Alliance members' management. The investigation documentation should record the information obtained and the analyses made to support the basis for the observations and recommendations to be reported.

### **File Transfer Protocol – Electronic Audit Documentation**

Investigations will use a File Transfer Protocol (FTP) website owned and administered by the Clerk & Comptroller for Palm Beach County, which automates the work paper process.

The AC and the Alliance will control access to audit work papers. The AC and Alliance shall obtain the approval of the Court (Form 800) prior to releasing such records to external parties, while abiding by Chapter 415, Fla. Stat.

The Alliance will retain work papers for investigations based on the retention requirements for engagements. These retention requirements should be consistent with the organization's guidelines and any pertinent regulatory or other requirements.

## **12. REPORTING PROCEDURES**

Reporting procedures for investigations are as follows:

The Alliance member is solely responsible for the contents of the Investigative Memorandum (Form 400) for initial findings and the Investigation Report (Form 500). The Investigative Report will report the "Introduction and Scope" "Summary of Investigative Findings" including "Allegation", "Background", "Conclusions" and "Observations and Recommendations", "Investigative Methods", "Summary of Case Supporting Material", "Exhibits", and "Status of Investigation", at a minimum.

The reports will be electronically signed by the Alliance member or the AC.

It should be noted that Fla. R. Jud. Admin. 2.425 limits the format of sensitive information filed with the court. There is an exception if the account number or sensitive information is the subject matter of the proceeding or for information which is relevant and material to an issue before the court.

### 13. COURT & LAW ENFORCEMENT NOTIFICATION

#### Court

1. The policy requires the Alliance to timely notify (Form 450) and document (Form 020) any notifications to the Court for findings detrimental to the ward and violations of Florida statute and standards of practice for professional guardians for closed investigations
2. A special set hearing, evidentiary hearing, or show cause hearing may be requested by the Alliance (Form 450). In such cases, the Alliance will notify the Court by providing details of the allegations or nature of the concerns.
3. All notifications to the Court will be documented in electronic work paper repository.
4. The Alliance member shall notify the AC of all referrals to the Court.
5. The Alliance member and the AC shall be available to the Court for consultation and advisement.

#### Law Enforcement

1. The policy requires the Alliance to timely notify (Form 900) and document (Form 020) any notifications to a law enforcement or prosecutor entity when there are reasonable grounds to believe a criminal violation has occurred involving a guardian or anybody else.
2. The Alliance is to timely notify and report to a law enforcement agency with appropriate jurisdiction, whenever the Alliance has reasonable grounds to believe there has been a violation of U.S. Federal or Florida Criminal Code.
3. All notifications to law enforcement and/or the State Attorney's Office will be documented in electronic work paper repository.
4. The Alliance members shall notify the AC of all referrals to law enforcement or the State Attorney's Office and the dispositions of status changes.
5. The Alliance member and the AC shall be available to law enforcement or the State Attorney's Office for consultation and advisement.

#### Other Oversight and Regulatory Organizations and Agencies

The policy requires the Alliance to timely notify and document any notifications to the following organization and agencies when there are reasonable grounds to believe code, canon, rules, ethics, or any other offense has occurred involving a guardian or anybody else.

1. The Florida Bar Grievance Committee.
2. Judicial Qualifying Committee (JQC).
3. Florida Department of Business and Professional Responsibility (DBPR).

#### **14. DISPOSITION OF INVESTIGATIONS**

Investigations will remain “open” until a “Investigation Report” and all criminal and/or administrative activity is finalized in criminal cases, once all arrests are made, the investigation will be deemed “closed” by the AC.

#### **15. POLICIES & PROCEDURES UPDATE**

The Alliance and the AC will maintain and update policies and procedures related to the guardian investigation process as needed.

#### **16. COMPLIANCE WITH CHAPTER 415, FLA. STAT.**

Pursuant to Section 415.1034, Fla. Stat., the Alliance members will abide by mandatory reporting requirements for abuse, neglect, and exploitation of vulnerable adults.

**GUIDING PRINCIPLE:** Reasonable suspicions about physical abuse, neglect, and exploitation of vulnerable persons should be reported to the Florida Abuse Hotline at 800-96-ABUSE (2-2873) and can be anonymous. If there is double or uncertainty, report reasonable suspicions of abuse, neglect, or exploitation of vulnerable persons immediately.

**STATUTE:** Section 415.1034, Fla. Stat., states, “Any person...who knows, or has reasonable cause to suspect, that a vulnerable adult has been or is being abused, neglected, or exploited shall immediately report such knowledge or suspicion to the central abuse hotline.”

**STATUTE:** Section 744.102, Fla. Stat., provides the definition of the following terms “abuse”, “neglect”, “exploitation”, and “vulnerable adult”.

#### **17. COMPLIANCE WITH SECTION 39.201, FLA. STAT.**

Pursuant to Section 39.201, Fla. Stat., the Alliance members will abide by mandatory reporting requirements for child abuse, abandonment, or neglect.

**GUIDING PRINCIPLE:** If there is doubt or uncertainty, report child abuse, abandonment or neglect to the Florida Abuse Hotline at 800-96-ABUSE.

**STATUTE:** Section 39.201(1)(a), Fla. Stat., states, “Any person who knows, or has reasonable cause to suspect that a child is abused, abandoned, or neglected by a parent, legal custodian, caregiver, or other person responsible for the child’s welfare, as defined in this chapter, or that a child is in need of supervision and care and has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care shall report such knowledge or suspicion to the department in the manner prescribed in subsection (2).”

**STATUTE: Section 39.201(2)(a), Fla. Stat. states, “Each report of known or suspected child abuse, abandonment, or neglect by a parent, legal custodian, caregiver, or other person responsible for the child’s welfare as defined in this chapter, except those solely under s. 827.04(3), and each report that a child is in need of supervision and care and has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care shall be made immediately to the department’s central abuse hotline.”**

## **18. SEEKING REIMBURSEMENT FROM THE OPPG**

On a monthly basis, the Alliance member may prepare an invoice for the actual labor and costs for investigating legally sufficient complaints of professional guardians referred by the OPPG. The Alliance member must complete all applicable forms, vouchers, and approvals required by the State of Florida, the Department, and the OPPG. A copy of the invoice and supporting documentation will be sent to the AC.

### Labor reimbursements:

At a minimum, the invoice should contain the following information:

- The actual time spent investigating the complaint, by investigation case number and investigator.
- The salary and benefits hourly rate of the corresponding investigator along with supporting documentation from the accounting or payroll system.
- The Investigative Journal (Form 325) can be a supporting document to back-up the labor reimbursement invoice. However, the Investigative Journal (Form 325) should be held confidential while the investigation is open. The Investigative Journal (Form 300) can be submitted along with the first monthly reimbursement request after the investigation is closed.

### Reimbursement of investigation costs:

- The Alliance member can be reimbursed for the following costs related to an investigation of a legally sufficient complaint of a professional guardian:
  - o Shipping, postage, mailing, and delivery charges (USPS, UPS, FedEx)
  - o Subpoena fees from banks, financial institutions, and other non-parties.
- The invoice should contain the investigation case number.

There may be other investigative costs that the OPPG will reimburse. Prior to incurring the cost, the Alliance member should discuss with the AC. The AC will seek prior approval of the OPPG before the Alliance member incurs the expense.

### Reimbursement of travel:

- The Alliance member will be reimbursed pursuant to Section 112.061, Fla. Stat.
- The Alliance member will reimburse their employees pursuant to their established travel policy or, if there is no established travel policy, the Alliance member will reimburse their employees pursuant to Section 112.061, Fla. Stat.
- The invoice should contain the investigation case number.

## **19. PARTICIPATION AS AN ALLIANCE MEMBER**

Each participating Alliance member must be independent, professional, competent, and have a demonstrated ability, desire, and history to following FCCC Best Practices for Guardianship Auditing.

All clerks' offices are encouraged to strive for and become eligible to join the Alliance and complete statewide investigations of professional guardian complaints on behalf of the OPPG.

In order to be considered for inclusion, a consensus of the participating Alliance members, by super majority (75% of Alliance members) must agree to allow another clerk's office to join the Alliance. In addition, the OPPG must consent and approve the applicant clerk's office into the MOU.

In general, the requirements to be considered for inclusion, at a minimum:

- 1) The Clerk's office must perform guardianship audits and investigations in an Inspector General function; see Appendix E for sample IG Charter.
- 2) The Clerk's Inspector General function must be headed by a Certified Inspector General ("CIG").
- 3) The Clerk's Inspector General function must be accredited or taken a substantial step towards pursuing accreditation.
- 4) The Clerk's Inspector General function must be performing enhanced guardianship audits and following guardianship audit best practices adopted by the FCCC for a time span of 1 year at a minimum (365 days).
- 5) The Clerk's Inspector General staff assigned to perform investigations under the MOU must meet the minimum qualifications of other professional audit/investigative staff within the Clerk's Inspector General function.
- 6) The Clerk's office must wholly or partially invest in basic investigative tools, devices, and services such as but not limited to commercially available databases, social media tools, and other third party transaction information.
- 7) The Clerk's office must agree to abide by the policies and procedures developed by the Alliance (Form 015), including a program of quality assurance reviews of the guardianship investigations performed under the MOU.

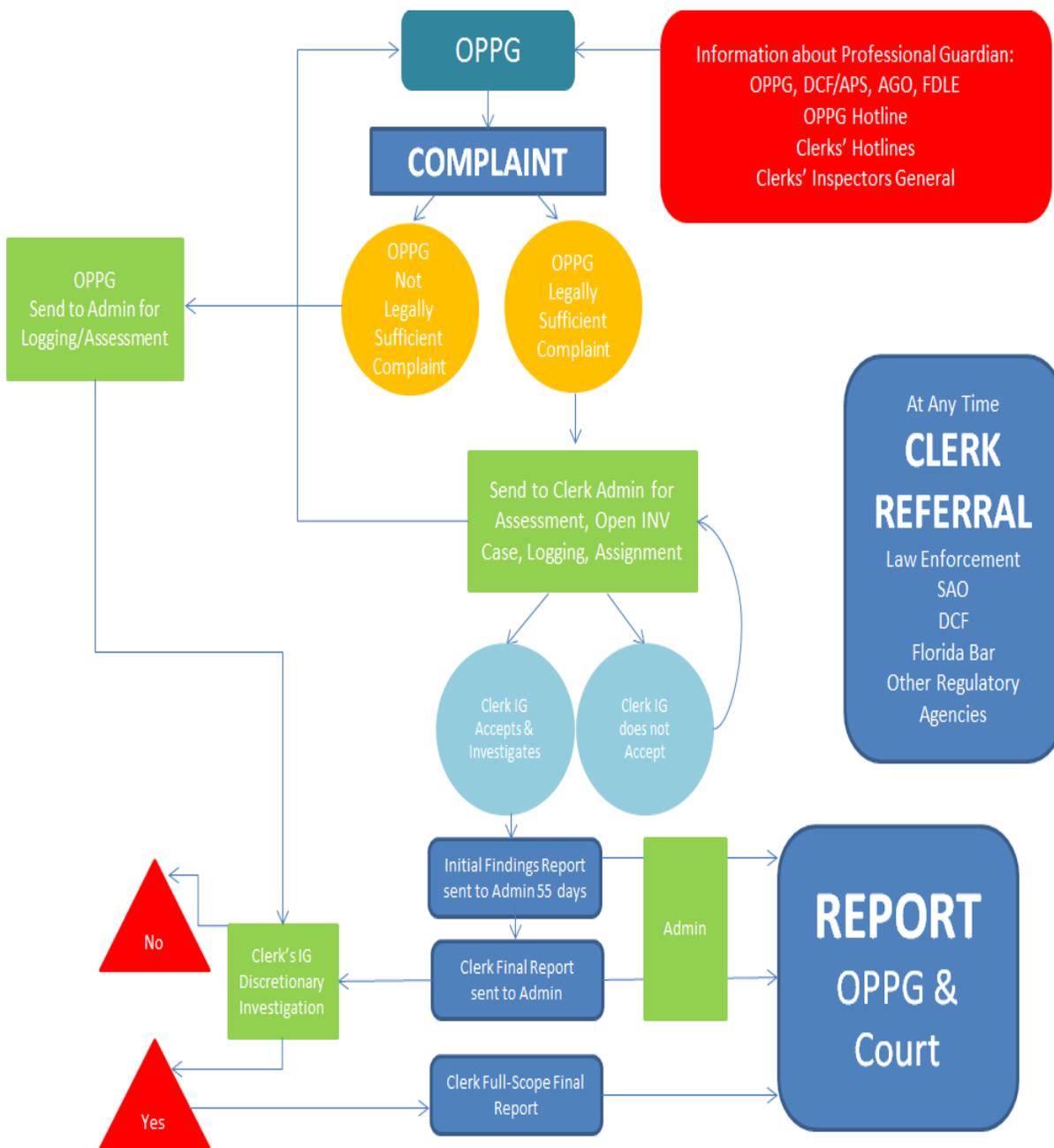
## **20. QUALITY ASSURANCE REVIEW**

To assist in determining the extent to which the investigation being reviewed was conducted in compliance with these standards, in the spirit of and derived from the Florida Commission for Law Enforcement Accreditation, Inc. (CFA) for IG Offices and Principles and Standards for Offices of Inspectors General (AIG), Alliance members may complete the Quality Assurance Checklist (Form 999) for all statewide investigations.

## **21. GUARDIANSHIP AUDITING AND INVESTIGATIVE SERVICES TO CLERKS**

Each participating Alliance member may provide enhanced auditing and investigating services to any other clerk's office regardless of geographic location. The enhanced auditing and investigative services would not be reimbursable by the OPPG.

**APPENDIX A**  
**SAMPLE OPPG AND ALLIANCE WORK FLOW**



## APPENDIX B

### INDEX OF FORMS

Form Number	Title
010	Annual Independence Statement, Conflicts of Interest Statement, Code of Ethics, and Confidentiality Agreement
015	Acknowledgement of Alliance's Policies & Procedures
020	Complaint Log
100	Determination of Legal Sufficiency for Complaint
120	Request for Reconsideration
200	Investigation Assignment
300	Preliminary Investigative Plan & Budget
325	Investigation Journal
350	Request for Information
400	Investigative Memorandum
450	Notification of OPPG Complaint about Professional Guardian & Clerk IG Investigation
500	Investigation Report
600	Nonparty Subpoena Application
610	Nonparty Subpoena Notice
620	Nonparty Subpoena
630	Notice of Uncooperative Court-Appointed Guardian
700	Voluntary Interview Affidavit
730	Investigative Contact Memo
800	Draft Order Authorizing Access to Guardianship File
900	Referral of Alleged Criminal Wrongdoing
920	Referral to Clerk Memorandum
999	Quality Assurance Checklist

**APPENDIX C**  
**MAP OF FLORIDA REGIONAL ASSIGNMENTS**

