

**Supreme Court of Guam
Office of the Public Guardian's
Ward Trust Accounts**

**Performance Audit
October 1, 2001 through June 30, 2005**

**OPA Report No. 06-05
May 2006**



OFFICE OF THE PUBLIC AUDITOR

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OFFICE OF THE PUBLIC AUDITOR

EXECUTIVE SUMMARY

Ward Trust Accounts

Office of the Public Guardian, Supreme Court of Guam

Report No. 06-05, May 2006

Public Law 25-103 established the Office of the Public Guardian (OPG) in March 2000 to oversee the care of incapacitated adults and the management of their assets when private guardians are unavailable. The Chief Justice appoints the Public Guardian (PG). The OPG has only had two staff since 2002: the PG and a secretary. At the outset, the PG established individual trust accounts for each of his wards by opening individual bank accounts for the wards. As of June 2005, there were 62 bank accounts, valued at \$207,797, for 43 wards at three local banking institutions. Based on the number of individual bank accounts, the PG would have to timely perform 568 reconciliations a year for the 62 accounts, provided accounting records were maintained properly.

Specifically, we found that the PG did not do the following:

- Sufficiently segregate duties to safeguard ward trust funds and assets for which the PG is the sole custodian. The PG was responsible for depositing ward trust funds, approving all ward disbursements, reconciling bank statements, recording all financial transactions and preparing all financial reports.
- Perform timely reconciliations of ward trust accounts for 18 of the 62 accounts, with cumulative total assets of \$140,542.
- Utilize an electronic database for the management of ward cases.
- Maintain an accurate and complete master listing of accounts.
- File annual financial reports for five of eight ward cases reviewed.
- File inventory reports of ward assets for six of eight ward cases reviewed for which the PG serves as guardian of the estates.
- Close the estates of seven deceased wards nor submit final accounting of these trust accounts, valued at \$11,262, to the Superior Court.
- Return \$151 to the Retirement Fund for a deposit received after the ward died.
- Have supporting documentation for disbursements totaling \$389, of which \$139 was inappropriately reimbursed from a ward account for purchases made by the caregiver with the caregiver's food stamps.

In the 2001, 2002, 2003 and 2004 OPG Annual Reports, the PG reported the difficulties in accomplishing several operational and financial responsibilities because of his limited staff. Despite his request for assistance, there had been no independent review, oversight, or monitoring by the Courts of OPG's financial activities.

The law also created the Public Guardianship Review Board (PGRB) to monitor appointed guardians responsible for the care and protection of those persons under the guardianship of the OPG, as well as other guardians. We found that the PGRB has not reviewed the guardianships of the Clerk of Courts or other private guardianships of the Superior Court as required by law. Although the PGRB has reviewed a number of OPG guardianships, the reviews were not documented in the ward case files.

In September 2005, we recommended the OPG transfer its financial accounting function to the Financial Management Division (FMD) within the Courts to address several of the OPG's financial management issues related to the segregation of duties, reconciliations, and timely reporting. The Chief Justice and the PG agreed to this recommendation. The PG and other Court officials began corrective action in October 2005 to transfer the financial accounting functions of the ward trust accounts to the FMD. The transfer should improve the PG's ability to close deceased ward estates, as well as address the intake and referral of cases.

Other recommendations included the development and automation of a comprehensive database of ward data for the management of ward cases and statistical information; the documentation of receipts, transfers, and disbursements; and the establishment of a petty cash fund for cash allotment. We applaud the PG and the Chief Justice for taking swift action to correct these concerns and their efforts to maintain transparency in the accounting of the wards' assets.

A preliminary draft report was transmitted to the PG, the Chairwoman of the Public Guardian Review Board, and the Chief Justice in April 2006. We met with the Judiciary officials and the Board Chair in early May 2006 to discuss the preliminary draft. Revisions to the final draft were transmitted to the PG for his official response. The PG indicated concurrence with seven of the eight recommendations with the exception of recommendation 4, which was to establish a petty cash fund and discontinue using his personal funds to distribute to his wards. This recommendation is under discussion and no decision has been reached. See Appendix 6 for OPG's management response.



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Public Auditor



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Contents

	Page
Introduction	1
Background.....	1
Results of Audit	4
Importance of Management Accountability and Control	5
Board Composition, Case Management, and Annual Reporting.....	13
Consolidate Guardianship Responsibilities	15
Other Observations	16
Subsequent Court Action	18
Conclusion	19
Recommendations	20
Management Response and OPA Reply	21
Appendices	
Appendix 1: Classification of Monetary Impact.....	22
Appendix 2: Scope and Methodology.....	23
Appendix 3: Prior Audit Coverage	25
Appendix 4: Duties of the Public Guardian.....	26
Appendix 5: Definitions of Guardianship Terms.....	27
Appendix 6: Office of the Public Guardian’s Management Response.....	28
Appendix 7: Status of Audit Recommendations.....	30



OFFICE OF THE PUBLIC AUDITOR

Introduction

This report represents the results of the performance audit of ward trust accounts managed by the Office of the Public Guardian (OPG). This audit was initiated as part of our on-going review of Government of Guam agencies with checking accounts. The Public Guardian (PG) maintains separate trust funds of individuals where the PG serves as *Guardian of the Person and Estate* or *Guardian of the Estate*.

Our audit objective was to determine whether all trust funds collected and expended by OPG were properly accounted for and reported. Our audit was conducted in accordance with the standards for performance audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States. See Appendices 2 and 3 for a detailed explanation of the scope, methodology, and prior audit coverage.

Background

Guardianship is a relationship created by law in which a court gives one person or entity (the guardian) the duty and power to make personal and/or property decisions for another (the ward or incapacitated person). The appointment of a guardian occurs when a judge decides that an adult individual lacks capacity to make decisions on his or her own behalf. Guardians are often family members or willing friends, attorneys, corporate trustees, agencies, or even volunteers.¹



Image 1: Office of the Public Guardian Building in Hagatna

Public guardianship is the appointment and responsibility of a public official or publicly funded organization to serve as legal guardian in the absence of willing and responsible

¹ Excerpt from “Wards of the State: A National Study of Public Guardianship” funded by The Retirement Research Foundation.

family members or friends to serve as, or in the absence of resources to employ a private guardian.²

The OPG, a division of the Supreme Court of Guam, was established in March 2000 by Public Law 25-103 to oversee the care of incapacitated adults and the management of their assets when private guardians are unavailable.³ The PG is appointed by and serves at the discretion of the Chief Justice. Since the PG's initial appointment in January 2001, he has served under three Chief Justices. The OPG is comprised of the PG and a Legal Secretary, and is funded through the budget of the Supreme Court of Guam with an annual budget of just under \$200,000.

The law also created an 11-member Public Guardianship Review Board (PGRB) to monitor all appointed guardians and monitor the care and protection of those persons under the guardianship of the OPG. The Board is comprised of members appointed by individual agencies as prescribed by law,⁴ and serve at the discretion of their appointer. The Board is required to meet every six months to review guardianship cases.

The PG may serve in different guardianship capacities such as Guardian of the Person, Limited Guardian, Guardian Ad Litem, etc.⁵ The PG manages the legal, financial, and social service decisions for these adult clients. In June 2005, there were 47 active cases managed by the PG.⁶

The PG may also provide assistance to private guardians and those seeking appointment as guardian for an incapacitated person. In addition, the PG manages a volunteer program consisting of two volunteers who provide assistance in processing referrals and conducting visitations to wards housed in group-home settings.

An amendment to 7 GCA § 3112⁷ authorized the PG to establish and administer the Public Guardian Fund, a separate and distinct fund from the General Fund, to solicit and accept donations, grants, and volunteer services to supplement its annual appropriation. All court-authorized fees,⁸ donations or grants are to be deposited into the Public Guardian Fund. As of June 2005, the Public Guardian Fund had not been established nor has the PG charged any fees. The PG is not required to seek fees in a case where, in the judgment of the PG, such fee would be detrimental to the ward.

The PG submitted annual reports for 2001 through 2004 of its operations to the Chief Justice. The PG has continually raised concerns about the growing number of cases, the lack of human resources to provide assistance in administration and case management, the backlog of pending referrals and intakes, and the lack of full accounting and financial reporting of ward trust accounts.

² Ibid.

³ See Appendix 4 for the duties of the Public Guardian.

⁴ 7 GCA § 3112 (b).

⁵ See Appendix 5 for Definition of Guardianship Terms.

⁶ The 47 active cases are inclusive of cases in which the PG does not manage accounts.

⁷ P. L. 26-112 signed in June 2002.

⁸ A fee schedule was passed through the Administrative Adjudication Law in February 2004.

As of December 2004, the PG reported 31 pending cases requiring completion under statutory mandates, which include seven cases pending appointment of the PG, seven cases pending appointment of a family member as guardian, seven referrals received and pending intake, and 10 cases awaiting closure due to the death of the ward, for which financial reports have not been completed.⁹

Because of the OPG's limited personnel resources (only two personnel), the PG prioritized the office workload by ranking the guardianship duties and emergency intake management as higher priorities than other responsibilities, which included the accounting and financial reporting of ward trust accounts that is completed when time permits. In the 2004 annual report, the PG acknowledged that he did not update accounting records of ward trust accounts, produce timely financial reports of these accounts, compile and file inventories of ward assets, file annual financial statements with the Superior Court of Guam, and fulfill other OPG mandates.

More importantly, the PG raised concerns about the lack of involvement and oversight by the Superior and Supreme Courts. Specifically, the PG reported that:

“In practice, the judges of the Superior Court of Guam do not take any steps to review the work (or lack thereof) of guardians who have been appointed for the person or the estate of an individual. As a result, there are no checks or balances currently at play in the system . . . There is no court program in place to visit with and confirm the well-being of persons who are subject to a guardianship.”¹⁰

The PG stated that the shortage of personnel compromises his ability as PG to serve his wards. We consider this to be a significant concern, since clients who already have diminished or limited capacity may be at further risk. We acknowledge and applaud the PG for reporting the concerns and shortcomings of the OPG and his efforts to maintain transparency in the accounting of the wards' assets.

⁹ Excerpts from the 2004 Annual Report of the Office of the Public Guardian, page 15.

¹⁰ Excerpts from the 2004 Annual Report of the Office of the Public Guardian, page 12.

Results of Audit

The Public Guardian, appointed by the Chief Justice of the Supreme Court, has the responsibility for the care of wards as well as the financial responsibility of ward trust funds and assets assigned to the OPG by the Superior Court judges. The obligation to manage the ward trust funds and related assets imposes a fiduciary responsibility on the Judiciary of Guam that requires continued diligence, oversight, and supervision. We observed that management controls of ward trust funds and assets, valued at \$207,797 as of June 30, 2005, could be strengthened to improve accountability, monitoring, and oversight. Specifically, we found that the OPG:

- Has not sufficiently segregated duties to safeguard ward trust funds and assets for which the PG is the sole custodian. The PG was responsible for depositing ward trust funds, approving all ward disbursements, reconciling bank statements, recording all financial transactions, and preparing all financial reports.
- Has not utilized an electronic database for the management of ward cases.
- Did not maintain an accurate and complete master listing of accounts.
- Has not returned \$151 to the Retirement Fund for a deposit made after the ward died.
- Lacked supporting documentation for disbursements totaling \$389, of which \$139 was inappropriately reimbursed from a ward account for purchases made by the caregiver with the caregiver's food stamps.
- Has not performed timely reconciliations of ward trust accounts for 18 of 62 accounts, with cumulative total assets of \$140,542.
- Has not filed annual financial reports for five of eight ward cases reviewed.
- Has not yet closed the estates of seven deceased wards nor submitted final accounting of these trust accounts, valued at \$11,262, to the Superior Court.
- Has not filed inventory reports of ward assets for six of eight ward cases reviewed, for which the PG serves as guardian of the estates.

Oversight by the Public Guardianship Review Board (PGRB) and the Courts could be improved with regular monitoring by these officials to ensure proper administration and

case management of guardianships to reduce the risk of loss or misuse of ward trust funds and assets.

Importance of Management Accountability and Control

Management accountability is the expectation that managers are responsible for the quality and timeliness of program performance, promoting productivity, controlling costs and mitigating adverse aspects of agency operations, and assuring that programs are managed with integrity and in compliance with applicable laws. Management controls include the policies, procedures, techniques and processes, which are tools used to assist government managers in achieving the desired results and safeguard the integrity of their programs.¹¹

Internal controls, which are synonymous with management controls, play an integral part of managing an organization and cover all aspects of the agency's operations (programmatic, financial, and compliance). These controls serve as the first line of defense in safeguarding assets and preventing and detecting errors and fraud.¹²

We found that the OPG did not design or place in operation adequate controls for ward trust accounts. Specifically, multiple trust accounts were maintained, making the process of accounting and reporting for these accounts burdensome, difficult, and cumbersome. Additionally, sufficient segregation of duties was not established, an electronic database was not utilized, and bank reconciliations and financial reports were either not performed timely or not performed at all. As of June 30, 2005, we estimated that 52¹³ ward trust fund accounts, valued at \$207,797, were potentially at risk for loss or possible theft.

Trust Accounting, Segregation of Duties and Information Technology

Under the Standards of Practice of the National Guardianship Association (NGA) adopted by the OPG, the PG has the duty to exercise reasonable care and skill in managing the wards' estates by keeping accurate records of all transactions and by reporting the financial activities of all trust funds and assets to an oversight body. These Standards of Practice allow the PG to either establish separate accounts for each ward or combined accounts of all wards into a master account.

Trust Accounting

We found that the PG had elected to have separate bank accounts for each of the wards under his care. As of June 30, 2005, 52 separate bank accounts, valued at \$207,797, were maintained at three local banking institutions for 39 wards.

¹¹ Excerpts from OMB Circular A-123, "Management Accountability and Control," revised June 1995.

¹² Excerpts from "Standards for Internal Control in the Federal Government," issued November 1999 by the U.S. Government Accountability Office (formerly known as the General Accounting Office).

¹³ During the audit period of October 1, 2002, through June 30, 2005, the OPG managed approximately 62 trust accounts, 10 accounts were closed during this period.

Wards could establish a checking and savings account, a checking account, a savings account, or a joint savings account with access to an Automated Teller Machine (ATM). Table 1 illustrates the type of bank accounts managed by the PG on behalf of the wards.

Table 1
Type of OPG Ward Accounts
As of June 30, 2005

No. of Wards	Type of Account	No. of Accounts	Account Balance
22	Checking Account only	22	\$ 34,564
6	Savings Account only	6	\$ 92,540
6	Checking & Savings Accounts	12	\$ 44,106
1	Checking, Savings, & Joint-Trust Savings Accounts	3	\$ 8,849
1	(2) Checking Accounts & 1 Joint-Trust Savings Account	3	\$ 2,738
1	Joint-Trust Savings Accounts & Checking Account	2	\$ 765
<u>2</u>	(2) Checking Accounts ¹⁴	<u>4</u>	<u>\$ 24,235</u>
<u>39</u>		<u>52</u>	<u>\$ 207,797</u>

The PG stated that there was no policy in determining the type of bank account to open for wards; therefore, he elected to open separate individual bank accounts for each of his wards rather than maintain a consolidated bank account for all wards. The number of anticipated transactions and the amount of excess funds available after expenses were paid determined the type of account to open.

Maintaining separate individual bank accounts for a handful of wards may have been appropriate when the OPG began its operations in 2001, but with the growing volume of cases, this practice has now become cumbersome and difficult to maintain with the OPG's limited staff. This is evident in the OPG's inability to perform timely bank reconciliations of the 62 bank accounts and to complete annual financial reports for its 43 wards. Based on the number of separate individual bank accounts, we estimated that timely reconciliation of these accounts would require the PG or the secretary to perform about 568 bank reconciliations a year.¹⁵

¹⁴ The PG stated that two wards already had existing checking accounts prior to the guardianship appointment. The PG was not a signatory on these two accounts. However, he was able to access the accounts, (1) via court order, and (2) with the presentation of guardianship appointment documents. These account balances were to be consolidated into the ward trust accounts established by the PG.

¹⁵ A total of 568 need to be performed a year for the 62 accounts. Monthly reconciliations for the 40 checking accounts (40 multiplied by 12 equals 480 reconciliations) and quarterly reconciliations for the 19 savings accounts and three joint savings accounts (22 multiplied by 4 equals 88 reconciliations).

The Superior Court of Guam, on the other hand, elected to maintain one master bank account, the Guardianship Trust Fund, for the seven wards under the guardianship of the Clerk of Courts (COC). The Financial Management Division (FMD) within the Superior Court maintains and processes all accounting transactions related to the accounts of these wards, which includes the custody of cash, the collection and/or the disbursement of cash, and the preparation of financial reports. The Guardianship Trust Fund requires at least two signatories¹⁶ and any disbursement over \$500 requires Veterans Affairs (VA) Administration approval for wards that are veterans.

Segregation of Duties

Segregation of duties is an effective internal control over the safeguarding of assets from misappropriation. Ideally, a single individual should not be able to (1) authorize a transaction, (2) record the transaction in the books of the account, and (3) have custody or access to the asset resulting from the transaction.¹⁷ The establishment of good internal controls divides the responsibility of these transactions between two or more individuals to ensure that the work of one acts as a check to the other.

Because there are only two OPG employees, the PG designated himself as the sole signatory for all the ward trust accounts and is responsible for depositing ward trust funds, approving all ward disbursements, reconciling all bank statements, and recording and reporting all the financial transactions. The Legal Secretary can deposit ward trust funds, but is not authorized to disburse funds. The PG performs a substantial amount of the work in preparing, approving, and recording financial transactions from the beginning of a transaction to the end; therefore, there is insufficient segregation of duties and no independent review of financial transactions initiated by the PG. The lack of oversight or monitoring of OPG's financial activities by the Courts further exacerbates this control weakness.

We recognize that complete segregation of duties may not be possible with the OPG's resource limitations; however, at a minimum, the Chief Justice should consider designating a third party to periodically review and monitor ward trust accounts.

We recommend that the PG adopt a similar arrangement as the COC with the FMD, to close all of the 52 OPG separate ward bank accounts, establish one consolidated account, maintain subsidiary records for each ward, and transfer the cash management functions of the new consolidated account to the FMD. The corrective action of this recommendation took effect on October 1, 2005, with the transfer of the financial accounting functions to the FMD and certain issues including the lack of segregation of duties should be addressed.

¹⁶ Authorized signatories of the Guardianship Trust Fund include the Administrator of the Court, the Deputy Director of the Court, the Clerk of Courts, the Controller, and the Deputy Controller.

¹⁷ Excerpts from An Elected Official's Guide to Internal Controls and Fraud Prevention issued by the Government Finance Officers Association (GFOA).

Information Technology

The use of information technology can be defined generally as the use of computers to process transactional data to provide information to users.

We found that the OPG did not utilize an electronic database to manage ward cases. All statistical information, such as the number of referrals received, intakes processed, wards appointed, and the status of cases must be manually retrieved from individual ward folders and sign-in logs. This process is inefficient and cumbersome.

For the purpose of this audit, we had to compile an electronic database of our own to include the ward's name, the type of guardianship, the date of appointment, the date of birth, the date of death (when applicable), the type of bank account, the number of bank accounts, the source of income, the banking institution, the caregiver's name (when applicable), when reviews occurred, etc. for those wards we selected for review. Because an electronic database of ward cases managed by the OPG was not readily available, the relevant information had to be manually researched and inputted through a time consuming process.

We found that statistical data reported in the 2004 Annual Report was not accurate. The discovery of accounts not included in the OPG's master listing during the audit led us to conclude that there could be a high possibility of other trust accounts, which may not be included in the OPG's master list; therefore, the accuracy of statistical data reported in the OPG Annual Reports cannot be reasonably verified.

Use of a well-maintained electronic database can provide the OPG with an opportunity to manage the volume of client information, such as the number of wards, the status of cases and referrals, and others. The automated information will help ensure the accuracy of statistical data and can be managed by the OPG to generate other useful reports.

We recommend that the PG develop a comprehensive database of all ward data to include, at a minimum, the ward's name, the type of guardianship, the assigned case number, the date of appointment, the date of birth, source of income, the date of death (when applicable), dates when reviews occurred, and other relevant information. We also recommend that the PG provide training for the Legal Secretary in database management.

Deposits, Disbursements, and Reconciliations

Under the NGA's Standards of Practice, the guardian of the estate shall employ prudent accounting procedures when managing the estate of the ward in compliance with applicable statutes, regulations, and policies.

From October 2001 through June 30, 2005, the PG managed approximately 62 accounts. As illustrated in Table 2, total cash deposits and disbursements were over \$1 million during this 45-month period.

The majority of the deposits into the ward accounts are from social security and/or veterans benefits, retirement, or public assistance. Disbursements paid from ward accounts are generally used to pay for the ward's utilities, clothing, food, etc.

Table 2
Ward Trust Account Activities¹⁸
From October 2001 through June 2005

<u>Year</u>	<u>Deposits</u>	<u>Disbursements</u>
2002	\$ 209,755	\$ 158,130
2003	\$ 240,454	\$ 219,592
2004	\$ 319,429	\$ 420,498
2005 thru 06/30/05	<u>\$ 270,385</u>	<u>\$ 219,730</u>
Total	<u>\$1,040,023</u>	<u>\$1,017,950</u>

To determine whether cash deposits were properly accounted for and reported and whether cash disbursements were appropriate, we randomly tested eight of the 52 active trust accounts. From October 2001 through June 2005, we tested 92 deposits totaling \$99,800, and 211 disbursements totaling \$90,302 from the eight accounts.

Cash Deposits

Two ward accounts included five deposits totaling \$2,739 that were made after the wards had died. Of these five deposits, one deposit for \$423 was from the Government of Guam Retirement Fund. However, the PG did not reimburse this deposit. Although the PG is aware of the Social Security Administration's policies on the reimbursement of funds received after the death of a Social Security recipient, he was not aware of similar policies of the Retirement Fund. Subsequently, the PG contacted the Retirement Fund regarding the \$423 and it was determined that only \$151 should be reimbursed to the Retirement Fund.

Cash Disbursements

As the sole signatory on all disbursements, the PG is responsible for paying utility bills, purchasing food and clothing, and other items for wards. A disbursement record usually documents these disbursements. In some cases, the wards are under the care of hired caregivers. The PG regularly reimburses caregivers for purchases made on behalf of the wards.

Other than the fact that the PG was the sole signatory on all checks, of the 211 disbursements tested, we questioned ten disbursements that totaled \$788 because the disbursements lacked supporting documentation. We found six disbursements, totaling \$649 that did not have invoices to support the disbursements, the majority of which were reimbursements to caregivers for various ward expenses. Four disbursements totaling \$831 was supported by receipts of which \$139 were for grocery purchases made with

¹⁸ Amounts were rounded to the nearest dollar.

food stamps. The PG was unaware that approximately \$139 was reimbursed to a ward's caregiver for purchases made with the caregiver's food stamps. This error was identified during the audit and the PG was immediately informed of the error. The PG was able to locate supporting documentation for four disbursements totaling \$399.

We also found that the PG wrote 16 checks totaling \$6,814 directly to a ward as allowance. Although the PG required that the ward acknowledge receipt of the checks, we did not have a signature specimen for comparison. Maintaining a signature specimen on file would assure that a third party could verify that the check was actually disbursed to the ward by comparing the signature specimen to the signature on the receipt. A signature specimen would also allow a third party to verify the identity of the ward in the absence of the PG.

We recommend the PG require that receipts be submitted before processing reimbursements with ward funds. The PG should also notify caregivers that reimbursements will not be given for purchases made with food stamps. Furthermore, the PG should determine what action should be taken to address the \$139 erroneously reimbursed to the caregiver.

We recognize the amount of trust account transactions is voluminous. Because the PG is the sole signatory and authorization, there is no independent review for the appropriateness of disbursement transactions. Had there been a second reviewer, the reimbursement for food stamps may have been avoided. We recommend that a second review policy be established and that the PG no longer be the sole signatory on bank accounts. Corrective action on this recommendation took effect on October 1, 2005, with the transfer of the financial accounting functions to the FMD and certain issues including the lack of second and other reviews of disbursements and the PG as the sole signatory should be addressed.

Bank Reconciliations

To properly safeguard cash, all bank accounts should be timely reconciled. Reconciliations should be performed monthly for checking accounts and at least quarterly for savings accounts. Adequate segregation of duties dictate that employees handling ward deposits and disbursements should not also perform bank reconciliations. The purpose of bank reconciliations is to compare the bank balance with the entity's book balance and to resolve or explain any differences. Errors and omissions could be identified on a timely basis during this process. The reconciliation by another individual serves as a check to ensure that deposits received have been recorded and that disbursements are proper.¹⁹

Our review of bank statements indicated that the PG did perform certain bank reconciliations; however, the reconciliations were not performed timely and were not independently verified. This condition occurred because of the number of separate bank

¹⁹ Excerpts from "Accounting Issues and Practices, A Guide for Smaller Governments" issued by the Government Finance Officers Association (GFOA).

accounts maintained by the PG and time resources are limited. As previously stated, the 62 accounts would require the PG or the secretary to perform about 568 bank reconciliations a year.

As of June 30, 2005, we found that bank reconciliations were not performed on 18 of the 62 ward trust accounts managed by the PG. The reconciliations for 15 accounts were not performed timely and the timing of the bank reconciliations varied from account to account. For example, in one account, the November 2004 bank statement was reconciled in July 2005, eight months after the bank statement date. Yet, the May 2005 bank statement for the same account was reconciled also in July 2005, two months after the bank statement date.

Further, we could not determine whether any bank reconciliations were performed for one ward trust account, which had been open for approximately three years. Bank statements and other financial related documents could not be located other than a handwritten note indicating that the account had been closed.

Financial Reporting, Closure of Ward Estates, and Inventory of Ward Assets

15 GCA §4304 requires the PG to present an annual accounting of each estate to the Superior Court. The NGA standards also require that the guardian facilitate the appropriate closing of the estate and submit a final accounting to the Court. In addition, 15 GCA §4301 requires the PG to fully account for all the assets in the estate, such as personal and real property, in addition to cash in trust accounts and to file a report detailing the composition of the estate's inventory and appraised value of the ward's estate within three months of appointment or within an otherwise reasonable time period. The asset inventory, including appraised value, is to be recorded and maintained by the COC. Similarly, the NGA standards state that the guardian of the estate shall have the duty to keep the assets safe by keeping accurate records of all transactions and be able to fully account for all of the assets in the estate.

Financial Reporting

We found that some annual financial reports were not filed timely with the Superior Court. We also found that some annual financial reports were not prepared at all. This condition can be attributed in part to the numerous bank accounts maintained by the PG, the tremendous number of bank reconciliations to be performed, and by the judges allowing the PG to provide oral presentations of the financial status of ward accounts.

Of the eight accounts reviewed, five accounts had no annual financial reports. Of the other three accounts reviewed, there was at least one annual financial report missing.

The PG stated that, on occasion, judges have allowed him to make an oral presentation of the wards' financial status; however, we found no written evidence of these oral presentations in the wards' case files.

The PG did compile annual financial reports for nine wards that receive VA benefits. The PG stated that the reports are required to be filed in order for the wards to continue to receive their VA benefits. Providing annual financial reports for just a few wards appears to be discriminatory for those wards that do not receive VA benefits. Annual reporting of financial transactions of **all** ward accounts, not just VA recipients, should be performed in order to ensure accountability and transparency of **all** ward funds.

Closure of Deceased Ward Estates

Records indicate that the PG had not initiated closure of deceased ward estates and did not submit a final accounting of these deceased ward estates within a reasonable time to the Court. As of June 30, 2005, there were seven deceased wards with a cumulative balance of \$11,262 in ward trust funds that remained open and for which the final accounting had not been made. We noted that two wards died in 2003, yet the estates remained open.

From October 2001 through June 2005, we estimated that the length of time to prepare a final accounting of the deceased ward estates ranged from four to 29 months and bank fees of as much as \$300 were charged against the ward accounts. As previously stated, this condition occurred because regular reconciliation of accounts had not been performed. The PG stated that the growing workload and staff constraints prevented him from closing the estates in a timely manner. Thus, the accounts of deceased wards remain open until the PG is available to prepare the final accounting of the estate.

We noted that policies differed among the banks on the length of time an account can remain inactive before the account is charged a dormant fee, ranging from six months to two years for checking accounts and two to five years for saving accounts. The usual fee assessed to inactive accounts is \$15 each month. This charge can only be waived at the discretion of bank management. In some instances, the PG has been successful in arranging for these charges to be reversed on the dormant accounts.

We recommend the PG request assistance from the FMD to reconcile and close accounts of deceased wards and the Chief Justice's designee or the PGRB review the final financial report before the report is filed with the Court. We recognize this recommendation will be addressed with the transfer of the accounting of ward accounts to FMD.

Inventory of Ward Assets

We found that the PG did not consistently conduct an inventory of ward assets. Of the eight case files reviewed, only two cases included a description of the ward's unappraised assets and were reported to the Court. We were unable to locate any documentation for the remaining six cases that the assets had been inventoried or appraised and reported to the Court.

According to the COC, he was unaware of the requirement and did not maintain an inventory record of ward assets filed with the Court; therefore, the value of ward assets held in trust is unknown and is potentially at risk for loss or misappropriation.

We recognize that appraisals of ward assets may not always be practical because the wards may not have significant personal or real property and may not have the resources to pay for appraisals. However, at a minimum, the PG should comply with the law and perform an inventory of personal and real property and have periodic inventories conducted every few years. For appraisals, we recommend that the PG, together with the PGRB, develop guidelines to determine when an appraisal should be performed, given the financial status of the wards. These guidelines should be approved by the Chief Justice.

Board Composition, Case Management, and Annual Reporting

P.L. 25-103 established an 11-member Public Guardianship Review Board (PGRB) to consistently monitor persons, corporations, and/or agencies appointed as guardians and to review the care and protection of those persons under the guardianship of the OPG and all other guardianships established under the Superior Court. Under the Rules of Order established by the PGRB, a member of the board shall serve until such time he or she either resigns from appointment, is replaced by the appointing authority, or is unable to serve due to health or death. The Board is required by law to meet every 6 months. In June 2005, the Rules of Order required the PGRB to meet every three months or four times a year.

Board Composition

The PGRB is comprised of one social worker and one nurse appointed by the Director of the Department of Public Health and Social Service; one physician appointed by the Administrator of the Guam Memorial Hospital Authority; one representative of the Guam Council of Senior Citizens; one attorney appointed by the Guam Bar Association; one psychiatrist appointed by the Director of the Department of Mental Health and Substance Abuse; one representative from a local nonprofit social service organization providing service to those with developmental disabilities; one representative from a local nonprofit social service organization providing services to the youth; and three members from the community at large appointed by the Speaker of *I Liheslaturan Guahan*.²⁰ As of June 30, 2005, there were three vacancies on the Board: a physician, a psychiatrist, and a nonprofit social service representative.

Case Management

When the PGRB meets, they review guardianship cases of the OPG. However, they have not reviewed the guardianships of the COC or other private guardianships of the Superior Court as required by law. The PGRB has acknowledged this deficiency in several Board minutes. This condition arose because most of the Board members are employed full time in the public or private sector.

²⁰ 7 GCA § 3112 (b).

The PG reported that the PGRB has made numerous attempts to satisfactorily review guardianship cases but has achieved limited success due to the large number of cases assigned to the PG, the limited time availability of the Board members, and the lack of resources of the OPG and the PGRB. The PGRB initially attempted to review guardianship cases of the PG by assigning a number of cases to each Board member to review and report on. A Board member stated that guardianship cases are currently unassigned. The PG now reports on cases that have changed or have activity and other concerns during the Board meetings. The Board members are then encouraged to give their opinions, guidance, or concerns on the cases.

We noted that in certain Board minutes, the PGRB have relayed concerns as to the financial status and financial reporting of the ward trust accounts. A Board member did state that he had reviewed some financial records, but because he was not an accountant, he would prefer an accountant review the records. According to the Board member, the PGRB reports to the Chief Justice; however, there has been no formal submission of reports to the Chief Justice, independent of the PG's annual reports.

In order to address the growing backlog of unreviewed cases, the PG and the PGRB, together with the Chief Justice, should evaluate whether the composition of the Board is still appropriate, given the number of vacancies and the limited availability of current Board members to meet more frequently. If a recomposition of the Board is deemed appropriate, the PG should recommend to the Legislature a change in the PGRB composition of the PGRB.

The PGRB did not document its review in the case files. Of the eight case files tested, there was no indication that a PGRB member had reviewed the ward's case file. Yet, board minutes indicated that the PGRB had reviewed the case files for five wards and addressed several case management issues focusing on the ward's health, level of care received, living arrangements, and progress. Without the evidence of review described in the board minutes, we would not have been able to determine whether a review had been conducted and whether concerns raised by the PGRB had been addressed. This condition occurred because standardized reporting forms were not established.

Independent reviews of the guardianship cases should be performed and should be thorough, unbiased, and independent of the PG to ensure that services being provided are in the best interest of the wards and the PG is performing his duties. We noted that the PGRB has yet to review or monitor other cases of persons, corporations, and/or agencies appointed as guardian of a ward and the guardianship cases managed by the COC. The PGRB has been unable to determine the number of these cases. As a result, wards not under the care and guardianship of the OPG are potentially at risk because of the lack of review by an independent third party. This condition can be attributed to the shortage of board members available to review cases and that the PGRB is meeting only four times a year.

Subsequently, the Chief Justice submitted requests to the Director of Mental Health and Substance Abuse, the Administrator of the Guam Memorial Hospital Authority, and the Speaker of the Legislature to appoint members to fill the vacancies on the board.

We recommend the establishment of standardized reporting forms to document the contact, status, review, and reporting of the wards' cases.

Annual Reporting

Section X of the OPG Policies, Procedures, and Rules states that the PG is required to prepare and submit an annual report to the Chief Justice of the Supreme Court of Guam, on or before January 31 of each year, for the period from January 1 through December 31 of the prior year.

The PG has complied with the requirement through 2004. As of March 2006, however, the PG has not yet submitted the 2005 report. In the 2001 through 2004 annual reports, the PG has continually raised concerns about the growing number of cases, the lack of human resources to provide assistance in administration and case management, the backlog of pending referrals and intakes, and the lack of the full accounting and financial reporting of ward trust accounts.

However, we found that the PG and the PGRB did not jointly issue annual reports. The annual report should be reviewed and approved by the PGRB, with a separate message from the PGRB Chairperson, and should include any concerns based on the PRGB review of case files. We recommend that the PGRB review and approve the OPG's annual report and incorporate any concerns raised by the PGRB.

Consolidate Guardianship Responsibilities

Prior to the creation of the OPG, the Superior Court of Guam had appointed the COC to be the Guardian of the Estate for incapacitated adults.

The establishment of two offices with guardianship roles, the PG and the COC, appears to be a duplication of services. According to the COC, the Superior Court no longer appoints him as guardian to wards since the creation of the OPG. Five of the 12 guardianship cases assigned to the COC have already been transferred to the OPG, while the remaining seven cases are still being managed by the COC.

We recommend the consolidation of the COC guardianship responsibilities into the OPG, provided that the financial accounting and reporting functions be performed by the FMD. We recognize this recommendation will be addressed, with the transfer of accounting of ward accounts to FMD.

Other Observations

During the course of our audit, other issues came to our attention as discussed below.

Hiring of Employees

The PG found it necessary to hire caregivers to assist in caring for his wards. Instead of hiring the caregivers as independent contractors, they were hired as employees of the PG where the PG withheld taxes for these caregivers. We noted that the annual W-3SS Transmittal of Wage and Tax Statements for calendar years 2003, 2004, and 2005, did not identify the Office of the Public Guardian as the employer but rather the PG's name. However, the PG did sign as the Public Guardian. The PG files employer tax documentation with the Department of Revenue and Taxation. The PG reported paying \$37,410 to 13 employees in 2003, \$28,655 to 11 employees in 2004, and \$11,056 to five employees from January through June 2005.

The hiring of these caregivers as employees of the individual rather than the Office of the Public Guardian poses a greater risk of liability to the individual personally. Such practice would not have occurred had there been sufficient oversight.

The Chief Justice was not aware of these arrangements prior to a meeting in which the OPA staff informed him of this practice. The Chief Justice voiced concerns about the suitability of the employer/employee relationship and the possible liabilities that the PG has assumed. As a result, the Chief Justice requested the caregivers no longer be hired as employees of the OPG.

Office Hours

We noted that the OPG is closed from 12pm to 1pm. As a government office, OPG should remain open during the lunch hour to provide greater accessibility of OPG services to wards and other clients. In the past, with only two personnel, it may have been difficult to ensure that at least one employee remain in the office to accommodate clients or other constituents; however, with the relocation of the OPG to the Old Court Building, other Supreme Court of Guam employees could be utilized to assist in keeping the office open the entire day.

Bonding of the Public Guardian

Guam law requires that, prior to the appointment of a guardianship, the person appointed must furnish a bond, which shall not be less than twice the value of all personal property and profits of all property belonging to the ward, or not less than the value of the personal property of the ward when given by an authorized surety company.

The PG and the OPG Legal Secretary were bonded for \$10,000 during 2003 and 2004, which was insufficient by law. In FY 2005, all bonding of previously bonded Court employees was discontinued. The Controller of the Courts stated that the provider of the

surety bond no longer offered this service; therefore, bonding was not available to Court employees.

We recognize that the bonding of Government of Guam employees may not always be cost effective. We recommend that the PG, PGRB, and the Administrator of Courts determine the availability, practicality, and cost benefit of OPG bonding and submit their recommendation to the Chief Justice either to continue bonding or to seek an amendment to the law to not require bonding.

Power-of-Attorney

The PG obtained the power-of-attorney for a competent, though bedridden elderly man who was not a ward of the PG. For approximately two years, the PG managed the money of this individual until his death in 2003. The PG stated that the individual had asked for the PG's help due to the alleged theft of his money by a previous holder of the power-of-attorney. The PG reported this additional duty in the 2001 Annual Report. The PG reported in the 2002 Annual Report that the Chief Justice directed the PG to refrain from this practice.²¹

Cash on Hand for Ward Distribution

The PG keeps cash on hand for cash allowances of certain wards of up to \$100. The cash is obtained from each ward's bank account and the ward signs for each cash allotment. We noted that the cash is kept in a locked cabinet, adjacent to his office. The key, however, is kept in an unlocked desk drawer. The cash and the key should be kept in a secured location where access is limited only to authorized persons.

We noted that the PG distributes a daily cash allowance to a homeless ward. The daily distribution of cash provides the PG an opportunity to see and visit the ward regularly to ensure his well-being and safety. On other occasions, other wards have also received money at the OPG. Cash held in the office for distribution to wards is only on a case-by-case basis and determined by the PG.

Following the transfer of the check writing function for ward accounts to the FMD in October 2005, the PG stated that it takes anywhere from five to six days for FMD to prepare a check after it is requested. The PG and his wards are not accustomed to the extended turn around time and the PG has decided to give the wards his personal funds and request reimbursement from FMD. The establishment of a petty cash fund would provide the PG a source of readily available cash for wards that would be replenished on the submittal of the signed cash vouchers by the wards. We recommend the PG discontinue utilizing his personal funds and establish a petty cash fund from OPG's operating budget for daily cash distribution to wards.

²¹ Excerpt from the Office of the Public Guardian Annual Report for 1/1/02-12/31/02, Appendix III, page 4.

Subsequent Court Action

In September 2005, we met with the Chief Justice, the PG, and the FMD Controller to discuss various issues raised during the audit. The areas of concern included the separation of duties, account file maintenance, financial reports of ward accounts, and closure of deceased ward estates. Based on these concerns, the Chief Justice initiated a full consolidation of the two guardian functions. The FMD will assume the account maintenance and check writing duties of the PG. The corrective action took effect on October 1, 2005, although the OPG is experiencing some transition issues. The PG will request appointment of guardianship for the remaining seven guardianship cases handled by the COC.

We applaud the Chief Justice for implementing the suggested changes in a prompt manner. With the transfer of the financial accounting functions to the FMD, certain issues should be addressed to include the lack of segregation of duties, the PG as the sole signatory, second and other reviews of disbursements, the hiring of caregivers as employees of the individual, the lack of timely reconciliation, the lack of annual financial reporting and final closing of deceased ward accounts, and the consolidation of Superior Court guardianships into the OPG.

Conclusion

Wards of the Office of the Public Guardian are among the most vulnerable citizens that the OPG serves. These individuals are usually unable to make decisions that will protect their health, welfare, and financial resources. They are often victimized and have very few advocates who have personal knowledge and time to act on their behalf or are not capable of advocating for them. Because these clients either do not have personal or community ties or have no family members willing to become guardians, the OPG assumes the responsibility for decisions regarding the care and safety of these incapacitated adults.

The obligations to make appropriate decisions for the clients served by the Public Guardian and to provide accountability over such decisions are tremendous responsibilities. While the Public Guardian has taken a positive approach to address these responsibilities, improvements can be made.

We found that the financial management controls of ward trust fund accounts were not adequately designed or placed in operation, leaving client assets at risk for error and possible misappropriation. There was little or no oversight or monitoring of the OPG to ensure proper administration and case management of guardianships and related financial activities to reduce the risk of loss or misuse of ward trust funds and assets. Some corrective actions have been taken with the transfer of the financial accounting function to the FMD.

Recommendations

We recommend the PG:

1. Develop a comprehensive electronic database of all ward cases and provide training in database management for the Legal Secretary who will maintain the database.
2. Document all deposits, transfers, and disbursements; reimburse the Retirement Fund for \$151; notify all caregivers that no reimbursements will be made for purchases from food stamps since such transactions are a cash exchange and violate provisions of the food stamp program; and determine what corrective action should be taken to recover \$139 that was reimbursed to the caregiver for food items purchased with food stamps.
3. Inventory all wards' personal and real property as required by law and perform periodic inventories of ward assets.
4. Establish a petty cash fund from OPG's operating budget and discontinue using the PG's personal funds for daily cash distribution to wards.

We recommend the PG and the PGRB, in coordination with the Chief Justice:

5. Develop guidelines for determining when an appraisal should be performed, given the financial status of the wards.
6. Evaluate whether the composition of the Board is still appropriate, given the number of vacancies and the limited availability of current Board members to meet more frequently. If a re-composition of the Board is deemed appropriate, the PG should recommend to the Legislature a change in the composition of the PGRB.
7. Establish standardized forms and reports to document the contact, visitation, status and review of wards and determine the availability, practicality, and cost benefit of employee bonding and if appropriate, seek amendment to the law.
8. Review and approve the OPG's annual report and incorporate any concerns raised by the PGRB.

Management Response and OPA Reply

A preliminary draft report was transmitted to the Public Guardian, the Chairwoman of the Public Guardian Review Board, and the Chief Justice on April 5, 2006. We met with the Judiciary officials and the Board Chair on May 9, 2006 to discuss the preliminary draft. Revisions to the final draft were transmitted to the Public Guardian on May 15, 2006 for the Public Guardian's official response.

On May 18, 2006 we received the Public Guardian's response (see Appendix 6) indicating concurrence with seven of the eight recommendations, with the exception of recommendation 4. In his response, the PG stated that "the matter raised by recommendation 4 is under discussion and no decision has been reached on this recommendation." However, we re-emphasize that the PG reconsider the recommendation to establish a petty cash fund from the OPG's operating budget and discontinue using his personal funds to distribute to his wards.

Many offices and organizations often maintain a petty cash fund as a convenience to those individuals who are required to make small cash payments for goods and services. A petty cash fund will provide the necessary funds quickly and easily. It benefits those individuals who cannot wait for a normal check reimbursement. It would benefit the PG in that he would not have to expend personal funds for OPG business and it would benefit FMD in that it can significantly reduce the amount of reimbursement checks that would need to be issued.

The legislation creating the Office of the Public Auditor requires agencies to submit an action plan to implement audit recommendations within six months after report issuance, or by November 30, 2006. We will be contacting the Public Guardian to provide the target date and title of the official(s) responsible for implementing the recommendations. We appreciate the cooperation shown by the management and staff of the Office of the Public Guardian, the Public Guardian Review Board, and the Judiciary of Guam.

OFFICE OF THE PUBLIC AUDITOR



Doris Flores Brooks, CPA, CGFM
Public Auditor

Appendix 1**Classification of Monetary Impact**

<u>Finding Area</u>	Questioned Costs		Funds Put to <u>Better</u> Use ²⁴
	<u>Revenue/Cost</u> <u>Exceptions</u> ²²	<u>Unsupported</u> <u>Costs</u> ²³	
Trust Accounting and Segregation of Duties	\$ -	\$ -	\$ 207,797
Cash Deposits, Cash Disbursements, and Bank Reconciliations			
Unsupported Deposits	\$ -	\$ -	\$ -
Non reimbursement of Retirement Fund Deposit	\$ 151	\$ -	\$ -
Unsupported Disbursements	\$ -	\$ 250	\$ -
Inappropriate Reimbursement of Food Stamp Purchase	\$ 139	\$ -	\$ -
Financial Reporting and Inventory of Ward Assets	\$ -	\$ -	\$ -
Annual Reports	\$ -	\$ -	\$ -
Case Management	\$ -	\$ -	\$ -
Consolidate Guardianship Responsibilities	\$ -	\$ -	\$ -
Other Observations			
Hiring of Employees	\$ -	\$ -	\$ -
Bonding of the Public Guardian	\$ -	\$ -	\$ -
Cash on Hand for Ward Distribution	\$ -	\$ -	\$ -
Total Questioned Costs	<u>\$ 290</u>	<u>\$ 250</u>	<u>\$ 207,797</u>

²² Revenues or expenditures that the auditor has determined are unallowable or otherwise improper based on available criteria.

²³ Expenditures that may be allowable; however, the accounting records or other documents available to the auditors did not provide adequate support for the costs.

²⁴ Funds that could be used more efficiently.

Appendix 2

Scope and Methodology

The scope of the audit included a review of applicable laws, regulations, policies and procedures of the OPG; ward case files to include but not limited to bank statements, deposits and disbursement transactions pertaining to ward trust accounts managed by the OPG; and other relevant documents for fiscal years 2002, 2003, 2004, and 2005 through June 30, 2005, and other periods as warranted. We also interviewed officials and staff of the OPG and other Court officials including the Chief Justice, the Controller of the Court, the Clerk of Courts, and various members of the Public Guardianship Review Board.

The audit methodology included gaining an understanding and familiarity of the processes relevant to the recognition of revenues, expenditures, and other transactions concerning the ward trust accounts.

Of the 62 ward trust accounts managed by the OPG, there were deposits of \$1,040,023 and disbursements of \$1,017,951 made from October 2001 through June 2005 and other periods as warranted. We randomly selected eight accounts of the 62 accounts to review, and judgmentally selected and tested the following:

- 92 deposits, totaling \$99,800, to determine whether receipts were accurately accounted for, recorded, and deposited.
- 211 disbursements, totaling \$90,302, to determine whether disbursements were duly authorized, appropriate, and recorded.

We also reviewed the case files of the eight wards to determine whether reporting requirements were fulfilled to include:

- Annual Financial Reports, to determine whether ward financial transactions were reported to the Court.
- Inventory Reports, to determine whether the PG had appraised and reported ward assets to the Court.
- Final Accounting of Deceased Ward Estates, to determine whether estates of deceased wards were closed timely and reported to the Court.

Further, other issues came to our attention during the audit and are discussed in the Other Observations segment of the report.

Scope Limitation

The discovery of accounts not included in the OPG's master listing, led us to conclude that there could be a high possibility of other trust accounts, which may not be included in the OPG's master list; therefore, the accuracy of statistical data reported in the OPG Annual Reports cannot be reasonably verified.

Our audit was conducted in accordance with the standards for performance audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Accordingly, we included such tests of records and other auditing procedures that were necessary under the circumstances. As part of our audit, we evaluated the internal controls related to the management of ward trust accounts to the extent we considered necessary to accomplish the audit objective. Internal control weaknesses identified in these areas are discussed in the Results of Audit section of this report. The recommendations, if implemented, should improve the internal controls in these areas.

Appendix 3**Prior Audit Coverage**

In July 2005, the Social Security Administration conducted a review of beneficiaries for whom the PG is serving as their “representative payee.” The review was to determine whether the Social Security benefits were properly used and accounted for in accordance with the Social Security Administration requirements and included site visits to various Social Security beneficiaries. The review concluded that the OPG had performed a good job of managing the benefits of its clients. The report did indicate that the OPG’s “accounting records were well documented, however, they were time consuming to reconcile.” The PG had informed the Social Security Administration that the implementation of QuickBooks, effective January 2005, was still in transition and that the majority of Social Security beneficiaries have not been updated. The review reported that the completion of the transition should make OPG records easier to reconcile.

Appendix 4**Duties of the Public Guardian**

7 GCA § 3112 (a) specifically outlines the duties of the Public Guardian, including:

- To serve as guardian, limited guardian, testamentary guardian, or temporary guardian of the person and/or estate of an incompetent adult when so appointed;
- To assist the Court, as the Court may request or direct, in proceedings for the appointment of a guardian of the person and in the supervision of persons, corporations, or agencies which have been appointed as guardians of the person;
- To advise and assist persons, corporations, and agencies which are seeking appointment as a guardian of the person and in the supervision of persons, corporations, or agencies that have been appointed as guardian of the person to assist them in the discharge of their duties;
- To offer guidance and counsel to persons for the purpose of encouraging maximum self-reliance and independence of such persons, and avoiding the need for appointment of a guardian; and
- To develop programs of public education on guardianships and alternatives to guardianship and encourage the development of private guardians able and willing to serve as guardian for the person.

Appendix 5

Definitions of Guardianship Terms²⁵

Guardian: An individual or organization named by order of the Court to exercise any or all powers and rights of the person and /or the estate of an individual.

Guardianship of the Person: A guardian who possesses any or all the powers and rights granted by the Court with regard to the personal affairs of the individual.

Guardian of the Estate: A guardian who possesses any or all the powers and rights with regard to the property of the individual. All guardians are accountable to the Court.

Ad Litem: A person appointed by the Court to make an impartial inquiry into a situation and report to the Court.

Emergency/Temporary Guardian: A guardian whose authority is temporary and usually only appointed in an emergency.

Limited Guardian: A guardian who has been appointed by the Court to exercise the rights and powers specifically designated by a court order entered after the Court has found that the ward lacks capacity to do some, but not all, of the tasks necessary to care for his/her person or property, or after the person voluntarily petitioned for appointment of a limited guardian. A limited guardian may possess fewer than all of the legal rights and powers of a plenary guardian.

Ward: A person for whom a guardian has been appointed. Other names for ward are “Conservatee,” “Disabled Person,” “Protected Person,” and “Incapacitated Person.”

Testamentary Guardian: Every testamentary guardian must qualify, has the same powers, and must perform the same duties with regard to the person and estate of his ward as guardians appointed by the Court, except so far as his powers and duties are legally modified, enlarged or changed by the will by which he was appointed.²⁶

²⁵ Excerpts from the National Guardianship Association’s Standards of Practice, pages 16 through 18.

²⁶ 15 GCA § 4005.

Office of the Public Guardian's Management Response



OFFICE OF THE PUBLIC GUARDIAN

Supreme Court of Guam

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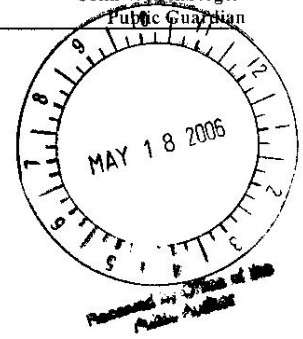
John Weisenberger
Public Guardian

MEMORANDUM

To: Doris Flores Brooks
Public Auditor, CPA, CGFM

Fr: John Weisenberger
Public Guardian (with signature)

Date: May 18, 2006



Re: Response To Recommendations of the Performance Audit

- 1. The Office of the Public Guardian concurs with recommendation 1. A comprehensive database of all wards is in the process of being compiled.
2. The Office of the Public Guardian concurs with recommendation 2.
a. All deposits, transfers and disbursements will continue to be documented.
b. Reimburse Retirement Fund \$151.42 - The funds held by the Public Guardian on behalf of a deceased ward, which included funds received by the Public Guardian from the Retirement Fund after the death of the ward, have been paid over to the attorney for the administrator of the deceased ward's estate. A letter has been sent to the attorney and the administrator advising them of the overpayment by the Retirement Fund.
c. A notice is to be provided to all care providers advising them that no reimbursement will be made for Food Stamp purchases. In the matter of the \$139.00, the ward is deceased. The administrator of the estate of the ward is to be notified of the overpayment to the care provider. The care provider, who was released from employment in December 2001, will be contacted if possible and a reimbursement for the overpayment will be requested.
3. The Office of the Public Guardian concurs with recommendation 3. The estate of each ward is being reviewed and inventories are being completed on each estate. Each inventory, once completed, will be filed in the corresponding guardianship action in the Superior Court of Guam.

Office of the Public Guardian's Management Response

Response To Recommendations
Page 2.

4. The matter raised by recommendation 4 is under discussion and no decision has been reached on this recommendation.
5. The Office of the Public Guardian concurs with recommendation 5. The Public Guardian and the Public Guardian Review Board will review the means of acquiring appraisals of property and the cost involved, and propose specific recommendations for the Chief Justice.
6. The Office of the Public Guardian concurs with recommendation 6. Steps have been taken to fill three vacancies. Of these, one is filled. The Public Guardian will contact the Office of the Speaker of the 28th Guam Legislature to follow up on the two pending appointments. One additional vacancy needs to be confirmed, and then, if the vacancy exists, the appointing authority will be formally requested to fill the vacancy.
7. The Office of the Public Guardian concurs with recommendation 7. A committee of the Public Guardian Review Board is formed and scheduled to meet for the purpose of developing clear standards for the maintenance of ward files, as well as a format for review of guardianship cases. It is likely that the recommendation of the Chief Justice for a format and process which would require a thorough review of at least one guardianship case, chosen at random, at each quarterly board meeting, will form the heart of the review process.

The Chief Justice and the Public Guardian are seeking a company that will bond the employees of the Office of the Public Guardian.
8. The Office of the Public Guardian concurs with recommendation 8. The chairperson of the Public Guardian Review Board has reviewed and approved the 2005 Annual Report of the Public Guardian, and has forwarded this approval to the Chief Justice of the Supreme Court. A formal process for a review and approval of the annual report will be implemented through an amendment of the Policies, Procedures and Rules of the Office of the Public Guardian and an amendment of the Rules of Order of the Public Guardian Review Board.

Appendix 7**Status of Audit Recommendations**

Finding/ Recommendation Reference	Status	Action Required
1	Management concurs; additional information needed.	Provide the target date and the title of the official responsible for developing and maintaining the comprehensive electronic database.
2	Management concurs; additional information needed.	<p>Provide a copy of the letter OPG transmitted to the attorney and the administrator of the respective estate advising of the \$151 overpayment made by the Retirement Fund.</p> <p>Provide a copy of the notice transmitted to the care providers, advising them that no reimbursement will be made for Food Stamp purchases.</p> <p>Provide a copy of the notification to the administrator of the respective estate that an overpayment was made to a care provider and documentation of the efforts made to contact the care provider that received the overpayment for purchases made with food stamps.</p>
3	Management concurs; additional information needed.	Provide the target date and the title of the official responsible for conducting periodic inventories of ward assets.
4	Unresolved	Reconsider the recommendation to establish a petty cash fund from OPG's operating budget and discontinue using the PG's personal funds for daily cash distribution to wards.
5	Management concurs; additional information needed.	Provide the target date and the title of the official responsible for the development of guidelines for determining when an appraisal should be performed, given the financial status of the ward.
6	Management concurs; additional information needed.	Provide the target date and the title of the official responsible for the evaluation of whether the composition of the Board is still appropriate and the recommendation to the Legislature for a change in PGRB composition if it is found inappropriate.
7	Management concurs; additional information needed.	Provide the target date and the title of the official responsible for the development of standards and the format for review of guardianship cases and the determination of the availability, practicality, and cost benefit of employee bonding and if appropriate, seeking the amendment to the law.
8	Management concurs; additional information needed.	Provide a copy of the amendment to OPG's Policies, Procedures and Rules and the PGRB's Rules of Order concerning the review and approval of the annual reports of the OPG.

Do you suspect fraud, waste, or abuse in a government agency or department? Contact the Office of the Public Auditor:



- Call our HOTLINE at 47AUDIT (472-8348);
- Visit our website at www.guamopa.org;
- Call our office at 475-0390;
- Fax our office at 472-7951;
- Or visit us at the PNB Building, Suite 401
In Hagåtña

All information will be held in strict confidence.