



July 24, 2007

The Honorable Donald E. Shaver  
Presiding Judge  
Stanislaus County Superior Court  
800 11<sup>th</sup> Street  
Modesto, CA 95354

RE: RESPONSE TO CIVIL GRAND JURY CASE #07-38, 2006-2007

Dear Judge Shaver:

Thank you for the opportunity to respond to the comments and recommendations of the 2006-2007 Civil Grand Jury. The Public Guardian is well aware of the importance of maintaining public trust and feels that Civil Grand Jury oversight is an opportunity to maintain that trust.

It should be noted that the Office of Public Guardian has been concerned about staffing reductions and the ability to remain in compliance with Court mandates. Over the past years, the Office of Public Guardian has consulted with the Court and Court staff to strategize how best to address a number of these concerns. In addition to developing an efficient procedure to address one area of concern, two fulltime employees with the classifications of Account Clerk III and Administrative Clerk III were requested and granted in the proposed budget for the Office of Public Guardian for Fiscal Year 2007-2008.

### RESPONSE TO FINDINGS

Following is the Office of Public Guardian's response to the findings:

1. In May 2007, the Public Guardian has a caseload of 165 clients.
  - 82 – LPS Conservatorship
  - 59 – Probate Conservatorship
  - 23 – Representative Payee
  - 1 – Guardian ad litem

**Response:**

**The Department agrees with this finding.**

2. 2006-2007 Office of Public Guardian Personnel:
  - Program Manager II
  - Deputy Public Guardian II
  - Behavioral Health Specialist II
  - Account Clerk III (2)
  - Stock Delivery Clerk II (3)
  - Stock Delivery Clerk I
  - Account Clerk II (extra help)
  - Chief, BHRS Forensics Services/ Public Guardian (39% assignment)

**Response:**

**The Department agrees with this finding.**

3. The duties and legal responsibilities of the Public Guardian are listed in the California Probate Code and the California Welfare and Institutions Code.

**Response:**

**The Department agrees with this finding.**

4. Limited Agreed-Upon Procedures reports on the Office of Public Guardian were performed by Certified Public Accountants and Management Consultants Bartig, Basler and Ray in 2003 and 2006.

**Response:**

**The Department agrees with this finding, in part. Although the reports on the Office of Public Guardian were performed by Certified Public Accountants and Management Consultants Bartig, Basler and Ray in 2003 and 2006, the following agreed-upon procedures were reviewed and make up a majority of procedures for the Office of Public Guardian. The following procedures were reviewed:**

- **The internal controls over cash accounts receivable and accounts payable**
- **The internal controls over the conservatees' personal assets**
- **The internal controls over court accountings**
- **The calculations and allocation of interest**
- **The internal controls over case management**

5. Staffing for the Public Guardian has decreased from 17 fulltime employees (FTE) in Fiscal Year 2002-2003 to nine FTEs in 2006/2007.

**Response:**

**The Department agrees with this finding.**

6. Office of Public Guardian estimates indicate that up to \$175,000 in court accounting fees has gone uncollected due to lack of staff. Also undone or not done timely are the following Public Guardian duties:

- Fee summaries for court accountings
- Inventory and appraisals
- Letters to conservatees' creditors
- Filing
- Tracking of outside client bank accounts and investments
- Client medical bills and the research involved in matching what insurance has paid and what is outstanding
- Warehouse audits
- Releasing and/or disposing of deceased conservatees' property
- Cleaning of clients' houses so that they may be sold on a timely basis
- Correspondence with IRS to assure that conservatees' taxes are current

**Response:**

**The Department agrees with this finding, in part. Court Accounting Fees are projections based on previous years. The \$175,000 amount in this finding is the shortfall in the projection, which in part could be related to the Office falling behind in Court Accountings due to a decrease in staffing. However, there are several other factors that may have contributed to this shortfall such as services provided, court approval, the size of the estate and the conservatee's ability to pay.**

7. Evidence suggests that eligible persons who have been referred for appraisal to the Public Guardian have not been accepted into the program because of staff limitations.

**Response:**

**The Department disagrees with this finding. The legal criteria for an LPS Conservatorship is very specific and the application of that criteria has not changed with the decrease in staff. Criteria for Probate Conservatorship are based on risk and what is in the best interest of the proposed conservatee and the application of the criteria has not changed with the decrease in staff.**

8. The 2006 Omnibus Conservatorship and Guardian Reform Act impose new duties to the California probate system. As a result, additional Public Guardian staff will be needed to accomplish the increased administrative time and effort this new law will require.

**Response:**

**The Department agrees with this finding.**

9. The 2006/2007 Public Guardian budget is \$965,030 and is funded from three sources:
- County match funds
  - Service revenue from Public Guardian clients
  - Service revenue from Medi-Cal

**Response:**

**The Department agrees with this finding.**

10. The Public Guardian budget decreased from \$1,185,310 in 2003/2004 to \$1,095,391 in 2005/2006. It then decreased to \$965,030 in 2006/2007.

**Response:**

**The Department disagrees with this finding, in part. The Office of Public Guardian's budget in Fiscal Year 2003-2004 was \$1,191,571.**

11. Service revenue from Medi-Cal funds have declined from \$182,020 in 2005/2006 to \$71,000 in 2006/2007. Limited staffing to bill Medi-Cal and a lower reimbursement rate are two reasons for this decline.

**Response:**

**The Department agrees with this finding.**

12. Client funds and Public Guardian funds are commingled in one fund. Software allows tracking of each client's individual funds.

When the Public Guardian bills a client for a service, the transferred funds are placed in the Public Guardian portion of the commingled fund. These transactions are not recorded in the monthly County budget until these funds are transferred to the County treasury each June.

**Response:**

The Department disagrees with this finding, in part. The Office of Public Guardian bills a client for services only after the Court approves fees. The amounts transferred to the pooled trust account are tracked through the Office of Public Guardian's internal accounting software.

13. Evidence suggests that some client interest revenue is used to offset Public Guardian administrative program costs and not added to individual client accounts.

**Response:**

The Department agrees with this finding. Intermingled client funds and interest allocation are allowed by law under Probate Code Section 2940, 7640, 2642 (b), and 7642, Conservatorship of Key, 134 Cal. App. 4<sup>th</sup> 254 and 68 Ops. Cal. Atty. Gen 257 (1985). Several times since 1992, The Public Guardian's Office has reviewed its procedure for interest allocation. Several other Public Guardian Offices were surveyed as to how they allocate interest. In addition, a question was posted on the Public Administrator, Public Guardian and Public Conservator Association Bulletin Board and several responses were posted. It was concluded that the procedure in which the Stanislaus County Office of Public Guardian determines interest allocation is within the parameters set by the industry standard.

14. Interest percentage paid to individual Public Guardian client accounts varies according to the amount in the individual client fund account – the larger the amount, the higher the interest percentage paid. It should be noted that Public Guardian clients who have less than \$2,000 are paid no interest due to administrative cost offsets.

**Response:**

The Department agrees with this finding. As mentioned in response 13, intermingled client funds and interest allocation are allowed by law under Probate Code Section 2940, 7640, 2642 (b), and 7642, Conservatorship of Key, 134 Cal. App. 4<sup>th</sup> 254 and 68 Ops. Cal. Atty. Gen 257 (1985). Several times since 1992, the Public Guardian's Office has reviewed its procedure for interest allocation. Several other Public Guardian Offices were surveyed as to how they allocate interest. In addition, a question was posted on the Public Administrator, Public Guardian and Public Conservator Association Bulletin Board and several responses were posted. It was concluded that the procedure with which the Stanislaus County Office of Public Guardian determines interest allocation is within the parameters set by the industry standard.

## **RECOMMENDATIONS**

Following is the Office of Public Guardian's response to the recommendations of the Civil Grand Jury:

1. Schedule a full performance audit by an independent firm to assure compliance with federal, state and court requirements.

### **Response:**

The Department agrees with Recommendation 1, in part. The Court maintains authority and monitoring of the actions of the Office of Public Guardian. Court actions are reviewed by a Court Investigator, the conservatee's family (if any), the conservatee and/or his/her attorney, with a review and decision by the Superior Court Judge. Court Accountings, in addition to the review described above, are also reviewed by the Court fiscal services, prior to the review and decision by the Superior Court Judge. In addition to the Court monitoring required by law, this report will be shared with Bartig, Basler & Ray for review to ensure that the Office of Public Guardian is in full compliance with all Federal State and Court requirements.

2. Schedule an in-depth financial audit by an independent firm to assure that the handling and investments of county and client funds by the Office of Public Guardian are appropriate.

### **Response:**

The Department agrees with Recommendation 2, in part. The Court maintains authority and monitoring of the actions of the Office of Public Guardian. Court actions are reviewed by a Court Investigator, the conservatee's family (if any), the conservatee and/or his/her attorney, with a review and decision by the Superior Court Judge. Court Accountings, in addition to the review described above, are also reviewed by the Court fiscal services, prior to the review and decision by the Superior Court Judge. In addition to the Court monitoring required by law, this report will be shared with Bartig, Basler & Ray for review to ensure that the Office of Public Guardian is in full compliance with all Federal State and Court requirements.

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Page 7

Please do not hesitate to contact me if you have any questions or need further information.

Sincerely,

A handwritten signature in black ink that reads "Denise C. Hunt, RN, MFT". The signature is written in a cursive style.

Denise C. Hunt, RN, MFT  
Behavioral Health Director

cc: Stanislaus County  
Board of Supervisors

Richard W. Robinson  
Chief Executive Officer

Michael H. Krausnick  
County Counsel

Debra Buckles  
Public Guardian