
BP Guardianship Audits

Best Practice:

GUARDIANSHIP AUDITS

(Category: Financial Management & Case Processing, Goal #3 Op. Consistency)

EXECUTIVE SUMMARY

Guardianship is a last resort option for protecting at-risk incapacitated persons who are most often elders. Guardianship is appropriate when there are no other less restrictive options available. Sometimes guardianship is the appropriate option because of oversight and monitoring. Florida Clerks are involved as a “check and balance” and monitoring role in guardianship cases, and administratively assist the Courts with oversight. The Court and the Office of Public and Professional Guardians have a substantive and decision-making role in guardianships. Florida Clerks monitor guardianship cases by auditing the guardian’s financial reports and reviewing the guardian’s person reports. Florida Guardianship Law provides Clerks the ability to permissively do so much more based on each individual Clerk’s guardianship caseloads, resources, and community demographics. Guardianship cases are often contentious and occasionally subject to public and media scrutiny. The Florida Clerks have a statutory duty to advise the Court of its findings. A robust guardianship monitoring program can be a valuable public service to the community. The Clerk serves to better protect incapacitated persons.

The Florida Court Clerks & Comptrollers (FCCC) Best Practices for Guardianship Auditing is a “tool box” that clerks may consider when developing a guardianship monitoring program. These best practices are aspirational.

BACKGROUND

Historically, the intent of guardianship was benevolent in nature. The courts, as a trier of fact, administered the proceedings and adjudicated decisions that were in the best interest of the person needing assistance or equitable in nature. The government powers would take action to protect a person who was incapacitated, but over time, the pendulum has swung creating a guardianship system that is often excessively litigated and adversarial in nature. Allegations of opponents are hotly contested until the ultimate available level of review has been exhausted or the person under guardianship’s assets are depleted. Guardianship law in Florida was first written in 1974. From 1974 to 1989, the court was the sole monitor of guardianship proceedings. This continued until the late 80’s when several Associated Press media reports focused on the courts for significant wrongdoing in guardianship cases resulting in harm to persons under guardianship. In 1989, the legislature found, “...there is sufficient evidence that court monitoring of guardians’ protection of their wards’ assets, well-being, dignity, and personal rights are deficient...” and “...untold number of individuals not in full control of their capacities are being taken advantage of, both financially and by having their personal rights stripped by the court without adequate supervision...” Additionally, the legislature stated, “...the court should take a more proactive and affirmative role in guardianship matters, rather than wait, as it sometimes presently does, until an abuse of the system is brought to its attention”. The Florida legislature, in response to the Guardianship Reform Committee’s recommendations, passed extensive revisions to the guardianship laws in 1989, which focused on more judicial supervision of persons under guardianship and mandated the involvement of clerks’ offices. See FS 744.368 (“the clerk shall review each initial and annual guardianship report”; “the clerk shall complete” reviews of the guardians’ reports; “the clerk shall audit the verified inventory and the accountings”; “[t]he clerk shall advise the court of the results of the audit”; and “[t]he clerk shall report to the court when a report is not timely filed.”). According to Senate Staff Analysis on May 24, 1989, “The task of monitoring guardians would be shared by the clerks of court and the courts itself.”

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Clerks have a responsibility to process guardianship cases with due care and, as such, it is important that methods used, although they may vary by jurisdiction, are consistent with the intent of the legislation and are affirmative/proactive in nature. This is particularly important, given the legislative intent of FS Chapter 744:

The Legislature finds that adjudicating a person totally incapacitated and in need of a guardian deprives such person of all her or his civil and legal rights and that such deprivation may be unnecessary. The Legislature further finds that it is desirable to make available the least restrictive form of guardianship to assist persons who are only partially incapable of caring for their needs and that alternatives to guardianships and less restrictive means of assistance, including, but not limited to guardian advocates, be explored before a plenary guardian is appointed. Recognizing that every individual has unique needs and differing abilities, the Legislature declares that it is the purpose of this act to promote the public welfare by establishing a system that permits incapacitated persons to participate as fully as possible in all decisions affecting them; that assists such persons in meeting the essential requirements for their physical health and safety, in protecting their rights, in managing their financial resources, and in developing or regaining their abilities to the maximum extent possible; and that accomplishes these objectives through providing, in each case, the form of assistance that least interferes with the legal capacity of a person to act in her or his own behalf. **Florida Guardianship Law shall be liberally construed to accomplish this purpose.**

Through the efforts of the FCCC and the Legislative Committee, the Florida legislature passed revisions to the guardianship laws in 2014, which allows clerks' offices to be more proactive and involved with guardianships. The permissive statutes give clerks' offices tools to comprehensively audit guardianships and better advise the court. See FS 744.368(5) ("If the clerk has reason to believe further review is appropriate, the clerk may request and review records and documents that reasonably impact guardianship assets, including, but not limited to, the beginning inventory balance and any fees charged to the guardianship.") The revision also codifies processes to obtain documents and records from guardians and non-parties. See FS 744.368(6) and (7) and FS 744.3685.

Although best practices are designed to provide a framework for all clerks' offices, the reality is that clerks' offices have varying resources and skills available to them. In some counties, the clerk's office has staff with both the training and the experience to perform high-level audits, detailed investigations, and be proactive in presenting orders in accordance with their findings. Other clerks' offices only have the resources to have line staff trained in basic bookkeeping to perform a more rudimentary review to catch the grossest abuses and report apparent abuses to the judiciary. All clerks want to prevent the wasting and dissipation of guardianship assets whether through lack of knowledge or through malfeasance and want their offices to provide the most service that can be provided within the limits of their resources.

To promote an environment of oversight and monitoring, the legislature also passed several reforms peripheral but related to the clerks' duties to audit and advise the court. See FS 744.474(21) ("A guardian may be removed for any of the following reasons...a bad faith failure to submit guardianship reports during the audit pursuant to FS 744.368."); see FS 943.0585(4)(a)(8) ("The subject of a criminal history record sealed under s. 943.059, may not lawfully deny or fail to acknowledge the arrests covered by the sealed record for those seeking to be appointed as a guardian pursuant to FS 744.3125."); see FS 744.3135(1) ("The court shall require all guardians who are seeking appointment by the court, other than a corporate guardian as described in FS 744.309(4) to undergo a level 2 background screening. On petition by any interested person or on the court's own motion, the court may waive the requirement of a credit history investigation or a level 2 background screening, or both."). The legislative reforms stemmed from the practice of FCCC's best practices in several clerks' offices.

744.102. Definitions

As used in this chapter, the term:

(2) “Audit” means a systematic review of financial and all other documents to ensure compliance with [FS 744.368](#), rules of court, and local procedures using **generally accepted accounting principles (GAAP)**. The term includes various practices that meet professional standards, such as verifications, reviews of substantiating papers and accounts, interviews, inspections, and investigations.

House Bill 5, effective July 1, 2015, revised the date for filing guardianship plans, however, effective July 1, 2017, the date for filing some guardianship plans changed again, requiring some clerks to once again change the due date in their tickler systems. The law also addresses the issue of annual plans that have not been reviewed by the clerk or ordered approved by the court. See FS 744.367(1). Absent other provisions of Florida Guardianship Law, the court must make a specific finding of fact stating why the person was selected as guardian in the particular matter involved if the court does not use a rotation system for such appointments. As a result, the clerk should seek the court’s direction on which professional guardians, if not all registered guardians, to put on a conflict wheel, if the clerk maintains a conflict wheel. See FS 744.312(4)(a). A court may not authorize any payment of the emergency temporary guardian’s final fees or the final fees of his or her attorney until the final report is filed. See FS 744.3031(9)(b). For the first time, a civil guardianship statute has been directly linked by statute to a criminal statute. See FS 744.359(1)-(4). For-profit corporate guardians must post and maintain a blanket fiduciary bond or maintain a liability insurance policy with the clerk that covers any losses sustained by the guardianship of a least \$250,000. See FS 744.309(7)(a)(1) and (2).

To better protect persons under guardianship, the legislature also passed several reforms peripheral but related to the clerks’ duties to audit and advise. See FS 744.3031(2) (“Notice of filing of the petition for appointment of an emergency temporary guardian and a hearing on the petition must be served on the alleged incapacitated person and on the alleged incapacitated person’s attorney at least 24 hours before the hearing is commenced...”); see FS 744.107(5) and FS 744.1075(6) (“the court may appoint the office of criminal conflict and civil regional counsel as monitor if the ward is indigent”); see FS 709.2109(3) (“If any person initiated judicial proceedings to determine...incapacity...power of attorney is suspended until the petition is dismissed or withdrawn or the court enters an order...(unless) the agent named in the power of attorney is the principal’s parent, spouse, child, or grandchild...”); see FS 744.108(9) (“The court may determine that a request for compensation by the guardian, the guardian’s attorney, a person employed by the guardian, and attorney appointed...or an attorney who has rendered services to the ward, is reasonable without receiving expert testimony.”; see FS 744.312(4)(b) and (5)) (“An emergency temporary guardian who is a professional guardian may not be appointed as the permanent guardian of a ward unless one of the next of kin...or the ward requests...the court may waive the limitations...the court must make specific findings of fact that justify waiving the limitations...” and “the court may not give preference to the appointment...based solely on the fact that such person was appointed...as an emergency temporary guardian”); see FS 744.331(7) (“The fees of the examining committee shall be paid upon court order as expert witness fees under FS 29.004(6).”

In 2016, the Florida Department of Elder Affairs, Office of Public and Professional Guardians (OPPG) was given statutory responsibility for oversight of professional guardians. This law marked a dramatic shift of oversight responsibilities in the Florida Guardianship System. The court has oversight duties of guardianship proceedings and all of the parties of the proceeding. The OPPG now has oversight of professional guardians. The OPPG is responsible for monitoring, educating, and regulating professional

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guardians. Several clerk offices with FCCC Best Practices Guardianship Auditing expertise formed a Statewide Investigations Alliance (SIA) and entered into a memorandum of understanding (MOU) with OPPG to provide investigative services to OPPG. Participation with the Clerks' SIA is encouraged by the FCCC Best Practices Committee as an aspirational goal. In general, the requirements to be considered for inclusion are:

- The Clerk's office must perform guardianship audits and investigations in an Inspector General function with an appropriate charter.
- The Clerk's Inspector General function must be headed by a Certified Inspector General ("CIG").
- The Clerk's Inspector General function must be accredited by the Commission for Florida Law Enforcement Accreditation, Inc. or have taken a substantial step towards pursuing accreditation.
- 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).
- 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.
- 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 analytical tools, and other third party transaction information.
- The clerk's office must agree to abide by the policies and procedures developed by the SIA, including a program of quality assurance reviews of the guardianship investigations performed under the MOU.

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

Currently, the participating SIA members are:

- Lee County
- Okaloosa County
- Palm Beach County
- Pinellas County
- Polk County
- Sarasota County

Sometimes performing comprehensive enhanced audits may not be reasonable for smaller-sized clerk offices or counties with a minimal guardianship case load. Clerks should consider taking steps to use the SIA to outsource enhanced guardianship audits on a case-by-case or program wide basis. Each participating SIA member may provide enhanced auditing and investigating services to any other clerk's office.

The Administrative Coordinator for the Clerks' SIA is Anthony Palmieri with the Clerk of the Circuit Court and Comptroller for Palm Beach County, for more information contact apalmieri@mypalmbeachclerk.com or see www.flclerksia.com.

In 2017, the Florida legislature improved due process and provided additional protections to persons under guardianship with Emergency Temporary Guardianship procedures. The Florida legislature also required the clerk to serve the examining committee reports on the petitioner and the attorney for the alleged incapacitated person by electronic mail delivery or U.S. mail, and, upon

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service, must file a certificate of service in the incapacity proceeding. The petitioner and the attorney for the alleged incapacitated person must be served with all reports at least 10 days before the hearing on the petition. See FS 744.331(3)(h) for more information.

In 2018, the Florida legislature expressly clarified and affirmed the Clerk's monitoring role within the guardianship system. As the clerk of the court, the authority to conduct audits of initial and annual guardianship reports if the Clerk has reason to believe further review is appropriate. Any fee or cost incurred by the guardian in responding to the review or audit may not be paid or reimbursed by the ward's assets if there is a finding of wrongdoing by the court. See FS 744.368(5). The clerk is allowed to disclose confidential information to the Florida Department of Children and Families (DCF) and law enforcement agencies for other purposes as provided by the court. See FS 744.3701(4). As the designee and investigator for the Florida Department of Elder Affairs, the clerks participating in the SIA are authorized to receive records held by a state agency, court, or clerk. See FS 744.2014. Guardians are authorized to provide confidential information about a ward to the clerk or the Clerks' SIA; the Clerk and the SIA shall maintain the confidentiality of such information. See FS 744.444(17).

In 2019, the Florida Legislature responded to the findings of Clerks' SIA investigations of a state-registered professional guardian in central Florida. CS/CS/SB 994, which was effective on July 1, 2020, provided incremental reforms to protect persons served by guardianship and heighten the oversight and monitoring framework. Professional guardians are restricted from petitioning for appointment. See FS 744.334. The existence of preexisting advanced directives such as do not resuscitate orders (DNR) were made more transparent. See FS 744.3675(1)(d). All remuneration received by a guardian for services rendered to a person under guardianship were made more transparent. See FS 744.367(3)(a). Directed professional guardians on when to obtain a court order for signing DNR orders. See FS 744.441(2). Tightened conflicts of interest concerns by prohibiting commissions, bonuses, rebates, kickbacks for services involving an alleged incapacitated person or a person served by guardianship. See FS 744.446(2). Professional guardians with interests, financial or otherwise, direct or indirect, with the person under guardianships, the presiding judge, any member of the examining committee, or any court employee involved in the guardianship process, or the attorney for the alleged incapacitated person are further restricted with exceptions. See FS 744.446 (2)(a).

CS/SB 344, which was effective July 1, 2020, exempted public guardians from paying court fees, filing fees, and costs. See FS 744.2008. CS/SB 344 also authorized the report of a physician, submitted with the annual guardianship plan, to be prepared and signed by a physician assistant or an advanced practice registered nurse. See FS 744.3675.

Clerks' offices should be aware of several points of analysis:

- In reality, the court is the guardian; an individual given that title is merely an agent or arm of the tribunal in carrying out its sacred responsibility. *Kicherer v. Kicherer*, 400 A.2d 1097 (Md. 1979).
- According to a Stetson Law School article by Alison Barnes, in response to the National Summit on Guardianship in 2002, referring to national trends in guardianship monitoring stated, "It is increasingly likely that courts alone are not the appropriate body to be charged with effective guardianship monitoring. There is no reason that one body should be solely responsible for investigating all aspects of guardianship services, and because courts are inept investigators, their work alone should not be relied upon. The difficulties with guardian monitoring can be attributed primarily to the fact that few or no persons who are knowledgeable and concerned with quality of services have access to

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information likely to prevent or curtail guardian abuse and neglect.”

- The clerks are statutorily required to “advise” the court. FS 744.368. A common definition of “advise” as a verb is “to offer suggestions about the best course of action”, “to recommend”, and “to inform about a fact or situation.” Any advice should be submitted, generally, in written form, such as a report or memo and filed in the case file. Constructive notice to the guardian, guardian’s attorney, and/or any other interested party may also be considered
- The clerk’s report of statutory audit and review is not impermissible ex-parte communication. First, by many authorities including Florida Constitution (Article V, Section 16), statute (Ch. 28, FS and Ch. 744, FS), Attorney General Opinion (AGO 2004-33), and case law, the clerk is not a party to the guardianship proceeding. The Black’s Law definition of “ex parte communication” is “any communication between a judge and a party outside of the presence of the opposing party”. Second, even if it could be successfully argued that the clerk’s communication is impermissible ex-parte communication, Judicial Canon allows statutorily authorized ex-parte communication. See Florida Code of Judicial Conduct, Canon 3(B)(7)(e).
- The statutory definition of “audit” includes the ability to “interview”, “inspect”, and “investigate”. Enhanced audits of accountings may include such procedures. See FS 744.102(2).
- The clerk may perform an enhanced audit when “...the Clerk has reason to believe further review is appropriate” and there is an impact to guardianship assets. Therefore, the clerk may perform random enhanced audits if the clerk believes this review is appropriate. In addition, the clerk may perform enhanced audits based on complaints, less comprehensive reviews or audits, and using professional judgement.

Increasingly, attorneys and guardians are challenging the Clerk’s Constitutional and Statutory role within the Florida Guardianship System.

The most recent effort included a proposed strike-all of Chapter 744 and total rewrite into a brand-new Chapter 745 by The Florida Bar, Real Property, Probate, and Trust Law (RPPTL) Section, Guardianship and Advanced Directives Committee, Ad Hoc Guardianship Rewrite Subcommittee. In part, the draft bill loosens the oversight of guardians and attorneys and shifts protections to guardians and attorneys and away from persons served by guardianship.

The bill does not sufficiently modernize guardianship and/or follow national best practices for guardianship. For example, the bill uses the terminology “ward” over 700 times. Modern reform efforts include giving dignity to persons served by guardianship. Additionally, the strike-all bill makes the entire guardianship court case file and the proceedings confidential. This removes any chance of meaningful “watch-dogging” by anyone that is not a party to the case or provided with a statutory oversight or monitoring role. Modern reform efforts include balancing transparency with the person served by guardianship’s right of privacy.

The Florida Bar RPPTL section strike-all bill proposes to remove meaningful oversight of guardians by the Clerks and the courts. For example, the bill:

- Narrows the definition of an audit;
- Creates ex-parte communication concerns where none exist;
- Prohibits courts from having court monitors;
- Allows for the taking of attorney and guardian fees without a court order.

The Florida Bar RPPTL bill is totally devoid of any provisions or guidance for the collection of data and statistics about the guardianship system or lesser restrictive alternative to guardianship such as

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supportive-decision making.

There are no known adverse judicial opinions to the clerk's role. However, on the other hand, written orders or judgments supporting the clerk's role are scarce. If an order, opinion, or judgment specific to the clerk's role with guardianships are identified in your jurisdiction, please notify Anthony Palmieri, Deputy Inspector General & Chief Guardianship Investigator for the Clerk of the Circuit Court & Comptroller for Palm Beach County at apalmieri@mypalmbeachclerk.com or call 561-355-6782 for centralized tracking.

In Re: Guardianship of Dorothy A. Laue, Case No. 2010GA000190 (Florida 20th Circuit Court in and for Lee County), the Court stated the following:

- The court retains jurisdiction over all guardianships, is to conduct judicial reviews, and has the authority to enter any order necessary to protect the ward. FS 744.372.
- The clerk is required by statute to report directly to the court with regard to guardianship matters, and any characterization of such reporting as “ex parte” is inaccurate.
- The clerk is not a party to any guardianship matter, is required to conduct audits by statute, and is required to report to the court by statute. The guardianship at issue is a non-adversarial proceeding. The Court and Clerk, however, are not relieved of responsibility for ensuring the protection of the ward's assets.
- See *In Re: Guardianship of Dorothy A. Laue* (Fla. 20th Cir. Ct. 2016). (Order Denying Guardian's Motion for Rehearing and Order Granting Motion for Continuance, adjudged March 15, 2016 by Circuit Court Judge Alane C. Laboda.).

Pursuant to Section 744.102(22), Florida Statutes, a “ward” is the statutory terminology for “a person whom a guardian has been appointed. The term “ward” is considered derogatory, demeaning, and pejorative by many advocates throughout the country. Because the term is antiquated and Florida Clerks serve to protect the dignity and rights of persons who are incapacitated, pursuant to the Clerk's role as defined by statute, a national best practice in guardianship is using person centered language (such as adult subject to guardianship, minor subject to guardianship). As such, when possible, the Best Practice will use person centered language.

RECOMMENDATIONS

The Best Practices Committee on Guardianship appointed by the President of the FCCC recommends that the following guidelines be implemented by the Clerks of the Circuit Court in the State of Florida in accordance and compliance with legal requirements set out by the legislature in the Florida Statutes. The Best Practices Committee urges the 67 Clerks of the State of Florida to consider adopting some, if not all, of the following best practices:

A. Communicate with all involved to ensure a concerted effort.

1. Establish communication among the various agencies.
 - Court
 - Guardianship, Probate, or Elder Law committees of local bar associations
 - Florida State Guardianship Association and its local chapters
 - Law enforcement and Adult Protective Services
 - Clerks' SIA
 - For state-registered professional guardians:
 - Contact the SIA if your clerk audit or review of a guardianship report that was filed

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- by a state-registered professional guardian raised concerns
 - Contact the SIA if your clerk office is aware that the court discharged, sanctioned, or found that a professional guardian violated a statute or OPPG standard of practice.
 - The SIA will ensure that the OPPG is properly notified, and that any necessary administrative actions related to the guardian's registration by the OPPG are considered.
 - Suggest that your court or court administration contact the SIA for any concerns about a professional guardian.
 - For non-professional guardians, attorneys, or anyone raising concerns:
 - Contact the SIA if your clerk's office needs assistance, guidance, or advice regarding your clerk's office audit or review of the guardianship report.
2. Coordinate and cooperate with the local court to agree on a uniform set of procedures, and audit forms, and seek any necessary Guardianship Administrative Order from the Court or Policies and Procedures for Guardianship within a county.
 3. It may be important to point out that the clerks' audit report, memos, and communications are not ex-parte and that the clerk is not a party to the guardianship proceeding. The clerks have a statutory duty to audit and advise the court.
 4. Discuss the court's proper use of the information provided by the clerk, balancing due process rights of the guardian and attorney with and the court's authority to protect the person subject to guardianship. See FS 744.372.
 5. It may be important to discuss with various guardianship stakeholders:
 - The fact that the clerk's office is independent and objective; and independence and objectivity are hallmarks of professional audits and investigations.
 - The FCCC "best practices"/enhanced auditing model is an established, successful and proven model in many counties.
 - Keys to successful auditing and investigating of guardianships are: locally performing the audits and investigations, establishing a confidential and trusting but independent relationship with the court, and being present in the community.
 - The clerk's statutory duties are an important "check and balance" to the Florida Guardianship System. This check and balance is consistent with many other clerk administrative processes conducted on behalf of the court.
 6. Contribute to local guardianship newsletters, local bar association newsletters, and other communications for dissemination from the clerk and court to the guardianship community.
 7. In general, the court, law enforcement, and other regulatory agencies, rely on the clerk and the clerk's audit in guardianship proceedings because the clerk:
 - is an independent check and balance to the Florida Guardianship system.
 - has unfettered access to the confidential and non-confidential court records.
 - is not an interested party, third-party, substantive trier of fact, or advocate to any guardianship proceeding.
 - deters wrongdoing and increases integrity in the judiciary.
 - levels the playing field, shifts protection of rights to the person under guardianship.
 - assists the court with administrative duties and oversight duties.

B. Community Involvement

1. Promote community engagements with local bar associations, Florida State Guardianship Association and local chapter meetings, guardianship committees and other interested

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community groups on audit requirements. These community engagements can include events such as workshops, classes, training materials, and website materials.

2. Consider membership of the Clerk and key staff to the Florida State Guardianship Association and local chapter and the National Guardianship Association.
3. Utilize website for dissemination of information, and link to audit forms.
4. Make assistance available to potential pro se guardians in simplified guardianship matters.
5. Recommend establishment of local liaison committee with court, professional guardians, and Clerk's staff to develop training materials for a Handbook for Local Practices for Guardians.
6. Engage local law enforcement, DCF adult protective services, and child welfare agencies to develop a network and processes for referrals.
7. Establish a dedicated hotline specializing in guardianship financial matters

C. Utilize Internal Resources

Resources available to perform the clerk's audit activities and the extent of audit activities that can reasonably be performed vary by the size of the county. In some smaller counties, professional audit staff may not be available; thus, Probate clerks will perform all audits. In larger counties, the Clerk's Inspector General(IG)/Internal Audit may be performing much of the audit work.

1. Involve Clerk's IG/ Internal Audit staff working side by side with clerk's court/probate staff to provide various degrees of audit scrutiny. The size of the organization, number of open guardianships, and staffing levels available to conduct audits will vary significantly by clerk's office. The various types of audits have been divided into level 1, level 2, and level 3 for simplification of discussion. Audit functions do not need to divide audits into each type, but this is used in some large counties. For example, in a large county using these classifications in 2013, about 660 level 1 audits were done, 64 level 2 audits, and 2 level 3 audits were done. In another smaller county, all documentation (receipts and cancelled checks) was required to accompany the accountings. These audits are equivalent to a level 3 audit. Each county must establish its procedures to align with staffing while achieving a satisfactory level of fulfilling the Clerk's audit responsibilities.
 - Level 1 Audit: Ordinarily consists of audit performed by IG/Internal Audit staff of the guardianship reports (and supporting documentation), but may vary by county with some counties providing this level of audit by probate staff. Some counties may consider adding a more thorough review of selected cases either with a certain total value, or with disbursements or income exceeding certain levels. In addition, this level audit includes cases that were determined during the Desk Review to have discrepancies or concerns requiring review that is more detailed. Additional review may entail a Level 2 or 3 Audit or IG/Internal Audit providing guidance to clerk's court/probate staff or the court on incremental steps to take to ensure reports are complete and accurate. The objective of the level 1 audit is to determine whether all expenditures were for the benefit of the person subject to guardianship or whether there is some misfeasance or malfeasance by the guardian.
 - Level 2 Audit: Consists of an IG/Internal Audit examination of the guardianship report, and the attempted verification of selected questionable items. Inquiries and/or requests for supporting documentation may be necessary to resolve issues.
 - Level 3 Audit: Consists of an IG/Internal Audit comprehensive examination and attempted verification of all significant items pertinent to the guardianship report. Detailed review of accounts and attendant transactions is common, which may include third party confirmations as necessary.

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D. Conduct Desk Reviews and Audits

1. First, calculate whether the accounting period is correct and whether the accounting was filed on time. An accounting, except for the very first accounting filed, always runs from the first of a month through the end of a month. Some clerks may have administrative orders that control whether accountings run on the fiscal year in which case the fiscal year ends in the month the guardian's letters were issued. The due date is 1 year and three months after the beginning of the accounting period per statute, except for the very first accounting.
2. For the very first accounting, the beginning of the accounting period must be the date the letters of guardianship were issued and the end of the accounting period is the end of the month one year after the letters were signed.
3. If the guardian uses the wrong accounting period or files the accounting late, in the comments note the correct due date and the correct accounting period on the audit.
4. Before beginning the audit, review the file for orders that pertain to the accounting to determine whether the guardian has authority to make the expenditures shown on the accounting.
5. Determine whether there seems to be adequate documentation to begin the Level I audit.
6. Determine if the guardian meets the statutory definition of "professional guardian". See FS 744.102(17). If a guardian or an attorney providing guardian services is a "professional guardian", they must be registered with the OPPG. See FS 744.2002(1). The court may not appoint any professional guardian who is not registered by the OPPG. See FS 744.2003(9).
7. Perform a Level I audit
 - Determine whether there are carryover items or adjustments.
 - Trace the prior accounting's ending balance to the current accounting's beginning balance and note whether these balances match.
 - If this is the first accounting, trace the beginning balances with the inventory balance and note whether these balances match.
 - Review the account statements to be sure they are titled correctly, i.e., in the name of the guardian in his/her capacity as guardian (not individually or not in person subject to guardianship's name or some other person's name).
 - Check math and addition on all pages and summaries.
 - Trace ending asset balances to supporting documents provided by guardian.
 - Reconcile each asset independently.
 - Compare income items to the income in the inventory or the income in the prior accounting.
 - Determine whether earnings are reasonable compared to the prior year, looking at rate of return.
 - Trace income items to deposit slips or entries on a statement.
 - Determine that non-income cash receipts are separately identified on schedule C.
 - Compare expenditures to the expenditures on the prior year's accounting.
 - Match the expenditures to orders approving the expenditures.
 - Match the expenditures to receipts or other document verifying the nature of the expenditure.
 - Determine that non-expense cash disbursements are separately identified on schedule C.
 - Review capital transactions for orders to buy, sell, exchange or abandon assets and note any increases or decreases that are not part of a purchase, sale, exchange, etc., as being improperly on schedule C.
 - If there is a bond, determine whether the premium has been paid.

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- Check for reasonableness and consistency with prior accounting or inventory.
 - Verify the guardian has signed the accounting
 - Verify the guardian's attorney, if any, has signed the accounting. Determine whether the guardian has reported on trust assets, if subject to guardian's control; see section below on Trust Assets.
 - Complete and sign the appropriate Clerk's Review of Report form, which reflects whether the report was filed on time, and what information the report provides. See attached review sheet for accountings.
 - List any additional comments at the bottom of the audit form. E.g., "The beginning balance does not match the ending balance of the prior accounting..." or "there are no receipts verifying the following disbursements...", etc.
 - After docketing your audit, send the audit to the court or appropriate court staff person.
 - Go to a higher level review if there is some discrepancy, for example:
 - Missing entries for expected expenses, i.e. health insurance, property taxes
 - Gaps and missing entries for expected income, i.e. social security, rental income
8. Trust Assets in Guardianship Accountings
- FS 744.3678(2)(a) provides that the annual accounting must include a full and correct account of the receipts and disbursements of all of the ward's property over which the guardian has control ... [but does not include] any property or any trust of which the ward is a beneficiary, but which is not under the control or administration of the guardian." The guardian is considered to have control if the guardian is trustee.
FS 744.441 (19) provides that "the court shall retain oversight of the assets transferred to a trust, unless otherwise ordered by the court." This refers to funds or property transferred to the trust from the guardianship. If the court enters an order stating that the court does not retain oversight of the assets, then these assets are not subject to accounting and subsequent audit. When auditing an accounting under FS 744.3678(2), and there are trust assets in the guardianship, determine whether there is an order that exempts the trust assets from the control of the court, and, if so, do not note that trust assets were not included in the accounting. If the trust is under the control of the court, then the assets should be included or separately accounted for, unless there is a court order to the contrary. If the trust is not under the control of the guardian, the assets should not be included on the accounting or inventory. If guardianship assets transferred to the trust are under the oversight of the court or if the clerk determines the trust is under the control or administration of the guardian, the clerk should request the appropriate trust documentation. If the guardian refuses to provide the documentation, the clerk should report this to the court through the audit considered necessary. The clerk can provide the court with pertinent information or facts to advise the court and help the court determine whether or not the trust is under the control or administration of the guardian.
9. For Level 2 and 3 Audits:
- Utilize third party verifications to independently validate and substantiate beginning balances, income, disbursements, and capital transactions. FS 744.102
 - For initial beginning balances: determine if elements of exploitation of the elderly in FS 825.103 are identifiable FS 744.368(5); refer alleged criminal activity to the appropriate law enforcement agency and notify the court. Ideally the concerning conduct will have occurred when the court record is clear that the person under guardianship had significant cognitive decline and/or the timing of the conduct is proximate to the allegation of incapacity. For

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example, the AIP's assets were transferred from a bank account to a third parties bank account on the day that the incapacity allegation was filed.

- Investigate using commercially and publicly available information; inspect and observe tangible assets such as collections, artwork, jewelry, and other furnishings. FS 744.102
- Interview parties and non-parties. FS 744.102
- Review guardianship and attorney fees for egregious and unreasonable charges; obtaining and advising the court of information that was not apparent to the court in the pleading or hearing. FS 744.368(5)
- Identify exceptions that adversely affect the guardianship and the guardianship assets
- Suggest possible root-causes and attributions for audit findings, deficiencies, and exceptions such as waiving of the background screening, consumer credit review, and guardianship education classes and issues identified. FS 744.368(6) and (7)
- Suggest recommendations to the court
- Utilize process to obtain records from guardians; obtain records from non-parties using subpoena. FS 744.368(6) and (7)
- **Level 3:** Compliance type audit. Go through accountings, and using a risk-based approach, select some that might warrant a level 3 audit. If necessary, obtain a court order informing the guardian that "you've been selected" for a level 3 audit. Guardians must provide every document needed to audit the accounting, including canceled checks, receipts, etc.

10. PETITIONS

- Certain types of transactions including sale of real estate, sale of personal property, gifts, home remodeling or repairs, fees, waivers of accounting, etc. require a court order prior to the transaction. These requests are made to the court as petitions as needed. Under the normal audit process, these would not ordinarily be audited until the annual accounting is filed. Thus, the transaction would have already occurred and little can normally be done to adequately safeguard the person subject to guardianship's assets. The effectiveness of the audit process and assistance to the court can be significantly enhanced by the Clerk auditing these petitions as they come in, before the transaction occurs, with audit results provided to the court prior to the court ruling on the petition. To facilitate establishment of this process, the Clerk should meet with the applicable judge(s) and discuss this process and a potential administrative order or policy and procedure. In general, it is expected that judges will welcome this independent audit as a tool to help them make the appropriate decision.
- In performing audits of the petitions, auditors should consider whether the transaction appears to be in the best interest of the person subject to guardianship and whether reasonable prices are being obtained for sales, purchases, or the repair of assets. The auditor should review supporting documentation for the value of the asset as compared to the selling price for the asset that was sold. For real estate, the best documentation is a professional appraisal by a licensed appraiser. If that is not present, a competitive market analysis prepared by a realtor represents some documentation, preferably along with a real estate agent's listing in the Multiple Listing Service (MLS). If none of these documents is present, there is an increased risk that the guardian may have sold the property to an investor (or another individual that would not be an arms-length transaction). Properties sold to investors are frequently sold at a significant discount (30-50%) of the market value. The sale of vehicles should be supported by a value in the Kelly Blue Book or the NADA guide, which includes the odometer reading. If the value is not supported, the auditor should review the values and inquire or investigate the circumstances of the sale. While

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determination of the values of the sales of other assets may be more difficult, the presence of some type of appraisal/valuation by an independent party can enhance assurance that a reasonable value was obtained in the sale. For repairs of assets or purchases of assets or other services, or fees incurred, the auditor should consider whether the action benefits the person subject to guardianship. The auditor should review supporting documentation including quotes from multiple vendors, itemization of work performed or to be performed, and other pertinent documentation.

E. Collect statistics and data about the guardianship system

To assist decision-makers with relevant and reliable information, Clerks could collect statistics and data about guardians, persons under guardianship, guardianship attorneys, petitioners, and the guardianship system in general. The goal is to enable informed decision making with empirical data as opposed to conversational and anecdotal information.

In Collier County, the Clerk's Internal Audit / Inspector General is taking steps to automate and track guardianship data and statistics through their Case Management System. At this point, they are tracking and collecting the following metrics on guardianship cases:

- Number of cases by cases type: Verified inventory, simplified accounting, final accounting
- Number of reports approved and disapproved
- Total assets
- Court fees by case type: Clerk's audit fees, guardian fees, attorney fees
- Number of reports filed late
- Internal performance

In Palm Beach County, the Clerk's Inspector General, Operational Auditors, and PMO/IT department developed the Guardianship Inventory Reports & Accountings For Florida (GIRAFF) system. GIRAFF is a web-based and on-line system that not only automates the entire accounting process for guardians and attorneys but the system also collects all of the financial and demographic information about the guardianship cases as well. The Clerk's office is currently able to collect numerous data points, including but not limited to the age of person under guardianship, gender, alleged incapacity, petitioner information, and type of guardian. The GIRAFF system streamlines the accounting processes and saves the guardian and the attorney time, makes reporting more uniform and standardized, and is available 24 hours per day, 7 days per week, and 365 days per year. For newer guardians/attorneys and non-professional guardians, the GIRAFF system has an advanced "walk me" tutorial feature that can be turned on to guide the guardian or the attorney step-by-step to complete the report. GIRAFF 2.0 and beyond will automate annual guardian plan, the Clerk's audit, review, and monitoring of the guardianship reports, identify "red flags" for auditor follow-up, and a notification system for guardians and attorneys.

F. Report concerns about state-registered professional guardians to the Clerks' SIA

If a professional guardian has violated Florida Guardianship Law, Florida Criminal Code, or Standards of Practice for Professional Guardians, contact the Florida Department of Elder Affairs, Office of Public and Professional Guardians or the Administrative Coordinator for the Clerks' SIA to lodge a complaint. See Rule 58M-2.009. See http://elderaffairs.state.fl.us/doea/oppg_complaint.html for more information.

G. Utilize a statewide fee schedule for Guardianship Audits

- Determine whether accountings will be accepted without a fee, and if so how the issue of auditing without payment will be addressed with the court – local policy.
- Determine whether fees will be assessed and audits conducted on simplified accountings- local

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policy.

- Determine whether fees will be assessed and audits conducted on VA accountings – local policy.
- Determine whether fees will be assessed on amended accountings or inventories – look at statutes for this.
- Address the waiver of audit fees with judiciary, as statute authorizes audit fees to be waived by court order. FS 744.3678(4)
- Determine method for assessing and collecting professional guardian handling fee of \$7.50, see FS 744.3135(1), and whether this should be tracked when auditing accountings or reviewing plans.

H. Restrict electronic access to probate images pursuant to FSC Order AOSC14-19

- Attorneys of record and attorneys for other interested parties
- Distinguish access to accountings and plans from that of other non-confidential documents
- Court personnel

I. Utilize e-mail to communicate between the Clerk's staff and the local court's staff regarding audits

J. Establish an automated or manual system for reminders of statutory time frames. Whether the system is automated or manual, the clerk is required to report filing deficiencies to the court. FS 744.368(4).

- Establish the due date for initial reports (inventory or initial plan), which are due 60 days from the date letters are issued. FS 744.365
- Establish the due date for annual reports (annual plan or accounting)
 - The statute defaults filing for annual plans on a fiscal-year basis. Using a fiscal year, the first annual plan is due on the 1st day of the 16th month after the letters are issued. A new report is due 90 days after the end of the report year.
 - a. The statute defaults filing for accountings on a calendar basis. The first accounting is due on April 1st of the following year. Consider local policy, for instance some counties set the accounting years on a fiscal basis, rather than a calendar basis to spread the clerk's auditing and reporting responsibilities over the year, rather than all being due at once.
 - The court can order the annual plans due on a calendar-year basis and can order accountings due on a fiscal-year basis.
 - b. Establish a system for annual reminders on annual plans and accountings. Clerks have been sued for failing to send reminders to the court for the non-filing of accountings, so establishing reminders is an important protection for clerks' offices.
- Establish a system of reporting past-due filings to the court. Bar forms are available for this purpose, or a clerk can create customized forms.

K. Simplified Accountings

- Clerks' offices must determine whether to audit simplified accountings and assess a fee for those audits.
 1. The auditing of simplified accountings differs from county to county. If the clerk is directed to audit simplified accounting per local order, charge the fee that would be charged for auditing a regular accounting. FS 744.3679
- Note whether the guardian filed the original or a certified copy of the year-end statement of the person subject to guardianship's account from the financial institution, FS 744.3679(1)(a). A certified copy is defined as a copy that has been certified by the same financial institution as a true and correct copy of the original statement. Decide if original bank statements filed with a simplified accounting are part of the court file or are subject to return. A year-end statement is

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defined as a statement ending at the end of the fiscal year which is being reported and which contains all transactions for that fiscal year. If there is no single statement that covers all the transactions for the fiscal year, then the guardian must provide all of the statements for the fiscal year in question. An end-of-the-month statement for the last month of the year is not a “year-end” statement.

- Clerks can report whether the accounting qualifies as simplified, for example if assets are not in a restricted account, or there are disbursements other than interest or bank fees. If at any time during any accounting period the estate no longer qualifies for a simplified accounting, the guardian shall file a full accounting as required by FS 744.3678.

L. Expenditures

- Guardians have the power pursuant to FS 744.444(8) to pay for reasonable living expenses for the person subject to guardianship. Pursuant to this power, guardians who are required to make such payments may be required to file a budget on an annual basis setting forth the monthly living expenses of the person subject to guardianship. Though any budget requirement would have to be enforced by the court, Clerks may consider recommending a budget to the Court when disbursements appear to be high in light of the person subject to guardianship’s income and assets or when expenses seem imprudent.
- Clerks can report whether expenditures are not either authorized by court order or cannot be categorized as reasonable living expenses or unauthorized gifts.
- Expenditures that are not categorized as reasonable living expenses must have court approval pursuant to FS 744.441. The guardian shall follow the procedures set forth in FS 744.447, and Fla. Probate R. 5.630, unless there is an emergency, in which case the expense may be ratified by the court.
- See attached examples of items that may be questionable.

M. Inventory

The objective of the inventory is to verify the statements on the inventory and to provide a clear report to the court so that any non-compliance is obvious. For that reason set up any report so that the only “NO”s on the audit are for non-compliance. Keep in mind that audits are to be conducted in accordance with Generally Accepted Accounting Principles (GAAP) FS 744.102(2).

- To make auditing easier, make a copy of the inventory, so that you can track each item and make notes on the inventory so that the audit form can be easily completed.
- Audit the inventory for:
 - Real property listed by legal description and there is some verification of value.
 - Tangible personal property is adequately described and its location is shown.
 - For cash assets, the institution name, amount, account number and account type.
 - Cash assets that are not on deposit are adequately described and location shown.
 - Securities and other investments are adequately described and location shown.
 - States whether there is or is not a safety deposit box, if none, mark NA.
 - If there is a safety box, whether an inventory has been filed; if none put NA.
 - Note if service was made to person subject to guardianship of the inventory, and whether anything was removed without court order.
 - Clerk has no duty to verify the contents of the safe deposit box.
 - Periodic income is listed with amount, type, source, and how often paid.
 - If verified by documentation.
 - Whether person subject to guardianship is beneficiary of any trusts. FS 744.365(3)(a).
 - If verified by documentation.
 - Verify that mathematical calculations are correct (by spreadsheet)

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- Report inaccurate calculations.
- Also review for these if local policy (like admin order) dictates:
 - Whether the assets on the inventory match those listed on the petition
 - The posting of the bond, if bond ordered, if local policy for clerk to point this out
 - The filing of the depository receipt, if a depository has been appointed
 - The guardian has signed the inventory
 - The guardian's attorney has signed
 - Whether a will has been located, the date and any death instructions
- Refer to attached examples of what auditors might consider looking for when reviewing inventories.
 - Complete the audit form. Make notes about non-compliant matters and other matters that may be of interest to the court at the bottom of the audit form. E.g. "The clerk is unable to properly audit the inventory for the following reasons..." or "The assets listed in the guardianship petition do not agree with those listed in the inventory, etc. Do not show asset values on the review form. A copy of the auditor's marked up copy of the inventory can be furnished to the attorney's office or to the guardian, if they request information about how the inventory was audited.
- Sign and date the review or audit form.
- Distribute the audit form to the court staff designated to receive the audit.
- Audits are not confidential. Do not put bank account numbers or other financial information on the audit.
- Auditor must report the results of the audit within 90 days after the report is filed, FS 744.368(3).

N. Returning Supporting Documents.

Upon court approval of each initial or annual accounting, the Clerk shall return all supporting receipts to the guardian or to the attorney for the guardian unless otherwise ordered by the court. Copies of bank statements or financial statements of any kind, however, shall be retained in the court file. If it impacts audit finding, consider keeping it in the court file. If not, consider returning the document. If documents are e- filed, these documents can be retained.

O. Initial Plan Review

Clerks are required to review initial plans when filed. FS 744.368. The requirements for the plan are contained in FS 744.363. Initial plans are filed for adult and minor subject to guardianships, but are on different bar forms.

Audit each initial plan for:

- Medical, mental health or personal care to be provided to the person subject to guardianship.
- Social and personal services to be provided to the person subject to guardianship.
- The place and kind of residential setting best suited for the person subject to guardianship's needs.
- Health and accident insurance and any other private or government benefits to meet any part of the person subject to guardianship's medical or mental health costs.
- Any physical and mental examinations needed to determine the person subject to guardianship's medical and mental health treatment needs.
- Any preexisting orders not to resuscitate or preexisting advance directives, the date an order or directive was signed, whether such order or directive was suspended, and the steps taken to identify and locate the preexisting order not to resuscitate or advance directive.
- The plan is signed by the guardian.

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- The plan is signed by the attorney, if there is one.

The plan must also show whether the person subject to guardianship has been consulted with regard to the plan and it must not restrict the physical liberty of the person subject to guardianship any more than reasonably necessary – if these items are not addressed, note this on the review form. The audit is due within 30 days from the filing of the plan.

P. Annual Plan Review

The clerk is required to review an annual plan when filed. FS 744.368. The requirements for the plan are contained in FS 744.3675.

Plans for adults and minors differ somewhat, so have a separate review form for each case type. The review for adult plans is the same for guardianships and guardian advocacies.

Audit each adult annual plan for:

- A declaration of all remuneration received by the guardian from any source for services rendered to or on behalf of the ward
- A list of any preexisting orders not to resuscitate or preexisting advance directives, the date an order or directive was signed, whether such order or directive has been suspended by the court, and a description of the steps taken to identify and locate the preexisting order not to resuscitate or advance directive.
- The medical and mental health care provided and to be provided to the person subject to guardianship
- The residence of the person subject to guardianship, past, present, ideal, and plans to achieve the ideal
- Report of physician's exam no more than 90 days before the beginning of the plan period
- Information, including personal and social services to person subject to guardianship, on the person subject to guardianship's social skills
- Information about whether person subject to guardianship is capable of having any rights restored
- Whether plan has been reviewed with person subject to guardianship
- The plan is signed by the guardian
- The plan is signed by the attorney, if there is one (see Florida Rules of Probate

The physician's report is a Florida Bar form, but a letter or other document signed by a doctor is sufficient, if it meets the time requirements and if it contains an evaluation of the person subject to guardianship's condition and a statement of the current level of the capacity of the person subject to guardianship, FS 744.3675(1)(b).

When reviewing annual plans for guardian advocates, the guardian may attach a habilitation plan that contains the information required by the plan. This unsigned document may be sufficient for a physician's plan depending if authorized by the judiciary in an administrative order or court memo. However, an annual plan must be signed by the guardian, and questions regarding whether the guardian plans to seek restoration and whether the guardian has reviewed the plan with the person subject to guardianship must still be addressed.

Q. Minor Annual Plans

Historically, a minor was not required to file a plan unless ordered by the court. Fla. Prob. R. 5.555 (2005). Effective July 1, 2006, the Guardianship Code was amended to distinguish between plans of adults and plans of minors and set forth the requirements for a plan on a minor. FS 744.3675. Rule 5.555 now reads that the guardian shall file an initial and annual guardianship plan as required by law. See Fla. Prob. R. 5.555(e)(2).

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- Check to see if the plan includes:
 - Minor's residential address at time filing the plan.
 - If applicable, the name of a facility and address of each place the minor lived during the preceding year.
 - Information concerning the medical and mental health conditions and treatment and rehabilitation needs of the minor, including:
 1. A resume of any professional medical treatment given to the minor during the preceding year.
 2. A report from the physician who examined the minor no more than 180 days before the beginning of the applicable reporting period that contains an evaluation of the minor's physical and mental conditions.
 3. The plan for providing medical services in the coming year.
 - Information concerning the education of the minor, including:
 1. A summary of the school progress report.
 2. The social development of the minor, including a statement of how well the minor communicates and maintains interpersonal relationships.
 3. The social needs of the minor.

Consider using these templates to document the Clerk's audit.

INSTRUCTIONS FOR SAMPLE ACCOUNTING AUDIT FORM

These instructions are designed to provide guidance in those areas of the audit form where the question or the issue represented by the question needs further explanation. This is not meant to provide instructions as to every question on the form.

The form is established to be a guide in conducting a level 1 audit. This can be used as a basis for a Level 2 audit, if additional receipts, invoices, or other documentation are requested. The form is designed to allow the auditor to identify all discrepancies for each section of the form. When noting discrepancies, it is important to quantify the discrepancy, in terms of amounts, calendar days or seriousness of other potential losses to the person subject to guardianship, as appropriate. Clearly describing the discrepancy allows that the court or their representatives to quickly assess the magnitude and significance of the issue.

Summary Page

Is there any trust where the person subject to guardianship is a beneficiary and the guardian is trustee or the guardian is the defacto trustee?

Trusts involve different scenarios, and the specific situation dictates information that the clerks , or the court, needs in order to evaluate whether the person subject to guardianship and/or the person subject to guardianship's interests are being protected. The scenarios are:

- 1) The person subject to guardianship is beneficiary and the guardian is trustee. Under this scenario, annual accountings are required for the trust, unless the court has entered an order to the contrary.
- 2) Monies from the guardianship are put into the trust (but the guardian is not trustee). Bank statements should be required to be submitted along with the annual accountings. Require same bank statements for the same period as the annual accounting.
- 3) The trust existed before the guardianship, the guardian is not trustee, and no monies from the guardianship have been put into the trust. Under this scenario, no information is required regarding the

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trust, unless the court determines that the trust is subject to the oversight of the court, in which case there should be a trust accounting.

4) If the guardian is administering the trust and the person subject to guardianship has power to direct the trustee, then, if the guardian is also the guardian of the property, the guardian now has the power to make those financial decisions and is therefore subject to account for those trust assets.

Income: Schedule A

The purpose of this section is to determine whether all income is listed and accounted for properly. Therefore, the auditor should ensure all months' income of each relevant type are included, looking for missing months, keeping in mind that at the beginning of the year payments can be made late or early, and to check with a previous year's accounting to account for any missing payments. The auditor should also review to determine that income that would normally be expected for a ward in this situation is being received and included in the guardianship, such as social security.

Disbursements: Schedule B

If Attorney's or Guardian's fees & costs are listed, is there a court order?

As a part of reviewing questionable disbursements, fees for guardians and attorneys should be reviewed. Items to consider are:

Guardian's Fees and Costs:

- Are hourly rates in accordance with that prescribed by the Circuit?
- Are fees itemized noting each specific task performed along with the related time?
- Do times charged for the specific tasks appear reasonable?
- If assistants appear to be used by the guardian, are lower rates charged for assistant activities?
- Did the guardian receive remuneration from any other source? Trust, hospital, assisted living facility, rehab center, family, etc.

Attorney Fees and Costs:

- Are attorney fees itemized with specific times for specific activities?
- Are specific activities adequately described?
- Is paralegal work billed at a lower rate?
- Are attorney activities appropriate to be performed by an attorney?
- Is the hourly attorney rate generally in line with the market?

Questionable Disbursements

The overriding criterion is whether a disbursement is of benefit to the ward. To the extent there is not enough information to determine whether the expenditure benefits the ward, the auditor should consider requesting more information and/or documentation. In addition to guardian and professional fees, if there are cash withdrawals or credit card purchases that are significant, receipts may need to be reviewed. Also, consider payment of expenses to/for other family members, such as meals, groceries, etc. If several members live in the same household, relevant living expenses should be pro-rated among the members.

Gains/Losses: Schedule C

The sale of assets including but not limited to real estate, vehicles, fine jewelry, household furniture, coin collections, etc. require a court order. The auditor should review supporting documentation for the value of the asset as compared to the end selling price for the asset that was sold. For real estate, the best documentation is a professional appraisal by a licensed appraiser. If that is not present, a competitive market analysis prepared by a realtor represents some documentation, preferably along

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with a real estate agent's listing in the MLS. If none of these documents are present, there is an increased risk that the guardian may have sold the property to an investor (or another individual, which would not be an arms-length transaction). Properties sold to investors are frequently sold at a significant discount (30- 50%) of the market value. In these situations, the auditor should consider reviewing the property appraiser's website, official records to determine value from documentary (doc) stamp taxes paid, or use a commercial website like www.redfin.com, to determine who purchased the property and any subsequent resales at a much higher value.

The sale of vehicles should be supported by a value in the Kelly Blue Book or the NADA guide, which included the odometer reading. If the value is not supported, the auditor should review the values and inquire or investigate the circumstances of the sale.

While determination of the values of the sales of other assets may be more difficult, the presence of some type of appraisal/valuation by an independent party can enhance assurance that a reasonable value was obtained in the sale.

Regarding the sale or valuation of stocks, the auditor should review the accounting for three possible scenarios. The first is that expenses are buried in gains or losses rather than being identified as a disbursement. This can occur with financial advisor fees, attorney fees, and brokerage fees. To detect this situation, stock transaction statements should be reviewed and compared to the amounts reported on the annual accounting. The second scenario involves churning of the brokerage accounts. Churning occurs when a broker engages in excessive trading of stocks far beyond what is necessary for the fulfillment of the portfolio objectives. This is done by the broker for the purpose of generating more commissions. Generally, investments of a ward are meant to be long-term in nature. If stocks are bought and sold within a few months, the auditor should question as to why this is done. The third scenario involves investment into stocks that may not be appropriate for the ward's circumstances in the guardianship. As a general principle in fiduciary investment responsibilities, the first goal should be preservation of principle. This means that risky or highly volatile stocks should be avoided entirely or otherwise be a small portion of the asset allocation. Volatility is controlled to a large extent by diversification. Stocks should be held in mutual funds or in different industries. Stocks that tend to be volatile are penny stocks (stocks below \$5 per share in value), technology stocks, and airline stocks.

Personal Property Assets: Schedule D

For a discussion of sales of personal property, see Section above.

See Separate Exhibit for Sample Review Forms and Sample Orders

1. Clerk's Review of Initial Guardianship Plan
2. Clerk's Review of Annual Guardianship Plan
3. Clerk's Review of Annual Minor Guardianship Plan
4. Clerk's Audit of Initial Verified Inventory
5. Clerk's Audit of Annual Accounting
6. Clerk's Audit of Simplified Accounting
7. Clerk's Audit of under 65 Trust Accounting (Special Needs Trust)
8. Order to File Required Documents and to Show Cause
9. Guardianship Audit for Discharge
10. Order Disapproving Annual Guardianship Report
11. Order Disapproving Initial Guardianship Report
12. Order Disapproving Simplified Guardianship Report
13. Order to File Required Documents
14. Order to File Documents for Discharge
15. Guardianship - Dates to Remember

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Becky Norris, Gulf County
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Victoria Rogers, Hardee County
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