

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Chief Executive Office

BOARD AGENDA # *B-7

Urgent Routine

AGENDA DATE August 28, 2007

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Consideration and Approval of Response to the 2006-2007 Stanislaus County Civil Grand Jury Final Report as it Relates to the Office of the Public Guardian

STAFF RECOMMENDATIONS:

1. Accept the responses to the Grand Jury Final Report, with any modifications made after consideration by the Board of Supervisors, and authorize the Chairman to forward the response to the Presiding Judge of the Superior Court.
2. Direct the Chief Executive Officer to ensure that the recommended actions approved by the Board of Supervisors be followed and completed by each County Department and report back to the Board as appropriate.

FISCAL IMPACT:

There is no direct fiscal impact associated with this response.

BOARD ACTION AS FOLLOWS:

No. 2007-668

On motion of Supervisor Mayfield, Seconded by Supervisor Grover

and approved by the following vote,

Ayes: Supervisors: Mayfield, Grover, Monteith, DeMartini, and Chairman O'Brien

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) X Approved as recommended

2) _____ Denied

3) _____ Approved as amended

4) _____ Other:

MOTION:

ATTEST: Christine Ferraro
CHRISTINE FERRARO TALLMAN, Clerk

File No. M-39-K-7

DISCUSSION:

This year the Final Report of the Civil Grand Jury included three case findings associated with Stanislaus County government that require a response. This response is in accordance with California Penal Code Section 933(c), which states that the Board of Supervisors has 90 days to comment to the Presiding Judge of the Superior Court on the findings and recommendations. This agenda item is in response to Case #07-38 regarding the Stanislaus County Office of Public Guardian and is provided to you within the 90-day period. Case #07-34 and Case #07-40 regarding Stanislaus County Fire and Life Saving Services and Stanislaus County Disaster Preparedness were submitted by the Civil Grand Jury to the Board of Supervisors at a later date and will be responded to under separate Board action.

Civil Grand Jury Case #07-38 (Stanislaus County Office of Public Guardian)-

The 2006-2007 Stanislaus County Civil Grand Jury conducted a review and assessment of the Stanislaus County Office of Public Guardian to determine the office's ability to meet community needs. The Civil Grand Jury report contains findings and recommendations specific to the operation of the Stanislaus County Public Guardian. The Office of the Public Guardian is administered through the County Behavioral Health and Recovery Services Department. The County Behavioral Health Director has submitted a response to all findings and recommendations as requested by the Civil Grand Jury. It is recommended that the Board of Supervisors adopt the response as received by the County Behavioral Health Director as the Board of Supervisors' response to Civil Grand Jury Case #07-38.

The following is a summary of the findings and recommendations of Civil Grand Jury Case #07-38. Attached (Attachment B) is a copy of the more comprehensive Department response.

RESPONSE OF FINDINGS

GENERAL

The Office of the Public Guardian functions as a division of the Stanislaus County Behavioral Health and Recovery Services (BHRS). The Public Guardian serves persons who cannot provide basic services for themselves and do not have others who are willing to or able to initiate conservatorship proceedings on their behalf.

Response: Agree.

FINDINGS

Finding #1: In May 2007, the Public Guardian had a caseload of 165 clients.

- 82- LPS Conservatorship
- 59-Probate Conservatorship

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- 23- Representative Payee
- 1- Guardian ad litem

Response: Agree.

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 Forensic Services/Public Guardian (39% assignment)

Response: Agree.

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: Agree.

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

Response: Agree, in part. The County agrees that in 2003 and 2006 reports were performed by Certified Public Accountants and Management Consultants Bartig, Basler and Ray. However the following agreed upon procedures were reviewed and make up a majority, not limited as stated in the report, of the procedures for the Office of the 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

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

Response: Agree.

Finding #6: Office of the 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 the conservatees' taxes are current

Response: Agree, in part. Court Accounting fees are projections based upon previous years. The \$175,000 amount in this finding is the shortfall in the projection, which in part could be related to the Office of the Public Guardian falling behind in Court Accountings due to a decrease in staffing. However, other factors may have contributed to this shortfall such as services provided, court approval, the size of the estate, and the conservatee's ability to pay.

Finding #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: Disagree. The legal criteria for LPS Conservatorship is very specific and the application of the criteria has not changed with the decrease in Public Guardian Office staffing. Criteria for the 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.

Finding #8: The 2006 Omnibus Conservatorship and Guardian Reform Act imposes 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: Agree.

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: Agree.

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: Agree, with clarification. The Office of the Public Guardian's budget in Fiscal Year 2003/2004 was \$1,191,571.

Finding #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: Agree.

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

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

Response: Agree. Intermingled client funds and interest allocation are allowed by law under Probate Code Section 2940, 7640, 2624 (b), and 7642, Conservatorship of Key, 134 Cal. App. 4th 254 and 68 Ops. Cal. Atty. Gen 257 (1985). Several times since 1992, the Department 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 Administer, 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 industry standard.

Finding #14: Interest percentage paid to the 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 the Public Guardian clients who have less than \$2,000 are paid no interest due to the administrative offsets.

Response: Agree. Intermingled client funds and interest allocation are allowed by law under Probate Code Section 2940, 7640, 2624 (b), and 7642, Conservatorship of Key, 134 Cal. App. 4th 254 and 68 Ops. Cal. Atty. Gen 257 (1985). The Department of Behavioral Health and Recovery Services has used surveys and other methods to determine how other Public Guardian Offices allocate interest. The Department concluded that the procedure used by the Stanislaus County Public Guardian's Office is within the parameters set by industry standards.

RECOMMENDATIONS

The following is the County'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: Agree, 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 the Public Guardian is in full compliance with all Federal, State and Court requirements.

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

Response: Agree, 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 the Public Guardian is in full compliance with all Federal, State and Court requirements.

The complete report from the Behavioral Health Director is attached (Attachment B).

POLICY ISSUE:

Pursuant to California law, the Board of Supervisors must respond to the Presiding Judge of the Superior Court no later than 90 days after submittal of the Final Report of the Civil Grand Jury. Adoption of this response meets this requirement.

STAFFING IMPACT:

There is no staffing impact associated with this report.

ATTACHMENT A

August 28, 2007

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

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

Dear Honorable Judge Shaver:

Enclosed is the Stanislaus County Board of Supervisors response to the 2006-2007 Stanislaus Civil Grand Jury Final Report Case #07-38 regarding the Office of the Public Guardian a division of the Department of Behavioral Health and Recovery Services approved by the Board of Supervisors on August 28, 2007. The Board of Supervisors takes the comments made by the Grand Jury members very seriously. We want the Grand Jury to know that we appreciate the time and effort each member provided to this important process and value their findings and comments.

It is important to report that the Board of Supervisors carefully considered the agenda item in response to the Grand Jury findings and recommendations. The attached staff report and resolution of the Board of Supervisors reflects clarifications, corrections and comments the Board felt were integral to our final response.

Finally, the responsiveness of the Department of Behavioral Health and Recovery Services and specifically the staff at the Office of the Public Guardian, whose department was the subject of the Grand Jury Report, are attached for informational purposes.

On behalf of the Stanislaus County Board of Supervisors, thank you for consideration of our response.

Sincerely,

Chairman William O'Brien
Stanislaus County Board of Supervisors



ATTACHMENT B

DENISE C. HUNT, RN, MFT
Director

800 Scenic Drive, Modesto, CA 95350
Phone: 209.525.6225 Fax: 209.525.6291

CHIEF EXECUTIVE OFFICER

2007 AUG -8 A 10:00 AM
July 24, 2007

The Honorable Donald E. Shaver
Presiding Judge
Stanislaus County Superior Court
800 11th 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. 4th 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. 4th 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.

The Honorable Donald E. Shaver

July 24, 2007

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

Sincerely,

A handwritten signature in cursive script that reads "Denise C. Hunt, RN, MFT". The signature is written in black ink and is positioned above the typed name.

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