

Internal Audit Report

Audit of Lee County Guardianships



Audit Number: 2014.04

Date: August 8, 2014

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August 8, 2014

The Honorable Linda Doggett, Lee County Clerk of Court

Re: Audit of Guardianships

Dear Ms. Doggett:

The Internal Audit Department has conducted an audit of Guardianships. Dave Rollman, CIA and Mabel Febles completed this review.

The response to the auditor's conclusions, issues, and recommendations are attached to this report. The auditor wishes to thank the Clerk's employees for their assistance and cooperation during the review.

This report will be posted to the Clerk of Courts website www.leeclerk.org under Internal Audit/Inspector General, Audit Reports. The hyperlink to the report has been sent to the appropriate parties.

Sincerely,

Tim Parks, Chief Internal Audit Officer/Inspector General
Internal Audit/Inspector General Department

TJP/SR

Audit of Guardianships

Executive Summary

Many deficiency letters and show cause letters have not been sent timely when guardians failed to submit the proper documentation.

Audits of plans, inventories, and accountings need to be conducted in a timelier and more thorough manner.

Procedures need to be put into effect to address inactive cases and cases where the minor ward has reached the age of majority.

It is recommended that a guardianship auditor position be established in the IA/IG Department. This auditor could handle problem cases, cases with large dollar amounts, delve deeper into guardianship cases, and take advantage of the new law provisions that took effect on July 1, 2014. Many other counties surveyed have Internal Audit involvement in the guardianship auditing process.

Written operating procedures for guardianship need to be updated.

Introduction

The Internal Audit/Inspector General (IA/IG) Department has conducted an audit of the Guardianship program. The scope of the audit is outlined on the last page of this report.

Background

A guardianship is a legal proceeding in the circuit court in which a guardian is appointed to exercise the legal rights of an incapacitated person or minor. A guardian can be an individual or institution such as a nonprofit corporation or a bank trust department. All guardianship matters in Florida require an attorney. Guardians can be appointed as a guardian of the person only, property only, or person and property.

The guardianship program is regulated by Florida Statutes, Chapter 744, and the Florida Rules of Court, Probate Rules. Administrative Order 5.1 addresses guardianship financial returns.

The number of new guardianship cases has been fairly consistent over recent years. Prior to our 2006 guardianship audit, the new cases (including pre-need guardianship cases) filed per year averaged approximately 287. Between 2009 and 2013 approximately 274 cases were filed per year.

Issues

Submission of Plans, Inventories, and Accountings

Guardians are to submit an initial plan and inventory within 60 days of the date of the guardianship letters. Annual plans and accountings are to be submitted within 90 days of the end of the month in which the guardianship letters were issued.

When the proper documents are not received, a delinquency notice is to be sent. The written procedures do not state a specific time frame for the sending of delinquency letters. The delinquency letters state that the deficiency is to be corrected within 30 days. If there is no response to the delinquency letter, the written procedures state that a show cause order is to be issued within two weeks after a 30 day expiration of the delinquency notice.

A sample of 30 cases opened in 2011 and 2012 was selected. The cases were reviewed to determine whether the initial reports and the first annual reports had been submitted timely or that a delinquency notice and a show cause order had been sent.

The submission of 120 plans, inventories, and accountings were reviewed. For each of the 30 cases, there was an initial plan, an initial inventory, an annual plan, and an annual accounting. The following are the results of the review:

- Written procedures state that deficiency and show cause letters are to be sent when plans, inventories, and accountings are not timely. However, in most cases, deficiency and order to file letters are being sent.
- Thirty-five of the submissions were submitted late or not at all, and no delinquency letters or other documentation had been sent.
- For twenty-five of the submissions, a delinquency letter or other documentation was sent but not in a timely manner. Some of the delinquency letters were sent months after the item's due date.

In summary, many of the delinquency letters and other follow-up actions were not taken in a timely manner.

Recommendations

The due dates of plans, inventories, and accountings should be monitored more closely so that delinquency letters and other follow-up actions can be sent in a timelier manner.

Written procedures need be expanded to include the documents actually sent; deficiency letters, orders to file required documents, and show cause letters.

Written procedures should specify a timing goal for sending delinquency letters, orders to file required documents, and show cause letters.

Audits/Reviews of Plans, Inventories, and Accountings

The initial report from the guardian includes a plan and an inventory. The annual reports include a plan and an accounting. According to Florida Statutes, Chapter 744, the clerk is to review each initial and annual guardianship report. If questionable items are listed, a letter is sent requesting clarification or more information. If necessary, the judge is notified.

Checklists are utilized to review the various plans, inventories, and accountings as they are submitted.

A review was conducted of Florida statutes, rules of court, samples of checklists from other counties, FACC best practices, and other information available to determine the items that should be reviewed during the audits of plans, inventories, and accountings.

A sample of 45 documents (15 plans, 15 inventories, and 15 annual accountings) was selected for review. A review was conducted to determine whether the plans, inventories, and accountings had been thoroughly reviewed.

The following is a summary of the results. In most cases no follow-up letters were sent for clarification:

- Eleven of the documents were not reviewed in a timely manner, primarily plans. One plan had not been reviewed.

- Two accounting did not add up correctly. In both cases, the accountings were out of balance approximately \$10,000.
- Nine of the documents had no approval order from the court. These are evidently prepared by the guardian's attorney and are not monitored by Civil personnel.
- Many plan requirements were not met. The wording in plans makes it difficult to verify some of the requirements such as doctor visits, examinations, medical treatment, health insurance, restoration of rights, and professional guardian visits with the ward.
- Nine of the documents had no evidence of being served on ward and ward's attorney. This is not included on the current checklists.
- The accountings are to be dated through the end of the month in which the Letters of Guardianship were issued. Five of the accountings were not dated through the end of the letter's month. Since all months and monies were accounted for, no correspondence was sent to the guardian about the incorrect time period.
- Some of the disbursements on the accountings, such as credit card bills and "living expenses", were assumed to be for the benefit of the ward without requesting more detail.
- Three of the accountings had less than 12 monthly recurring receipts.
- One accounting was not signed by the guardian's attorney.
- The beginning balance for one accounting did not agree with the prior ending balance.
- Most inventories and accountings do not show two values on assets per Florida Probate Rule 5.346 on Fiduciary Accounting. However, most of the other counties contacted did not monitor this requirement.

The checklists utilized do not appear to include all of the necessary items to ensure that the documents are complete.

Recommendations

Timelier, more thorough reviews of the plans, inventories, and accountings need to be completed.

Procedures should be implemented to ensure that the plans, inventories, and accountings are properly approved by a court order.

More detailed, comprehensive checklists should be implemented. These should include the following items not currently included on the checklists:

- Plan
 - Contains the statement beginning "Under penalties of perjury", per FS 744.104
 - The application of health and accident insurance and other benefits to which the ward may be entitled
 - If a professional guardian, the ward was visited at least once per quarter FS 744.361

- Inventory
 - Computations are mathematically correct
 - Signed by the guardian
 - Signed by guardian's attorney
 - Contains the statement beginning "Under penalties of perjury", per FS 744.104
 - Copy served on ward and ward's attorney
 - Rule 5.346 addresses accounting standards for fiduciary accounting. It states that the accountings should contain two values for assets, the acquisition value or carrying value, and estimated current value.

- Accounting
 - Computations are mathematically correct
 - Contains the statement beginning "Under penalties of perjury", per FS 744.104
 - Substantiating documentation for court ordered disbursements
 - A copy of the accounting was served on the ward and the ward's attorney
 - Verify the number of receipts correct for each type of income (12 social security checks, etc.).
 - Any conflicts of interest for guardian
 - Transactions appear reasonable, prudent, and for the benefit of the ward
 - Verify that assets placed in a designated financial institution in lieu of bond, are still there at end of the period.
 - Rule 5.346 addresses accounting standards for fiduciary accounting. It states that the accountings should contain two values for assets, the acquisition value or carrying value, and estimated current value.

Report Auditing Procedures

In Lee County, the review/audit of the guardianship reports (plans, inventories, and accountings) is conducted by employees of the Civil Division.

The FCCC (Florida Court Clerks and Comptrollers) best practices guide for guardianships recommends that the Clerk's Internal Audit staff work side by side with the personnel conducting the guardianship audits for various degrees of audits. The FCCC recommends three levels of audits.

Twenty-three other counties were contacted to determine their procedures for conducting audits of the plans, inventories, and accountings.

- In most of the counties the audits are conducted by Civil/Probate personnel, as they are in Lee County, with little or no involvement by the IA/IG Department.
- Eight of the counties have at least some involvement of Internal Auditing or a tiered system. One county was in the process of converting to a tiered system with Internal Audit involvement. The counties with Internal Audit involvement have guardianship auditors with various skill sets (attorney, financial auditor, etc.).

- In two of the counties, Civil Division personnel review plans and the Internal Audit Department audits the inventories and accountings. FS 744.368 and Florida Attorney General Opinion 2004-33 appear to support to differentiation between reviews of plans and audits of inventories and accountings.
- Lee County has two Civil Division employees that devote part of their time to conducting the audits. This appears to be on the low end of the scale in comparison to the other counties.
- Some counties require the use of standardized forms that include all of the required information.
- The general trend appears to be to a tiered system with IA/IG involved in the audits of the larger or problem cases.

Adding a guardianship auditor in the IA/IG Department would provide many benefits:

- The current guardianship auditors in the Civil Division would be relieved of some of their duties. This would allow them to spend more time on other duties, such as monitoring the submission of the guardianship documents and reviewing inactive cases.
- The IA/IG guardianship auditor could handle problem cases and delve deeper into a sample of plans, inventories, and accountings. For example, additional documentation could be requested for expenditures such as items labeled “Visa payment” or “living expenses”.
- New guardianship laws went into effect on July 1, 2014. These new laws implement changes to guardianship procedures such as expanding the Clerk’s access to records impacting guardianship assets and authorizing the Clerk to issue subpoenas upon application to the court. A guardianship auditor in the IA/IG Department would assist in complying with the provisions and taking advantage of the new procedures.

The cost of adding a guardianship auditor in the IA/IG Department would include the salary and fringe benefits, along with other costs such as office space, equipment, and certification/education expenses.

Recommendations

A guardianship auditor position should be established in the IA/IG Department. Civil Division personnel would continue with their current guardianship functions (process cases, send deficiency letters, conduct basic audits of plans, inventories, and accountings, etc.). The second tier audits would be conducted by the auditor in IA/IG. The second tier audits would include the following:

- Problem cases
- Issue subpoenas
- All accountings and inventories over a certain dollar limit (Most plans would continue to be reviewed primarily by Civil personnel)
- A random sample of inventories and accountings
- The requesting of additional documentation

- Utilizing checklists that would examine the inventories and accountings in more detail. Many examples of such checklists have been obtained from other counties.

Consideration should be given to requesting an administrative order requiring the use of standardized forms for the plans, inventories, and accountings. This would ensure that all of the issues are addressed. For example, if inventories do not address a safe deposit box it is currently assumed that the ward does not have one. Standardized forms for inventories would require a statement as to whether or not there is a safe deposit box.

Sample Case File Review

A sample of 30 guardianship cases was selected for review. The cases were reviewed for items such as guardian bond coverage, guardian application, guardian order, documents date and time stamped, letters of guardianship, education of guardian, and registration of professional guardians.

Per Florida Statute 744.3145, each person appointed by the court to be a guardian, other than a parent who is the guardian of the property of a minor child, must receive instruction and training within four months after his or her appointment as guardian.

The results are as follows:

- In seven of the cases there was no evidence of the guardian having met the education requirement, and no follow-up action had been taken.
- One case was missing the guardian application.

Recommendation

When evidence of guardian education is not received in a timely manner, steps should be taken to obtain the documentation.

Paper Case Files

Paper case files are maintained for guardianship cases. A sample of 30 cases was selected for review. The documents in the paper case file were compared to the items entered for the case in the Odyssey computer system.

The results are as follows:

- 15 documents were in Odyssey but not in the case file
- 6 documents were in the case file but not in Odyssey
- 2 documents were filed in the wrong paper case file
- 1 document was in Odyssey under the wrong case

Recommendation

Care should be taken to ensure that the paper case files are maintained properly and all documents uploaded into the correct case in Odyssey.

Inactive Accounts

In our prior audit report it was recommended that a report of inactive cases be run annually and action taken where appropriate. This procedure was to be incorporated into the written operating procedures. These reports have not been run on a regular basis. The written procedures do not include the steps to take to address inactive cases.

A report was run of all open guardianship cases with no docket entry from April 2012 through March 2014. There were 1,747 cases on the report.

The report does not appear to be totally accurate, as it contains a few closed cases.

A sample of cases on the report was reviewed. Many of the cases on the list have a case status of disposed. Some of the cases on the report have not had activity for 25 years. Cases with a status of disposed need to be reviewed and the case status changed to closed.

Another report that would aid in the cleaning up of old cases is a Majority of Age Report that would identify wards that reach adult age and are no longer considered a minor. There are evidently issues with generating this report.

Recommendations

A report of inactive cases should be run annually. The cases should be reviewed and action taken where appropriate. When available, a Majority of Age Report should also be generated.

The written operating procedures should be expanded to include these reviews.

Fees

Fees are charged for items such as guardianship proceedings, audits of inventories, and audits of annual accountings.

A sample of 30 cases was selected for review. The case activity was reviewed to determine whether the proper fees had been charged.

The proper fees had been charged in all but two of the cases. Civil personnel were notified of the two exceptions so that follow-up action could be taken.

Written Operating Procedures

Some sections of the written operating procedures for guardianships need to be updated.

Some of the procedures were updated during the course of this audit. Others remain to be updated.

Scope of Audit

The scope of the audit included the following:

- Operating procedures
- Department organization
- Guardianship case trend
- Laws and regulations
- Interviews
- Guardianship procedures utilized in other counties
- Guardianship case file reviews
- Submissions of plans, inventories, and accountings
- Auditing of plans, inventories, and accountings
- Fees collected
- Inactive cases
- Reports issued

To: Tim Park, Chief Internal Audit Officer/Inspector General

From: Sandi Sauls, Deputy Chief Civil Division

Date: August 15, 2014

Re: Response to Audit of Guardianships

As a result of recent legislative changes that allow for more enhanced audits of court appointed guardianship cases, a very timely and thorough internal audit was conducted by Dave Rollman. His review of our procedures and records uncovered several areas needing attention as well as suggestions on how to improve and enhance our current program to make it more accurate and effective. The Guardianship Team started meeting regularly, outlining each recommendation and establishing goals to ensure their successful implementation. Reports have already been created to update all closed cases; ticklers are being established for all follow-up processes; the checklist is being enhanced to include all clerk responsibilities; and forms are being compiled to send to the judge along with our request for an AO so we can enforce the use of these documents. We are also reviewing the active cases to quantify the caseload that will need more intensified scrutiny as well as the appropriate personnel to complete this task. Lastly, we are updating our documentation in each of these areas. We look forward to working with the auditor to accomplish these goals and rectify all issues addressed in the audit.

Thank you for providing an informative and comprehensive analysis of our Guardianship Audit process. The recommendations have been well received and the implementation process is underway.

Yates, Ginny

From: bhsitka@gmail.com on behalf of ~ Bruce Sitka [Bruce@sitkalaw.com]
Sent: Friday, October 17, 2014 2:20 PM
To: Yates, Ginny
Cc: Amy McGarry; Alexis Sitkalaw
Subject: Audit of Lee Clerk Records re: Guardians
Attachments: Clerks_Guardianships_Program.pdf

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RE: CLERK'S AUDIT

VIRGINIA YATES

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Dear Ginny,

Thank you for arranging the guardian meeting on Oct 16th. It is always beneficial to converse with colleagues.

In following through on Amy McGarry's comments, please find attached the audit conducted of the Clerk's records related to Guardian Plans and Inventories/Annual reports. It may provide some insight into what is expected for the guardian by the court in regards to reporting, as issue was touched on in the meeting. Perhaps you would like to distribute to the guardians and attorneys on your list as you see fit.

Sincerley,
Bruce
Legal Assistant

