

A LOOK AT THE PUBLIC GUARDIAN

SUMMARY

The Public Guardian is one of those less well known departments within Sonoma County government. It functions to assist citizens who are unable to handle their own affairs and who have no family or designated agents qualified to provide care and financial guidance, or discord prevents family from providing beneficial care. For many people, the Public Guardian is a resource of last resort.

Occasionally, disagreements arise over decisions by the Public Guardian which reflect the complexity of the Guardian's tasks. Families and/or other involved parties may seek redress in several venues including the Court system and the Grand Jury. The Grand Jury is reluctant to step into ongoing litigation; those issues are properly addressed in Court. Issues not in litigation are subjects for Grand Jury investigation and report.

While some actions by the Public Guardian have spawned legitimate complaint, a common theme arises from each of the complaints received by the Grand Jury; there was a lack of written direction from individuals who become dependent on others for supervision.

REASON FOR INVESTIGATION

The Grand Jury received several reports in 2009 alleging malfeasance on the part of the Sonoma County Public Guardian's office. The charges range from misappropriation of clients' property, to refusal to cooperate with clients' families, to elder abuse, negligence, and incompetence. In its investigation, the Grand Jury chose to focus on issues of accountability and transparency.

BACKGROUND

The Public Guardian (PG) operates to provide conservatorship of the person and/or estate of individuals who are unable to make decisions in their own best interest or to resist undue influence.

The PG is part of the County Adults and Aging Services Division (A&ASD) of the County Human Services Department. The PG is staffed by a Chief Guardian who oversees four Deputies. The PG typically administrates a case load of about 118 conservatees at any given time.

The Director of the Human Services Department is the official Public Guardian for the County. Authority is delegated through the A&ASD Director and the Chief Deputy.

Within the A&ASD, the Public Conservator(PC) (a separate function) provides involuntary conservatorship to individuals who meet a narrow definition of grave disability by reason of a mental disorder. A third branch of the A&ASD is the Public Administrator (PA) who administrates the estates of persons who die without a will.

The PG is governed by the California Probate Code (Section 2900) and the Welfare and Institution Code. The Probate Court also establishes directions for specific fiduciary and personal care concerns. The Court directs the scope of care and fiduciary responsibility. The standard is "prudent management", which is the standard of practice for any professional fiduciary. Conservatees are referred to the PG by professional medical or social services staff. The PG investigates the merit of a conservatorship referral as well as alternatives to conservatorship. If the investigation substantiates the need, the PG will petition the court for conservatorship of a person or estate. When appointed, the PG will prepare a comprehensive case plan encompassing both immediate and long-term needs to ensure appropriate medical, social, and fiscal management. In assuming the role of conservator of a person, the PG will arrange for the conservatee's care and protection, will decide where the conservatee will live and assume charge of a conservatee's health care (medical decisions), clothing, and personal care, housekeeping, transportation and recreation needs.

As conservator of an estate (the property and money the conservatee owns), the PG is responsible for management of the conservatee's finances, including protection of the conservatee's income and property, inventorying everything in the estate, creating a plan to insure the needs of the conservatee are met, securing all of the benefits to which a conservatee is entitled, filing and paying the conservatee's taxes, keeping accurate financial records, and reporting financial accounts to the court and other interested persons.

In the administration of persons and estates by the PG, conflicts and differing opinions with a conservatee's family occasionally arise. Prescribed procedures usually resolve these issues. In the cases presented to the Grand Jury at this time, families felt that the prescribed procedures did not satisfy.

INVESTIGATIVE PROCEDURES

The Grand Jury conducted interviews and discussions with the following people:

- Director of Adult and Aging Services
- Chief Deputy Public Guardian
- Family members of conservatees
- Legal advisors to conservatees and families
- Legal advisors within the Sonoma County Counsel's office

DOCUMENTS REVIEWED

- Individual complaints from families of conservatees
- Background documentation provided by families
- Court records from previous and ongoing litigation involving conservatees
- PG's literature provided to the public
- State of California Probate Code

FINDINGS

F-1 Employee confidentiality and ongoing litigation with conservatees' families impeded Grand Jury inquiry into allegations of misappropriation of conservatees' property. However, investigation into past and recently revised PG procedural policy indicated corrective actions have been undertaken to address future situations so that such allegations would be less likely to arise. Outcome of the present allegations will await adjudication by the Court.

F-2 The complaints received by the Grand Jury had a common theme: there has been inadequate documentation of conservatees' wishes regarding how they wanted their estates and persons to be administrated in case of incapacity to act for themselves.

F-3 The PG operates under the jurisdiction of the Probate Code and the Probate Court. Complaints about the PG frequently revolve around the perceived ponderousness of deliberation and protracted time it takes to address even routine requests. These complaints are commonly heard about any of the agencies working with the overloaded court system.

F-4 The PG has undergone a significant re-organization in the recent past resulting in reassignment of responsibilities of the Chief Guardian, who now has a greater role in overseeing operations and supervising Deputies.

CONCLUSIONS

The staff of the Public Guardian presents as highly knowledgeable and qualified for the tasks of providing conservatorship as defined in the Probate Code. Confidentiality is a significant and appropriate consideration in dealing with conservatees and their families. Conservatees cited in the complaints reviewed by the Grand Jury have been and are being provided with care and compassion appropriate to their needs. It is extremely difficult at times for the Public Guardian to balance the demands of conservatees' families with the responsibilities to provide competent, legal and compassionate care.

The PG has experienced some troubling lapses in the recent past and management has made changes in personnel and policy to address perceived difficulties. They are continually monitoring and improving the quality and effectiveness of their mandate to provide care and supervision.

Potential conservatees (and that means anybody) could avoid considerable stress and conflict if they (and all of us) attend to the continuity of health and well-being by thoughtfully and thoroughly preparing advance financial and healthcare directives. These directives would include a will or living trust, Durable Power of Attorney for Finances that specify who will administer money matters, and Advance Healthcare Directive to assist family, domestic partner, or other designated agent(s) to make informed medical decisions in case of a person's inability to speak for him or her self. A frank discussion of these matters with family members before the need arises would go a long way to assure that wishes are honored and would greatly lessen the necessity to require the PG's services.

For those who cannot fend for themselves and for those who have no family or trusted surrogate to speak for them, the PG is there to assure health and well-being are professionally and compassionately available as best it can be.

RECOMMENDATIONS

R-1 The Public Guardian's Office must continue to pursue its recently revised standard of accountability to the public and provide increased public exposure to its role in assisting citizens who cannot help themselves.

R-2 The Public Guardian should create an outreach program, including efforts to inform vulnerable populations, especially seniors, about options for assigning alternate agents to step in when necessary.

COMMENDATIONS

The Grand Jury commends those concerned citizens who spoke up and asked the Jury to look into perceived irregularities in the administration of public offices. The officers of the Public Guardian, the Public Conservator, and the Public Administrator have been uncommonly patient in explaining the complicated interactions and statutes that inform their tasks.

REQUIRED RESPONSES TO RECOMMENDATIONS

Sonoma County Public Guardian: R-1, R-2