

JUDICIARY OF GUAM

OFFICE OF THE PUBLIC GUARDIAN

SUPREME COURT OF GUAM



2007 Annual Report

January 1, 2007–December 31, 2007

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TABLE OF CONTENTS

To Summarize	page i
Maintaining an Office	page 1
Staffing the Office.....	page 2
Referrals and Casework	page 2
2007 Referrals	2
Open Cases	4
As Guardian for Individuals	5
Accounting For Ward Money	6
Additional Mandated Roles	8
Pending Matters	9
Assessment	10
Policies, Procedures and Rules	page 13
Public Guardian Review Board	page 13
Volunteer Program	page 15
Permanent Injunction Case	page 15
P.R.O.A.	page 17
Some Glaring Community Gaps That Affect Our Most Needful Wards.....	page 17
Appendix I	page 19
Appendix II.....	page 20
Appendix III	page 22

A Summary of the 2007 Annual Report of the Public Guardian

This is the 7th Annual Report of the Public Guardian

The Office of the Public Guardian now has a staff of three, to include a Judicial Social Worker who has been employed by the office since February.

In 2007 the Office of the Public Guardian

- Received 131 referrals and opened 103 cases.

On December 31, 2007, the Office of the Public Guardian

- Had 100 open and active cases.
- Had guardianships on 57 individuals.
- Had 17 pending guardianship cases that have not been filed.

Due to the continued influx of new cases, and the high volume of existing work, the office continues to have difficulty in accommodating pending projects and work

Initiatives to manage data and ward records manually and electronically have not progressed at this time.

Progress is still needed in preparing and filing some past due financial reports and inventories.

Data entry, management of ward records and meeting the needs of our wards will continue to be a challenge.

The community continues to lack comprehensive and integrated services for our wards and others with cognitive and mental disabilities and the Office of the Public Guardian spends an inordinate amount of time plugging gaps in services.

The Public Guardian Review Board has embarked on a redesigned system of oversight of public guardianship. Implementation of this process is somewhat hampered by the limitations of the office and of a volunteer board.

In conjunction with other human service organizations, much good work and valuable services have been provided to some of the most vulnerable members of our community in this past year. The program has consistently demonstrated that it fills a necessary spot in the overall delivery of social services to individuals who are elderly and to individuals with serious mental disability.

OFFICE OF THE PUBLIC GUARDIAN

2007 ANNUAL REPORT January 1, 2007 – December 31, 2007

This report of the Office of the Public Guardian is prepared in accordance with Title 7, Guam Code Annotated, Section 3112(g), for the Honorable Robert J. Torres, Chief Justice of the Supreme Court of Guam. It covers the period January 1, 2007 through December 31, 2007.

Maintaining An Office

The Office of the Public Guardian (OPG) Continues to be located in the Old Court Building on the corner of Route 4 and O'Brien Drive in Hagatna, the capital of Guam. The office is easily located just inside the door at the rear of this building, directly across the street from the Agana Public Library.

This door into the building, and the office itself, are accessible to persons with disabilities. There are four parking spaces just outside the door that are clearly designated and dedicated as spaces for persons with disability.

The office is now comprised of four rooms, three of which include the reception room, which is the office for the Legal Secretary, and one office each for the Public Guardian and a Social Worker. One other room provides for storage of supplies and documents. The office shares a room with the Probation Division for a refrigerator, water cooler and coffee maker.

The office is connected by a doorway to the Adult Drug Court, and to Adult Probation. The Public Guardian secures a door to these units at this time. Staff of the office has access to a bathroom located through the door leading to Adult Probation.

The OPG occupied this suite of offices in August 2005. Since that time, this space has been comfortable and adequate. The only difficulty presented is the inability of the thermostat to be turned above approximately 60 degrees. The offices in this building are cold most of the time.

Staffing the Office

In 2007 the OPG was staffed by the Public Guardian, a Legal Secretary, and, beginning in mid-January, by a Judicial Social Worker. The position of Judicial Social Worker was established, and funded in the last months of 2006. The Judicial Social Worker, in effect, replaced a Probation Officer I who had been detailed to the OPG in January 2006.

The addition of a professional social worker to the staff of the OPG has resulted in better, more comprehensive services to the clients of this office. The Judicial Social Worker has assumed primary responsibility for initial intake of individuals and families who come to or are referred to the OPG. (There were 131 intakes this year. See Referrals and Casework, below.) As well, the social worker is responsible for much of the work on behalf of and with the wards regarding medical and pharmaceutical services, entitlement applications and renewals, and some of the numerous meetings that are held with and on behalf of wards concerning the planning for and delivery of services for housing, medical and psychiatric care, transportation, resolution of conflicts, and planning activities that involve multiple agencies and community organizations.

An agreement that was initiated in December 2006, for a clerical staff person from the Clerks and Ministerial Division of the Superior Court of Guam to assist the Legal Secretary with filing and clerical work two days a month, did not continue long into 2007. Unfortunately, that temporary arrangement was not feasible for the Clerk of Court to maintain. Further, an arrangement initiated in 2006 for a social work student from the University of Guam to work with the Public Guardian in a 'field placement' also did not continue during this 2006/2007 school year. Apparently no social work student chose this office for a field assignment. This arrangement requires a considerable time commitment on the part of the Public Guardian, a commitment which was difficult to meet during the 2006 student placement.

Referrals and Casework

In 2007 OPG received 131 referrals.¹ The referrals in 2007 initiated from:

Individuals	43
Guam Memorial Hospital	14
Senior Law Service	14
Catholic Social Services	8
Naval Hospital	7
Adult Protective Services	6
Attorneys in Private Practice	5
DISID	5
DMHSA	4

¹ There were 86 referrals in 2001; 90 referrals in 2002; 122 referrals in 2003; 110 referrals in 2004; 133 referrals in 2005, and 103 referrals in 2006.

Public Defender Services Corporation	4
Superior Court	3
DPHSS	3
Health Care Providers	2
Attorney General	2
Veterans Administration	2
Guam Legal Services Corporation	2
Guma Mami; District Court; Hospice; Servicio Para Manamko; Social Security Administration; GHURA; Senator	<u>1 each</u>
	<u>131</u>

Referrals this year resulted in 103 cases being opened, 5 referrals which are pending intake, and 23 referrals which were not opened or fell outside of the scope of services offered by OPG. Of the matters opened this year, the cases fell into the following categories (established by the Public Guardian Act; 7 GCA § 3112 (a)):

- (1) 16 Public Guardian to serve as the guardian; no family or friend willing or able to do so.
15%
- (2) 40 Advise and assist individuals seeking appointment as guardian
39%
- (3) 0 Assist the Court, as directed, in proceedings for the appointment of a guardian, and in supervision of persons appointed as guardian.
0%
- (4) 4 Provide advice, information and guidance to individuals appointed as guardian for an adult.
4%
- (5) 43 Offer guidance and counsel to persons requesting assistance, encouraging maximum self-reliance and independence, and avoiding guardianship.
42%
- 5 Referral pending an intake interview.
5%

Open Cases:

As of December 31, 2007, OPG has 100 open and active cases.² An open case is a matter in which OPG has accepted responsibility to accomplish some purpose consistent with one of the five mandated responsibilities established by the Public Guardian Act. A description of the open cases, by year, is as follows:

From 2001	15 active cases	15 cases;	Public Guardian appointed
<hr/>			
From 2002	13 active cases	11 cases; 2 cases;	Public Guardian appointed. Pending Public Guardian appointment.
From 2003	5 active cases	4 cases; 1 case;	Public Guardian appointed. Pending Public Guardian appointment.
From 2004	5 active cases	4 cases; 1 case;	Public Guardian appointed. Pending Public Guardian appointment.
From 2005	14 active cases	8 cases; 6 cases;	Public Guardian appointed. Pending Public Guardian appointment.
From 2006	13 active cases	8 cases; 2 cases; 3 cases;	Public Guardian appointed. Pending Public Guardian appointment. Serving Individuals/Families.

² As of 12/31/01, 26 open cases; 12/31/02, 57 open cases; 12/31/03, 58 open cases; 12/31/04, 95 open cases; 12/31/05, 89 open cases; 12/31/06, 85 open cases.

From 2007	35 active cases	7 cases;	Public Guardian appointed.
		5 cases;	Pending Public Guardian appointment.
		4 cases;	Pending Family Member appointment.
		19 cases;	Serving Individuals/Families.
		+ 5 cases;	Pending Intake.

The Public Guardian as Guardian for Individuals.

The Public guardian is currently guardian for 57 individuals.³ These appointments represent different roles and responsibilities, as noted in part, in this breakdown:

Guardian of the Person and Estate	33 individuals	(28 end of '06)
Co-Guardian w/ Family member	5 individuals	(2 end of '06)
Guardian of the Estate	12 individuals	(11 end of '06)
Limited Guardian of the person and/or estate	2 individuals	(No change)
Guardian Ad Litem	5 individuals	(No change)

As guardian of the person, the Public Guardian is responsible for assuring that each ward has safe and appropriate housing, receiving the necessary therapeutic care required by the individual's disability or medical condition; that each ward is associating with the proper people, and not associating with the wrong people; that each ward is receiving appropriate and necessary medical and dental care; and that each ward has the opportunity to maximize life's potentials and opportunities, for example, vocational potential.

As guardian of the estate, the Public Guardian is responsible for identifying and gathering an individual's property; identifying and collecting all income and public or private benefits accruing to the individual; holding and protecting the individual's wealth and money; and providing for all of the physical and financial needs of the individual.

³ *Guardian of 13 at end of 2001; guardian of 25 at end of 2002; guardian of 30 at end of 2003; guardian of 43 at end of 2004; guardian of 44 at end of 2005; and guardian of 49 at end of 2006.*

Because of the nature of the appointment, as a guardian for an individual who is not able to manage personal or financial affairs without the assistance of another, these matters have been the first priority of the Public Guardian. All other matters that are the responsibility of the Public Guardian due to legislative mandate are necessarily subordinate to the responsibility to meet the needs of the wards.

In five cases the Public Guardian shares responsibility as guardian with a co-guardian. This arrangement is made, with the co-guardian typically being a family member, in order to involve the family and share the responsibility for decisions concerning the ward. This arrangement also allows for the Public Guardian to provide necessary technical and advocacy support to a family member who would likely decline to serve as guardian without the Public Guardian's shared responsibility.

Accounting For Ward Money

A performance audit by the Office of the Public Auditor, of the financial activities of the Public Guardian concerning the funds of his wards was concluded in February 2006. The report of the audit by the Public Auditor was published in May 2006. A complete copy of this audit is available on the web site of the Office of the Public Auditor - Guam at www.guamopa.com. A copy can also be obtained at the OPG.

The management of ward funds was substantially modified by both the recommendations of that audit and by decisions made by the Public Guardian under the guidance of the Chief Justice of the Supreme Court. Those changes made in 2005, during the audit, and in 2006 have now been in place for more than one year.

With some exceptions, all ward funds are held in a Superior Court of Guam Savings Account, essentially a trust account, from which the Financial Management Division (FMD) produces checks for ward expenditures, as requested by the Public Guardian. These funds are under the control of the Controller, but expended under the authority of the Public Guardian. There is segregation of responsibilities in the approval of expenditures, preparation of checks and management of cash accounts. Further, detailed financial reports are available on a timely basis with little effort on the part of the Public Guardian.

With check writing responsibility placed with the Financial Management Division, a different challenge arose. In many of the guardianship cases, the Public Guardian, from a financial point of view, is essentially operating a 'household' for an individual who is not competent to manage household funds. As in any household, funds are needed on relatively short notice for both unexpected expenditures and to simply manage purchase of household goods. In addition, for many household expenditures and unanticipated expenditures it is not practical to produce the type of documentation which is necessarily required, in advance, by the

Financial Management Division in order for a check to be produced as payment for a product or service.

The solution to this challenge, worked out between FMD and OPG, is maintenance of a household fund held by the Public Guardian for certain wards. At this time, the Public Guardian holds funds for 34 individuals. These funds are maintained, segregated for each ward, in a secure location available to the Public Guardian. The use of these funds falls into four main categories, to include purchase of prescriptions, replenishing cash being held by group homes or other institutional settings for ward use, making cash available for the household expenses of a number of individuals, and, in several cases, providing a scheduled weekly or bi-weekly stream of cash to some wards not capable of managing money over long periods of time. Typically, on a bi-monthly basis, the Public Guardian reviews the activity in each fund and arranges to replenish an individual fund as necessary. Separate records for each fund are maintained. A separate report is being provided to the Chief Justice concerning the status of each household fund.

The preparation of financial reports in individual guardianship cases has improved significantly. Detailed reports of receipts and expenditures are available on each ward as needed upon request to the FMD. There is rarely a delay of more than 30 minutes during regular business hours for this report. These reports are being filed in the Superior Court in individual cases as periodic Further Proceeding are scheduled.

There are, however, still a number of cases in which financial reports for periods prior to October 1, 2005 need to be completed. Progress has been made in completing some of this overdue work, and the effort continues. There are 19 wards needing financial reports completed for periods prior to October 1, 2005. Inventories still need to be prepared, or updated, in many guardianship cases and filed in the Superior Court. There has been some progress made in this regard. This matter, however, needs to be resolved.

A concern exists for the prudent investment of ward funds. A number of wards, most especially veterans receiving 100% disability pensions, have reserves of cash in excess of \$10,000.00 up to \$100,000.00. Currently, these funds are being held in individual savings accounts at a relatively low interest rate. The offices of FMD and OPG have discussed this matter with the Honorable Katherine A. Maraman. It was agreed that, in order to be a prudent steward, significant cash savings for an individual that are not to be needed in the foreseeable future, must be placed into secure financial instruments, such as time certificates of deposit (TCD).

It is understood that OPG will explore the availability of TCD's in the Guam market and prepare a recommendation to be considered by FMD and OPG for action. This matter has been pending since prior to the 2006 Annual Report.

Additional Mandated Roles of the Public Guardian

The Public Guardian Act, at 7 GCA §3112 (a), mandates six responsibilities of the Office of the Public Guardian. These responsibilities are:

- (1) to serve as the guardian of the person and/or estate of an incompetent adult when there is no family or friend willing or able to do so;
- (2) to advise and assist individuals, family or friends seeking appointment as guardian for an incompetent adult;
- (3) to assist the Court, as the Court may direct, in proceedings for the appointment of a guardian, and in supervision of persons which have been appointed as guardian;
- (4) to provide advice, information and guidance to individuals who have been appointed as guardian for an adult;
- (5) to offer guidance and counsel to persons, to encourage maximum self reliance and independence of such persons, and avoid the need for appointment of a guardian;
- (6) to develop programs for public education on guardianship and alternatives to guardianship and encourage the development of private guardians able and willing to serve as guardian.

As set out at page 3, above, there were 87 referrals which came to the Office of the Public Guardian concerning mandated responsibilities # 2 through #5, above. This is a significant increase in these types of referrals over 2006 (consistent with the increase in referrals). As in previous years, much effort is still exerted in assisting families and individuals to avoiding the need for a formal guardianship. This is important work and many individuals are assisted in sorting out and resolving complex social problems brought on by the reduced capacity, mental or medical illnesses of a family member, and preparation for death of a loved one.

In addition, many families are provided an orientation, prepared for, and assisted in developing the information necessary to seek guardianship for a family member. This work both facilitates the timely and appropriate designation of a family member as guardian, and reduces the need for the Public Guardian to become the guardian of many individuals. Families are assisted in identifying a private attorney to represent their cause through the Guam Bar Association Lawyer Referral Service.

As in previous years, only limited effort has been invested directly into mandated responsibility #6, the development of programs for public education on guardianship and alternatives, and the development of private guardians. This effort is still limited to providing information and orientation on a case-by-case basis, at which time effort is invested to teach fundamental information about competence, informed consent, the guardianship process, and alternatives to guardianship, and in the development and support of competencies among clients and their families. The Public Guardian does work well with the staff and management of a number of public and private agencies (See, for example, the list of agencies making referrals, page 2, above) and it is felt that significant public education is accomplished by directly educating the personnel of these agencies.

Nonetheless, having said this, OPG has still not been able to accomplish this mandate as it has been clearly stated by the public act establishing this office.

Pending Matters

There are significant pending matters identified in this report. Of most concern are the 17 cases in which the Public Guardian is to become guardian of the person and/or estate of a mentally disabled member of our community. Twelve of these cases are from prior years. There are also 4 pending family guardianship cases. All of these family guardianship cases are from 2007, and all but one of these cases developed into a family guardianship case in December 2007.

There is a real concern that the Office of the Public Guardian, as currently staffed, is not able to open and competently handle these pending matters. There are 10 cases pending since 2002 and coming forward through 2005. Of these, 7 are individuals in group homes within the community. Although these individuals are well cared for and fairly stable in those settings, they do require a guardian of the person and estate appointed for them. Three cases involve veterans for whom the Clerk of the Superior Court is currently the guardian of the estate. These cases have been referred to OPG since 2005. Originally, the Clerk of the Court referred 8 cases to OPG. Five of those veterans are now wards of the Public Guardian.

In addition, the pending financial matters are a concern. This is so both because the statutes of Guam require these matters reported to the court, and also because the Office of the Public Guardian should provide the 'model' for the management of guardianship cases. It would be the desire of OPG to be able to resolve these matters as soon as is practical.

Finally, the audit report from 2006 recommended the implementation of a computerized client data base for our wards. A data base program has been devised within the court for this office. It remains to be implemented and utilized by OPG. The current staff have not taken advantage of this opportunity as of this report.

Assessment

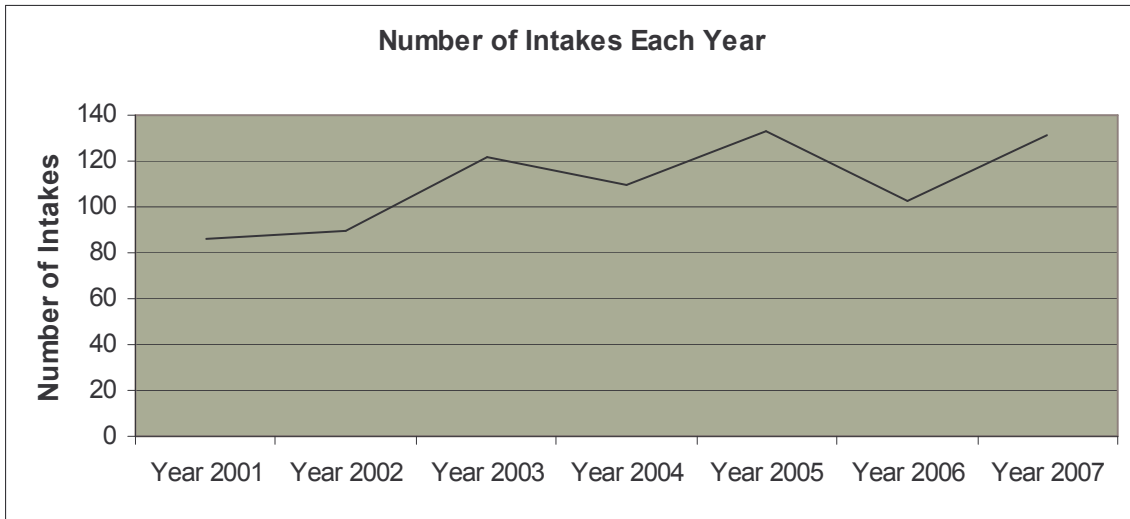
The Office of the Public Guardian continues to provide comprehensive case management and guardianship services to a large number of disabled and elder adults in our community who have significant mental disability. Most of these individuals are poor. In addition, many individuals and families facing complex social problems due to the incapacity of a family member caused by mental disability, medical trauma or the aging process are assisted in making decisions and are connected to needed services.

The addition of a social worker to the program has greatly enhanced the quality and quantity of social services provided. The transition of financial management responsibilities to a shared arrangement between the Office of the Public Guardian and the Financial Management Division has brought stability to this critical function of the program. (It has also increased the workload of the Legal Secretary significantly.) However, the addition of these necessary components to the operations of OPG has not resolved the dilemma of pending work in the office.

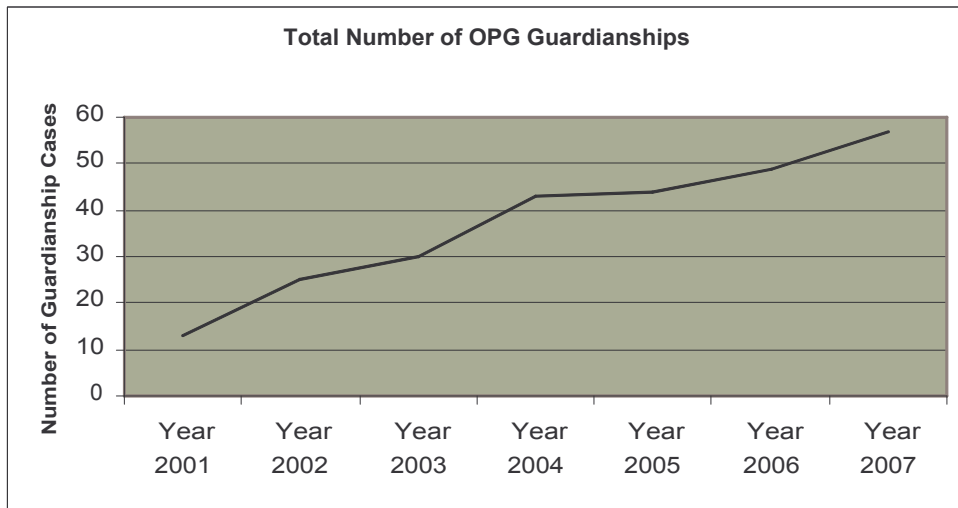
The workload and mandated responsibilities of this office remain greater than the resources available. The staff of OPG work hard, work consistently, and given the dynamic and sometimes volatile nature of the individuals with whom we work, we work efficiently. The Legal Secretary and the Judicial Social Worker are to be commended for their spirit, their devotion to our clients, and their willingness to ‘make things work’ under these circumstances. In seven years, there has never been a “No, I don’t do that.” from a member of this staff.

As well, the Public Guardian consistently works additional hours, both before and after working hours Monday through Friday, and also on weekends. Without the commitment and dedication of the staff, and the additional hours worked by the Public Guardian, this office would be much further behind in its work than it is today.

After seven years of public guardianship practice on Guam some conclusion can be drawn from the experience. First, intakes have remained stable and actually increased over time. It was once felt that, with time, intakes would decrease. If intakes did decrease over time, it was assumed that we would ‘catch up’ to the untapped demand that existed in the community prior to 2001. This is not the case. In 2007 we had more intakes than in any other year (there were 133 in 2005, but that included 7 intakes from the Clerk of the Court right at the end of the year consisting of veterans for whom the Clerk was guardian of the estate).



Second, the number of guardianships being held by the Public Guardian has continued to rise, with 57 wards at the end of this year and 17 pending guardianships.



Given the current staffing of this office, it is not reasonable or appropriate for the Public Guardian to continue to file guardianship cases seeking appointment of himself as guardian. The likelihood that important matters to be done will be missed, and that decisions will be delayed or made without proper investigation or understanding will continue to increase. This may already be the state of affairs in this office.

There are three options which become apparent. **First, maintain the status quo**, continuing to conduct intakes as such are received by the office, assessing and opening new cases as in the past, managing the casework for all five case categories of cases as well as possible, and opening 'emergency' guardianships (and possibly others) as time seems to permit. **Second, limit or discontinue opening new cases.** This may include a limit to conducting intakes or not. The very fact of conducting intakes, however, creates an expectation that more extensive services are available to the public. **Third, retain additional staff**, handle the quantity of work that is obviously present within the community, and provide a higher level of quality in all of the work that is accomplished.

Additional staff that are needed, in order of importance, in order for this office to continue to provide quality guardianship services include:

- one **clerk typist/runner**
- one **financial analyst/technician**
- one additional **public guardian**
- one additional **judicial social worker**
- one **part-time nurse**

Additional staff will necessitate additional space. The office as it is now configured would not easily accommodate one more person.

One further concern affects the ability of OPG to effectively serve our wards. The office does have access to one official vehicle, a 1998 Hundai Access. For the most part, this vehicle has been reliable. There are periodic breakdowns and the responsible employees in the Maintenance Section of the Division of Procurement and Facilities Management are very responsive to any breakdown of the official vehicle. There are times however, due to the age of this vehicle, when it is difficult to acquire necessary parts. During breakdowns OPG is without an official vehicle.

As well, there are often times, almost daily, when two of the staff of OPG, usually the Public Guardian and the Judicial Social Worker, are out of the office on official business at the same time. At these times, the Public Guardian uses his own vehicle. It has become increasingly difficult to arrange the use of another vehicle with other sections of the judiciary.

It would greatly benefit the Office of the Public Guardian, and the clients of this office, to have two vehicles available for regular use by staff of OPG.

Policies, Procedures and Rules

The Policies, Procedures and Rules of the Office of the Public Guardian (the Rules) have been in place since 2004. These Rules continue to provide guidance and clarification to the staff of the office, to the Public Guardian Review Board, the Chief Justice of the Supreme Court and to the community in implementing and carrying out the responsibilities of this program.

As previously recommended in the 2006 Annual Report, it is necessary to revisit and amend the Rules, especially in light of the recommendations of the audit completed two years ago. A comprehensive review and rewrite of the financial management policies is required to take account of the various changes in financial procedure and policy which have been implemented. The Public Guardian Review Board has proposed one amendment to the Rules. The proposed amendment is at Appendix I. Further, any decision to limit intake or to limit the mandated functions of the program would require a modification of the Rules, as well as a likely amendment of the enabling legislation. The Rules may be amended “pursuant to the rule making powers of the Supreme Court of Guam.” Rule XII, Policies, Procedures and Rules of the Office of the Public Guardian.

Public Guardian Review Board

The Public Guardian Review Board (Review Board) met three times in 2007. One of the four quarterly meetings became a unofficial meeting when there was a failure to reach a quorum. Four quarterly meetings have been scheduled for 2008. At Appendix II, find specific information on the membership of the board, the three vacancies that exist, and the schedule of meetings for 2008.

The Public Guardian Act, at 7 GCA § 3112 (b), requires that “(e)very six months, the Board shall review the care and protection of those persons who are under guardianship by the Office of the Public Guardian.” It further requires that “(p)ersons, corporations and/or agencies appointed guardians shall be consistently monitored through the Public Guardian Review Board.”

The manner in which the Board is to review the care and protection of persons who are under guardianship with the Public Guardian has been a matter of discussion and discernment since this Board first met in 2001. Several approaches have been attempted in the past, but no approach actually resulted in a critical review of public guardianship.

In response to an audit recommendation, and based upon guidance from the Chief Justice, the Review Board and the Public Guardian have developed an approach to the random and systematic review of guardianship cases handled by the Public Guardian. A process has been developed for the comprehensive review of four cases each year, one each quarter. Each case to be reviewed is chosen at random, without input from the Public Guardian. The Review Board forms among its members four distinct groups, and each group reviews a separate aspect of the chosen case.

The four aspects of the case under review are (1) the financial estate of the ward; (2) the medical and psychiatric care of the ward; (3) a personal assessment of the ward; and (4) a review of the maintenance and management of the ward file. Each group selects one of these aspects for critical review and assessment.

This approach, which began with the review of a case in the fourth quarter of 2006, continued through 2007 with mixed results. Three cases were reviewed in 2007. All aspects of each review were not fully completed. For example, the review of the medical and psychiatric care of a ward was not completed due to a failure to follow through on the part of the members. Further, there is not yet a competent process for capturing the information gathered, recording the recommendations made, or even documenting that a review has been completed.

The Review Board reports being satisfied with the concept and the design of the overview process. The shortcomings are due to two main factors. First, it is difficult for a volunteer board member who is already very busy in ones own profession or practice, to be able to find the quality time required for the review process as it is now designed. Second, any volunteer board operates most effectively when the organization management, in this case the Public Guardian and Legal Secretary, provide the necessary organizational support. This office has always been fortunate to have very committed members on its Public Guardian Review Board. In fact, the one meeting which could not be held this past year was the first to be missed for a lack of a quorum in several years. The office management has also provided support for the operation of the board. However, it is clear that more support is required from management in order to facilitate the quarterly case review. Better support from management would make it easier for busy board members to accommodate the challenges of conducting a case review. More support from the management will continue to be a challenge given the overall workload of this office.

Despite much discussion by the Review Board in the past six years on an approach toward fulfilling the second mandate, to consistently monitor persons, corporations and agencies appointed as guardians, no workable approach has been developed to monitor all adult guardians. It is the sentiment of the Review Board and of the Public Guardian that this mandate is not realistic.

As discussed in the annual reports of the past three years, a realistic approach to the oversight of all guardians is to develop a program within the court in which court staff assess the work of guardians, require submission of reports, visit wards in the community and analyze the financial practices and activities of the guardian with ward assets. Even the modest approach of having guardians appear at least one time each year, with their ward, before the judge who appointed them, would enable some oversight of the guardian. The Public Guardian has at least an annual progress hearing in almost all of his cases. If the difficulty of the case warrants it, the appearance before the court is more often than one time a year.

Volunteer Program

During 2007 there have been four volunteers who have worked consistently with OPG. One volunteer, a mature woman who visited regularly with wards of the Public Guardian who reside in institutional settings, to include St. Dominic's Senior Care Home, Guma Hinemlo, the Independent Group Home, the Mary Clare Home, and CARIDAD II, has decided to 'retire' from her role with OPG. The regular visits by this volunteer with at least 16 of the wards of this office was important, assuring quality of care and oversight of the care providers. Her service will be greatly missed. Two other volunteers have provided care services to one ward who had been living independently in the community and could not afford to purchase the needed care service. A fourth volunteer works directly with the social worker to carry out a monthly function acquiring prescription medication and medical supplies for nine ward, the majority of whom reside at St. Dominic's Senior Care Home.

The potential for expansion of the volunteer program is great, but not without the commitment of staff time to nurture, train and manage the volunteers. The greatest potential of an organized volunteer program would include the recruitment and use of volunteers as guardians, each volunteer guardian serving one or two wards under the supervision of the Public Guardian. Such expansion will require the commitment of at least half of the time of a judicial social worker. This expansion is not possible with the current staffing in the office.

Permanent Injunction Case

In 2001, as guardian of the person and estate of an individual placed into the Adult Inpatient Unit, I joined two other guardians in filing suit in the U.S. District Court of Guam against three individuals, the Governor, and the Directors of the Department of Mental Health and Substance Abuse (DMHSA) and the Department of Integrated Services for Individuals with Disability (DISID). The suit sought injunctive relief on the basis of the Americans with Disability Act, the Rehabilitation Act of 1973, and the 14th Amendment to the U.S. Constitution. In 2003, a fourth plaintiff, also a ward of the Public Guardian, was joined into the suit.

In 2004, after a trial, the District Court entered Judgment and granted a Permanent Injunction against the individual defendants and ordered a number of actions by the defendants in order to remedy certain identified violations of federal law and substantive due process. In essence, three areas of concern needed to be addressed by the defendants. First, the court adopted minimum standards of care that were to be met in serving individuals inside of the Adult Inpatient Unit (AIU) and in other residential settings operated by either DMHSA or DISID. Second, the defendants were to develop and implement a Comprehensive Implementation Plan to establish facilities within the community that would enable individuals to move out of the AIU into community services in a timely manner. Third, the defendants were to develop and implement a wait list policy and procedure so that individuals who required placement in community based services or settings that were not available, would receive placement according to a rational and fair process, and with assurance that the wait list moved at a reasonable pace. For some specific matters, implementation was to be immediate, and for many matters the court set various deadlines (e.g., 120 days).

In 2005, the District Court held the defendants in contempt for failure to comply with the permanent injunction. The Court set new deadlines to be met by the defendants, admonished the defendants that penalties would be imposed for future failure to meet court mandates, and did not impose any sanctions on the defendants. The plaintiffs worked with the defendants who engaged the services of consultants to assist the defendants to meet the mandates of the Permanent Injunction.

In March 2007, the plaintiffs again filed a motion for contempt against the defendants. Many months earlier, the defendants had missed all of the timelines set by the court in its July 2005 contempt order. The plaintiffs delayed any action on missed deadlines so that the election process of 2006 could be resolved completely. The plaintiffs had no desire to insinuate this matter into the election debate or process. Although there was competent evidence in support of a contempt finding, the plaintiffs determined that the proper outcome of the process, one that could lead to sustained progress in both the short term and long term, was to resolve the dispute by agreeing to the appointment of court monitors, by clarifying and confirming a commitment on the part of the defendants to achieve JCAHO accreditation in all DMHSA and DISID programs, and by providing the defendants with another opportunity to meet court ordered mandates for development of a Comprehensive Implementation Plan, with assurances from the defendants that there would be no excuse for missing another deadline.

Beginning in 2006, and continuing throughout 2007, the Public Guardian became much more involved in this litigation and in the efforts to implement the Permanent Injunction. This increased involvement came about as the result of several factors. First, the Public Guardian was not only guardian for two named plaintiffs, but was also guardian for 27 other individuals who were members of the class of individuals which the Judgment and the Permanent Injunction identified as individuals to be protected and served by the Permanent Injunction.

Second, the plaintiffs had been represented by Guam Legal Services Corporation up until May 2007. The decision by the Managing Attorney (and Director) of Guam Legal Services Corporation to resign his position caused the three guardians of the named plaintiffs (myself and two family guardians) to search for and retain new legal counsel at a time when the Motion for Contempt was pending before the U.S. District Court of Guam.

Third, the OPG necessarily assumed much more responsibility for the day-to-day effort to implement the Permanent Injunction now that Guam Legal Services Corporation was not representing the plaintiffs. An increase in involvement was necessary as it was appropriate to work closely with the defendants and the staffs of both DMHSA and DISID in developing the Comprehensive Implementation Plan, the Wait List, and the meaningful milestones for the acquisition of JCAHO accreditation. This level of increased involvement is likely to continue for some time into the future.

For a large number of the wards of the Public Guardian, the litigation that commenced in 2001 and continues today is crucial to their future health and security in our community. A full implementation of the Permanent Injunction will secure services and facilities that are needed by several hundreds of the most vulnerable Guam citizens, and provide safe and secure community-based services in lieu of prolonged incarceration in an unsafe and unaccredited AIU, or life in

our community without necessary housing, medical and psychiatric care, and supportive services.

P.R.O.A.

For the past two years the Public Guardian has testified before the Finance Committee of the Guam Legislature during the annual budget hearings for the proposed budget of the Government of Guam. Specifically, the Public Guardian sought consideration of an increase in the amount of Public Assistance being provided to disabled individuals and elders who are poor and reliant on welfare for support (current maximum for an individual is \$151.00 a month, has not been increased since 1989), seeking to assure that Medicaid and MIP programs are funded adequately so that medical providers are timely paid for care provided to poor persons (currently most medical providers refuse to accept Medicaid and MIP due to extremely late payment for services rendered) and seeking to increase the fee paid to St. Dominic's Senior Care Program by the MIP program (fee has been set at \$90.00 a day since 1985).

For the past year, in response to information about these issues which the OPG has provided to individuals and organizations, an informal coalition made up of (1) individuals with disability, (2) parents and family members of individuals with disability, and (3) providers of services to these two groups, has formed. This loose coalition began to develop a strategy to more effectively petition the legislature during the 2009 budget hearing process.

As the coalition continued to discuss its strategy and plans, from March 2007 to the present, certain members decided to name the coalition PROA, that is, Persons Reaching Out to Advocate for persons with disability. Most recently, this coalition has been meeting with each of our Senators to provide the lawmakers with information concerning the needs of poor persons with disability and poor elders, requesting that public assistance and programs for these persons would be increased during consideration and adoption of the 2009 budget.

Some Glaring Community Gaps That Affect Our Most Needful Wards

Each year in this report it is appropriate to state some community deficiencies that affect our wards. Because a number of our wards are poor and vulnerable, they are greatly affected by these deficiencies. The gaps that are most obvious are:

1. The maximum Public Assistance provided to a poor disabled or elder person is \$151.00 a month. This has not increased since 1989.
2. Therapeutic care options are very limited and, for the most part, not available for many persons who need personal care, supervision or other forms of support to live in the community. Therefore, too many people live in the community without the appropriate level of needed care.
3. St. Dominic's Senior Care Home receives \$90.00 a day for the care of elders. This is the same amount the program received in 1985, when it opened its doors to the community. Assuming an annual inflation rate of 2%, this is the equivalent, in 2006, of being paid \$58.80 a day for the care St. Dominic's

- provides to our elders; likewise, what cost St. Dominic's \$90.00 to purchase in 1985, now costs St. Dominic's \$136.29 today.
4. There are very few community activities, such as sports recreation and education, available to provide quality of life for persons with chronic disability.
 5. Transportation is limited and difficult to access.
 6. Vocational opportunities and jobs continue to be limited by a chronic inability to effectively manage the Division of Vocational Rehabilitation.

Conclusion

The Office of the Public Guardian has concluded its seventh year. In conjunction with other human service organizations, much good work and valuable services have been provided to some of the most vulnerable members of our community in this past year. The program has consistently demonstrated that it fills a necessary spot in the overall delivery of social services to individuals who are elderly and to individuals with serious mental disability.

There has been an increase in the amount of work handled by the program this year. In addition, there has been an increase in the amount of work that is now pending and requiring completion in the future. There is no indication that the level of work coming into the office will decrease in 2008. Decisions must be made to address these conditions. The staff of the Office of the Public Guardian look forward to this coming year and look forward to working with the management and staff of the Judiciary of Guam and the Guam community in facing these challenges.



APPENDIX I

OFFICE OF THE PUBLIC GUARDIAN

Supreme Court of Guam

Old Court Building, 110 West O'Brien Drive, Hagatna, Guam 96910

Telephone: (671) 475-3173 Facsimile: (671) 472-0381

Email: publicguardian@opg.guamcourts.org

John Weisenberger
Public Guardian

An Amendment to Part X, Policies, Procedures and Rules of the Office of the Public Guardian

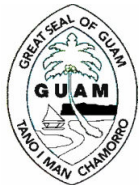
Add This paragraph to follow existing paragraph:

The annual report shall be submitted to the members of the Public Guardian Review Board no later than January 20 of each year for review and comment by the members. Any comments provided to the Public Guardian by January 28 of each year shall be included into the annual report prior to submission to the Chief Justice of the Supreme Court. The Chairperson of the Public Guardian Review Board shall solicit input from the members of the board and shall provide written recommendation to the Chief Justice of the Supreme Court concerning the annual report. This written recommendation shall be included into the annual report.

Note:

This proposed amendment to the Policies, Procedures and Rules of the Office of the Public Guardian was adopted by the Public Guardian Review Board at its regularly scheduled meeting held on December 13, 2006.

APPENDIX II



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Email: publicguardian@opg.guamcourts.org



John Weisenberger
Public Guardian

Public Guardian Review Board Members Listing

- | | | |
|-----|--|--|
| 1. | Alejandrina E. Cacho, "Andring"
Community Health Nurse Supervisor I, DPH&SS | (Dept. Of Public Health Nursing)) |
| 2. | Kathleen Maher
Director, Public Defender Services Corp. | (Guam Bar Association) |
| 3. | Sarah Thomas-Nededog
Executive Director, Sanctuary, Inc. | (Non-profit agency serving youth) |
| 4. | Bernadita P. Grajek
Consumer Advocate | (Community at large, by Speaker) |
| 5. | Ann San Nicolas
Guam Council on Senior Citizens | (Guam Council on Senior Citizens) |
| 6. | Dr. Laura Post
Psychiatrist, DMH&SA | (Psychiatrist, by Department of Mental Health) |
| 7. | Cathy Illarmo
Guam Vet Center | (Community at large, by Speaker) |
| 8. | (Non-profit agency serving Developmentally Disabled) | Vacancy |
| 9. | (Social Worker, appointed by Director, DPH&SS) | Vacancy |
| 10. | Physician appointed by Administrator, GMHA | Vacancy |
| 11. | Member/Community At Large appointed by Speaker | Vacancy |

The current vacancies on the board include:

- a physician, to be appointed by the Administrator of the Guam Memorial Hospital.
- one member at large, to be appointed by the Speaker of the Legislature.

- one social worker appointed by the Director of the Department of Public Health & Social Services.
- a representative of a non-profit agency serving Developmentally Disabled individuals.

Board Meeting Dates for 2007

March 14, 2007
June 13, 2007
September 12, 2007 (no quorum)
December 12, 2007

Board Meeting Dates for 2008

March 12, 2008
June 11, 2008
September 10, 2008
December 10, 2008