

# *Office of the* **PUBLIC GUARDIAN**

SUPREME COURT OF GUAM



## **2008 ANNUAL REPORT**

JANUARY 1, 2008 - JANUARY 20, 2009

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# OFFICE OF THE PUBLIC GUARDIAN

## S U P R E M E C O U R T O F G U A M

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### 2008 ANNUAL REPORT OFFICE OF THE PUBLIC GUARDIAN January 1, 2008 – January 20, 2009

#### TABLE OF CONTENTS

	<b>Page</b>
Mission of the Office of Public Guardian .....	1
ORGANIZATION .....	3
Office Budget .....	3
Location and Physical Layout of the Office.....	4
Staffing the Office of Public Guardian.....	4
Public Guardian.....	4
Legal Secretary.....	4
Judicial Social Worker.....	5
Volunteer Program .....	6
WHO WE SERVE.....	7
Referrals and Casework.....	7
New Cases Opened in 2008 .....	9
Active Guardianships .....	10
Ward Placement/Location .....	10
FINANCES.....	11
Accounting For Ward Money .....	11

Financial Reporting.....	12
Electronic Benefits Transfers.....	12
Household Funds/Petty Cash .....	13
Public Guardian Fund.....	14
Fees .....	15
Donations .....	16
Condition of the Fund .....	16
ADMINISTRATIVE RULES and REGULATIONS .....	17
PUBLIC GUARDIAN REVIEW BOARD .....	19
Membership and Meetings .....	19
Case Review Procedures .....	21
Review of Private Guardianships .....	22
Who is Guarding the Guardians? .....	23
EDUCATIONAL OUTREACH .....	24
PERMANENT INJUNCTION CASE.....	25
IMMEDIATE NEEDS OF THE OPG.....	26
Staffing the OPG .....	26
Computerized Case Management Information System.....	31
UNADDRESSED ISSUES FROM PRIOR REPORTS .....	32
SUMMARY OF RECOMMENDATIONS .....	34
CONCLUSION .....	35
Postscript.....	36



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## **2008 ANNUAL REPORT**

### **January 1, 2008 – January 20, 2009**

This report 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, 2008 through January 20, 2009.

#### **Mission of the Office of Public Guardian**

The Office of Public Guardian (OPG) was created by act of the Guam Legislature signed into law on March 22, 2000 (P.L. 25-103) and funded by the Legislature in December 2000. In January of 2001, the Chief Justice of the Guam Supreme Court appointed John Weisenberger, Esq., to serve as the first Public Guardian, and on February 19, 2001, the Office of Public Guardian officially opened its doors. The legislation establishing the Office of Public Guardian has been amended twice. See P.L. 26-64 (signed into law: 12/22/01); and P.L. 26-112 (signed into law: 06/18/02). For more information, including policies, procedures and rules of the OPG; forms; and annual reports for previous years, see, <http://www.guamcourts.org/OPG/pubguard.html>.

The Office of the Public Guardian has the following statutorily defined powers and duties:

(1) The Public Guardian shall serve as guardian, limited guardian, testamentary guardian or temporary guardian of the person and/or estate of an elderly or mentally incapacitated individual when so appointed ... The Public Guardian shall file a petition for the Public Guardian's own appointment. Petitions for public guardianship may also be filed by any person, agency, or facility responsible for the support or care of individuals who:

(i) are not able to understand or adequately participate in decisions concerning their care; and

(ii) have no relatives or friends willing and able to act as guardian.

(2) The Public Guardian shall have the same powers and duties as a private guardian.

(3) The Public Guardian shall assist the Court, as the Court may request or direct, in proceedings for the appointment of a guardian of the person and in the supervision of persons, corporations or agencies which have been appointed as guardians of the person.

(4) The Public Guardian shall advise and assist persons, corporations, and agencies which are seeking appointment as a guardian for an incapacitated person. The Public Guardian shall also provide advice, information and guidance to the persons, corporations or agencies who have been appointed as guardian of the person to assist them in the discharge of their duties.

(5) The Public Guardian may offer guidance and counsel, without court appointment as guardian, to those persons who request such assistance or to those on whose behalf it is requested for the purpose of encouraging maximum self-reliance and independence of such persons, and avoiding the need for appointment of a guardian.

(6) The Public Guardian shall develop programs of public education on guardianship and alternatives to guardianship and encourage the development of private guardians able and willing to serve as guardian for the person.

7 GCA § 3112(a).

As **guardian of the person**, the Public Guardian is responsible for ensuring 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.

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 defined as statutory responsibilities of the Public Guardian are necessarily subordinate to the responsibility to meet and manage the personal and financial affairs of the wards.

The Public Guardian presently serves as guardian for 54 individuals.<sup>1</sup> These appointments represent different roles and responsibilities, as noted in part, in this breakdown:

<b>Guardian of the Person and Estate</b>	37 individuals
<b>Guardian of the Estate</b>	8 individuals
<b>Limited Guardian</b> of the person and/or estate	2 individuals
<b>Co-Guardian</b> with Family member	7 individuals

As noted, in 2008 the Public Guardian shared responsibility as co-guardian in seven cases. The co-guardian is typically a family member, and shares the responsibility for decisions concerning the ward with the OPG. This 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.

## **ORGANIZATION**

### **Office Budget**

Funding for the OPG is in the budget of the Judiciary. See 3 GCA § 3112(f). For FY2008, the OPG was budgeted \$232,368 and expended \$217,044; \$160,588 of those expenditures was paid in salaries and \$48,538 in benefits. As of December 31, 2008 in FY 2009, the OPG has expended \$30,742 in salaries and \$12,461 in benefits.

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<sup>1</sup> Guardian of 13 by the end of 2001; guardian of 25 in 2002; guardian of 30 in 2003; guardian of 43 in 2004; guardian of 44 in 2005; guardian of 49 in 2006; and guardian of 57 in 2007.

## **Location and Physical Layout of the Office**

The Office of the Public Guardian is located in the Old Court Building on the corner of Route 4 and West O'Brien Drive in Hagåtña, 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, and is accessible to persons with disabilities.

The office consists of four rooms. Upon entering through a secured door, visitors immediately encounter the legal secretary's workspace which also doubles as a small reception area. Behind the secretary's workspace is the office of the Public Guardian. The social worker's office or workspace also serves as the filing room. And there is one other closet-size room which provides for storage of supplies and documents. OPG Staff has access to a non-public bathroom located through the door leading to Adult Probation. It also has shared access to a conference room.

The OPG first occupied this suite of offices in August 2005. Since that time, the space has been relatively comfortable and adequate. However, there is no room for expansion within the current physical facility should the OPG acquire additional personnel, such as another social worker and additional clerical support.

## **Staffing the Office of Public Guardian**

The current staff of the OPG consists of the Public Guardian, a legal secretary, and judicial social worker. By law, the Public Guardian is the head of the OPG, and is appointed by and serves at the pleasure of the Chief Justice of the Guam Supreme Court.

### **Public Guardian**

John Weisenberger, Esq. served as Public Guardian from January 2001 until August 2008, at which time Robert M. Weinberg, Esq. was appointed to serve as Interim Public Guardian. Although Messrs. Weisenberger and Weinberg are both licensed attorneys, the Act establishing the OPG does not require that the Public Guardian be an attorney, nor otherwise establish minimum qualifications for the position.

### **Legal Secretary**

Ms. Zerlyn Palomo has served as secretary to the Office of Public Guardian from the time it first opened its doors to the public. Typical secretarial and clerical duties of legal secretary to the OPG include serving as

receptionist, typing, filing, preparation of purchase orders, serving as a notary public, and performing paralegal work, such as preliminary drafting of legal pleadings and other legal documents, filing documents with the court, and ensuring service of process is made. Under the direction of the Public Guardian, and with only limited supervision, Ms. Palomo has shouldered increasing responsibility for handling household finances and bookkeeping for over 50 individual wards of the OPG. These tasks include receipt, tracking and disbursement of wards' funds from a variety of private and public sources, e.g., U.S. Department of Veterans Affairs, Social Security Administration, Department of Public Health and Social Services, Department of Revenue and Taxation, Government of Guam Retirement, and other income, e.g., wages, annuity payments rental and mortgage payments on properties held for wards; preparation of financial documentation necessary to apply for public benefits; assisting in the preparation and filing of quarterly and annual tax returns; accounting for individual household funds (petty cash); and preparing documentation necessary for annual mandatory reporting required by Veterans Affairs, Social Services Administration, Department of Public Health, and other public agencies that administer benefits payable to wards of the OPG.

At any given time, a significant portion of Ms. Palomo's time is spent in the day-to-day management of finances for upwards of 50 or more separate wards including preparation of disbursement documents (check requests) for payment of each ward's monthly or bi-monthly allowance; rent or mortgage; utilities (water, power, cable TV, gas); insurance; debt service, e.g., hospital bills, automobile loan payments, layaway plans for personal items such as furniture; routine medical and pharmacy bills; personal care attendant fees; and managing requests for incidental expenditures from residential group homes or other care providers.

According to the former Public Guardian, an agreement 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. That did not continue long into 2007. The Interim Public Guardian's observations are two-fold: First, there is a demonstrable need for additional clerical support, a minimum of 20 hours per week, if not more, to handle the more routine secretarial work which will free Ms. Palomo to focus on the more critical tasks. Second, there is a critical need to create a backup for Ms. Palomo in the event anything should happen to her or should she become unavailable for longer than two weeks.

### **Judicial Social Worker**

From February of 2001 when the OPG opened its doors until mid-January of 2006, the OPG was without the services of a social worker.



Beginning in mid-January 2006, a probation officer was detailed to the OPG to assist with the provision of case management services described below, which had previously been performed by the former Public Guardian himself with the assistance of the OPG legal secretary. A permanent position was created and funded in the last months of 2006 which established the position of judicial social worker. Ms. Esther Mendiola was hired in mid-January 2007 to fill the newly created position. As noted by the former Public Guardian in prior reports, 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.

Under the supervision of the Public Guardian, Ms. Mendiola has assumed primary responsibility for initial intake of individuals and families who come to or are referred to the OPG. Within the OPG, Ms. Mendiola has been the individual tasked with most of the responsibility with respect to applying for medical and pharmaceutical services, public benefits entitlement applications and renewals on behalf of the wards with such agencies as the Department of Public Health and Social Services (e.g., Food Stamps, MIP, Welfare); and Guam Housing and Urban Renewal Authority (GHURA). This requires an intimate knowledge of the filing requirements necessary for the array of available public benefits, and working relationship with the agencies that administer those benefits. Her secondary duties include attending and reporting on individual review and multi-disciplinary treatment team meetings on behalf of wards in residential placement settings and independent living 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. In addition to procuring and managing public benefits for wards and being responsible for “case management” aspects of their lives within the OPG, Ms. Mendiola is expected to attend court proceedings, individual case reviews and multi-disciplinary treatment team (MDTT) meetings with the Public Guardian. And last but not least, Ms. Mendiola spends a significant amount of her time “in the field,” personally attending to the ward’s healthcare needs when no one else is available (which is, almost by definition, usually the case); managing their prescriptions, including pickup and delivery; accompanying wards to doctors clinics and the hospital; arranging transportation for wards, sometimes personally transporting wards herself; and, in more than a few cases, even acting as a personal shopper for wards who have no one else and who are in a secure hospital facility, nursing home or residential group home.

### **Volunteer Program**

By law, the “Public Guardian is authorized to solicit and accept services of individuals and organizations on a voluntary basis in its programs in a carefully planned and supervised manner.” 3 GCA § 3112(j). According to the

former Public Guardian, in 2007 there were four volunteers who worked with OPG. One volunteer, a mature woman visited regularly with OPG wards residing in institutional settings such as St. Dominic's Senior Care Home, Guma Hinemlo, the Independent Group Home, the Mary Clare Home, and CARIDAD II. These regular visits with at least 16 of the wards provided an important extra set of eyes and ears with respect to assuring quality of care and oversight of the care providers. Two other volunteers provided care services to a ward that had been living independently in the community but could not afford to purchase the needed care service. A fourth volunteer worked directly with the social worker to acquiring prescription medication and medical supplies for nine wards, the majority of whom reside at St. Dominic's Senior Care Home. There were no volunteers associated with the OPG in 2008, despite an overture to the University of Guam offering to sponsor interns from UOG's Social Work and clinical programs. However, UOG has expressed an interest in working with the OPG again in 2009.

The renewal of the volunteer program will require the commitment of staff time to nurture, train and manage the volunteers. The Public Guardian Review Board has made a number of suggestions for soliciting volunteers, which the OPG intends to explore, and that will hopefully not merely lighten the workload within the OPG, but broaden the resources available to all service providers on Guam.

## **WHO WE SERVE**

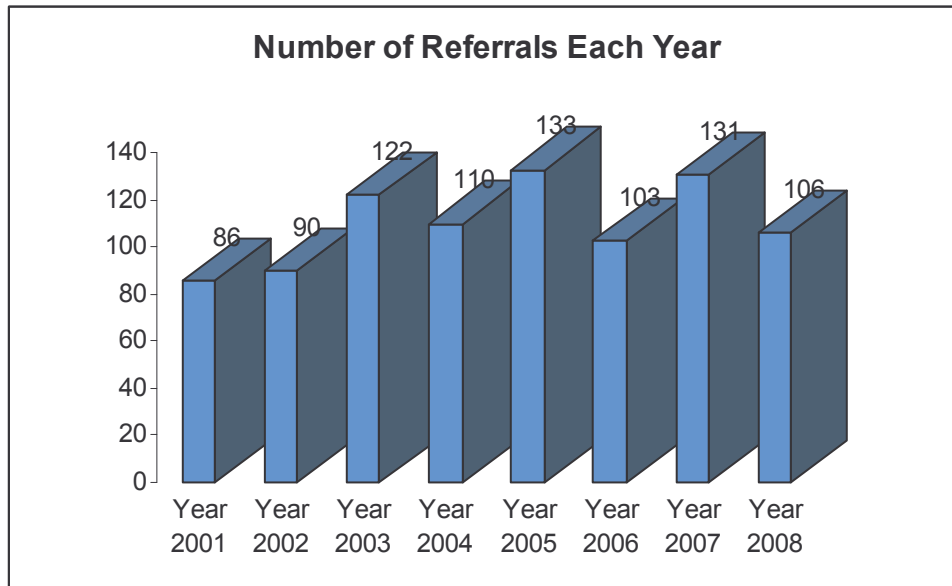
### **Referrals and Casework**

In 2007 the OPG received 131 referrals, both self-referred and from public agencies. In 2008 the OPG received 106 referrals.<sup>2</sup>

Referral Source	2007 Totals	2008 Totals
Individuals	43	57
Guam Memorial Hospital	14	6
Senior Law Service	14	7
Catholic Social Services	8	6
Naval Hospital	7	2
Adult Protective Services	6	2
Attorneys in Private Practice	5	1

<sup>2</sup> Compare 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.

DISID/DVR	5	1
DMHSA	4	4
Public Defender Services Corp.	4	1
Superior Court	3	6
DPHSS	3	1
Health Care Providers	2	3
Attorney General	2	1
Veterans Affairs	2	1
Guam Legal Services Corp.	2	2
Guam Mami	1	1
District Court	1	3
Hospice	1	1
Servicio Para Manamko	1	
Social Security Admin.	1	
GHURA	1	
Senator Jesse A. Lujan	1	
	<b>131</b>	<b>106</b>



Interestingly, while the total number of referrals decreased almost 20% from the preceding year, the number of self-referrals actually increased 33%. In the case of the overall decrease of referrals, it may be that the population needing the services of the OPG has reached a plateau, at least temporarily. There is no evidence to suggest or reason to believe that any of the referring agencies have been any less diligent in 2008 than in the year before. The

increase in self-referrals likely suggests increased public awareness of the Office of Public Guardian and the services it offers.

### **New Cases Opened in 2008**

An “open case” is a matter in which the OPG has accepted responsibility to render services consistent with one of the five mandated responsibilities established by the Public Guardian Act. Of the 106 matters referred to the OPG in 2008, the distribution of cases fell into the following categories established by the Public Guardian Act, 7 GCA § 3112(a):

(1) 10 – Public Guardian to serve as the guardian; no family or friend willing or able to do so. (9%)

(2) 32 – Advise and assist individuals seeking appointment as guardian. (30%)

(3) 2 – Assist the Court, as directed, in proceedings for the appointment of a guardian, and in supervision of persons appointed as guardian. (2%)

(4) 7 – Provide advice, information and guidance to individuals appointed as guardian for an adult. (7%)

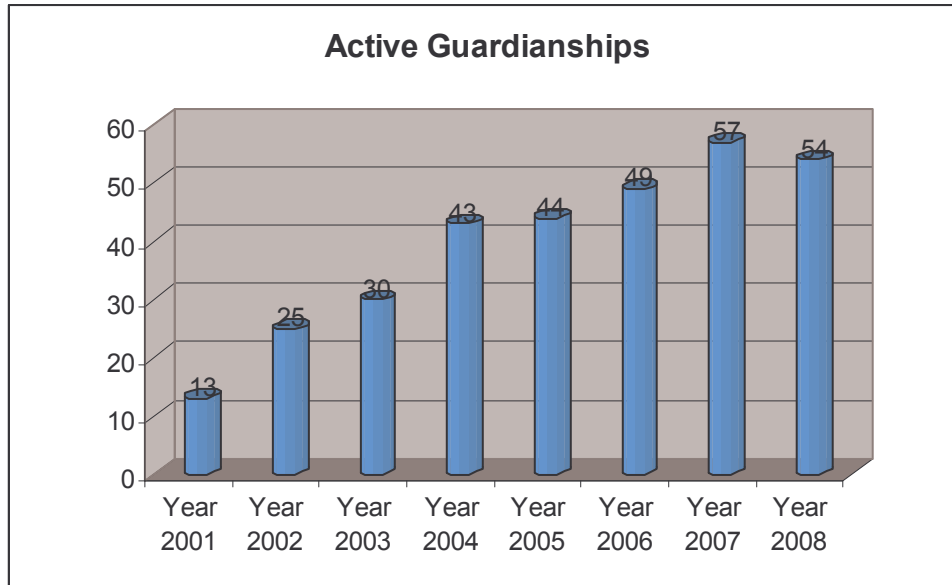
(5) 37 – Offer guidance and counsel to persons requesting assistance, encouraging maximum self-reliance and independence, and avoiding guardianship. (35%)

Of the 106 matters referred in 2008, only two currently remain pending and are awaiting an initial intake interview.<sup>3</sup> An additional 16 of the 106 referrals (15%) were classified as “case not opened.” Reasons for not opening a case included withdrawal or cancellation of the request for services; proposed ward left island; death of the proposed ward; failure to appear for intake appointment; failure to follow up or return with requested information by referring individuals or respond; and determination by the Public Guardian that the individual proposed ward did not meet the legal criteria for involuntary guardianship.

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<sup>3</sup> One of these intake interviews was conducted during the drafting of this report but after the reporting period covered by the report and resulted in a case being formally opened with the decision made to provide service.

### **Active Guardianships**



At any given time, there are between 50 and 60 active guardianships being managed by the Office of Public Guardian, independent of assisting family members or friends by filing petitions for guardianship on their behalf to become guardians. As noted previously, in 2008 there were 54 active guardianships. That number might have been slightly higher but for the natural deaths of two of the wards and an unofficial moratorium placed on new intakes immediately before, during and after the transition from the former to Interim Public Guardian.

### **Ward Placement/Location**

Wards of the OPG live in a variety of different places around the island depending upon their needs and abilities. Some live entirely independently, with only their finances being managed by the OPG. Some live in homes which they own, are purchasing, or are renting with and without public assistance through GHURA. A number of wards live in different residential treatment facilities or group homes depending upon their treatment needs and the level care and supervision they require.

<b>Placement of Wards</b>	<b>Total Number of Wards</b>
Karidat Mangilao A in Mangilao (formerly known as KARIDAT II) operated by Catholic Social Services (CSS)	5
Guma Hinemlo in Mangilao operated by CSS	2
St. Dominic's in Barrigada Heights	8
Karidat Tumon A in Tumon operated by CSS	1
Karidat Mangilao B & C in Mangilao operated by CSS	2
Guma Bethesda in Yigo operated by Latte Treatment Center	5
Skilled Nursing Unit in Barrigada Heights operated by GMH	3
Adult Inpatient Unit in Tamuning operated by DMHSA	4
Emergency Receiving Home in Yigo operated by CSS	1
Guma Trankilidat in Tumon	1
Guma San Jose in Harmon operated by CSS	1
Department of Corrections in Mangilao	1
Living Independently in their own homes or apartments	16
Off island in Texas	3
Off island in Oregon	1
<b>Total Number of Wards</b>	<b>54</b>

## **FINANCES**

### **Accounting For Ward Money**

A performance audit of the financial activities of the Public Guardian concerning the funds of OPG wards was concluded by the Guam Office of the Public Auditor in February 2006. The report of the audit by the Public Auditor was published in May 2006. A complete copy of the audit is available on the web site of the Office of the Public Auditor at <http://guamopa.com>.

The management of ward funds was substantially changed in response to the recommendations of the Public Audit. Those changes made in 2005, during the audit, and in 2006 have now been in place for more than two years. With only two 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. Funds managed on behalf of OPG wards are under the control of the Controller, but expended under the authority of the Public Guardian. The responsibilities with respect to the approval of

expenditures, preparation of checks and management of cash accounts are segregated. Further, detailed financial reports are regularly available from FMD as needed or requested by the Public Guardian.

An as-yet unaddressed concern carried forward from the former Public Guardian is the issue of prudent investment of ward funds. A number of wards, especially veterans receiving 100% disability pensions, have reserves of cash in excess of \$10,000.00, at least one upwards of more than \$100,000.00. Currently, these funds are being held in individual savings accounts at a relatively low interest rate. The FMD and the former OPG discussed this matter and in consultation with the Honorable Katherine A. Maraman, it was agreed between the former OPG and FMD that in order to be a prudent steward significant cash savings for any individual that are not to be needed in the foreseeable future, should be placed into secure financial instruments, such as time certificates of deposit (TCD). The OPG was tasked with exploring 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, but no reportable action taken.

### **Financial Reporting**

Reports of deposits and details of 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 filed in the Superior Court in individual cases as periodic or further proceedings in individual cases are scheduled, generally on an annual basis.

### **Electronic Benefits Transfers**

Twelve of the OPG's wards receive public benefits in the form of Food Stamps and cash assistance administered by the Department of Public Health and Social Services. Guam's delivery system for public benefits (food stamps and cash assistance) is an Electronic Benefits Transfer (EBT) system. In all jurisdictions throughout the United States, EBT replaced food stamp coupons with a plastic card called the QUEST card, similar to a credit card. Benefits recipients can use their QUEST Card at the Point-of-Sale (POS) machines to buy eligible groceries at stores taking part in the Guam EBT Program. Benefits are electronically deposited into separate accounts at the Bank of Guam in the name of the individual, and food items may be purchased through a "QUEST Card," similar to a credit card. While the EBT system works well enough for food items purchased by or on behalf of wards by care givers and other services providers, the cash assistance component involves the Public Guardian and the OPG secretary personally going to the Bank of Guam, physically retrieving cash in varying amounts (from \$40 to \$150 per month, totaling most recently in

excess of \$1,000) from an automated teller machine (ATM), and then re-depositing it through a human teller into the Superior Court of Guam Savings Account at Bank of Guam, meanwhile creating separate records and paper trails for each deposit which are later posted to each of the ward's subsidiary accounts at FMD.

This is obviously a cumbersome and inefficient process given other demands upon the OPG's time and resources. Also, for each transaction, federal law authorizes the deduction of 85 cents for administrative costs, plus the Bank of Guam charges another \$2.25 for each ATM transaction for persons who do not have accounts with the bank. While those fees may not seem like much to some, considering that some wards receive only \$40 per month in cash assistance, \$2.25 is a sizeable amount (over 5%) simply to access their already meager public benefits. The local bank has no means by which this can be done without standing in front of an ATM, as the system as designed requires the use of an ATM. The OPG has, since September of 2008, endeavored to work with the Department of Public Health to find a mechanism whereby cash assistance benefits can be deposited directly to FMD's account at the Bank of Guam, which would save the OPG time and the wards money, and has been informed that it may be "do-able."

### **Household Funds/Petty Cash**

In many cases wherein the OPG handles all or a substantial portion of an individual's financial affairs, processing check requests to FMD has become a matter of calendared (albeit not yet automated) routine. Routine checking needs of the wards for monthly expenses can be anticipated at last two weeks in advance of their due date. Turnaround time between check requests to FMD and disbursement of checks to OPG is generally no more than four to five days. As in any household, funds are sometimes needed on relatively short notice for both unexpected expenditures and access to petty cash generally. The Public Guardian is, after all, from a financial point of view, operating a "household" for an individual who is not competent to manage their own funds. In addition, for many household expenditures and unanticipated expenses it is not practical to produce the type of documentation required, in advance, by the Financial Management Division in order for a check to be produced as payment for a product or service.

Although it would be ideal if the OPG was not required to handle cash at all, and although alternatives have been contemplated, a workable solution that does not involve ready access to a limited amount of cash for certain of the wards has failed to present itself. The solution devised between FMD and OPG is establishment of a household or petty cash fund held by the Public Guardian for certain wards. At this time, the Public Guardian holds funds for 31



individuals in amounts from \$40 per month to \$400 per month, with an estimated total amount of \$8700 being held in petty cash at any given time. These funds are maintained, segregated for each ward, in a locked and secure location available to the Public Guardian. The use of these funds falls into four main categories: (1) purchase of prescriptions;<sup>4</sup> (2) replenishing cash being held by group homes or other institutions for ward use; (3) making cash available for the household expenses of individuals who can only handle limited amount of cash at a time, and, in several cases; and (4) providing a scheduled weekly or bi-weekly stream of cash to some wards not capable of managing money over long periods of time. Separate records for each fund are maintained, and the Public Guardian reviews and reconciles the activity in each fund and arranges to replenish an individual fund and adjusts the amounts kept as necessary on a regularly scheduled monthly basis.

### **Public Guardian Fund**

Title 7 GCA § 3112(m) establishes a Public Guardian Fund:

Fund Created. There is hereby created, separate and apart from other funds of the government of Guam, a fund known as the 'Public Guardian Fund' ('Fund'). The Fund shall not be commingled with any other fund and shall be deposited into a separate account. All fees, charitable monetary donations, and public and private grants collected pursuant to this § 3112 shall be deposited into the Fund and it shall be administered by the Public Guardian. The Fund shall be used for the purpose of the administration and operation of the Office of the Public Guardian. The Public Guardian shall make an annual report to the Chief Justice of the Supreme Court of Guam and *I Liheslaturan Guåhan* of the condition of, and activity within, the Fund.

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<sup>4</sup> Until the latter part of 2008, purchasing prescription medications for wards involved the social worker traveling to a number of different pharmacies around the island, sometimes with hundreds of dollars in cash at a time. In order to limit unnecessary travel and reduce the need for the social worker to carry large amount of cash, the OPG was able to consolidate a number of prescriptions for different wards to one pharmacy that would bill the OPG in the name of the ward rather than require cash payment.

## **Fees**

Subsection (e) of 7 GCA § 3112 provides that the “Public Guardian may receive such reasonable fees for services as a public guardian as the Court allows,” provided that:

(1) No fees shall be allowed which would unreasonably diminish the ward's estates so as to endanger the ward's financial independence, and no fees shall be allowed when the ward's primary source of support derives from public funds.

(2) Any fees received under this Section by the Public Guardian shall be deposited into the Public Guardian Fund.

(3) No fees shall accrue to the individual benefit of the Public Guardian.

Section VII of the *Policies, Procedures and Rules of the Office of the Public Guardian* established a fee schedule for services provided by the OPG. The schedule provides that no fee will be sought for individuals whose monthly income is \$1,076.08 or less, and that a fee of 8% per month will be charged against the ward’s adjusted monthly income provided the ward has a gross monthly income in excess of \$1,076.08. Adjusted monthly income is defined as gross monthly income less cash grants of public assistance received during the month. While it appears that considerable thought went into designing the fee schedule, to-date the OPG has never sought fees for services provided to the public. With only a few exceptions none of the wards whose finances are managed by the OPG would be a candidate for being charged a monthly fee.

A possible source of revenue for the OPG not contemplated by the *Policies, Procedures and Rules* would be to charge a flat fee for the preparation and filing of petitions for guardianships for persons other than the OPG. But the OPG is hesitant to request a fee and engage in competition with the local Bar. Generally, it is those who cannot afford an attorney who are referred to the OPG. As well, charging a fee, sometimes even in a routine and uncontested matter, creates the impression that the Public Guardian is the person petitioning the court for guardianship’s attorney. Although it has not come to this, the OPG has had one or two occasions where it has accepted and filed a petition on behalf of a family member, and, after filing, the matter had the potential to become contested or adversarial. It is the OPG’s position that in those cases involving equally competing claims to guardianship of a person or an estate, the OPG should not act in an adversarial role on behalf of a particular guardian, but must reserve its ability to advise the court as to the OPG’s opinion as to what is in the ward’s best interests in the capacity of a guardian ad litem.

## **Donations**

Title 7 GCA § 3112(l) provides that the Public Guardian may solicit and accept donations and apply for grants:

The office of the Public Guardian may solicit and accept voluntary charitable monetary donations and may apply for and accept public or private grants it may be eligible to receive. All expenditures for solicitation of or application for such donations or grants shall be prudent and reasonable.

As of June 29, 2007, when a separate account was established at FMD, the OPG had accepted a total of \$420 in donations: \$100 from a then-active now-former Review Board member; \$20 from a former volunteer; and \$300 from a retired Superior Court judge. The OPG has not otherwise or since solicited donations, and it has not applied for any public or private grants. In point of fact, soliciting donations and applying for grant monies would be an advisable thing for the OPG to pursue for, as discussed immediately below, there have been four occasions when purchases for wards who had no funds of their own became necessary.

## **Condition of the Fund**

On January 1, 2008, there was \$420 in the Public Guardian Fund, carried over from the previous year. As of the date of filing this report, the Fund has a balance of \$217.90.

In September and November 2008, Public Guardian Fund monies were used to place a ward at the Harmon Loop Hotel, accompanied by the OPG social worker overnight, and to pay for meals. The OPG and DMHSA have had particular difficulty finding a permanent placement for this ward, who at the time was (and is again) a resident of Guma San Jose, a homeless shelter in Harmon. Because of federal restrictions on its funding and programming, Guma San Jose can only offer shelter to a homeless individual for 60 days at a time, at the end of which they must leave the shelter for at least 24 hours, and then they must reapply. This ward of the OPG was literally going to be “put out on the street” if a temporary solution could not be found. Even the presiding judge of the Superior Court was at a loss to suggest an alternative, and he was unwilling to consider ordering Guma San Jose to continue to shelter the ward in violation of federal regulations. The Interim Public Guardian personally advanced the OPG social worker funds to cover the cost of hotel and meals,

and obtained reimbursement in the amount of \$97.45 for the September hotel visit and \$94.65 for the November visit.<sup>5</sup>

Finally, ten dollars (\$10) was used for two wards (\$5 each) to obtain their birth certificates from DPHSS in November 2008.<sup>6</sup> These four expenditures may not fit exactly within the letter of the statute that the Funds be “used for the administration and operation of the Office of the Public Guardian,” but they are certainly with the spirit of law.

### **ADMINISTRATIVE RULES and REGULATIONS**

Title 7 GCA § 3112(f) provides: “The Public Guardian shall develop rules and regulations in compliance with the Administrative Adjudication Law.” The OPG’s annual report for 2003 reflects that a final draft of the rules was disseminated to the public and a public hearing was held on April 10, 2003 in the Supreme Court, and after consideration of comments solicited from the public, a proposed bill adopting the rules was submitted to the Legislature. A public hearing was held before the Committee on Judiciary and Transportation of the 27th Guam Legislature on February 12, 2004 and because the Legislature took no further action, the *Policies, Procedures and Rules of the Office of the Public Guardian* became effective by operation of law. The rules are available online at <http://www.justice.gov.gu/OPG/policy.html>. Within the Rules, the OPG adopted the *Model Code of Ethics for Guardians and Standards of Practice*, adopted in 1988 and 2000 respectively by the National Guardianship Association. The *Model Code* provides a modern and comprehensive statement of rules which serve as an excellent guide to ethical decision making and ethical behavior by the Public Guardian, and the staff and volunteers of the Office of Public Guardian, and is available online at <http://www.guardianship.org/pdf/codeEthics.pdf>. The *Standards of Practice* is available online at <http://www.guardianship.org/pdf/standards.pdf> and provides guidance in the day-to-day practice of guardianship. In the collective judgment of the National Guardianship Association, the *Standards of Practice* reflects the best or highest quality of practice, which in many cases may go beyond what the law requires.

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<sup>5</sup> The OPG has since decided that this will not be an option should similar events occur in the future. First, the Interim Public Guardian wishes to acknowledge that the judicial social worker went above and beyond the call of duty (and her job description) to have volunteered to become an overnight personal caregiver for an elderly individual who also happens to be mentally ill. However, it is precisely because such duties are not in the judicial social worker’s job description, nor is she trained in such duties, that it is inadvisable for the OPG to authorize or the public to expect her to do so again.

<sup>6</sup> The OPG did inquire whether, in the spirit of cooperation between government agencies, the \$5 fees could be waived by DPHSS, but they would not waive it.

The 2004 annual report recommended amendments to the Rules to provide more “detail and guidance concerning management and accounting for the funds of wards held in trust by the Public Guardian.” This recommendation was repeated in the OPG’s 2005 annual report in contemplation of the then-pending Public Auditor’s report. In view of the substantial overhaul of the management and accounting for funds following the Office of Public Auditor’s 2006 report, the OPG’s annual reports for 2006 and 2007 again recommended that the rules be revisited to ensure that procedures set forth in the rules were consistent with actual practice, to “take account of the various changes in financial procedure and policy which have been implemented.” This has yet to be done. When amendments to the Rules are considered, it would also be advisable that rules be adopted establishing a formal policy concerning investment of funds in excess of those necessary for management of the wards’ day-to-day affairs, a suggestion pending since at least 2006.

The OPG’s 2006 annual report included a proposed amendment to the Rules adopted by the Review Board on December 13, 2006, which provided that the annual report was to be submitted to the Public Guardian for its review and comment no later than January 20 of each year, with comments from the Board to be provided for inclusion no later than January 28 of each year prior to the Chief Justice. This proposed rule does not appear to have been officially promulgated pursuant to the AAL, as it is referenced again as a proposed amendment in the OPG’s 2007 annual report.

Section XI of the *Policies, Procedures and Rules of the Office of the Public Guardian* states: “The Public Guardian Review Board shall enact Rules of Order or Bylaws which promote the operation of the Public Guardian Review Board in compliance with the Open Government Act, 5 GCA Chapter 8, and which provide for the Public Guardian Review Board to go into executive session when permitted by law.” The Review Board adopted *Rules of Order of the Public Guardian Review Board* on June 9, 2005. Article 1, Section 1.07 of the *Rules of Order* provides that a “quorum [of the 11 member Board] shall consist of four members being present at the meeting.” The Interim Public Guardian questions whether, absent specific statutory authority in its enabling legislation, Guam Law authorizes the Review Board to establish a quorum of less than a majority of the Board, and has advised the Review Board that it does not.<sup>7</sup>

Section XII of the *Policies, Procedures and Rules of the Office of the Public Guardian* states: “These Policies, Procedures and Rules are adopted pursuant to the Administrative Adjudication Law, and may be amended or otherwise

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<sup>7</sup> While the rules are being amended with respect to the operation of the Public Guardian Review Board, the Interim Public Guardian also recommends the consideration of a rule setting a defined limit on the number of absences from Board Meetings that, if exceeded, would result in the Board certifying to the appropriate authority that a vacancy exists.

modified pursuant to the rule making powers of the Supreme Court of Guam.” The Interim Public Guardian is unclear what this means, as on its face it appears to conflict with 7 GCA § 3112(f) which provides: “The Public Guardian shall develop rules and regulations in compliance with the Administrative Adjudication Law.”

While the current policies and rules are not so inconsistent with actual practice as to impair the functioning of the OPG or the rights of the public, a comprehensive review and overhaul of the OPG’s *Policies, Procedures and Rules* and the Review Board’s *Rules of Order* at the earliest practicable opportunity is recommended.

## **PUBLIC GUARDIAN REVIEW BOARD**

### **Membership and Meetings**

The Public Guardian Review Board was scheduled to meet four times during 2008: March 12, June 11, September 10, and December 10, 2008. The Review Board met as scheduled on March 12 and June 11, but by September 2008, there were six vacancies on the eleven member board. See 7 GCA § 3112(b) (“This review Board shall consist of eleven (11) members”). The Review Board as of September 2008 was comprised of the following members:

1. Sarah Thomas-Nededog – Representative, Non-profit Agency Serving Youth, appointed by the Speaker of the Legislature;
2. Bernadita P. Grajek – Member of the Community at large, appointed by the Speaker of the Legislature;
3. Ann San Nicolas – Representative, Guam Council on Senior Citizens;
4. Dr. Laura Post – Psychiatrist, appointed by Department of Mental Health & Substance Abuse;
5. Cathy Illarmo – Member of the Community at large, appointed by the Speaker

There were six vacancies to be filled by various appointing authorities:

6. Physician, appointed by Administrator, Guam Memorial Hospital Authority;
7. Representative, Non-profit agency serving Developmentally Disabled, appointed by the Speaker;
8. Member/Community At Large, appointed by Speaker;
9. Social Worker, appointed by Director, DPH&SS;

10. Nurse, appointed by Director of DPH&SS;
11. Attorney, appointed by Guam Bar Association.

The scheduled September 10, 2008 meeting did not occur because the Pacific Daily News failed to publish five days notice of the public meeting as required by law. Also, the Interim Public Guardian was of the opinion that the Review Board's *Rules of Order* which defined a quorum as four members of the board was not statutorily authorized, and that a quorum would require at least six members. This is so, in the opinion of the Interim Public Guardian, because Robert's Rules of Order defines a quorum as a majority of registered or qualified members, and because research has revealed no case in which the Guam Legislature has ever authorized a quorum to be less than a majority of the number of duly appointed or authorized members necessary to establish any board or commission.

The five remaining Review Board members rescheduled the September 2008 board meeting and met October 15, 2008. Although minutes were kept, no official business was conducted at that meeting except that Robert M. Weinberg, Esq. was introduced as the Interim Public Guardian and gave an informal report as to issues he had identified to focus on since coming to the OPG. At the suggestion of the Interim Public Guardian and the acting chair, Sarah Thomas-Nededog, the Review Board members discussed plans for scheduling an informal retreat to discuss its role as a board. The members also discussed plans to individually lobby appointing authorities with suggestions to fill vacancies on the board.

By November 20, 2008, five new members were appointed to the Review Board, leaving only one vacancy, which remains empty as of the filing of this report. The current composition of the Board is as follows:

	<b>Board Member</b>	<b>Appointing Authority</b>
1	Lynn Okada – Community Health Nurse, DPH&SS	Nurse, by DPH&SS
2	Mike Nispersos, Esq. – Director, Public Defender Corporation	Attorney, by Guam Bar Association
3	Sarah Thomas-Nededog – Executive Director, Sanctuary, Inc.	Non-profit agency serving youth, by Speaker of the Legislature
4	Bernadita P. Grajek – Executive Director, Guma Mami, Inc.	Community at Large, by Speaker
5	Ann San Nicolas	Guam Council on Senior Citizens
6	Dr. Laura Post, M.D., J.D.	Psychiatrist, by DMHSA
7	Cathy Illarmo – Guam Veterans Center	Community at Large, by Speaker

8	Ella Cruz	Community at Large, by Speaker
9	Joseph Diaz	Social Worker, by DPH&SS
10	Lisa Kenworthy	Non-profit agency serving developmentally disabled
11	Vacancy	Physician, by Administrator Guam Memorial Hospital Authority

On November 26, 2008, the Board met, at no cost to the OPG, at the Westin Resort Guam in an informal retreat to discuss the role and future of the Review Board. At the invitation of Board member Sarah Thomas-Nededog, the meeting was graciously facilitated by the Office of Minority Health, U.S. Department of Health and Human Services. All in attendance agreed it was a productive and informative meeting that gave new and existing members an overview of the OPG and an opportunity to discuss issues facing the Board in a comfortable setting at no cost to the public.

The Board met officially for the third time on December 10, 2008 and formally elected Sarah Thomas-Nededog as chair. The Board did not conduct case reviews of any guardianships at that time.

### **Case Review Procedures**

Title 7 GCA § 3112 (b), provides:

Public Guardianship Review Board. Persons, corporations and/or agencies appointed guardians shall be consistently monitored through a Public Guardianship Review Board. Every six (6) months, the Board shall review the care and protection of those persons who are under guardianship by the Office of the Public Guardian. The review Board may review cases before the six (6) month period upon the request of the majority of the members of the Board.

The Review Board's approach to reviewing the care and protection of persons who are under guardianship with the Public Guardian has been a matter of continual discussion and refinement since the Board first met in 2001. In response to a recommendation from the Public Auditor, with guidance from the Chief Justice, a process was developed for the comprehensive review of four cases each year, one each quarter. Each case to be reviewed was to be chosen at random, without input from the Public Guardian. The Review Board was to form among its members four distinct groups, and each group was tasked to review 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 one case in the fourth quarter of 2006, continued through 2007 with mixed results. Only three cases were reviewed in 2007. And not all aspects of each case that was reviewed were fully completed. Only two guardianships were reviewed under this procedure in 2008, and they appear to have been based on reports by individual board members and the former Public Guardian. Even without the benefit of direct experience in facilitating Review Board reviews of OPG guardianships, it is the opinion of the Interim Public Guardian that the approach adopted by the Review Board to “review the care and protection of those persons who are under guardianship by the Office of the Public Guardian” is not workable. The individual members of the Review Board are unquestionably committed to their appointments, but fulfilling their statutory mandate has not been an easy task. The Review Board intends to continue to work toward refining its mission objectives and the process by which it reviews guardianships, and it is anticipated that it will arrive at a consensus hopefully by the end of the first quarter of 2009.

### **Review of Private Guardianships**

The Review Board has admittedly never met its statutory mandate to “consistently monitor[]” private guardianships by persons, corporations or agencies. Despite considerable discussion over the years, no approach has ever presented itself that would permit the Review Board to monitor private adult guardianships in addition to those managed by the OPG. This mandate is, frankly, not realistic. Simply as a starting point, the Interim Public Guardian had asked court personnel to generate a list of all pending guardianships filed in the Superior Court, and although adult guardianship cases all contain the prefix “SP,” for “special proceeding,” the Superior Court’s docketing system is not designed to search on the underlying nature special proceedings. Thus, even if the OPG and its all volunteer Review Board had the manpower and resources to “consistently monitor[]” private guardianship, it has no place to begin.

### **Who is Guarding the Guardians?**

As discussed in the annual reports of the past four years prepared by the former Public Guardian, one approach to the oversight of all guardians might be to develop a program within the court in which court staff assesses the work of guardians, requires submission of reports, visits wards in the community and analyze the financial practices and activities of the guardian with ward assets. The former Public Guardian has proposed that even the “modest” approach of having guardians appear in court to file an inventory and accounting at least once a year would enable some oversight of private guardians. But the law currently does not even require annual accountings after the first year of an appointment.

At the expiration of a year from the time of his appointment, and *as often thereafter as he may be required by the court*, the guardian must present his account to the court for settlement and allowance. When account is rendered by two or more joint guardians, the court, in its discretion, may allow the same upon the oath of any of them.

15 GCA § 4304 (emphasis added). Indeed, from what the Interim Public Guardian has observed, and can offer only anecdotally, the only time a private guardianship appears on the court’s docket after letters of guardianship have been issued is when there is a dispute, usually between a guardian and an interested third party. But there is otherwise no judicial oversight on a regular basis that inquires into the well-being of the ward’s person and estate.<sup>8</sup>

Although not required by statute to do so, the Public Guardian has, historically, voluntarily tendered annual progress reports and requested hearings in cases filed by the OPG, and annual hearings have been conducted in the Superior Court, sometimes more often depending upon the condition and needs of the ward. Even then, Presiding Superior Court Judge Alberto C. Lamorena, III posed a question that has no satisfactory answer under Guam law: “Who is guarding the guardian?” In theory, the Legislature may have intended that to be the Public Guardian Review Board. In practice, that is simply not going to happen, even with a fully constituted Review Board.

With respect to third party review of guardianships managed by the OPG if the Review Board is unavailable, Presiding Judge Lamorena inquired whether the Public Auditor could conduct audits in individual cases. The Public Auditor

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<sup>8</sup> This particular observation has been noted by the former Public Guardian since at least 2004. See *2004 Annual Report of the Office of the Public Guardian*, p. 12 (“In practice, the judges of the Superior Court of Guam do not take any steps to review the work (or lack thereof) of guardians who have been appointed for the person or estate of an individual. As a result, there are no checks or balances currently at play in the system... There is no court program in place to visit with and confirm the well-being of persons who are subject to guardianship.”).

responded politely enough that that was not a service her office was capable of providing considering its current resources and established priorities. The Presiding Judge next suggested that perhaps the court itself could engage a certified public accountant or firm to conduct individual audits, but the Administrator of Courts replied that there is no budget for it.

How other jurisdictions review guardianships is a matter that should be researched, certainly for comparison purposes to make recommendations to the judiciary and the Legislature.<sup>9</sup> Most commonly, the answer lies in the first instance with the courts and those judges assigned to particular guardianships. Perhaps the Guam Bar Association might encourage local attorneys to volunteer their services to the court pro bono. However it is addressed, Presiding Judge Lamorena's question deserves meaningful and deliberate consideration by all who are interested in the protection and care of Guam's elderly and adult population who have been determined by the courts to be unable to protect and care for themselves.

### **EDUCATIONAL OUTREACH**

As in previous years, only limited energies have been directed toward the development of outreach programs designed to educate the public on guardianship and its alternatives. Educational efforts remain limited to providing information and orientation on a case-by-case basis. Time and resources permitting, educational efforts in the future should be focused on educating the public concerning when and in what circumstances guardianship are considered, the array of public services available to individuals with disabilities, the meaning of informed consent, and preventative alternatives to guardianship before the need arises, such as powers of attorney and living wills, while an individual is still competent to make such decisions. Educational outreach efforts should also be expanded to include educating local attorneys and private guardians with respect to the specific duties encompassed by their roles and responsibilities in guardianship proceedings; and, where appropriate, lobbying efforts should be expanded to educate the Legislature, the Executive Branch and the Judiciary, with regard to the special needs of this most vulnerable population in their care.

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<sup>9</sup> Presiding Judge Lamorena's question "Who is guarding the guardian?" is by no means unique to Guam. Compare Naomi Karp AARP Public Policy Institute and Erica Wood ABA Commission on Law and Aging, *Guardianship Monitoring: A National Survey of Court Practices* (June 2006), available at <http://www.guardianship.org/reports/07GuardianshipMonitoring.pdf> (last visited January 31, 2009); and Naomi Karp & Erica Wood, *Guardian the Guardians: Promising Practices for Court Monitoring* (December 2007), available at [http://assets.aarp.org/rgcenter/il/2007\\_21\\_guardians.pdf](http://assets.aarp.org/rgcenter/il/2007_21_guardians.pdf) (last visited January 31, 2009). See also, *The New York Times*, "Lawyer Is Accused of Stealing Disabled People's Assets He Was Assigned to Protect," January 28, 2009 available at <http://www.nytimes.com/2009/01/29/nyregion/29lawyer.html?emc=eta1> (last visited Feb. 4, 2009).

## **PERMANENT INJUNCTION CASE**

In 2001, as guardian of the person and estate of an individual placed into the Adult Inpatient Unit, the former Public Guardian joined two other guardians in filing suit in the United States District Court of Guam against 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). Styled *J.C. v. Felix Camacho*, Civil Case No. 01-00041, the complaint 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 defendants to remedy a number of 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 designed to establish facilities that would enable individuals to move out of the AIU into less restrictive community settings in a timely manner. Third, the defendants were ordered to develop and implement a wait list policy and procedure so that individuals entitled to 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 former Public Guardian became much more involved in this litigation and in the efforts to implement the Permanent Injunction. *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.* Also in 2007, with plaintiffs calling for federal receivership, attorney James Casey and clinical psychologist James Kiffer, Ph.D., were appointed by the court to serve as court monitors to report to the court with respect to the defendants' progress in complying with the permanent injunction.

On April 30, 2008, the court monitors submitted an *Amended Comprehensive Implementation Plan* (ACIP), available at <http://courtmonitors.googlepages.com/499ACIPfiled.pdf> (last viewed February 1, 2009), which the court approved on June 9, 2008, see *ORDER Approving and Adopting the Amended Comprehensive Implementation Plan*, see <http://courtmonitors.googlepages.com/504acipapprovalcourtorder.pdf> (last viewed February 1, 2009). Plaintiffs now contend that the defendants have not complied with ACIP and have filed a motion for an order to show cause why defendants should not be held in contempt which is scheduled for hearing February 13, 2009. Concerned consumers and stakeholders will be watching the case closely in the months ahead.

## **IMMEDIATE NEEDS OF THE OPG**

### **Staffing the OPG**

The Office of the Public Guardian provides comprehensive case management and guardianship services to a significant cross-section of disabled and elderly adults who have no, or limited, family support. Many, if not most, of these individuals are poor, and in need of integrated services from such agencies as the Department of Mental Health and Substance Abuse (DMHSA); the Department of Integrated Services for Individuals with Disability (DISID); Division of Vocational Rehabilitation (DVR); Department of Public Health and Social Services (DPHSS); and the Guam Housing and Urban Renewal Authority (GHURA). Other wards receive benefits from Veterans Affairs and the Social Security Administration that require management and communication with those agencies. Many individuals and their families face

complex social problems as a result of the unanticipated incapacity of a family member due to mental disability, medical trauma, or the aging process and are assisted in making decisions and connected to services through the OPG's case management component. With respect to the OPG's ability to meet its statutory mandates, the former Public Guardian had this to say in the OPG's 2007 annual report:

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.

(Emphasis in bold in the original.) The Interim Public Guardian most assuredly agrees with the former Public Guardian's sentiments with respect to the professionalism displayed by OPG's staff, their enthusiasm, and in particular, their devotion to the OPG's mission. The Interim Public Guardian also agrees that manageability of the caseload is at maximum capacity given current staffing and resources.

In the OPG's 2007 annual report, the former Public Guardian expressed concerns that projected caseload exceeded current resources:

**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.

(Emphasis in bold in the original.)<sup>10</sup>

The OPG did, in fact, maintain the status quo for the most part during 2008, and continued to conduct intakes as received. To a degree, although not entirely, the OPG also declared an unofficial moratorium on opening new cases during the last half of 2008, which in turn allowed the OPG the opportunity to “clean house,” to take inventory and re-prioritize how to best meet its mission objectives. By the end of January 2009, many matters that had been referred but not acted upon in previous years had been re-reviewed and either closed altogether, intake appointments scheduled, or officially opened as new intakes with the OPG making the determination to file as guardian; petition for guardianship on behalf of a family member or members, and in one case friend, of the proposed ward; or petition for co-guardianship with a family member. That, in turn, has permitted the Interim Public Guardian to focus on more global or systemic issues affecting the OPG’s clientele and to explore advocacy on behalf of adults with disabilities in broader ways, discussed in further detail within.

The Interim Public Guardian’s focus on broader issues has not been without consequence within the OPG. A deliberate decision was made in the beginning of the Interim Public Guardian’s tenure to depend more heavily on staff, in particular the social worker, to assume duties previously shared by the former Public Guardian. This helped to identify where the “stressors” were in the OPG, and permitted the OPG to re-prioritize the social worker’s workload, to consolidate or eliminate where possible, functions performed by the OPG that could or should be performed by other service agencies, and to take a more proactive, rather than reactive, approach to the needs of the OPG’s wards. The OPG continues to look for opportunities to eliminate or reduce waste and duplication without compromising its statutory duties and responsibilities to the wards and community it serves.

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<sup>10</sup> The former Public Guardian also suggested that additional staff would necessitate additional work space, and requested a second vehicle to supplement the one official vehicle assigned to OPG, a 1998 Hyundai Access.

The former Public Guardian's 2007 annual report contained specific staffing recommendations:

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**

The recommended staffing additions may have been a bit ambitious when originally presented in the OPG's 2007 annual report. Given the condition of the Government of Guam's current finances, the OPG recognizes that some of the requests are simply not economically viable, at least at this time. The suggestion of adding a part-time nurse who could presumably accompany the social worker on visits to wards that live independently is withdrawn, if for no other reason than that, in the paradigm of "integrated service," the provision of nursing services are (or should be) the function of the Department of Public Health and Social Services and the Department of Mental Health & Substance Abuse. Also, assuming that the number of referrals and intakes remains constant and has reached a plateau for the immediate future, the Interim Public Guardian does not believe that an additional public guardian is necessary.

With respect to the request for an additional judicial social worker, the Interim Public Guardian emphatically agrees that the workload of the existing social worker has exceeded or at least reached maximum capacity in terms of the effectiveness and quality of services that the OPG is capable of delivering with only one social worker. The OPG has already in recent months critically streamlined and re-prioritized the social worker's daily tasks; the Interim Public Guardian has also retrieved a number of temporarily delegated duties, in order to reduce delay in processing referrals and intakes due to the backlog of matters assigned to the social worker. Service to existing wards, by necessity, takes precedence over processing referrals and new intakes, except in emergencies which are handled by the Public Guardian personally anyway.

When the Interim Public Guardian arrived, the philosophy of the staff of the OPG had been "there is no one else to do it, so we must." To a degree that may be true, given the fact that one of the specific statutory purposes of the OPG, if not its main reason for being, is to step in where disabled adults "have no relatives or friends willing and able to act as guardian." With the social worker's highest priorities being directed toward case management and shepherding the various wards through the array of services and benefits programs, there is simply not enough time in the day for only one social worker



to also provide services, e.g., personal shopping, transportation and accompanying to doctors and hospital visits, filling prescriptions, deliveries to the Department of Correction and DMHSA, and the like, that could or should be performed by personal care attendants (finances permitting), or social workers from other agencies or care providers. It is imperative that agencies and institutions like DMHSA; DISID; DPHSS; and public and private contract care providers (e.g., St. Dominic's; Catholic Social Services; Latte Treatment Center) shoulder their own responsibilities which many but not all had until recently simply deflected to the OPG and its social worker claiming lack of resources. An unscientific survey of other jurisdictions with public guardian offices suggests that some jurisdictions expect public guardians to provide these kinds of ancillary services, some do not, and each is funded and staffed according to the expectations of their respective jurisdiction. If the Guam Legislature determines that such services should be provided by the OPG, then it must be asked to fund it.

The OPG also could not agree more with the former Public Guardian's recommendation that an additional clerk typist/runner be added to the OPG's staff, which would provide relief to both social worker and secretary. If the legal secretary were not also tasked to single-handedly manage the financial and bookkeeping responsibilities described in partial detail earlier, there might not be a need. Add to a legal secretary's ordinary responsibilities – receptionist, office administrator, typist, file clerk, occasional delivery person, and preliminary drafts-person for correspondence and court filings – that of managing the finances for 50 some wards, and it becomes readily apparent that it is much too much to ask of any single individual. The Interim Public Guardian has already tried to reduce or eliminate much of what a runner would do from the social worker's responsibilities, but a certain amount will always remain a necessary part of the job. To their credit, both the legal secretary and social worker have performed admirably, indeed heroically in the circumstances. With the addition of a clerk typist/runner a *minimum* of 20 hours a week, someone who could also perform the responsibilities of receptionist and file clerk, the division of labor within the OPG becomes considerably more reasonable.

The former Public Guardian's recommendation that the OPG be allowed to add a financial analyst technician to its staff is reserved for last. It is the philosophy of the Interim Public Guardian that no one person should be deemed indispensable to an organization, and that backup should always be available in the event something were to happen to key personnel. Since arriving at the OPG in August 2008, the Interim Public Guardian has endeavored to document with as much detail as possible the financial responsibilities performed by the legal secretary, and the case management services provided by the social worker. When the Interim Public Guardian first arrived, the legal secretary was away from the office for approximately a month. And although an individual was detailed from the Clerk's office to fill in and had some basic familiarity with the financial operations of the OPG, in the

secretary's absence, that person was simply not well-enough versed in the nuances of managing 50 or more individual's finances to keep matters running as smoothly as the public and the wards of the OPG have come to expect. Whether or not the OPG is staffed with a financial analyst technician, it is imperative that someone else be cross-trained to perform those financial duties currently tasked to the legal secretary in the event she retires from service with the OPG or should be away from the office for any more than two weeks at a time.

Although it is unclear exactly what the former Public Guardian had in mind with respect to the request for a financial analyst technician, it is clear that there is the OPG is able to conduct only limited analysis with respect to any individual ward's particular finances. To be sure, receipts and records of income and expenditures are maintained and are easily enough retrieved from FMD or the OPG's own files. But currently, the OPG does not have the capability to conduct more detailed analysis of categories, classifications and expenditures from which to draw more sophisticated conclusions in regard to the prudent management and investment of wards' funds. The addition of a financial analyst would also greatly assist the OPG in the preparation of tax returns and related filings, financial reports required by the U.S. Department of Veterans Affairs and Social Security Administration, and detailed analyses for accounting purposes when called upon to do so by the court in individual cases. Whether on a seasonal or 20 hour per week part-time basis, there is a particularized need for access to a financial analyst in order for the OPG to fulfill its statutory commitments and, just as importantly, to set an example to guardians elsewhere on Guam.

### **Computerized Case Management Information System**

At the moment, the OPG employs an ad hoc assortment of record keeping tools – paper forms for intake and contacts; logbooks to track new intakes; different loose-leaf notebooks to track petty cash and QUEST Card accounts; a variety of homemade spreadsheets to input personal, health, financial, and public assistance data, and to record events, such as when prescriptions need to be refilled or applications for public benefits renewed – none of which are capable of generating useful reports. Although the OPG computers are networked for file and print-sharing, and have access to the Internet and the court system's email, they are not truly networked in a manner designed to take advantage of modern technology. Indeed, the OPG has been experimenting (successfully) recently with an Internet-based calendar system (Google Calendar) so that the staff can see and modify one another's combined calendar from office or home.

One of the Public Auditor's specific recommendations in her 2006 Audit of the OPG was the utilization of "an electronic database for the management of ward case." The OPG's 2007 annual report stated that "[a] data base program has been devised within the court for this office. It remains to be implemented

and utilized by the OPG.” Upon taking office in August 2008, the Interim Public Guardian inquired after this so-called database program that had reportedly been written and was informed that its author had left the service of court. No one within the court system knew about it or where it might be. The OPG determinedly pursued the individual with the hopes that he would return and complete the installation of this program he said he had created. Despite personal assurances that he would return, he never did. Repeated phone calls to the individual and his place of employment in a local senator’s office were never returned. The OPG finally gave up and began looking for case management solutions of its own. Although there may be others products available, the Interim Public Guardian has found what he believes to be a reasonable solution (a product called AbacusLaw law practice management software) at a reasonable price (less than \$2500), and shared that information with the Chief Justice in September of 2008. It is currently being evaluated by the Management Information System division of the judiciary who will report back to the Chief Justice with a final recommendation. It is expected that a new case management system will be deployed sometime in 2009.

The contribution made by a computerized case management system with which the OPG could track, integrate and analyze data and generate reports cannot be emphasized enough. Indeed, the ability to track and analyze data and generate *meaningful* reports may also greatly reduce the need for a financial analyst. While the initial investment inputting data into a properly designed and configured case management system would be time and labor intensive, it would unquestionably generate immediate savings and triple productivity as soon as it is implemented.

### **UNADDRESSED ISSUES FROM PRIOR REPORTS**

Each year in this report it is appropriate to identify island-wide deficiencies that affect our wards. What follows are the deficiencies noted by the former Public Guardian in the OPG’s 2007 annual report, none of which have been addressed, and so warrant repeating:

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.<sup>11</sup>
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.

To the specific list of unaddressed critical issues facing wards of the OPG from the 2007 annual report, the Interim Public Guardian would add the following observations, which pertain to all guardianships on Guam, and have remain unaddressed from prior annual reports:

- As first noted in the OPG's 2004 annual report, Guam guardianship laws have not been amended or updated since probably 1953, certainly no more recently than when the 1970 Probate Code was first published. *See generally*, Guam Code Annotated, Title 15, Chapters 35 – 48. The laws are woefully outdated, and it is recommended that the courts, in cooperation with the Guam Bar Association, establish a committee to draft proposed legislation to modernize Guam law.
- Existing laws governing the responsibilities of guardians and the management and supervision of private guardianships, including the requirement that guardians post bond, *see* 15 GCA § 4001 et seq., and file regular reports, do not appear, as a matter of custom and practice, to be routinely applied and enforced by the Superior Court.

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<sup>11</sup> Today, St. Dominic's receives \$135 per day. Residents with income are still also asked to pay for laundry service and air conditioning separately.

## **SUMMARY OF RECOMMENDATIONS**

The mission of the Office of Public Guardian is defined by statute. In addition to those issues identified from prior reports, the recommendations of the Interim Public Guardian as to how that mission and the challenges facing the OPG can most effectively be met in the immediate future are summarized as follows:

1. Staffing. First, because of the volume of the OPG's legal secretary's non-secretarial duties, i.e., her management of ward finances, in addition to her ordinary legal secretarial duties, there is a critical need to build some redundancy into the OPG, a second person capable of handling the day-to-day financial affairs of the OPG's wards. Second, there is a critical need for additional clerical, "runner," and receptionist support, a minimum of 20 hours per week to relieve the legal secretary and social worker from tasks that are secondary to responsibilities that do not require their level of individual experience and expertise.
2. Computerized Case Management Information System. A computerized case management information system to track and analyze the myriad of data and to generate meaningful reports is critical to a truly efficient and streamlined operation. If properly designed, a proper case management system might also reduce or even eliminate the need for an independent financial analyst necessary for proper reporting to the court.
3. Investment of Ward Funds. It is recommended that the OPG, in consultation with the Public Guardian Review Board and the Superior Court, continue the work of the former Public Guardian to establish a formal policy concerning investment of funds kept in excess of those necessary for management of the wards' day-to-day affairs.
4. Fee Schedules. The fee schedule contained in Section VII of the *Policies, Procedures and Rules of the Office of the Public Guardian* should be revisited both in terms of its advisability as a matter of policy altogether, and in terms of its practicality.
5. Review and amendment of *Policies, Procedures and Rules of the Office of the Public Guardian*. While the current policies and rules are not so inconsistent with actual practice as to impair the functioning of the OPG or the rights of the public, a comprehensive review of the OPG's *Policies, Procedures and Rules* and the Review Board's *Rules of Order* is recommended.
6. Public Guardian Fund. In order to be prepared for contingencies which the OPG's wards are themselves sometimes unable to meet and cannot be met by public assistance elsewhere, the OPG and its Review Board should investigate ways to exercise the OPG's statutory authority to

solicit donations and apply for public and private grants and replenish the Public Guardian Fund.

7. Volunteer Program. The OPG should renew its efforts to re-establish a regular volunteer program.
8. Educational Outreach. Educational outreach efforts should be expanded toward educating the public concerning the nature of, and alternatives to, guardianships; the OPG should take a more active role in educating local attorneys and private guardians as to their roles and responsibilities; and lobbying efforts should be expanded, to inform the Legislature, the Executive Branch and the Judiciary about the special needs of this most vulnerable population in their care.
9. Guardianship Case Review Procedures. Presiding Superior Court Judge Lamorena's question "Who is guarding the Guardian?" deserves an answer by the courts, the Legislature and by all concerned with the protection and care of Guam's population served by court-appointed guardians. The OPG, the Public Guardian Review Board, and the Superior Court, perhaps with a view toward proposing specific recommendations to the Legislature, should continue as planned to refine mission objectives of the Review Board and the procedures by which all guardian, public and private, are made accountable to their wards.

## **CONCLUSION**

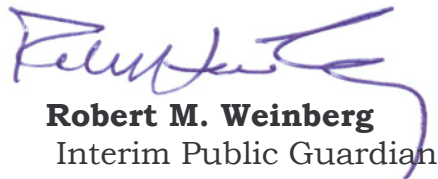
The Office of the Public Guardian has concluded its eighth year. The Public Auditor perhaps described it best in the conclusion of her 2006 Performance Audit Report:

Wards of the Office of Public Guardian are among the most vulnerable citizens that the OPG serves. These individuals are usually unable to make decisions that will protect their health, welfare and financial resources. They are often victimized and have very few advocates who have personal knowledge and time to act on their behalf or are not capable of advocating for them. Because these clients do not have personal or community ties or have no family members willing to become guardians, the OPG assumes the responsibility for decisions concerning the care and safety of these incapacitate adults.

The obligations to make appropriate decisions for the clients served by the Public Guardian and to provide accountability over such decisions are tremendous responsibilities.

The Office of Public Guardian fills a critical need and performs a vital service to Guam's elderly and adults with disabilities, who are otherwise incapable of managing their own personal or financial affairs. There is no indication that the workload of the Office will decrease in 2009. To the contrary, with the proper resources, there is much to be done to fulfill the mandates envisioned by the Legislature over eight years ago.

Respectfully submitted, this the 9th day of February, 2009.



**Robert M. Weinberg**  
Interim Public Guardian

### **Postscript**

The Interim Public Guardian would be remiss if he did not acknowledge the significant contribution to the care, protection and advocacy on behalf of Guam's elderly and disabled adults by John Weisenberger, Esq., the first person to hold the office of Public Guardian. Upon arriving at the OPG in August 2008, the Interim Public Guardian found an extremely capable and enthusiastic staff in an office that at times practically ran itself. And Mr. Weisenberger is due the credit for that. Given occasion to re-visit some of the policies and practices instituted by Mr. Weisenberger, the Interim Public Guardian's modifications have generally been very minor, more matters of style than substance. The thoughtfulness and care with which Mr. Weisenberger nurtured and guided the OPG and its wards over the course of eight years is readily apparent to those who knew him and will become apparent to those who may follow him in the Office of Public Guardian. On behalf of the staff and the wards of the OPG, we thank him for his service.