REPORT NO. 95-04

STATE OF FLORIDA

OFFICE OF PROGRAM POLICY ANALYSIS AND GOVERNMENT ACCOUNTABILITY

REVIEW

OF

PUBLIC GUARDIANSHIP

WITHIN THE

STATE COURTS SYSTEM

September 6, 1995

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State of Florida

OFFICE OF PROGRAM POLICY ANALYSIS AND GOVERNMENT ACCOUNTABILITY

JAMES L. CARPENTER
INTERIM DIRECTOR

September 6, 1995

The President of the Senate,
the Speaker of the House of Representatives,
and the Legislative Auditing Committee

I have directed that a review be made of Public Guardianship within the State Courts System. The results of the review are presented to you in this report. This review was made as a part of an ongoing program of performance auditing as mandated by Section 11.51(1), Florida Statutes. This review was conducted by Kathryn Bishop under the supervision of D. Byron Brown.

We wish to express our appreciation to the staff of the State Courts System and the Department of Elder Affairs for their assistance.

Respectfully yours,

James L. Carpenter
Interim Director

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SUMMARY

No. 95-04

Review of Public Guardianship

Purpose

The purpose of this review was to determine the current status of Offices of Public Guardian in Florida, which are authorized by Ch. 744, F.S., and to identify alternative approaches to implementing public guardianship.

Background

Chapter 86-120, Laws of Florida, created the Public Guardianship Act (Part IX of Ch. 744, F.S.). The Act authorizes the establishment of Offices of Public Guardian for the purpose of providing guardianship services for incapacitated persons when no private guardian is available. Section 744.703, F.S., specifies that a Chief Judge of a judicial circuit may establish an Office of Public Guardian within the judicial circuit. Offices of Public Guardian received $606,684 in state funds and $1,405,749 in locally generated funds for fiscal year 1993-94. For fiscal year 1994-95 Offices received $635,521 in state funds; the amount of local funds is not readily available.

Seven Offices of Public Guardian have been established to serve 12 counties. Three Offices are supported with state funds and four are supported by locally generated funds. In 1986, the Legislature provided funds for the establishment of two Offices of Public Guardian as pilot projects—one in Leon County to serve the entire 2nd Circuit and one in Broward County (the 17th Circuit). In 1989, the Legislature provided additional funds for Hillsborough County (the 13th Circuit) to establish a contract with a non-profit organization (Lutheran Ministries) to serve as the Office of Public Guardian.

Since 1990, four additional Offices have been established: Dade County (the 11th Circuit); Palm Beach County (the 15th Circuit); and Collier and Lee counties in the 20th Circuit. These Offices are administered by circuit courts, non-profit organizations, or county clerks, using combinations of county funds, court filing fees, and funds from non-profit organizations.

Findings

Factors That Hinder Establishing Additional Offices of Public Guardian

Competing priorities for limited state and local resources appear to have hindered the establishment of Offices of Public Guardian in additional circuits. We found that seven Chief Judges in additional circuits have requested state funds to establish Offices over the last three years (1993-94, 1994-95, or 1995-96). In addition, Chief Judges in two other circuits told us that they have considered establishing Offices. However, the Chief Justice has not requested funds to establish additional Offices of Public Guardian in the Court's Legislative Budget Requests in recent years due to competing priorities for limited state resources.

Although s. 744.706, F.S., also authorizes the operations of Offices of Public Guardian to be financed by funds raised through local efforts, we identified several obstacles to obtaining county funding for Offices of Public Guardian: (1) some counties are reluctant to fund additional programs; (2) court filing fees are already high; and (3) if the court filing fees are raised, the county is required to produce matching funds.

Lack of Review of State-Funded Offices

Offices in the 2nd and 17th Circuits were established as pilot projects in 1986. However the State Courts System has not established procedures, goals, or evaluation criteria for the Offices. These Offices have received state funds for the past nine years but have not been evaluated to determine the extent to which they are meeting Legislative intent with regard to guardianship services. As a result, it is not clear whether the Offices are accomplishing the Legislature's intent of providing guardianship services for incapacitated persons.

Conclusions and Recommendations

The current placement of the Offices of Public Guardian in the State Courts System is not the most appropriate placement. State funds have been provided over the past nine years through the State Courts System to fund pilot projects in three circuits. However the State Courts System has not established procedures and goals for Offices of Public Guardian or criteria for assessing how well these state-funded pilot projects are serving those in need of services. Nor has any review of these Offices been

conducted to identify their accomplishments. In addition, there are no Legislative provisions requiring an evaluation or assessment of Offices. The above factors, combined with the lack of additional state funding to expand to a statewide program, indicate that alternatives to the current situation should be considered.

Based on our review and assessment of several alternatives, we recommend that the Legislature consider: (1) discontinuing state funding of existing Offices and allow local governments to determine how guardianship services can best be provided to indigent persons; or (2) transferring responsibility for the Offices of Public Guardian to an executive agency.

Discontinue

If the Legislature wishes to discontinue state funding of existing Offices, it should provide existing Offices an opportunity to find new funding sources or to find persons to serve as guardians for the wards currently being served. The Legislature should then repeal Ch. 744, Part IX, F.S.

Transfer

If the Legislature wishes to make state funds available for public guardianship services for citizens of Florida, it should consider two courses of action. First, assign responsibility for public guardianship to the Department of Elder Affairs. That agency's mission is most closely aligned with the purpose of public guardianship. Second, the Legislature may wish to fund Offices of Public Guardian through the use of grants, based on identified need and the availability of supplemental funding generated through court filing fees, county general revenue, or donations.

Regardless of the funding mechanism chosen, the Department of Elder Affairs should: (1) establish clear goals and objectives regarding guardianship services; (2) establish procedures and criteria for assessing how effectively and efficiently the Department is serving those in need of services; and (3) conduct periodic reviews to identify accomplishments and areas in need of improvement. These components would provide a systematic approach for gathering information and monitoring the Department's performance in providing

guardianship services to citizens determined in need of services.

Agency Responses

The State Courts Administrator took issue with what he perceived to be assumptions upon which our conclusions and recommendations were based. He did, however, agree that placement of the program in the judicial branch, rather than in the executive branch or some other alternative, is a debatable issue. He provided several additional alternatives for consideration prior to recommending a change in current placement. See Appendix B of our final report for the State Courts Administrator's response and additional comments from the Interim Director of the Office of Program Policy Analysis and Government Accountability.

The Secretary of the Department of Elder Affairs, in his written response to our preliminary and tentative findings, disagreed with placing the program in the Department of Elder Affairs.

Review of Public Guardianship

CHAPTER I Scope and Methodology

Purpose and Scope

Reviews are conducted by the Office of Program Policy Analysis and Government Accountability, a unit of the Office of the Auditor General, as part of the Legislature's oversight responsibility for public programs. The primary objective of reviews is to provide information the Legislature can use to improve programs and allocate limited public resources.

The purpose of this review was to determine the current status of public guardianship offices in Florida, which are authorized by Ch. 744, F.S., and to identify alternative approaches to implementing public guardianship. Our review was conducted in accordance with generally accepted government auditing standards and accordingly included appropriate performance auditing and evaluation methods. Fieldwork was conducted from December 1994 to February 1995.

We reviewed pertinent sections of the Florida Statutes and Agency Budget Requests. We interviewed selected staff in Offices of Public Guardian, Department of Elder Affairs, Department of Health and Rehabilitative Services, legal services organizations, and advocacy groups. Finally, we interviewed officials involved in public guardianship in seven other states and surveyed the Chief Judges in all 20 judicial circuits since Ch. 86-120, Laws of Florida, authorizes Chief Judges to establish Offices of Public Guardian.

CHAPTER II Public Guardianship: An Overview

Background

Chapter 86-120, Laws of Florida, created the Public Guardianship Act (Part IX of Ch. 744, F.S.). The Act authorizes the establishment of Offices of Public Guardian for the purpose of providing guardianship services for incapacitated persons when no private guardian is available. An incapacitated person is a person who has been judicially determined to lack the capacity to manage their property and essential health or safety. A public guardian may be appointed by a judge for a person if there is no willing and responsible family member, friend, or other entity available to serve as guardian, and the person's assets and income do not exceed specified levels. [1] The population served by Offices of Public Guardian includes the elderly, developmentally disabled, and mentally ill persons. While there is no information available on the number of people who need a guardian, census data shows that over 500,000 people are over 60 years of age, live alone in Florida, and earn less than $25,000 a year.

Guardianship is a legal procedure in which a guardian, appointed by a court, is lawfully vested to take care of another person and manage the property and rights of the person considered incapable of administering his/her own affairs. (See Appendix A for an outline of the adjudication process.) In Florida, a person can be declared fully or partially incapacitated under Ch. 744, F.S., and have a guardian appointed. If declared fully incapacitated, the person becomes the ward of the guardian and loses all the rights displayed below in Exhibit 1. If declared partially

[1] Section 744.704, F.S., states that a public guardian may serve as guardian if the assets of the ward do not exceed the asset level for Medicaid eligibility, exclusive of homestead and exempt property as defined in s. 4, Art. X of the State Constitution, and the ward's income, from all sources, is less than $4,000 per year. Income from public welfare programs, supplemental security income, optional state supplement, a disability pension , or a social security pension shall be excluded in such computation. However, a ward whose total income, counting excludable income, exceeds $30,000 a year may not be served.

incapacitated, the ward loses only certain rights specified by the judge.

Exhibit 1: Rights Wards May Lose and Responsibilities Guardians May Assume

Rights Wards May Lose	Responsibilities Guardians May Assume for Wards
Marry	Contract
Vote	Sue and defend lawsuits
Travel	Apply for government benefits
Have a driver's license	Manage property
Seek and retain employment	Make any gift or disposition of property
Personally apply for government benefits	Determine the ward's residence
	Consent to medical treatment
	Make decisions about the ward's social environment or other aspects of the ward's life

Source: Office of Program Policy Analysis and Government Accountability review of Ch. 744.3215, F.S.

Organization

Section 744.703, F.S., specifies that a Chief Judge of a judicial circuit may establish an Office of Public Guardian within the judicial circuit. Chief Judges are responsible to the Chief Justice of the Supreme Court for the administrative supervision of the circuit and county courts in their jurisdiction. In the State Courts System, the Office of State Courts Administrator allocates state funds to circuits. The duties of this Office include preparing budget requests for Supreme Court approval and presentation to the Legislature.

Funding

Offices of Public Guardian may be funded through either state or local funds. Section 744.706, F.S., provides for funding appropriated by the Legislature to a judicial circuit. The law also authorizes Offices of Public Guardian operations to be financed through locally generated funds. In addition, s. 28.241(1), F.S., authorizes counties to impose filing fees up to $10 for each civil action filed, contingent upon the county matching these funds from county general revenue, for payment of the costs associated with public guardianships. Offices of Public Guardian received $606,684 in state funds and $1,405,749 in locally generated funds for fiscal year 1993-94. For fiscal year 1994-95 Offices received $635,521 in state funds; the amount of local funds is not readily available.

CHAPTER III Current Status of Public Guardianship

Offices of Public Guardian currently serve a total of 12 counties. Three Offices, which serve eight counties in three circuits, receive state funds. Four county-funded Offices have been established in three other circuits. The establishment of Offices of Public Guardian in additional circuits appears to be hindered by competing priorities for limited state and local resources. Public Guardianship is not administered as a state program and has not been expanded to all circuits that have identified a need.

Offices of Public Guardian

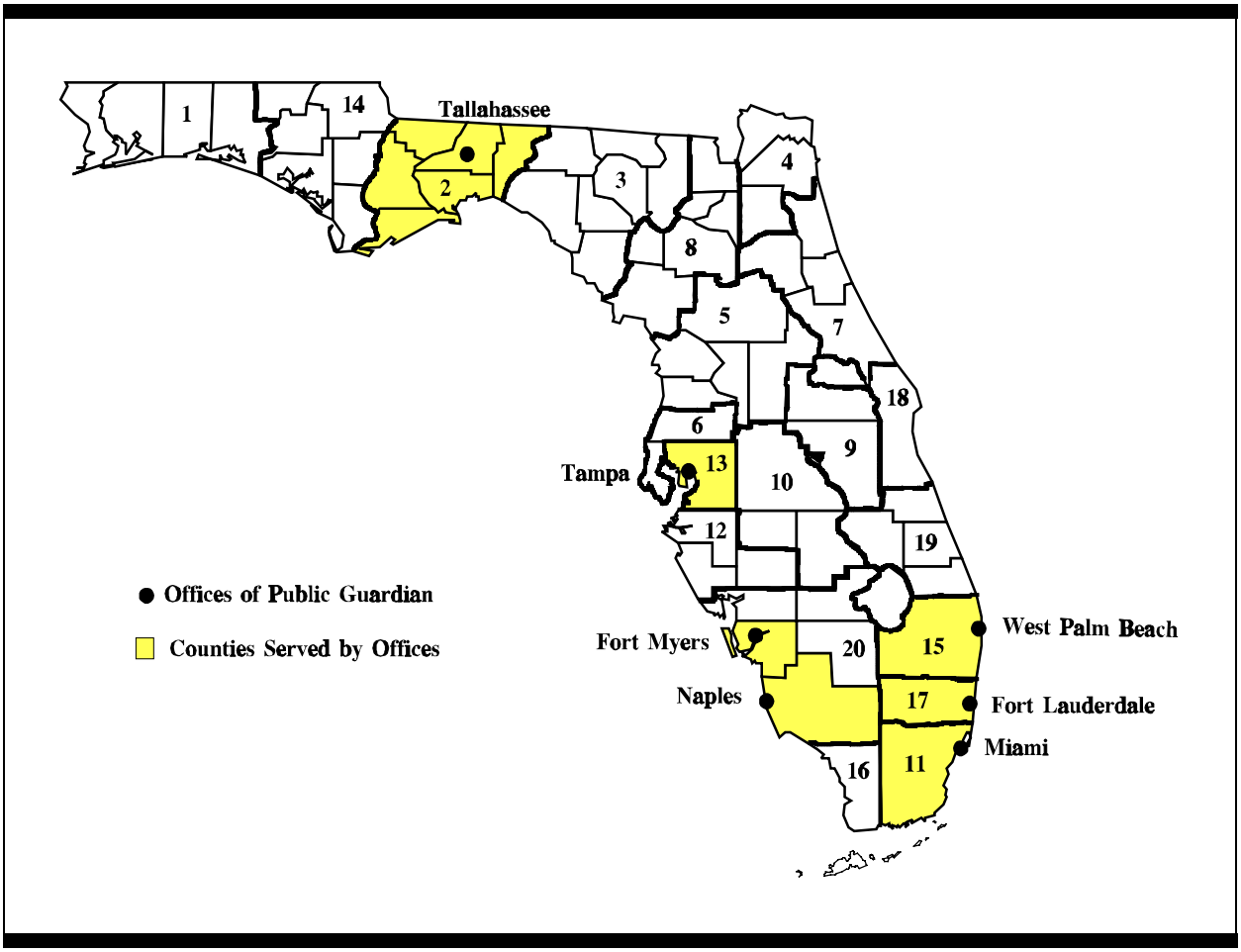
Chapter 744, Part IX, F.S., sets forth the Legislature's intent to ensure the availability of guardianship services to persons who do not have or cannot afford a private guardian. Section 744.703, F.S., assigns Chief Judges the authority for determining the need for Offices of Public Guardian. Offices can be funded through state funds or locally generated funds.

Seven Offices have been established to serve 12 counties (see Exhibit 2). Three Offices are supported with state funds and four are supported by locally generated funds. In 1986, the Legislature provided funds for the establishment of two Offices of Public Guardian as pilot projects-one in Leon County to serve the entire 2nd Circuit and one in Broward County (the 17th Circuit). In 1989, the Legislature provided additional funds for Hillsborough County (the 13th Circuit) to establish a contract with a non-profit organization (Lutheran Ministries) to serve as the Office of Public Guardian. This Office also uses funds from private sources. State funding has been provided for these three offices each year since their establishment.

Since 1990, four additional Offices have been established: Dade County (the 11th Circuit); Palm Beach County (the 15th Circuit); and Collier and Lee counties in the 20th Circuit. These offices are administered by the court, non-profit organizations, or county clerks, using

combinations of county funds, court filing fees, and funds from non-profit organizations.

Exhibit 2: Counties Served by Offices of Public Guardians



Source: Office of Program Policy Analysis and Government Accountability based on s. 26.021, F.S., and information provided by chief judges and Offices of Public Guardian.

During fiscal year 1993-94, the three Offices that received state funds served as guardians for 368 persons and expended $602,889 to provide guardianship services. The four county-funded Offices reported serving 766 persons in the 1993-94 fiscal year with funding of approximately $1.28 million. The largest Office in the state, in Dade County, served as guardian for 672 persons with funding of over $1.1 million.

Based on the information provided by Offices of Public Guardian, the average estimated cost per ward during fiscal year 1993-94 ranged from $821 to $2,311. [2] The average estimated cost per ward for state-funded offices ranged from $1,488 to $2,311. Costs per ward may vary due to the size of the Office, the types of wards, the make-up of full or partial guardianships, the time and distance necessary to visit the wards, whether the wards live independently or in congregate facilities, and the health condition of the ward.

The elderly, developmentally disabled, and mentally ill persons are the three primary categories of persons served by Offices of Public Guardian. Referrals for guardianship services come primarily from the Department of Health and Rehabilitative Services, nursing homes, and hospitals. Exhibit 3 contains a description of each Office's amount of funding, number of wards, types of wards, and source of referrals for fiscal year 1993-94.

[2] The Palm Beach Office was established in May 1994; therefore its estimate of $3,095 per ward includes start-up costs.

Exhibit 3: Description of Florida Offices of Public Guardian

Date Office Established	Counties Served	Type of Funding/ Administration	Fiscal Year 1993-94 Funding	Fiscal Year 1993-94 Number of Wards and Cost Per Ward	Composition of Ward Population	Source of Referrals
1986	Circuit 2 Franklin Gadsden Jefferson Leon Liberty Wakulla	State funds Circuit-administered	$ 243,111	113 $2,311 per ward	53% Developmentally disabled [1] 15% Mentally Ill 12% Elderly 20% Other	50% Department of Health and Rehabilitative Services 10% State hospital 40% Nursing homes
1986	Circuit 17 Broward	State funds Circuit-administered	$ 261,321	168 $1,488 per ward	52% Elderly 48% Developmentally disabled	9% Department of Health and Rehabilitative Services 7% State hospital 38% Nursing home 30% Hospitals 16% Other
1989	Circuit 13 Hillsborough	State funds Private grants Non-profit administered (Lutheran Ministries)	$ 102,252 $ 46,316	87 $1,598 per ward	60% Elderly 3% Developmentally disabled 21% Mentally ill 14% Dual diagnosis 2% Other	35% Department of Health and Rehabilitative Services 25% Nursing homes 30% Hospitals 10% Social service agencies
1990	Circuit 11 Dade	County funds Federal Older American Act Florida Bar Jewish Family Services non-profit administered	$1,126,551 $ 15,276 $ 69,606	672 $1,676 per ward	92% Elderly 8% Other	65% Court 15% Department of Health and Rehabilitative Services 0% State hospital 10% Nursing homes 10% Other
1994	Circuit 15 Palm Beach	County funds [2] Legal Aid Society non-profit administered	$ 65,000	21 $3,095 per ward	100% Elderly (also physically disabled and mentally disabled) [4]	100% Department of Health and Rehabilitative Services
1993	Circuit 20 Collier	County funds Local hospital contribution Court-administered	$ 3,000 $ 20,000	33 [3]	*Not Available	*Not Available
1993	Circuit 20 Lee	County funds [5] County contracts out with private attorney	$ 60,000	73 $821 per ward	34% Elderly 63% Developmentally disabled 3% Other	30% Department of Health and Rehabilitative Services 8% State hospital 30% Nursing homes 2% Hospitals 2% Other

[1] Circuit 2 reported that most wards fall in more than one category.
[2] Palm Beach uses filing fees and county matching funds.
[3] Fiscal year 1993-94 information on wards was not available. The Office has reported that it has served 33 wards since its inception.
[4] This Office has established an additional criteria for wards: they must be over 60 years of age.
[5] Lee County uses county filing fees and county matching funds.

Source: Interviews and information provided by Offices of Public Guardian.

Factors That Hinder Establishing Additional Offices of Public Guardian

Competing priorities for limited state and local resources appears to have hindered the establishment of Offices of Public Guardians in additional circuits. The Legislature intended to establish Offices of Public Guardian for the purpose of providing guardianship services for incapacitated persons when no private guardian is available. The law also provides for funding through two sources: funds appropriated by the Legislature and locally generated funds. However, we identified issues at the state and local levels that appear to limit the use of these funding mechanisms.

Section 744.703, F.S., provides Chief Judges authority to determine the need for Offices of Public Guardian. We found that seven Chief Judges have requested state funds to establish Offices over the last three years (1993-94, 1994-95, or 1995-96). In addition, Chief Judges in two other circuits told us that they have considered establishing Offices. Although Circuit Judges have requested funding for additional Offices, the Chief Justice has not requested funds to establish additional Offices of Public Guardian in the Court's Legislative Budget Requests in recent years. According to the State Courts Administrator, the priority for limited state resources has been given to the essential constitutional functions performed by the court over public guardianship, which is considered a non-essential function.

Section 744.706, F.S., also authorizes the operations of Offices of Public Guardian to be financed by funds raised through local efforts. These funds can include a county fee of up to $10 on each civil action filed, contingent upon the availability of matching funds from county general revenue. Judges identified three obstacles to obtaining county funding for Offices of Public Guardian: (1) some counties are reluctant to fund additional programs; (2) court filing fees are already high; and (3) if the court filing fees are raised, the county is required to produce matching funds. In addition, all counties within a circuit may not be willing to provide funds. Because only two of the five counties in the 20th Circuit were willing to provide funds, the Chief Judge established two county-level Offices rather than a circuit-wide Office.

In areas without Offices of Public Guardian, the provision of guardianship services for indigent persons varies depending on local and private resources. In some counties, non-profit organizations funded by the county or from private sources may provide guardianship services to indigents. For example, an Orange County non-profit organization in the 9th Circuit receives county funds to provide guardianship services to indigents. In other counties, professional guardianship companies or volunteers may serve as guardians for no compensation.

Public Guardianship Has Not Been Evaluated on a Statewide Basis

Current law does not provide for the operation of a statewide public guardianship program. With the passage of Ch. 86-120, Laws of Florida, the Legislature authorized the establishment of circuit-based Offices to provide public guardianship services to indigent wards whose needs cannot be met through less drastic intervention. That law established pilot Offices of Public Guardian in the 2nd and 17th Circuits, and set forth procedures for additional circuits to request state funds or to use local funds to establish similar offices. One additional office was added in 1989 in the 13th Circuit, using a non-profit organization to deliver services. State funds for the continued operation of these three Offices have been provided each subsequent year. Each of these Offices has operated at the circuit level, independent of administrative direction from the Office of the State Courts Administrator.

Each of the Offices of Public Guardianship submits periodic reports to the Chief Judge of the circuit, and has been audited by the Office of the Auditor General, private accounting firms, or the Office of the State Courts Administrator. These reviews are useful in determining fiscal responsibility, legal compliance, and other management concerns, but do not address the issue of whether these Offices should be continued, or whether the state should expand the Public Guardianship program to other circuits.

In part because public guardianship is not administered as a statewide program, the Office of State Courts Administrator has not evaluated public guardianship on a statewide basis. Additional circuits that have identified a need for public

guardianship services have not been provided state funding to establish such offices. Requests for new offices have been assigned lower priorities than requests for continued funding for existing offices. As a result, state funding for public guardianship services has continued for nine years, but is limited to only 3 of 20 circuits. Given that additional circuits have identified a need for public guardianship and have requested funding, and the Legislature has continued providing limited resources to 3 of 20 circuits, lack of such evaluation limits the ability of the Office of State Courts Administrator to provide the Legislature with information so they may determine whether these resources should continue to fund only three circuits or whether a more equitable distribution of the limited resources could be made.

Conclusions

Chapter 744, Part IX, F.S., sets forth the Legislature's intent to ensure the availability of guardianship services to persons who do not have or cannot afford a private guardian. Yet Offices of Public Guardian have been established in less than one-fifth of the state's counties. At least seven circuits, representing 22 counties, have identified a need for such services since fiscal year 1993-94, but have not established Offices. These circuits have not received equitable state funding due to competition for limited state resources. Because public guardianship is a circuit-based rather than a statewide program, the Office of the State Courts Administrator has not gathered information that could be used to determine the best use of those limited resources. In the following section, we discuss alternatives available to the Legislature regarding Public Guardianship.

CHAPTER IV Alternatives

Florida's practice of establishing Offices of Public Guardian within the State Courts System is unique among the states, and may not be the best approach to providing public guardianship services to Florida citizens. Responsibility for public guardianship services should be transferred to an executive branch agency or left to the discretion of local governments. If transferred to an executive branch agency, statewide goals, objectives, and procedures for evaluating the effectiveness, efficiency, and need of such services should be established.

Florida is unique in its establishment of public guardianship offices within the State Courts System. Public guardianship laws in other states provide a diversity of approaches to providing guardianship services. Thirteen of the other 49 states (27%) provide for public guardianship through a state agency, such as a social service agency; 11 states (22%) administer public guardianship through local governments; and 16 states (33%) have varying approaches to public guardianship, ranging from allowing any public employee to serve as a guardian to authorizing the Governor to appoint a non-profit organization to provide guardianship services. Nine states have no authorization for public guardianship services in law.

We identified five alternative approaches that could be considered in Florida:

1. Continue with the current placement of Offices within the State Courts System;

2. Assign responsibility to the state's primary social service agency, the Department of Health and Rehabilitative Services;

3. Assign responsibility to the Department of Elder Affairs, a state agency charged with preventing the

neglect, abuse, and exploitation of elderly persons who cannot protect their own interests;

4. Delegate responsibility for Offices of Public Guardian to the counties; or

5. Repeal statutory provisions related to Offices of Public Guardian, and allow courts to appoint volunteers, public employees, or non-profit organizations as guardians for indigent persons.

Criteria for Assessing Alternatives

To assess these alternatives, we developed criteria through a review of literature on public guardianship and discussions with staff in Offices of Public Guardian, the State Courts Administrator's Office, and the Departments of Health and Rehabilitative Services and Elder Affairs. The criteria we used to assess the alternatives were:

- **Consistency with Agency Mission:** Does the alternative place responsibility for administration within an organization whose mission is consistent with providing guardianship services to elderly, developmentally-disabled, and mentally ill indigent persons?

- **No Conflict of Interest:** Does the alternative avoid potential conflicts between the interests of the persons being served and the responsibilities of the agency?

- **Need for Additional State Resources:** Does the alternative require additional staff and resources?

- **Ability to Establish Offices of Public Guardian When and Where Needed:** Does the alternative offer the opportunity for need for additional Offices to be identified and communicated to the Legislature?

Evaluation of Alternatives

The criteria used to assess alternatives are displayed in Exhibit 4 and show how each criterion would or would not be satisfied if public guardianship responsibilities were placed with a particular entity. Exhibit 5 displays the advantages and disadvantages of the various alternatives.

Exhibit 4: Evaluation of Alternatives

Criteria	Option #1 Circuit Courts (current approach)	Option #2 Department of Health and Rehabilitative Services (DHRS)	Option #3 Department of Elder Affairs (DOEA)	Option #4 County Government	Option #5 Repeal Ch. 744, Part IX, F.S.
Consistent with Agency Mission?	No, courts' primary mission is to manage and process court cases; only similar program is the guardian ad litem program	Yes, DHRS's mission is to provide services to the elderly, developmentally disabled, and other persons who may also need a public guardian	Yes, although focus is on elderly rather than develop-mentally disabled or mentally ill	Not applicable	Not applicable
Conflict of Interest?	No, court monitors appointed guardians through annual reporting	Yes, DHRS provides certain direct social services	No. DOEA does not provide direct services to the elderly	No, unless placed in a local social service agency	Not applicable
Need for Additional State Resources?	No, state funding would continue to be limited to eight counties	Yes, additional staff would be needed or current staff would have to be reassigned to carry out these responsibilities	Yes, additional staff would be needed or current staff would have to be reassigned to carry out these responsibilities	No, annual savings of $600,000	No, annual savings of $600,000
Ability to Establish Offices When and Where Needed?	No, identified need does not get communicated to the Legislature due to competing court priorities	Maybe, would compete with similar social service priorities	Maybe, would compete with similar advocacy priorities	Maybe, would depend upon local government initiative and resources	No, indigents in need of guardianship would have to rely upon volunteers

Source: Office of Program Policy Analysis and Government Accountability analysis.

Exhibit 5: Advantages and Disadvantages of Placement Options

Administering Agency	Advantages	Disadvantages
State Courts System	Circuit staff have an understanding of the legal aspect of guardianship.	The court's mission is not focused on the administration of a state public guardianship program; the State Courts System's mission is to process civil and criminal cases. "Non-essential" public guardianship budgetary needs compete with "essential" court services for limited state resources. Inequity between counties.
Department of Health and Rehabilitative Services	The Department of Health and Rehabilitative Services' mission is to provide services to the elderly, developmentally disabled, and other persons who may also need a public guardian.	This agency currently provides direct services to clients that either need or currently have a public guardian. In the past, the Department ruled that it was a conflict of interest to act as guardians for clients to whom they also provide services.
Department of Elder Affairs	Department's mission is consistent with the goals of public guardianship - the Department is responsible for overseeing implementation of state funded programs and services for the state's elderly population, which comprises a large portion of the wards under public guardianship. The Department is also charged with promoting the prevention of neglect, abuse, or exploitation of elderly persons unable to protect their own interests. (Ch. 430.03, F.S.) Avoids the conflict of interest question of direct service providers also being guardians since the Department does not provide direct services.	The Department may require additional resources to expand availability of services. The Department does not have responsibility for developmentally disabled or mentally ill indigent persons.
County Government	Since counties have the ability to generate their own funds, counties would not have to coordinate with other counties in the same circuit to establish offices. Need for public guardianship offices may be determined by community members and local groups. Currently, the state spends approximately $600,000 on public guardianship, therefore state expenditures would be reduced by $600,000.	Some counties in Florida may need public guardianship but cannot raise adequate funding to administer such a program. Currently, approximately 300 persons are wards of the state under state-funded Offices of Public Guardian. Continuation of guardianship services would depend upon availability of local funds. If local funds are not available, the courts would have to identify and appoint new guardians for these wards. Inequity between counties may increase.
None	No state or local responsibility. Currently, the state spends approximately $600,000 on public guardianship, therefore state expenditures would be reduced by $600,000.	Currently, approximately 300 persons are wards of the state under state-funded Offices of Public Guardian. The elimination of these state funds would require the identification and appointment of new guardians for these wards. Would require reliance upon volunteers to provide guardianship services.

Source: Office of Program Policy Analysis and Government Accountability analysis.

Conclusions and Recommendations

The current placement of the Offices of Public Guardian in the State Courts System is not the most appropriate placement. State funds have been provided over the past nine years through the State Courts System to fund Offices in three circuits. Although procedures were established in law to permit the addition of Offices in other circuits, limited state resources have prevented the establishment of Offices where a need has been identified. These factors indicate that alternatives to the current situation should be considered. Rather than continuing to provide state funds to only three circuits, we recommend that the Legislature consider: (1) discontinuing state funding of existing Offices and allow local governments to determine how guardianship services can best be provided to indigent persons; or (2) transferring responsibility for the Offices of Public Guardian to an executive agency.

Discontinuation

If the Legislature wishes to discontinue state funding of existing Offices, it should provide existing Offices an opportunity year of funding to find new funding sources or to find persons to serve as guardians for the wards currently being served. The Legislature should then repeal Ch. 744, Part IX, F.S.

Transfer

If the Legislature wishes to make state funds available for public guardianship services for citizens of Florida, it should consider two courses of action. First, the Legislature may wish to consider assigning responsibility for public guardianship to the Department of Elder Affairs. That agency's mission is more closely aligned with the purpose of public guardianship. Transferring responsibility to the Department of Health and Rehabilitative Services is a less appealing alternative since it provides direct services to many persons who may be eligible as wards, thus creating a potential conflict of interest for that agency to assume guardianship responsibility for clients to whom they also provide services. Leaving responsibility in the State Courts System would allow the problems we identified earlier to continue.

Second, the Legislature may wish to fund Offices of Public Guardian through the use of grants, based on identified

need and the availability of supplemental funding generated through court filing fees, county general revenue, or donations. This approach would allow existing county-funded Offices to use existing sources of revenue to enhance their services, and would prevent the establishment of Offices where a need may not exist. By encouraging the use of locally generated funds, state funding could be kept to a minimum.

If the program is transferred, regardless of the funding mechanism chosen, the Department of Elder Affairs should: (1) establish clear statewide goals and objectives regarding guardianship services; (2) establish procedures and criteria for assessing how effectively and efficiently the Department is serving those in need of services; and (3) conduct periodic reviews to identify accomplishments and areas in need of improvement. These components would provide a systematic approach for gathering information and monitoring the Department's performance in providing guardianship services.

List of Appendices

Appendices

Appendix A
How Is a Guardian Appointed?

As authorized in Ch. 744, Part V, F.S., the appointment of a guardian involves the filing of two petitions, both of which are generally considered at the same hearing. First, the court considers a petition to determine the incapacity of a person. Second the court considers a petition for the appointment of a guardian for that person. Any interested party, such as a family member, attorney, or medical care provider may file a petition to determine capacity of an individual. Within 5 days after this petition has been filed, the court appoints an examining committee consisting of three members, as specified by law. Each member must examine the person and the committee must submit a report within 15 days after appointment. The court then holds a hearing and examines the evidence to determine whether the person is incapacitated and to what extent. The court determines what decisions, if any, the ward is incapable of making and which decisions should be delegated to the guardian. The court must state its findings in an order to determine incapacity.

Upon the determination of incapacity, the court hears any petitions for the appointment of a guardian for that person. The court may hear testimony on persons desiring to be appointed guardian. The court's order appointing a guardian must be consistent with the incapacitated person's welfare and safety, and must be the least restrictive appropriate alternative.

Appendix B
Response From the State Courts System

In accordance with the provisions of s. 11.45(7)(d), F.S., a list of preliminary and tentative review findings was submitted to the Chief Justice of the State Courts System.

The State Courts Administrator's written response is reprinted herein beginning on page 21. Additional comments from the Interim Director of the Office of Program Policy Analysis and Government Accountability follow his written response.

Office of the State Courts Administrator

August 29, 1995

James L. Carpenter
Interim Director
Office of Program Policy Analysis and Government Accountability
111 W. Madison Street, Room 312
Tallahassee, Florida

Dear Mr. Carpenter:

I am writing in response to your July 13, 1995 letter by which we were provided with a copy of the preliminary and tentative report containing findings and recommendations on your performance review of the Public Guardianship Program. Our response to the findings, conclusions, and recommendations included therein is attached. You will note that I have cited appropriate text from the report in bold face; related comments follow in each instance.

Please let me know if this office can answer any questions concerning our response.

Sincerely,

Kenneth R. Palmer

KRP/BLT/llc

Attachment

cc: Byron Brown

Note to the Reader:

To avoid duplication, the cited text has been deleted and page references to the appropriate report areas have been inserted.

RESPONSE OF THE STATE COURTS SYSTEM

ALTERNATIVES

Report Page 12

The report makes an unsupported assumption that, if responsibility for public guardianship is transferred to an executive branch agency, the legislature is likely to appropriate additional state resources to expand the program to more circuits or that local government is a viable funding alternative. The report seems to suggest that because Florida's establishment of offices of public guardianship within the State Courts System is unique among the states, it is therefore somehow faulty or inferior. These assumptions contained in the report are not predicated upon existing performance data. The report lacks a foundation in performance review and evaluation of the effectiveness and efficiency of the existing state funded programs, which should have occurred before formulation of concrete alternatives and recommendations for change.

The State Courts Systems agrees that there is a threshold issue of whether the public guardianship program is most appropriately housed in the judicial branch, as opposed to the executive branch or some other alternative. Some chief judges and administrators in the judicial branch view public guardianship as being outside the scope of the judicial branch function as articulated in Article V of the Florida Constitution. Nevertheless, a number of chief judges and trial court administrators have strongly advocated the maintenance and expansion of the program within the judicial branch.

In fact, in Fiscal Years 1990 - 91 and 1991 - 92, the State Courts System sought substantial increases in funding for both workload in the existing programs and creation of programs in the remaining circuits. To suggest, as in Exhibit 4, Evaluation of Alternatives on Page 14, that there is no need for additional state resources if public guardianship continues to be housed within the judicial branch, is incorrect. Exhibit 4 says that state funding would continue to be limited to eight counties. This is uncertain and depends on economic variables. Although the State Courts System has asked only for continuation funding since Fiscal Year 1991 - 92, this is a function of statewide governmental budget austerity rather than a commentary on the efficacy of public guardianship expansion.

While the Office of the Public Guardian does not perform an "essential" court service, meaning those services mandated by the Florida Constitution, it is, nevertheless, a program that the State Courts System takes seriously. Moreover, the State Courts System questions whether judicial branch housing of public guardianship is actually "unique". While it might not be the norm, in 1984 six states had judiciary based programs.[1] The State Courts System would not support or advocate removal of public guardianship from the judicial branch without a suitable alternative being carefully researched and identified, and a plan for it's implementation being promulgated.

There are significant problems with the proposed alternatives to the judicial branch placement described in the report. Specifically, several policy reasons militate against housing the Office of the Public Guardian in the Department of Health and Rehabilitative Services (a point conceded by OPPAGA), or the Department of Elder Affairs. (See Infra) Likewise, it is inappropriate and unrealistic to rely on local government to fund even minimal public guardianship programs in any effective way. These problems and several others are addressed below in the State Courts System response to the conclusions and recommendations.

The State Courts System also takes exception to the inference that statewide goals, objectives and procedures do not in many respects exist, and should be developed upon transfer of the program to the Department of Elder Affairs or another executive branch entity. Note that this will be discussed later in this response.

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[1]The OPPAGA report states that Florida is unique in offering a judicial based public guardianship model. However, the final report of the Public Guardianship Pilot Project written by Elaine New and published on February 1, 1984 identifies six states that at that time had a provision for public guardianship that operated using a court model. Id at 44. Citing W. Schmidt, Kay Miller, W. Bell, and B. New, Public Guardianship and the Elderly 25 (1981) at 61. Although this research is now 11 years old, there is no indication in the OPPAGA report that these research sources have been reviewed or updated in any way.

CONCLUSIONS AND RECOMMENDATIONS

Report Page 16

The above quoted matter from Page 16 refers to "these factors". There is really only one factor mentioned in reaching the conclusions that public guardianship should be either discontinued or transferred to the executive branch; that is, that limited resources within the State Courts System prevent expansion. No explanation is given for why either recommendation might improve the long term prospects for increasing the availability of public guardianship resources. If the goal is expansion, Recommendation 1, which proposes to discontinue state funding altogether would not help to achieve the objective. Similarly, no reasons are given to indicate why transferring responsibility for the Office of the Public Guardian to an executive agency (Recommendation 2) will result in additional resources or expansion. Page 17 of the report essentially raises two questions in the readers mind, neither of which is answered in the report:

1. What guarantee, or even possibility, is there that alternative placement will result in establishment of more offices?

2. Why is it more likely that state funds will be provided to the Department of Elder Affairs or another executive branch agency than to the State Courts System?

If the twin goals are to establish more offices and obtain more state funds, an appropriation could just as easily be made to the State Courts System as to any executive branch entity. Discontinuation and transfer will be discussed in more detail below.

DISCONTINUATION

Report Page 16

The report suggests that a viable alternative to the present system is to leave establishment, administration, and funding of public guardianship to local government or rely on some system of volunteers. Again, the report offers no evidence that the proposed alternatives, as implemented in other states, have worked any more effectively than Florida's model. Indeed, early pilots tested in 1984 included a volunteer model which was identified as having, several deficits. E. New, Final Report of the Public Guardianship Pilot Project, 58 - 60

(1984) A copy of this report was provided to the OPPAGA staff before they began work on the current report.

Furthermore, it is under the authority of the state that persons are determined to be incapacitated. Thus, it is essentially a state responsibility, and not a local funding obligation to provide for the needs of adjudicated incapacitated persons. This conclusion was reached by the Public Guardianship Pilot Project Advisory Board in 1984, Id., and the whole notion of incapacity determination as state action permeates the Guardianship Study Commission report of 1989 as well. The plain mandate of Florida Statutes, Section 744.706, is that each public guardian shall prepare a budget to be submitted to the chief judge of the judicial circuit for inclusion in the court's legislative budget request. While that section provides that it shall not be construed to preclude the financing of any operations of the office by monies raised through local efforts, there is no provision leaving the funding of public guardianship to the uncertainty of county-by-county choice as to participation.

Guardianship being a court function, the assessment of needs and making of budgetary requests are mandated on a circuit by circuit basis. The report leaves the impression that the issue is framed as "either/or" with regard to state versus local funding when this was plainly never the legislative intent. Section 744.706 requires funding on a circuit by circuit basis from the general revenue fund and allows additional financing by local effort. It does not mention counties because there was never a legislative intent that the statute be so construed.

Moreover, Florida's counties are already strained financially and many are close to the ten mil cap on ad valorem taxes. The counties are already obligated for an estimated net of $250,000,000 in "Article V costs" to support the "state" courts system, prosecution, and defense. Evidence of the likely result of a shift to reliance on local funding can be found in the limited extent to which counties have exercised the option for filing fee increases and 50% matching funds under Section 28.241(1), Florida Statutes.

As concerns other "new" funding sources to explore during one final "opportunity year" of the current support, in the absence of local government initiative and resources, history suggests that it is unlikely that various civic and charitable organizations would or could make up the short fall. In the

past, eleemosynary agencies have provided only a portion of funds required to support public guardianship programs. The private and not-for-profit methods of supplying these services have worked, to a limited degree, only in the Fourth and Eleventh Judicial Circuits, in Duval and Dade Counties. These are, however, unique situations. Guardianship Services of Dade, Inc. is not a governmental entity and therefore has no statutory prohibition on merging services to non indigent paying wards with services to indigent wards. Dade County has a very large Bar Association and a number of volunteers who provide free legal services to the program and serve on its Board. In Duval County, the Cathedral Foundation, Inc. offers a limited alternative to guardianship, but is mostly a diversion program that searches for less restrictive alternatives.

The Seventeenth Judicial Circuit has made numerous attempts to interest various charitable and civic organizations in providing supplemental funding to its public guardianship program. The Seventeenth Judicial Circuit has met with only limited success. Similarly, in the Thirteenth Circuit the public guardianship program is primarily state appropriation funded with only a small portion of its total public guardianship budget coming from charity. Civic organizations generally perform multiple functions and try to serve a broad spectrum of societal needs. Their budgets rarely, if ever, permit devotion of substantial funds to a public guardianship program. It is very speculative to assume that, if state funds for public guardianship are eliminated, charitable organizations will step in and channel funds away from their existing obligations to rescue public guardianship during one "opportunity year".

TRANSFER

Report Pages 16 and 17

This portion of the report, found on Pages 16 and 17, makes essentially two recommendations: 1) Transfer of public guardianship to the Department of Elder Affairs, or; 2) Fund public guardianship through grants. The report then suggests that if the program is transferred, regardless of how funded, the Department of Elder Affairs should establish statewide goals, objectives, policies and procedures, and should conduct periodic performance reviews. The implication is that since there is no formal, "statewide" mandate or mechanism for

oversight of all of the existing programs, that there are no identifiable goals, and objectives, or policies and procedures to guide program administration, and that there is no data available to assess how effectively and efficiently public guardianship works in its current incarnation. The following response addresses first, the problems with placement in the Department of Elder Affairs, second, the problem with an entirely grant funded public guardianship program, third, the erroneous conclusion that there is a total absence of goals, objectives, policies, procedures, and data upon which to predicate an evaluation of public guardianship, fourth, alternatives to the current system never considered in the OPPAGA report, and finally, repercussions to incapacitated citizens if program funding is discontinued.

1) Elder Affairs Placement. Such a recommendation rests on a presumption that public guardians provide services primarily to elder, indigent persons. While many wards of the public guardianship program are elders, most wards have multiple incapacitating conditions. Public guardianship was designed to provide surrogate decision makers for persons incapacitated by any number of disabilities, including but not limited to developmental disability and mental illness. As the guardianship study commission noted in its 1989 report and recommendations to the legislature, "age and infirmity" are not in and of themselves incapacitating conditions. Illness involving physical or mental deterioration can be incapacitating. Likewise, developmental disability and mental illness can be incapacitating conditions.

2) Grant Funding. While grant funding is a possibility, the OPPAGA report contains no empirical research or data collection on the effectiveness of grant funding or results of grant funded projects in any other states. A review of the historical use of grant funding and its effectiveness within the state of Florida is also lacking. Grants-in-aid, through state appropriation, are currently possible within the existing structure. Nevertheless, only one public guardianship grant-in-aid, the continuation grant to maintain the public guardianship program in the Thirteenth Judicial Circuit, has been issued through the legislature. Despite demonstrated need and requests for programs in other judicial circuits, grant-in-aid funding has not been a funding mechanism of choice for the legislature. The report presents no discussion and offers no empirical evidence to suggest why

discontinuation of the existing structure or transfer of public guardianship responsibility to some other entity within state
government is likely to result in a change in legislative policy with regard to grants.

3) Program Goals, Objectives, and Procedures. The report implies that under the current system there are no goals and objectives regarding guardianship services, no set policies and procedures, sufficient data for assessing how effectively and efficiently public guardianship services are provided, and no periodic reviews or performance audits. Plainly, policies and procedures exist; goals and objectives have been stated; and more than 29 reviews a by multiplicity of entities, both independent and within the judicial branch, have been conducted on an ongoing and consistent basis. (See Appendices A - C) There is a substantial body of data, spanning nine years, evaluating the three state funded programs. These documents monitor statutory compliance, fiscal management and accounting, effectiveness and efficiency. They would provide indispensable to any entity attempting to replicate the program statewide. The report offers no discussion of these reports, no analysis of their findings, and infers that they are not useful for evaluation on a statewide basis. Any serious recommendation for major changes to the structure and funding of the public guardianship program must be predicated upon a careful and detailed study of at least the 29 audits and performance evaluations detailed in Appendices A - C. They can serve a valuable purpose for future programs.

In evaluating the performance of the existing public guardianship system, the report should also have taken into consideration the dictates of all of Chapter 744, not just Sections 744.701-708 pertaining specifically to public guardianship. Chapter 744 contains detailed and mandatory filing requirements for initial and annual reports and provides for court monitoring of each individual guardianship case at critical junctures. So, in addition to the overall programmatic audits referred to above, and referenced in Appendices A - C, every ward's condition is independently monitored by the court pursuant to the general guardianship law. Moreover, the Supreme Court of Florida has promulgated detailed Rules of Probate and Guardianship Procedure which govern the conduct of these cases. These policies and procedures are applicable to public guardians and private guardians alike.

The report infers that transfer of the public guardianship programs to an executive branch entity would and should result in a more intense level of "statewide" oversight. It is noted the numerous audits and performance reviews referenced in Appendices A - C were done by the State Courts System or the local circuits without either an express mandate from the legislature or additional resources appropriated for that purpose. Merely changing the organizational placement of the public guardianship programs without changing such circumstances will not likely improve the level of "statewide" oversight.

Further, a substantial body of general research from the 1980's does not receive mention in the report. The Final Report of the Public Guardianship Pilot Program prepared by Elaine New and published on February 1, 1984 is completely ignored. This report directly addresses many of the issues touched upon in the OPPAGA report. It should have been a logical starting point for serious analysis and evaluation of the existing structure and proposed alternatives. As Ms. New notes in her executive summary:

> "This study of public guardianship in Florida was funded by the Florida Legislature to address several questions:
>
> > Is there a need in Florida for public guardianship?
> >
> > If a need exists, is it the state's responsibility to provide guardians to meet that need?
> >
> > If a need exists and it is the state's responsibility to meet that need, which state agency is appropriate to address that need, and what is the best method to provide guardians?" Id. at i.

As previously noted, this document was provided to the OPPAGA staff before work began on this report.

The Pilot Program report reaches the conclusion that, ". . . if the state is going adjudicate an individual incompetent, it is the state's responsibility to provide a guardian if there is no one else willing and able to serve in that capacity." Id. at ii. This

lends further support to the position that funding should not be a local government option.

4) Unconsidered Alternatives. There are a number of possible alternatives to the current structure, in addition to those mentioned in the report, that should be considered before recommending a change in current placement.

Governor's or Attorney General's Offices. Points against maintaining the Office of the Public Guardian as a judicial branch entity include: 1) The fact that it is an appointed office; and 2) The fact that it is an advocacy office. The Office of the Public Guardian, being an appointed advocate, very closely resembles an executive function. Indeed, a 1993 judicial counsel report on Article V costs recommended that the Office of Public Guardian should be an executive branch entity. Yet, despite the fact that OPPAGA staff were supplied with an outline of a January 8, 1993 report to the Guardianship Oversight Board listing the Governor's office as a possible placement alternative, no such alternative is considered in the report. The report also listed the Attorney General's office as another possibly more appropriate placement alternative for public guardianship. Numerous analogies have been drawn to public defenders and state attorneys and all three offices have the ability to advocate and, at a minimum, represent the legal interests involved.

Independent Commission. The legislature could statutorily create a commission to provide statewide programmatic oversight. This commission might operate independently of any governmental entity as the oversight board of an advocacy organization.

Elimination of Statutory Matching Funds Requirement. Numerous proposals have been made over the years suggesting the amendment of Florida Statutes, Section 28.241(1) to eliminate the county
match requirement. In several circuits where chief judges would like to establish offices of public guardian, they have reported that their efforts are hampered by inability or willingness of the county to provide matching funds. The option of eliminating the

county match would allow programs to be exclusively filing fee funded. A point against filing fee funding, of course, is that filing fees are very high already and are not standard statewide. Some counties have very high filing fees and one more add-on would raise an "access to courts" concern. Additionally, some offices of public guardian have suggested that a public guardianship program that was exclusively filing fee funded could probably only operate at a very minimal level, and only in larger circuits, and would not be able to provide the same quality of representation and monitoring that the current programs are able to provide. Nevertheless, this alternative is not even discussed in the report. It should be given some consideration if it appears to be the only viable alternative for program expansion into circuits where offices of public guardian do not currently exist.

Alternatives Discussed in Final Report of the Public Guardianship Pilot Program. The 1984 Pilot Program report, at pages 46 - 52, discusses numerous options including the strengths and weaknesses of each. These placement alternatives include: (a) an independent agency; (b) a division of the Department of Administration; (c) the Governor's Office; (d) the Office of the Attorney General; (e) the Office of the Public Defender; (f) Area Agencies on Aging; (g) Office of the State Courts Administrator; and (h) the Department of Health and Rehabilitative Services (which has obvious conflict of interest recognized by OPPAGA). Although this report is 11 years old, some the same considerations are still relevant. Moreover, some of the strengths and weaknesses of the various entities might have changed, making the 1984 report a good starting point for further research and inquiry with regard to the issues and questions it raises.

5) Potential Repercussions if OPPAGA Recommendations are Implemented. The OPPAGA Report suggests that the two most viable alternatives for public guardianship are either: a) to place it in the Department of Elder Affairs; or b) to eliminate the program altogether. The latter option completely ignores obvious statewide need. Currently, somewhere between 400 and 700 qualified individuals are served by the existing public guardianship programs. Finally, if those more than 400 wards currently served by the Office of

Public Guardianship lose that representation, the likely effect will be that most will be institutionalized and at a cost that will probably exceed the level of state funding to the existing programs. What is more, Chapter 744 requires that all adjudicated incapacitated persons must have guardians appointed to represent them. Finding successor guardians for these indigent individuals will prove challenging, but is not discretionary under the statute.

Finally, there is an expanding pool of individuals who are eligible for guardianship services. During the pilot program in 1984, 5,000 wards were estimated to be in need of a public guardianship program. A 1988 study, prepared by then Public Guardian in the Seventeenth Judicial Circuit, Lisa Goldstein, and included in the 1989 Guardianship Study Commission report, demonstrated an increase in need. Additionally, a 1988 report from the AARP (also contained in the Appendices to the 1989 Guardianship Study Commission report) projected dramatically expanded need into the 21st century. In 1988, Chester C. Bennett, then president of the Manatee County Chapter of the AARP, testified before the Guardianship Study Commission and cited AARP statistics and Associated Press estimates showing that the number of elderly Americans under guardianship was 400,000 with about 10,000 new guardianships in Florida alone each year. He testified that the numbers have been increasing by 8 to 10% each year. See Appendices to Report and Recommendations of the Study Commission on Guardianship Law (March 1, 1989).

As Tom Weekes, president of the Florida State Guardianship Association, noted recently in his President's Column in the Florida Guardian:

> Finding guardians for elderly wards is going to become increasingly difficult. Today it is estimated there are over 500,000 guardianships in the United States, most of whom are elderly persons.

Weekes, *Letter from the President*, **The Florida Guardian**, Vol. V, No. 7 (August 1995)

He also cites "more needy elderly persons with a much higher incidence of indigency." Id. Clearly, if this is the trend nationally, it will be amplified in Florida. Now is not the time to consider elimination of public guardianship a viable alternative to the current system.

Interim Director's Comments

The purpose of this report was not to evaluate the extent of the need for public guardianship, nor to evaluate the performance of individual Offices, but rather to review the implementation of public guardianship in Florida.

In conducting our review:

- ***We present options that include eliminating all funding, maintaining the current level of funding, or providing additional funding. If the Legislature maintains the current level of funding or provides additional funds, we believe steps should be taken to make this a statewide program rather than a program that serves only three circuits. For example, grant funding as used by the Thirteenth Circuit to fund Public Guardianship activities at a fraction of the cost of activities in the Second and Seventeenth Circuits, could be used to fund all circuits. Grant funding provides one alternative for stretching limited dollars by taking advantage of existing funding sources, both governmental and charitable.***

- ***We provide the Legislature with selected alternatives to facilitate decision-making, rather than present an exhaustive list of alternatives.***

- ***We reviewed the 1984 report on the Public Guardianship Pilot Program; however, our analysis considered a 1993 publication that included a comprehensive statutory survey of all 50 states. (Siemon, D., S. B. Hume, and C. P. Sabatino, "Public Guardianship: What Is It and What Does It Need?", Clearinghouse Review, October 1993.)***

Our main concern is that since Chapter 86-120, Laws of Florida, was passed nine years ago, the Public Guardianship Program is still a "pilot project" with only 3 of the state's 20 circuits receiving state funds. Several circuits have requested funds to establish Public Guardianship Programs and four additional circuits have implemented locally funded programs; however, the Public Guardianship Program as currently implemented does not equitably serve the citizens of Florida.

In conclusion, given limited general revenue funding the Legislature may wish to consider discontinuing funding the Public Guardianship Program. However, if the Legislature decides to continue funding for the Program and make it a statewide program, then the Program should be transferred to an Executive branch agency and changed to a grant funded program to attract additional funding sources.

Appendix C
Response From the Department of Elder Affairs

In accordance with the provisions of s. 11.45(7)(d), F.S., a list of preliminary and tentative review findings was submitted to the Secretary of the Department of Elder Affairs for his review and response.

The Secretary's written response is reprinted herein beginning on page 35.

DEPARTMENT OF
ELDER AFFAIRS

August 18, 1995

James L. Carpenter
Interim Director
Office of Program Policy Analysis and
Government Accountability
111 West Madison Street, Room 312
P.O. Box 1735
Tallahassee, FL 32302

Dear Mr. Carpenter:

This is in response to your preliminary and tentative findings concerning the status of the Public Guardianship program in the state. You asked me to specifically comment on the proposed alternatives for the program in Chapter IV of your report. In this chapter, you compare and contrast the advantages and disadvantages of keeping the program in the State Court Administrator's Office or relocating it to the Department of Health and Rehabilitative Services, the Department of Elder Affairs, or turning the program over to the counties. In fact, one of your proposals suggested allowing the courts to appoint certain designated people to be guardians for indigent persons.

In the conclusions and recommendations section of Chapter IV, you recommend the transfer of the Public Guardianship program to the Department of Elder Affairs. I was flattered to learn of the confidence that your office, an important arm of the Legislature, has in the Department of Elder Affairs. However, as you noted, the department was created to serve Florida's elders. While the largest percentage of guardianship services are rendered to elderly persons, they are not exclusively a need of elders. Additionally, congressional proposals for cuts in elder services dictate extreme caution in undertaking additional programs and services.

While the State Court Administrator may characterize guardianship services as "non-essential" in terms of the court's essential constitutional functions, the few existing offices of the Public Guardian appear to be operating effectively. Consequently, absent an assessment of the success or effectiveness of the Public Guardianship program, and a commitment to provide a more adequate appropriation for the services required, in my opinion the program is best left within the State Court Administrator's Office. The Chief Justice should be

encouraged to request funding for expansion of the program to all the judicial circuits, and to require the establishment of procedures and criteria to assess how well these offices are meeting legislative intent. The rest is in the hands of our state representatives.

Thank you for the opportunity to respond to your preliminary findings.

With kind regards, I am

Sincerely,

E. Bentley Lipscomb

EBL/EM/sr

cc: Chief Justice Grimes
State Courts Administrator