



# **Internal Audit Department Audit Report 2019-6**

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## **Clerk's Annual Report on Guardianships**

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The files and draft versions of audit reports are confidential and exempt from public records requests during an active audit under *Nicolai v. Baldwin* (Aug. 28, 1998 DCA of FL, 5<sup>th</sup> District) and §119.0713, Florida Statutes. Workpapers supporting the observations noted within this report become public record and will be made available upon request once the final audit report has been issued.

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## Summary

Guardianship is a legal proceeding in the Circuit Court of Florida, where a person is appointed by the court as the guardian, to exercise the legal rights of a ward. A ward could be a minor, an incapacitated person or a mentally competent individual who has voluntarily petitioned for the appointment of a guardian. The guardian typically makes decisions related to finances, health, living and social arrangements of the ward. The guardian is required to file with the Court an Initial Guardianship Report, which consists of an Initial Guardianship Plan by the guardian of the person, and a Verified Inventory by the guardian of property. The guardian is also required to file an annual guardianship plan, and annual accounting, which rolls forward the activity of the last reported inventory to the current balance.

In accordance with Florida Statute 744.368, one of the Clerk’s responsibilities is to audit each initial and annual guardianship report, and advise the court of the results of audits. The total audits performed in FY 2019 is summarized below:

Total # Transactions	Total Amount of Transactions	Questioned Costs	Taxpayer Savings	Description	Total # Observations	# Open Observations
530	\$ -	\$ -	\$ -	Number of audits performed	0	0

## Objectives and Scope

Per Florida Statute 744.368, Responsibilities of the Clerks of the Circuit Court, “in addition to the duty to serve as the custodian of the guardianship files, the Clerk shall review each initial and annual guardianship report to ensure that it contains information about the Ward, addressing as appropriate:

- (a) Physical and mental health care;
- (b) Personal and social services;
- (c) The residential setting;
- (d) The application of insurance, private benefits, and government benefits;
- (e) The physical and mental health examinations; and
- (f) The initial Verified Inventory or the Annual Accounting.”

The Clerk shall complete his/her review of report within 30 days of the guardian of person files the initial or annual report. The Clerk shall audit the Verified Inventory or the Annual Accounting within 90 days after the filing of the initial or annual report by the guardian of the property. The Clerk shall advise the Court the results of the audit, and report to the Court when a report is not timely filed.

## Background

Guardianship is a legal proceeding in the Circuit Court of Florida, where a person, normally referred to as a ward, has some or all of his or her rights removed by the court, and for whom a guardian has been appointed by the court. The guardian will then be able to exercise the legal rights of a ward, which may include providing medical, mental and personal care services, determining the place and kind of residential setting best suited for the ward, and making decisions related to finances.

There are many types of guardianships. The most common types are:

- ◆ **Guardianship of a Minor** – A guardianship must be established for the property of a minor child when the minor receives a court settlement or inherits assets of more than \$15,000.
- ◆ **Guardianship of an Incapacitated Person** – A person who has been judicially determined to lack the capacity to manage at least some of the property or to meet at least some of the essential health and safety requirements of the person.
- ◆ **Voluntary Guardianship** – A person who is mentally competent, but incapable of the care, custody, and management of his or her estate by reason of age or physical infirmity and who has voluntarily petitioned for the appointment of a guardian.
- ◆ **Emergency Temporary Guardianship** – Prior to appointment of a guardian but after a petition for determination of incapacity has been filed, the Court may appoint an emergency temporary guardian for the person or property, or both, of an alleged incapacitated person. The court must specifically find that there appears to be imminent danger that the physical or mental health or safety of the person will be seriously impaired or that the person's property is in danger of being wasted, misappropriated, or lost unless immediate action is taken.

The Florida Probate Rules require that every guardian be represented by a Florida bar attorney. The guardian must receive instruction and training within 4 months of his or her appointment, which includes the preparation of the financial Verified Inventory and Annual Accounting for the Ward's property.

Within 60 days after appointment, the guardian shall file with the Court, an Initial Guardianship Plan by the guardian of the person and a Verified Inventory by the guardian of the property.

Within 90 days after the last day of anniversary month, the guardian of the person shall file an Annual Guardianship Plan that covers the coming fiscal year. Administrative Order 5.1 of the 20th Judicial Circuit, dated February 14, 1995, requires the guardian of the property to file an Annual Accounting on or before the first day of the fourth month after the month the original letters of guardianship were signed and each year thereafter.

Upon the filing of the Verified Inventory and Annual Accounting, the guardian shall pay from the Ward’s property to the Clerk of the Circuit Court, a fee for the auditing of the accounting. Any guardian unable to pay the auditing fee may petition the Court for a waiver of the fee.

The total guardianship cases involve millions of dollars in assets. The Clerk of Courts is required by Florida Statute to review the guardianship plans, inventories and accounting reports. The guardianship auditor reviews the reports filed for errors and irregularities, and advises the Court of the results of the audit. The audit process is intended to help protect the assets of the ward and make the guardian accountable to the court.

## Results

During FY 2019, we conducted 112 Verified Inventory audits and 418 Annual Accounting audits, which includes re-audits of failed original filings. In accordance with Florida Statute, one of the Clerk’s responsibilities is to advise the court of the results of these 530 audits.

In FY 2019, ninety-four (94), or 22% of original filings did not pass the audit requirement on the initial review (see Exhibit A). Eighty-four (84, or 89%) of those failed filings were subsequently cleared in FY 2019, two (2, or 2%) more were subsequently cleared, and eight (8, or 9%) are still awaiting action by the guardians and/or court.

There were total of \$29,840 audit fees collected in FY 2019.

**Exhibit A**

**FY 2019 Guardianship Audits**



*\*Including re-audits*

Description	Number of Audits
Total Cases Audits	436
Failed/ Re-audits	94
Total Audits Performed	530