

FILED

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INYO CO. SUPERIOR COURT PAMELA M. FOSTER CLERK BY DEPUTY

COUNTY OF INYO

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August 25, 2018

To the Honorable Brian J. Lamb, Presiding Judge Inyo County Superior Court

Dear Judge Lamb:

Please find enclosed, Public Administrator Public Guardian's response to the 2017/2018 Inyo County Grand Jury Report regarding Inyo County Office of Public Guardian.

Thank you for your consideration.

Very truly yours,

Patricia Barton, Public Guardian

SUMMARY

Response to Summary:

§1 The respondent agrees with the finding.

§§2-4 The respondent partially agrees with the findings.

- The Public Guardian is occasionally behind on filing her reports congruent with the staffing levels of her office. Although the findings of the Grand Jury were specific to the Office of Public Guardian, it is impossible to bifurcate the Duties and Responsibilities that she is required to fulfill for both offices dictated by California Probate Code.
- It should be established that neither the office of Public Administrator or Public Guardian (hereinafter PA/PG) have had an Assistant position funded during her tenure.
- PA/PG was unstaffed upon taking office in January 2007 from January 1, 2007 to February 16, 2007, again from July 22, 2009 to October 1, 2009 and from September 15, 2014 to the end of December 2017.
- During the periods that were staffed, the PA/PG and Deputy PA/PG were certified and participated in continuing education as dictated by California Probate Law by CAPAPGPC Association.
- The legal requirement for participation began in 2007, when the California Judicial Council designated the CAPAPGPC Association as the certifying body for all county Public Administrators, Guardians, and Conservators with certification required by law for PA/PG/PCs to work within the state.
- As the Public Administrator, and Public Guardian for Inyo County, I and my staff (who perform the duties for these two functions) are required by the following Probate Code Sections to be certified by our Association:
 - Probate Code Section 7605 for the Public Administrator function Probate Code Section 2923 for the Public Guardian: Probate Conservatorship function
- After more than three years of CAO recommended staffing levels for PA/PG that did not include a Full Time Deputy PAPG, PAPG was granted a part time position titled PUBLIC GUARDIAN SPECIALIST (PART-TIME) for FY 2017 to 2018. PA/PG continued to be unstaffed for an additional four (4) months to allow for the hiring process.
- Funding was not reestablished for, association dues or Standby Time, so PA/PG must fulfill the duties of her offices within legal parameters and continues to work forty (40) to Sixty (60) hour per week in direct relation to the needs of her conservatees, including after hours, on week-ends and holidays.
- PA/PG is only one of many departments that are funded by the General Fund. Fees collected by PA/PG are monies paid by decedent estates (PA) or Conservatee estates (PG), never from intra-office fees paid between departments.
- Public Guardian has not received an increase in salary during her nearly twelve (12) years in office. Public Administrator Public Guardian will receive a modest increase in Salary in January, 2019 largely due to the <u>Elected Official Salary Survey of 15 Like Counties for 2017</u> compiled by Board Clerk Darcy Ellis and;

- Efforts of Inyo County Recorder' compilation of data, <u>Elected and Appointed Official's Fact Sheet</u> presented to the Board of Supervisors and granted by the Board on December 12, 2017, pursuant to the Elected Officials Salary Adjustment Policy adopted by the Board of Supervisors on February 4, 2014.
- Taxpayers my view all Salaries on the Inyo County website under Salary Schedule.
- Tax payers may also view the 2018-2019 Recommended Budget on the Inyo County web site consisting of 700 pages, however for clarity purposed for this response, for the Public Administrator/ Public Guardian office, CAO recommended:

Public Administrator-Public Guardian. As part of the Department Requested Budget, the Public Administrator-Public Guardian requested that her office's Authorized Staffing be increased by deleting the BPAR PAPG Specialist position (Range 57) and adding a full-time PAPG Specialist position (Range 57). The total cost of the requested change in the office's Authorized Staffing is an additional \$38,296 a year.

In requesting this change to the office's Authorized Staffing, the Public Administrator-Public Guardian wrote that, "if a full time position is granted, the office of PAPG can function at an efficient level to ensure higher fees are taken in without compromising the duties required by California Probate Law." However, during the departmental budget meeting on June 29, 2018, the Public Administrator-Public Guardian indicated that these same efficiencies could be achieved if the Recommended Budget supported purchasing a public administrator-public guardian case management software system for an estimated one-time cost of \$21,000, plus \$6,000 in annual fees.

The Recommended Budget supports funding for both the purchase of the software system, through coordination with the Information Services Director, as well as the requested change in the Authorized Staffing for the office. While the nature of the office's caseload precludes any guarantee of the amount of fees that can be collected in any given year, by funding both the new software system and increasing the Authorized Staffing in the Recommended Budget, the office will be afforded the best opportunity to collect all of the fees to which it is entitled and, in doing so, will, hopefully, offset some of the increased costs associated with at least some of the \$44,296 in new, ongoing expenses.

The BPAR PAPG Specialist position is currently filled. If the change in Authorized Staffing for the office is approved, it will result in reclassifying the incumbent in the current position, unless your Board of Supervisors directs that the new full-time PAPG Specialist position be filled through a competitive recruitment, in which case the incumbent would have to be laid-off if not selected for the new position.

 Public Administrator/Public Guardian confirms the representation made in the above passage from the Inyo County 2018-2019 CAO recommended Budget and is in agreement with restoring staffing levels in addition to purchasing the recommended software. • Public Guardian is mandated to retain conserved persons in the least restrictive setting for the greatest period of time as is possible. Many of PG's conserved persons live/ have lived independently in their own home and Public Guardian must meet the needs of her conservatees including health care, meals, clothing, personal care, housekeeping, transportation and even recreation. Public Guardian must judiciously marshal the estates of all of her conservatees to allow for the greatest length of time that the estate may "private pay" or pay within the means of their savings, Social Security, Veteran's Benefits and pensions.

This is a direct benefit to the taxpayers of Inyo County as it delays and often times prevents her conservatees failing to a progressively more expensive placement. Assisted Living Facilities are not funded by Medi-Cal and must be paid by private means. If a conserved person is no longer able to remain in their private home or live independently due to physical or mental health issues, Assisted living Placement is required at a higher level of Room and Board costs. If a conserved person fails to the level of Skilled Nursing, the conserved person's estate must private pay until the estate is spent to meet criteria for Medi-Cal coverage, not private pay. The Office of Public Guardian works diligently to retain the estates of her conservatees which in turn is a substantial cost savings to the taxpayers of Inyo county.

BACKGROUND

Response to Background §§1-6 The respondent agrees with the finding

§7 Respondent does not agree with the finding

- Public Guardian acts on the behalf of minor's estates.
- Public Guardian has been assigned two (2) minor's estates by Inyo County Superior Court and has received statutory fees for management of one (1) estate and will receive fees on the second estate upon accounting and final distribution of the estate.

§8 Respondent agrees with the finding

§§9-13 respondent partially agrees with finding

- FY 2006-2007 Total Fees Collected: \$19,980.60
- FY 2007-2008 Total Fees Collected: \$21,762.85
- FY 2008-2009 Total Fees Collected: \$2,965.35 PA/PG partially unstaffed
- FY 2009-2010 Total Fees Collected: \$8,638.20
- FY 2010-2011 Total Fees Collected: \$11,994.95
- FY 2011-2012 Total Fees Collected: \$8,064.26
- FY 2012-2013 Total Fees Collected: \$8,152.74
- FY 2013-2014 Total Fees Collected: \$7,150.63
- FY 2014-2015 Total Fees Collected: \$8,000.00 PA/PG partially unstaffed
- FY 2015-2016 Total Fees Collected: \$8,621.26 PA/PG unstaffed PA Fee NOT PG Fee collected and NOT resulting from "past County Counsel's achievement". Collections could have been "slightly to significantly" more if it had not been for the "past".

County_Counsel's" actions and practices that were not aligned with_the purposes and goals as outlined on the County Counsels' Association of California's website.

Corrective Action: The present County Counsel and specifically the Deputy County Counsel assigned to the PA/PG office have worked diligently and have been successful in legitimately bring the Public Guardian's court filings up to date. Additionally, PA/PG and present County Counsel and Deputy County Counsel have updated the INYO COUNTY PUBLIC GUARDIAN FEES SCHEDULE to fairly and equitably reflect services of the Public Guardian Office.

- FY 2016-2017 Revenue: \$152.83 PA/PG unstaffed and residual consequences of the "previous" County Counsel's actions.
- FY 2017-2018 Total Fees Collected: \$7,376.06 PA/PG partially unstaffed and residual consequences of the "previous" County Counsel's actions and practices.

METHODOLOGY

Response to Methodology

§§1-6 Public Administrator Public Guardian is respectful of the Methodology of Investigation of the Grand Jury with reservation that the Inyo County Court Investigator was not interviewed. At the time of filing a Petition for Conservatorship of the Person, the Estate or both, a proposed conservatee is assigned a Public Defender and the Court appoints a Court Investigator to independently conduct an investigation defined under Probate Code § 1826. Accountings do not trigger an investigation and are independent of any parties, conducted every two years or sooner if directed by the Court. California Court Investigators have full authority to review all aspects of care of Probate Conserved persons by the Public Guardian's Office including the confidential supplemental information form submitted by the petitioner and consider the facts set forth in the form that address each of the categories specified in paragraphs (1) to (5), inclusive, of subdivision (a) of Section 1821 and has full access to the estates accountings and may question any action taken by Public Guardian in regards to fees requested or not requested in relation to the best interest of the conservatorship of the person and estate.

DISCUSSION

Response to Discussion

§§ 1-7 Respondent agrees with the findings

§ 8 Respondent disagrees partially with the findings

- Public Guardian had ten (10) conservatorships and five(5) probates(although PA has received three more PA probates cases)
- PG has twelve open and active referrals that require ongoing investigations
- PG has twenty seven (27) deceased conservatee cases that have not reached final disposition of varying degrees that accumulated during the times the PA/PG office was unstaffed. PAPG will implement the new software when funded, installed and populated to close backlogged cases and receive fees.

QUALITY OF CARE

Response to Quality of Care

§§1-4 The respondent agrees with the findings

FEES

Response to fees

§§1-11 The respondent partially agrees with the findings

- Probate Code §1470(b) and 1472(a)(1) dictate: Fees shall be awarded at the conclusion of the
 matter. Prior Court approval is required before payment of compensation or fees can be made
 to the Conservator, Conservator's Attorney or Conservatee's Attorney (PC§2430(a)(4) and
 Cal.Rules of Court 7.775. In re the Guardianship of Cookingham allows for fees without
 approval for a PROFESSIONAL fiduciary. All authorized periodic payments are subject to
 review-
- Probate code §2614.7- Unlike a personal representative or a professional fiduciary, PG is not
 entitled to file for proposed hourly fees. A Public Conservator is not a professional fiduciary
 business as defined in California Code, Business and Professions Code BPC § 6501

§12 Respondent is unable to speak to the findings as Court Case Numbers were not assigned to the assets as listed. Public Guardian's cases are not confidential(with the exception of some Confidential Supplemental Information and Court Investigator's Reports) and can be reviewed by any interested party as requested during Inyo county Superior Court business hours.

§13 Respondent disagrees partially with finding and cannot speak to cases or fees requested before January 2007.

§14 Respondent agrees with the finding

§15 Respondent disagrees partially with the findings

- The Court grants, for good cause, extensions. Never has the Court or conservatee's attorney requested an accounting or objected to an accounting.
- Good cause includes adequate staffing required to attend to the needs of the Person first in deference to the myriad of paperwork required to retain benefits for SSA, SSI, Pensions, Veterans Benefits, Medi-Care, Medi-Cal, interfacing with medical professionals both for long term care, physical health crisis, Emergency Room visits (often in the middle of the night, on week-ends and holidays) responding to Law Enforcement when conserved persons with Learning Disabilities, dementia, schizophrenia and other mental health issues are engaged by Law Enforcement (again, often in the middle of the night, etc.) due to wandering, inappropriate activity of threatening harm to others. Availability to Conservatee's that live independently and have unforeseen daily living issues that require immediate attention. Availability to placements to de-escalate inappropriate activity that may endanger other residents in the

- placement. Pay bills, review medications and procedures for proper insurance coverage that is often incorrect.
- PAPG also must address the needs of her office regarding Elected Official Filings, payment of office bills, adherence to budgetary fiscal matters, open and address a large volume of mail on a daily basis, file and physical case management, etc.

§16 Respondent disagrees partially with the findings

- Public Guardian is <u>not</u> granted fees of 6% for sale of Real Property or other assets. After the sale of Real Property, the Curt must fix commission of the <u>Agent</u> (PC§§ 10160-10166 and Cal rules of Court 4.39(d)
- Public Guardian and Public Administrator <u>must</u> file Judicial Counsel Form DE-260/GC-060, REPORT OF SALE AND PETITION FOR ORDER CONFIRMING SALE OF REAL PROPETY to allow transfer of sale and pay commission to brokers upon signing of the ORDER.

§17-23 Respondent is unable to adequately address the specifics of cases not identified by case numbers.

§§24-26 Respondent agrees with the finding

§27 Respondent wholly disagrees with the finding.

- Public Guardian has read the Fee Schedule
- Public Guardian has discussed the Fee Schedule with County Counsel
- Public Guardian has discussed the Fee Schedule with a Presiding Judge of the Superior Court

TIMELINESS OF ACCOUNTS TO THE COURT

Response to Timeliness of Accounts to the Court

§1 Respondent disagrees partially with the findings

§2-5 Respondent is unable to respond to specific cases that are not noted by a case number

§ 6 Respondent disagrees partially with the findings

§ 7-8 Respondent strongly disagrees wholly with the findings.

- Filing of Reports and Accounts DOES NOT influence the Court or the Court Investigator in any manner.
- Inyo County Superior Court and the Superior Court Clerks Order and Notice Order to the Court Investigator independent of the actions of Public Guardian.
- Inyo County Court Investigator is an Independent Court Officer and does not take direction from the Public Guardian regarding the Annual or Bi-Annual Accountings.
- The Grand Jury did not interview the Court Investigator.
- Public Guardian's Conservatees have independent ability to contact their Lawyer at any given time for any purpose.
- Hospital Staff, Doctors, Ombudsman, Law Enforcement and Care Providers are Mandatory Reporters and are subject the Ethics of reporting any and all concerns

- Family, friends, neighbors or any other concerned citizen may contact any of the above reporting agencies, the Office of Public Guardian, County Counsel or conservatee's Counsel at any time.
- Public Guardian has never had any person or agency raise any concern about the health and welfare of her conservatees.

§9 Respondent agrees wholly with the findings

Public Guardian has been working without regular assistance for several years

§§10-11 Respondent partially agrees with the findings

- Public Guardian is very cognizant of the value and requirements for timeliness of Accountings
 and is very happy to adhere to Court scheduled Accountings and other required paperwork
 with the advent of the minimum level of staffing that has been requested and with the
 Purchase of adequate software to support her efforts to do so.
- Public Guardian has prioritized the care of Conservatee's Person. There is no argument that
 the loss of health or life cannot be regained if lost and when faced with the paradox of caring
 for the Person when time restrains of Administrative Duties as a working Department Head,
 Fiscal Compliance, mandatory Public Administrator and Public Guardian duties in a very large
 land mass County that requires travel and oversight to all areas of remote parts of South
 County requiring her personal attention.
- Public Administrator Public Guardian additionally offset loss of payments to local businesses by marshaling both Administrator and Guardian Estates and paying local delinquent accounts owed to small businesses, Hospitals, Pharmacies, Care Placements, Taxes, ad infinitum, a benefit to the County and its taxpayers.

OVERSIGHT

Response to Oversight

- § 1 Respondent agrees wholly with the finding.
 - A good system of oversight is in place regarding both care given and finances.
- § 2 Respondent disagrees partially with findings
 - Inyo County Superior Court, County Counsel's Office and Attorney for Conservatees do provide
 oversight over the Office of Public Guardian and Public Conservator, however they do not have
 oversight over the funding of the PAPG office to adequately staff or fund required tools such as
 software, lap top computers to ensure proper time management and case notes while in the
 field.

§3 Respondent disagrees partially with findings

- County Counsel advises Public Guardian on all matters, including fees. The Office of County Counsel is also subject to scrutiny regarding fees by the CAO and his fiscal staff and Public Guardian and Public Administrator pays for fees to the County coffer County Counsel Fees by personal money from PA/PG Estates
- The attorney assigned to conservatees is also subject to scrutiny by the CAO and his fiscal staff and Fees are paid to the County coffers for services rendered to conservatees by conservatees personal estates

- §4 Respondent wholly disagrees with the finding
 - Public Guardian has responded previously to an inadequate understanding of Public Guardian Fees.
 - Calculation of lost fees is often speculative and Public Guardian cannot speak for fees requested before taking office.

§5 Respondent disagrees partially with finding

- Proper oversight is in place at this time as previously stated
- The Office of Public Administrator Public Guardian will have direct oversight by the Inyo County Treasurer. The Inyo County Treasurer is an Auxiliary of the Inyo County Public Administrator Guardian Trust Account and will have daily access and oversight of Conservatee's funds.

FINDINGS

Response to Findings

- F1. Respondent agrees wholly with findings stated.
- F2. Respondent agrees partially with findings stated. The present job description does not include a duty to petition for fees and California Probate Law does not demand that Public Guardian petitions for Fees, however Public Guardian does petition and has always been granted fees requested.
- F3. Respondent disagrees partially with findings stated. The Public guardian is authorized by law to petition for reasonable fees from conservatorship estates but not always as a private attorney can.
- F4 Respondent agrees wholly with findings stated. There is now and has been a Court Ordered Fee Schedule in place.
- F5 Respondent agrees wholly with the findings stated.
- F6 Respondent disagrees partially with the findings stated.
- F7 Respondent agrees wholly with the findings stated.
- F8 Respondent disagrees partially with the findings stated. The Office of County Counsel works directly with Public Guardian on all accountings including requests for Fees. Additionally, Probate accountings are available to review by any County Tax Payer that wished to do so.
- F9 Respondent agrees wholly with findings stated. With the Software requested and recommended by Inyo County CAO Public Guardian will have the tools required to case manage and time manage to optimize fees including extraordinary fees.
- F10 Respondent agrees wholly with the findings stated. Due to the Level of staffing, time restraints have precluded Public Guardian from time tracking, however with the restored staffing level to a full time position and with the previously mentioned Software, time tracking will be feasible.

F11 Respondent disagrees partially with the findings stated. Keeping track of time spent is not difficult with adequate tools. Public Guardian is anxious to comply upon funding of the requested Software.

F12 Respondent disagrees partially with the findings stated. Minimal effort is required to compute appropriate fees if appropriate and adequate software is in place. Public guardian is anxious to comply upon funding of requested Software.

513 Respondent agrees wholly with the findings stated. Public Conservator does prioritize the care of conservatees. County Taxpayers deserve to be reasonably compensated for services rendered not only by the Office of Public Administrator Public guardian, but by <u>all</u> Generally Funded Departments in the County of Inyo. A point of interest is that the office of Public Administrator and the Office of Public Guardian facilitate payment of taxes to the County by and for her decedent's estates and living conservatee's that have been and still are county taxpayers.

F14 Respondent disagrees partially with the findings stated.

F15 Respondent disagrees partially with the findings stated. The systems in place do not have oversight over the funding of staffing of the Public Guardian's office to ensure timely filings.

RECOMMENDATIONS

Response to Recommendations

R1 Respondent agrees wholly with the recommendation.

- Public Guardian has and will continue to adhere to California Probate Code §2902 to wit: A
 public guardian who takes possession or control of property pursuant to this chapter is
 entitled to reasonable costs incurred for the preservation of the property, together with
 reasonable compensation for services, in case of the subsequent appointment of another
 person as guardian or conservator of the estate. The costs and compensation are a proper and
 legal charge against the estate of the ward or conservatee.
- Public Guardian has and will continue to adhere to California Probate Code §2942(a)(b)

to wit: The public guardian shall be paid from the estate of the ward or conservatee for all of the following:

- (a) Reasonable expenses incurred in the execution of the guardianship or conservatorship.
- (b) Compensation for services of the public guardian and the attorney of the public guardian, and for the filing and processing services of the county clerk or the clerk of the superior court, in the amount the court determines is just and reasonable. In determining what constitutes just and reasonable compensation, the court shall, among other factors, take into consideration the actual costs of the services provided, the amount of the estate involved, the special value of services provided in relation to the estate, and whether the compensation requested might impose an economic hardship on the estate. Nothing in this section shall require a public guardian to base a request for compensation upon an hourly rate of service

R2 Respondent disagrees partially with the recommendation.

 Public Guardian is mindful of judicious guidelines regarding reasonable fees, however she is reticent regarding usurping the office of Public Guardian to interpretation of her duties to a County Department or entity other than the Superior Court as is in place by California Probate Law at this time.

R3 Respondent disagrees partially with the recommendation

- Each new Public Guardian should read the Court Fees Schedule for Public Guardians.
- Public Guardian should seek the advice of the Court or County Counsel or an Experienced attorney if they have questions about it.
- Public Guardian <u>has</u> and will continue to adhere to the above best practices guidelines.

R4 Respondent agrees wholly with the recommendation

• Public Guardian will adhere to the best practice guideless of time tracking upon funding and receipt and implementation of requested Probate Software that will enable her to do so.

R5 Respondent agrees wholly with the recommendation

- Public Guardian is mindful of California Probate law regarding timely filing
- Public Guardian has requested in FY 2018-2019 that the position of Public Administrator
 Public Deputy be funded to restore a full time position in addition to Probate Software to
 facilitate the ability to file Accounting timely.
- Public Guardian will facilitate the required training for certification of her Deputy Public Administrator Public Guardian in adherence to:

Probate Code Section 7605 for the Public Administrator function Probate Code Section 2923 for the Public Guardian: Probate Conservatorship function upon funding to do so

R6 Respondent disagrees partially with the recommendation

- A system of oversight is presently in place as dictated by California Probate Law, Inyo County Local Rules of Court, California Civil Code, California Government Code, California Tax Code and California Penal Code.
- Public Guardian Public Administrator seeks the advice and counsel of Inyo County Counsel regarding interpretation and implementation of all laws pertaining to her office.

R7 Respondent Disagrees partially with the recommendation

- A system of oversight is presently in place as stated above in R6
- Notice of actions of Public Guardian are properly adhered to as dictated by the following California Probate Codes: §§1460 to 1469, §§1842, 1853, §§2620.2, §2621, §1822, §2352, §§1823, 1824, §1210, §§1461, 1461.4, 1822, §§1461,1822, §1461, §277, §§2890 to 2893, §1822, §1822, §1467, §1892, §2581, §1461.4, §2652, §§2253, 2254, §2543, §1824, §\$2700 to 2702, §2683, §2250, §1862, §2804, §§1461.5, 1822
- Any interested party may file for notice. Public Guardian has received request for Special Notice and been adherent and will continue to be adherent to requests as dictated by California Probate code Section 1250-1252

- PROBATE CODE SECTION 1250-1252:1250.
 - (a) At any time after the issuance of letters in a proceeding under this code for the administration of a decedent's estate, any person interested in the estate, whether as devisee, heir, creditor, beneficiary under a trust, or as otherwise interested, may in person or by attorney, file with the court clerk a written request for special notice.
 - (b) The request for special notice shall be so entitled and shall set forth the name of the person and the address to which notices shall be sent.
 - (c) Special notice may be requested of one or more of the following matters:
 - (1) Petitions filed in the administration proceeding
 - (2) Inventories and appraisals of property in the estate, including any supplemental inventories and appraisals
 - (3) Objections to an appraisal.
 - (4) Accounts of a personal representative.
 - (5) Reports of status of administration.
 - (d) Special notice may be requested of any matter in subdivision
 - (c) by describing it, or of all the matters in subdivision (c) by referring generally to "the matters described in subdivision (c) of Section 1250 of the Probate Code" or by using words of similar meaning.
 - (e) A copy of the request shall be personally delivered or mailed to the personal representative or to the attorney for the personal representative. If personally delivered, the request is effective when it is delivered. If mailed, the request is effective when it is received.
 - (f) When the original of the request is filed with the court clerk, it shall be accompanied by a written admission or proof of service
- R8 Respondent agrees wholly with recommendation
- R9 Respondent disagrees wholly with recommendation
 - County Auditor's Office and/or the County Budget Analyst may petition for Special Notice as outlined in R7

R10 Respondent agrees wholly with the recommendation

 Public Administrator Public Guardian welcomes a respectful and professional working relationship with any and all County Departments under the lawful umbrella of California Probate Code and Personnel Policies and Procedures presently in place.