

**STATE OF FLORIDA
AUDITOR GENERAL**



*OPERATIONAL AUDIT
OF THE*

*OFFICE OF THE PUBLIC GUARDIAN
SEVENTEENTH JUDICIAL CIRCUIT*

For the Period January 1, 1997, Through December 31, 1997

Dated: April 29, 1998

STATE OF FLORIDA
AUDITOR GENERAL

OPERATIONAL AUDIT
OF THE

OFFICE OF THE PUBLIC GUARDIAN
SEVENTEENTH JUDICIAL CIRCUIT

For the Period January 1, 1997, Through December 31, 1997

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***OFFICE OF THE PUBLIC GUARDIAN
SEVENTEENTH JUDICIAL CIRCUIT***

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CHARLES L. LESTER, CPA
AUDITOR GENERAL

STATE OF FLORIDA
AUDITOR GENERAL
TALLAHASSEE

April 29, 1998

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

Pursuant to the provisions of Section 11.45, Florida Statutes, and as part of the
Legislature's oversight responsibility for operations of State agencies, I have directed that an
operational audit be made of the

***OFFICE OF THE PUBLIC GUARDIAN,
SEVENTEENTH JUDICIAL CIRCUIT,***

For the Period January 1, 1997, Through December 31, 1997.

The results of the audit of the Office of the Public Guardian are presented herewith.

Respectfully submitted,

A handwritten signature in cursive script that reads "Charles L. Lester".

Charles L. Lester
Auditor General

Audit supervised by:
Agustin Silva

Audit made by:
Heather B. Vetzner

**OPERATIONAL AUDIT
OF THE**

**OFFICE OF THE PUBLIC GUARDIAN
SEVENTEENTH JUDICIAL CIRCUIT
For the Period January 1, 1997, Through December 31, 1997**

AUDIT REPORT SUMMARY

This audit report summary highlights the scope, objectives, methodology, and findings of audit report No. 13221, dated April 29, 1998. It is intended to present the findings of our report in a condensed fashion. The entire audit report should be read for a comprehensive understanding of our audit findings.

SCOPE/OBJECTIVES

The Auditor General, as part of the Legislature's oversight responsibility for operations of State agencies, makes operational audits to evaluate management's performance in administering assigned responsibilities in accordance with applicable laws, administrative rules, and other guidelines and to determine the extent to which the internal control, as designed and placed in operation, promotes and encourages the achievement of management's control objectives in the categories of compliance, economic and efficient operations, reliability of financial records and reports, and safeguarding of assets.

The scope of this audit of the Office of the Public Guardian, Seventeenth Judicial Circuit, focused primarily on the administration of guardianship services and related transactions for the period January 1, 1997, through December 31, 1997.

METHODOLOGY

We conducted our audit in accordance with generally accepted auditing standards and applicable standards contained in *Government Auditing Standards* issued by the Comptroller General of the United States.

FINDINGS

A matter coming to our attention relating to noncompliance with various guidelines for those operations audited is as follows:

Ratio of Professional Staff to Wards

Section 744.708, Florida Statutes, requires that the ratio of professional staff to wards shall be 1 professional to 40 wards. At December 31, 1997, the Office of the Public Guardian's ratio of professional staff to wards was 1 professional to 49 wards. (See paragraphs 21 through 23.)

The Public Guardian's written response to the audit findings and recommendations included in audit report No. 13221 is presented as Exhibit D.

**OPERATIONAL AUDIT
OF THE**

**OFFICE OF THE PUBLIC GUARDIAN
SEVENTEENTH JUDICIAL CIRCUIT
For the Period January 1, 1997, Through December 31, 1997**

Par.
No.

REPORT ON COMPLIANCE AND INTERNAL CONTROL

- (1) Office of the Public Guardian, Seventeenth Judicial Circuit, management is responsible for administering numerous programs, activities, functions, and classes of transactions in accordance with governing provisions of laws, administrative rules, and other guidelines. Additionally, the proper administration of public funds requires that management establish and maintain a system of internal control to provide reasonable assurance that specific entity objectives will be achieved. The Auditor General, as part of the Legislature's oversight responsibility for operations of State agencies, makes operational audits to determine the extent to which management has fulfilled those responsibilities.
- (2) The scope of this audit focused primarily on the administration of guardianship services and related transactions. For each of these areas, our audit included examinations of various transactions (as well as events and conditions) during the period January 1, 1997, through December 31, 1997.
- (3) We conducted our audit in accordance with generally accepted auditing standards and applicable standards contained in *Government Auditing Standards* issued by the Comptroller General of the United States. Our audit objectives were:
 - To evaluate the Office's performance in administering its assigned responsibilities in accordance with applicable laws, administrative rules, and other guidelines.
 - To determine the extent to which the Office's system of internal control, and selected relevant controls, promotes and encourages the achievement of management's objectives in the categories of compliance with applicable laws, administrative rules, and other

guidelines; the economic and efficient operation of the Office; the reliability of financial records and reports; and the safeguarding of assets.

- (4) As a part of our audit, we examined, on a test basis, evidence supporting transactions (as well as events and conditions) which occurred; performed analytical procedures; reviewed management's administrative constructions of law; and performed such other procedures as we considered necessary in the circumstances. Our objective was to evaluate management's compliance with significant provisions of laws, administrative rules, and other guidelines governing those programs, activities, functions, and classes of transactions within the scope of audit. However, providing an opinion on compliance with those provisions was not an objective of our audit.
- (5) The results of our tests of compliance indicated that, with respect to the items tested, the Office had generally complied with the significant provisions of laws, administrative rules, and other guidelines governing those programs, activities, functions, and classes of transactions within the scope of audit. A matter coming to our attention relating to noncompliance with various guidelines for those operations audited is noted in the ***FINDINGS AND RECOMMENDATIONS*** section of this report.
- (6) In planning and performing our audit, we considered the Office's internal control relevant to those programs, activities, functions, and classes of transactions within the scope of audit. Our purpose in considering internal control was to determine the nature, timing, and extent of substantive audit tests and procedures necessary to the accomplishment of our audit objectives, not to provide assurance on internal control.
- (7) Our consideration of internal control would not necessarily disclose all matters in the Office's internal control that might be material weaknesses. A material weakness is a condition in which the design or operation of one or more of the internal control components does not reduce to a relatively low level the risk that operating deficiencies, material in relation to the financial records and resources of the programs, activities, functions, and classes of transactions being audited, may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions. We noted no matters involving the system of internal control and its operation that we consider to be material weaknesses.

- (8) This report is intended for the information of the Legislative Auditing Committee, members of the Florida Senate and the Florida House of Representatives, and applicable management. Copies of this report are available pursuant to Section 11.45(7), Florida Statutes, and its distribution is not limited.

BACKGROUND

Authority

- (9) Pursuant to Chapter 86-120, Laws of Florida, the Legislature established the Public Guardianship Act, codified in Part IX of Chapter 744, Florida Statutes. The Legislature's stated intent in this Act was to establish the Office of the Public Guardian for the purpose of providing guardianship services for incapacitated persons when no private guardian is available. The purpose of the Act is to provide a public guardian only to those persons whose needs cannot be met through less drastic means of intervention.
- (10) Pursuant to Section 744.703(1), Florida Statutes, the Chief Judge of a judicial circuit may establish, within a county in the judicial circuit or within the judicial circuit, an Office of the Public Guardian. The Public Guardian is to be appointed by the Chief Judge of the judicial circuit for a term of four years, after which the appointment must be reviewed by the Chief Judge of the circuit, and the Public Guardian may be reappointed.

Organizational Structure

- (11) During the audit period, Shari Stone served as the Public Guardian for the Seventeenth Judicial Circuit. On February 27, 1998, the Chief Judge of the Seventeenth Judicial Circuit issued an administrative order appointing Diane C. Kahn and Barry University School of Social Work as the Public Guardian for the Seventeenth Judicial Circuit, pending the execution of a formal contract between the Court and the University.
- (12) The Public Guardian is responsible, subject to the oversight of the Circuit Court, for establishing an organizational structure and hiring personnel necessary to carry out the duties prescribed by law. The organizational structure of the Office of the Public Guardian, Seventeenth Judicial Circuit, as of December 31, 1997, is presented as Exhibit C.
- (13) The Office of the Public Guardian was funded entirely from an allotment of General Revenue Fund appropriations made to the Circuit Courts of the State. The allotment was determined by the Office of the State Courts Administrator based on funding requested by the Public Guardian through the Chief Judge of the Seventeenth Judicial Circuit. For the 1996-97 fiscal year, the total expenditures and other commitments of current allotments for salaries and benefits and other expenses was \$273,873.99.

- (14) A comparison of the funds allotted to the Office of the Public Guardian with actual expenditures and commitments for the 1996-97 fiscal year is presented as Exhibit A. The purpose of this budgetary comparison is to provide information useful to an understanding of the budgetary structure and operations of the Office of the Public Guardian. The Exhibit was prepared by us from Office records and was reviewed by the Office of the State Courts Administrator. The Office of the State Courts Administrator maintains accounting records and other administrative records for the Office of the Public Guardian.
- (15) The objectives of this audit did not include the expression of an opinion on the comparison of budgeted with actual expenditures and commitments, which is presented on the basis specified in Chapter 216, Florida Statutes, and includes several elements and accounts relating to the Office's budgetary operations. Therefore, an independent auditor's report on the budgetary comparison, as contemplated by *AU Section 623, Special Reports, Codification of Statements on Auditing Standards*, is not included herein.

Public Guardian Program

- (16) Sections 744.704 through 744.709, Florida Statutes, describe the powers, duties, and responsibilities of a Public Guardian. Pursuant to Section 744.704(2), Florida Statutes, the Public Guardian is vested with all the powers and duties of a guardian under Chapter 744, Florida Statutes, the Florida Guardianship Law.
- (17) A Public Guardian may serve as a guardian of a person adjudicated incapacitated under the provisions of Chapter 744, Florida Statutes, if the person: (1) has no family member or friend, other person, bank, or corporation willing and qualified to serve as guardian; and (2) meets the assets and income limit requirements set by Section 744.704(1)(b), Florida Statutes. Once the Public Guardian is appointed, the individual becomes a ward of the Public Guardian and the ward's right to control his or her affairs may be removed as defined by the Court. Oversight of actions taken and decisions made by the Public Guardian for the ward is the responsibility of the Circuit Court. Annually, the Public Guardian must report to the Court an accounting for the guardianship of each ward's person and property.
- (18) The Public Guardian receives funds on behalf of wards and maintains records and an account ledger to separately account for each ward's assets. The wards' assets are to be used to pay for the wards' care and to satisfy the wards' financial obligations. The Public Guardian is not

responsible for satisfying outstanding obligations if the ward no longer has funds available. None of the wards' assets or income may be used to pay for the costs of administration of the Office of the Public Guardian. According to Office records, the number of wards and the amounts of wards' assets, as of December 31, 1997, were as follows:

Number Of Wards	Cash	Burial Contracts	Other Property	Total Assets
166	\$105,385.71	\$41,781.14	\$19,937.77	\$167,104.62

Related Audits

- (19) Our audit did not extend to an examination of the Office of the Public Guardian's financial statements. On January 29, 1998, this Office issued audit report No. 13138, with accompanying general-purpose financial statements of the State of Florida as of and for the fiscal year ended June 30, 1997. The Office of the Public Guardian is an integral part of the reporting entity of the State of Florida. The financial information relative to the Office of the Public Guardian, except for that related to funds received by the Public Guardian on behalf of wards for whom she is appointed guardian, was included by the State Comptroller in the general purpose financial statements that accompany that report.

Other Matters

- (20) At December 31, 1997, the Public Guardian, Seventeenth Judicial Circuit, was responsible for 166 wards. Of these, 29 were placed with privately owned and operated facilities formerly defined for Medicaid reimbursement purposes as "Intermediate Care Facilities for the Developmentally Disabled (ICF/DDs)." Effective August 30, 1996, Chapter 96-417, Section 11, Laws of Florida, in effect, required that many of the wards who had been institutionalized and placed with ICF/DDs be transferred to residential providers. However, we have been advised that on August 28, 1996, the Advocacy Center for Persons with Disabilities, representing Brett Cramer, et al. (Cramer versus Chiles, USDC FISO. 96-6619), obtained an injunction against the State of Florida. The injunction stayed the implementation of Chapter 96-417, Laws of Florida, until a transfer process acceptable to the Court could be devised.

FINDINGS AND RECOMMENDATIONS

Ratio of Professional Staff to Wards

- (21) Section 744.708, Florida Statutes, requires that the ratio of professional staff to wards shall be 1 professional to 40 wards. At December 31, 1997, the Office of the Public Guardian's ratio of professional staff to wards was 1 professional to 49 wards.
- (22) Section 744.708, Florida Statutes, requires that the ratio of professional staff to wards shall be 1 professional to 40 wards. Effective July 1, 1996, Section 744.708(8), Florida Statutes, provides that the term *professional*, for purposes of Chapter 744, Part IX, Florida Statutes, shall not include the Public Guardian and shall be limited to those persons who exercise direct supervision of individual wards under the direction of the Public Guardian. The Chief Judge of the judicial circuit may enlarge or recede from the ratio for good cause.
- (23) Our audit disclosed that at December 31, 1997, the Public Guardian employed 3 professionals while serving 146 living wards, for a ratio of 1 professional to 49 wards. On that date, the Public Guardian maintained open guardianship case files for an additional 20 wards who were deceased, but whose guardianship case files had not yet been closed. Most of these 20 wards died during the audit period. Upon inquiry, the Public Guardian indicated that the Chief Judge had not been asked to reconsider the statutory ratio. We recommend that the Public Guardian consult with the Chief Judge concerning the appropriate ratio of professional staff to wards. In her written response to our recommendation, the Public Guardian indicated that the Chief Judge had, by order dated April 1, 1998, changed the Office's ratio to 1 professional to 49 wards.

STATEMENT FROM AUDITED OFFICIAL

- (24) In accordance with the provisions of Section 11.45(7)(d), Florida Statutes, a list of audit findings and recommendations was submitted to the Public Guardian, Seventeenth Judicial Circuit. The Public Guardian's written response to the audit finding and recommendation included in this report is shown as Exhibit D.
- (25) In her written response, the Public Guardian submitted and made reference to a document which constitutes a public record of her Office. This document was not reproduced in this report.

AUDIT AUTHORITY

- (26) Pursuant to the provisions of Section 11.45(7), Florida Statutes, I have directed that this audit report, including all Exhibits thereto, be prepared to present the results of the operational audit of the Office of the Public Guardian, Seventeenth Judicial Circuit.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Charles L. Lester". The signature is written in a cursive style with a large, prominent "C" and "L".

Charles L. Lester, CPA
Auditor General

EXHIBITS

The following Exhibits are attached to and form an integral part of this report:

[EXHIBIT - A](#) *Comparison of Budgeted With Actual Expenditures and Commitments - By State Fund Type.*

[EXHIBIT - B](#) *Notes to Comparison of Budgeted With Actual Expenditures and Commitments - By State Fund Type.*

[EXHIBIT - C](#) *Organizational Chart.*

[EXHIBIT - D](#) *Statement from Audited Official.*

EXHIBIT – A
OFFICE OF THE PUBLIC GUARDIAN
SEVENTEENTH JUDICIAL CIRCUIT
COMPARISON OF BUDGETED WITH ACTUAL
EXPENDITURES AND COMMITMENTS – BY STATE FUND TYPE
For the Fiscal Year Ended June 30, 1997

Fund Type/ Appropriation Category	Final Operating Budget	Actual Expenditures of Current Allotments	Other Commitments of Allotted Resources	Total Expenditures and Other Commitments of Current Allotments	Variance - Favorable (Unfavorable)
GENERAL REVENUE FUND					
Current:					
Salaries and Benefits	\$ 264,631.00	\$ 264,390.72	\$ -	\$ 264,390.72	\$ 240.28
Expenses	<u>12,000.00</u>	<u>9,483.27</u>	<u>-</u>	<u>9,483.27</u>	<u>2,516.73</u>
TOTAL GENERAL REVENUE FUND	<u>\$ 276,631.00</u>	<u>\$ 273,873.99</u>	<u>\$ -</u>	<u>\$ 273,873.99</u>	<u>\$ 2,757.01</u>

The accompanying notes to this Exhibit describe in more detail the information included in this comparison.

EXHIBIT – B
OFFICE OF THE PUBLIC GUARDIAN
SEVENTEENTH JUDICIAL CIRCUIT
NOTES TO COMPARISON OF BUDGETED WITH ACTUAL
EXPENDITURES AND COMMITMENTS – BY STATE FUND TYPE
For the Fiscal Year Ended June 30, 1997

- (1) The following procedures are used in adopting, amending, and reporting budgets and budgetary data:
- The budget for the Office of the Public Guardian, Seventeenth Judicial Circuit, is prepared and included in the budget request for the Circuit Courts of the State. The Office of the State Courts Administrator submits the request to the Legislature and a copy to the Executive Office of the Governor in the form and manner prescribed by Chapter 216, Florida Statutes.
 - From appropriations made for the Circuit Courts, the Office of the State Courts Administrator determines an allotment for each applicable appropriation category for the Office of the Public Guardian. Allotment information for the Office of the Public Guardian is integrated into the State Courts System's accounting system.
 - Allotments are a guide used by the Public Guardian for planning and making expenditures during the fiscal year.
- (2) Because the budgetary basis of accounting for operating categories described in Chapter 216, Florida Statutes, and used by the State Courts Administrator requires recognition of amounts which are in addition to those used to recognize and report expenditures in accordance with generally accepted accounting principles, the expenditures and commitments presented on Exhibit A have been shown on a basis comparable to the budget. To present these data on a basis comparable to the budget, expenditures paid from or charged to 1996-97 fiscal year allotments have been shown in the "Actual Expenditures of Current Allotments" column. Since there were no encumbrances at June 30, 1997, which were approved for certification forward to be paid in the 1997-98 fiscal year, no amounts are shown in the "Other Commitments of Allotted Resources" column.

EXHIBIT – C
OFFICE OF THE PUBLIC GUARDIAN
SEVENTEENTH JUDICIAL CIRCUIT
ORGANIZATIONAL CHART
As of December 31, 1997

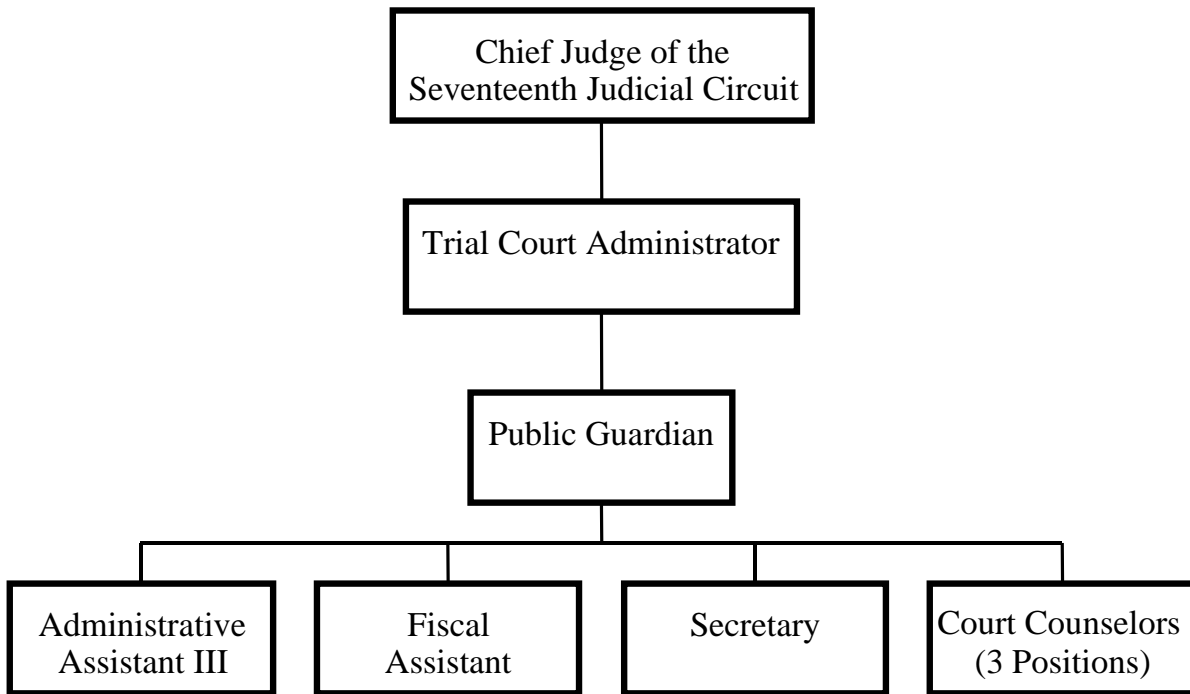


EXHIBIT - D
OFFICE OF THE PUBLIC GUARDIAN
SEVENTEENTH JUDICIAL CIRCUIT
STATEMENT FROM AUDITED OFFICIAL
For the Period January 1, 1997, Through December 31, 1997

Diane C. Kahn
Court Guardianship Counsel
Broward County Courthouse
Seventeenth Judicial Circuit of Florida



Broward County Courthouse
201 Southeast Sixth Street
Fort Lauderdale, Florida 33301
954-831-6340

April 10, 1998

Charles L. Lester, Auditor General
111 West Madison Street
P.O. Box 1735
Tallahassee, Florida 32302-1735

Re: Audit of the Office of the Public Guardian, Seventeenth Judicial Circuit

Dear Mr. Lester:

Enclosed please find a copy of the Administrative Order entered by Chief Judge Dale Ross, increasing the ratio of Professional to Wards to 1 to 49. The decision not to request that the Chief Judge increase the ratio prior to this time was an individual decision of the Public Guardian at the time. I, having just recently been appointed Acting Public Guardian, have made an effort to ensure that the ratio will not exceed the statutory limit.

Sincerely,

A handwritten signature in cursive script that reads "Diane C. Kahn".

Diane C. Kahn
Court Guardianship Counsel and
Acting Public Guardian

cc: Judge Mel Grossman, Administrative Judge, Probate Division

Audit
Report
Par. No.
(21-23)