



**Orange County Comptroller Audit of the
Orange County Clerk of Courts' Administration of the Guardianship Program
Summary and Fact Sheet
3/1/21**

Introduction

On March 1, 2021, the Orange County Comptroller released their final audit report of the Orange County Clerk of Courts (OCCC) Administration of the Guardianship Program. This 86-page report cites multiple areas where controls can be improved and offers 13 specific recommendations. Of those, we concur with two, partially concur with seven, and do not concur with four. Given that difference of opinion, we felt it is important to communicate our specific concerns by responding directly to some of the audit's findings and recommendations, with which we do not agree.

Our office is seeing the Auditor's Comments in appendix B for the first time and is currently reviewing them. In addition, there appears to be additional editing of the final report previously provided to this office.

Guardianship is a very complicated area of the law, and the Guardianship Program itself is very complex. In general, we feel strongly that those complexities were not fully understood by the auditors. This summary document is intended to complement the audit report and help readers better understand our concerns.

As stated in our formal response to the audit, my office welcomes the oversight of the Comptroller's Audit Division, and we are committed to ensuring that our Guardianship Program complies with statutory requirements.

Tiffany Moore Russell, Clerk of Courts



Official Statement from Clerk Tiffany Moore Russell

On March 1, 2021, the Clerk of Courts received the final audit report from the Orange County Comptroller regarding our office's administration of the Guardianship Program in Orange County during the 2016-2019 time period. The stated objective of this audit was "to determine where the Clerk's Office complied with the requirements of Chapter 744, Florida Statutes," the law governing the guardianship process in our state. Our analysis of the report found that *we are in compliance* with all requirements outlined in Chapter 744.

Our office is seeing the Auditor's Comments in appendix B for the first time and is currently reviewing them. In addition, there appears to be additional editing of the final report previously provided to this office.

While some findings and recommendations included in the report are well-intentioned, we cannot concur with a number of them, primarily because they are outside the scope of the audit and recommend actions that would exceed our statutory authority.

That said, let us be clear: When it comes to guardianship, *all* of us involved in the process are working toward a common goal – to protect the most vulnerable in our community. We want the system to work effectively and efficiently on their behalf.

Toward that end, the Clerk of Court's office is committed to a culture of continuous process improvement – and we welcome the opportunity to work with other offices of government to help improve Orange County's guardianship system.



The Clerk's Response to the Orange County Comptroller's Audit **Fact Sheet**

- **Guardianship Program in Florida:** A guardianship is a legal proceeding in the circuit courts of Florida in which a guardian is appointed to make either personal and/or financial decisions for a minor or for an adult with mental or physical disabilities. The process is governed by Chapter 744, Florida Statutes.
- **Partners in the Guardianship Program:** The guardianship process is overseen by several partners, including The Office of Public and Professional Guardians (OPPG), the Guardian, Attorney, Clerk of Courts and the Court – each of which has legally specified roles and responsibilities per Statutes.
- **The Clerk of Court's Role in Guardianship:** The OCCC's role is primarily "ministerial": to audit specific documents and to notify the court of any discrepancies, as outlined by law.
- **Objective of the Audit:** As stated in the Comptroller's report, "The audit objective was to determine where the Clerk's Office complied with the requirements of Chapter 744, Florida Statutes."
- **Audit Period:** Duration of audit – three years (November 2016 – November 2019)
- **During the Audit Period:** The timing of this audit spanned two different operations managers in the Clerk's office, three Guardianship Judges in the Ninth Circuit, several changes in Statutes by the Legislature, and many process improvements made voluntarily by the Clerk to increase efficiency and effectiveness.
- **Continuous Cooperation:** For more than three years, the OCCC cooperated with the audit process, spending significant time and resources to conduct reviews.
- **Number of Recommendations in the Audit:** 13
- **Clerk's Response:** Concur with 2, partially concurs with 7; does not concur with 4
- **Reasons for Concerns:** Many of the findings/recommendations are outside the scope of the audit and reflect a misunderstanding of the Clerk's responsibilities under the law.
- **OCCC's Analysis:** Our own analysis of the report found that *our Office is in compliance* with all requirements outlined in Chapter 744.



Audit Timeline

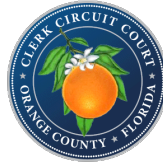
October 2016: Clerk of Courts notified of the audit

December 2016: Auditor arrived to begin discovery

December 2019: Exit Conference

Duration of Audit: 3 years

Timeframe	Milestones
<i>Feb. – May 2017</i>	<ul style="list-style-type: none"> • 3 months to clarify data request and provide data • October 2017: Auditors visit Palm Beach County Clerk Guardianship to learn
<i>Feb. 2018</i>	<ul style="list-style-type: none"> • Leadership change in division Management – OCCC practice is that new managers perform a process review upon entering a new division. • 1 Clerk subject matter expert (SME) transferred to another division • 1 Clerk SME retired • 1 new employee to the area
<i>April 2018</i>	<ul style="list-style-type: none"> • Audit status meeting held with Clerk staff and auditors
<i>April – Sept. 2018</i>	<ul style="list-style-type: none"> • Approximately 113 cases sent from auditor for manager review
<i>Sept. 2018</i>	<ul style="list-style-type: none"> • Clerk General Counsel informed the auditor that we would no longer be able to respond to the volume of cases sent from auditor for manager review • Requested that the next correspondence be the draft audit report.
<i>2019</i>	<ul style="list-style-type: none"> • Voluntary and proactive restructure of the Guardianship area started. • After completing some process reviews and internal audits, the manager initiated a re-structure of the areas under her responsibility, which included the Civil Division, Probate & Mental Health and Guardianship areas.
<i>Nov. 2019</i>	<ul style="list-style-type: none"> • Auditor called to schedule Exit Conference – indicated resources were diverted to an investigation instead
<i>Dec. 2019</i>	<ul style="list-style-type: none"> • Exit Conference held
<i>2020</i>	<ul style="list-style-type: none"> • Consistent updates and communication on status of Clerk response. • Clerk resources diverted due to pandemic.
<i>March 2021</i>	<ul style="list-style-type: none"> • Release of final report.



Responses At a Glance

Recommendation from Orange County Comptroller Audit	Orange County Clerk of Courts Response		
	<i>Concur</i>	<i>Partially Concur</i>	<i>Do Not Concur</i>
1. "The Case Management System Used to Administer the Guardianship Program Should be Improved"		X	
2. "The Court Should Be Notified of Professional Guardians That Do Not Meet and Maintain Statutory Requirements for Appointment"			X
3. "The Court Should Be Notified of Non-Professional Guardians That Do Not Meet the Statutory Requirements Before Letters of Guardianship are Issued"			X
4. "Controls Should Be Implemented to Prevent Conflicts of Interest Within Guardianship Cases"			X
5. "Attorney and Guardian Fees Should Be Adequately Reviewed"		X	
6. "The Clerk Should Ensure an Adequate Audit of Inventories is Performed and Issues Identified are Corrected"		X	
7. "The Procedures for Auditing Annual Accountings Should be Improved"	X		
8. "Trust Accountings and Other Trust Documentation Should be Regularly Reviewed to Ensure Accuracy and Compliance with the Law"		X	
9. "Reports Should Be Reviewed and Approved in a Timely Manner"		X	
10. "The Court Should Be Timely Notified of all Delinquent Reports"		X	
11. "Procedures Should Be Developed for Discharging Guardians"	X		
12. "Guardian Advocate Cases Should Be Monitored for Compliance"			X
13. "The Court Should be Timely Notified When Plans Do Not Satisfy the Statutory Requirements"		X	



Summary of the Clerk's Response to the Audit Report

While we welcome and support recommendations that will improve the Guardianship Program in Orange County and better serve those in our care, we strongly disagree with a number of the recommendations made in the audit report. Some were beyond our authority as mandated by law; some were no longer relevant; others were simply inaccurate.

Key areas of concern include:

- **Partners in the Program.** The various partners involved in the Guardianship Program have specific roles and responsibilities during the life of a guardianship case. In the Ninth Circuit, these partners are the Office of Public and Professional Guardians (OPPG), the Guardian, Attorney, Clerk of Courts and the Court. ***Some of the audit report recommendations are outside of the Clerk's statutory responsibility.*** Thus, while this report does include ideas that could make the guardianship process more efficient, it doesn't mean that our office has the authority to implement them.
- **Case Reviews.** Throughout the audit period, auditors provided OCCC with case numbers to review in order to validate their findings. ***In some cases, the Clerk's office found that the auditor's findings were not accurate.*** However, due to the significant time involved in performing case reviews, OCCC determined nearly three years into the audit that they could no longer invest the time and resources to conduct the reviews. Without a review of 100% of the cases in their sample, we were not able to fully concur with audit findings related to Recommendations 3, 5, 6, 9, 10 and 13.
- **Audit Scope.** Overall, we believe that there are valuable recommendations included in the report. However, we find that some findings and a few of the recommendations include ***tasks that are outside of the scope of the audit and/or the Clerk's responsibility***, per Florida Statutes.
 - For example, Recommendation #4 states: *"The Clerk should develop and implement guardianship and incapacity procedures to document identified conflicts of interest. This should include a list of potential conflicts that clerks can reference while administering assigned cases. Procedures should also be implemented for the clerks to notify the Court when conflicts of interest have been identified."* ***We find that this recommendation would be inappropriate for us to implement.*** As we stated in our response *"In the rare event that the Clerk is made aware of a conflict of interest, it is noted as a Clerk Note in our Case Management System, which allows anyone reviewing the case to view the*



documentation. Therefore, the Clerk's current process complies with the applicable Florida Statutes. In fact, Florida Statutes places the responsibility of disclosing any conflict of interest on the professional guardian."

- **Audit Timing and Process Improvements.** The audit started in November 2016 and concluded in November 2019. Because of the extraordinary length of this audit, it spanned two different Operations Managers in the Clerk's office, three Guardianship Judges in Ninth Circuit, several changes in Statutes by the Legislature, and many process changes. When the current Operations Manager began leading the team in February 2018, she performed an internal review of various processes, as is consistent with our internal protocols. While we were fully aware that the audit was still in progress, it was prudent to evaluate processes and implement process improvements in accordance with our goals for continuous improvement. In fact, our management teams had specific performance goals around process improvements at the time. ***This internal review led to several process improvements that were implemented during the audit period:***
 - Our most significant accomplishment was completing a procedural manual for the area, with assistance from our Project Management Office's Process Consultants. Along the way we validated our processes by consulting Florida Statutes and benchmarking with other counties. This enabled us to eliminate unnecessary steps and improve the forms we use. *(Related to recommendations about documenting procedures)*
 - A dashboard was created to compare data from previous years to the current year, and to identify active cases and patterns. *(Related to recommendation #1)*
 - We also implemented a new process to link all Professional Guardians to their cases. Although not required by statute, this provides visibility to the number of assigned cases in our county for ease of monitoring by Court Administration and the Guardianship Judges.
 - We added more Deputy Clerks to the Guardianship team and provided training specific to general accounting principles. *(Related to recommendation #6)*

Conclusion

In conclusion, the OCCC finds that we are complying with our statutory responsibilities outlined in Chapter 744 of the Florida Statutes. Consistent with our culture of continuous process improvement, we will continue to look at best practices provided by the Florida Court Clerks and Comptrollers and perform periodic reviews of our internal processes and procedures. We welcome feedback and oversight – and we will work with all offices of government to help improve the guardianship system so that, together, we can better serve those in our care.