

**OFFICE OF THE PUBLIC GUARDIAN**  
**Annual Report**  
**February 19, 2001 - December 31, 2001**

This report is prepared pursuant to 7 GCA §3112 (g) by the Office of the Public Guardian for the Chief Justice of the Supreme Court of Guam.

**Establishing An Office**

Public Law 25-103 created the Office of the Public Guardian (hereafter the Office) and placed it under the authority of the Supreme Court of Guam. The Office has five responsibilities, as established by 7 GCA §3112 (a):

- (1) The Public Guardian shall serve as guardian, limited guardian, testamentary guardian or temporary guardian of the person and/or estate of an incompetent adult when so appointed;
- (2) The Public Guardian shall assist the Court, as the Court may request or direct, in proceedings for the appointment of a guardian of the person and in the supervision of persons, corporations or agencies which have been appointed as guardians of the person;
- (3) The Public Guardian shall advise and assist persons, corporations, and agencies which are seeking appointment as a guardian for an adult believed to be incompetent, and shall provide advice, information and guidance to the persons, corporations or agencies who have been appointed as guardian of the person to assist them in the discharge of their duties;
- (4) The Public Guardian may offer guidance and counsel to persons for the purpose of encouraging maximum self-reliance and independence of such persons, and avoiding the need for appointment of a guardian.
- (5) The Public Guardian shall develop programs of public education on guardianships and alternatives to guardianship and encourage the development of private guardians able and willing to serve as guardian for the person.

In December 2000, the Guam Legislature funded the Office and in January 2001 the Chief Justice of the Supreme Court, the Honorable Benjamin J.F. Cruz, appointed John Weisenberger as Public Guardian.

On February 19, 2001, the Office opened, and was initially located within the Supreme Court of Guam office space, on the third floor of the Guam Judicial Center. In June 2001, the Office moved to its current location at Suite 104, Calvo and Arriola Building, 259 Martyr Street in Hagatna. The physical office space includes a reception area with a work station for the legal secretary, an office for the Public Guardian, an office, currently equipped with one work station, which could serve two additional staff, and a file room/employee lounge. The existing office can accommodate growth. There are three computer workstations, connected by a network and a fax/copy machine. The Office has internet access via a DSL connection with ITE.

### **Reaching Out**

The Office has implemented a program of outreach as required by statute. This began with a press release from Chief Justice Benjamin J.F. Cruz. The press release was carried by print, radio and TV media in February/March 2001. Since that time, the Public Guardian has appeared at numerous public forums to describe the public guardian program, to discuss guardianship law and practice, and alternative approaches and interventions which reduce or eliminate the need for a guardian.

The Appendix includes the press release, a list of the forums where the Public Guardian has made a presentation and press clippings. A pamphlet describing the office has not been designed or produced yet.

### **Referrals and Case Work**

As of December 31, 2001 the Office has received eighty-six referrals. These referrals came from service providers in the community, including Adult Protective Services, Guam Legal Services Corporation, Guam Memorial Hospital, Pacificare Home Nursing, Catholic Social Services, Superior Court of Guam, and the Micronesian Health and Aging Institute/UOG, as well as from individuals and families. Many of these referrals are as a result of the outreach program which is being conducted.

The Public Guardian has been appointed legal guardian of the person and/or estate of thirteen adults. Two of these wards are Guam residents living in residential treatment programs in Austin, Texas, and the remainder live on Guam. In addition, he has been appointed as the Guardian Ad Litem for two adults in a probate proceeding. The Public Guardian has assumed responsibility to be the agent (attorney in fact through a limited power of attorney) for a frail but competent man at St. Dominic's Senior Care Home who has no family or friends to fulfill this necessary task. A listing of the Wards of the Public Guardian is included in the Appendix.

Two petitions for guardianship, nominating the Public Guardian, are pending before the Superior Court. In one matter, the proposed ward is missing and efforts to locate him by Supreme Court Marshals, Guam Police, Guma Mami and The Department of Mental Health and Substance Abuse have been unsuccessful. The second petition is scheduled to be heard on 2/21/02, and the Public Guardian has been actively participating with a treatment team on behalf of the prospective ward since May 2001. Further, the Office has filed guardianship petitions on behalf of four incompetent adults, nominating a family member or friend to be the guardian. Three of these cases have been resolved successfully. One case has a hearing set for January 28, 2002.

In addition, in matters which involve support to existing guardians, and support to individuals in order to avoid the need for a guardian, the Office has ten cases currently open and has closed six cases. There are twelve pending cases which require further action in order to determine case status. Thirty-nine referrals were not opened after an initial meeting, and in most of these referrals, information was provided or persons were referred to another service provider.

The Public Guardian currently maintains nine checking accounts and five savings accounts, styled "*John Weisenberger, In the Interest of [name of ward]*". All of these accounts are with the Bank of Guam. The combined total of the deposits in these accounts is approximately \$178,263.00. The Office has entered into an agreement with the Bank of Guam to utilize its Cash Management system which permits information retrieval and limited internet banking from our office computer system.

In the Appendix is a listing of each referral received in 2001 and the status of the referral.

### **Procedures and Processes**

The Office has two staff, the Public Guardian and the Legal Secretary. Together they receive referrals and schedule appointments, interviews and meetings. The Public Guardian follows up on each referral, initially determining if the referral is appropriate for the purposes of the Office. From that determination, additional work is done to determine the status of each referral. An initial referral form has been developed. This form will be revised based upon experience gained from its use this past year. The form currently in use is in the Appendix. The referral form has been widely distributed and people and organizations are encouraged to use it.

In matters involving a decision as to whether a person is competent or incompetent, the Public Guardian gathers medical or psychological information. An Individualized Functional Assessment of the person is conducted by the Public Guardian in conjunction with one or more persons who are care givers for the person believed to be incompetent. A copy of this assessment tool is in the Appendix. Initially, the Public Guardian reaches a determination whether or not the person is incompetent, as that term is defined at 15 GCA §3801, and whether the person would benefit from the appointment of a guardian of either his person or his estate. There is also an assessment of whether it is possible and appropriate to benefit the person by seeking a limited guardianship, that is, a guardianship over only an aspect of the person's life, such as medical decision-making.

If the person would benefit from the appointment of a guardian, and there is family or friend available and able to serve as guardian, then that person is referred to private counsel for the legal work necessary to establish a guardianship. If the circumstances presented make it unlikely or impossible for the family or friend to acquire legal representation, then the Office will file for the guardianship, nominating the family or friend to be guardian. If the person would benefit from the appointment of a guardian, and there is no family or friend available or able to serve as guardian, then the Public Guardian petitions the Superior Court, nominating himself to serve as guardian of the person and/or the estate of that individual. Ultimately, the Superior Court determines whether a person is incompetent, would benefit from appointment of a guardian, and who that guardian will be.

In secondary matters, including assistance to established guardians, as aide to the Superior Court in existing guardianships, which has included investigations of guardians who are alleged to be failing in their responsibilities, and assistance to persons in order to avoid or plan around a guardianship, the Office will open a case based upon an assessment of the need presented, and the likelihood that intervention will reasonably aid the person who is subject to the guardianship.

### **Public Guardian Review Board**

The enabling legislation for the Office provided for the establishment of the Public Guardian Review Board. The role of the Public Guardian Review Board (the Board) is (1) to consistently monitor persons, corporations and agencies appointed as guardians for adults, and (2) to review the care and protection of those persons under guardianship of the Office of the Public Guardian. The Board consists of eleven members comprised of doctors, lawyers, social workers and representatives of organizations which represent the persons who are likely to need guardians during their adult life. 7 GCA § 3112(b).

Chief Justice Cruz formed the Board immediately after the Public Guardian was appointed and the initial meeting of the Board took place on February 20, 2001. The Board has met on three occasions during 2001. The first meeting for 2002 is scheduled for January 31, 2002.

## **Matters Worth Noting**

### **The National Guardianship Association**

In September 2001 the Office of the Public Guardian joined the National Guardianship Association (NGA). The NGA, is an association incorporated in 1988 as a non-profit national organization to strengthen guardianship and related services through networking, education, and tracking and commenting on litigation. The NGA is made up of guardians, attorneys, conservators, bankers, social workers, advocates, representative payees, fiduciaries, physicians and hospitals. It produces a quarterly newsletter for its members and maintains a web site for current information and as a means for seeking answers to questions.

Of great importance to the Office, the NGA has produced Standards of Practice for Guardians and a Model Code of Ethics for Guardians. Since the professional practice of guardianship is new to our community, these materials developed by persons with experience, expertise and commitment to incapacitated persons will be of great assistance to the Public Guardian and to other guardians on Guam.

The Public Guardian attended the Annual Conference and Membership Meeting for the NGA, held in Del Ray Beach, Florida in October 2001. This was a valuable experience as it provided a wealth of information, an appreciation of the complexity of this role and a connection to resources available to fulfill the role.

### **Visit With Wards in Austin, Texas**

On the way to the NGA Conference, the Public Guardian visited two wards who reside in residential treatment programs in Austin, Texas. Each of these wards has been placed in residential treatment on the mainland since their mid-teen years. Both wards are now thirty years of age.

There were two purposes for the visit. First, the Public Guardian had an obligation to visit each of his wards and assess the services and treatment being received by each. Second, it was timely to conduct an assessment of the kinds of services which would be needed in our own community so that these persons could return to Guam and be provided appropriate care in the community of Guam.

Both purposes were met by the visit. The Public Guardian retained the services of an expert in Austin, Texas to assist him in his work. The expert, David Pharis, is a licensed therapist, a professional guardian himself, and has served a Master for a Federal District Court in Texas with the responsibility to assess services provided by residential treatment programs serving adults. With the assistance of Mr. Pharis, the Public Guardian found both wards to be well served and has developed a basic understanding of the needs of these persons so that appropriate services for them can be identified or developed on Guam.

### Wards in Wrong Placements

The most significant issue which has arisen for the Wards of the Public Guardian this year is the serious lack of appropriate and therapeutic residential care in our community. Six of the Wards of the Public Guardian are living in placements which are inappropriate for them. This means that the current placement of a ward is either not therapeutic, or is contrary to the policy of the organization providing the placement, or is outside of Guam. Two wards are 'voluntarily' placed in the acute care adult inpatient unit at the Department of Mental Health and Substance Abuse (although they do not need acute psychiatric care); one ward is at Guma Sagrada, the emergency receiving home operated by Catholic Social Services, for nine months more than the maximum placement; one ward is a pre-trial detainee at the Department of Corrections and will not be considered for pre-trial release because there is no appropriate therapeutic home for her care; and two wards are placed, and have been for the last 15 years, in residential treatment in the mainland because an appropriate placement has not available in this community.

A suit has been filed in the District Court of Guam on behalf of one of these wards in order to enforce the provisions of the Americans with Disabilities Act. There are two other plaintiffs, and the Public Guardian is represented by Guam Legal Services Corporation in this suit. The defendants are the Governor of Guam and the directors of the Department of Integrated Services for Individuals with Disability and the Department of Mental Health and Substance Abuse. On November 7, 2001 the Court granted plaintiffs a Preliminary Injunction requiring the defendants to establish a plan for the placement of the plaintiffs into appropriate residential care in the community. This suit requires further action in order that a real remedy be acquired.

### MIP, Medicaid and Public Assistance Dilemma

A number of Wards are adversely affected by the difficulty which the Department of Public Health and Social Services has had in paying providers of medical services and pharmacy services in both the MIP program and in Medicaid. Our Wards have been purchasing their own prescriptions because pharmacies either do not accept MIP or Medicaid, or the pharmacies which do accept MIP or Medicaid are 'out of' the particular medication which our Wards are seeking to pay for with MIP or Medicaid. It is believed that this problem is caused by the pharmacies being unable to collect from the government for MIP and Medicaid services.

In addition, at least one Ward has lost his medical doctor because the doctor now refuses to schedule any more appointments with persons holding MIP or Medicaid. This doctor, in the past, had always agreed to serve persons with MIP and Medicaid even when many other providers would not. There are very few, if any, doctors or clinics who will accept new MIP or Medicaid patients. Those doctors and clinics which

have served persons with MIP and Medicaid in the past are now closing their practice to existing patients with these forms of coverage.

It is not clear how our Wards with MIP or Medicaid will be able to continue to receive medical and pharmacy services unless they continue to use their own limited resources to pay for care.

### Rules and Regulations

The enabling legislation for the Office of Public Guardian provides that rules and regulations be enacted for the operation of the office. 7 GCA § 3112 (f). The Public Guardian has found it difficult to complete this responsibility prior to December 31, 2001. This responsibility is pending at the writing of this report.

### Need For Social Work Staff

The response of the community to the Office of Public Guardian has been heartening, and at the same time a challenge. There can be no question that a need exists for the services of a public guardian in our community. The concomitant duties of support to other guardians, investigation of guardians and assistance to persons and families in order to avoid the need for a guardianship has contributed to the challenge of the Office to meet the community response.

The resources of the Office, of the Public Guardian and his Legal Secretary, are taxed by the community response. The role of guardian is a role of great personal and fiduciary responsibility. As such, there is a limit to the amount of work that the Office can accept. To assume too much responsibility as a guardian and as a fiduciary will result in a breach of the duty owed by the Public Guardian to his Wards. This must not be permitted to occur.

In its proposed budget for fiscal year 2002, the Supreme Court requested the addition of a Social Worker II position for the Office. Even in August 2001 it was evident that the Public Guardian needed a social worker on his staff to assist in carrying out all of the varied responsibilities he has for his Wards and others. Unfortunately, the budget for fiscal 2002 did not contain the additional staff position.

The compilation of, and assessment of the information presented in this report only serves to support in a dramatic way the need for a social worker to assist the Public Guardian. Frankly, the day when the Public Guardian is unable to accept new Wards or other case responsibilities is not far off. For this reason, the request for additional staff support is here stated again.

**Conclusion**

This report and the attached Appendices comprises the first report of the Public Guardian to the Chief Justice of the Supreme Court of Guam for the period February 19, 2001 to December 31, 2001.

Dated: January 31, 2002

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John Weisenberger, Public Guardian

**(Please Note Attachments and Listing of Appendices for the 2001 Annual Report are available at the Office of the Public Guardian)**

