



County of Santa Barbara
Assets Held on Behalf of Others:
Public Administrator - Guardian



Photo of the Public Administrator-Guardian Warehouse

Audit Report

July 13, 2017



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Overview

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Introduction

We performed an audit of the County of Santa Barbara (the County) Public Administrator-Guardian's (PAPG) management of client assets. Our work was limited to the areas specified in the Objectives and Scope section of this report. We believe the evidence we obtained provides a reasonable basis for the findings in this report.

Objective and Scope

We conducted our audit in conformance with the *International Standards for the Professional Practice of Internal Auditing (Standards)*. The Standards require that the internal audit activity be independent and internal auditors be objective in performing their work. The Standards also require that the internal auditors perform their engagements with proficiency and due professional care; that the internal audit function is subject to a program of quality assurance; and that the results of the engagements are communicated.

Our audit included examination of seventeen case files which were selected from the PAPG active case list, court records, and cases with assets held in the PAPG's vault; five Public Administrator (PA) and twelve Public Guardian (PG) cases. Our tests were designed to determine the adequacy of internal controls over the receipt, safeguarding, documentation, and disposition of client assets. We also tested to determine whether these cases were handled in accordance with the Probate Code and County policy. Our audit did not include Lanterman-Petris-Short conservatorships, for adults who are mentally ill, nor did it include indigent estate cases due to the confidential nature and low estate values of these cases.

Background

The PA manages estates of deceased individuals who do not have an appropriate person to act as an administrator. There are 60 PA and 215 PG cases that had cash balances amounting to \$490,147 and \$1,972,683 at May 3, 2016 and July 11, 2016, respectively. The PA collects the decedent's assets, makes burial arrangements, pays creditors, locates heirs, and distributes any remaining assets, as appropriate.

The PG serves as the legally appointed guardian or conservator for adults who cannot care for themselves and do not have someone who is willing and able to help. The PG may be appointed as guardian of the person, guardian of the estate, or both. As guardian of the person, the PG arranges housing, health care, personal care, transportation, and any other needs the client may have. As guardian of the estate, PG collects and manages the client's

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assets, collects income due to the client, pays the client's expenses, and provides financial accounting to the client, the court, and other related parties.

PAPG activities are subject to the California Probate Code (the Probate Code). In addition to the Probate Code, the *Handbook for Conservators* is a resource published by the Judicial Council of California, a policymaking body of the California courts, which recommends its use by public conservators. Furthermore, *the Probate Referee Guide* is a resource published by the California Probate Referees' Association and is focused on the proper preparation of court reports.

The PAPG contracted auctioneer (auctioneer), warehouse, and double lock cabinets hold physical assets for clients. The majority of assets are marshalled by PAPG staff and picked up by the auctioneer. Small assets of value are often kept in the double lock cabinets. Little is kept in the warehouse as large items of value are typically immediately consigned to the auctioneer, who stores them while they are pending sale. When assets are consigned, PAPG staff and the auctioneer sign a consignment control contract that lists the assets that are transferred. The PAPG also is responsible for closing client's bank accounts. These funds are either put into a savings account in the County Treasury or an external checking account managed by the PAPG. The PAPG utilizes the Panoramic software system (Panoramic), which is specific PAPG case management software. The PAPG uses Panoramic for certain case management activities, such as paying client expenses.

The Public Administrator and Guardian are required to comply with legal statutes, which require accountings and reports of assets be filed with the court. These documents help to inform the court of the inventory of assets held in the estate and also are used to establish the fees charged by the PAPG. In turn for their services, the PAPG is entitled to fees for administering estates and conservatorships pursuant to the Probate Code.

Conclusion

Based on our audit, we noted weaknesses in policies and procedures and areas where internal controls could be strengthened. Significant improvements are needed in the areas of client inventories, court reporting, the case management system, and policies and procedures.

Findings and Recommendations

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Finding 1 – Policies and Procedures

The PAPG has written policies and procedures. However, we noted instances where written policies and procedures were not in place. Written policies and procedures ensure consistent interpretation in business functions and practices, and reduce opportunity for errors to occur. There were no written policies or procedures requiring:

- A complete listing of assets be maintained in each client case file.
- Periodic inventories of the client assets held by the PAPG be made and reconciled to Panoramic and other inventory records.
- Bank statements be requested when clients' personal bank accounts are closed.
- Keys to clients' houses be stored in a secure location.
- Prescription medications be disposed of in a prescribed manner.
- Staff adhere to best practices on completing tasks within certain timeframes.

Deficiencies in policies and procedures increase the risk of inconsistent practices and errors. As a result of the deficiencies in these policies and procedures we noted that an incomplete list of cases was maintained, we could not verify clients' personal bank account balances at closure, and cases were not closed timely.

Recommendation 1: We recommend that the PAPG write policies and procedures over the areas identified above. We also recommend that the PAPG establish best practices with timeframes on completing tasks.

Finding 2 – Timely Administration of Client Assets

The PAPG has a responsibility to safeguard client assets. This includes protecting assets held for clients, reporting assets to the court as required under law, timely filing for appointment as personal representative, and timely distribution of assets as necessary. The following legal sections outline certain PAPG responsibilities:

- Probate Code 2610 states that within 90 days of appointment, a guardian or conservator must file a report listing assets of a client's estate with the court. Probate Code 8800(b) states that this report must be filed within four months after the court issues letters to the personal representative.
- Probate Code 2610(b) states that the guardian or conservator must, when filing the aforementioned report, take and subscribe to an oath that the report contains a true

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statement of all of the estate which the guardian or conservator has possession or knowledge.

- Probate Code 7620 requires that the PA of the county in which the estate of a decedent may be administer shall promptly petition for appointment as personal representative of the estate if there is no person having higher priority, the property in the estate exceeds \$150,000, and the PA determines it is proper.
- Probate Code 8400 states that a person has no power to administer the estate until the person is appointed personal representative.

When assets are not reported to the court and timely distributed, the opportunity for asset loss increases.

Timely Court Reporting

During our audit, we noted the following instances where assets were either not reported to the court or they were not reported to the court in a timely manner:

- Out of 12 PG cases sampled, three clients had estates with jewelry. In all three cases, although other assets were reported to the court, the clients' jewelry was not. In one case, the jewelry was held by the PG for approximately eight years after the client's death and the PG had been discharged as guardian of the estate. To be discharged, the PG submitted a declaration to the court signed under penalty of perjury stating that the PG did not hold any assets for this client. The jewelry is still held by the PG.
- We noted three additional instances where items of apparent value (a home, shares of stock, and a violin) were not reported to the court.
- Out of the 17 cases sampled, there were nine cases where the reports listing assets in clients' estates were not filed with the court within the required timeframes. However, the reports were ultimately filed with the court for these clients.

Timely Appointment

The PA did not promptly petition for appointment of the following clients' estates:

- One PG client passed away on March 25, 2014 and left a will specifying that assets of approximately \$528,000 should be distributed to a specific charity. The PAPG retains the full amount of these assets and has not taken any steps to file for appointment as administrator of the client's estate.

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- An individual passed away in 2013 and the PA marshalled the individual's assets; however, at the commencement of our audit the PA had not yet filed with the court for appointment as the personal representative. Although the PA had not been appointed as personal representative, the PA consigned the client's assets to the auctioneer and a portion of these assets were sold.

Timely Monitoring and Discharge

Furthermore, there were the following instances where the PAPG did not timely monitor or discharge client assets:

- The court ordered the PA to distribute a client's estate in 2011. The PA continues to hold assets, including real estate, associated with this client.
- At the request of the PG, the court appointed a trustee to manage the sale of a client's house. The court ordered the PG to direct the trustee to distribute the sale proceeds to the client when the house was sold, which occurred in September 2013. According to the court order, the trust would no longer be funded at this point and would be terminated by the PG. In October 2013 the trustee withheld a portion of the home proceeds as a reserve for outstanding expenses. We noted that the trustee still retains the holdback. Between October 2013 and July 2016, trustee fees continued to be charged and taken from the client because the trust had not been terminated.

If cases are not closed timely, efficiencies are not achieved, and the risk of misappropriation of client assets increases.

Recommendation 2: We recommend that, as required by law, all assets in an estate which the guardian or conservator has possession or knowledge of be reported to the court. When developing policies and procedures over entry of cases into the system and case closure, the PAPG should establish the timelines expected to file for appointment and close decedent or terminated cases, and require that compliance with these timelines be monitored. The policy should also require that cases which take longer than the established timeline be escalated to PAPG management at an assistant department level or higher.

Findings and Recommendations

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Finding 3 – Segregation of Duties

Staff duties should be separated whenever possible. Without adequate segregation of duties or mitigating controls, the opportunity exists to perpetrate and conceal fraudulent activity. The PAPG should evaluate whether the following duties can be separated, and if not, consider whether mitigating controls can be implemented.

The same employee who enters payment information and marks the check for printing also mails the checks. We noted that this employee is also able to enter new vendors and that there were many instances of duplicate vendors in the system which contained the same name and address. Generally, employees with the ability to set up a vendor should not have the ability to initiate or authorize payment. Although case managers are able to review expenditure reports, no review of these reports is evidenced by signature.

Recommendation 3: We recommend that the case managers evidence their review of the monthly expenditure reports. We also recommend PAPG consider assigning an employee to maintain a master vendor list. In addition to reviewing supporting documentation for one time payments, the employee responsible for printing the checks should compare information on checks for ongoing monthly budgeted statements to corresponding supporting documentation.

Finding 4 – Photos and Video

Existing procedures require PAPG staff take videos or photos of the entire property when assets are marshalled. However, in the cases we reviewed, we noted that photos are not always taken and/or retained. Of seventeen case files we examined, photos were available for four clients and no video was taken. Out of the thirteen cases where photos were not available, non-cash assets were marshalled and/or consigned for eight clients.

Photos and video each have an important role in documenting the process performed by the PAPG. Video can provide a full perspective of what is seen and which staff are present, whereas, photos document the state of property marshalled. Therefore, the combination of the two is best used to adequately document the marshalling of assets and protects PAPG staff through maintaining documentation.

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It is not adequately documented in files which employees are present when assets are marshalled from residences. It was also sometimes unclear on the form as to which staff's signatures were on the form. Using photos and video can clearly document which staff are present.

In one case, two pieces of jewelry did not match the description on the inventory log in the vault. One of these items was described as a yellow colored ring with princess cut clear center stone. In the vault we could only locate a yellow colored ring with a round cut clear center stone. This is an example of how photos on file can verify and identify that the correct assets are held.

Recommendation 4: We recommend that PAPG consider purchasing wearable video cameras and revising policies and procedures to require that one person wear a video camera when assets are marshalled and the other take photos of individual items. We also recommend documenting staff that are present when assets are marshalled from a residence. Because the PAPG is responsible for assets, the PAPG should consider modifying its policies to require that photographs be taken of all real and personal property as soon as possible after appointment, regardless of whether assets are marshalled.

Finding 5 – Auctioneer Contract and Consigned Items

The PAPG contracts with one auctioneer, exclusively, to sell and store client assets. The contract between the PAPG and the auctioneer expired in August 2015 and was not renewed as of the start of our audit. We also noted that the contract was not subject to competitive procurement practices. The contract states that the auctioneer will retain 50% of the sales price of all client assets sold, except for vehicle sales, where the auctioneer retains 40% of the sales price.

We noted five cases where items were consigned to or sold by the auctioneer; however the assets were not included on the consignment control contract. Additionally, there were three instances where items described on clients' consignment contracts were vague such as "jewelry" and "coins in black bag." The PAPG's current policies and procedures state that jewelry must be listed in specific detail on these contracts. The exclusion of assets on a client's consignment contract and the absence of descriptive language increase the risk of loss of client assets.

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Recommendation 5: PAPG should establish a competitive bidding process for a new auctioneer contract. Furthermore, every item consigned to the auctioneer should be listed on a consignment control contract and documented thoroughly. In addition, consignment control contracts should be signed by all parties when assets are transferred.

Finding 6 – Automation of Case Management

Panoramic can be used to more effectively organize case documents and file court reports. We found certain documents and photos were either not in the prescribed area of the case file, making them difficult to locate, were not in the case file and had to be requested after the fact, or were lost. There are features of the software which are not currently utilized such as document uploading and preparation of court reporting of client asset lists. By using these management features, the PAPG can increase the accuracy of inventorying of assets and court reporting. These features can also ensure that documents and photos are organized, readily available, and less likely to be lost or misplaced.

Recommendation 6: We recommend that the PAPG utilize key features offered by Panoramic which would allow the PAPG to more effectively organize case documents and file court reports.

Finding 7 – Receipt Forms

The PAPG's policies and procedures require that a receipt form should be completed for assets marshalled by the PAPG. The receipt form should contain a description of the assets and signatures from the employees responsible for marshalling and receiving the asset. This form was not available for three assets and there were eight instances where this form did not have the appropriate information.

Recommendation 7: We recommend that PAPG adhere to its policies and procedures. We also recommend that the PAPG ensure that the person responsible for receiving cash or other assets signs the receipt forms.

Acknowledgement

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The responses to the findings, conclusions, and recommendations, as well as any planned corrective actions, are presented as an attachment to this report. We have not performed any audit procedures over these responses.

We appreciate the courtesy extended to us by management and various staff during this audit. If we can be of further assistance, please contact us at (805) 568-2100.

Respectfully Submitted,



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Audit Manager

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County of Santa Barbara Assets Held on Behalf of Others: *Public Administrator - Guardian*

Audit Responses

Finding 1 – Policies and Procedures

Recommendation 1: We recommend that the PAPG write policies and procedures over the areas identified above. We also recommend that the PAPG establish best practices with timeframes on completing tasks.

Response: Agree. There are presently informal policies and procedures in place surrounding the items noted in the report. The PAPG understands the importance of having written policies and procedures. The PAPG Manager's goal for 2016 was to update the policy and procedures manual to incorporate current practices, including areas identified. Workload constraints necessitated this be continued into 2017. Best practices with timeframes will be established where applicable. Additionally, an internal database has been created to track physical assets.

Finding 2 – Timely Administration of Client Assets

Recommendation 2: We recommend that, as required by law, all assets in an estate which the guardian or conservator has possession or knowledge of be reported to the court. When developing policies and procedures over entry of cases into the system and case closure, the PAPG should establish the timelines expected to file for appointment and close decedent or terminated cases, and require that compliance with these timelines be monitored. The policy should also require that cases which take longer than the established timeline be escalated to PAPG management at an assistant department level or higher.

Response: Partially Agree. The PAPG concurs that all assets in an estate which the guardian or conservator has possession or knowledge of should be reported to the court within the mandated

timelines. However, it is not always reasonable to establish internal timelines around other areas of case management when much of the PAPG's work is dependent on other organizations. The PAPG is reviewing ways to ensure the administration of cases are proceeding. Additionally, department executives are regularly made aware of issues or difficulties surrounding PAPG cases.

Timely Court Reporting

- The PG is allowed to sell assets of value when the client needs the funds for their care, and is not allowed to give away any client property during the lifetime of the conservatorship. We store things that have little or no monetary value, but may have emotional value to relatives such as old family photographs and costume jewelry, until we are discharged from the case and can distribute these items to the family.
- The referenced home is in a complicated estate, and the court is aware we are still awaiting the paperwork back from the appraiser. Also, any paper stock we find is assumed to have no value until we can prove otherwise, as most paper stocks we find do not have any value.
- The court expects us to file an initial I & A within 90 days, which we accomplish when possible. There are a myriad of reasons why we're unable to do an initial I & A in that timeframe, including how difficult it is to marshal the asset, difficulty determining ownership or value of an asset, and the length of time it takes the Probate Referee to respond with their paperwork. In these instances, we verbally update the Court, who is aware of these challenges and therefore accommodates delays.

Timely Appointment

- The PAPG is working with County Counsel to streamline requests for appointments and formally track follow-up.

Timely Monitoring and Discharge

- Actions in the first referenced case had been taken, but not fully documented. The PAPG staff will be reminded to appropriately document actions taken, per policies and procedures.
 - In the second case referenced, the PG was not the trustee of the trust. A separate entity was the trustee. After the sale of the trust asset, the house, the PG requested the funds from the trust be disbursed to the client's estate, which the PG controls. The client's estate received \$358,000. As is proper fiduciary duty and practice, the trust kept back a reserve amount to pay any additional liabilities such as income tax, property tax, etc. Since outstanding debts can arise much later, it is not uncommon for this amount to be held back for multiple years. The PG anticipated the balance would be distributed when the Trustee reviewed the taxes, and dissolved the trust, and it has been. The PAPG could have been more diligent in following up with the Trustee on the timeline for trust closure.
-

Finding 3 – Segregation of Duties

Recommendation 3: We recommend that the case managers evidence their review of the monthly expenditure reports. We also recommend PAPG consider assigning an employee to maintain a master vendor list. In addition to reviewing supporting documentation for one time payments, the employee responsible for printing the checks should compare information on checks for ongoing monthly budgeted statements to corresponding supporting documentation.

Response: Partially Agree. The PAPG doesn't receive printed expenditure reports because case managers have daily access to the client's transaction ledger in Panoramic. The case managers moreover review the transaction ledgers monthly to ensure clients do not exceed balances necessary to keep their benefits.

The PAPG feels the segregation of duties is met as there are multiple check points during the disbursement process:

- A case manager generates a paper disbursement request on the approved form, which includes the date, client estate, payee, amount, when needed, and why necessary, or reason requested. Any pertinent back-up documentation is attached. A second case manager or supervisor or manager also signs it (both signers are responsible). All checks are only payable to a vendor or the client.
- The FOP Sr. enters the disbursement request information into the computer and marks it for printing; the original disbursement request(s) with backup information is given to the Accountant III, or Business Manager, who is the back-up check printer.
- The Accountant III verifies payee, address and amount and reason against original disbursement request and back-up documentation. With the exception of some rent bills and personal needs checks, all bills for budgeted items are submitted. (Bills for some rents are not sent monthly; they are based on the rental or admissions agreement. Clients do not invoice us for their personal needs money.) The Accountant III then prints marked requests, writes the paper check number on the original disbursement request/bill and gives the checks to the FOP Sr. to mail.
- The FOP Sr. puts the checks into envelopes and then out to mail.
- Documentation is stored in the client's disbursement file.

The PAPG is reviewing its processes to look for additional mitigating controls, such as developing a duplicate vendor report and randomly sampling budgeted checks for validity. The PAPG has assigned a Financial Systems Analyst to review, and with the software vendor's assistance, appropriately delete redundant vendors in the computer's vendor list.

Finding 4 – Photos and Video

Recommendation 4: We recommend that PAPG consider purchasing wearable video cameras and revising policies and procedures to require that one person wear a video camera when assets are marshalled and the other take photos of individual items. We also recommend documenting staff that are present when assets are marshalled from a residence. Because the PAPG is responsible for assets, the PAPG should consider modifying its policies to require that photographs be taken of all real and personal property as soon as possible after appointment, regardless of whether assets are marshalled.

Response. Partially Agree. The PAPG's current practice and industry standard requires photographs of all real and personal property, and will create a written policy as such. The PAPG currently possesses a handheld video camera that is used as deemed appropriate. However, this method of documentation presents challenges because it is not a useful format for reporting assets to the court or the Probate Referee. The names of the staff present are documented in the client's notes in Panoramic and normally listed on the inventory sheet and consignment control contract.

As to the finding *"Of the seventeen case files we examined, photos were only available for four clients,"* for the thirteen others:

Six PG clients were living in skilled nursing homes when they became our clients. Nursing homes keep an inventory of client's belongings. No photographs were taken because there were no physical assets of value.

One PG client's house and belongings are in a trust and therefore not part of the PG estate.

One PG client resides in her home. Her home and belongings have not been marshaled; the PAPG has neither custody nor control. No photos were necessary under the policy at that time.

One PG client lived in a Board & Care facility with only clothing. Photos of the house were taken after the client's family moved out.

One PA client's estate consisted entirely of bank accounts. He was a German national and did not have a residence in the US. There were no physical assets to photograph.

During the time period audited, the PAPG was transitioning to digital photographs. In two PG and one PA case, photos were taken. These were not stored appropriately on the network shared drive, which has since become our procedure, so we were unable to retrieve them.

Finding 5 – Auctioneer Contract and Consigned Items

Recommendation 5: PAPG should establish a competitive bidding process for a new auctioneer contract. Furthermore, every item consigned to the auctioneer should be listed on a consignment control contract and documented thoroughly. In addition, consignment control contracts should be signed by all parties when assets are transferred.

Response: Partially Agree. The PAPG (SB County) no longer has a contract with the auction company, as it is not the PAPG who is contracting; it is each individual client’s or decedent’s estate. Currently there is no other auctioneer who meets our client’s needs other than the one we use. The PAPG periodically reviews the marketplace to determine if there are any new vendors available.

The PAPG concurs that every item consigned to the auctioneer should be listed on a consignment control contract, documented thoroughly and signed by all parties when assets are transferred. The PAPG will review its practices to ensure policies and procedures are being followed. Of the 30+ contracts reviewed, all were signed by PAPG staff. Only one was not properly countersigned by the vendor.

Unless the Probate Referee determines that a specific item has unique value, it is standard practice for any estate administrator to gather and list assets to be sold as “Lots.”

Finding 6 – Automation of Case Management

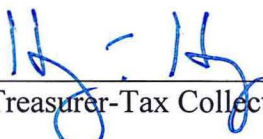
Recommendation 6: We recommend that the PAPG utilize key features offered by Panoramic which would allow the PAPG to more effectively organize case documents and file court reports.

Response: Disagree. The PAPG feels it uses its software system efficiently. Storing photos and documents on the network meets its needs as the items would have to be saved before they could be uploaded to Panoramic. Additionally, documents are often needed in other ways that Panoramic does not allow, e.g. sending as an email attachment.

Finding 7 – Receipt Forms

Recommendation 7: We recommend that PAPG adhere to its policies and procedures. We also recommend that the PAPG ensure that the person responsible for receiving cash or other assets signs the receipt forms.

Response: Agree. It is the intent of PAPG staff to adhere to PAPG policies and procedures, including requiring the person responsible for receiving cash and other assets sign the receipt forms. The PAPG will review its practices to ensure policies and procedures are being followed.



Treasurer-Tax Collector-Public Administrator-Public Guardian

7-6-17
Date

Auditor Clarification of Audit Report and Management Responses

The Public Administrator-Guardian (PAPG) Management's responses to the audit report included points requiring further explanation by the Auditor. Clarifications of responses #2, 4, 5, & 6 are presented below.

Auditor Clarification to Response #2:

Under law, all client assets (regardless of value), should be reported to the court. All of the jewelry and the stock noted in our report appeared to have value, yet was not appraised, nor was it reported to the court.

Auditor Clarification to Response #4:

We agree with the current policies and procedures which require that photos be taken when assets are marshalled. We also understand that, in accordance with policy, no photos will be available when no assets exist and considered this when writing our audit report. There were eight cases where assets were marshalled, but photos were not available. We also recommend that the PAPG consult with County Counsel as to when an asset is legally considered marshaled (the timing of this) and when the PAPG has control over an asset.

Auditor Clarification to Response #5:

We understand that the Probate Referee's Procedures Guide (the Guide) allows items such as furniture and furnishings, tools, etc. to be grouped together when assets are reported to the court. However, the Guide requires that items such as jewelry, art, coins, and antiques be listed in detail. Furthermore, the PAPG's current procedures require that jewelry, coins, stamps, and guns be listed in detail on the consignment control contract. Listing potentially valuable assets on a consignment control contract reduces the risk of loss and establishes a record of the items consigned to the auctioneer.

While the PAPG is not required under law to have a contract with the auctioneer, using a contract that meets County contracting standards could give the PAPG additional legal rights and protections. County Counsel has confirmed that the PAPG, not the estate, contracts with the auctioneer. The PAPG should consult with County Counsel to determine if it is worthwhile to have a contract due to the legal protections it provides.

Auditor Clarification to Response #6:

It is our understanding that PAPG staff does not use the feature in Panoramic that can produce the Inventory and Appraisal, the form that reports assets to the court. Exploring whether this feature can be utilized may result in efficiencies in court reporting.