

CONSERVATORSHIPS REVISITED



2019-2020 Civil Grand Jury
of Santa Clara County

September 17, 2020

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GLOSSARY AND ABBREVIATIONS

Administrator	A PAGC staff member who manages the real and personal property of conservatees, and acts as trustee for trusts created for the benefit of conservatees
APS	Adult Protective Services is a Santa Clara County program that investigates cases of adult abuse or neglect.
Capacity Declaration	The Capacity Declaration is a Judicial Council of California form (GC-335) completed by a doctor or psychologist that states whether a person is capable of caring for themselves. This form is used by the Probate Court to decide whether a person needs to be conserved.
CAPAPGPC	The California Association of Public Administrators, Public Guardians, and Public Conservators
County Counsel	The Office of the County Counsel is the legal advisor for all Santa Clara County agencies and departments.
CQI	Continuous Quality Improvement is a project staffed by stakeholders that analyzes an organizational weakness with the goal of improving the process.
DAAS	The Department of Aging and Adult Services is within the Santa Clara County's Social Services Agency and oversees PAGC, APS, In-Home Supportive Services, and the Senior Nutrition Program.
Deputy	A PAGC staff member who manages the living environment of the conservatee
FAST	The Financial Abuse Specialist Team is composed of staff members from PAGC, APS, County Counsel, and the Office of the District Attorney. Together they investigate serious allegations of adult and senior financial abuse.
FDIC	Federal Deposit Insurance Corporation
FMS	Financial Management Services is the accounting arm of SSA.

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I&A	The Inventory and Appraisal is a Judicial Council of California form (DE-160/GC-040) that is filed to provide information about the conservatee's financial assets. Attachment 1 of the I&A lists cash assets. Attachment 2 lists real and personal property.
LPS	In 1967, California passed the Lanterman-Petris-Short Act. Named after its authors, the LPS Act sought to end the inappropriate, indefinite, and involuntary commitment of persons with mental health disorders. It also established a right to prompt psychiatric evaluation and treatment, in some situations, and set out strict due process protections for mental health clients.
PAGC	Public Administrator/Guardian/Conservator of Santa Clara County, also known as the Office of the Public Guardian
PANO	Panoramic (PANO) is a case management system used by Public Guardian offices. The developer is Panoramic Software, Inc.
P&P	Policies and Procedures are a set of over 180 documents that describe the purpose, relevant code sections, policies, and procedures for specific tasks of PAGC staff.
Probate Referee	A person assigned by the Probate Court to verify the I&A submitted by PAGC
SSA	Social Services Agency provides basic safety net and protective services to Santa Clara County's vulnerable children, families, and adults.
Toolbox	An online repository of forms used by PAGC staff
TSS	Technology Services and Solutions, the Santa Clara County IT department

PREFACE

When the Santa Clara County Civil Grand Jury began investigating the Public Administrator Guardian Conservator Office (PAGC), the Civil Grand Jury recognized the difficulty of the work being done by the staff. The deputies, administrators, and their assistants have a difficult job—they must earn the trust of prospective conservatees who are often confused and frightened due to mental illness or dementia. Predatory family members who have taken advantage of an elderly person suffering from dementia may be hostile to government interference. Many conservatees are destitute, lack the capacity to take care of themselves, and have serious medical problems. It is the job of the PAGC staff to establish a healthy level of care, stabilize their financial situation, and provide for their physical and financial well-being.

The staff is on call 24 hours a day to handle emergencies. At times they feel overworked and experience burnout. Morale is low.

Despite these difficulties, both staff and management are doing admirable work. They work long hours under difficult conditions with insufficient encouragement, but they persevere and provide an important service to some of the most vulnerable adults of Santa Clara County.

SUMMARY

PAGC management and staff provide important support for vulnerable residents of Santa Clara County, and the Civil Grand Jury commends them for their dedication. Many of the shortcomings noted from previous Civil Grand Jury reports have been corrected: improved training, effective referral screening, updated Policies and Procedures (P&P), correct completion of Capacity Declaration forms, and improved filing times for Inventory and Appraisal (I&A) reports.

The Grand Jury also learned that PAGC effectively mediates conflicting viewpoints within the office, is improving the filing time of court documents, pays bills efficiently, and maintains well-organized file rooms.

PAGC services and staff morale could be improved through better communication within PAGC and between PAGC and other departments:

1. Lift office morale with well-planned monthly staff meetings and periodic group meetings.
2. Help staff be more effective by providing annual performance appraisals.
3. Maintain the complaint log to help detect recurrent problems.
4. Follow practices that would reduce friction between deputies and administrators and between Intake deputies and Ongoing deputies.

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5. Encourage staff to participate in the revision of Policies and Procedures.
6. Provide punctual feedback to Adult Protective Services (APS) and Financial Management Services (FMS).
7. Ensure robust participation of key stakeholders in the Continuous Quality Improvement (CQI) project to address court filing delays.

Performance can also be improved by providing access to helpful forms, adding improvements to the Panoramic (PANO) case management system, and defining a file naming convention.

Management needs to follow through with their commitment to county auditors to properly manage conservatees' assets by making use of financial advisors.

These recommendations will help make PAGC not only work more effectively, but also help lift the morale of staff. Staff and management are doing excellent work, and it is crucial to foster a healthy and positive work environment.

BACKGROUND

Every county in California is required to have a Public Guardian function. In Santa Clara County, this is carried out by PAGC.

There are two types of conservatorships for residents of Santa Clara County: probate and Lanterman-Petris-Short (LPS).

Probate conservatorships are set up for adults who cannot handle their own finances or care for themselves. As probate conservator, PAGC is involved in all aspects of their clients' lives, including financial management, housing, medical care, placement, and advocacy. Referrals for probate conservatorship usually come from the community, another county agency, an institution, or a physician.

LPS conservatorships are established to arrange placement and mental health treatment for persons who are gravely disabled, a legal criterion by which a person is unable to provide for their own food, clothing, and shelter as a result of a mental disorder. LPS conservatorships must be renewed on an annual basis. LPS conservatorships are often preceded by temporary LPS conservatorships, which are generally established for 30 days and can be extended by the Superior Court. As an LPS conservator, PAGC is responsible for directing the mental health treatment and placement of their conservatees. They are typically referred to PAGC by locked psychiatric hospitals.

Under either conservatorship, the Probate Court appoints PAGC to act as *conservator of the person* and/or *conservator of the estate* for a conservatee.

Conservator of the Person: As the conservator of the person, PAGC takes care of the conservatee's physical necessities, such as housing, nutrition, and medical needs.

Conservator of the Estate: If the conservatee has significant assets but is unable to manage their finances, the Probate Court appoints the Public Guardian as conservator of the estate.

PAGC also acts as the Public Administrator to manage and distribute "estates of people who die without a will or without an appropriate person willing or able to act as an administrator."¹ This report does not examine the Public Administration function of PAGC, and in this report, the term

¹ Office of the Public Guardian, "What is Conservatorship? What is Public Administration?" accessed February 21, 2020, <https://www.sccgov.org/sites/ssa/protective-services/Documents/Conserve-Brochure.pdf>.

“administrator” refers only to staff members who act as conservators of the estate of living conservatees.

As of November 2019, PAGC was responsible for managing over 1,400 cases. Of these cases, 16% were for estate administration and trusts, 34% for probate conservatorships, and 50% for LPS conservatorships.²

Department and Office Organization

Both PAGC and APS are part of the Department of Aging and Adult Services (DAAS), and DAAS is a division of Santa Clara County’s Social Services Agency (SSA). See figure 1 for the DAAS hierarchy.

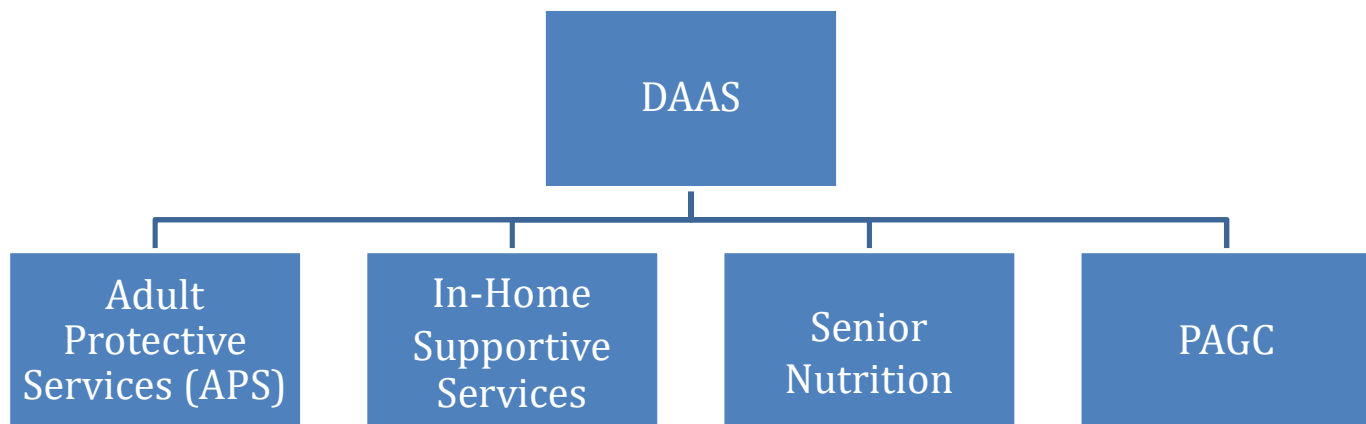


Figure 1. DAAS Organization

The Director of DAAS currently holds the title of Public Guardian, while the head of PAGC is the Chief Deputy. Reporting to the Chief Deputy are the Estate Administration Program Manager and the Conservatorship Program Manager.³

² *PAGC 2019 Annual Report*, p. 26, accessed August 4, 2020, https://www.sccgov.org/sites/ssa/protective-services/Documents/page_annual_report.pdf

³ In this report, the term “management” includes both Program Managers and Supervisors. The term “staff” is used for employees who are not managers.

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DAAS has about 70 staff members assigned to provide PAGC services. About 20 more employees work directly for SSA but provide accounting services for PAGC functions.

There are seven groups (units) within PAGC, and each group has a supervisor, with the exception of the clerical group, which has an Office Management Coordinator reporting to the Estate Administration Program Manager. In addition to the supervisor, each conservatorship group has a lead deputy to assist with training and case management. See figure 2 for the PAGC workforce.

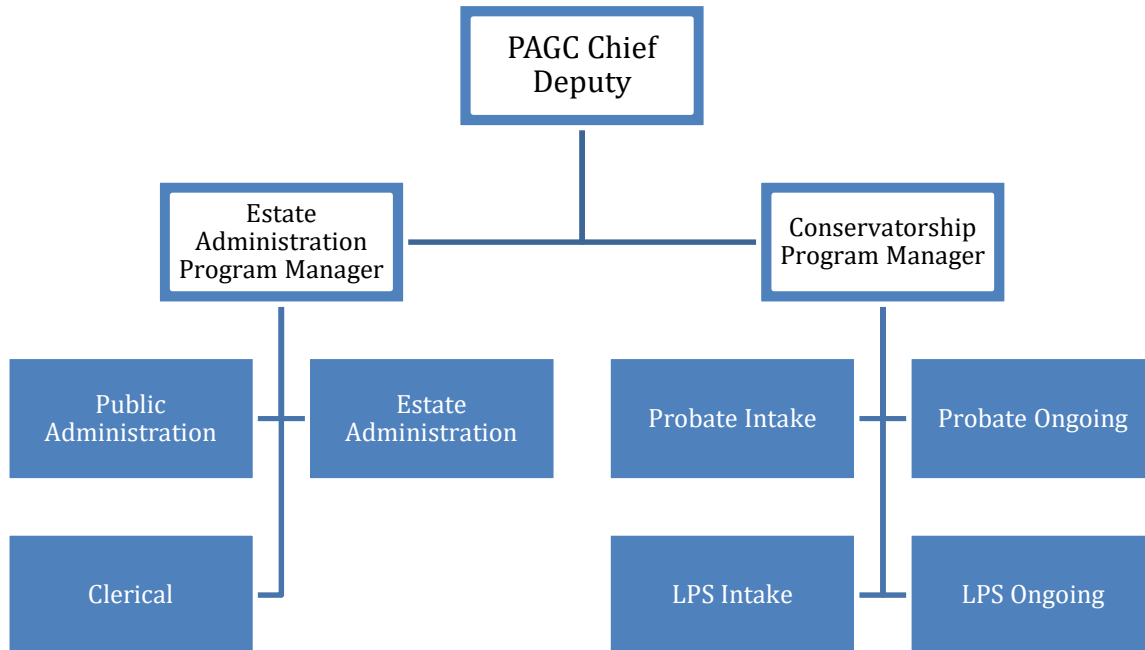


Figure 2. PAGC Workforce

The seven groups within PAGC are:

1. **Public Administration:** This group manages estates of people who have died without a will. The group has seven administrators and an assistant. They are responsible for contacting heirs and managing the estate until the final distribution.
2. **Estate Administration:** This group acts as conservators of the estate. The group has six administrators, an assistant, and four property specialists. They are responsible for managing conservatees' real estate and investments. Administrators also act as trustees for Special Needs Trusts or other trusts created by the conservatee's family for the benefit of the conservatee.

3. **Probate Intake:** This group has five deputies and one assistant. They investigate probate referrals to PAGC and determine if the person needs to be conserved. Once the conservatorship has been established and the conservatee has a stable living environment, the case is transferred to the Ongoing group.
4. **Probate Ongoing:** This group has nine deputies and two social workers who act as conservators of the person for probate cases. They are required to oversee the care of the conservatee and make periodic visits to verify that their living situation is satisfactory and that their medical needs are met. For conservatees living independently, monthly visits are required. If the conservatee lives in a licensed community facility, the deputy must visit the conservatee every three months. If the conservatee lives outside of Santa Clara County, the deputy must call the conservatee every three months and visit the conservatee every six months.⁴
5. **LPS Intake:** This group has five deputies who establish the LPS conservatorships and find stable living environments for the conservatees.
6. **LPS Ongoing:** This group has ten deputies who act as conservator of the person for LPS cases.
7. **Clerical:** This group is composed of nine office specialists. They organize files, process mail, keep track of conservatees' property, and prepare insurance and benefits paperwork for Social Security, MediCal, and Veterans Administration (VA) benefits.

Policies and Procedures (P&P)

The Policies and Procedures (P&P) are a set of over 180 documents that describe different tasks, ranging from how to manage a conservatee's individual retirement account (IRA) to how to arrange for a conservatee's funeral and burial service. These policies are provided through the office intranet, which also contains the Toolbox, a repository for application forms used by outside agencies such as Medicare and MediCal, forms used by the Probate Court, as well as internal office forms and task lists.

⁴ During interviews, staff explained that conservatees on Medicare and with no assets are often placed in an out-of-county Skilled Nursing Facility (SNF) because there is a shortage of affordable SNFs in Santa Clara County.

Prior Civil Grand Jury Reports

There have been three Grand Jury reports about PAGC over the last twenty-two years. The 1998 report focused on the improper handling of conservatees' cash, inadequately defined procedures and employee training, and an inadequate database system for managing case files. The old database system was subsequently replaced by the PANO system in 2009. The 2013 report described problems with the new database system and inadequately defined procedures. The 2014 report described problems in the interaction between PAGC and APS, an inappropriate process for screening referrals, overdue filing of court documents, and procedures that had still not been properly updated.

METHODOLOGY

All interviews and site visits were completed by February 2020. This report does not take into consideration subsequent changes to office procedures required by the Novel Coronavirus (COVID-19) pandemic.

The Civil Grand Jury interviewed 29 managers and staff from PAGC, FMS, and APS.

Three site visits were made to PAGC which involved using PANO to review eight cases, examining hard copy case files, viewing documents and keys stored in the locked file room, and using the office intranet to review P&Ps and internal forms.

PAGC provided over 20 reports about various office statistics, logs, accounting statements, and organizational charts requested by the Civil Grand Jury.

See the References section for additional source material used during this investigation.

DISCUSSION

A common thread throughout the investigation was the need to improve communication. The lowest scoring issue in a recent DAAS survey involved disagreement by management and staff with the statement that “there is good communication across departments and units within SSA.”⁵ Improving meaningful communication between staff and management, between groups within PAGC, and between PAGC and other county offices will help lift morale and retain employees.

Communication within PAGC

Within PAGC, communication can be improved by holding monthly staff meetings, scheduling weekly or biweekly group meetings, providing performance reviews, maintaining the complaint log, and clearly defining the tasks of deputies and administrators.

Monthly staff meetings

In the past, PAGC held monthly meetings with a substantive agenda. That practice ended when management changed, and staff advised that they desire staff meetings to obtain information about departmentwide topics and issues. The practice of holding a monthly PAGC meeting for staff and management needs to be restored to improve communication. According to interviews, staff meetings have occurred once or twice over the last year and the agendas of the meetings were not inspiring. ([Finding 1](#)) Meetings can be valuable if they are thoughtfully organized and contribute to workplace improvement. Staff meetings can help morale if there is an effort to provide useful information and positive feedback. A new or significantly revised policy could be highlighted with a brief presentation to explain the relevant procedures and the reasoning for the addition or revision. Newly hired employees can be introduced, and best wishes can be given to employees who are retiring or transferring. An office inefficiency or bottleneck can be examined, and improvements to correct the issue can be explained. A difficult problem facing a conservatee can be described, and the staff member who successfully resolved the problem can be celebrated.

Performance reviews

⁵ The County of Santa Clara Social Services Agency, *DAAS 2019 Culture and Climate Survey Results*, revealed that 44% of DAAS staff disagreed with this statement, 22% were ambivalent, and only 33% agreed.

Within a group, feedback from the supervisor is critical. Based on information provided by the county Employee Services Agency, of the seven groups within PAGC, only one supervisor has provided annual performance reviews in the last year, and more than half of the PAGC staff have never received a review. In the response to the 2013 Civil Grand Jury report, SSA committed to training its supervisors and providing staff with annual performance evaluations as stipulated in the SEIU Local 521 Performance Appraisal Program Agreement.⁶ Nevertheless, PAGC management has not provided the annual performance reviews as promised. ([Finding 2](#)) By union agreement, the purpose of the performance appraisal cannot be used for promotions, demotions, or transfers. Instead, it is a mechanism to improve communication, give praise for work well done, and suggest areas for improvement when appropriate. A well-written performance appraisal can improve morale by showing employees that their good work is recognized and valued.

Training

The 2014 Civil Grand Jury report recommended a better training program for staff.⁷ In the years since the release of the report, PAGC developed an induction training program taught by supervisors, staff, County Counsel's attorneys, and outside lecturers.⁸ In the first quarter of 2019, the training program offered 24 seminars covering the duties of each of the seven groups within PAGC as well as seminars on ethics, confidentiality, PANO, court processes, trusts, public benefits, inventory control, and home visit safety. In addition to the induction class on home visit safety, the Sheriff's Department periodically teaches a seminar for all staff about the danger signals that should alert staff when visiting a conservatee's home.

Aside from classes, PAGC follows procedures to help train and ensure the safety of the staff. Despite the fact that newly hired deputies have a background in social work or mental health, and newly hired administrators have a background in financial management, several staff members insisted that it takes several years to learn the nuances of the work. Each conservatee faces unique problems, and deputies and administrators must learn not only the mechanics and procedures, but how to manage people who are experiencing mental illness, dementia, and a difficult living environment. The supervisors select less complex cases when making the first assignments to new staff. Each group has a lead who often accompanies a recently hired deputy during home visits, so that the more experienced deputy can help recognize danger signals. Even when there is no danger,

⁶ From Bruce Wagstaff to Gary Graves, *Response to Civil Grand Jury Report titled "Improvements are Needed in the Office of the Public Administrator/Guardian/Conservator"*, July 1, 2013, p. 4, accessed January 7, 2020, http://www.sescourt.org/court_divisions/civil/cgj/2013/responses/pubguardian/SSA.pdf.

⁷ 2013-2014 Santa Clara County Civil Grand Jury Report, *Probate Conservatorship: A Safety Net in Need of Repair*, pp. 8-9, accessed January 6, 2020, http://www.sescourt.org/court_divisions/civil/cgj/2014/PublicGuardian.pdf.

⁸ The Office of the County Counsel is the legal advisor for all county agencies and departments.

if there are several people in the home, one deputy can divert their attention while the other deputy conducts a private interview. In the first months on the job, new deputies and administrators shadow more experienced colleagues to learn how to cope with the various challenges.

PAGC staff participate in workshops offered by the California State Association of Public Administrators, Public Guardians, and Public Conservators (CAPAPGPC). The annual meeting provides seminars and gives deputies and administrators the opportunity to compare their procedures and share work experiences with peers from offices throughout the state. All PAGC deputies and administrators are required to be certified with the state association, which requires forty hours of continuing credit every four years. ([Finding 3](#))

Employee wellness

Numerous interviews with staff and management revealed that PAGC is experiencing low morale. ([Finding 4](#)) Some staff say they do not receive enough positive feedback from management. Opportunities for internal advancement is blocked when vacant management positions are filled from outside of PAGC. The staff are members of the SEIU union, and over the last year there has been a discouraging backdrop of a threatened county-wide strike.

The county's Employee Assistance Program (EAP) provides up to five free counseling sessions to all employees, but this program is intended for individual and family counseling, not for an organization experiencing poor morale.

SSA has already developed a roadmap for addressing employee wellness and retention issues in the Department of Family and Children's Services (DFCS) where social workers and staff are suffering similar problems. In June 2019, the SSA Director announced initiatives to improve the morale of DFCS social workers and management.⁹ A Pilot Mentoring Program was begun to foster the growth of leadership from within the organization. Alia, a counseling program, evaluated DFCS and worked on techniques to prevent employee burnout. Additionally, a psychologist from the Centre for Living with Dying was made available to provide training and stress relief. SSA should leverage this initiative and provide similar programs to PAGC management and staff.

Complaint system

The 2013 Civil Grand Jury report recommended establishing a complaint system:

⁹ Robert Menicocci to the Board of Supervisors and Jeffrey Smith, June 28, 2019, "Off-Agenda Report Relating to Social Worker Trauma and Tension and What Supports Are in Place to Alleviate the Stress," accessed January 3, 2020, <https://services.sccgov.org/OffAgenda/Home/ViewFile/254>.

A functioning complaint collection system would allow the PAGC management to have a data source for: 1) identifying common complaints and sources; 2) identifying proactive procedures or actions to avoid situations and circumstances that generate complaints in the first place; 3) ensuring a case history that includes all complaints, their resolution, and the staff member(s) providing the resolution.¹⁰

SSA responded to the recommendation by noting that “effective June 3, 2013, all complaint calls are being documented by the respondent.”¹¹ SSA elected to address the Grand Jury’s findings about the absence of a functioning complaint system by having the “Officer of the Day” log complaints in a complaint log. Deputies and administrators spend a large amount of time outside of the office; to ensure that an experienced person is available to handle emergencies, the role of Officer of the Day is assigned on a rotating basis to a staff member or supervisor. The Officer of the Day stays in the office to answer calls from the public, route calls to the appropriate person, deal with emergencies in the event the deputy or administrator is not available, and handle complaints.

The complaint log was maintained from June 2013 to December 2014, with a total of 33 complaints together with their resolutions. The last entry in the log is dated December 2014. ([Finding 5](#)) A review of the log shows that it was more than just a record of complaints; there were several instances of family members calling to express appreciation for the good work done by deputies.

The Grand Jury learned that the Officer of the Day no longer keeps a complaint log. The practice of maintaining the log should be restored.

Communication between deputies and administrators

Although there are ways in which communication can be improved, many of the deputies and administrators work together effectively. This is especially evident in the Financial Abuse Specialist Team (FAST) cases, where an administrator, deputy, an APS social worker, and an attorney from County Counsel collaborate to investigate allegations of financial abuse.

Non-FAST cases, however, do not experience this same level of cooperation. The Civil Grand Jury heard multiple complaints during interviews about disagreements between administrators and

¹⁰ 2012-2013 Santa Clara County Civil Grand Jury Report, *Improvements Are Needed in the Office of the Public Administrator/Guardian/Conservator*, p. 10, accessed January 6, 2010, http://www.sccourt.org/court_divisions/civil/cgj/2013/publicguardian.pdf.

¹¹ Bruce Wagstaff to Gary Graves, “Response to Civil Grand Jury Report,” p. 2, accessed August 3, 2020, https://www.sccourt.org/court_divisions/civil/cgj/2013/responses/pubguardian/SSA.pdf.

deputies about who should be responsible for specific tasks. There are several reasons for this conflict: 1) administrators' caseloads are larger than normal due to vacant positions, 2) tasks are not clearly defined, and 3) administrators and deputies have different frames of reference.

There are six administrator positions in the Estate Administration group, but two positions have been vacant for over six months. Consequently, rather than a typical caseload of 50 cases, the administrators have a caseload of 75 cases. ([Finding 6](#)) Conditions should improve when an administrator who left the group in 2019 returns.

Staff refers to the P&P for details about various tasks. A second reason for conflict between administrators and deputies is that the procedures do not specify which tasks are to be performed by the deputy and which tasks are to be performed by the administrator. For example, Policy 501, "Estate Administration Public Guardian," states that the "DPGC/EA" (Deputy Public Guardian Conservator/Estate Administrator) must determine the conservatee's assets and income. Policy 503, "Property Search Conservatorship," states that the "DPGC/EA" must evaluate the property environment for safety before entering a conservatee's home. This ambiguity over whether the responsibility lies with the deputy or the administrator occurs throughout the policies. An administrator is assigned to a case only if the conservatee has substantial assets. If there is no administrator, the deputy must manage all tasks. For cases with an assigned administrator, the ambiguity in the policies can lead to dissension, where the deputy and administrator feel the other person should handle a task. ([Finding 7](#)) The procedures section of the P&P should be revised to clearly define responsibility for tasks when both a deputy and administrator are assigned to a case.

There are other methods for defining the tasks. For cases with an assigned administrator, management and staff have created a task list that details which tasks should be performed by the deputy, and which tasks should be performed by the administrator. Unfortunately, there are two variations of this document that were given to the Civil Grand Jury by PAGC. Neither has been posted in the Toolbox, the internal online repository for office forms. A decision must be made between the two forms, and the selected form should be posted and used.

A third reason for dissension between deputies and administrators is their different perspectives. The deputy is a "conservator of the person," and is responsible for ensuring that the conservatee has a stable living situation and receives appropriate medical care and food. The administrator, however, is a "conservator of the estate," and is responsible for managing the conservatee's investments and real estate. While the deputy typically has the background of a social worker, the administrator has a background in finance. Although both the deputy and administrator focus on caring for the conservatee, their frames of reference are different: the former is focused on living conditions, while the latter is focused on asset management.

For example, there was a situation where the administrator concluded that the financial situation required selling the conservatee's home. The deputy disagreed, however, because of the emotional distress this would cause when the conservatee was forced to move from their longtime home. In this situation, management acted as the arbitrator and was responsible for weighing both perspectives and making the final decision. While dissension may be inevitable, management effectively mediates these differences. ([Finding 8](#))

Communication between Intake and Ongoing groups

Aside from friction between administrators and deputies, interviews with staff have indicated the existence of friction between the Intake and Ongoing groups.

Deputies in the Intake groups are responsible for investigating the prospective conservatees' living situation. If the person needs to be conserved, then the Intake deputy must ensure that the conservatee has a safe and stable living environment and receives proper medical care.

Once the situation is stable, and the court has issued the Letters of Conservatorship, supervision over the conservatee's care is transferred to a deputy in the Ongoing group. Typically, due to the complexity of investigating and then stabilizing the conservatee's situation, each Intake deputy has five to eight cases at any given time. In contrast, each Ongoing deputy has 25 to 50 cases. While a case is assigned to the Intake deputy for approximately six months, cases assigned to the Ongoing deputy can be for the life of the conservatee. When it comes time to transition a conservatee from Intake to Ongoing, the two supervisors and the assigned Intake and Ongoing deputies hold a transfer meeting to inform the Ongoing deputy about the background and status of the conservatee. The Civil Grand Jury learned from interviews that occasionally the Ongoing deputy or Ongoing supervisor require the Intake deputy to perform additional tasks before accepting the transfer, which has been a source of disharmony. Due to the unique aspects of each case, it is difficult to systematize the transfer process. ([Finding 9](#))

In order to improve this situation, efforts have been made to provide a task checklist that identifies exactly what must be completed before a transfer can occur. The checklist may be simplistic and may not reflect the complexities of each case, but it is a starting point. A transfer form listing all tasks is available for the Probate groups, but it is either not posted in the Toolbox, or deputies are not aware of its availability. To complicate the situation, there were two variations of this form provided to the Civil Grand Jury, so it is not clear if management has decided on an official form. A decision must be made between the two forms, and the selected form should be posted in the Toolbox and used by the deputies.

Revising Policies and Procedures

Both the 2013 and 2014 Civil Grand Jury reports found the P&P were not properly updated and contained inaccurate or obsolete information.¹² To correct this problem, PAGC hired an outside consultant in 2016 to revise the P&P. Over the last three years, almost all of the policies have been revised, with many completely rewritten. The format of each policy has three sections:

1. The Policy section contains an overview that describes a task or responsibility.
2. The Definitions section defines terms and quotes relevant sections of the Probate Code.
3. The Procedures section goes into detail about how the task is to be performed by staff, including a reference to relevant internal forms.

The Policy and Definition sections have been rewritten, but a common staff complaint during the interviews was that the Procedures section sometimes does not accurately reflect the details of their day-to-day duties. ([Finding 10](#)) An example of this is the failure to define whether a task is to be performed by the deputy or the administrator, as noted above. It would be difficult for an outside contractor who is not experienced in the day-to-day practices of the local office to document their procedures. PAGC management review and revise the procedures, but all staff should participate in the revisions. This creates additional work for staff, but properly documented procedures will eventually ease their workload because new employees can then rely on accurate documentation instead of requesting clarification from more experienced colleagues. Perhaps if the task to review procedures was rationed so that appropriate staff were given only a single policy to revise each month, then disruption to their work would be minimized.

Communication with APS

Communication can be improved within PAGC, but communication also needs to improve with offices outside of PAGC. APS and PAGC interact in two types of cases: FAST and non-FAST. The FAST investigation begins with a report of a vulnerable elderly or dependent person who may be the victim of financial abuse. A team composed of an APS social worker, a deputy and an administrator from PAGC, and an attorney from the County Counsel work closely together to quickly investigate the case. The teamwork is effective, with good communication between team members.

¹² 2012-2013 Santa Clara County Civil Grand Jury Report, pp. 7-8, and 2013-2014 Santa Clara County Civil Grand Jury Report, p. 9.

Communication in non-FAST cases

Non-FAST APS cases start when family, neighbors, the police, or others make a referral to APS about suspected elder abuse or neglect. The APS social worker visits the referred person to investigate the situation. This can be a difficult visit because the person may be suffering from dementia or mental illness or may be resistant towards government employees prying into their life. If the elder person refuses to talk with the social worker, then there is little the social worker can do. In order to evaluate the situation, the social worker must be sensitive to the client and try to earn the client's trust and cooperation. If the APS social worker believes that the client needs to be conserved, the social worker makes a referral to PAGC.

The APS social worker typically keeps the case open for approximately 90 days while the deputy makes an independent investigation, which may take as long as six months. There were complaints during interviews from both offices about poor communication in the non-FAST cases. Deputies reported that APS was not sharing vital information about unsafe or dangerous environments in the conservatees' homes, while APS social workers reported that deputies were not informing APS about the status of cases. ([Finding 11](#))

The June 2014 Civil Grand Jury report found that "poor communication and incomplete information sharing from APS to PAGC in non-FAST cases result in inefficiencies."¹³ In response, PAGC and APS worked together to create a Memorandum of Understanding (MOU) that defined how information was to be shared. The MOU clearly states the requirements for non-FAST cases after the PAGC supervisors reviewed the referral and assigned a deputy. Those requirements include:

4. Prior to the [deputy] visiting the client, the [social worker, deputy, and administrator] will work jointly and decide to conduct a home visit together or separately; at which point, they will exchange information regarding the client's condition and environment is shared.
5. Investigation and assessment continues via information sharing.
6. Status of case is documented by PAGC to APS within 30 days.
7. [Deputies] to provide continued status reports to APS every 2 weeks.¹⁴

¹³ 2013-2014 Santa Clara County Civil Grand Jury Report, p. 13.

¹⁴ Robert Menicocci, James Ramoni, and Kristina Cunningham to the Children, Seniors, Families Committee, February 18, 2015, "Agency Status Update to the Grand Jury Report relating to *Probate Conservatorship: A Safety Net in Need of Repair*," p. 100, accessed December 30, 2019, <http://sccgov.iqm2.com/Citizens/FileOpen.aspx?Type=1&ID=5918&Inline=True>.

The content of this MOU is not widely known among the staff. In fact, out of almost 30 interviews with management and staff, only three or four people were aware of its existence. Interviews from staff in both offices indicate that social workers do not always share relevant information with the deputies, and deputies do not always send status reports to the referring social worker every two weeks.

The Grand Jury learned that APS social workers had not informed probate intake deputies of the existence of closed APS cases for clients referred to PAGC from APS. The client may have had a history of multiple APS investigations caused by the behavior of an abusive relative. The law allows for information sharing between APS and Public Guardians.¹⁵ Further, the MOU states that “APS will update the PAGC with any new information to the client’s situation, as well as any additional abuse reports received.”¹⁶ The unwillingness by APS to disclose relevant information about the prospective conservatee’s environment is not in the best interest of the person experiencing abuse because this disclosure may reveal a pattern that should be taken into consideration by deputies when determining how to best protect the person and whether or not the person should be conserved.

The importance of sharing the existence of closed cases applies not only to APS referrals to PAGC for probate conservatorships but also to LPS conservatorships. For example, when an LPS conservatorship is ending, and a deputy wants to release the conservatee from a care facility to their home, then the conscientious deputy needs to know if the conservatee had been a past victim of abuse in their home prior to the establishment of the conservatorship.

When an APS social worker and a deputy make an initial joint visit in a FAST case, it is clearly necessary to share notes. For non-FAST cases, however, the meeting described in Step 4 of the MOU above does not always occur. It can be difficult for the social worker and the deputy to meet in person because often the social worker or deputy is in the field with clients. Consequently, the deputy relies on a referral form completed by the social worker when referring a non-FAST client to PAGC. The form has shortcomings, however, because it does not cover safety issues.¹⁷ The form does not cover whether the client is hostile, has hostile relatives, owns a vicious dog,

¹⁵ California Welfare and Institutions Code §15633.5(a) allows for “information relevant to the incident of elder or dependent abuse shall be given to ... the office of the public guardian,” accessed August 3, 2020, https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=WIC&division=9.&title=&part=3.&chapter=11.&article=4.

¹⁶ Menicocci et al, “Agency Status Update to the Grand Jury Report relating to *Probate Conservatorship: A Safety Net in Need of Repair*,” p. 101.

¹⁷ See link to “Probate Conservatorship Referral Form” at <https://www.sccgov.org/sites/ssa/protective-services/Pages/page.aspx>.

possesses firearms, or other conditions that could pose a risk to deputies. To correct this shortcoming, the form should be modified and contain questions that would allow the social worker to warn the deputy of safety conditions or other environmental issues.

Resolving disputes

Communication between APS and PAGC can be aggravated by tension between the two offices caused by the different roles they serve. The APS case is normally closed before PAGC makes the decision to establish a conservatorship. Meanwhile, the APS social worker may expect the person will be conserved. If PAGC decides not to conserve that person, and if subsequently the elder person is referred to APS again, the APS social worker may be understandably frustrated that the person was not conserved. The role of PAGC in preventing abuse is complicated by the principle that conservatorships by PAGC is the last resort for someone who does not have the mental capacity to take care of themselves.¹⁸ After being placed under the care of conservators, conservatees lose their independence; the conservator decides where they live, how they spend their money, and, with court approval, what kind of medical care they receive. If during the PAGC investigation an alternative to the PAGC conservatorship is found by contacting relatives who are willing to take care of the person, then the conservatorship must be rejected.

If the APS social worker believes the referral should not have been rejected, the issue can be raised to management. The Director of DAAS is responsible for mediating disagreements that cannot be resolved by PAGC and APS management. According to interviews, this mediation is only necessary once or twice a year because PAGC and APS management are able to resolve the dispute. The decision that results may sometimes disappoint APS, but there must be a balance between the protection of a person and taking away that person's civil rights.

Disputes between APS and PAGC regarding referrals can occur because the reasons for accepting or rejecting a conservatorship has many complications. This complexity cannot be resolved by a single person's judgment. The 2014 Civil Grand Jury report found that the process for accepting or rejecting referrals was too subjective because the decision was made by one person.¹⁹ This problem has been corrected. Since the 2014 report was written, a referral committee composed of several managers and supervisors meets twice a week. The committee reviews the referral and determines if there is any missing information, and if not, whether the situation warrants an

¹⁸ Probate Code §2920 states that the Public Guardian is appointed by the court only if "there is no one else who is qualified and willing to act and whose appointment as guardian or conservator would be in the best interests of the person." See https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=PROB&division=4.&title=&part=5.&chapter=3.&article=.

¹⁹ 2013-2014 Santa Clara County Civil Grand Jury, p. 7.

investigation. The investigation begins with the supervisor requesting missing information, using the Accurint® service to verify the person’s identity and that the person is a resident of Santa Clara County, and verifying that the Capacity Declaration was properly completed. ([Finding 12](#))

Communication with the Court

PAGC works with the Probate Court to create and manage conservatorships. The Capacity Declaration is filed with the court as part of the petition to establish the conservatorship. The I&A report must be filed with the court within 90 day after the court establishes the conservatorship.

Capacity Declaration

A key document in the conservatorship process is the Capacity Declaration, a complex form created by the Judicial Council of California. It is completed by a physician, psychologist, or religious healing practitioner and states whether a person is capable of caring for themselves. This form is used by the Probate Court to decide whether a person needs to be conserved.²⁰

The 2014 Civil Grand Jury report noted that there was a problem in getting a completed Capacity Declaration, causing delays establishing the conservatorship.²¹ It recommended devising a process for screening the form for errors. This is not an easy problem to solve because the proposed conservatee’s doctor is sometimes unwilling to complete the form for a patient the doctor has known for years or because the doctor may not be trained to recognize incapacity. If the doctor does not know the proposed conservatee, he or she may not be comfortable completing the declaration. And even if the doctor is willing to complete the form, the form is so complex, it is easy for the doctor to miss a checkbox or fail to fill in a field.

A key task of the Intake supervisor is to work with the referring parties to ensure that the form is filled out correctly. Reports provided by PAGC showed that between July 2018 and October 2019, out of a total of 123 referrals, 40 were not accepted.²² Of the 40 cases that PAGC did not accept, alternative plans were found for 20 referrals. The reasons for rejecting the other 20 referrals were:

1. The person was not a resident of Santa Clara County (5 cases)

²⁰ See <https://www.courts.ca.gov/documents/gc335.pdf>.

²¹ 2013-2014 Santa Clara County Civil Grand Jury, p. 12.

²² The “Probate Referral Intake Data” report showed that there were 123 probate referrals for the fifteen months between July 2018 and October 2019. Of these referrals, 35% were not accepted, 24% were pending, 26% were resolved by finding an alternative to a PAGC conservatorship, and 15% were conserved.

2. Referral was to have PAGC make a medical decision²³ (5 cases)
3. The person did not have mental incapacity (4 cases)
4. Referral was to have PAGC find a nursing facility²⁴ (3 cases)
5. Referral was incomplete (2 cases)
6. The person died before the investigation was complete (1 case)

Many of the referrals to PAGC made by the public have incomplete information. The referral package has a six-page referral form as well as the Capacity Declaration. The Intake supervisor works with the referring party to obtain the necessary information, and to obtain a completed Capacity Declaration. Given the complexity of the Capacity Declaration form, it is impressive that of the 40 rejected cases, only two were rejected due to incomplete information. ([Finding 13](#))

Inventory and Appraisal report

Once the conservatorship is established, the conservator is required by law to file an I&A report within 90 days after the court establishes the conservatorship. The I&A is a Judicial Council of California form that is filed to provide information about the conservatee's financial assets. The I&A has two attachments: Attachment 1 lists the cash assets, while Attachment 2 lists noncash assets (real estate, stocks and bonds, and personal property).²⁵ Completing Attachment 2 can be difficult when the conservatee has substantial investments. Because the conservatee is typically suffering from dementia or mental illness, the administrator must talk to relatives, examine personal papers, and check mail to discover the location of assets. Despite the fact that the court authorizes deputies and administrators to control a conservatee's investments, interviews with staff revealed that some banks and stock brokerage firms resist cooperating, and instead refer PAGC staff to their corporate attorneys who are often out of state. Discovering out-of-state real estate can also be a problem, with the administrator becoming aware of its existence only after receiving a property tax bill.

Once the information is gathered, the deputy enters the data into PANO, and PANO outputs Attachment 1. The attachment is submitted to the deputy's supervisor, and after review, the supervisor routes it to the PAGC legal secretary. The administrator enters the property data into

²³ Referrals from a skilled nursing facility are rejected if the purpose of the referral was to have PAGC make a medical decision. Probate Code § 3200 allows a relative to file a petition that gives the relative the power to make medical decisions for someone who needs medical help and that person is unable to make decisions.

²⁴ Referrals from hospitals or others are rejected if the reason for the referral is that the referring party wanted PAGC to find medical placement, such as a skilled nursing facility, for the patient. Health and Safety Code § 1262.5 requires hospitals to arrange for appropriate posthospital care.

²⁵ For the I&A form, see <https://www.courts.ca.gov/documents/de160.pdf>. For the attachment form, see <https://www.courts.ca.gov/documents/de161.pdf>.

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PANO, which generates Attachment 2. It is submitted to the administrator's supervisor for review, who then routes it to the legal secretary. The legal secretary completes the I&A form and sends it together with the attachments to the Probate Referee. The Probate Referee, who has an independent backlog of work, performs an investigation to verify the inventory and appraise the properties. When the Probate Referee completes the work, the I&A is returned to the legal secretary, who routes it to the supervisor of the Estate Administration group for signature, who then returns it to the legal secretary. The legal secretary then sends the papers to County Counsel's Office for signature and filing with the court. If new property is found after the I&A has been filed, a supplemental I&A must be generated and filed with the court.

This is a complex process that is prone to delays. See figure 3 for an overview of this process.

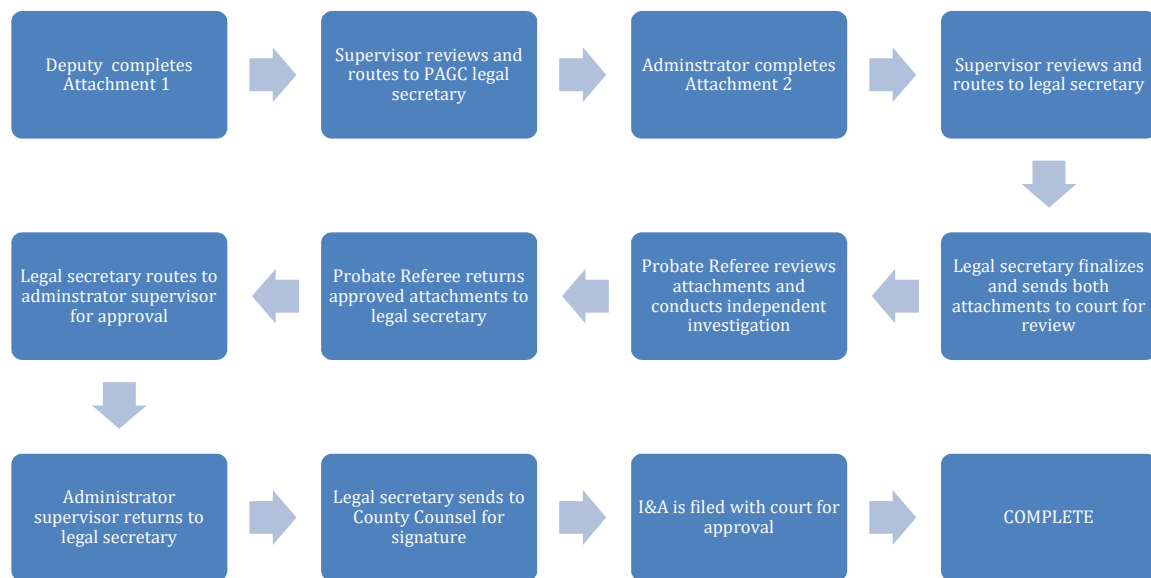


Figure 3. Process of completing the I&A

The 2010 Internal Audit of PAGC by the county's Internal Audit Division of the Controller-Treasurer Department found that 38% of the I&As were late.²⁶ Over the last two years, management and staff have instituted improvements to help recognize bottlenecks and reduce incidents of late filing. A team composed of managers and staff tracked the length of time between each step of the process to determine bottlenecks. Logs have been maintained that keep track of when the I&A is routed to and from the PAGC legal secretary and the supervisor of the Estate

²⁶ Controller-Treasurer Department, Internal Audit Division, *Internal Audit Report, Public Administrator/Guardian/Conservator's Office Custody Internal Controls*, August 5, 2010, p. 5, accessed January 5, 2020, <https://www.sccgov.org/sites/controller/internal-audit/Documents/10200%20Public%20admin-guardian-conservators%20office.pdf>.

Administration group. PANO was recently enhanced so that it now generates the attachments rather than requiring the deputy and administrator to write a draft manually and then have the final versions rewritten by the legal secretary.

To avoid unnecessary delays, if there is a problem getting information about a particular asset, the I&A is filed without that particular asset, and a supplemental I&A is filed after the missing information becomes available. According to internal reports provided by PAGC, the result is a significant improvement in filing delays: in 2018, I&As were late by an average of three months and a median of two months. The latest information from July 2019 to October 2019 provided by PAGC show all of the I&As were filed on time. ([Finding 14](#))

Communication with FMS

Aside from APS, the County Counsel, and the Probate Court, an important contributor to PAGC operations is staff assigned to PAGC from FMS, which report to the Chief Financial Officer of SSA. Approximately 20 FMS accountants, accountant assistants, income tax specialists, and account clerks support PAGC and are responsible for paying conservatee bills, filing tax returns, and preparing court accounting reports.

Court Accounting

As conservator of the estate, PAGC is required by law to file an accounting report one year after the establishment of the conservatorship, and then every two years afterwards. FMS generates those reports based on information provided by the deputies and administrators. The accounting report contains a detailed listing of assets, liabilities, income, and expenses for the conservatee.

Between July 2018 to July 2019, PAGC filed 160 court accountings. A November 2019 report compiled by FMS showed that FMS had 12 past due accountings because PAGC had not provided supplemental or final I&As to FMS. Additionally, the report showed 53 I&A issues had caused late accountings over the last two years. The problem revealed by the report is not that supplemental I&As caused a delay—supplemental I&As always indicate a delay getting information about assets. Instead, the report revealed that the deputy or administrator did not respond to multiple requests for status sent by the FMS accountants. Communication between FMS and PAGC staff is hampered by the fact that they are located in different buildings, making face to face meetings difficult. Regardless of this problem, communication needs to improve. ([Finding 15](#)) PAGC needs to address the delay caused by staff being nonresponsive to FMS.

Continuous Quality Improvement (CQI)

To help facilitate communication among FMS, PAGC, and County Counsel, a CQI project was launched in September 2019 with the goal of understanding why court filings are late and explore how to improve the situation. Initial findings from the study highlighted two issues:

1. It is unclear who is doing the work, where the work is located, and how long that work has been there.
2. When questions or problems arise, a message should be directed to a particular person, so that they own the issue and take action as needed.

A focus on improving communication between all stakeholders is an important effort that would reduce late filings and improve morale of all three groups.

Accounts Payable

Aside from the accountings, FMS is also responsible for conservatorships' accounts payable. Before FMS issues a check, the deputy or administrator must approve the payment of a bill. The approval is submitted to FMS, where an account clerk issues the check. FMS tracks any payments that are late due to mistakes by PAGC; i.e., the conservatee had the funds to pay the bill, the bill was received on time, but PAGC did not pay the bill. In these cases, the county reimburses the conservatee for the late fee.

The Civil Grand Jury received complaints from staff about bills not paid on time, with some bills unpaid since 2008. This issue is not due to any shortcoming of FMS, however.

The Grand Jury learned from FMS that between July 2018 and June 2019, there were 48 reimbursed late fees for a total of \$1,700. FMS processes tens of thousands of bills each year for more than 1,200 conservatorships and trusts; and with only 48 reimbursements, both FMS and PAGC are doing a commendable job of processing bills. Further, the Grand Jury learned that sometimes the deputy or administrator makes a deliberate choice to pay a bill late because there are insufficient funds, or where certain bills are left unpaid because there are bills with a higher priority. Nursing facilities can cost well over \$10,000 each month, so there are cases where sufficient cash must be kept in reserve despite outstanding bills so that the nursing facility can be paid. Consequently, sometimes nonpayment of other bills is unavoidable and in the best interest of the conservatee. ([Finding 16](#))

Panoramic (PANO) and Document Management

PAGC manages over 1,400 cases, and there is a massive amount of information that must be stored for later access. This information is accessed through case management software as well as hard copy documents stored in the file room.

Panoramic (PANO)

PANO is a web-based database software package used by a number of Public Guardian offices in California. It contains case notes, contact information, address history, income and expense transactions, inventory of the conservatees' personal and real property, medical information, the history of visits made by deputies, and upcoming tasks that the deputy or administrator must complete. Client documents, such as bank statements and correspondence, are scanned and stored with each client record. PANO has been used by PAGC since 2009, and numerous modifications have been made by the vendor over the years in response to customization requests made by PAGC. A member of the Santa Clara County's Technology Services and Solutions (TSS) office is assigned to PAGC, and acts as a liaison with Panoramic Software, Inc. When problems occur or when staff makes requests for modifications, a ticket is created, and the ticket is reviewed by management and the TSS liaison. Simple bug fixes or minor modifications are routinely processed, but significant modifications require negotiations with Panoramic Software, Inc. for an additional payment over and above the annual hosting fee of \$102,000.²⁷

There are a few problems with the capabilities of PANO and how it is used. A major limitation is that PANO is a case management database—it is not intended to be financial management software. FMS uses SAP® financial software. FMS staff must take the income and expense data from PANO and re-enter it manually into the SAP® system. ([Finding 17](#)) SSA should have TSS investigate the feasibility of automating this task. This would both save time and prevent data entry errors.

Another limitation of PANO is that it does not provide a workflow or time management feature, which means that there is no way to add a reminder within PANO regarding due dates for upcoming tasks. Instead, the staff must rely on their Outlook calendar. Supervisors generate reports that show, for example, when court filings or conservatee visits are due. The supervisor then creates a task which shows up in the assigned deputy or administrator's PANO task list. The deputy or administrator must then manually enter a reminder into their Outlook calendar. PANO does provide the capability to export the tasks, and it should be possible for staff to import the tasks into their Outlook calendar. This process is clumsy, however, and SSA should talk to Panoramic Software, Inc. to see if they can provide a better solution.

²⁷ Twelfth Amendment to Agreement No. 5500001841 By and Between County of Santa Clara and Panoramic Software, Inc., June 1, 2019.

A third problem is not a PANO limitation, but an issue for PAGC staff to solve. When documents are scanned into PANO, there is no naming convention for the documents. When a case is transferred from one deputy to another, or from one administrator to another, it can be challenging for the newly assigned staff to locate a particular document. A naming convention needs to be defined to prevent this confusion. This naming convention should be followed by all groups in PAGC, including the clerical staff. Certain documents used by FMS and the clerical staff are also stored in an internal shared drive, and the naming convention should be extended to documents stored in the shared drive.

Hard copy filing system

The Grand Jury also received complaints about the complex filing organization of hard copy documents, and the difficulty of locating a specific document. A document organization has been defined, and it is complex (see Appendix 1). There are six sections: correspondence, medical records, property records (including brokerage statements and insurance policies), benefits correspondence, court documents, and accounting reports. A conservatee may be managed by PAGC for many years, so it is inevitable that there will be a large accumulation of documents in the file. Some of the documents may not easily fit into the six categories, and consequently it is not surprising that locating a particular document may be difficult. Despite these difficulties, the Grand Jury observed that all documents were carefully attached to the file folder—documents did not fall to the floor when picking up a folder several inches thick containing hundreds of papers. The file room where thousands of files are stored was clean and well-organized.

There is a separate locked room equipped with an alarm for storing conservatees' valuables and vital documents such as birth certificates and driver licenses. No one is allowed in the locked file room without supervisor approval, and two property clerks must accompany any person entering this room. The Grand Jury observed that the room is small, but well-organized. ([Finding 18](#))

Managing Assets

The Civil Grand Jury discovered problems in how PAGC manages conservatees' financial assets. Most conservatees have very few assets and depend on Social Security and MediCal for their support. However, some conservatees and trusts have substantial assets. In 2019, the value of all conservatorship property, including real estate, was over \$93 million.²⁸ Of this amount, approximately \$18 million was composed of securities held in brokerage accounts.

²⁸ *PAGC 2019 Annual Report*, p. 27.

Investment model

The 2010 Internal Audit of PAGC found that “PAGC should work with a financial advisor to establish guidelines in reviewing client financial securities.”²⁹ The report found:

As the conservator of the estate charged with the responsibility to manage client assets, it is PAGC’s fiduciary responsibility to review financial securities. Without written established guidelines to follow when reviewing financial securities, the review may not be consistently performed by all estate administrators.³⁰

The auditor recommended:

PAGC should work with a professional financial advisor to learn about the industry and establish written guidelines and thresholds for all estate administrators to follow when reviewing financial securities. PAGC should go through the appropriate procurement process to select a professional financial advisor.³¹

Based on information provided to the auditor by PAGC, the 2013 follow-up audit stated that the recommendations had been implemented.³² The Grand Jury learned that as of 2019 there is no official financial advisor, there is no ongoing effort to educate PAGC staff about the industry, and administrators face resistance from management about making any changes to conservatees’ investments.

PAGC has a policy that requires staff to meet with the conservatee’s existing financial institution to learn about the investment model and to bring the investment strategy to management. Policy 527, which was last revised on April 26, 2019, states:

²⁹ Internal Audit Division, Controller-Treasurer Department, Internal Audit Division, *Internal Audit Report, Public Administrator/Guardian/Conservator’s Office Custody Internal Controls*, p. 14.

³⁰ Ibid.

³¹ Ibid., p. 15.

³² Internal Audit Division, *Internal Audit Report, A Follow-up Audit to the “Internal Audit Report, Public Administrator/Guardian/Conservator’s Office Custody Internal Controls” issued August 5, 2010*, August 28, 2013, p. 8, accessed January 5, 2020, <https://www.sccgov.org/sites/controller/internal-audit/Documents/10281%20PAGC%20Follow-up%20Audit%20Report.pdf>.

If the investment account was managed by an institution, meet with the agent managing the account to determine the investment model. The models are based upon high risk, moderate risk and low risk. [The deputy/administrator] gathers information about the current model and other models available. After receiving the information, the [deputy/administrator] schedules an estate planning meeting to discuss whether the model is changed or remains under the same model.

The Grand Jury learned that estate planning meetings take place but not for the purpose of discussing alternative investments. Discussions involve whether assets need to be sold in order to pay for the conservatees’ living expenses, but there is no discussion about the investment model and whether assets should be rebalanced in order to conform to the appropriate investment model. ([Finding 19](#))

Return on cash investments

Periodically, PAGC needs to sell a conservatee’s home when it comes time to move the conservatee into a skilled nursing facility, and this leads to a very large amount of cash held by the conservatorship. Because PAGC does not use a financial advisor and does not follow an investment model, the conservatee receives a very low return on their cash.

The Grand Jury acknowledges that there are special rules regarding the Public Guardian’s responsibility in managing conservatorships’ financial assets. Procedure 5.5 of Policy 527 asserts, “In the event there is a sale, the proceeds of the sale are deposited with the County Treasurer. Funds deposited in the County Treasurer discharges the Public Guardian from any liability related to the ‘Prudent Investment Rule.’”

To determine how much interest conservatees should earn on their cash, FMS surveys six local banks every month to find out the interest rates paid on simple savings accounts. They then use the highest of the six rates to calculate the interest paid to conservatees’ cash holdings. According to FMS, conservatees’ cash earned the following interest rates for the fourth quarter of 2019:

< \$50,000	0.08% per annum
\$50,000 to \$100,000	0.12% per annum
\$100,000 to \$500,000	0.17% per annum
\$500,000 to \$1MM	0.23% per annum
Over \$1MM	0.4% per annum

According to a PAGC report, there are six conservatees whose entire estate is in the form of cash, ranging from \$200,000 to \$440,000. The conservatee with \$440,000 in cash receives \$748 interest for the year. If in January 2020 this cash was instead invested in a one-year certificate of deposit

(CD) at 0.76% per annum, the conservatee would earn \$3,344 interest for the year.³³ It is evident that conservatees earn a lower interest rate compared to alternative FDIC-insured investments, such as CDs. ([Finding 20](#))

In the event of substantial cash holdings after the sale of real estate, PAGC should obtain advice from a financial advisor. One year's living expenses could be placed in the County Treasury, but the balance should be placed in a more productive investment.

³³ "Historical CD interest rates: 1984-2020," accessed August 25, 2020, <https://www.bankrate.com/banking/cds/historical-cd-interest-rates/>.

FINDINGS AND RECOMMENDATIONS

Finding 1

Communication within PAGC has been hampered by the lack of monthly all-hands meetings with well-planned agendas.

Recommendation 1

Restore the monthly staff meetings using well-planned agendas.

Finding 2

The fact that performance appraisals are rarely provided hampers communication between the staff and their supervisor.

Recommendation 2

Adhere to the requirement that supervisors provide annual performance appraisals.

Finding 3

The Civil Grand Jury commends PAGC for providing induction classes and on the job training for new employees, and for requiring certification through CAPAPGPC.

No recommendation.

Finding 4

PAGC staff are experiencing low morale.

Recommendation 4

Develop a wellness and retention plan for management and staff by August 31, 2021.

Finding 5

Absence of an up-to-date complaint system prevents identifying common complaints from the public.

Recommendation 5

Restore the practice of maintaining the complaint log by November 30, 2020.

Finding 6

Caseloads for administrators are too large due to vacant positions.

Recommendation 6

Prioritize efforts to fill the vacant probate administrator positions.

Finding 7

The Policies and Procedures need to distinguish between the duties of deputies and the duties of administrators.

Recommendation 7a

Revise the Policies and Procedures by August 31, 2021, so they clearly define the duties of deputies and administrators.

Recommendation 7b

Post the official Deputy/Administrator task list in the Toolbox by November 30, 2020, to clarify task assignments.

Finding 8

Different perspectives cause disagreements between deputies and administrators. The Civil Grand Jury commends PAGC for establishing a procedure to mediate the conflicting viewpoints of the deputies and administrators.

No recommendation.

Finding 9

Unclear transfer requirements cause friction between Intake and Ongoing groups because of differences over task responsibilities.

Recommendation 9

Post the official Probate transfer form in the Toolbox by November 30, 2020, to clarify transfer requirements between Intake and Ongoing deputies.

Finding 10

The procedures section of the Policies and Procedures (P&P) does not always accurately reflect office routines.

Recommendation 10

Devise a plan to encourage all staff to participate in revising applicable Procedures sections of the P&P.

Finding 11

Communication needs to improve between APS and PAGC.

Recommendation 11a

Probate Deputies should provide status reports to APS as specified in the MOU.

Recommendation 11b

APS should follow the MOU and share all relevant information about the prospective conservatee's environment with PAGC staff when there is an open conservatorship investigation.

Recommendation 11c

Modify the Request to Establish Probate Conservatorship referral form by August 31, 2021, so that the social worker can describe all safety and environmental issues to inform the deputy before visiting the prospective conservatee.

Finding 12

Despite occasional disagreements over the outcome, the Civil Grand Jury commends the PAGC decision-making process for accepting or rejecting referrals from APS. The Civil Grand Jury also commends PAGC for improving the referral process, and only accepting conservatorships after verifying that there are no better alternatives.

No recommendation.

Finding 13

The Civil Grand Jury commends PAGC for improving the referral process by ensuring Capacity Declarations are complete.

No recommendation.

Finding 14

The Civil Grand Jury commends management and staff for significantly improving the filing time of I&As.

No recommendation.

Finding 15

Communication needs to improve between FMS and PAGC.

Recommendation 15a

Develop a plan by November 30, 2020, so that PAGC responds to requests for status updates made by FMS accountants within time frames defined by PAGC and FMS management.

Recommendation 15b

SSA needs to support the CQI project and encourage participation by all stakeholders in order to improve communication and reduce delays associated with court filings.

Finding 16

The Civil Grand Jury commends both FMS and PAGC for effective processing and prioritization of conservatees' bills.

No recommendation.

Finding 17

The Panoramic (PANO) case management software has limitations involving financial data and calendaring information that need to be mitigated. Additionally, since there is no document naming convention established, it is difficult for staff to locate documents scanned into the system.

Recommendation 17a

SSA should have TSS investigate the feasibility of automating the transfer of income and expense data from PANO into SAP® software by August 31, 2021.

Recommendation 17b

Investigate and implement a solution so that PANO exports calendaring information to Outlook. Investigate this issue with the vendor to find a better solution by June 30, 2021.

Recommendation 17c

Define a naming convention by November 30, 2020 for documents scanned into PANO or the shared drive.

Finding 18

The Civil Grand Jury commends the clerical staff for well-organized file rooms and for ensuring that documents are firmly attached to their file folders.

No recommendation.

Finding 19

The passive approach that PAGC takes in managing the financial assets of conservatees does not optimize the values of conservatees' investments.

Recommendation 19

By August 31, 2021, use a professional financial advisor to establish guidelines about how to invest funds. After determining an appropriate investment model, ensure that a conservatees' investments match that model, and rebalance investments as appropriate.

Finding 20

Since no investment model is followed, conservatees' cash holdings are kept in the County Treasury and earn a lower interest rate compared to alternative FDIC-insured investments depending on the current market.

Recommendation 20

Substantial cash holdings that cover more than one year's living expenses should be invested following the appropriate investment model.

REQUIRED RESPONSES

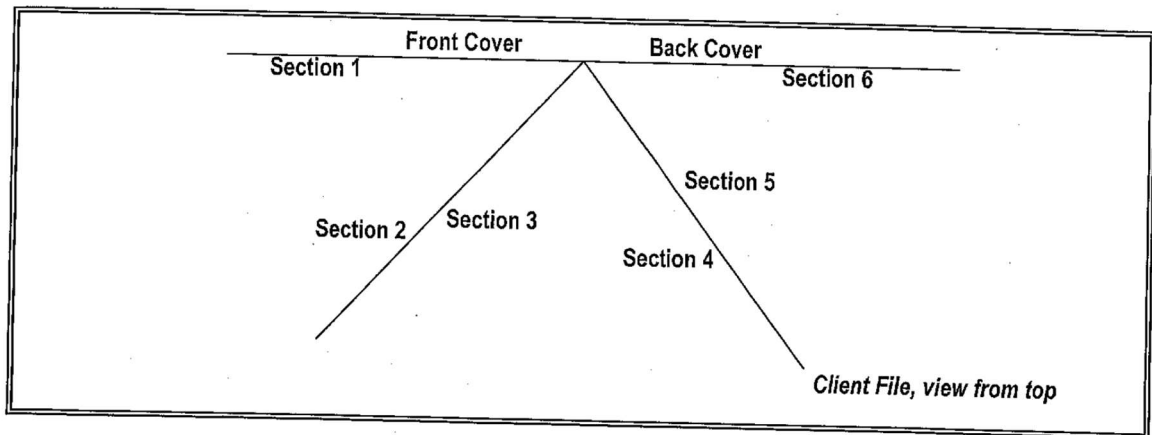
Pursuant to Penal Code sections 933 and 933.05, the Civil Grand Jury requests responses as follows from the following governing bodies:

Responding Agency	Finding	Recommendation
The County of Santa Clara	1, 2, 4, 5, 6, 7, 9, 10, 11, 15, 17, 19, 20	1, 2, 4, 5, 6, 7a, 7b, 9, 10, 11a, 11b, 11c, 15a, 15b, 17a, 17b, 17c, 19, 20

APPENDIX 1: File Folder Document Organization

CLIENT FILE FORMAT – LPS (all) & PROBATE PERMANENT
LPS folders – blue, Probate folders - green

Rev. 12/3/2018



SECTION 1
Correspondence

SECTION 2
Under Flap: Contact Reports
Next Flap: Medical (records, consents, DNRs, etc.)

SECTION 3
Property Records, Property Index Card
Flap: Bank Records, Statements, Ins. Policies

SECTION 4
Address Log and Forms
Under Flap: Benefits Correspondence (notices, etc.)
Plastic Sleeve – Benefits Cards

SECTION 5
Current Court (Letters & Orders, Reports, etc.)
Under Flap: Court Investigator reports
Next Flap: Inventories & Appraisals, Burials, Cash

SECTION 6
Approved Accountings, Unicare Reports
Plastic Sleeve – Client Information Sheet, Photos

CLIENT FILE FORMAT – PROBATE REFERRALS (manila folder)

INSIDE FRONT COVER
1: Property Index Card (at bottom)
2: Property Sheet
3: Contact Report
4: Benefits Log
5: Progress Notes

INSIDE BACK COVER
1: Address Log (at bottom)
2: Green Investigation Task Sheet
3: Referral packet.
4: Probate evaluation packet (blank white forms)

REFERENCES

1997-1998 Santa Clara County Civil Grand Jury Report. “Review of the Real and Personal Property Management Division of the Public Administrator/Guardian/Conservator.”

2012-2013 Santa Clara County Civil Grand Jury Report. “Improvements Are Needed in the Office of the Public Administrator/Guardian/Conservator.” Accessed January 6, 2020.

http://www.sccourt.org/court_divisions/civil/cgj/2013/publicguardian.pdf.

2013-2014 Santa Clara County Civil Grand Jury Report. “Probate Conservatorship: A Safety Net in Need of Repair.” Accessed January 6, 2020.

http://www.sccourt.org/court_divisions/civil/cgj/2014/PublicGuardian.pdf.

Agreement Between County of Santa Clara and Local 521 (Santa Clara Chapter) Affiliated with Service Employees International Union, June 22, 2015 through June 16, 2019. Accessed August 19, 2020. <https://www.seiu521.org/wp-content/uploads/2015/05/SCCo-Master-Contract-6-22-15-through-6-16-19.pdf>.

California Adult Protective Services Program. *APS Guidelines to Supplement Regulations.* Version 1.6. February 1, 2016. Accessed January 21, 2020.

https://www.cwda.org/sites/main/files/file-attachments/aps_guidelines_to_supplement_regulations_ver_1_6.pdf.

California Association of Public Administrators, Public Guardians, and Public Conservators. *Suggested Industry Best Practices.* May 2017.

Controller-Treasurer Department, Internal Audit Division, *Internal Audit Report, A Follow-up Audit to the “Internal Audit Report, Public Administrator/Guardian/Conservator’s Office Custody Internal Controls” issued August 5, 2010.* August 28, 2013. Accessed January 5, 2020.

<https://www.sccgov.org/sites/controller/internal-audit/Documents/10281%20PAGC%20Follow-up%20Audit%20Report.pdf>.

Controller-Treasurer Department, Internal Audit Division. *Internal Audit Report, Public Administrator/Guardian/Conservator’s Office Custody Internal Controls.* August 5, 2010, Accessed January 5, 2020. <https://www.sccgov.org/sites/controller/internal-audit/Documents/10200%20Public%20admin-guardian-conservators%20office.pdf>.

Controller-Treasurer Department of Santa Clara County. *Quarterly Investment Report.* September 30, 2019. Accessed January 5, 2020.

<https://www.sccgov.org/sites/controller/treasury/Documents/quarterly-investment-report-20190930.pdf>.

County of Santa Clara. “Contract Award Notice, Conservatorship and Estate Administration System (CEAS).” Contractor: Panoramic Software, Inc. Contract Number: 5500001841. Award Date: June 1, 2009. Amendments 2 – 12, dated June 1, 2013 – June 1, 2019.

County of Santa Clara. *Financial Abuse Specialist Team Practice Guide*. April 2016. Accessed January 21, 2020.

County of Santa Clara, “Report 97868, Consider Recommendations Relating to the Public Administrator/Guardian/Conservator Deferred Fees and Uncollected Fees.” August 15, 2019. Accessed January 21, 2020. http://sccgov.iqm2.com/Citizens/Detail_LegiFile.aspx?ID=97868.

Judicial Council of California. *Handbook for Conservators*. 2016. Accessed January 21, 2020. <https://www.courts.ca.gov/documents/handbook.pdf>

Mandala, Keerthi. *Business Process Document, Office of the Public Administration/Guardian/Conservator (PAG/C)*. June 30, 2008.

Menicocci, Robert, James Ramoni, and Kristina Cunningham to the Children, Seniors, Families Committee, February 18, 2015, “Agency Status Update to the Grand Jury Report relating to Probate Conservatorship: A Safety Net in Need of Repair.” Accessed December 30, 2019. <http://sccgov.iqm2.com/Citizens/FileOpen.aspx?Type=1&ID=5918&Inline=True>.

Menicocci, Robert to the Board of Supervisors and Jeffrey Smith, June 28, 2019, “Off-Agenda Report Relating to Social Worker Trauma and Tension and What Supports Are in Place to Alleviate the Stress.” Accessed January 3, 2020. Accessed August 3, 2020. <https://services.sccgov.org/OffAgenda/Home/ViewFile/254>.

PAGC 2017 Annual Report.

PAGC 2018 Annual Report.

PAGC 2019 Annual Report. Accessed August 3, 2020.

https://www.sccgov.org/sites/ssa/protective-services/Documents/page_annual_report.pdf.

Ramoni, James and Lisa Pate to Children, Seniors, and Families Committee. Video of Presentation of *PAGC 2018 Annual Report*. December 11, 2018. Accessed January 21, 2020. <http://sccgov.iqm2.com/Citizens/Calendar.aspx?From=1/1/2018&To=12/31/2018>.

Superior Court of California, County of Santa Clara. *Local Probate Rules of Court*. Accessed January 21, 2020.

http://www.scscourt.org/court_divisions/probate/probate_rules/probate_rules.shtml.

Wagstaff, Bruce to Gary Graves. "Response to Civil Grand Jury Report titled 'Improvements are Needed in the Office of the Public Administrator/Guardian/Conservator.'" July 1, 2013. Accessed January 7, 2020.

http://www.scscourt.org/court_divisions/civil/cgi/2013/responses/pubguardian/SSA.pdf

Internal reports and documents:

DAAS 2019 Culture and Climate Survey Results.pdf.

PAGC Policies and Procedures. September 2019.

APS Policies and Procedures.

2019 Q1 PAGC Induction Classes, February – April 2019.

DAAS, PAGC, FMS, and APS organization charts.

PANO training PowerPoint presentation.

Panoramic Service Request logs, 2018-2019.

Reports on APS Referrals 2018-2019, Probate Cases Investigated 2018-2019, Probate Intake Tracking Log, Breakdown of Cases, Reasons for No Conservatorship.

Reports on late fees, conservatorship assets, I&A filings, and court accountings.

Reports from the County of Santa Clara Employee Services Agency concerning length of service of PAGC staff and dates of performance appraisals.

Memos on Filing Procedures, Property File Protocol Order of Documents, How to Set Up Trust Files, Desk Procedures for Clerical Staff, Legal Secretary Desk Procedures.

Log files on I&A receipts and 2013-2014 complaints.

This report was **ADOPTED** by the 2019-2020 Santa Clara County Civil Grand Jury on this 17th day of September, 2020.

Handwritten signature of Karla Fukushima in cursive script.

Ms. Karla Fukushima

Foreperson