



Office of Missouri State Auditor
Nicole Galloway, CPA

**Benton County Public
Administrator**

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auditor.mo.gov



Findings in the audit of Benton County Public Administrator

<p>Background</p>	<p>The public administrator serves as the court appointed personal representative for decedents' estates and as guardian and/or conservator for individuals who are unable to care for themselves or their property. As of December 31, 2015, the Benton County Public Administrator was responsible for the financial activity of approximately 60 wards with assets totaling approximately \$657,000. Elizabeth L. Dunkin was elected Benton County Public Administrator during a mid-term election in November 2010 and subsequently elected to the position in November 2012 and November 2016. In August 2016, auditors received concerns regarding the handling of ward's assets and performed additional audit work to evaluate the concerns.</p>
<p>Questionable Asset Sale and Related Party Transactions</p>	<p>The Public Administrator improperly allowed her mother and cousin to sell a ward's vehicle on June 27, 2016, for \$7,800 to an employee of the accounting and tax business operated by the Public Administrator and her mother. The \$7,800 was improperly deposited into a family trust account administered by the Public Administrator's mother and cousin rather than into the ward's bank account administered by the Public Administrator. The Public Administrator paid her cousin \$815 from the ward's account for time, mileage, and meals related to transporting the ward and/or his property during June and July 2016. A review of other wards' annual settlements and bank account activity determined the Public Administrator paid her family's accounting and tax business a total of \$1,886 from 4 wards' accounts during 2014, 2015, and 2016 for tax preparation services.</p>
<p>Controls and Procedures</p>	<p>The Public Administrator failed to adequately monitor the financial activity of some wards, causing 11 wards to incur unnecessary bank fees totaling \$370. The bank refunded \$125 of these fees; however, this issue could have been avoided if the Public Administrator had maintained running checkbook register balances and properly monitored account balances. Case files and disbursement records were not always complete and accurate, and the Public Administrator did not have a system to track the location and custody of case files.</p>
<p>Annual Settlements</p>	<p>The Public Administrator did not file required annual settlements and/or status reports for 10 cases from January 2015 through October 2016. Inventory reports were not filed timely for 18 cases including 2 due in 2011 that had not been filed as of November 2016. The Public Administrator also failed to file complete and accurate annual settlements or inventory reports for 7 of 90 cases reviewed. The Circuit Court, Probate Division, did not timely notify the Public Administrator of annual settlements or status reports due or follow up on those not filed by the required date.</p>
<p>Fees</p>	<p>The Public Administrator issued checks for fees prior to, or without, the approval of the Circuit Judge, Probate Division. In addition, the Public Administrator does not maintain documentation to support the fees assessed and did not remit some fees timely to the County Treasurer.</p>

Duties and Responsibilities

The Public Administrator handles finances for some wards without authority of the court. For 9 wards, the Circuit Judge, Probate Division, appointed the Public Administrator as guardian only in accordance with Missouri law; however, she reported receiving and disbursing monies for 5 of these wards.

In the areas audited, the overall performance of this entity was **Poor**.*

*The rating(s) cover only audited areas and do not reflect an opinion on the overall operation of the entity. Within that context, the rating scale indicates the following:

- Excellent:** The audit results indicate this entity is very well managed. The report contains no findings. In addition, if applicable, prior recommendations have been implemented.
- Good:** The audit results indicate this entity is well managed. The report contains few findings, and the entity has indicated most or all recommendations have already been, or will be, implemented. In addition, if applicable, many of the prior recommendations have been implemented.
- Fair:** The audit results indicate this entity needs to improve operations in several areas. The report contains several findings, or one or more findings that require management's immediate attention, and/or the entity has indicated several recommendations will not be implemented. In addition, if applicable, several prior recommendations have not been implemented.
- Poor:** The audit results indicate this entity needs to significantly improve operations. The report contains numerous findings that require management's immediate attention, and/or the entity has indicated most recommendations will not be implemented. In addition, if applicable, most prior recommendations have not been implemented.

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Benton County Public Administrator

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NICOLE GALLOWAY, CPA

Missouri State Auditor

To the County Commission
and
Public Administrator of Benton County

We have audited the Public Administrator of Benton County. During our audit of certain operations of Benton County in fulfillment of our duties under Section 29.230, RSMo, we determined additional audit work was necessary to review transactions in the Public Administrator's Office. The scope of our audit of the Public Administrator included, but was not necessarily limited to, the year ended December 31, 2015. The objectives of our audit were to:

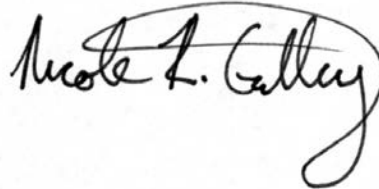
1. Evaluate the Public Administrator's internal controls over significant management and financial functions.
2. Evaluate the Public Administrator's compliance with certain legal provisions.
3. Evaluate the economy and efficiency of certain management practices and procedures, including certain financial transactions.
4. Evaluate concerns regarding the disbursement of estate funds and sale of assets held by the Public Administrator.

Our methodology included reviewing written policies and procedures, financial records, and other pertinent documents; interviewing various personnel of the county, as well as certain external parties; and testing selected transactions. We obtained an understanding of internal controls that are significant within the context of the audit objectives and assessed whether such controls have been properly designed and placed in operation. We also obtained an understanding of legal provisions that are significant within the context of the audit objectives, and we assessed the risk that illegal acts, including fraud and violations of legal provisions could occur. Based on that risk assessment, we designed and performed procedures to provide reasonable assurance of detecting instances of noncompliance significant to those provisions.

We conducted our audit in accordance with the standards applicable to performance audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform our audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides such a basis.

For the areas audited, we identified (1) deficiencies in internal controls, (2) noncompliance with legal provisions, (3) the need for improvement in management practices and procedures, and (4) improper handling of some disbursements of estate funds and sale of assets. The accompanying Management Advisory Report presents our findings arising from our audit of the Benton County Public Administrator.

An additional report, No. 2016-097, *Benton County*, was issued in September 2016.

A handwritten signature in black ink, reading "Nicole R. Galloway". The signature is written in a cursive style with a large, looping initial "N".

Nicole R. Galloway, CPA
State Auditor

The following auditors participated in the preparation of this report:

Director of Audits:	Randall Gordon, M.Acct., CPA, CGAP
Audit Manager:	Deborah Whitis, MBA, CPA, CIA, CFE
In-Charge Auditor:	Connie James
Audit Staff:	Marian Rader, M.Acct., CPA, CFE

Benton County Public Administrator

Introduction

Background

The Public Administrator serves as the court appointed personal representative for decedents' estates and as guardian and/or conservator for individuals who are unable to care for themselves or their property when there is no one else to serve. The Public Administrator is responsible for the financial activity of approximately 60 wards with assets totaling approximately \$657,000 as of December 31, 2015. The Public Administrator is required to file annual settlements with the Circuit Court, Probate Division, for each appointed ward or estate reflecting the financial activity for the year.

Elizabeth L. Dunkin was elected Benton County Public Administrator during a mid-term election in November 2010 and subsequently elected to the position in November 2012 and November 2016. During the year ended December 31, 2015, the Public Administrator received salary compensation of \$43,310. The Public Administrator supervised the daily operations of the Public Administrator's office and employed one part-time employee as of December 31, 2015.

In August 2016, auditors received concerns regarding the handling of a ward's assets.

Benton County Public Administrator

Management Advisory Report

State Auditor's Findings

1. Questionable Asset Sale and Related Party Transactions

The Public Administrator improperly allowed the sale of a ward's assets and paid related parties for services performed.

In April 1993, a couple with no children established a family trust for the benefit of themselves and their family, and named themselves as co-trustees to manage the funds and other assets held in the family trust. The couple listed their nieces and nephews as beneficiaries and the wife's nephew as successor trustee. The duty of the successor trustee is to manage the assets of the family trust in the event the co-trustees either refuse or become unable to continue to serve as co-trustees. After the wife's death in March 2013, the husband became the sole trustee of the family trust. In April 2014, an amendment to the family trust removed the wife's nephew as successor trustee and added 2 of the Public Administrator's family members (her mother and cousin), as successor joint co-trustees.

In January 2016, the Public Administrator petitioned the court to become guardian and conservator of the husband. Upon learning of these activities, the wife's nephew petitioned the court in April 2016 to become guardian and conservator. On May 12, 2016, the Circuit Judge, Probate Division, issued judgment the husband was totally incapacitated and disabled, and issued letters of guardianship and co-conservatorship. These letters appointed the Public Administrator as his guardian, and appointed the Public Administrator and the wife's nephew as co-conservators with the condition the Public Administrator will handle all financial income and expenses while the nephew will have access to financial information.

As of May 12, 2016, the Public Administrator is responsible for all financial activity of the husband's (ward) personally titled funds and assets, and the Public Administrator's mother and cousin are responsible for all financial activity of funds and assets held in the family trust. The Circuit Court, Probate Division, provides oversight of financial activity handled by the Public Administrator; however, there is no required independent oversight of financial activity in the family trust.

The Public Administrator is responsible for the ward's personal assets. She improperly allowed her mother and cousin to sell a ward's vehicle on June 27, 2016, for \$7,800 to an employee of the accounting and tax business operated by the Public Administrator and her mother. There is no order from the Circuit Judge, Probate Division, authorizing the sale of this vehicle.

The \$7,800 proceeds from the vehicle sale were not deposited into the ward's bank account administered by the Public Administrator. Instead, these monies were improperly deposited into the family trust account. The Public Administrator indicated she and her family members thought the vehicle was titled to the family trust. However, the Public Administrator paid \$150 from the ward's assets on June 27, 2016, to have the vehicle



Benton County Public Administrator
Management Advisory Report - State Auditor's Findings

detailed. In addition, the Public Administrator did not attempt to recoup the \$7,800 from the family trust once she realized the mistake. After our inquiries, the Public Administrator recovered the \$7,800 from the family trust and deposited the funds into the ward's bank account on February 21, 2017. We also noted the Public Administrator paid her cousin \$815 from the ward's account for time, mileage, and meals related to transporting the ward and/or his property during June and July 2016.

A review of other wards' annual settlements and bank account activity determined the Public Administrator paid her family's accounting and tax business a total of \$1,886 from the accounts of 4 wards during 2014, 2015, and 2016 for tax preparation services.

The Public Administrator has a fiduciary responsibility to protect wards' personally titled assets and bank accounts, and make decisions for the benefit of her wards. The appearance of conflicts of interest creates a situation that could prevent the Public Administrator from objectively performing her duties. To avoid conflict of interests or the appearance of a conflict of interest, the Public Administrator should consult the Circuit Judge, Probate Division, when her family's business or members of her family are going to provide services to wards for compensation. In addition, documentation should be maintained of the consideration of persons other than her family members for the services.

A similar condition regarding the appearance of a conflict of interest when family members provide services to wards for compensation was noted in our prior audit report.

Recommendation

The Public Administrator avoid the appearance of a conflict of interest that could prevent her from objectively performing her duties. The Public Administrator should also ensure documentation is maintained of the consideration of persons other than family members for services provided to wards.

Auditee's Response

I acknowledge that a vehicle was sold for \$7,800 (which was fair market value as determined by National Automobile Dealers Association values) by the co-trustees of the family trust while the vehicle was titled in the personal name of the ward. I mistakenly believed the vehicle was titled in the name of the family trust. The Missouri Department of Revenue, through its fee agent office, allowed the improper transaction under the same mistaken belief that the vehicle was titled in the name of the trust. No impropriety or conflict of interest on the part of the Public Administrator existed regarding this transfer, and there was no loss of funds, or harm to the ward, as a result of the mistaken belief in the actual ownership of the vehicle.



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The ward was a long time tax client of my family's accounting and tax business prior to me filing for guardianship and conservatorship. No impropriety, or actual conflict of interest, on the part of the Public Administrator existed regarding the continued use of the tax business.

I acknowledge that an appearance of conflict must be avoided, and therefore I will request for court approval on any transaction between wards and my family or family's business. I will further submit a bid from a separate accounting and tax business with the request for court approval to document that the lowest priced services are being obtained for my wards.

2. Controls and Procedures

The Public Administrator does not adequately monitor the financial activity of some wards, causing wards to incur unnecessary bank overdraft fees. In addition, case files and disbursement records were not always complete and accurate.

2.1 Monitoring

The Public Administrator does not adequately monitor ward account balances and does not maintain running cash balances in the checkbook registers. Upon receipt of the monthly bank statements, the Public Administrator uses the checkbook registers to record the receipts and disbursements in the accounting software for preparation of the bank reconciliations. Once reconciled, the Public Administrator then records the monthly account balance in the ward's checkbook register. This method does not allow the Public Administrator to easily determine each ward's account balance on a daily basis. As a result, 11 wards were charged non-sufficient funds and overdraft fees by the bank totaling \$370. The bank refunded \$125 of these fees. However, this issue could have been avoided if the Public Administrator had maintained running checkbook register balances and properly monitored account balances.

The failure to adequately monitor the financial activity, including account balances, of wards increases the risk that loss, theft, or misuse of funds and other assets could go undetected. The Public Administrator should monitor financial activity and maintain running cash balances in the checkbook registers to avoid unnecessary bank charges.

2.2 Case files

The Public Administrator did not retain complete case files for all wards and does not have a system to track the location and custody of case files.

The Public Administrator does not always maintain copies of the approved annual settlements, status reports, inventory reports, and court orders in the case files. The Public Administrator indicated that she either had not picked them up from the courthouse or was no longer receiving them from the Probate Clerk after implementation of the electronic filing system in 2016. Although the Public Administrator has the ability to retrieve electronic copies, she indicated she has not learned how to retrieve them. As a result,



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Management Advisory Report - State Auditor's Findings

we obtained numerous records from the Circuit Court, Probate Division to do our work.

Due to limited space in her office, the Public Administrator maintains current year case files in her office and older case files in various county storage locations. In addition, the Public Administrator's attorney may have possession of some case files while preparing annual settlements. The Public Administrator could not locate and provide us with 2 case files requested during the audit. Upon request, the Public Administrator's attorney was able to provide copies of some documentation for these cases. One of these cases had a final settlement filed in 2015 and the other case had not had any filings since the filing of an inventory report in 2013.

Failure to maintain complete case files for all wards significantly increases the risk that loss, theft, or misuse of funds could occur undetected. Record retention is necessary to ensure the validity of transactions and provide an audit trail. A formal system to track the location and custody of records decreases the likelihood of lost or misplaced records.

2.3 Disbursement records

The Public Administrator does not always maintain accurate disbursement records. For 2 cases the recorded disbursement activity does not agree to the actual bank activity. For one case, the general ledger accounting records indicate check number 1017 was issued to the Benton County Treasurer for Public Administrator fees; however, the check showed the payee was crossed out by the Public Administrator and it was issued to an attorney. While the payment to the attorney appears appropriate, the Public Administrator did not correctly record it in the general ledger. For the second case, the amended final settlement shows check number 1111 payable to the Benton County Treasurer for \$338.90; however, 2 checks (numbers 1111 and 1112) totaling \$318.11 were actually issued to the Benton County Treasurer. No documentation could be provided to explain these differences.

To ensure payments are valid and proper and reduce the risk of loss, theft, or misuse of ward assets, accurate accounting records should be maintained for all disbursements.

Recommendations

The Public Administrator:

- 2.1 Monitor financial activity and maintain a running balance in the checkbook registers to ensure sufficient funds are available for disbursements to avoid unnecessary bank charges.
- 2.2 Retain adequate documentation for each ward and implement procedures to track the location and custody of case files.



Auditee's Response

- 2.3 Maintain accurate accounting records for all disbursements.
- 2.1 *I acknowledge that overdrafts occurred as I forwarded checks to health care providers at the beginning of each month. I would attach a note to the check requesting the health care provider to withhold depositing the funds until later in the month when the ward's social security/pension checks would be received. On some occasions these checks were deposited prematurely incurring overdraft fees. I will refrain from issuing checks in the future until such time as the social security/pension checks have been deposited into the ward's account. I will continue to monitor the financial activity, along with maintaining a running balance in the checkbook registers to ensure sufficient funds are available for disbursements to avoid unnecessary bank charges.*
- 2.2 *I will request additional storage space from Benton County to store files in one location. In the meantime, I will develop additional procedures to track the location and custody of case files. I will further request a user logon so signed court orders can be obtained from case.net without the necessity of traveling to the Probate Clerk's office.*
- 2.3 *I will verify that the general ledger matches disbursements to ensure that accurate accounting records for all disbursements are kept.*

3. Annual Settlements

The Public Administrator did not always file annual settlements and/or status reports and inventory reports timely, and those filed were not always complete and accurate. In addition, the court did not have procedures to notify the Public Administrator of reports due.

3.1 Timely filing

For each ward or estate, the Public Administrator is required to file an annual settlement and/or status report with the Circuit Court, Probate Division, on the anniversary date of letters reflecting a detailed list of assets held, as well as financial activity for the previous year. We reviewed case activity for all 90 wards and estates handled by the Public Administrator from January 2015 through October 2016 and noted annual settlements or status reports were not filed for 10 cases. For 4 of these 10 cases, annual settlements or status reports had not been filed for 3 to 5 years.

In addition, the Public Administrator did not always file inventory reports within the required timeframe. Inventories were not filed timely for 18 cases. Inventories for 2 of these cases were due in 2011 and had not been filed as of November 2016.



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Sections 473.540 and 475.270, RSMo, require the Public Administrator to file an annual settlement and/or status report with the court for each ward or estate. Sections 473.233 and 475.145, RSMo, require the Public Administrator to file an inventory of all property of the decedent or ward within 30 days after letters are granted, unless a longer time is granted by the court. Timely filing of settlements, status reports, and inventory reports is necessary for the court to properly oversee the administration of cases and reduce the possibility that loss, theft, or misuse of funds could go undetected.

3.2 Complete and accurate

The Public Administrator does not always file complete and accurate annual settlements and inventory reports. For 7 of 90 cases reviewed, the assets listed on the annual settlement or the inventory report did not accurately reflect all assets owned by the ward. These documents did not include vehicles owned by wards for six cases, understated the value of a prepaid burial plan by \$300 for another case, and incorrectly included real estate actually owned by the ward's mother for one of the cases that had not properly reported a ward's vehicle.

To ensure the financial activity of the wards or estates is accurately and completely reported to the court, all assets should be adequately detailed and recorded on the annual settlements and inventory reports. Complete and accurate records are necessary for the court to properly oversee the administration of cases and reduce the possibility that loss, theft, or misuse of funds could go undetected.

3.3 Notification

The Circuit Court, Probate Division, does not timely notify the Public Administrator prior to the filing deadline for the annual settlement or status report or follow up on settlements or reports not filed by the required date. For 8 of the 10 cases when annual settlements or status reports had not been filed, the court did not send a notice of the late filing.

Sections 473.557 and 475.280, RSMo, require the clerk of the court to notify the conservator or guardian (Public Administrator) of the deadline for the annual settlement. Failure to ensure annual settlements and status reports are filed timely increases the risk that loss, theft, or misuse of funds will go undetected.

Recommendations

- 3.1 The Public Administrator file annual settlements, status reports, and inventory reports timely.
- 3.2 The Public Administrator ensure annual settlements and inventory reports are complete and accurate.



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- 3.3 The Circuit Court, Probate Division timely notify the Public Administrator of annual settlement or status report deadlines and follow up on settlements or reports not filed by the required date.

Auditee's Response

The Public Administrator provided the following responses:

- 3.1 *I will request that the software designed for Missouri Public Administrators to track cases be obtained by Benton County. I will further request additional funding to obtain a Deputy Public Administrator as the number of wards being supervised by the Public Administrator's office has increased by almost 400 percent since I took office. I will try very hard to get all settlements and reports to the court in a timely fashion.*
- 3.2 *I will file amended settlements and inventories to reflect the property held, as further information about the property of my wards is discovered.*

The Probate Clerk provided the following response:

- 3.3 *We are working with the Office of State Courts Administrator to ensure the milestone reports are set up for all of the Public Administrator's cases. The milestone reports will help us send notifications timely of annual settlements and annual reports due. We are working on implementing procedures to follow up on any reports not filed timely.*

4. Fees

The Public Administrator issued checks for fees prior to, or without, the approval of the Circuit Judge, Probate Division. In addition, the Public Administrator does not maintain documentation to support fees charged and did not remit some fees timely.

4.1 Approval of fees

The Public Administrator issued checks for payment of fees prior to, or without, approval of the Circuit Judge, Probate Division. We identified Public Administrator fees paid to the County Treasurer prior to judicial approval for 8 cases and fees paid in excess of the amounts stated in the judicial orders for another 2 cases. In addition, the Public Administrator paid attorney fees for 2 cases without judicial approval.

To ensure fees are properly assessed, the Public Administrator should obtain court approval prior to disbursing fees.

4.2 Fees assessed and collected

The Public Administrator does not maintain a fee schedule or document criteria used when determining the appropriate fee to charge, and did not remit some fees timely. Public Administrator fees totaling \$29,725 in 2015



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and \$17,393 from January through November 12, 2016, were remitted to the County Treasurer.

The Public Administrator indicated her fees were generally based on 5 percent of disbursements; however, we could not recalculate the fees charged using this percentage. In addition, we identified 21 cases in which the fees were not remitted to the County Treasurer within 30 days of the judicial order allowing the fee.

To ensure fees are properly assessed, the Public Administrator should work with the Circuit Judge, Probate Division, to establish a fee schedule. Without documenting criteria used when determining the appropriate fee to charge, and without adequate supporting documentation, there is less assurance fees charged to each ward are fair, reasonable, and properly assessed. In addition, the Public Administrator should obtain copies of approved orders and remit fees timely to the County Treasurer.

Recommendations

The Public Administrator:

- 4.1 Obtain court approval prior to disbursing fees.
- 4.2 Work with the court to establish a formal policy outlining the fee amount to assess wards and remit fees timely to the County Treasurer.

Auditee's Response

- 4.1 *I will await receipt of a signed court approval prior to disbursing fees to attorneys and to the Benton County Treasurer.*
- 4.2 *I will submit a formal fee schedule to the Circuit Judge, Probate Division, requesting the payment of 5 percent of funds during each calendar year pursuant to statute. I will timely pay any fees to the Benton County Treasurer upon receipt of a signed order from the Probate Division.*

5. Duties and Responsibilities

The Public Administrator handles finances for some wards without authority of the court. For 9 wards, the Circuit Judge, Probate Division, appointed the Public Administrator as guardian only in accordance with Section 475.105, RSMo; however, she reported receiving and disbursing monies for 5 of these wards. Section 475.010, RSMo, defines a guardian as someone appointed to have the care and custody of the person while a conservator has the care and custody of the estate. Performing conservator duties not appointed by the court increases the risk that loss, theft, or misuse of funds could go undetected.

Recommendation

The Public Administrator perform duties and responsibilities as appointed by the court.



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Auditee's Response

I acknowledge that I assisted some wards, for which I was solely the guardian, to obtain financial assistance and helped manage those resources, prior to being named conservator. I have been named as the conservator in each of those cases which assistance was provided, as soon as I was notified that I was not in fact the conservator on those cases. The cases involved persons who were a ward of the court managed by the former Public Administrator prior to me taking office in 2011.