

OPG Commission meeting
Director Report – Emergency meeting
08.20.2020

Purpose: The Director Report will provide detailed information about new matters, updates about the previous month's matters, and next steps for the following month. The Director will provide the Director Report to all Commission members. Questions about the Director Report will be addressed at the Commission meetings, if necessary.

a. Intake Eligibility, Prioritization and Referral Process.

- i. Update on number of registered users, referrals, accepted cases, etc. as of 08.18.2020. An update will be provided at the 08.26.2020 meeting.
 1. First appointment on 08.17.2020
 2. 46 registered referrals
 3. 23 accepted cases: 11 filed – attorneys, hospitals, APS, VA
 4. 3 Partial/Incomplete referrals
 5. 1 filed referral passed away

- ii. Consideration of OPG filing guardianship petitions and Consideration of OPG funds to pay filing fees and court costs
 1. CRS 13-94-102: Definitions
 2. CRS 13-94-106: Waiver of Court Costs & Filing Fees for potential OPG petitions
 3. CRS 15-14-304: Judicial Appointment of Guardian – Petition. Does this statute allow for the OPG to file petitions nominating itself as guardian?
 4. Discussion with Hugh Wilson that there is no bar using OPG funds to pay filing fees and court costs
 5. Some petitions are time-sensitive. For example, the alleged incapacitated person's health is declining and needs a decision-maker

iii. Consideration of OPG contracting with attorneys or organizations to file petitions. Potential organizations:

1. Medical Legal Partnership
2. Colorado Cross-Disability Coalition
3. Colorado Legal Services
4. CBA volunteer attorneys

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Current through all laws passed during the 2019 Legislative Session.

[CO - Colorado Revised Statutes Annotated](#) [TITLE 15. PROBATE, TRUSTS, AND FIDUCIARIES](#) [COLORADO PROBATE CODE](#) [ARTICLE 14. PERSONS UNDER DISABILITY - PROTECTION](#) [PART 1. GENERAL PROVISIONS](#)

15-14-102. Definitions

In parts 1 to 4 of this article 14:

- (1) "Claim", with respect to a protected person, includes a claim against an individual, whether arising in contract, tort, or otherwise, and a claim against an estate which arises at or after the appointment of a conservator, including expenses of administration.
- (2) "Conservator" means a person at least twenty-one years of age, resident or non-resident, who is appointed by a court to manage the estate of a protected person. The term includes a limited conservator.
- (3) "Court" means the court or division thereof having jurisdiction in matters relating to the affairs of decedents and protected persons. This court is the district court, except in the city and county of Denver where it is the probate court.
- (4) "Guardian" means an individual at least twenty-one years of age, resident or non-resident, who has qualified as a guardian of a minor or incapacitated person pursuant to appointment by a parent or by the court. The term includes a limited, emergency, and temporary substitute guardian but not a guardian ad litem.
- (5) "Incapacitated person" means an individual other than a minor, who is unable to effectively receive or evaluate information or both or make or communicate decisions to such an extent that the individual lacks the ability to satisfy essential requirements for physical health, safety, or self-care, even with appropriate and reasonably available technological assistance.
- (6) "Legal representative" includes a representative payee, a guardian or conservator acting for a respondent in this state or elsewhere, a trustee or custodian of a trust or custodianship of which the respondent is a beneficiary, or an agent designated under a power of attorney, whether for health care or property, in which the respondent is identified as the principal.
- (7) "Letters" includes letters of guardianship or letters of conservatorship.
- (8) "Minor" means an unemancipated individual who has not attained eighteen years of age; except that in proceedings pursuant to section 15-14-204 (2.5) only, "minor" means an unmarried individual

who has not attained twenty-one years of age.

(9) "Parent" means a parent whose parental rights have not been terminated.

(10) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(10.5) "Post-adjudication" means after appointment of a permanent guardian or special or permanent conservator after a hearing for which a respondent was provided notice pursuant to section 15-14-309 or section 15-14-404, or both, and at which the respondent had an opportunity to present evidence and be heard.

(11) "Protected person" means a minor or other individual for whom a conservator has been appointed or other protective order has been made.

(12) "Respondent" means an individual for whom the appointment of a guardian or conservator or other protective order is sought.

(13) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(14) "Tribe" means an Indian tribe or band, or Alaskan Native village, which is recognized by federal law or formally acknowledged by a state.

(15) "Ward" means an individual for whom a guardian has been appointed.

History

Source: L. 2000: Entire part R&RE, p. 1778, § 1, effective January 1, 2001 (see § 15-17-103). **L. 2016:** (10.5) added, (SB 16-131), ch. 286, p. 1165, § 2, effective August 10. **L. 2019:** IP and (8) amended, (HB 19-1042), ch. 55, p. 192, § 1, effective March 28.

▼ Annotations

Notes

Editor's note: This section is similar to former § 15-14-101 as it existed prior to 2001.

Case Notes

ANNOTATION

Law reviews. For article, "Legal Guidelines and Methods for Evaluating Capacity", see 32 Colo. Law. 65 (June 2003). For article, "How to Reconcile Advance Care Directives With Attempted Suicide", see 42 Colo. Law. 97 (July 2013).

Government entity may serve as a guardian. Although subsection (4) provides that "guardian" means "an individual", the guardianship provisions as a whole lead to the conclusion that the probate court as a government entity may serve as a guardian. In re J.C.T., 176 P.3d 726 (Colo. 2007).

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The Colorado Constitution and Titles 3, 4, 21, and 41 have been updated and are current through all laws passed during the 2020 Legislative Session, subject to review by the Colorado **Office** of Legislative Legal Services. Other statutory titles are current through all laws passed during the 2019 Legislative Session and are in the process of being updated.

[CO - Colorado Revised Statutes Annotated](#) [TITLE 13. COURTS AND COURT PROCEDURE](#) [ADVOCATES](#) [ARTICLE 94. OFFICE OF PUBLIC GUARDIANSHIP](#)

13-94-106. Waiver of court costs and filing fees

The court shall waive court costs and filing fees in any proceeding in which an indigent and incapacitated adult is receiving **public guardianship** services from the **office**.

History

Source: L. 2017: Entire article added, (HB 17-1087), ch. 319, p. 1719, § 1, effective June 5.

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The Colorado Constitution and Titles 3, 4, 21, and 41 have been updated and are current through all laws passed during the 2020 Legislative Session, subject to review by the Colorado Office of Legislative Legal Services. Other statutory titles are current through all laws passed during the 2019 Legislative Session and are in the process of being updated.

[CO - Colorado Revised Statutes Annotated](#) [TITLE 15. PROBATE, TRUSTS, AND FIDUCIARIES](#) [COLORADO PROBATE CODE](#) [ARTICLE 14. PERSONS UNDER DISABILITY - PROTECTION](#) [PART 3. GUARDIANSHIP OF INCAPACITATED PERSON](#)

15-14-304. Judicial appointment of guardian - petition

- (1) An individual or a person interested in the individual's welfare may petition for a determination of incapacity, in whole or in part, and for the appointment of a limited or unlimited guardian for the individual.
- (2) The petition must set forth the petitioner's name, residence, current address if different, relationship to the respondent, and interest in the appointment and, to the extent known, state or contain the following with respect to the respondent and the relief requested:
- (a) The respondent's name, age, principal residence, current street address, and, if different, the address of the dwelling in which it is proposed that the respondent will reside if the appointment is made;
- (b) (I) The name and address of the respondent's:
- (A) Spouse or partner in a civil union or, if the respondent has none, an adult with whom the respondent has resided for more than six months within one year before the filing of the petition; and
- (B) Adult children and parents; or
- (II) If the respondent has neither spouse, partner in a civil union, adult child, nor parent, at least one of the adults nearest in kinship to the respondent who can be found with reasonable efforts;

- (c) The name and address of each person responsible for care or custody of the respondent, including the respondent's treating physician;
- (d) The name and address of each legal representative of the respondent;
- (e) The name and address of each person nominated as guardian by the respondent;
- (f) The name and address of each proposed guardian and the reason why the proposed guardian should be selected;
- (g) The reason why guardianship is necessary, including a brief description of the nature and extent of the respondent's alleged incapacity;
- (h) If an unlimited guardianship is requested, the reason why limited guardianship is inappropriate and, if a limited guardianship is requested, the powers to be granted to the limited guardian; and
- (i) A general statement of the respondent's property with an estimate of its value, including any insurance or pension, and the source and amount of any other anticipated income or receipts.

History

Source: **L. 2000:** Entire part R&RE, p. 1792, § 1, effective January 1, 2001 (see § 15-17-103).
L. 2013: (2)(b)(I)(A) and (2)(b)(II) amended, (SB 13-011), ch. 49, p. 165, § 19, effective May 1.

▼ Annotations

Notes

Editor's note: This section is similar to former § 15-14-303 as it existed prior to 2001.

Case Notes

ANNOTATION

Law reviews. For note, "Settling the Personal Injury Claim of a Minor", see 38 U. Colo. L. Rev. 377 (1966). For article, "Adult Guardianships and Conservatorships: Protection of Constitutional Rights", see 15 Colo. Law. 820 (1986). For article, "Colorado Guardianship and Conservatorship Law: A Status Report", see 16 Colo. Law. 421 (1987). For article, "Interrogating Medical Witnesses As to Mental Capacity", see 23 Colo. Law. 2753 (1994). For article, "The Self-Interested Fiduciary: Implications in Guardianship and Conservatorship Law", see 24 Colo. Law. 2181 (1995). For article, "The Court Friends Program of the Denver Probate Court", see 25 Colo. Law. 49 (March 1996). For article, "Defects, Due Process, and Protective Proceedings", see 27 Colo. Law. 39 (April 1998). For article, "How to Reconcile Advance Care Directives With Attempted Suicide", see 42 Colo. Law. 97 (July 2013).

Annotator's note. Since § **15-14-304** is similar to repealed and reenacted § 15-14-303 and repealed § 152-9-2, CRS 53, relevant cases construing those provisions have been included in the annotations to this section.

The use of the term adjudicating in article 10 of title 27 indicates that a jury verdict is not an essential requisite of adjudication within the meaning of this section. Young v. Brofman, 139 Colo. 296, 338 P.2d 286 (1959).

Allegations of complaint insufficient to confer jurisdiction to appoint guardian. Nelson v. Nelson, 31 Colo. App. 63, 497 P.2d 1284 (1972).

Proof by clear and convincing evidence is required in guardianship proceedings because of the possibility of being deprived of basic liberties. Sabrosky v. Denver Dept. of Soc. Servs., 781 P.2d 106 (Colo. App. 1989).

An evidentiary hearing is necessary to consider the factual circumstances to determine whether a petitioner is a person interested in the welfare of the incapacitated person. In re Estate of Edwards, 794 P.2d 1092 (Colo. App. 1990).

No authority existed to interview allegedly incapacitated person in her home ex parte, even though the probate judge was motivated by her concern for the allegedly incapacitated person's welfare, by her deteriorated physical and mental condition, and by the court's desire to evaluate her without the undue influence of third parties. Estate of Milstein v. Ayers, 955 P.2d 78 (Colo. App. 1998).

This section unambiguously entitled the allegedly incapacitated person to attend her competency hearing. Anything less would implicate constitutional concerns because a potential deprivation of fundamental rights and liberties is involved. Estate of Milstein v. Ayers, 955 P.2d 78 (Colo. App. 1998).

A necessary inference from the express right to be present by counsel is the right to retain counsel. Estate of Milstein v. Ayers, 955 P.2d 78 (Colo. App. 1998).

No authority existed to deny the allegedly incapacitated person counsel on the grounds that she was incompetent to engage counsel. Estate of Milstein v. Ayers, 955 P.2d 78 (Colo. App. 1998).

Because a guardian ad litem and counsel represent different interests, appointment of a guardian ad litem for the allegedly incapacitated person did not substitute for counsel. Estate of Milstein v. Ayers, 955 P.2d 78 (Colo. App. 1998).

It is within the court's discretion to appoint legal counsel in addition to a guardian ad litem for an incapacitated person where the guardian ad litem does not undertake to represent the incapacitated person's legal interests in a proceeding to gain permission to withhold life-sustaining treatment. Dept. of Insts. v. Carothers, 821 P.2d 891 (Colo. App. 1991).

Although subsection (6) does not unambiguously grant the court power to assess attorney fees against another branch of government, it was within the court's discretion to assess attorney fees against the department of institutions. Dept. of Insts. v. Carothers, 821 P.2d 891 (Colo. App. 1991).

Defendant, department of institutions, waived its right to appeal issue that attorney fees may not be assessed against it on grounds that this section does

not contain express authorization for the assessment of such fees against state agencies where argument was not presented at trial and there was no indication that the court of appeals ruled on the issue. *Carothers v. Dept. of Insts.*, 845 P.2d 1179 (Colo. 1993).

Applied in *Romberg v. Slemon*, 778 P.2d 315 (Colo. App. 1989); *In Interest of Arguello*, 2019 COA 20M, -- P.3d --.

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