
Colorado Office of Public Guardianship

Director, Sophia M. Alvarez

Commissioners

Kelsey Lesco, Chair
Karen Kelley, Vice-Chair
Deb Bennett-Woods
Marco Chayet
Alison Zinn



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PUBLIC MEETING

August 26, 2020

RECORD OF PROCEEDINGS

CONVENE

The meeting of the Colorado Office of Public Guardianship Commission was convened by telephone conference at 10:04 AM by Commission Chair Kelsey Lesco.

A quorum of the Commission was present.

Commission Members Present

Kelsey Lesco, Chair
Deb Bennett-Woods
Marco Chayet
Alison Zinn

OPG Director

Sophia M. Alvarez

Others Present

Jacquelyn Beal, Office of Public Guardianship
Rhonda Sanchez, Office of Public Guardianship
Camille Price, Office of Public Guardianship
Erin McGavin, Office of Public Guardianship
America Paz Pastrana, Office of Public Guardian
Debbie Enck, Office of the Attorney General

Public Attendance

Shari Caton
Julia Cardi
Lara Vandenberg
Robert Hernandez, Former State Senator
Maureen Welch
Jim Tatten

All participated by telephone.

AGENDA ITEMS

I. Call to Order

The meeting was called to order.

II. Approval of the July 22, 2020 Meeting Minutes

Chair Lesco calls for amendments to the draft meeting minutes. Commissioner Bennett-Woods asked to amend in page 5 her comment to state she reviewed the bylaws of the Office of Child Representative and they provide for minimal oversight. Commissioner Bennett-Woods moves to approve the July 22, 2020 Meeting Minutes as amended. Commissioner Chayet seconds the motion. Motion passes unanimously.

III. Chair Report (Kelsey Lesco)

Chair Lesco begins meeting asking members of the public to comment at the end in the public comment section. Chair Lesco indicated that the Chair Report will be discussed as we go through the agenda.

IV. Discussion of Budget (Sophia M. Alvarez)

Director Alvarez's 8.26.2020 Director Report was distributed electronically and discussed. Additional items discussed included but not limited to:

- a. Director Alvarez informed there are no additional updates to the Director Report. Director Alvarez advised that a monthly budget report was included in the Directors Report. The report was provided by Hugh Wilson for FY20 June - 8.12.2020. Director Alvarez explained that Journal notes show how expenses were classified, such as website

expenses and non-classified full-time wages. Director Alvarez advised this information came from Judicial and now she is presenting them to the Commission for review.

- b. Commissioner Chayet inquired as to when the updates to the MOU are expected.
- c. AG Enck informed that the general counsel sent the updates draft, but this will change if OPG gets a different office space and will depend on the kind of space.
- d. Commissioner Chayet asked if the office moves, what would the time frame be? Director Alvarez replied that she is working with Hugh Wilson to find a space. Director Alvarez informed that as of now, there is no space in the Ralph Carr building and is waiting for the Real Estate point person to find commercial space close to the Carr building.
- e. AG Enck stated that she will provide a review of the MOU at next Commission meeting. Chair Lesco requested to put review of MOU in the agenda for next Commission meeting.
- f. Maureen Welch a member of the public asked if the meeting is being recorded. AG Enck affirmed that the meeting is being recorded.
- g. Ms. Welch asked if the audio will be posted along with meeting minutes.
- h. Chair Lesco asked members of the public to write down any questions they may have and discuss under the public comment section.
- i. AG Enck stated that she had no comments on whether the audio will be posted, but that she will discuss it with Director Alvarez.
- j. Commissioner Chayet inquired whether the MOU will be reviewed under executive session. Chair Lesco replied that it would be at public meeting.
- k. Commissioner Chayet asked if there is a proposal as how to structure the Ethics committee and the Systematic Equality policy. AG Enck informed that her office is doing research and looking at other offices to use as models to structure Ethics committee. Director Alvarez informed that she will have an updated Systematic Equality policy before next meeting.
- l. Commissioner Bennett-Woods informed that the budget of \$300,000 for OPG's case management system (CMS) was an estimate from several years ago and that the CMS budget was not updated since then. Commissioner Bennett-Woods indicated that is important to acknowledge that the CMS came in under budget. Further, the original CMS budget did not include expenditures for the website or separate non-Judicial IT support. Commissioner Bennett-Woods praised the fiscal management of these projects.

- m. Chair Lesco inquired whether this would be the format planning on using for the budget. Director Alvarez answered that it is, unless Mr. Wilson changes it.
- n. Commissioner Chayet asked if is possible to have a spreadsheet to supplement Budget report and if the report was produced by the Mr. Wilson. Director Alvarez informed that the last two attachments were provided by Mr. Wilson.
- o. Commissioner Chayet asked to label documents stating the author of the document, it will help when reviewing them.
- p. Director Alvarez asked for additional comments. There were none.

V. Director Report (Sophia M. Alvarez)

Director Alvarez gave updated report on the Intake Eligibility, Prioritization and Referral Process and as of today OPG has:

- 1. 2 appointments
- 2. 24 accepted cases
- 3. 14 petitions filed
- 4. 8 hearings scheduled in the next 2 weeks

Director Alvarez informed that Public Guardians are doing a good job and have some success stories to share at next meeting. Director Alvarez stated that the Consideration of OPG filing guardianship petitions and consideration of using OPG funds to pay filing fees will be tabled for now. Director Alvarez informed that on the subject of data gathering, she has reached to other organizations and has allocated funds to potentially hire a Graduate student to handle data gathering and reporting. Director Alvarez stated that she has no other updates on Director Report.

- a. Chair Lesco asked for comments. There were none.

VI. Discussion of Emergency Petitions Policy

Director Alvarez informed that only part of Policy 6 was distributed because not all is relevant for purposes of this meeting. Director Alvarez asked for questions or comments.

- a. Commissioner Bennett-Woods stated that she had a couple of points to address:
 - i. In terms of language the words emergency and urgent are used interchangeably and they have different meanings. This is confusing as to what it would qualify as urgent or an emergency.
 - ii. Emergency surgery is clearly an emergency and a placement issue is not an emergency, but it is an urgent matter. How do you identify an emergency for the basis of accepting a case?

- b. Director Alvarez stated that a true emergency is when a medical provider indicates that a treatment needs to be addressed in a short amount of time.
- c. Commissioner Chayet suggested to take out the word urgent and substantial harm would be a definition or part of the criteria to define an emergency. Commissioner Chayet further suggested that medical proxy or medical decision maker should be consistent with section 3.13. AG Enck agrees.
- d. Commissioner Bennett-Woods advised that a medical decision could also be the withholding of treatment and must be careful with the use of the term emergency. Commissioner Bennett-Woods stated that should not be bias towards medical treatment as it could become an ethical problem.
- e. Commissioner Chayet suggested that bullet point 2 should be flushed out as well, where it refers to emergency. Commissioner Chayet stated that a medical decision is different than placement and inquired if placement would ever be an emergency.
- f. Commissioner Bennett-Woods stated that healthcare providers can decide without consent, especially when relates to COVID-19 and moving a patient to a more appropriate setting constitutes more than an urgent matter. Commissioner Chayet agrees.
- g. Chair Lesco asked for any further comments or discussions. There were no further comments. Chair Lesco thanked Director Alvarez for putting together the policy so quickly.

VII. Discussion of OPG Filing Petitions and related items (Kelsey Lesco, Deb Enck, and Sophia M. Alvarez)

- A. Hiring an OPG staff attorney and Attorney General's role
- B. Contracting to file OPG Petitions

Chair Lesco turned over discussion to Director Alvarez for thoughts and suggestions. Director Alvarez expressed her concern over filing petitions. Director Alvarez agrees that statutorily OPG could file guardianship petitions but doesn't think that is ethical for an agency to file them. Director Alvarez also agrees that OPG should have an attorney for other issues that could come up or judicial guidance when appropriate. However, Director Alvarez would rather separate being a guardian and becoming the petitioning party. Director Alvarez informed that there are funds available to hire an attorney but may not have the enough work for a full-time position. Director Alvarez suggested creating a short-term plan to contract with attorneys or agencies that would provide more time to assess whether there is the need for house counsel. Director Alvarez further suggested to contract with an attorney at a flat rate and if a hearing is contested putting very structured parameters for additional payment. Director Alvarez asked if there are any comments.

- a. Commissioner Zinn stated that she is not concerned with the OPG office filling petitions, because it's not a for profit agency, but it worries her if a petition becomes contested and OPG office having to prosecute the petition. Commissioner Zinn state that it can potentially be extremely expensive and that OPG filing a petition should be the last resource.
- b. Commissioner Chayet agreed with commissioner Zinn and suggested the OPG office needs to have a very specific policy if it is going to be the petitioner. Commissioner Zinn agreed.
- c. Commissioner Zinn state that should be determined as to what to do when it comes to the cost of a petition that becomes more complicated.
- d. Commissioner Chayet inquired about how many petitions have been filed. Director Alvarez stated that 14 petitions have been filed.
- e. Commissioner Chayet inquired if there are petitions not filed for lack of legal assistance.
- f. Director Alvarez answered yes and stated that hospitals are having that problem. Director Alvarez informed that she puts them in touch with other agencies to help with filing petitions.
- g. Commissioner Chayet suggested that it should be a very rare situation where OPG should file a petition.
- h. Commissioner Zinn agreed to the extent where cases may become complicated and tax OPG resources.
- i. Commissioner Chayet stated that on the issue of OPG becoming a petitioner or not, should be decided by vote. Commissioner Chayet stated that as a pilot program this issue is completely different if we were a multi jurisdiction; therefore, we need to be very careful. Commissioner Bennett-Woods agreed.
- j. Commissioner Bennett-Woods stated that the health facilities have some obligation to support this office and have the resources to do so. Commissioner Bennett-Woods further stated that people we are serving are the most vulnerable and we should find a way to file a petition for them.
- k. Chair Lesco stated that we need to make sure this issue does not affect data collection and filing petitions is risky; however, we will further research. Chair Lesco inquire whether need further discuss or wait on making a decision.
- l. Commissioner Chayet stated that should make a definitive decision but could be made at the meeting next month.
- m. Commissioner Zinn agreed to wait for next meeting and further research the issue to be prepared to decide.
- n. Chair Lesco stated that it would be helpful to review records and identify barriers as to getting petitions filed.
- o. Commissioner Chayet asked Director Alvarez to collect the data to help make a determination.

- p. Chair Lesco inquired whether this is the Commission's role or the Director's decision. AG Enck stated that will research more and speak with Chair Lesco before making any comments as to this issue.
- q. Commissioner Chayet stated that is important to determine today that at this point the OPG office will not act as petitioner per Director's preference.
- r. Chair Lesco asked if Director Alvarez had anything else to add. Director Alvarez answer no.
- s. Chair Lesco inquire whether everyone is comfortable if for now the OPG office will not act as petitioner. All Commissioners agreed.
- t. AG Enck stated that for right now we must continue giving a statement that OPG is a pilot project will not act as petitioner.
- u. Commissioner Bennett-Woods supports the position of OPG not filing petitions with the caveat that we keep detailed records of such cases.
- v. Chair Lesco inquired whether it is possible to track if we are not able to serve someone because they can't file a petition. Director Alvarez answered yes.

C. Using OPG Funds for filing fees

- a. Commissioner Zinn inquired whether there are funds available to pay for filing fees and requested to set criteria to determine who will receive those funds.
- b. Director Alvarez stated that there are funds available and agreed with Commissioner Zinn regarding setting criteria and will provide a policy for criteria at the next meeting.
- c. Commissioner Zinn inquired as to how many people have raised this issue. Director Alvarez stated that as of today only one, but this is not an urgent matter since it has been resolved for now. Director Alvarez stated that this item can wait until next month's meeting. Commissioners agreed.
- d. Chair Lesco stated that this could wait to see policy next month regarding this item and asked for additional comments. There were none.
- e. Chair Lesco asked to table discussion of Director Evaluation process for next meeting to allow time for public comment. AG Enck agreed.

D. Interpretation of C.R.S. § 13-94-106

- a. Director Alvarez informed that she and AG Enck have not discussed the interpretation of this statute and asked to table for next meeting. Commissioners agreed.
- b. AG Enck inquired if the Commission would like a written memorandum. Commissioner Chayet answered yes.

VIII. Discussion of Referrals and Placement outside of Denver County prior to Appointment

Director Alvarez began discussion by referring to page 8 of the Director Report. Director Alvarez advised that this is a recurring issue and expressed her concern with clients being placed outside of Denver county. Director Alvarez informed that at the time a referral was accepted where client was a Denver resident, but unfortunately appropriate placement was not within Denver county.

- a. Chair Lesco asked for comments.
- b. Commissioner Bennett-Woods stated that is important to continue to take and serve clients if they started as Denver residents. Commissioner Bennett-Woods stated that OPG needs to always default to the needs of the client.
- c. Commissioner Chayet agreed and further stated that there is no reason to restrict OPG services depending on placement.

IX. Discussion of Fiscal Policies (Kelsey Lesco and Deb Enck)

- a. Chair Lesco asked if the Commission had the opportunity to review the fiscal policy.
- b. Director Alvarez advised that the drafted policy was based on discussions with AG Enck. Director Alvarez stated that initially the policy was very bare because Judicial handles fiscal policies. Director Alvarez tailored new additions to the policy to OPG such as: Commission oversight; explicit policy as to purchases; use of office credit card; vendor payments, and policy related to travel.
- c. Commissioner Bennett-Woods thanked Director Alvarez for her work on expanding the fiscal policy. Commissioner Bennett-Woods inquired if there is a State Policy regarding fiscal audits and if there is, how often are audits?
- d. Director Alvarez stated that the policy follows State requirements and audits are every 3 years. Director Alvarez further informed that State just issued an audit this spring.
- e. Commissioner Bennett-Woods suggested to add a paragraph to section 5.3 stating that the Commission reviews audit documents and provides responses to audits.
- f. Commissioner Chayet stated that Director Alvarez did a great job with fiscal policies. Commissioner Chayet suggested to add to first paragraph of section 5.3 that Director should provide SCAO summaries.
- g. Commissioner Bennett-Woods asked whether it's required to have a motion providing approval of the policies specific to the Commission. AG Enck answered yes.

- h. Chair Lesco asked if want to make motion now or wait to see the amended document.
- i. Commissioner Chayet preferred to approve as amended and making it retroactive.
- j. Commissioner Bennett-Woods stated that she does not see the need to make the policy retroactive.
- k. AG Enck advised to not attempt to make the fiscal policy retroactive.
- l. Chair Lesco asked for motion to adopt policy as amended. Commissioner Bennett-Woods moved to adopt policy as amended. Commissioner Chayet seconded motion.
- m. Director Alvarez read amendments to section 5.3:
 - i. Add to Section 5.3 that Director shall provide monthly budget summaries in addition to any summaries provided by SCAO.
 - ii. Add to Section 5.3 that the Commission shall be involved in decision and oversight as to any responses to audit.
- n. Chair Lesco stated that there is a motion and asked if everyone was in favor of passing motion. All Commissioners were in favor and the motion passed unanimously.

X. Discussion of Conflict of Interest Policy (Deb Enck)

AG Enck indicated that the conflict of interest policy is fairly broad, and the only question is to whether add, personal and financial conflict of interests statements. AG Enck asked if there any comments.

- a. Commissioner Bennett-Woods stated that section 3 does not make sense to her the way it is written. Commissioner Bennett-Woods stated that other organizations she has been associated with sign an annual or semi-annual disclosure statement regarding personal and financial conflicts of interest.
- b. AG Enck stated that is not necessary, but it can be done.
- c. Commissioner Chayet stated that he has no problem signing a disclosure statement. Commissioner Chayet suggested to define what personal and financial mean.
- d. Commissioner Zinn asked to please be mindful and identify the specific situations that we are trying to avoid. Commissioner Zinn inquired about the difference between nominating OPG or some else, because she does not want to give the wrong appearance.
- e. Commissioner Chayet stated that there is the possibility where a Commissioner can nominate the OPG office as guardian.
- f. Commissioner Zinn inquired if it is possible that she could represent a client that is a petitioner.
- g. Commissioner Chayet stated that he has received calls as to whether OPG is appropriate for a case. Commissioner Chayet urges to be very

conservative and always err on the side of caution when answering these kinds of questions to avoid anything that can cast a negative light on OPG.

- h. Chair Lesco agreed with Commissioner Chayet and asked for definition to be provided to avoid any conflict of interest.
- i. Commissioner Zinn stated that she would like to have it spelled out because it will be helpful for anyone who joins the Commission in the future.
- j. AG Enck informed that she will have a second draft of this policy by the next meeting.
- k. Commissioner Chayet asked regarding point 5 if its usual and customary that Commissioners are not allowed to make a donation to a political candidate, party or issue.
- l. AG Enck stated that it was not meant to say that a Commissioner cannot personally donate. The policy is meant to say that a Commissioner cannot make a donation and make the representation that it is sanctioned by the Commission.
- m. Commissioner Bennett-Woods inquired about issues directly related to the office when asked by the media or a member of the legislation. The statement about Commissioners not speaking to the public on a political issue is broad.
- n. AG Enck indicated that the spirit of the policy is that a Commissioner should not be using their influence as a Commissioner in a political sphere. AG Enck stated that she can work on the language of point 5 where it discusses this issue.
- o. Chair Lesco suggested to get a redraft and discuss at next commission meeting.

XI. Discussion of Director Evaluation Process (Kelsey Lesco and Deb Enck)

Chair Lesco stated that will table Director Evaluation Process discussion for next meeting because it is after 12:00 pm.

XII. Public Comment

- a. Chair Lesco asked for comments from the Public.
- b. Jim Tatten stated that he heard a lot about design of the OPG office and in his view the foundation of this office is fractured and dangerous.
- c. Former State Senator Robert Hernandez stated that Commissioner Chayet is in the right track and the rest of the commission should know that starting September 1st there is new language being added to the statute. Mr. Hernandez stated that State workers will be stripped of

governmental immunity and should consider taking into account as OPG takes more appointments.

- d. Maureen Welch inquired if all commissioners were still present. All commissioners confirmed to be present at this point of the meeting.
- e. Commissioner Chayet stated that Statute 3.12 did not change and believes everyone is aware of changes in language.
- f. Ms. Welch stated that she has 7 points she wants to address:
 - o Ms. Welch stated that we should remember that this office is a pilot program. The main objective is the collection of data for the 2nd judicial district and there is little talk about what data that has been collected and the how.
 - o Ms. Welch stated that it seems like Director Alvarez went in a spending spree and until recently the Commission and Judicial were not even conducting fiscal oversight.
 - o Ms. Welch reminded the Commissioners that the Governor appointed them to this Commission. Ms. Welch asked to not embarrass the Governor and to be fiscally responsible and oversee the Director.
 - o Ms. Welch expressed her concerns about this pilot office and how money is getting burned through when there is real suffering in our great state.
 - o Ms. Welch stated that the Director is running this office as a permanent program spending \$300,000 on a fancy case management software contract and program when she had not one ward until last week.
 - o Also, the Director hired all guardians at once, in December without having policies in place or even a way to petition, how to have a Rep Payee, and any fiscal policies. This could have been addressed with furloughs.
 - o Ms. Welch stated that according to FY 2020 OPG spent just under \$600,000 in general funds after some shell movement of funds after Steve Allen informed OPG that they had to drop general funds and live off the error of the bill 19-1045 which irresponsibly has a tax, hidden as a fee, for all filings in court.
 - o Ms. Welch stated that to allow full participation of both the Commission and members of the public, she requested that documents to be posted 72 hours before the meeting.

- Ms. Welch stated that the Director is asking to extend pilot program a year and she does not support that.
 - Ms. Welch agrees with Chair Lesco regarding contracting for petitioners, and this had been addressed before.
 - Ms. Welch disagrees with the hiring of a staff attorney.
 - Ms. Welch stated that as to moving clients outside of Denver county should not be allowed because it is counter to legislative intent and HC12-1045.
 - Ms. Welch inquired if there is a written plan on how data is collected and if it can be shared.
 - Ms. Welch stated that she hears objections but no formal votes or motions.
 - Ms. Welch requested that public comment to be held regularly at the same time and it should be added after every agenda item.
- g. Chair Lesco asked for any further comment. Commissioner Chayet indicated that he is in agreement that the Respondent should be in the 2nd Judicial District when the petition is filed. There were no further comments. Chair Lesco thanked all the public members for their comments and indicated that she hears their concerns.

XIII. Adjourn

Commissioner Zinn moves to adjourn the meeting. Commissioner Chayet seconds the motion. Motion passes unanimously. Meeting adjourned at 12:25 p.m.

ATTESTATION

As Commission Chair and Commission Vice-Chair, we attest that these minutes of the open public meeting of the Colorado Office of Public Guardianship Commission substantially reflect the substance of the discussion and action taken related to the matters under the authority of the Commission.

Kelsey Lesco, Chair

Date

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Karen Kelley, Vice-Chair

Date

FOR COMM'N REV ON 09.23.2020