
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 20, 2020

RECORD OF PROCEEDINGS

CONVENE

The emergency meeting of the Colorado Office of Public Guardianship Commission was convened by telephone conference at 12:02 PM by Commission Chair Kelsey Lesco.

A quorum of the Commission was present.

Commission Members Present

Kelsey Lesco, Chair
Karen Kelley, Vice-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

Lara Vandenberg

Robert Hernandez, Former State Senator

Shari Caton, Former Chair, CO OPG Commission

All participated by telephone.

AGENDA ITEMS

I. Call to Order

The meeting was called to order.

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

Director Alvarez's 8.20.2020 Director Report was distributed electronically and discussed. Additional items discussed but not limited to:

a. OPG filing petitions

Discussion of this topic was included with the discussion under item II.c, as noted below.

b. OPG contracting with attorneys/organizations to file petitions

Discussion of this topic was included with the discussion under item II.c, as noted below.

c. OPG using funds for filing fees

Director Alvarez began discussion stating that Parties can't afford to hire legal counsel to file petitions and some organizations do not want to use their funds to pay court fees, including petition filing fees. Therefore, Director Alvarez contacted Hugh Wilson and he informed her that Judicial fiscal rules do not bar OPG from using funds to pay filing fees and court costs.

- Chair Lesco stated that it would be difficult build up the caseload and data if people cannot file petitions. Director Alvarez advised she had reached out to Colorado Legal Services, the Medical Legal Partnership, and the Colorado Bar Association, and they are all looking into it. Director Alvarez does not know whether they will be providing services pro bono, or at a reduced fee.
- Director Alvarez informed that court fees are under \$200 and that Colorado Revised Statute 13-94-106 allows OPG for the waiver of the Court costs and filing fees for potential OPG petitions. There was discussion about the interpretation of 13-94-106, C.R.S., with Commissioner Chayet stating that it should waive fees for filing petitions if OPG is the nominated guardian. Director Alvarez stated the Probate Court will only wave filing fees if the OPG is the petitioner. Commissioner Zinn agrees with Commissioner Chayet's reading of the statute but also agrees with Director Alvarez as to how the court is interpreting it.
- Commissioner Chayet stated the fee or hourly rate that contract counsel will charge depends on the engagement of the attorney and whether he/she would he/she will stay on after filing the petition. Commissioner Zinn stated that if the petition is contested, it could be quite costly at an hourly rate and that you cannot anticipate what the needs of a case will be.
- Commissioner Chayet stated that if OPG has the option of having a staff attorney all of this would be moot. Commissioner Zinn stated that this kind of issue will deter organizations from the entire process because it is possible other issues will follow. Director Alvarez informed that OPG may have money to hire a staff attorney, but not produce enough work for a fulltime position. Commissioner Chayet stated that a 0.5 position would solve the issues. Commissioner Zinn advised that even if the petition is not overly contested the contracted attorney will still have to stay on for post adjudication. Commissioner Zinn stated that one contested case may take a lot of time and this contracted attorney will give the appearance of representing OPG on any possible legal matter. Commissioner Chayet expressed his concern regarding unlimited use of a staff attorney and suggested that OPG can appear Pro Se in post adjudication matters.

- AG Enck informed that it is fairly common for governmental agencies to have staff attorneys and for the Attorney General's office handle other litigation and general counsel matters. AG Enck will look into what kind of support the Attorney General's Office can and cannot provide.
- Commissioner Chayet stated that it is troubling that organizations are not willing to pay for the court fees. Commissioner Chayet inquired whether the fees were raised to fund OPG? Director Alvarez answered yes. Commissioner Chayet stated that by asking for the waiver of those fees would hinder OPG's funding. Chair Lesco advised that petition filing fees are very minimal compared to other court fees.
- Director Alvarez informed that the VA is one of the organizations where the petition has been filed and the Court denied motion requesting waiver of fees. Director Alvarez informed that the VA had filed a petition for two clients and in the process one passed away recently.
- Commissioner Zinn inquired whether payment of filing fees is going to be determined in a case by case basis. Commissioner Zinn expressed that this matter makes her uncomfortable and puts Director Alvarez in a difficult position if OPG does not pay fees for everyone.
- Commissioner Chayet asked for a written legal opinion on the interpretation of Colorado Revised Statutes 13-94-105 and whether that can be interpreted to include potential OPG clients. AG Enck will prepare that opinion by next week's meeting.

d. OPG accepting emergency petitions

Director Alvarez opened discussion and stated that she also would like to discuss emergency petitions to find out whether she can accept an emergency referral, specifically for a referral currently open in the OPG.

- Commissioner Chayet inquired whether OPG is the petitioner and nominated guardian. Director Alvarez clarified that OPG would be the

nominated permanent guardian in this case. In response to an additional question from Commissioner Chayet, Director Alvarez clarified that an attorney would get appointed for the respondent, would be carrying the petition and also representing the respondent. Director Alvarez informed that this case was already accepted for a petition to nominate OPG for permanent guardianship, and because Client needs emergency surgery was asked to accept an emergency guardianship.

- Commissioner Bennett-Woods will support any process we can to provide a medical proxy on an emergency basis. Commissioner Kelley also agrees.
- Chair Lesco stated that the long-term effects sound problematic for other cases, and expressed that there is the need to establish guardrails to make sure OPG isn't doing more than it should. Commissioner Chayet stated that it needs to be determined in a case by case basis but will need to set policies and procedures.
- Commissioner Zinn agrees with accepting emergency guardianship for a medical emergency. Commissioner Zinn inquired whether OPG has turned down any other requests for emergency guardianship. Director Alvarez answered that this is the first case where an emergency situation has arisen, and policies about this issue have not been discussed prior to today.
- Chair Lesco stated that Director Alvarez needs guidance for what she should do as to the current issue, because it will take some time to getting in place policies and procedures.
- In response to a question from Commissioner Chayet, Director Alvarez clarified that the client is jailed, and GAL will petition for an emergency guardianship. Commissioner Chayet inquired if there is someone who can volunteer as emergency guardian. Director Alvarez informed that she is not aware whether GAL has taken further steps other than asking if OPG can take an emergency guardianship.
- Commissioner Zinn inquired as to why the commission is resisting taking this particular case. Chair Lesco stated that emergency guardianships are different. Commissioner Zinn agreed with Chair

Lesco and stated that this is a little different because OPG accepted the case for permanent guardianship. Chair Lesco wants to have policies in place before OPG can start taking emergency guardianships.

- Commissioner Bennett-Woods stated that OPG needs to do what it has been asked to do and become more robust and evolve. Commissioner Bennett-Woods stated that her feeling is to take this case. Commissioner Bennett-Woods stated that this is not the Commission's place to determine whether to accept a case or not. The Commission's role is to provide guidance as to whether OPG should accept these types of cases.
- Commissioner Chayet stated that he will need a better understanding about what the need is and if this is a matter of life or death. Commissioner Chayet objects to taking this case.
- Commissioner Zinn stated that OPG is a pilot project and it may not be perfect in the way things get done but we should serve our purpose as well as we can, even if we don't have all policies and procedures in place. Commissioner Zinn stated that OPG should have some kind of policy in place regarding emergency guardianships.
- Commissioner Bennett-Woods **moved** to allow Director Alvarez to accept cases in situations where we have already accepted the referral to be nominated as permanent guardian.
 - As additional discussion, Commissioner Chayet expressed that he is conflicted, he heard enough that is sympathetic to the situation, and his fiduciary duty disagrees; however, this may change next week if have policies and procedures in place.
 - Commissioner Bennett-Woods **amended her motion** as follows: for an interim period of one week, to allow OPG to accept emergency guardianship without policy and procedure, where the case already has been accepted for permanent guardianship to serve as medical proxy.
 - Commissioner Kelley **seconded** the motion.
 - Commissioner Zinn and Commissioner Bennett-Woods vote yes.
 - Commissioner Chayet and Commissioner Kelley vote no. **The motion failed.**

- Director Alvarez will draft policies regarding acceptance of emergency guardianship and present them at next week's meeting.

II. Public Comment

- Chair Lesco called for public comment.
- Lara Vandenberg stated that the cases with filing fees issues were coming from the VA and VA's counsel has advised that they are not able to use federal money to pay for filing fees. Ms. Vandenberg informed that the Court keeps telling her that OPG can file the petition in these cases. Chair Lesco advised that at this time OPG doesn't have a staff attorney and have not contracted with any other agency to file petitions. Ms. Vandenberg expressed her concern that this is going to preclude the VA from utilizing this office. Ms. Vandenberg stated that the Court give them 30 days to determine how to pay for filing fees which will not help their situation. Ms. Vandenberg stated that she is disappointed with the process, that she had two patients so perfect for OPG to serve, but now one has passed away in the process. Chair Lesco and Commissioner Chayet expressed understanding and frustration for the same reasons Ms. Vandenberg is disappointed.
- Former State Senator Mr. Hernandez stated that Commissioner Chayet is on the right track because Commissioners have a duty to follow policies and procures. Mr. Hernandez stated that is troubling that someone passed while waiting for fees to be paid. Mr. Hernandez stated that in September new policies come into effect under new emergency guardianships and suggested that AG Enck should be aware and be well informed. Mr. Hernandez applauded the Commission because of how are dealing with tough issues but must follow policies and procedures. Mr. Hernandez thanked the commission for having the opportunity to speak.

III. Adjourn

Commissioner Zinn **moved** to adjourn the meeting. Commissioner Chayet **seconded the motion**. Motion **passed** unanimously. Meeting adjourned at 1:25 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

12.04.2020
Date



Karen Kelley, Vice-Chair

12.04.2020
Date