NEW MEXICO ADULT GUARDIANSHIP STUDY COMMISSION
MEETING MINUTES
AUGUST 11, 2017

State Bar Center
5121 Masthead St. NE
Albuquerque, NM

A complete audio recording of this meeting is available on the commission’s website:
https://nmcourts.gov/Supreme-Court/audio-recordings-of-commission-meetings.aspx

Members present

Hon. Wendy York (Ret.), Chair
Jorja Armijo-Brasher
Stephen Clampett
Emily Darnell-Nunez
Hon. Nancy Franchini
Tim Gardner
Hon. Jarod Hofacket
Hon. Dustin Hunter
Conrad James
Jill Johnson Vigil
Gaelle McConnell
Leslie Porter
Dr. Samuel Roll

Members absent

Patricia Galindo, Vice-chair
Jerry Ortiz y Pino
Patricia Stelzner

Agenda Item 1: Public Comment.

The chair called the meeting to order at approximately 12:10 p.m. The meeting began with several members of the public who addressed the commission. A complete recording is available on the commission’s website at https://nmcourts.gov/Supreme-Court/audio-recordings-of-commission-meetings.aspx.

Agenda Item 2: Administrative matters.

2A. Review and approve minutes.

The chair asked for a motion to approve the minutes from the meeting on July 14th, 2017.
Motion #1: Commissioner James moved to approve the minutes, and the motion passed unanimously without discussion. The approved minutes are available at https://supremecourt.nmcourts.gov/uploads/files/AGSC%20Minutes%207_14_17_FINAL.pdf.

2B. Update on commission’s request for Attorney General opinion.

The chair updated the commission about the status of the commission’s request for an Attorney General opinion about whether the Open Meetings Act applies to the commission. The chair explained that the request had been sent to the Attorney General and that no response had been received. No formal action was taken on this sub-item.

2C. Update on chair’s plan to meet individually with members of the public.

The chair updated the commission about her plan to invite members of the public to meet with her individually to discuss their experiences with the guardianship system. The chair has decided to offer this as a way to hear from individuals who are reluctant to share their experiences publicly, due to concerns such as privacy or retaliation. The chair explained that interested persons may request an appointment by sending an email to the following address: nmguardianshipcommission@gmail.com.* The email will be received by a scheduler who will help to coordinate a time to meet, likely by telephone. The chair encouraged anyone interested in meeting with her to send a request to nmguardianshipcommission@gmail.com. No formal action was taken on this sub-item.

2D. Discuss recent allegations of misconduct by court-appointed guardians.

The chair began by acknowledging recent news reports that two executives of Ayudando Guardians had been indicted in federal court and that testimony to the commission in May by one of the executives appears to have been false. Judge Franchini then explained that the 2d Judicial District had been notified that the U.S. Marshals Service is planning to close Ayudando on August 31, 2017. Judge Franchini then summarized the steps being taken in the 2d Judicial District to quickly and legally transfer all guardianships and conservatorships to which Ayudando had been appointed. Several commissioners expressed grave concern that such egregious conduct could have occurred and emphasized the need for better safeguards and monitoring to detect and prevent similar misconduct in the future. A complete recording of this discussion is available at https://nmcourts.gov/Supreme-Court/audio-recordings-of-commission-meetings.aspx. No formal action was taken on this sub-item.

2E. Review format of Nevada Guardianship Commission’s recommendations.

The chair introduced this sub-item by acknowledging the ambitious task that the commission has been given. She emphasized the need to develop recommendations quickly, particularly if any recommendations may be suitable for the 2018 legislative session. To that end,

* The email address provided at the meeting was mistakenly given as nmguardianship@gmail.com and was incorrect. These minutes provide the correct address, nmguardianshipcommission@gmail.com.
the chair suggested that the recommendations prepared by the Nevada Guardianship Commission may provide a useful example of the format and types of recommendations that the commission may make in its interim report to the Supreme Court. She also encouraged members of the commission to review the Uniform Law Commission’s final draft of the Uniform Guardianship, Conservatorship, and other Protective Arrangements Act, which in her view addresses many of the issues that have been brought to the commission’s attention.

The chair concluded this agenda item with an overview of her goals for the time remaining until October 1st, the deadline for submitting the commission’s interim report. Her current plan is for the commission to focus on reviewing as many subcommittee recommendations as possible by October 1st and to submit a report that is as comprehensive as possible. The chair also expressed a strong desire for a representative from the Uniform Law Commission, perhaps Professor David English who chaired the drafting committee, to come and speak with the commission about the Uniform Act in November. The commissioners voiced support for this suggestion. No formal action was taken on this sub-item.

Agenda Item 3: Subcommittee reports.

Court-Appointed Professionals Subcommittee

A. Propose legislation to require registration of guardians and conservators. The subcommittee recommends proposing legislation that would require all “professional guardians and conservators” to register annually with the district court and for the registry to be made available and easily accessible to the public. A “professional” would be defined as a person (including a corporation) appointed to serve as a guardian or conservator for more than two non-family members. Professional guardians and conservators would have to provide a statement of qualification setting forth information about education and experience, proof of current certification, licensing, and insurance, disclosure of any period in which certification was revoked or lapsed, and average number of cases. Conservators would have to declare the average values of estates managed.

The commission discussed the definition of “professional” and whether it also should apply to guardians or conservators who are family members. In the end, the commission agreed that family members who serve as guardians should not have to register and that the definition was appropriately limited to a person appointed to serve as a guardian or conservator for more than two non-family members. However, several commissioners expressed concerns about this recommendation in general and particularly about whether a district court should post a list of “registered” guardians and conservators that the court had not vetted or certified.

Motion A: Judge Hofacket moved to table this recommendation. Commissioner Darnell-Nunez seconded, and the motion passed unanimously. The commission may return to this recommendation if time permits.

B. Propose legislation to require certification of guardians and conservators. The subcommittee recommends requiring certification by the Center for Guardianship Certification for “professional guardians and conservators.” Again, a “professional” would be
defined as a person (including a corporation) appointed to serve as a guardian or conservator for more than two non-family members. Requiring certification would (1) set the standard of care to compliance with National Guardianship Association standards and ethical rules and mandate training; (2) create oversight, accountability and grievance procedures; (3) place the responsibility on the guardian and conservator to obtain and maintain certification at no cost to the state or protected person; (4) create a formalized vetting process for competency; (5) provide a background check at no cost to the state or protected person’s estate; and (6) help rebuild public confidence in protective proceedings.

The commission was generally supportive of this recommendation. The main concern was whether it was appropriate to recommend certification by a particular group. The Center for Guardianship Certification may not be the only or best organization for certifying guardians and conservators.

**Motion B:** Judge Hofacket moved to adopt this recommendation, and Commissioner James seconded the motion. After discussion about whether certification may be available by other organizations, the commission agreed to amend the motion to propose legislation to require certification of guardians and conservators by *a national organization, such as the Center for Guardianship Certification*. The amended motion passed unanimously.

**Judicial Training/Forms Subcommittee**

**C. Recommend judicial training to better educate judges about the law that applies in guardianship and conservatorship proceedings.** The subcommittee recommends proposing that the Supreme Court require training of all judges at the 2018 or 2019 Judicial Conclave, whichever follows consideration by the legislature of the Uniform Act. The subcommittee also recommends requiring guardianship and conservatorship training for all new judges and establishing an online video or web resource that could be accessed by judges whenever they have questions about guardianship or conservatorship proceedings.

The commission was supportive of this proposal.

**Motion C:** Judge Franchini moved to adopt this recommendation, and Commissioner Gardner seconded the motion. The motion passed unanimously.

**D. Recommend creation of an Adult Guardianship Forms subcommittee.** The subcommittee recommends proposing that the Supreme Court create a forms committee to develop a set of Court-approved forms for use in adult guardianship proceedings. Possible forms might include (1) a standard petition, (2) a petition to review a case, i.e., request a status conference, (3) orders tailored to require the least restrictive option, i.e., limited guardianships when appropriate, and to specifically identify the rights retained by the incapacitated person, (4) annual reports with more extensive requirements about visitation dates, financial transactions, and financial accountability.

The commission was supportive of this proposal.
Motion D: Judge Franchini moved to adopt the recommendation, and Commissioner Clampett seconded the motion. The motion passed unanimously without discussion. The motion was later amended to include a recommendation to include lay people on the forms subcommittee. The amended motion passed 11-1, with Judge Franchini opposed.

E. Recommendation to create an Adult Guardianship Rules subcommittee. The subcommittee recommends proposing that the Supreme Court create a rules subcommittee to review and develop rules necessary to ensure that all processes and procedures are followed in guardianship cases. Possible rules may include (1) procedures for how judges handle requests to alter or terminate guardianships (including letters from interested parties); (2) procedures for handling late or delinquent reports; and (3) procedures for handling emergency (ex-parte) petitions for appointment of a guardian or conservator.

The commission was supportive of this proposal. The one point of discussion was whether the list of proposed rules was intended to be exclusive.

Motion E: Dr. Roll moved to adopt the recommendation, and Commissioner Porter seconded the motion. Judge Hunter asked if the motion included the list of proposed rules, and Dr. Roll clarified that it did not; the recommendation is only to propose the creation of a rules committee. The motion passed unanimously.

Oversight Subcommittee

Members of the Oversight Subcommittee previewed some of the recommendations that they have been working on. No formal discussion or action was taken by the commission.

Procedural Fairness Subcommittee

Members of the Procedural Fairness Subcommittee previewed some of the recommendations that they have been working on. No formal discussion or action was taken by the commission.

The chair adjourned the meeting at approximately 4:05 p.m.