

GUARDIANSHIP RULES
RULE 1-142
[NEW MATERIAL]

Supreme Court Approved
January 14, 2019

1 **1-142. Guardianship and conservatorship proceedings; proof of certification of**
2 **professional guardians and conservators.**

3 A. **Scope.** This rule establishes qualification requirements under Sections 45-5-
4 311 and 45-5-410 NMSA 1978 for an individual or entity who may be appointed as a
5 professional guardian or conservator.

6 B. **Definition.** For purposes of this rule, a “professional guardian or
7 conservator” means an individual or entity that serves as guardian or conservator for more
8 than two individuals who are not related to the guardian or conservator by marriage,
9 adoption, or third degree of blood or affinity.

10 C. **Proof of certification.** An order appointing a professional guardian or
11 conservator under Chapter 45, Article 5, Parts 3 or 4 NMSA 1978, shall include a provision
12 that requires the professional guardian or conservator to submit proof that the individual who
13 has been assigned the duties of guardian or conservator for the protected person is certified
14 and in good standing with the Center for Guardianship Certification. The proof required
15 under this paragraph shall be submitted to the court not later than the first to occur of the
16 following:

- 17 (1) Ninety (90) days after the filing of the order of appointment; or
18 (2) The filing of the initial report required under Section 45-5-314(A)
19 NMSA 1978 or the inventory required under Section 45-5-418(A) NMSA 1978.

20 D. **Continuing duty.** A professional guardian or conservator must submit proof

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1 annually that the certification required under Paragraph C of this Rule is in good standing.

2 E. **Applicability.** This rule shall apply to all professional guardians and
3 conservators appointed on or after the effective date of this rule. Professional guardians or
4 conservators appointed before the effective date of this rule shall provide the proof required
5 under Paragraph C of this rule within six months of the effective date of this rule and as
6 further required by Paragraph D.

7 [Approved by Supreme Court Order No. 19-8300-001, effective for all cases on or after July
8 1, 2019.]

9 **Committee commentary.**— The definition of a professional guardian or conservator
10 focuses on the number of non-relatives who are under the care of the guardian or conservator.
11 The definition therefore excludes, for example, a guardian or conservator appointed to care
12 only for relatives, regardless of number. Similarly, the definition excludes a guardian or
13 conservator appointed to care for one or two non-relatives. The definition limits relatives by
14 blood or affinity to the third degree of relationship to the guardian or conservator, which
15 includes the guardian’s or conservator’s spouse, parent, stepparent, brother, sister,
16 stepbrother, stepsister, half-brother, half-sister, uncle, aunt, niece, nephew, first cousin, or
17 any person denoted by the prefix “grand” or “great,” or the spouse or former spouse of the
18 persons specified. *Accord* NMSA 1978, § 40-10B-3(E).

19 The Center for Guardianship Certification (CGC) provides certification to guardians
20 and conservators who demonstrate “sufficient skill, knowledge and understanding of the

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1 universal guardianship principles to be worthy of the responsibility entrusted to him or her.”

2 *Center for Guardianship Certification*, <https://guardianshipcert.org/about-us/>. Certification

3 by the CGC demonstrates that the guardian or conservator has met certain professional and

4 ethical standards, including the following:

5 Certification entitles the guardian [or conservator] to represent to the courts

6 and the public that he or she is eligible to be appointed, is not disqualified by

7 prior conduct, agrees to abide by universal ethical standards governing a

8 person with fiduciary responsibilities, submits to a disciplinary process, and

9 can demonstrate through a written test an understanding of basic guardianship

10 principles and laws.

11 *Id.* To view the CGC’s certification requirements, visit <https://guardianshipcert.org/>

12 [certification-requirements/](https://guardianshipcert.org/certification-requirements/).

13 Under Paragraph C of this rule, an order appointing a professional guardian or

14 conservator shall require the professional guardian or conservator to submit proof within

15 ninety (90) days that the person who has been assigned the duties of a guardian or

16 conservator has been certified with the CGC. A person assigned the duties of a guardian or

17 conservator is the individual who makes decisions on behalf of the protected person,

18 including but not limited to the professional guardian’s or conservator’s employee,

19 subcontractor, agent, case manager, guardianship coordinator, or an individual who signs a

20 report submitted under NMSA 1978, Sections 45-5-314, 45-5-409, or 45-5-418. If a

21 corporate entity is appointed as a guardian or conservator, the identity of the person who will

22 be assigned the duties of a guardian or conservator may not be known at the time that the

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1 order of appointment is issued. The ninety (90) day time limit set forth in Paragraph C is
2 intended to provide a reasonable amount of time for a corporate entity to assign the duties
3 of a guardian or conservator to a specific individual and to submit proof that the individual
4 is certified.

5 [Approved by Supreme Court Order No. 19-8300-001, effective for all cases on or after July
6 1, 2019.]