

Developmental Disabilities Planning Council (DDPC)
Office of Guardianship (OOG)
Meeting re: Ayudando transfers
August 15, 2017

SECOND JUDICIAL DISTRICT COURT Procedural Instructions

Overview (from the judges of the Second Judicial District Court):

•The transfer of all Ayudando cases in the Second Judicial District (SJDC) shall be transferred in accordance with the law, and consistent with the Protected Persons' Constitutional rights.

•To facilitate the timely transfer of the cases, the Second Judicial District will entertain temporary appointments of guardians and conservators at the outset with a requirement (set forth by statute) that permanent guardians and conservators shall be appointed within sixty (60) days. NMSA 1978, Sections 45-5-310 and Section 45-5-408.

•Removal of guardians/conservators and appointment of successor guardians/conservators is governed by NMSA 1978 Sections 45-5-307 and 45-5-415 respectively.

BEFORE FILING PETITIONS:

The Developmental Disabilities Planning Council, Office of Guardianship (DDPC/OOG) contract attorneys must not file petitions, until they receive notice from DDPC/OOG that the amendment to their contract has been approved. Pro Bono petitioning attorneys may file petitions.

Deadline for Petitions: DDPC/OOG attorneys must file petitions for temporary appointments of guardians/conservators by **AUGUST 25, 2017**, at the latest.

Specific procedure for Petitioning Attorneys (PET) and Guardian ad Litem (GAL):

Some of the petitioning attorneys (PET) assisting with Ayudando transfers are new to handling adult guardianship cases. The PET is in the driver's seat in adult guardianship cases. The timeliness of filings, ensuring all interested persons receive notice, and are properly informed will be up to the PET. The PET must also take into consideration the Guardian ad Litem's (GAL) recommendations, and work collaboratively, for what is in the best interest of the protected person. If you need additional details, refer to the resources provided, or contact Marina Cansino.

Templates of Pleadings:

1. Petition to Remove Guardian and Appoint Successor Temporary and Long-Term Guardian;
2. Request for Guardianship Hearing;
3. Notice of Guardianship Hearing;
4. Order Removing Guardian and Appointing Successor Temporary Guardian;
5. Order Removing Guardian and Appointing Successor Temporary Guardian and Conservator (if there's a conservator);
6. Acceptance of Appointment as Temporary Guardian;
7. Letters of Temporary Guardianship;

8. Order Appointing Guardian ad Litem (GAL);
9. Order Appointing Successor Guardian;
10. Order Appointing Successor Guardian and Conservator;
11. Acceptance of Guardianship;
12. Letters of Guardianship

PET must provide the following forms to successor guardians and conservators at court house, before the hearing starts:

1. SJDC Attachment to Annual Conservator or Guardian Report
2. SJDC Conservator Report Inventory

OOG has made every attempt to honor the requirements in the New Mexico Probate Code and of the SJDC judges in the templates. If you notice errors, have suggestions, or questions please bring them to the attention of Marina Cansino.

DDPC/OOG Assignments:

It is very important that attorneys honor the DDPC/OOG assignments. DDPC/OOG staff emailed an assignment to each (1) proposed successor guardian; (2) PET; and (3) GAL. If a judge refuses to appoint a proposed successor guardian, or proposed GAL, contact Manager Maria Bourassa immediately. At the 8/15/17 meeting, each petitioning attorney in attendance will receive a list of their assignments. Remember the cases are sequestered, therefore keep the names and information about the protected persons confidential.

Filing at SJDC Courthouse:

Filings for adult guardianship cases are generally made at the civil clerk's counter, the window is open Monday through Friday, between 10:00 A.M. to 2:00 P.M. The judges have granted an exception, that attorneys filing pleadings to transfer Ayudando's cases, may take the pleadings to SJDC judge's TCAAs Monday through Friday, between 8:00 A.M. to 10:00 A.M. The judge's discourage filing pleadings after 4pm. To expedite review, electronic access to the files will be provided to the petitioning attorneys. You must be registered with SOPA and file an entry of appearance in the case.

SJDC Specific Procedure for Petitioning Attorneys:

The Petition to Remove Guardian and Appoint Successor Temporary and Long-Term Guardian (petition), must:

1. Be very brief, one page is fine;
2. State Ayudando is current guardian, and ask to remove Ayudando;
3. request appointment of specifically named temporary guardian, assigned by OOG;
4. request appointment of specifically named Guardian ad Litem, assigned by OOG;
5. the named temporary guardians/conservators should be made with an eye toward them becoming the long-term guardian/conservator.

Temporary Guardianship:

SJDC judges are willing to immediately appoint successor guardians and conservators on a temporary basis for 60 days. I have provided two templates, some protected persons (PP) have Ayudando as guardian; others have Ayudando as guardian and conservator. If the protected person needs a successor conservator, there is language specific to the appointment of a conservator in the order.

OOG only pays corporate guardians for guardianship services. If the PP has Ayudando as a conservator, it is the responsibility of the PET to inquire with the proposed successor guardian, whether that guardian will provide conservatorship services? If so, name the guardian and the conservator.

If not, immediately contact Maria Bourassa. The PET, OOG, and the GAL will need to work together to find a conservator, that would be willing to serve pro bono.

Sequence of Pleadings when requesting Temporary Guardianship:

File together:

1. Petition to Appoint Successor Temporary and Long-Term Guardian; and
2. Request for Guardianship Hearing;

Same day, submit to judge with cover letter:

1. a. Order Appointing Temporary Successor Guardian; or
b. Order Appointing Temporary Successor Guardian and Conservator (if there's a conservator);
c. Set of self-addressed stamped envelopes; and
2. a. Notice of Guardianship Hearing with
b. Set of self-addressed stamped envelopes;
3. a. Order Appointing GAL
b. Set of self-addressed stamped envelopes;
4. Include endorsed copy of petition and request for hearing in packet for judge.

After PET receives endorsed Order Appointing Temporary Guardian/Conservator, PET emails to temporary guardian and conservator an unendorsed copy of:

1. Acceptance of Appointment as Temporary Guardian (add conservator if conservator);
and
2. Letters of Temporary Guardianship

After PET receives endorsed GAL report, prepare the following for the hearing, usually based on GAL's recommendations:

1. a. Order Appointing Successor Guardian; or
b. Order Appointing Successor Guardian and Conservator;
2. a. Acceptance of Guardianship or
b. Acceptance of Guardianship and Conservatorship;
c. Letters of Guardianship

Request for Guardianship Hearing (ROH) and Notice of Guardianship Hearing (NOH):

The packet for the SJDC's procedural instructions, includes a September and October 2017 calendar, listing when SJDC's judges have set aside half-days and whole days to hold hearings to handle Ayudando transfers. Please request hearings based on the dates the judges are handling Ayudando cases. It's very important the PET arrange for the protected person to attend the hearing, unless it is not in the PP's best interest to attend the hearing. It is up to the PET to inquire whether the PP, GAL, proposed successor guardian, and other interested persons are

available on the dates judges have indicated. The PET must also communicate the hearing dates to all the interested persons.

Guidance on handling adult guardianship cases in New Mexico:

Handouts with instructions for petitioning attorneys are provided, but the handouts are for PET's considering handling a case for an alleged incapacitated person (AIP), that has not had a guardian appointed. The instructions are not specific to Ayudando transfers. If it is helpful, you may take/request the following handouts:

1. PRACTICAL Tool for Lawyers;
2. a. Guardianship 101: Adult Guardianship in New Mexico CLE Handout;
b. Guardianship 101, PowerPoint;
3. Flow chart of New Mexico Adult Guardianship cases