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Susana Martinez, Governor  
Sandra Skaar, Chairperson  
John Block III, Executive Director

August 28, 2015

**VIA ELECTRONIC MAIL**

Peter Cubra, Esq.  
3500 Comanche Road NE, Suite H  
Albuquerque, New Mexico 87107-4546

John Hall, Esq.  
3500 Comanche Road NE, Suite H  
Albuquerque, New Mexico 87107-4546

Re: *JM v. NM DOH*, NO. CV-07-604 RB/ACT

Dear Mr. Cubra and Mr. Hall:

The Developmental Disabilities Planning Council (DDPC) Office of Guardianship (OOG) responds to Plaintiffs' submission to the Fifth Annual Report, dated August 17, 2015.

The Office of Guardianship (OOG) has made significant progress in petitioning the courts and obtaining guardianships for individuals, when appropriate. For example, of the eight individuals Plaintiff cites, four cases were completed, two petitions were filed; and two may have their petitions filed within the next two months. One of the cases for which a petition was filed, the hearing is set for November and the guardian will most likely be appointed. If Plaintiffs want status updates, they may ask Ms. Tapia at any time, and they will be informed of ongoing progress.

Plaintiffs' counsel has refused to understand guardianship and that a petition requesting the appointment of a guardian must be supported by a Report of the Qualified Health Care Professional (QHCP). NMSA § 45-5-303 (2014). Plaintiffs demand for OOG attorneys to file petitions without a QHCP is tantamount to telling OOG attorneys to violate the Rules of Civil Procedure, the Probate Code, and the Rules of Professional Conduct.

Attorney Marina Tapia (formerly Marina Cordova) had all Foley cases re-assigned from contract attorneys to herself and Mia Chavez. Ms. Tapia served as Chavez and OOG staff's supervisor. Tapia was not about to put contractors in such a position. Tapia and Chavez made diligent efforts to obtain a QHCP, prior to filing the petitions. Of the eight cases pending, four QHCP's were obtained. It was worth the effort and time to obtain QHCP's, it significantly increased the likelihood a guardian would be appointed, if the individual needed a guardian. Without a QHCP the petition would summarily be denied. Thus far, two petitions without a QHCP have been filed, one petition was denied. The other petition for 3473 is pending, the Court is waiting for a QHCP. The last two petitions remaining to be filed do not have a QHCP

or documentation demonstrating incapacity.

Moreover, the state cannot and will not force guardianships upon individuals unless there is a legitimate demonstration of incapacity. Forcing guardianship upon an individual is completely contrary to that individual's rights and dignity, and contrary to the safeguards afforded alleged incapacitated persons in the Probate Code.

Response to Plaintiff's #1:

Plaintiff admitted DDPC provided a sample petition used for Foley individuals, for cases in which Plaintiffs' counsel is an interested person. Each petition is modified and unique based on the capacity and functional impairments of each individual, and if there is any history related to the Foley case. In addition, DDPC provided orders appointing guardians, and orders denying petitions for appointment of a guardian, based on the agreement between DDPC and Plaintiffs.

It has come to OOG's attention that Plaintiffs' counsel has shared guardianship pleadings with third parties. Guardianship cases are sequestered, and the confidential pleadings must not be shared with any other individuals or entities. Consider this notice, if Plaintiffs share any other pleadings, DDPC will no longer share guardianship pleadings with Plaintiffs, in order to protect the confidentiality of the individuals OOG serves.

Response to Plaintiff's #2:

OOG previously informed Plaintiffs by letter, it is not feasible for OOG to file petitions in the counties neighboring the residence of the Native American individuals residing on Navajo land. A district court and the Probate Code does not have jurisdiction over Navajo tribal members residing on tribal land. The Executive Director of DDPC is arranging to meet with the President of the Navajo Nation. It is through the President that DDPC will see how the cases may or may not move forward.

Response to Plaintiff's #3, regarding the following individuals:

DDPC 858 is the same as 3409 - Completed. Mother appointed guardian December 16, 2014.

DDPC 3404 - Petition for limited guardianship filed by Ms. Tapia. Hearing scheduled November 12, 2015, Las Cruces, for brother to be appointed guardian.

DDPC 3407 - OOG contractors and staff attorney unable to get QHCP. 3407 refuses to go to doctor. He lives on his own. OOG may file petition soon.

DDPC 3413 - Completed. Niece appointed as plenary guardian August 6, 2015.

DDPC 3443 - Old QHCP stated 3443 does not need a guardian. Able to receive response from family, may obtain updated QHCP soon.

DDPC 3473 - Petition filed December 1, 2015 without QHCP. ENMRSH stated they will provide QHCP. Court waiting for report.

DDPC 3481 - Completed, limited guardianship, corporate guardian Dignity. The attorney representing 3481 in a financial settlement, petitioned for guardianship, in a judicial district

other than that in which Dignity was appointed. OOG staff attorney Mary H. Smith is the petitioning attorney assigned to this case.

DDPC 3792 – Completed. Local guardian appointed, all interested persons agreed. Highly contested case, sister wanted guardianship. Adult Protective Services (APS) involved regarding two of 3792's sisters. Ms. Tapia and DOH staff traveled to Farmington for two hearings, significant amount of time and effort.

Response to Plaintiff's #4, regarding the following individual:

DDPC 4107 – Previously completed by OOG. Current guardian, the mother of 4107 does not want to change guardianship.

If you have questions regarding the Foley cases, you may call Marina A. Tapia at (505) 841-4586.

Most Sincerely,

/s/ Marina Tapia  
Marina A. Tapia  
Senior Attorney