Annual Report for Foley Lawsuit

The Settlement Outline (dated January 8, 2010 and the date of Court approval, March 26, for the due date on the annual report) provides for an Annual Report for a period of 5 years regarding the circumstances of former residents of the State's Training Schools, who are not members of the Jackson class, which describes the circumstances of those persons.

NMDDPC Office of Guardianship

As of August 10, 2012

Through August 10, 2012, we received 55 total referrals for guardianship, and 1 case is pending completion (received on July 24, 2012) after completing 29 with guardianships appointed. Please note that 45% of the cases were either rejected by our office or withdrawn by the family (or other). The following is a summary on the overall status:

	Completed	**Assigned to our legal services and pending**	**Withdrawn by family or other**	**Rejected by the Office of Guardianship**	**Total**
Family guardianship	12	1	5	7	25
Corporate guardianship	17		2	11	30
Total	29 (52%)	1 (2%)	7 (13%)	18 (33%)	55

<u>Summary of the reasons cases for 33% of the cases (17) being rejected by our office</u>:

- individual lives on Indian land and our office has no jurisdiction on Indian land, nor in Tribal Courts;
- family member proposed as guardian does not meet our financial eligibility criteria (should be able to pay for the legal services themselves).
- guardianship of adults involves a Court proceeding, and we must meet the requirements under the NM Probate Code, and:
    - the people we need cooperation from are not providing the information, and they may not agree that a guardianship is needed.
    - doctor's report does not support the need for a guardian, or the person refused to be examined, or the family didn't cooperate.
    - guardianship should be as a last resort, and the NM Probate Code requires us to first consider any less restrictive alternatives;
    - the information available to us does not demonstrate the need for a guardian under the requirements of the NM Probate Code.

We do not have information demonstrating gaps in protection that would indicate that guardianship is necessary and that the apparent less restrictive alternatives currently in place are insufficient. Example: Request made for a temporary guardian because her husband feels "she is unhappy" and therefore needs a guardian temporarily. She has a rep. payee, receives 24/7 care in a supportive living home and lives with her husband and his brother who could act as surrogates. Therefore, less restrictive alternatives appear to be available and sufficient. The request submitted was for a contract corporate guardian to be appointed as the guardian.

- person being released/transition from prison (securing services, and supports, etc.), and the applications for our services say they should be able to resume independent decision making with appropriate supports and services in place. To our knowledge, the facility releasing an individual is responsible for providing the help with their release/transition (securing services, and supports, etc.). Our contractors may be willing to help with this, but their compensation will need to be from other sources.

Guardianship of adults is under the NM Probate Code (§45-5). First, there must be jurisdiction in State Courts since our office has no legal authority otherwise (e.g. Tribal Courts). Then there are some basic requirements that we must be able to address with a petition to the Court for guardianship, including (among others):

§ 45-5-303. Procedure for court appointment of a guardian of an incapacitated person

(2) the nature of the alleged incapacity as it relates to the functional limitations and physical and mental condition of the alleged incapacitated person and the reasons why guardianship is being requested;

(3) if a limited guardianship is sought, the particular limitations requested;

(12) the steps taken to find less restrictive alternatives to the proposed guardianship; and

(13) the qualifications of the proposed guardian, including whether the guardian has ever been convicted of a felony.

§ 45-5-304. Findings; order of appointment

(3) there are no available alternative resources that are suitable with respect to the alleged incapacitated person's welfare, safety and rehabilitation;

(4) the guardianship is appropriate as the least restrictive form of intervention consistent with the preservation of the civil rights and liberties of the alleged incapacitated person; and

(5) the proposed guardian is both qualified and suitable, has reviewed the proposed order of appointment and is willing to serve.

If less restrictive alternatives are already in place and appear to be effective, then we would need additional information to convince the Court that guardianship is still required, since guardianship should be as a last resort.

Whether the settlement agreement supersedes any discretion our office may generally have to decide to reject an application:

The basis for rejecting referrals is based on not meeting the requirements of the NM Probate Code (§45-5). For guardianship, it must be an "incapacitated person" (demonstrates over time either partial or complete functional impairment by reason of mental illness, mental deficiency, physical illness or disability, ..."). The NM Probate Code also requires the "least restrictive form of intervention", i.e. the guardianship represents only those limitations necessary to provide the needed care and

rehabilitative services and that the incapacitated person shall enjoy the greatest amount of personal freedom and civil liberties."

Summary of why our office cannot proceed with the 7 cases (13%) being withdrawn by the family (or other):

We do not have information demonstrating gaps in protection that would indicate that guardianship is necessary and that the apparent less restrictive alternatives currently in place are insufficient. Where the family (or other) withdraws their willingness to become a guardian or the proposed guardian is unresponsive; this may include various scenarios, e.g.:

- If there's suspected abuse, neglect (including self neglect), or exploitation, a referral should be made to Adult Protective Services (APS). Our office does not have the capability to investigate.
- the Columbus evaluation (person lacks decisional capacity and needs a guardian) is a preliminary evaluation requiring review by our office or by our contract attorneys. We request additional information where needed, and ultimately only reject those cases where there does not appear to be a sufficient basis to pursue guardianship through the Court. Our office does not have the capability to require anyone to cooperate, nor to investigate, therefore someone must provide the information required.
- If a proposed guardian withdraws their willingness to become a guardian, but it appears that a guardian is needed, we need other possible proposed guardians, or we will consider one of our contract corporate guardians as a last resort*.
- Cases that we proceed with will involve a Petitioning Attorney and the Court appointment of a Guardian ad Litem (GAL), a Court Visitor, and a Qualified Health Care Professional. Ultimately the Judge will make a determination re: incapacity, the need for a guardian, and who should be appointed as the guardian.

*Please note that if we were to seek appointment of one of our contract corporate guardians against the will of the family, and the protected person remains at home, the role of the guardians would most likely be rather ineffective. Seeking appointment of a contract corporate guardian should be as a last resort when no one else is available. Additionally, the appointment of a contract corporate guardian may mean you are thinking of removing the protected person from the home and finding other appropriate placement.

Examples from the cases withdrawn by the family (or other):

1) Referral for a guardianship limited to financial and medical protections. Proposed protected person relies on his brother who may act as his surrogate for medical decisions and become his rep. payee for social security benefits. Therefore, less restrictive alternatives appear to be available and sufficient. The request submitted was for a family member to be appointed as the guardian, the family member doesn't believe it is necessary.

2) Received letter from current representative payee, surrogate, and caretaker asking to withdraw the referral for guardianship as she was not interested in services at this time. The following less restrictive alternatives and supports are in place and appear sufficient: surrogate decision-maker for healthcare, rep. payee for financial protection and caretaker for other supports. The request submitted was for a family member to be appointed as the guardian.
3) Representative Payee rejected our requests for information for guardianship and believes it is unnecessary. The rep. payee is an old family friend and also acts as her caretaker and surrogate.

Therefore this client appears to have no unmet needs at this time. The request submitted was for a contract corporate guardian to be appointed as the guardian.

Obviously, we will consider any other information made available to us related to any case that has been withdrawn or that we have rejected.

Please let us know if we can provide any additional information.

Frank Fajardo, Deputy Director
DDPC Guardianship Program
810 W. San Mateo, Suite C
Santa Fe, NM 87505-4144
Ph: 505-476-7372
Fax: 505-476-7322
Website: http://www.nmddpc.com

Status of Foley Guardianship Cases
Cases Completed (as of 8/9/12)

Family guardians (10):

Name	Petitioning	Update	Note
Case #3541	Kent Yalkut	Completed 4/11/12	Previously shown as pending.
Case #3391	Jim Manlowe Assigned 6/20/11	Completed 6/21/12	Previously rejected due to family not wanting a guardian.
Case #3516	Jay Goodman Assigned 04/27/11	Completed 11/2/11	
Case #3514	Jackie Bennett Assigned 5/16/11	Completed 09/21/2011	
Case #3412	Nicoleta Spilca Assigned 9/29/10	Completed 08/23/2011	
Case #3363	Office of Guardianship attorney Assigned 5/24/11	Completed 08/01/2011	Previously rejected due to family being non-responsive.
Case #3423	Jim Manlowe Assigned 09/29/2010	Completed 02/11/2011	
Case #3403	Jay Goodman Assigned 09/29/2010	Completed 03/31/2011	
Case #3554	OOG Assigned 01/20/2011	Completed 03/22/2011	
Case #3480	Jay Goodman Assigned 10/26/2010	Completed 05/02/2011	
Case #3411	Wendy Basgall Assigned 09/29/2010	Completed 05/18/2011	
Case #3451 Release –	Jim Manlowe Assigned 08/26/2010	04/27/2011 Case transferred to family guardianship (family friend).	

Cases Completed (as of 8/9/12)

Corporate guardians (14):

Name	Petitioning	Update	Note
Case #3719	Kent Yalkut Assigned 6/27/11	Completed 2/14/12	
Case #3891	Barbara Buck Assigned 1/30/12	Completed 4/4/12	
Case #3504	Isabel Jerabek Assigned 10/14/11	Completed 3/12/12	Previously determined ineligible.
Case # 2957 Release –	Rachel Kolman Assigned -06/09/09	Completed 06/09/2010	
Case #3362 Release –	Santiago Juarez Assigned 06/03/2010	Completed 09/22/2010	
Case #3364	Santiago Juarez Assigned 06/13/2010	Completed 09/17/2010	
Case #3365	Santiago Juarez Assigned 06/03/2010	Completed 09/22/2010	
Case #3392	Aaron & Aaron Assigned 09/23/2010	Completed 01/10/2011	
Case #3435	Jay Goodman Assigned 09/23/2010	Completed 02/01/2011	
Case #3384	Office of Guardianship Assigned 09/23/2010	Completed 01/18/2011	
Case #3477 Release –	Beth Lindsey Assigned 02/17/2011	Completed 03/08/2011	
Case #3523	Office of Guardianship 12/13/2010	Completed 04/21/2011	
Case #3522	Office of Guardianship 12/13/2010	Completed 04/26/2011	
Case #3553	Office of Guardianship 02/28/2011	Completed 04/25/2011	
Case #3493	Aaron & Aaron 11/03/2010	Completed 5/19/11	
Case #3686	Office of Guardianship Attorney Assigned 6/6/11	Completed 6/6/11	
Case #3442 Release –	Jim Manlowe Assigned 9/29/10	Completed 10/4/11	

Cases pending - assigned to Counsel (as of 8/9/12)

Family guardians (2):

Name	Petitioning	Update	Note
Case #4107		Received 7/24/12 and awaiting eligibility information re: proposed family guardian.	

Corporate guardianships (1):

Name	Petitioning	Update	Note

Cases Withdrawn by family or other (as of 8/9/12)

Family Guardianships (4):

Name	Petitioning	Update	Note
Case #3558	Barbara Buck re-assigned from Scott Aaron on 06/7/11; Scott Aaron on 5/18/11	Per Petitioning Attorney: The mother didn't think that she needed to go through the guardianship process and would not cooperate in getting the health care form or any information on Eva.	
Case #3404 **No more follow-up needed.**		5/25/11 per Frank Fajardo: brother again declined Guardianship services; sent him a letter with package. Family declined Guardianship services as what is in place currently is a lesser restrictive alternative to Guardianship Request was for limited guardian for medical and financial, but the proposed guardian is the brother who can serve as rep. payee and surrogate. May need guardian later if needs placement authority or surrogacy becomes insufficient protection.	Sent letter with info. re: advance directives, POAs, legal resources, info. on UHCDA along with website or number for SSA for rep. payee info. and OOG website for other info. as well.
Case #3408 **No more follow-up needed.**	Jim Manlowe Assigned 9/29/10	Per PET Jim Manlowe (see e-mail message): family did not wish to pursue Guardianship.	Sent letter and info. re; POAs, advance directives, and legal resources
Case #3409 **No more follow-up needed.**	Jim Manlowe Assigned 9/29/10	5/25/11 per Frank Fajardo: sister again declined Guardianship services; sent her a letter with package. PET: family did not wish to pursue Guardianship	Same as above
Case #3496 **No more follow-up needed.**	Wendy Basgall Assigned 11/3/10	5/25/11 per Frank Fajardo: mother again declined Guardianship services; sent her a letter with package. Per Petitioning Attorney, Wendy Basgall, family did not wish to pursue Guardianship.	Same as above

Corporate Guardianships (2):

Name	Petitioning	Update	Note
Case #3398 **No more follow-up needed.**		5/25/11 per Frank Fajardo: no answer/left a message, and sent a letter with package. Family declined Guardianship services as what is in place currently is a lesser restrictive alternative to Guardianship	
Case #3473 **No more follow-up needed.**	Beth Lindsey Assigned 10/12/2010	8/22/11 DD Waiver Program Case Manager, contacted the family and they again said they are definitely not interested in guardianship and current arrangements are sufficient. 7/22, 6/24, and 5/25/11 per Frank Fajardo: sent an e-mail message and a letter with package to service provider. Cancelled 02/07/2011 - Contacted mother and she stated client has guardianship who is her 2 brothers.	

Cases Rejected by OOG (as of 8/9/12)

Family Guardianships (9):

Name	Petitioning	Update	Note
Case #3417 **No more follow-up needed.**	Nicoleta Spilca Initially assigned 9/29/10 Petitioning Attorney re-assigned on 6/7/11 from Scott Aaron.	Case closed since no one was able to contact the proposed family guardian.	
Case #3385 **No more follow-up needed.**		OOG has No Jurisdiction on Indian Reservation E-mail date to DOH – 6/23/10 and 10/26/10	
Case #3386 **No more follow-up needed.**		OOG has No Jurisdiction on Indian Reservation E-mail date to DOH – 6/23/10 and 10/26/10	
Case 3413 **No more follow-up needed.**	Charles Hostetler Assigned 9/29/10	5/25/11 per Frank Fajardo: Charles Hostetler made every effort. 12/7/10 Case Removed, Petitioning Attorney and the Office of Guardianship has attempted to contact the family with no response.	Same as above.
Case #3517 **No more follow-up needed.**	11/30/10 Application received for family guardianship, request sent for financial information this date.	5/25/11 per Frank Fajardo: letter returned undelivered; telephone not answered. 12/10/11 Case removed for non-responsiveness; mail was returned as addressee is not at address, telephone number provided does not work.	
Case #3491 **No more follow-up needed.**	10/21/10 Application received for family guardianship, request sent for financial information this date. 12/03/10: 2nd request sent.	5/25/11 per Frank Fajardo: again declined our services since doesn't need a guardian – already has a Rep. Payee and surrogate re: medical. Sent her a letter with package.	Send declination / no contact letter with resources re: POAs, advance directives, legal resources, and OOG website.
Case #3402 (also #3699) **No more follow-up needed.**		6/20/11 Moved to Denver Colorado to live with his sister. Family sent in letter to declining Guardianship services	

Cases Rejected by OOG (as of 8/9/12)

Corporate Guardianships (10):

Name	Petitioning	Update	Note
Case #3792 Release -	Reagyn Germer Initially assigned 11/3/11	Case closed since no one was able to contact the family.	John Hall may provide ideas for reaching the family for the information needed.
Case #3407 **No more follow-up needed.**	Kelley Grosso Assigned = 9/29/10	6/29/11 Petitioning Attorney and Court Visitor recommended cancelling this case – doesn't need nor want a guardian and will not cooperate – refused QHCP appointment. 4/27/11 Received e-mail from Kelley Grosso (case to be corporate guardianship instead of family) Corp. Guardian assigned: Necessity case Management	
Case #3474 **No more follow-up needed.**		5/31/11 Per Gerri Duran (Ph: 238-7223): they didn't qualify for our services and are using Lori Millett to do the guardianship.	
Case #3479 **No more follow-up needed.**		Not incapacitated, currently incarcerated E-mail Date to DOH 10/26/10	
Case #3481 **No more follow-up needed.**		Not incapacitated, currently incarcerated E-mail Date to DOH 10/26/10	
Case #3521 **No more follow-up needed.**		OOG has No Jurisdiction on Indian Reservation E-mail date to DOH – 12/08/10	
Case #3476 **No more follow-up needed.**	Robert Retherford Assigned 10/12/10	Cancelled 01/03/11 Proposed protected person was to return to Navajo Land.	
Case #3544 **No more follow-up needed.**		OOG has No Jurisdiction on Indian Reservation E-mail date to DOH – 12/28/10	
Case #3503 Release – **No more follow-up needed.**	Brett Schneider 11/04/10	5/25/11 per Frank Fajardo: currently has Power of Attorney and Rep. Payee; family again declined our services. Cancelled 01/31/11: Current services are a less restrictive alternative to Guardianship.	6/23/11: Frank Fajardo sent John Hall the Power of Attorney by Danny Armijo.
Case #3443 **No more follow-up needed.**	Office of Guardianship Assigned 11/29/10	Case cancelled - refused to be evaluated by a qualified health care professional and refused to be interviewed by the appointed court visitor as required by the NM Probate Code. Adamant in rejection of the appointment of a guardian, and refusal to cooperate would render a guardian unable to protect and assist her.	
Case#3439 Release – **No more follow-up needed.**	Brett Schneider Assigned 9/29/10	Per Petitioning Attorney, Brett Schneider: Dr's report states individual is not in need of Guardianship services.	6/23/11: Frank Fajardo sent John Hall the report of the Health Care Professional.