

Minutes: Guardianship Standards Workgroup

October 13, 2023

9:00 a.m. Call to Order

Zoom Only

Members Present

Judge Cynthia Feland
Salmina Tarek
Sally Holewa
Donna Byzewski
Rose Nichols
Catie Palsgraaf
Donna Wunderlich
Cheryl Bergian
Thomas Jackson
Diane Osland
Karen Kringlie
Scott Bernstein
Jon Alm
Cathy Ferderer
Jen Lee
Michelle Gayette
Rebecca Nelson
Mikayla Reis
Shelly Peterson
Micah Olson
Nikki Wegner

Members Absent

Dr. Gabriela Balf
Tracy Laaveg
Brian Osbold
Carrie Francis
Ref. Krista Thompson
Norma O'Halloran
Heather Krumm
Judge Cherie Clark
Brittany Fode
Jesse Maier
Lonnie Wangen
Aaron Birst
Roxane Romanick
Judge Pamela Nesvig
Keith Vavrovsky
Margo Haut
Rachel Sinness

Others Present

Sara Behrens, Staff
Kathy Krause, ND Supreme Court Self-Help Center
Scott Johnson

Ms. Holewa began the meeting in place of Chair Feland. Ms. Palsgraaf moved to approve the minutes, Mr. Alm seconded and the motion carried.

Chair Feland arrived.

Guardianship Task Force

Chair Feland explained that one of the things the Court was directed to do by the Legislature is to create a task force to work on the issue of guardianship services in particular with regard to investigations and how to handle bad actors. She asked for volunteers of those interested on serving on the task force.

Ms. Holewa stated that when she was at the Guardianship conference to talk about implementation of SB 2345, Senators Lee and Hogan were there to talk about it as well and touched on three options: use the task force as a complaint board, figure out rules or statutes that would need to be changed or enacted to allow us to hire an investigator as a new position as a blend of prosecution and police powers, which Ms. Holewa does not believe is workable, or use the task force to look at things as far as case load and fees. It's up in the air. With only one person on staff right now there is not sufficient resources to look at the cases. Ms. Nichols typically handles 66 referrals so she gets them from Judges and then another 10 random reviews. For instance, family guardians struggling with how gifts affect Medicare eligibility is an issue. There are a lot of ideas out there.

Chair Feland said the first step is to put the group together. Much like when this workgroup was first formed, we'll go through brainstorming the direction we want to take. The Legislature, at this point, doesn't want more government so we have to grow this within the existing structure.

The following individuals volunteered to be considered for the task force: Michelle Gayette, Jon Alm, Donna Byzewski, Cheryl Bergian, Tom Jackson, Rose Nichols, Cathy Ferderer, Diane Osland, Micah Olson, Mikayla Reis, Salmina Tarek, Scott Bernstein

Chair Feland will work on putting together the task force and we can give periodic updates to this group.

Other Legislation Issues

Ms. Byzewski stated that Protection and Advocacy is looking at people first language so that will likely be a project for next session.

Mr. Alm mentioned that the State Hospital reached out regarding the law change with prescribed medications and guardianships and he asked them to track and monitor any issues and concerns that come up so we can address them next session.

Ms. Bergian stated that some of the self-help forms need updating. Ms. Palsgraaf said she did the updates but if there is something she missed to let her know.

Mr. Jackson noted that in the guardianship statute it seems to be that if any attorney working on a file wants to examine they are given the right to subpoena anyone writing a report and that has caused conflict in one of my cases where a GAL wrote a report. Chair Feland stated the concern is that the statute says anybody who writes a report is subject to cross-examination and she doesn't know that until that particular case we ever had someone want to cross-examine the GAL. The issue came up in JDF v. DHS which

wasn't a guardianship case, but did find that a GAL in a juvenile case cannot be called as a witness to testify because of their particular role. There are many distinguishable things but the way the statute is written certainly gives the interpretation that the GAL can be subpoenaed so it's a discussion we need to have and perhaps seek clarification. Mr. Jackson did have another one he can send later.

Ms. Byzewski stated on the guardian fee we are supposed to send those notifications/motions to the court and she isn't doing that yet. She is waiting for the Rule to be updated. She is wondering the status of the Rule modifications. Ms. Holewa thought it went to Joint Procedure. Chair Feland confirmed it did. Ms. Holewa will check on it.

Mr. Jackson had another case where the judge asked about whether or not North Dakota requires professional guardians to be registered with the state. He and Ms. Nichols e-mailed about it but wondered if it should be considered. He assumes the judge meant it as possible oversight. The judge had some concerns about the professional guardianship organization but he isn't sure what. Chair Feland thinks that would fall under the purview of the task force. We do require certification or accreditation but the court cannot monitor that.

Mr. Jackson also noted that he isn't sure where in the statute it actually says a hearing must be in 10 days in the emergency guardian statute. Perhaps it needs to be addressed. Ms. Bergian agrees. Mr. Jackson believes it is ambiguous. Ms. Bergian said the reason it's come up is there was a pause on guardianships for a while as far as funding and we had people sitting in the hospital and then a whole flood of emergency guardianships. It needs to be quickly but is there a 10-day requirement? Mr. Jackson said it probably will apply to the emergency conservatorship statute as well.

Mr. Olson had a couple issues come up at Protection & Advocacy where guardianships have lapsed and it appears the guardian didn't receive notice about the lapse. He is trying to figure out the best course of action to reestablish the guardianship. Perhaps an ex parte emergency petition. Chair Feland stated that we sometimes find out there have been glitches. She came across one in a rural area that was initially a guardianship of three minors that should have expired when they turned 21 and one of the minors had a developmental disability and the other children had taken over and acted as guardian in place of the mother who had passed away. We did have them do an emergency guardianship first and then went through the whole process. Whether ex parte is necessary is a case-by-case determination. She noted there is a process for the establishment fund and he may want to reach out to Ms. Gayette about it. Ms. Nichols said this happens fairly frequently and even in cases of professional guardians they don't always keep track and wait for the review hearing. If there's an issue then the guardianship can lapse before the follow-up hearing can take place. Would they have to go through the whole process again? Chair Feland suggested we may need a good cause exception in the statute. She's had some where they discovered prior to the expiration and there wasn't time to review so she has extended some to allow for the hearing so maybe we need a statutory change. It doesn't say you can't, but it also doesn't say you can.

Ms. Palsgraaf mentioned that she has put forms on the self-help site for the new minor becoming an incapacitated adult procedure.

Ms. Nichols also pointed out that Ms. Palsgraaf has included information about the new establishment fund that is just for adults with disabilities when a family is making the motion.

The meeting was adjourned at 11:14 am.