

# THE OFFICE OF THE PUBLIC GUARDIANSHIP COMMISSION

## BY-LAWS

### ARTICLE I: PREAMBLE / ORGANIZATION

HB 17-1087 established the Office of the Public Guardianship (“Office”), an independent public entity within the Colorado Judicial Department. That same organic statute also established the Colorado Office of the Public Guardianship Commission (“Commission”). The Office and Commission comprise a pilot program that the General Assembly in its discretion may continue, expand, or discontinue in 2021.

The legislative purpose of establishing the pilot program is to address the needs of certain indigent and incapacitated adults who have otherwise lacked the financial resources or do not have responsible family or friends available and appropriate to serve as a guardian.<sup>1</sup> The legislative purpose of the Office is to provide public guardians for certain indigent and incapacitated adults, in addition to, collect data to determine the feasibility of a state-wide office of public guardianship, and appoint public guardians only to the extent necessary without altering or expanding judicial authority regarding determinations of mental capacity or altering or expanding the authority vested in the State Department of Human Services or County Departments of Human Services.<sup>2</sup>

### ARTICLE II: THE COMMISSION

#### Section 2.1 Composition and Term of Service.

The Commission is comprised of five members.<sup>3</sup> The appointing officials for the Commission include the Colorado Supreme Court and Governor that include:

- Three members are appointed by the Colorado Supreme Court, no more than one of whom is from the same political party, two must be attorneys licensed to practice law in the state of Colorado, and one a resident of Colorado not licensed to practice law.<sup>4</sup>

<sup>1</sup> § 13-94-102(1), C.R.S. (2017).

<sup>2</sup> §§ 13-94-102(2)(a)(I), (a)(II), (3), C.R.S. (2017)

<sup>3</sup> § 13-94-104(1), C.R.S. (2017).

<sup>4</sup> § 13-94-104(1)(a), C.R.S. (2017).

- Two members are appointed by the Governor, one who must be an attorney licensed to practice law in the state of Colorado and one who is a resident of Colorado but not licensed to practice law.<sup>5</sup>

Commission members serve until 2021, at which point the pilot program will either be continued, expanded or discontinued.<sup>6</sup>

## **Section 2.2 Compensation.**

Members of the Commission shall serve without compensation but may be reimbursed for actual and reasonable expenses incurred in the performance of their duties, subject to funding.

## **Section 2.3 Commission Vacancy Appointments.**

The Chair, the Vice-Chair, or the Director shall immediately notify the relevant appointing authority of any Commission member vacancy. The relevant appointing official shall fill any vacancy of the Commission for the remainder of any time.

### **ARTICLE III: COMMISSION CHAIR AND VICE-CHAIR**

The Commission shall elect by a majority vote a Commission Chair and Vice-Chair to oversee Commission business. ~~The current Chair and Vice-Chair, who were elected at the October 2017 meeting, shall serve until June 30, 2019. Thereafter, the Commission Chair and Vice-Chair shall serve one year terms that coincide with the state fiscal year of July 1 to June 30.~~ The Chair and Vice-Chair will be elected to serve one-year terms to commence the beginning of January of each year. The Chair shall preside over the meetings of the Commission and work with the Director to set the Commission agenda. The Vice-Chair will act as the Chair-Elect.

The Vice-Chair shall act in the absence of the Chair.

The election for the Vice-Chair, who will serve as the next Chair-Elect, shall take place six months prior to the expiration of the term of service as Commission Chair. In the event the individual serving as Commission Chair no longer serves on the

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<sup>5</sup> § 13-94-104(1)(b), C.R.S. (2017).

<sup>6</sup> § 13-94-104(2), C.R.S. (2017).

Commission prior to the expiration of the term as Chair, the Vice-Chair shall serve as the Commission Chair for the remainder of that term.

The Chair or Director shall immediately notify the relevant appointing authority of any Commission member resignation. The relevant appointing official shall fill any vacancy of the Commission for the remainder of any time.

## **ARTICLE IV: COMMISSION MEETINGS**

### **Section 4.1 Regular Meetings.**

Regular Commission meetings are held monthly commencing in February 2018 on the fourth Wednesday of the month, unless otherwise noticed. Meetings are from 10:00 AM-noon, unless otherwise specified. The meetings will be held in the Ralph L. Carr Judicial Building, located at 1300 Broadway in Denver, Colorado, unless a different location is designated. The specific conference room where the meeting is located in the Ralph L. Carr Building will change subject to availability.

Commission members may participate by telephone to attend meetings, so long as they provide notice to the Chair, Director or other acting liaison in advance so that appropriate conferencing technology is made available.

Emergency or special meetings of the Commission may be called by the Chair or Director or other acting liaison. Notice of an emergency or special Commission meeting shall be delivered by electronic mail or telephone to each Commission member, which will include the date, time, location and purpose of the meeting. Notice of the special or emergency Commission meeting shall be provided to the Commission member no later than 24 hours prior to the time set for the meeting.

### **Section 4.3 Quorum.**

A majority of the members of the Commission, when present at any meeting, shall constitute a quorum.

### **Section 4.4 Notice of Meetings.**

The Commission shall provide public notice of all its meetings on the Office website, or through such other means as the Chair or Director or acting liaison deems

appropriate until an Office website is established. The notice shall include the date, time, location, and agenda for the meeting.

#### **Section 4.5            Conduct of Meetings.**

All regular meetings of the Commission shall be open to the public where public business is discussed. Meetings of the Commission shall be conducted generally in keeping with Roberts Rules of Order, except as otherwise provided in these By-Laws, but shall be as informal as circumstances permit.

Members of the public who attend shall be provided a reasonable opportunity to speak ~~at the beginning of the meeting~~, subject to the Commission policy on public comment, as amended. The Commission may from time to time and by a majority vote adopt or amend its policy for the receipt of public comment.

The Commission may vote to conduct certain business in Executive Session. Such circumstances that may necessitate Executive Session include, but are not limited to, information that must be kept confidential subject to the attorney-client privilege, personnel matters related to the Director, or information that must be kept confidential subject to other state or federal laws. The Chair shall announce to the public the general topic for discussion in Executive Session and call for a motion to enter into Executive Session. The Commission must vote by two-thirds majority of its membership before it may enter into Executive Session. If the Commission votes to enter Executive Session, only those persons invited by the Commission may be present during the Executive Session.

#### **Section 4.6            Voting.**

Each member of the Commission shall be entitled to one vote in the affairs of the Commission. A majority of the quorum passes a measure unless otherwise specified in these By-Laws.

#### **Section 4.7            Minutes.**

Minutes for all Commission meetings shall be taken. The Commission shall have an opportunity to review the minutes of a prior meeting at its next regularly scheduled meeting, and shall approve the minutes by a majority vote, subject to any amendments or corrections. The approved minutes shall constitute the Commission's official record of proceedings. The approved minutes shall be made

available to the public via the Office website, or through other means until an Office website is established.

**Section 4.8 Attendance.**

Attendance to all regular Commission meetings is mandatory, unless previously excused by the Chair, Vice-Chair or Director. If a Commission member has more than three consecutive unexcused absences, the Chair, in his or her discretion and as may be delegated to the Director, may report such circumstances to the Commission member's appointing authority.

**ARTICLE V: COMMISSION DUTIES**

**Section 5.1 Commission Duties Generally.**

The Commission's duties include:

- Appointment and evaluation of the Director;
- Assignment of duties to the Director;
- Consult with the Director with the discontinuation plan for the Office in the event the General Assembly does not continue or expand the program in 2021.

**Section 5.2 Fundraising Activities.**

The Commission shall be authorized to engage in fundraising activities, and may draft and approve separate fundraising guidelines and materials in furtherance of those activities.

**Section 5.3 Appointment of the Director.**

The Commission shall appoint a Director by a two-thirds majority vote of the Commission membership.

The Commission shall work with Human Resources for the State Court Administrator's Office ("SCAO"), which may provide assistance with the hiring process for the Director, will be outlined in a Memorandum of Understanding

between the Colorado Judicial Department and the Office, or any successor agreement.

The Commission shall review the applications that are received, narrow the pool to a certain number of finalists, conduct interviews of the finalists, conduct reference checks, and vote by a two-thirds majority for appointment of the Director. The Commission shall provide reasonable transparency in the hiring process, while protecting the privacy rights of candidates subject to any applicable laws.

#### **Section 5.4 Evaluation of the Director.**

The Commission shall set the compensation of the Director, subject to the guidelines established or best practices engaged in by other state agencies in the compensation of their executive level staff directors, as well as subject to funding availability.

The Commission shall conduct Annual Evaluations of the Director, which shall include at minimum, a completed self-evaluation by the Director, comments and feedback from the Office staff, and completed evaluation forms of Commission members. The Commission may delegate to the Chair, or other designee, the responsibility of preparing a draft Annual Evaluation that combines the Director's self-evaluation, Office staff comments and feedback, and Commission member evaluations. The Commission shall review the draft Annual Evaluation, and by majority vote, approve a final Annual Evaluation subject to any corrections, amendments, or deletions. The final Annual Evaluation shall be delivered to the Director, who shall at the next regularly scheduled meeting have an opportunity to provide a response, either through written or verbal means, or both.

#### **Section 5.5 Termination of the Director.**

The Commission may terminate the Director's employment by a two-thirds majority vote of the Commission membership.

A decision by the Commission to terminate the Director is final and not subject to appeal, review, or grievance.

**Section 5.6            Advisory Role of the Commission to the Director.**

The Commission shall provide any and all assigned tasks to the Director as the Commission deems appropriate, and when appropriate in consultation with the Director.

The Commission shall from time to time offer suggestions, advice, recommendations or other input to the Director, as the Commission deems appropriate.

**ARTICLE VI:            COMMISSION DOCUMENTS**

The Commission shall draft and approve a separate Document Retention Policy that complies with the retention and destruction of Commission Documents in compliance with state and, to the extent applicable, federal law.

**ARTICLE VII:          AMENDMENTS**

**Section 7.1            Procedures.**

The change in state or federal law, or other circumstances, may warrant the amendment of these By-Laws. These By-Laws may be amended or repealed, in whole or in part, by a majority vote at any publicly noticed meeting of the Commission and are effective upon adoption or amendment.

**Section 7.2            Distribution.**

The Chair, as may be delegated to the Director, shall provide a copy of the latest version of these By-Laws to any person who requests a copy. The latest version of the By-Laws shall be made available to the public via the Office website, or through other means until an Office website is established.

**Section 7.3            History.**

Adopted and effective by the Commission on January 12, 2018.

[Amended and adopted effective by the Commission on November 21, 2019](#)

COLORADO OFFICE OF THE PUBLIC GUARDIANSHIP COMMISSION:

~~SHARI CATON,~~

~~ESQ. DEB BENNETT-WOODS~~

Commission Chair

~~KELSEY LESCO~~

~~DEB BENNETT-WOODS~~

Commission Vice-Chair

FOR CONSIDERATION