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# Colorado Office of Public Guardianship

## Commissioners

Shari Caton, Chair  
Deb Bennett Woods, Vice Chair  
Marco Chayet  
Kelsey Lesco  
Karen Kelley



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## PUBLIC MEETING

December 7, 2018

## Record of Proceedings

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### CONVENE

The meeting of the Colorado Office of Public Guardianship Commission was convened in the Law Offices of Poskus Caton & Klein, P.C. at 303 East 17<sup>th</sup> Avenue, in Denver, Colorado, Suite 900 at 11:05 AM by Commission Chair Caton.

A quorum of the Commission was present.

### **Commission Members Present**

Shari Caton, Chair	Deb Bennett-Woods, Vice-Chair
Kelsey Lesco*	Marco Chayet

### **Commission Members Absent**

Karen Kelley

### **Others Present**

Hugh Wilson, Office of the State Court Administrator  
Connie Lind, Office of the State Court Administrator  
Sueanna Johnson, Senior AAG  
Steve Allen, Joint Budget Committee Staff Member

### **Public Attendance**

Terry Lake  
Robert M. Hernandez\*  
Maureen Welch\*

\* Appeared/Participated by Telephone

## AGENDA ITEMS

### **I. Approval of the October 24, 2018 Minutes**

Commission Vice-Chair Bennett-Woods questioned if the date of the December Budget Briefing (JBC hearing) should be the 10<sup>th</sup> or the 12<sup>th</sup>, shown on page 3. It was determined it should be the 10<sup>th</sup>. Commissioner Chayet moved for adoption of the October 24, 2018, meeting minutes as amended. The motion was seconded by Commission Vice-Chair Bennett-Woods. The motion passed unanimously.

### **II. Approval of the November 14, 2018 Minutes**

Commission Vice-Chair Bennett-Woods moved for adoption of the November 14, 2018 meeting minutes. The motion was seconded by Commissioner Lesco. Commissioner Chayet abstained as he was not present for that meeting. The motion passed with Commissioner Chayet abstention.

### **III. Monthly Budget Report**

Mr. Wilson advises there was an \$8.00 fee to Wells Fargo for keeping the account open. No funds received. Balance is currently \$1,857.00. Ms. Johnson requested a copy of the current Budget Report from Mr. Wilson.

### **IV. Update on Budget Supplemental Proposal**

Commission Chair Caton advises that she and Mr. Wilson gave a brief PowerPoint presentation at the November 29, 2018 SMART Act hearing, as well as answered questions regarding funding concerns and who is currently doing the work. The Honorable Elizabeth Leith from the Denver Probate Court and Mr. Carl Glatstein also spoke.

Mr. Allen presented to the JBC at the December 5, 2018 Judicial Budget hearing. Commission Chair Caton attended the hearing. The JBC had formal questions which were sent to Commission Chair Caton. Commission Chair Caton will have the opportunity to give a presentation and answer the formal questions at the Dec. 18<sup>th</sup> JBC hearing, currently scheduled at 4:45 p.m. Mr. Allen also advised the hearing may move quicker, so arriving early is recommended.

Mr. Allen, as the JBC Staff Analyst, summarized for the background of the OPG, funding difficulties, pilot program and reporting dates, etc., and spoke about the Supplemental Request and seeking General Funds via a bill. Mr. Allen does not recommend the Supplemental Request, but for the OPG to be funded through a bill,

if a bill was to be carried. The JBC did not have the Interim Report, redline legislation, etc., however, AAG Johnson will send the materials to Mr. Allen for presenting to the JBC at the next hearing.

Mr. Allen read the JBC's formal questions as follows:

- OPG Question 1. Who does the guardianship work now for incompetent people who lack the resources to pay for a guardian and lack friends or family who can serve as guardians?
- OPG Question 2. Are there state or local offices that provide these services?
- OPG Question 3. How many people are estimated to need these services?
- OPG Question 4. Could this be partly or fully funded through probate fees? What level of fee would be required?
- OPG Question 5. Could the pilot project be contracted out to the private sector rather than using state employees? Could a pilot with private contractors answer the important questions that need to be answer?

It was decided that the questions would be divided and answered by the following:

- Question 1 – Commissioner Chayet
- Question 2 – Commissioner Lesco
- Question 3 – Commission Chair Caton
- Question 4 – Mr. Wilson, State Court Administrator's Office
- Question 5 – Commission Vice Chair Bennett-Woods

Chair Caton recommends draft answers be submitted to Commission Vice-Chair Bennett-Woods. AAG Johnson will assist Commission Vice-Chair Bennett-Woods in finalizing the draft by next Tuesday for sharing with Mr. Wilson. An emergency meeting will need to be held via phone to finalize and approve the final answers/report.

Commissioner Chayet asked that the formal questions be email to the OPG Commission, along with the two OPG Advisory Committee Reports, the Elder Abuse Task Force Report, and the Strategic Action Plan.

Commissioner Chayet moved to delegate drafting the final report to Commission Vice-Chair Bennett-Woods. The motion was seconded by Commissioner Lesco. The Motion passed unanimously. An emergency meeting is scheduled for Wednesday, December 12, 2018 at 4:30 p.m. via telephone. Ms. Lind is asked to provide the conference call information.

Mr. Allen informs the Commission that they will be given 15 minutes at the Dec. 18<sup>th</sup> JBC hearing, and it will be broke into two parts. First part will be introduction/opening comments, possibly a PowerPoint. If a PowerPoint is used, Mr. Allen will need a pdf version to present to the members of the JBC; the second part being to answer the formal questions.

Commission Chair Caton advises she will update the PowerPoint presented at the SMART Act hearing. She will present at the Dec. 18<sup>th</sup> JBC hearing and recommends all Commission Members also attend if possible. AAG Johnson will prepare a notice of the OPG Commission attending the Dec. 18<sup>th</sup> JBC hearing. Brief discussion regarding legislative strategy included, but not limited to:

V. Legislative Strategy

- Seeking a sponsor;
- Reaching out to the General Assembly;
- Which committees should they reach out to;
- Should the OPG be speaking to individual Representatives; and
- The OPG's role in lobbying.

Commission Chair Caton asked that this conversation be held for Executive Session.

VI. Fundraising Efforts/Community Outreach

*Commission Chair Caton*

- Worked with Mr. Wilson on their presentation for the SMART Act hearing, and presented at that hearing
- Attended the JBC hearing
- Was in contact with Mr. Terry Scanlon at the State Court Administrator's Office

*Commissioner Lesco*

- Reached out to her region for holding a meeting after the first of the year (Feb. – April)
- Contact with the Senior Lobby Board

*Commissioner Chayet*

- No fundraising efforts

- Was contacted by many after the airing of the 9News Special, including members of the Elder Law Community and Mr. Wade Buchanan, Senior Advisor on Aging

### *Commissioner Kelley*

Commission Chair Caton, on behalf of Commissioner Kelley, informs, Commissioner Kelley attended a meeting last month attended by approximately 25 individuals, where she handed out the OPG resource materials.

### **VII. Chair Report/Announcements**

Commission Chair Caton advises she just received a Letter back from Next50, informing the OPG Commission that their grant was denied. No reason stated for the denial. She has reached out to, leaving a message for their Chief Executive Officer.

### **VIII. Reschedule of the Dec 2018 Regularly Scheduled Meeting**

There was discussion as to whether the Dec. 26, 2018 meeting needed to be rescheduled. It was decided it did need to be rescheduled due to the holidays. Dates were discussed. Commission Vice-Chair Bennett-Woods moved to reschedule the Dec. 26, 2018 meeting to Jan. 3<sup>rd</sup> @ 10am – 12 pm. The motion was seconded by Commissioner Chayet. The motion passed unanimously. AAG Johnson will provide a notice of cancelled meeting and notice of rescheduled meeting with agenda at a later date.

### **IX. Public Comment**

#### *Mr. Rob Hernandez*

Mr. Hernandez informed the Commission that it was not appropriate for them to lobby and that there wasn't a need for them to go into Executive Session regarding hiring a lobbyist. He advised it was appropriate for the OPG Commission to be available as a resource to answer questions and provide general information. He discussed evidence-based policy that the JBC is looking at and the OPG Commission does not have data to support this project. Mr. Hernandez again discussed Colorado not having safeguards in place and Nevada's guardianship reform. Reference was made to the White Paper regarding Evidence-Based Policy on the JBC's website.

*Ms. Maureen Welch*

Ms. Welch asked if the four documents/reports discussed during today's meeting would be posted for the OPG Emergency Meeting, or at minimum hyperlinks to the documents. She also asked that the formal questions and answers be posted on the website. She spoke about the CO. State Auditor's Office Audit on Community-Centered Boards; Medicaid Fraud and paying back millions; and other needs and broken parts of government. She again discussed her concerns with APS being a pipeline to OPG, with no safeguards in place for family members and friends. She also asked why there is a need for the Commission to seek legal advice and to go into Executive Session.

It was noted the audit is posted on the State Auditor's Website.

Mr. Wilson advised against posting the questions and answers until after the JBC hearing.

AAG Johnson advises the discussion to be held in Executive Session will be regarding if the OPG Commission hire a lobbyist to act pro-bono, and any legal implications.

AAG Johnson and Commissioner Chayet respond to Ms. Welch's comments, noting:

- The OPG pilot project is not for individuals that have family members or friends;
- The Direct of the OPG, if there were funds to hire one, would do their due diligence to ensure individuals qualify for the OPG pilot project (e.g., no family, friends, and are found to be indigent); and
- The court does not have to approve the appointment of the nominated guardian/OPG. The petition can be denied.

*Mr. Terry Lake*

Mr. Lake had no public comment.

**X. Legal Advice on Whether the OPG Commission Can Hire a Lobbyist on a Pro-Bono Basis**

At 12:42 PM, Commission Chair Caton requested a motion to enter into Executive Session to review and discuss attorney-client privileged information from Senior AAG Johnson as to whether the OPG Commission could hire a lobbyist pro-bono.

Commissioner Chayet made the motion, which was seconded by Commission Vice-Chair Bennett-Woods. The motion passed unanimously.

**Executive Session was held to protect  
the Attorney-Client Privilege.**

**Executive Session was recorded**

**Return to open meeting**

At 1:34 p.m., the Commission returned to Open Session

The Commission directed AAG Johnson to draft a letter to the Independent Ethics Commission requesting an Advisory Opinion as to whether the OPG Commission could hire a lobbyist pro bono and not violate any ethical rules. The letter would need to be submitted ten days prior to the next IEC meeting, scheduled for January 14, 2019. Commissioner Chayet moved to have Commission Chair Caton delegated the task of approving the final version of the letter. Commission Vice-Chair Bennett-Woods seconded. The motion passed unanimously.

The Commission also directed AAG Johnson to provide legal advice on whether OPG Commission members could engage in lobbying efforts without registration and what activities would constitute lobbying under Colorado law.

**XII. Adjourn**

Commissioner Chayet moved for the meeting to be adjourned. The motion was seconded by Commission Vice-Chair Bennett-Woods. With no objections, the meeting was adjourned at 1:38 p.m.

**ATTESTATION**

As Commission Chair and Commission Vice-Chair, we attest that these minutes of the open public meeting of the Colorado Office of Public Guardianship Commission substantially reflect the substance of the discussion and action taken related to the matters under the authority of the Commission.

  
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Shari Caton, Commission Chair

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Deb Bennett-Woods, Commission  
Vice-Chair

*1-3-19*  
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Date

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Date