
Colorado Office of Public Guardianship

Commissioners

Deb Bennett-Woods, Chair
Kelsey Lesco, Vice-Chair
Marco Chayet
Karen Kelley
Alison Zinn



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PUBLIC MEETING

April 24, 2019

Record of Proceedings

CONVENE

The meeting of the Colorado Office of Public Guardianship Commission was convened in the Ralph Carr Judicial Building at 1300 Broadway, Conference Room 2B in Denver, Colorado at 10:04 AM by Commission Chair Bennett-Woods.

A quorum of the Commission was present.

Commission Members Present

Deb Bennett-Woods, Chair	Marco Chayet*
Karen Kelley	Alison Zinn

Commission Members Absent

Kelsey Lesco, Vice-Chair

Others Present

Sueanna Johnson, Senior AAG

Public Attendance

Shari Caton*
Robert M. Hernandez
Lara Vandervergh

* Appeared/Participated by Telephone

AGENDA ITEMS

I. Approval of the February 27, 2019 Minutes

Commission Chair Bennett-Woods called for a motion for approval of the February 27, 2019 minutes. The motion was made by Commissioner Kelley. Commissioner Chayet seconded the motion. There was no discussion. The minutes were approved with Commission Zinn abstaining.

II. Approval of the March 27, 2019 Minutes

Commissioner Chair Bennett-Woods called for a motion for approval of the March 27, 2019 minutes. Commissioner Kelley made the motion. Commissioner Chayet seconded the motion.

Commissioner Chayet suggested a change to the characterization of Ms. Welch's public comment on Page 6, as he did not take offense to her comments. He respects the opinions raised by Ms. Welch, but did disagree, as he only intended express that he cannot take a personal position on behalf of the Colorado Bar Association. The Commissioners discussed suggested language changes.

After discussion, the Chair called for a motion to approve the March 27, 2019 minutes as amended. The motion was made by Commissioners Kelley and seconded by Commissioner Chayet. The minutes were adopted as amended with Commissioner Zinn abstaining.

III. Monthly Budget Report

Chair Bennett-Woods noted that Hugh Wilson was not present to provide a monthly budget update.

AAG Johnson informed the Commission that Mr. Wilson and Ms. Lind were attending an all Division SCAO meeting.

Chair Bennett-Woods advised that to her knowledge she made no expenditures, and no gifts, grants or donations were received since last meeting so the budget should be the same.

IV. Update on the Commission Vacancy

Chair Bennett-Woods was glad to announce that the vacancy as a result of the resignation of former Chair Shari Caton was filled by the appointment of Alison Zinn. The Chair requested that Commissioner Zinn provide some background information for the Commissioners and public.

Commissioner Zinn informed the Commission that she was partner at Lathrop Gage, a firm that has ten offices with headquarters in Kansas. She received her law degree in 2005 from DU Law School and received her undergraduate degree from the University of Colorado. For approximately the first half of her career, she focused on commercial litigation. But then she switched focus to solely trusts and estates, including guardianship work as Respondent's counsel as well as serving as a Guardian ad litem. Commissioner Zinn noted that because of her legal work, she has discovered gaps in the system for vulnerable individuals so supports any effort to obtain funding so the pilot program can be implemented and begin to provide services.

Chair Bennett-Woods asked if any Commissioner had a comment or question for Commission Zinn. No questions or comments, but Chair Bennett-Woods welcomed Commissioner Zinn.

V. Legislative Update

Chair Bennett-Woods indicated that both Representative Snyder and Ms. Aponte could not attend due to scheduling conflicts with the end of legislative session activities. Chair Bennett-Woods provided an update to the Commission involving HB 19-1045. She also notes and apologizes for the extraordinary challenges with Commission communication that result in challenges for the Commissioners to be provided timely updates, which is made more difficult with the speed of activities in the legislative session. She noted the following:

- The bill was approved by House Appropriations as amended.
- The bill passed the House with wide margin (she believes 50-13) in support and 17 co-sponsors.
- The bill was amended to limit the pilot program initially to the Second Judicial District and partially funded with an increase of probate fees.

- The bill was then referred to the Senate with a hearing in the Judiciary Committee this past Monday, April 22, 2019.
- Ms. Busam and Representative Snyder had a strategy of abbreviated testimony given the time constraints of the legislative session.
- Senate Sponsor Joann Ginal introduced the bill to Senate Judiciary Committee members.
- Chair Bennett-Woods and Vice-Chair Lesco were in attendance and provided testimony. The Committee had no questions.
- Four other stakeholders testified, 3 in support and one neutral.
- Terry Scanlon from SCAO testified on behalf of Judge Leith who could not attend.
- Chair Bennett-Woods has not seen a revised Fiscal Note, but had questions about the FTEs. She was informed that it reflects total hours and, since the budget reflects a ramp up over the year, all positions remain but will not use the full number of hours in this first year. .
- Committee members had some questions for Carl Glatstein, who testified in support on behalf of the Colorado Bar Association.
- The bill passed out of the Senate Judiciary Committee by a 5-0 vote.
- The bill was referred to the Senate Finance Committee because of the increase to the probate fees.
- At this point, Ms. Busam had informed Chair Bennett-Woods that she did not need to appear for the Senate Finance Committee hearing, but that might change, and so the Chair suggested that the members keep track of the bill as it moves forward, and AAG Johnson will issue notices so Commission members can attend if needed or able.

Commissioner Chayet had a question about the fiscal note and whether the Chair had a sense the probate fee increases would be an issue.

The Chair responded that, in his testimony, Mr. Glatstein indicated from the Bar Association perspective that while they generally are not asked about fee increases, they appreciate the opportunity to respond. The Bar Association believes the pilot is necessary and important, and so there is no reason to express opposition to probate fee increases.

Commissioner Chayet had another question directed to the Fiscal Note, which indicates that \$50k and .3 FTE was appropriated for the Department of Law. He wondered if that indicated that DOL would appear in court for contested or post adjudication guardianship issues.

AAG Johnson explained that the budget for DOL is based on a three-year look back from what legal services are needed from a particular agency. The \$50k was for services already rendered in the representation of the Commission. The AG's Office represents all state agencies, commissions and boards but only if the entity or members are sued in their official capacities. Legal work that the OPG pilot program may need for purposes of guardianship appearances would need to be an employee or contract attorney of the OPG.

Commissioner Kelley asked whether there could be a link to the HB on the State Judicial website, as it gave no updates about current activities.

Chair Bennett-Woods indicated she would look into this with AAG Johnson, but there might be some concern by State Judicial putting proposed legislation on their website. Another concern is how rapidly things move that it will be outdated. But Chair Bennett-Woods indicated she would forward to AAG Johnson the updated fact sheet provided by Ms. Busam, obtain permission from the Bar Association to post the Frequently Asked Questions, and see if those documents could be posted to the website.

Chair Bennett-Woods also indicated that Judge Leith graciously contacted the judges in the Seventh and Sixteenth Judicial Districts to apprise them of changes in the pilot program with a hope to expand the program later.

Chair Bennett-Woods raised that she thought a letter to stakeholders would be helpful but that it should not be drafted until after the Legislative session, as that will inform the content of the update. She suggests having a draft for Commission review at the May 2019 meeting.

Commissioner Chayet informed the Commission that he saw an announcement that the Senate Finance Committee will hear the OPG Bill on Friday, April 26, 2019 upon adjournment of the Senate.

Chair Bennett-Woods indicated that as of now, she did not plan on attending, but that may change if Ms. Busam and Representative Snyder think otherwise.

AAG Johnson indicated that she would provide a notice of meeting for the April 26th committee hearing in the event two or more Commission members attend.

For the May meeting in light of legislative updates, Chair Bennett-Woods indicated that the OPG pilot program will have funding or not. If funding is made available with the passage of the Bill, her thoughts for the May 2019 meeting agenda include:

- Requests that Hugh Wilson attend to explain the budget issues if the Bill passes.
- A draft letter updating stakeholders on the Bill and pilot program implementation with opportunity for draft to be finalized with the Commission.
- Finalization of the job description for the Executive Director
- Request that State SCAO HR attend to explain the hiring process and inquire about additional resources they might be able to provide.

AAG Johnson briefly explained the process for hiring of the Executive Director for the Child Protection Ombudsman, including posting of the job description, timeframe to receive applications, review of submitted applications, interviews, public comment for the finalists, and reference checks. AAG Johnson indicated that some of those services were provided by State SCAO HR.

Chair Bennett-Woods also highlighted that if the Bill passes, she wonders if there are interim policies and procedures that the Commission could help draft to alleviate the onslaught that the Executive Director will face. Given that the pilot program will need to request funding for the second year, it is imperative that the Executive Director be able to implement and provide the data, so if Commissioners have ideas of possible tasks they can take on prior to the ED appointment, then they should share.

There was a general discussion about timing and schedules for the summer and availability. Commission Chair Bennett-Woods, Commissioner Chayet, and AAG Johnson indicated they all had previously scheduled activities during the summer.

Chair Bennett-Woods requested that at the May meeting, that the Commission have a discussion about summer schedules.

There was additional discussion about timing for hiring of Executive Director. AAG Johnson inquired if there was an emergency clause in the Bill, and if not, posting of the position could not occur until after the Bill is effective, because the Commission still operates under the current version of the law that requires appointment after receipt of \$1.7 M.

Commissioner Kelley asked if the May meeting should be longer given the additional issues. The Commissioners agreed that the meeting should be noticed from 10-1 PM.

Commission Chair Bennett-Woods requested that Commissioners provide scheduling availability to AAG Johnson

VI. Fundraising Efforts / Community Outreach

Commission Chair Bennett-Woods

Commission Chair Bennett-Woods indicated that her outreach was sending emails or making calls to legislators regarding the OPG Bill and offering to provide information.

Other Commissioners

No updates.

Commission Chair Bennett-Woods believed that Vice-Chair Lesco attended or spoke at an event, but she was not sure given the Vice-Chair's absence.

VII. Public Comment

Mr. Robert Hernandez. Mr. Hernandez is concerned with access to guardianship proceedings, especially now that the pilot program is only occurring in the Second Judicial District. He indicated that he believes the closing of guardianship proceedings violates the four-factor test in Waller test in *Waller v. Georgia*, 467 U.S.

39 (1984) and *People v. Hassen*, 351 P.3d 418 (Colo. 2015). He has brought his concerns about courtroom closure to the head of the SCAO who is conducting a survey of which judicial districts close courtrooms for guardianship hearings. He believes that the Second Judicial District is the only district to close courtrooms and has a sign on the door indicating people cannot enter and the docket is not public. He suggests that the Commission should have discussions with Judge Leith about this.

Ms. Lara Vandervergh. She had a question about how she could obtain the fact sheet discussed by Chair Bennett-Woods.

Chair Bennett-Woods indicated that she will look into whether those documents can be posted on the website and will forward the requested the requested documents in the interim by email.

VIII. Adjourn

Commission Chair Bennett-Woods called for a motion to adjourn the meeting. The motion was made by Commissioner Kelley and seconded by Commissioner Zinn. With no objections, the meeting adjourned at 11:20 AM.

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.

Deb Bennett-Woods
Commission Chair

Kelsey Lesco
Commission Vice-Chair

Date

Date