E-filing

• All e-filing to and from the Office of Public Guardian to the court will be through the e-mail address: nsc.opgefile@nebraska.gov

Petitioner

- Individual files emergency petition with court
- Notice of Emergency Nomination of the Public Guardian (CC 16:2.128) provided to Office of Public Guardian (OPG), court, interested persons (Neb. Ct. R. Sec. 6-1433.01(A)).
- Only after notice to the Public Guardian and a determination that the
 appointment of order is necessary and will not result in the Public Guardian
 having more appointments than permitted... The determination of necessity
 may require the court to ascertain whether there is any other alternative to
 public guardianship or public conservatorship (Neb. Rev. Stat. §30-4112)

Office of Public Guardian

- Files "Acknowledgement of Notice of Emergency Nomination Caseload Capacity Available" (CC 16:2.129) or "Acknowledgement of Notice of Emergency Nomination - Verification of No Caseload Capacity" (CC 16:2.130)
- Within 24 hours (1 judicial day) of receiving Notice of Emergency Nomination
- The office: (1) Shall provide immediate response when a guardian or conservator is needed in an emergency situation (Neb. Rev. Stat. §30-4105).

- NO OPG EMERGENCY CASELOAD CAPACITY:
- Good cause to deny OPG appointment
- Appearance of OPG will not be required
- Court files "Order Denying the Emergency Appointment of the Public Guardian" (CC 16:2.131)

Court

- Necessity/alternative requirements:
 - Person has <u>no</u> guardian AND an emergency exists (Neb. Rev. Stat. §30-2626(a))
 - Emergency situation
 - Not an emergency when there is a guardian and/or conservator currently serving <u>unless</u>
 - 1. Guardian not effectively performing his/her duties AND
 - 2. "Welfare of the incapacitated person require immediate action" (Neb. Rev. Stat. §30-2626(h)).

Court

Court

•OPG HAS EMERGENCY CASELOAD CAPACITY PENDING HEARING:

- Court appoints a Court Visitor or Guardian Ad Litem; "Order Appointing Court Visitor or Guardian Ad Litem" (CC 16:2.121)
- Within 10 judicial days of "Acknowledgement of Notice of Emergency Nomination
- Caseload Capacity Available" (CC 16:2.129)

Court

- ORDER APPOINTING PUBLIC GUARDIAN TEMPORARY GUARDIAN &/OR **TEMPORARY CONSERVATOR (CC 16:2.116, CC 16:2.118, or CC 16:2.120)**
- Public Guardian appointed temporary guardian pursuant (Neb. Rev. Stat. §30-2626(j)).
- Appearance of APG not required.
- Public Guardian Act requirement:
- Notice must be provided by plaintiff
- •Capacity within OPG for an emergency must be determined by OPG
- Determination of necessity and whether there is any other alternative to OPG

Court

- Office of Public Guardian on a temporary basis if an emergency exists until an evidentiary hearing can be held.
- Temporary Appointment
- •a. Court appoint a visitor/GAL to complete visitor report
- ·b. Appointed until evidentiary hearing
- •c. Orders and Letters specify the powers and duties of the temporary guardian (Neb. Rev. Stat. §30-2626(d)).
- •1. Limited powers and duties to those necessary to address the emergency (Neb. Rev. Stat. §30-2626(a)).
- •2. Successor has only the powers and duties specified in the previously appointed guardian's letters of guardianship (Neb. Rev. Stat. §30-2626(h)).



- The court shall appoint a visitor and/or guardian ad litem (Neb. Ct. R. Sec. §6-1433.02(G))
- If the Office of Public Guardian is nominated as the initial or successor guardian or conservator, the court shall appoint a visitor and/or guardian ad litem consistent with Neb. Rev. Stat. §30-2619.01, or a guardian ad litem pursuant to Neb. Rev. Stat. §30-2222(4), to ensure the necessity of the guardianship and/or conservatorship, whether there is an appropriate limitation within the guardianship and/or conservatorship...(Neb. Rev. Stat. §6-1433.02(f)).



- •Appointed by court within 10 days of receiving "Acknowledgement of Notice of Emergency Nomination Caseload Capacity Available" (CC 16:2.129);
- •Interview potential incapacitated person (PIP), petitioner, providers, interested parties and complete screening tool for gathering independent information
- •Submits confidential "Court Visitor or Guardian Ad Litem Report" (CC 16:2.93) to court within 60 days of Petition
- •Submits a "Notice of Availability of the Court Visitor or Guardian Ad Litem Report" (CC 16:2.92) to the Court, OPG, petitioner, GAL (if appointed for potential incapacitated person (PIP) in case), PIP attorney and PIP
- •Submits to the court the screening tool & any supplemental documents as confidential documents.

Court

- Receives the "Court Visitor or Guardian Ad Litem Report" (CC 16:2.93) as a confidential document
- Receives the screening tool and any supplemental documents as confidential documents
- Emails a copy of the "Court Visitor or Guardian Ad Litem Report" (CC 16:2.93) to the OPG

Office of Public Guardian

- •Within 5 judicial days of "Notice of Availability of the Visitor/GAL Report" (CC 16:2.92), OPG will provide to the court a "Verification of Caseload Capacity Subsequent to Court Visitor or Guardian Ad Litem Report" (CC 16:2.95) or "Verification of No Caseload Capacity Subsequent to Court Visitor or Guardian Ad Litem Report" (CC 16:2.98) to confirm there is/is not caseload capacity
- •Provide the court with the "Notice of Designation of Deputy Public Guardian and Associate Public Guardian" (CC 16:2.96) form
- Provide the court with background check information

Court

•NO CASELOAD CAPACITY BY OPG:

- Good cause to "Order Denying the Appointment of the Public Guardian" (CC 16:2.122)
- Appearance of OPG will not be required
- •Court may request the case to be placed on a waiting list; "Request for Waiting List Assignment" (CC 16:2.97)
- Court appoints a guardian or conservator (not OPG)

• CASELOAD CAPACITY AVAILABLE BY OPG:

Petitioner, PIP, GAL (case) and/or OPG Objection

- Review "Court Visitor or Guardian Ad Litem Report" (CC 16:2.93) for any Objection to information
- •If there is an Objection to Report, "Objection to Court Visitor or Guardian Ad Litem Report" (CC 16:2.88) to be filed with court within 10 judicial days of "Notice of Court Visitor or Guardian Ad Litem Report" (CC 16:2.92)



•OPG MAY FILE OBJECTION TO APPOINTMENT IF OTHER OPTIONS

- Review "Court Visitor or Guardian Ad Litem Report" (CC 16:2.93) to insure OPG is last resort (no other individual available for guardian/conservator), least restrictive and requested OPG services are necessary
- Within 10 judicial days of "Notice of Availability of the Court Visitor or Guardian Ad Litem Report" (CC 16:2.92)
- •If OPG determines other options are available file with court "Objection to the Appointment of the Public Guardian Due to Other Options" (CC 16:2.94)

EVIDENTIARY HEARING

- Scheduled between 70-90 days after petition;
- Court to review:
- If petition is for initial PIP capacity, court will make determination of need for g/c;
- If petition is for a successor g/c, court shall determine appropriateness of g/c;
- Court to determine whether Public Guardian is appropriate:
- If OPG has no caseload capacity, good cause exists for the denial of OPG appointment; and the appearance of OPG shall no longer be required.
- If OPG has no caseload capacity, the court may request for PIP to be placed on waiting list;
- If OPG has caseload capacity (or OPG has no caseload capacity but court request to be placed on waiting list is pending) and OPG Objects to Appointment due to Other Options Available, court is to determine if other options are available and if good cause exists to deny OPG appointment;
- If OPG has caseload capacity and OPG does not Object to Appointment (or court determines, despite Objection to the Appointment, that the appointment meets statutory and court rule requirements), the court may appoint the Public Guardian as a guardian or conservator. In addition to the statutory requirements, the order of appointment shall provide:
- •1) Proper notice has been given to the OPG;
- •2) The petitioner has acted in good faith and due diligence to identify a guardian or conservator who would serve in the best interest of the alleged incapacitated person;
- •3) The appointment of the Public Guardian is necessary and does not exceed the caseload limitations as set forth by statute;
- •4) The visitor or guardian ad litem report has provided supporting evidence that no person is available for appointment as guardian or conservator, all options available to support the individual in the least restrictive manner possible has been explored, and guardianship is a last resort; and
- ullet5) There is no other alternative than to appoint the Office of Public Guardian.

