

Pilot: OPG Waiting List Process

Enacted by AOC and Supreme Court November 22, 2017

(A) If the acknowledgment and caseload capacity verification shows the Office of Public Guardian (OPG) does not have capacity to take the case, the court may request the case be placed on the Office of Public Guardian Waiting List.ⁱ

(B) Temporary/emergency guardianships are appointed because the welfare of the incapacitated person requires immediate action, or an emergency exists, and are to terminate at the end of a ninety-day period- or when the circumstances leading to the order for temporary guardianship no longer existⁱⁱ. Accordingly, placement on the OPG Waiting List is not appropriate, and will not be available, for temporary/emergency guardianship and/or conservatorship OPG nominations.

(C) If the court requests the case be placed on the Office of Public Guardian Waiting List, the court shall appoint a court visitor consistent with Neb. Rev. Stat. § 30-2619.01, or a guardian ad litem pursuant to Neb. Rev. Stat. § 30-2222(4), within 10 judicial days of the request to place the case on the Office of Public Guardian Waiting List and provide notification of such to the OPG.ⁱⁱⁱ

(D) The Court Visitor or Guardian ad Litem Report, on the form required by the State Court Administrator's Office^{iv}, will:

- (1) Provide an evaluation on the allegations of incapacity^v;
- (2) Address whether there is an appropriate private guardian and/or private conservator to serve in the case^{vi};
- (3) Support the appointment of the OPG in accordance with the Public Guardianship Act, but for the lack of capacity by the OPG^{vii};
- (4) Indicate that all options available to support the individual in the least restrictive manner possible has been explored;^{viii}
- (5) State whether the guardianship is a last resort^{ix}; and
- (6) Specify whether appointment is necessary and that no alternative to public guardianship or public conservatorship is available^x

(E) Public guardianship and public conservatorship cases shall be managed by the Public Guardian^{xi} and the Waiting List process shall be determined by the Office of Public Guardian^{xii}. Upon receipt of the required Court Visitor or Guardian ad Litem Report, the OPG shall file a response to the report within 10 days^{xiii} indicating whether the OPG will accept or deny the case's placement on the Waiting List. The OPG may decline the request that the case be placed on the Waiting List if the information on the Court Visitor or GAL report fails to provide information required in (D) above.

(F) Upon notice that the OPG will accept the ward on the Waiting List, the court shall make findings, in accordance with Neb. Ct. R. § 6-1433.01 (J), and order the case be placed on the Waiting List for 90 days, as provided by the OPG Waiting List policy.

(G) If the case is not chosen from the Waiting List within 90 days the OPG will notify the court of the removal of the case from the Waiting List. Any subsequent request for consideration to be added to the Waiting List again will be subject to the same Waiting List process as originally required.

(H) If the OPG has an opening in its caseload capacity in an OPG Service Area from which a ward is on the Waiting List, the OPG shall determine the case to be chosen from the Waiting List, or to be accepted from a current Temporary/Emergency OPG Nomination.

(1) Determination will be solely at the discretion of the Office of Public Guardian, and will not be “first on the Waiting List, first chosen”. Rather, the determination will be in accordance with the Public Guardianship Act, (Neb. Rev. Stat. §§ 30-4101 to 30-4118), Nebraska Court Rules (Neb. Ct. R. §§ 6-1433.01 and 6-1434.02) and AOC/OPG policies. The determination will specifically take into consideration the OPG appointment caseload capacity^{xiv} and caseload distribution criteria^{xv}.

(2) In addition to the criteria in (H)(1) above, priority consideration will be given to cases in which Nebraska Adult Protective Services has substantiated abuse, neglect, self-neglect and/or exploitation of a vulnerable adult.^{xvi}

(I) When the case has been chosen from the Waiting List the Office of Public Guardian will contact the court that there is capacity for the OPG to be appointed as guardian and/or conservator for the chosen ward. The court will then, on its own motion, determine whether the OPG should be appointed as guardian and/or conservator in the case.

ⁱ Neb. Ct. R. §§6-1433.01(D), 6-1433.02(F)(2)

ⁱⁱ Neb. Rev. Stat §30-2626(a); (e)

ⁱⁱⁱ Neb. Ct. R. §§6-1433.01(D), 6-1433.02(F)(2)

^{iv} Neb. Ct. R. §6-1433.01(E)

^v Neb. Ct. R. §6-1433.02(H)

^{vi} Neb. Ct. R. §6-1433.01(G), Neb. Ct. R. §6-1433.02 (F)

^{vii} Neb. Ct. R. §§ 6-1433.01 (B) and (J)(4)

^{viii} Neb. Ct. R. § 6-1433.01(J)(4)

^{ix} Neb. Ct. R. § 6-1433.01(J)(4)

^x Neb. Ct. R. § 6-1433.02(F)

^{xi} Neb. Rev. Stat. §30-4115(1)(c)

^{xii} Neb. Ct. R. §6-1433.01(J)

^{xiii} Neb. Ct. R. §6-1433.01(F)

^{xiv} Neb. Rev. Stat §30-4115(2)

^{xv} Neb. Rev. Stat. §30-4115(1)(c)

^{xvi} Neb. Rev. Stat. §30-4102(d),(e) and §30-4105 (1),(2),(3)