



STATE OF  
**NEBRASKA**  
JUDICIAL BRANCH

Office of Public  
Guardian

## **2018 REPORT**



### **INSIDE:**

**OPG Provides Guardian Education to 1,294 New Guardians**

**OPG Reaches Capacity Initiates Pilot Waiting List, Six Wait Listed Individuals Die**

**OPG Assists Ward Who Was Paralyzed to Regain Independence**

**Emergency OPG Ward Dies: 38 year-old Woman with Cerebral Palsy, 58 lbs., blind, non-verbal, non-ambulatory; Unable to Intervene in Time**

**OPG Assists Ward to Terminate Guardianship**

**OPG Processed 15,000 Ward Transactions; receipts and disbursements totaling \$6.4 million**

**OPG Ward Commits Suicide Hours After Rejected for Requested In-patient Care**

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***Where, after all, do universal human rights begin? In small places, close to home – so close and so small that they cannot be seen on any maps of the world. Yet they are the world of the individual person; the neighborhood he lives in; the school or college he attends; the factory, farm or office where he works. Such are the places where every man, woman and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere. Without concerned citizen action to uphold them close to home, we shall look in vain for progress in the larger world.”***

Eleanor Roosevelt

## **INTRODUCTION**

Nebraska Revised Statute §30-4111 requires the Nebraska Office of Public Guardian (OPG) to report to the Chief Justice and the Legislature on, or before, January 1 of each year. This 2018 Office of Public Guardian Report (Report) is the fourth report since implementation began under the Public Guardian Act in 2015. In addition to the specific data required by the statute regarding the number of wards, types of guardianship/conservatorship cases, capacity of the OPG to serve, and the status of OPG waiting list, this Report provides information about the OPG people and programs. The Report seeks to account for how the OPG “uphold[s] [human rights] close to home” and serves to protect Nebraska’s vulnerable, incapacitated adults who are wards of the OPG.

## **“ANGEL’S” STORY**

The OPG was assigned as emergency temporary guardian of Angel after she was removed from her family home by DHHS. The removal was a result of a home visit by police and APS following multiple reports to Adult Protected Services (APS) filed by her Developmental Disability (DD) Service provider. Angel was 38 years old with severe disabilities. She had cerebral palsy, epilepsy, was legally blind, nonverbal and nonambulatory. She required 24 hour care. She lived at home and was provided DD day services with the same provider for 18 years.

The condition of the home was deemed to be unsanitary and unsafe. It had trash, animal feces, dirt, no handles for water at the sink, and holes in the floor boards. **When Angel was taken to the hospital she was 58 lbs., with severe malnutrition, dehydrated, and a pressure sore on her buttocks.**

The assigned APG worked quickly with DD Service Coordination, the Community support provider, and APS to secure Angel’s placement in an Extended Family Home (EFH) with oversight from her existing provider. Tragically, days after placement in the EFH she was hospitalized, again, with sepsis, gastric aspiration pneumonia and suspected bowel perforation. She died within hours.

There were no legal actions taken as a result of her death.

The DD EFH/service provider’s internal investigation stated, “The results of the investigation concluded, that [Angel] was provided appropriate services and care prior to and leading up to her passing. There was nothing further that could have been done to prevent or foresee her death.”

Angel is a tragic example of statewide issues with protection and intervention for vulnerable adults. At times, issues have deteriorated to such a degree that there is little or no avenue of decision making that can respond quickly enough to mitigate a negative outcome. Angel’s death was arguably preventable if intervention had been available when her provider first reported concerns about the food provided from lunches from home and the condition of her health. Increased capacity for oversight by the Division of Developmental Disabilities and the ability for faster intervention by Adult Protective Services to investigate initial reports could have identified the need for the OPG (or the identification of a natural guardian) earlier in Angel’s life preventing the tragedy of her severe malnutrition and early death.

***“The care of human life and happiness and not their destruction is the first and only object of good government.”***

Thomas Jefferson

## **DIRECTOR REPORT INFORMATION AND EXECUTIVE SUMMARY**

**Public Guardian, Michelle Chaffee**



### **OPG 2018 Report Changes**

In past years, because the OPG was a new entity to Nebraska, the OPG Report has included development, implementation and program information about the Office of Public Guardian. In this year's Report that information is provided as links to the OPG web site where it is always available and updated through the year. This Report focuses on two goals: 1) to comply with the statute to provide data about Nebraska guardianships and the work of the OPG; and 2) to give voice to the untold stories of wards and protected persons who are reflected individually in the data and experienced as vulnerable adults in Nebraska.

### **Untold Stories**

Due to respect for the privacy of the vulnerable adults served by the Office of Public Guardian (OPG), the OPG does not normally share information regarding specific wards and protected persons. However, it is important the people served by the OPG have their own voice, have their individual stories told. The OPG serves many people who led very different lives than they currently are experiencing; this report seeks to share a few of the stories of OPG wards. ***Vulnerable adults who find themselves incapacitated are our Nebraska neighbors. OPG wards are of all races, from all across the state, represented by every economic strata, and a myriad of past professions. Given the right circumstances, anyone could be in need of the Office of Public Guardian in the future. This Reports shares some of these stories.*** In order to protect privacy, the stories are, mostly, memorials to OPG wards who have passed away this year identified by pseudonyms. Some stories are celebrations about wards whose OPG guardianship/conservatorship have been terminated and civil rights and decision making powers are

reinstated (those names, also, are changed). Finally, examples of wards caught in social services system breakdowns are included.

## **Associate Public Guardian Turnover and Resulting Effect on OPG Capacity to Accept Cases**

One of the of the challenges the OPG has continued to face is personnel turnover. The 2016 OPG Report indicated that the OPG replaced five Associate Public Guardians (APGs) in 2016. In 2017 the OPG responded to 6 personnel changes. This year, the OPG had 8 personnel changes. However, due to the increased number of cases the OPG serves, those personnel changes- both in timing and in numbers- had a particularly detrimental action on services. The loss of each APG resulted in 20 cases per vacancy required to be covered by other APGs- who already have full caseloads. From the last day of employment, through posting the position, interviews, and training new employees it takes three months to replace an employee.

***From March 1<sup>st</sup> to November 1<sup>st</sup> the OPG did not have one week with a full staff. During that period OPG vacancies resulted in nine weeks with one vacancy, eleven weeks with two vacancies, 15 weeks with three vacancies and one week with four vacancies.*** While Omaha was hit especially hard (15 weeks with one vacancy, seven weeks with two vacancies, six weeks with three vacancies and one week with four vacancies) staff throughout the OPG was impacted. In order to maintain the statutory maximum average of 20 wards per APG (which was not always possible) the vacancies in Omaha required coverage by APGs in Lincoln, Norfolk, Grand Island, Hastings, and Kearney. This resulted in redrawn OPG boundaries and repeated redistribution of wards to current staff to serve as temporary designated guardians until vacancies could be filled. Accordingly, the capacity from North Platte to the eastern border of Nebraska was involved. ***From March until the present time there has been little, if any, capacity to accept nominations for the OPG due to trained worker shortages.***

Vacancies, and the additional stress caused to employees covering them, becomes a domino effect resulting in more employees leaving. Another contributing factor to turnover, and impact to OPG staff morale, is the stress of the type of work the OPG does- work that includes the challenges of incapacitated vulnerable adults who have a myriad of issues, as outlined in this report. The greatest effect on APG turnover is the constant pressure and frustration over the lack of programs, services, treatment and housing options for wards. This results in APGs with wards who are in constant crisis for which APGs have little, or no, available options. APGs are constantly trying to create something out of nothing- begging, cajoling, threatening, scraping together to try to assist wards, only to do it again, and again, and again. Examples of those struggles are described in the Systems Issues in this Report.

In response to APG work challenges, the OPG has initiated a number of programs this year. Starting in September the Administrative Office of the Court (AOC) began a Pilot program allowing APGs to utilize flex time, earn compensation time, and qualify for overtime pay for work hours completed during nights and weekends addressing ward emergencies. Additionally, the OPG has increased training for stress management and coping skills. The OPG is continuing to participate in a program with the Nebraska Center on Reflective Practice (NCRP), Center on Children, Families and the Law. The goal of Reflective Practice is to allow “individuals or groups to examine past actions, emotions, experiences and responses as a way to understand how and why the person responds in current situations, and to learn ways to adjust thoughts and actions to reduce the negative impact of emotionally intrusive work”. Reflective Practice has been utilized in case reviews and peer support group meetings during the past year. Next year all OPG staff will receive direct training and six months of individual mentoring from the NCRP.

## Social Services System Issues

The Public Guardianship Act directs the Office of Public Guardian (OPG) to safeguard equal access and protection of wards; safeguard ward rights; model a high standard of practice and support private guardians. In order to meet these standards the OPG is committed to collaborate with other Nebraska entities to address system barriers in the care, treatment and services for vulnerable adults experiencing mental illness, substance abuse, disabilities, and cognitive decline. The challenges of the issues faced serving OPG wards is described below.

## Case Management Data

The 2018 case data has reaffirmed the previous years' data regarding the complexity of wards and protected persons served by the Office of Public Guardian (OPG), the expenditure of time per case per week, and the importance of screening cases for appropriate utilization of OPG resources.

The timeframe for data covered in this Report is December 2017 to October 31, 2018, unless indicated as aggregate data. The change to October 31 rather than the prior November 30<sup>th</sup> date provides additional time to obtain and process data necessary for the annual report.

During the past three years of implementation of the OPG accepting nominations the OPG has processed 574 potentially incapacitated persons. Currently, as of November 1, 2018 the OPG had an aggregate of **259 Open cases**. Specifically, **within this reporting year the OPG was nominated in 166 cases statewide: 33 resulted in OPG appointments; 17 are pending appointment; and 57 were referred to the OPG Waiting List.**

The 259 wards have 731 identified categories involving complex issues, including cognitive impairment, mental health diagnoses, developmental disabilities, substance/alcohol abuse, medical conditions, history of criminal justice involvement, and/or history of Mental Health Board commitments.

In accordance with the Public Guardianship Act's mandate that the OPG serves as guardian/conservator only for individuals for whom there is no other alternative, in the least restrictive manner, and as a last resort, cases for which the OPG is nominated are screened by a Court Visitor or Guardian ad Litem to determine qualification under the Act and provide information on the individual's capacity. As a result of information gathered, of the 166 cases nominated during this reporting year 43 cases were closed- 27 the court denied guardian/conservatorship. In another 16 cases, alternative guardian/conservators were found, prior to the OPG appointment. **Accordingly, the Court Visitor/GAL screening resulted in twenty-six percent of OPG nominated cases closed either due to the guardianship petition being dismissed or an alternative identified.** This screen resulted in correct utilization of OPG resources, identification of a more appropriate guardian, and protection of the freedom of individuals who should not have been placed under guardianships.

## Court Visitors

Utilization of a Court Visitor, or Guardian ad Litem (GAL), as an independent screener, when the Office of Public Guardian is nominated, assists the OPG to comply with the Public Guardianship Act's requirement that the guardianship/conservatorship is required and least restrictive; the extent of the powers of the guardian/conservator are necessary; and that there is no one else to serve as guardian or conservator for the potential ward but the Office of Public Guardian. This has assisted with correct utilization of OPG resources, identification of more appropriate individuals to serve as guardians, and

protection of the freedom of individuals who should not have been placed under guardianships. As described above, 16 cases of the 43 closed cases (37%) were a result of finding alternative guardians. The OPG has had 11 people serve as volunteer court visitors; 73 cases have had volunteer court visitors. These volunteers have provided 1,125 hours of assistance to the OPG, vulnerable adults and the courts in their roles.

Court Visitors and GALs are also providing screening to cases prior to placement on the OPG Waiting List. ***This pre-screening of Waiting List cases ensures only qualified wards are placed on the OPG Waiting List. It also guarantees when an OPG opening occurs, crucial information about the potential ward is available to choose the individual with the greatest need (hospice, exploited and abused individual, critical cases). Finally, with this information when openings occur decisions and acceptance from the Waiting List can proceed immediately.***

## **Financial and Court Processes**

The Office of Public Guardian continues to utilize a web-based case management system, EMS, for ward information, medical documentation, and financial management of individual wards' accounts. Through software development, information can be exported from EMS into Nebraska Probate Court Forms for Annual Reports. ***In total the OPG processed approximately 15,000 transactions in EMS for wards from 12/1/17 through 10/31/18: 4,600 receipt transactions totaling \$3.2 million, and 10,400 disbursement transactions totaling \$3.2 million.***

## **Private Guardianship Education**

In January of 2016, the Office of Public Guardian (OPG) began providing the education and certification required for newly appointed private guardians and conservators. The Public Guardianship Act requires the OPG to maintain training programs for private guardians, successor guardians, and interested parties to ensure successful guardians/conservators.

***Between December 1, 2017 through October 31, 2018, 102 Guardian/Conservator Education Classes were held in 25 sites throughout the state, training 1,294 new Guardians and Conservators.*** Assisting the Associate Public Guardians in training are volunteer attorneys who provide general legal information regarding guardianship and conservatorship in Nebraska. They have enhanced the quality of the educational experiences provided to new private guardians and conservators across the state. They have also helped ensure participants leave their classes armed with information and resources necessary to fulfill their responsibilities to their wards and to the courts.

## **Pilot Process for Waiting List**

Under the Public Guardianship Act, public guardianship and public conservatorship cases are managed by the Public Guardian. The Public Guardian is limited to an average ratio of twenty public wards or public protected persons. ***Neb. Rev. Stat. §30-4115 (2).*** When the average ratio is reached, the Public Guardian shall not accept further appointments. ***Neb. Rev. Stat. §30-4115 (3).*** Nebraska Court Rules state that when notified of the lack of caseload capacity by the OPG, a court may *request* a case be placed on the OPG Waiting List, as provided by the OPG. ***Neb. Ct. R. §6-1433.01 (D) and (J).*** The OPG, in discussions with the Advisory Council and direction by the Supreme Court, implemented a Waiting List procedure in 2018. The process requires a case to be screened by a Court Visitor or Guardian ad Litem who provides a written report prior to the OPG determining whether a case qualifies for the Waiting List. Individuals can only be on the Waiting List for a total of 180 days after which they will be removed



from the Waiting List. ***The removal of Waiting List cases after 180 days is due to the reality that a case that has been on the Waiting List for 180 days will likely not be chosen because more recent cases will be at a greater crisis level- terminal, critical medical condition, current exploited/vulnerable adult or an Emergency Temporary case that may be taken immediately when an opening arises.***

Determination of when a case is chosen from the Waiting List is at the direction of the Office of Public Guardian. Cases chosen are not “first on the Waiting List, first chosen”. Rather, the choice is made 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. Priority consideration is given to cases in which Nebraska Adult Protective Services has substantiated abuse, neglect, self-neglect and/or exploitation of a vulnerable adult and those potential wards with terminal and/or critical medical issues.

As of October 31, 2018 there have been 40 cases referred to the OPG Waiting List. Seven cases- 18% of those referred- were denied to the Waiting List: four had an alternative to the OPG appointed, one no longer needed a guardian, one OPG was no longer petitioned for appointed; and one the OPG was not the least restrictive.

Thirteen cases have been removed from the Waiting List as of November 1, 2018. **Six potential wards died while on the Waiting List**, one found an alternative to the OPG, and one ward was moved out of state. The others reached the 180 day maximum time to be on the Waiting List.

## “Neil’s” Story

The Office of Public Guardian was appointed to serve “Neil” in May of 2016 on an emergency basis. He had been hospitalized due to psychosis, depression, and malnourishment. He had been using drugs to self-medicate prior to his hospitalization, and had been chronically homeless. Neil was committed to inpatient treatment by the Board of Mental Health just prior to the filing of the petition for guardianship.

The same day the guardianship was ordered, the Board of Mental Health dropped the inpatient commitment and no follow up or outpatient commitment was ordered. On the same day, the hospital discharged Neil to a homeless shelter with nothing more than a follow up appointment at a “free clinic” for his medical needs. There was no community support, housing specialists, or post-discharge psychiatric treatment set up for him by the hospital. **The Associate Public Guardian (APG) assigned to Neil’s case argued for services to be set up, but the hospital sent him in a cab to the homeless shelter anyway.**

When the APG went to the homeless shelter to meet him, he wasn’t there. The APG called all of the other shelters in the area over a period of several days; no one had seen Neil. A missing persons’ report was filed but the police department was unable to locate him. Just over a month later, the APG received word that Neil had been treated and released from another local hospital to a supportive group home.

Finally, the APG was able to meet Neil and establish a rapport with him. The APG participated in team meetings, consented to treatment and placement, and worked on getting Neil approved for Social Security Disability as well as Medicaid and other economic assistance programs. He began attending Alcoholics Anonymous (AA) and Narcotics Anonymous (NA) meetings. Living a sober lifestyle started to appeal to Neil, and he embraced his recovery process.

Over the next two years, **Neil did the work necessary to recover from years of drug use, homelessness, and mental health crises. He reunited with his children and was able to travel by airplane to visit them on two occasions. With the support of his APG, case manager, and sober friends, Neil moved from a group home to a supported apartment.** He participated in Alcoholics Anonymous and Narcotics Anonymous meetings. He achieved long stretches of sobriety (with a few relapses along the way). He kept his appointments with his psychiatric providers, took his medications, and actively took charge of his own recovery. He was honest and forthcoming with the APG about his struggles. This enabled the APG to tailor services, change course, or find new ways to assist Neil.

During the fall of 2017, Neil began expressing confidence and a determination to terminate the guardianship. The APG remained neutral, but communicated with Neil’s psychiatrist and case manager. During the fall and winter months, the APG worked with Neil in more detail in regards to his finances, accessing community resources, and self-advocacy skills. Neil’s psychiatrist and case manager assessed his ability to make decisions, especially in areas of medical, residential, and financial decisions that were handled by the APG. Neil’s psychiatrist ultimately recommended the guardianship was no longer necessary and could be terminated. The Office of Public Guardian was discharged in April of 2018. Today, Neil remains sober, healthy, and well!

## **COMPILATION OF SYSTEMS ISSUES OBSERVED OR ENCOUNTERED BY THE OPG**

The Public Guardianship Act requires the OPG to: provide equal access and protection for all individuals in need of guardianship or conservatorship services;<sup>1</sup> safeguard the rights of individuals by supporting least restrictive manner possible and full guardianship only as last resort;<sup>2</sup> model the highest standard of practice for guardians and conservators to improve performance of all guardians and conservators in state;<sup>3</sup> and develop and adopt standards of practice and code of ethics for public guardianship and conservatorship services<sup>4</sup>. The OPG shares observations and encounters of system issues, and the actions the OPG has taken in regards to the issues.

Unfortunately, many systems issues discussed in the 2017 OPG Report remain in this reporting period.

Descriptions of those issues can be found more fully in the 2017 Report

[https://supremecourt.nebraska.gov/sites/default/files/Final\\_Office\\_of\\_Public\\_Guardian\\_Implementation\\_and\\_Data\\_Report\\_2017\\_.pdf](https://supremecourt.nebraska.gov/sites/default/files/Final_Office_of_Public_Guardian_Implementation_and_Data_Report_2017_.pdf)

### **General practice of guardianship appointments in Nebraska**

- Full guardianships rather than limited;
- No legal representation for potentially incapacitated persons;
- Petitions with affidavits with incomplete medical information;

### **Medical Issues**

- Hospitals that refuse to provide mental health treatment to individuals with developmental disabilities with mental illness who are a danger to themselves or others
- Hospitals and inpatient facilities discharge wards without appropriate discharge planning resulting in lack of adequate services, putting at risk the health and wellbeing of wards, including suicide.
- Medical treatment and discharge by hospitals without consent of APG
- Hospitals do not admit a ward, but hold (sometimes for days) for “observation” only- which then does not require hospital to provide discharge planning
- Confusion regarding treatment protocols under Do Not Resuscitate and Hospice
- Difficulty getting medical and mental health evaluations

### **Lack of appropriate services for individuals with mental health all along the continuum of care**

- Lack of options for individuals with severe, pervasive mental illness to obtain residential treatment for stabilization
- Lack of intensive treatment to avoid in-patient hospitalizations or for those discharged from hospital, residential facility
- Many assisted living and nursing home facilities refuse to take wards with a history of mental illness because of behavior issues.
- Lack of permanent supportive housing for individuals with mental illness.
- Nursing home and assisted living facilities with multiple licensure and regulation issues

**Difficulty accessing ward financial accounts with banks, financial institutions and credit agencies, despite Letters of Conservatorship.**

**Difficulties in obtaining Medicaid when a ward has been a victim of financial abuse through a family member and/or Power of Attorney**

**Increasing numbers of young adults appointed as wards to the OPG**

## Need for Options other than Guardianships

### **OFFICE OF PUBLIC GUARDIAN-Real Stories of Challenges Serving Wards in Nebraska**

#### **Metro Area- Mental health issues, lack of appropriate treatment and facility/living options**

Ward has a schizoaffective diagnosis. Has had childhood trauma and has mental capability of about a 12 year old. He has been successful at Mental Health rehabilitation facility and due to insurance (Medicaid) is now required to step down to a less intensive service. Lack of services for these individuals leads to only one option in the Omaha area even having an opening at this time. APG has great concerns for the ward living in this facility but the only other option is independent living which is truly not an option. The frustration *is lack of services for people with mental illness. Most of the homes that do take these individuals are not monitored for cleanliness and upkeep; are found to be mostly in disrepair, over-crowded and running on very tight budgets.*

#### **Non-Metro, Small Nebraska city- Mental Health/DD, exploited young adult, lack of housing, services**

OPG received the emergency case from APS due to reports of financial exploitation by his mother. Ward experiences Autism, schizoaffective disorder; Bipolar Type, and drug history. *Lack of services were available to address both his mental health/developmental disabilities which contributed to ward being in an unsupported living environments and in and out of psychiatric unit.* APG requested ward be taken into Emergency Protective Custody (EPC) to the hospital and applied for priority funding through Developmental Disabilities- funding was approved. Services were obtained through a Developmental Disability services provider and Ward was moved to a group home. Due to lack of mental health services and legal interventions within the community, Ward's behaviors became increasingly more violent. Law enforcement refused to EPC. APG attempted to have Ward admitted for psychiatric care but was repeatedly denied by physician overseeing psychiatric unit, because of his opinion individuals with developmental disabilities would not benefit from mental health treatment. APG and provider requested, and obtained, County Attorney involvement. Additionally, the Director of the Division Development Disabilities was contacted by OPG for assistance. The APG spent approximately 60 plus hours from 4/17/18 – 7/30/18 to get the ward into appropriate placement for his displayed behaviors and need for medication adjustments.

#### **Metro Area-Mental Health, Substance abuse, Homeless, lack of treatment options**

Ward has several mental health diagnoses and substance abuse issues. She was placed under emergency guardianship despite scoring 30/30 on a cognitive assessment. The court appointed a full guardianship on a permanent basis without additional testing or evidence. The ward has lost three children to foster care/ adoption due to her inability to care for them; refuses birth control. She has family who live out of state; they are in contact with her as she is able to call them but they refuse to be involved or become successor guardian. Ward has been banned and barred from most community-based housing, independent living, assisted living, and homeless shelters. *She lives in the homeless camps and has been sexually assaulted, beaten, and gone without food for several days at a time.* The ward has also gone five to six months without her psychiatric medications. Homeless Outreach does what they can, but she refuses most assistance from them as well from the APG. APG is unable to locate

her most of the time. Missing persons reports have been filed previously but police will not take action when they find her because she is known to live in the camps. The Board of Mental Health has committed her to inpatient treatment many times but the hospital discharges her back to the street after 48 hours; without a hearing on the petition. Hospital typically calls the APG only after she has been discharged by the hospital, without APG consent. The police have also EPC'd her several times but the hospital continues to discharge her to the street despite OPG's objections.

**Non-Metro Small Nebraska city- Mental Health, drugs, arrests, lack of treatment, housing,**

Ward was hospitalized due to mental issues and hospital scheduled a Mental Health Board Hearing. The day of the hearing, the hospital abruptly canceled it, indicating they were preparing to discharge ward. APG was concerned about her discharge being premature. In addition, ward is very non-compliant at assisted living facility, refuses support services being offered, and often refuses medications. APG spent 15+ hours trying to find ward another mental health provider situation or convince current one to continue to provide her care. APG was unsuccessful in finding appropriate treatment for ward and the hospital would not continue to treat her. Ward was released to assisted living facility. APG is concerned for ward's ***continuous cycle of becoming somewhat stable, but then begin a downward spiral as she skips medications, drinks and smokes pot, all of which cause her mental illness symptoms to intensify. She then deteriorates to the point where she will be arrested and hospitalized again.*** The assisted living facility where she currently resides has now given 30 days' notice for her to move out, as she is refusing to comply with anything they ask of her and is becoming aggressive and belligerent. With no support services available, ward will deteriorate more quickly. Ward needs mental health care that helps her until she is truly stabilized. She is cared for only until she is considered manageable, and then released. She has never been cared for in a manner that would allow her to reach her full potential.

**Metro Area- Mental Health/DD/ExFoster Child, lack of services, benefits, education,**

Nineteen year-old youth ages out of the foster care system without appropriate services wrapped around her. The ward experiences both mental health and developmental disabilities. Three applications and one appeal for Developmental Disability (DD) services failed before OPG became involved. Ward attended a Level Three Behavioral School that was going to let her graduate at the end of the 12<sup>th</sup> grade. ***Once she turned 19 she was taken out of the foster home and dropped into a mental health group home for adults, which did not appropriately meet all her needs. The ward allegedly was sexually assaulted at this placement.*** Once in OPG services, APG request the school provide transitional services. Services were denied. APG had her reassessed, again requesting services, and transitional services provided. APG applied for Social Security benefits and DD services. Once APG applied for, and qualified ward for DD funding, APG requested emergency funding, and requested a boost in funding for the provider to manage her dually diagnosed symptoms. Ward needed the transitional school services to keep her in a structured day setting until DD funding provides the ward day services once she turns 21.

Each step in this process was a huge obstacle, and included additional system difficulties requiring transferring the ward to a different school system.

### **Small Nebraska Town-Dementia, absconding from Assisted Living**

Ward experiences major Depressive Disorder and many, many issues with his physical health. Ward absconded from his assisted living facility, took his wife's RV, and started driving south. He had no money, no food, and no way of making sure he didn't run out of gas or food along the way. He didn't know the address of where he was headed. The local law enforcement in Nebraska had been contacted, but no missing person's report was filed because he was not considered a danger to himself or others. ***He made it across the Kansas state border and ran out of gas on a minimum maintenance country road. It was the middle of winter and the temperature was expected to reach the low 20's.*** Thankfully, someone drove up on the RV and he was still inside. Local law enforcement was called. The Kansas law enforcement contacted the Nebraska law enforcement and arrangements were made to transport ward. Law enforcements met at the border and transfer was made. Nebraska law enforcement took ward back to his facility. Both the facility and OPG strongly requested law enforcement to take ward into Emergency Protective Custody so he could be evaluated and perhaps not abscond again. Law enforcement refused. The OPG was able to admit ward into a behavioral health unit a couple days later.

### **Metro- Mental Health, Diabetes difficulty when refused to cooperate with transfer to hospital**

Ward is diagnosed with Schizophrenia, Bipolar Disorder and several other health related issues, including Diabetes. The Ward's mental illness is hard to treat due to being allergic to most psychotropic medications. The Ward was recently released from an institution and resides at a nursing home in a unit that specializes in behavioral health needs. Shortly after transitioning, the Ward began to refuse treatment and medications, including his insulin. Multiple options were tried but eventually the Ward stopped allowing the nursing staff to check his blood sugar levels, which created a serious medical issue. Because the Ward had stopped taking his psychotropic medication, his mental illness began to create even more issues, including extreme verbal aggression and delusional ideation that negatively impacted other residents. Consultation was done with a nearby hospital. The hospital agreed to take the ward to attempt to get him stabilized. The ward refused to leave the nursing home. The County Sherriff was contacted to have the Ward placed under Emergency Protective Custody (EPC) and transported to the hospital. ***The Sherriff's department would not assist, stating they would not be able to EPC an individual from one institution to another.*** APG made multiple calls to the County Attorney's office, the Sherriff's office, and the Ward's doctors. The County Attorney's Office stated it was ultimately the Sherriff's decision to determine if a person should be taken into EPC or not. Eventually, a written order was issued from the Ward's doctor for the use of sedation and restraints to assist with transporting the ward to the hospital. When the transportation arrived to take the Ward, he became physically aggressive towards the transportation staff, nursing staff, and APG. Two County Sherriff's Deputies were called to assist with getting the Ward transported. After several attempts, the Ward eventually was sedated and restrained to a gurney to be transported to the hospital.

### **Metro- Mental Health, substance abuse, diabetes, homeless, aggressive- lack of treatment**

Ward experiences schizophrenia and drug/alcohol addiction. Ward has very little family support due to distance and the severity of the ward's mental illness. Ward has been institutionalized, jailed, and homeless since the 1970's. Ward has been committed by the Board of Mental Health two times as inpatient and one time as outpatient. When ward is not supervised/monitored ward refuses to take her

medications for her mental illness and her physical health (diabetes and blood sugar). Ward complies when placed in inpatient facilities long enough to be discharged. Ward agrees to comply with wraparound services, but once discharged ward refuses services and medications. **Ward is then homeless due her explosive and aggressive behaviors, homeless shelters refuse to allow her to stay.** Ward's mental and physical health require daily, consistent monitoring by a health care professional. Ward is unable to make the appropriate decisions regarding her mental health needs or her physical needs. Ward's behavior has escalated to physical aggression of health care workers and Associate Public Guardians. Ward's behavior is so unpredictable, APG fears for her safety in the general population.

**Metro-Mental health, substance abuse, violence, criminal activity**

Ward experiences schizophrenia and drug/alcohol addiction. Lack of programs that address both mental health/addiction has contributed to ward being in unsupported living environments and in and out of jail. Jail systems rarely communicate well with guardians. This often results in court hearings being moved up at the last minute (without guardian notification), near immediate release from jail and no plan in place for where the ward will go upon release. In this situation the ward's history has resulted in refusal by local homeless shelters. **Most recently, the guardian spent 15 hours+ in one week (including emergency weekend hours) calling multiple providers to set up housing/treatment/transportation for a ward who un-expectantly released from jail (after months of incarceration) on a Sunday.** These services were ultimately found, however, not in the preferred location of the ward (near family).

***“The purpose of human life is to serve and to show compassion and the will to help others.”***

Albert Schweitzer

## **ADVISORY COUNCIL**

The Office of Public Guardian (OPG) is assisted by an Advisory Council, appointed by the Administrator of the Courts<sup>5</sup>, to advise the Public Guardian on the administration of public guardianships and conservatorships.<sup>6</sup> Members of the Advisory Council, shall be comprised of individuals from a variety of disciplines who are knowledgeable in guardianship and conservatorship, and be representative of the geographical and cultural diversity of the state and reflect gender fairness<sup>7</sup>. As required by the Act, the appointments of initial members of the Advisory Council were made within ninety days after January 1, 2015. Initial appointments were staggered terms of one, two or three years, as determined by the State Court Administrator; subsequent terms shall be for three years. In 2018 the Advisory Council added Beth Baxter as a representative of an advocate of a mental health system.

To view the members and read biographical information see:

<https://supremecourt.nebraska.gov/programs-services/office-public-guardian/associate-public-guardians>

The Advisory Council has been invaluable in assisting the OPG in developing policies and protocols to carry out the intent of the Public Guardianship Act. The statute requires the Council to meet four times a year. This dedicated group has met its statutory requirements through quarterly meetings throughout the year to provide thoughtful, insightful guidance to the OPG. Many members have also made their expertise available on an ongoing basis to the OPG outside of these regularly scheduled meetings. During 2018, the Council received updates on and offered feedback regarding the OPG financial management of the funds of wards and protected persons, new and ongoing OPG policies and procedures, personnel strategies for newly created and ongoing positions within the OPG, Court Visitor screening and report statistics, court rules, medical ethics, implementation of public guardianship and conservatorship processes, collective account court rules, guardian and conservator education, and communication with court personnel. The 2019 meetings of the Advisory Council are currently being scheduled.



## OFFICE OF PUBLIC GUARDIAN MULTI-DISCIPLINARY TEAM

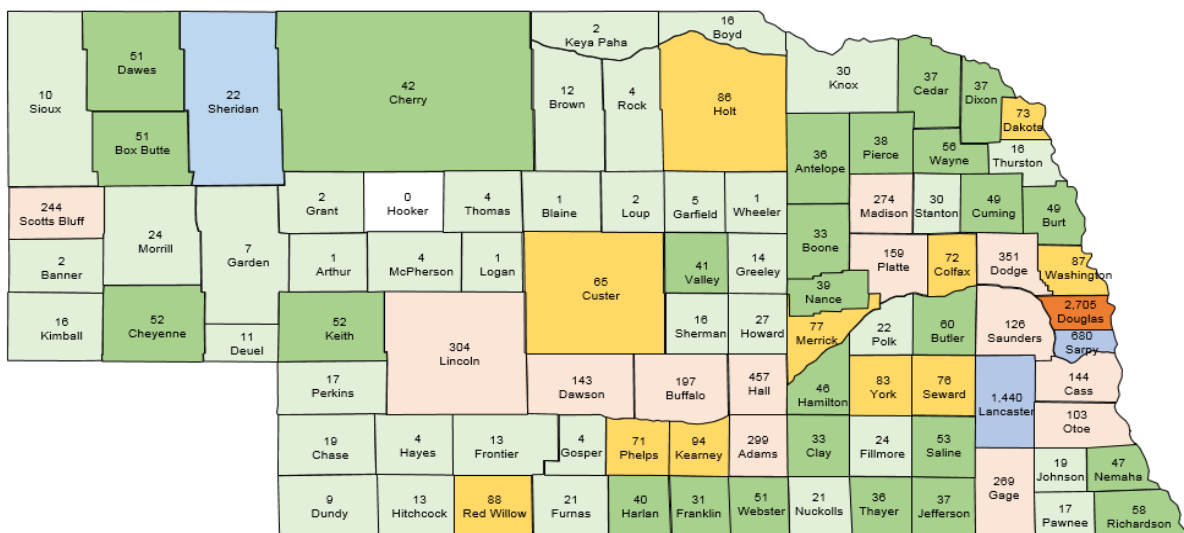
The OPG staff, outlined in statute, includes the Public Guardian as Director of the Office, a Deputy Director and a multidisciplinary staff including Associate Public Guardians, Legal Counsel, a Financial Operations Manager, an Education and Outreach Coordinator and Administrative Assistants.

<https://supremecourt.nebraska.gov/programs-services/office-public-guardian/associate-public-guardians>

## DUTIES OF THE OFFICE OF PUBLIC GUARDIAN

The Public Guardianship Act, Neb. Rev. Stat. §§ 30-4101 through 30-4118, outlines the responsibilities and duties of the Office of Public Guardian. The duties of the Public Guardian can be characterized by: responsibility for equitable appointment process (provided by the Court Visitor Program); direct service as public guardians and public conservators; maximizing resources and implementing effective financial and organizational management practices; facilitating model and best practices for services to wards and protected persons; providing education, support and education to all guardians and conservators in the state; and enhancing opportunity for recruitment of successor guardians/conservators in the private sector<sup>8</sup>.

### Nebraska Active Guardian/Conservator Cases: Probate Code - as of June 30, 2017

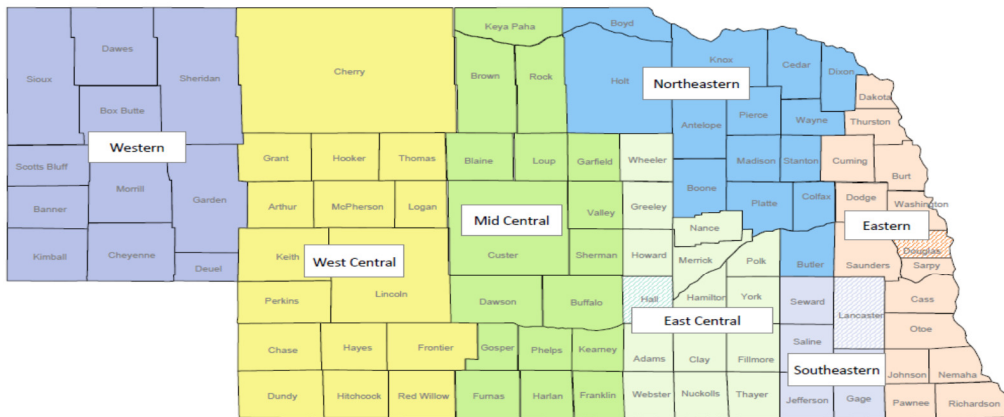


Total Cases: 10,405

- 1 to 30
- 31 to 60
- 61 to 100
- 101 to 500
- 501 to 2,000
- > 2,000

## OFFICES AND SERVICE AREAS

There are currently two office locations for the Office of Public Guardian (OPG). One office is in Omaha and houses seven Associate Public Guardians (APGs), two Legal Counsels (LCs), and a part-time Administrative Assistant that serve the Eastern area of the state. Three APGs share Lancaster County and the four surrounding counties. They are located in the OPG main office in Lincoln. All other APGs work from home offices located in their Service Areas. One LC serves Lancaster County and all remaining counties outside of the Omaha/Eastern area of the state along with some assistance from the Omaha LC's.



The counties of Hall, Lancaster and Douglas are shared between multiple Associate Public Guardians as a part of their Service Areas.  
Updated 11/22/2016

Panhandle: Scottsbluff/Gering - Banner, Box Butte, Cheyenne, Dawses, Deuel, Garden, Kimball, Morrill, Scottsbluff, Sheridan, and Sioux;

West Central: North Platte - Arthur, Chase, Cherry, Dundy, Frontier, Grant, Hayes, Hitchcock, Hooker, Keith, Lincoln, Logan, McPherson, Perkins, Red Willow, Thomas;

Mid Central: Kearney - Blain, Buffalo, Brown, Custer, Dawson, Franklin, Furnas, Garfield, Gosper, Hall\*, Harlan, Keya Paha, Kearney, Loup, Phelps, Rock Sherman, Valley;

East Central: Grand Island/Hastings - Adams, Clay, Fillmore, Greely, Hall, Hamilton, Howard, Nance, Merrick, Nuckolls, Polk, Thayer, Webster, Wheeler, York;

Northeastern: Norfolk - Antelope, Boone, Boyd, Butler, Cedar, Colfax, Dixon, Holt, Knox, Madison, Pierce, Platte, Stanton, Wayne;

Southeastern: Lincoln - Gage, Jefferson, Lancaster\*, Saline, Seward;

Eastern : Omaha, South Sioux City, Falls City - Burt, Cass, Cuming, Dakota, Dodge, Douglas\*, Johnson, Nemaha, Otoe, Pawnee, Richardson, Sarpy, Saunders, Thurston, Washington.

*\*Shared counties within Service Areas by multiple Associate Public Guardians*

# PUBLIC GUARDIANSHIP AND PUBLIC CONSERVATORSHIP NOMINATION AND APPOINTMENT

## Office of Public Guardian Court Rules

The Office of Public Guardian, in consultation with its Advisory Council, and in conjunction with the Forms, Court Rules and Statutes Subcommittee of the Commission on Guardianships and Conservatorships, worked together to develop and submit proposed amendments to the Uniform County Court Rules of Practice and Procedure and two new rules in accordance with Neb. Rev. Stat. § 30-4110 (2014).

<https://supremecourt.nebraska.gov/programs-services/office-public-guardian/court-appointment-process>

## PILOT: OPG Waiting List

Enacted by AOC and Supreme Court November 22, 2017

### INTRODUCTION

The Office of Public Guardian (OPG) is to serve as the public guardian and/or public conservator as last resort for vulnerable adults in Nebraska in accordance with the Public Guardian Act, **Neb. Rev. Stat. §§ 30-4101 to 30-4118**. Public guardianship and public conservatorship cases shall be managed by the Public Guardian through a caseload distribution of wards and protected persons taking into consideration: the identified needs of the service population; the complexity and status of each case; the geographical area covered by the public guardian assigned; the expertise of the OPG team member; the availability of services to support the guardianship and or conservatorship; organizational responsibilities of the team member and applicable legal requirements. **Neb. Rev. Stat. §30-4115(1)(c)**. The Public Guardian may accept an appointment as public guardian or public conservator for an individual not to exceed an average ratio of twenty public wards or public protected persons to each member of the multidisciplinary team. **Neb. Rev. Stat. §30-4115(2)**. When the average ratio is reached the Public Guardian shall not accept further appointments. **Neb. Rev. Stat. §30-4115(3)**.

In order to manage case load and case distribution assignments, the OPG has organized in geographic OPG Service Areas comprised of Nebraska counties with OPG personnel who provide guardianship/conservatorship management within the areas. The OPG may reach the maximum average ratio for an Associate Public Guardian in one service area, but not in others. Currently, the maximum case load and distribution capacity limit has been attained by some Associate Public Guardians within the Eastern and Southeastern OPG Service Areas. Accordingly, courts have begun to request cases be placed on an OPG Waiting List for future assignment of a public guardian/conservator when an opening occurs.

The OPG Waiting List Process (OPGWLP) Pilot has been developed in accordance with the Public Guardianship Act and Nebraska Court Rules, with input from the OPG Advisory Council, and final direction by the State Court Administrator.

The Public Guardianship Act does not specifically address the OPG utilization of a waiting list. However, the Act does direct that the OPG Annual Report include the status of the waiting list for public guardianship and public conservatorship services. **Neb. Rev. Stat. §30-4111**. In order to track, and accurately report those cases that legitimately meet the criteria for services by the OPG, the proposed OPG WLP reflects the Public Guardianship Act public policy directives that public guardianships and public conservatorships be last resort, least restrictive, provide only necessary services, and support individuals in the least restrictive manner possible.

Additionally, the OPG WLP complies with Nebraska Court Rules that a court may *request* a case be placed on the OPG Waiting List, as provided by the OPG. **Neb. Ct. R. §6-1433.01(D) and (J)**. Within ten days of the request the court will assign a court visitor or guardian ad litem to provide a report, on a form developed by the Supreme Court Administrator's Office, to assist the OPG fulfill its duties mandated by the Public Guardianship Act. **Neb. Ct. R. §6-1433.01(E) and Neb. Ct. R. §6-1433.02(F)(2)**.

The OPG WLP provides for a 90 day limit for placement on the Waiting List; allowing for subsequent requests for the case to be placed on the Waiting List again, subject to updated status information regarding the case. These requirements were included in the OPG WLP as a result of lengthy discussions with the members of the OPG Advisory Council. The Advisory Council was concerned that without a specific time limit, and a process for updated information outside of OPG's responsibility, the Waiting List would require ever expanding utilization of OPG time and resources to manage the hundreds of cases on the list; as well as heightened scrutiny, demands, and expectations of the OPG regarding the allocation of openings. The 90 day limit mirrors the time frame in temporary/emergency cases; and the requirement for updated reports, prior to repeat placement on the Waiting List, puts the burden for information justifying a request for a public guardianship or public conservatorship on the plaintiff who is requesting the appointment, rather than the OPG.

The criteria, under the OPG WLP for choosing a case from the waiting list or from an active emergency/temporary case when an opening for public guardianship/conservatorship occurs, seeks to align with case load and case distribution mandates, and the public interests undergirding the duties of the Public Guardianship Act. Those duties include the OPG to provide: immediate response in an emergency situation; an option, without a lapse in service, to a ward or protected person; equal access and protection for all individual in need of guardianship or conservatorship; and safeguard the rights of individuals by exploring all options available to support individuals in the least restrictive manner possible, and seek full guardianship only as a last resort. **Neb. Rev. Stat. § 30-4115 and Neb. Rev. Stat. 30-4105**. The limited resources of the OPG do not allow for full compliance with the duties listed for all cases and the OPG cannot meet all requests for public guardians and public conservators. However, the OPG Waiting List Process Pilot seeks to fulfill the public interests of OPG duties to: meet emergency needs, continue service for wards, provide equal access, give protection, safeguard individual rights, give least restrictive options and utilize public guardianship as a last resort. The Supreme Court has determined to initiate the OPG Waiting List Process as a Pilot Process through June 2018. While the June 2018 date has passed, the OPG WLP is still being implemented but is being reviewed to determine if any adjustments should occur.

## **“Ernie’s” Story**

The OPG had worked with “Ernie” for many years. He had a long history of mental illness including self-harm, depression, and addictive behaviors. After verbalizing multiple threats on his own life in the fall of 2017 Ernie was placed in Emergency Protective Custody. The hospital sought to discharge Ernie back to the assisted living facility he had been living in. Although the hospital deemed he was stabilized, the assisted living facility’s evaluation indicated an assisted living would not provide adequate supervision to assure Ernie’s safety. Ernie was transferred to a different facility in the Lincoln area where more consistent supervision would be available. Within three days, Ernie attempted to end his life by jumping into traffic from a bridge. Ernie survived this suicide attempt, although it resulted in several broken bones throughout his body. He underwent many surgeries. He transitioned from intensive to skilled care rehabilitation. Ernie did not receive mental health treatment while hospitalized or in rehabilitation services. However, during discharge planning the rehabilitation staff stated that Ernie was depressed and demonstrated suicidal ideation. The APG was also concerned about Ernie’s mental wellbeing due to his recent attempted suicide and his long history of suicidal thoughts. The APG requested an admission into the inpatient psychiatric unit of the hospital that had treated his physical injuries. Despite a documented history of modifying his interview responses to facilitate dismissal and concerns expressed by the APG, his direct care staff at the hospital, and Ernie’s family, he was discharged with a care plan for placement in a Supervised Assisted Living facility. He was discharged to the same facility he had lived prior to his suicide attempt. Tragically, within less than 24 hrs. Ernie had taken his life. Ernie’s denial of admission to intensive behavioral health treatment despite a long history of severe, pervasive mental health issues and suicide attempts resulted in his death. This lack of appropriate treatment for pervasive mental health issues is a problem seen by Associate Public Guardians across the state. The lack of care options between intensive locked units and community based assisted living facilities is a constant barrier to wards with severe, pervasive mental health needs- a lack of an appropriate level of treatment to address their needs.

*Justice will not be served until those who are unaffected are as outraged as those who are.”*

Benjamin Franklin

## **COURT VISITORS**

“Court visitors serve as the eyes and ears of probate courts, making an independent assessment of the need for guardianship/conservatorship.” National Probate Standards Commentary 3.3.4 Court Visitor

Utilization of a Court Visitor, or Guardian ad Litem, as an independent screener, when the Office of Public Guardian is nominated, assists the OPG to comply with the Public Guardianship Act’s requirement that the guardianship/conservatorship is required and least restrictive; the extent of the powers of the guardian/conservator are necessary; and that there is no one else to serve as guardian or conservator for the potential ward but the Office of Public Guardian. Court rules require the appointment of a Court Visitor or a Guardian ad Litem whenever the Office of Public Guardian is nominated for appointment.

The Office of Public Guardian recruits, screens, and trains volunteer Court Visitors, and provides appointed Guardians ad Litem with information to assist the Office of Public Guardian in complying with the Public Guardianship Act.

### **Court Visitor Education - Overview**

The Office of Public Guardian (OPG) orients new Court Visitors in the use of the Court Visitor screening tool (CC 16:2-93S) and the Court Visitor or Guardian Ad Litem Report form (CC 16:2-93). Each Court Visitor completes a five hour on-line introduction and orientation to guardianship/conservatorship. Upon completion of the on-line modules, the court visitor completes approximately six hours of classroom orientation to the Court Visitor process.

Upon completion of the Court Visitor orientation process, new Court Visitors indicate which County Courts they are willing to serve. This list and contact information is made available to Clerk Magistrates in each of the counties where the Court Visitor has agreed to serve. At times, when no local Court Visitor is available to serve, a request is made to the statewide Court Visitor group to consider serving on a case outside their catchment area.

### **Volunteer Court Visitors**

- 11 Volunteer Court Visitors were available to serve courts during 2018.
- 73 2018 Open OPG cases were served by Volunteer Court Visitors
- 15 Average number of hours worked by a Court Visitor per case
- 1125 Volunteer Court Visitor hours contributed to 2018 Open OPG cases

### **Guardians Ad Litem Appointed to Complete Court Visitor Reports:**

- 8 - OPG Court Visitor trained attorneys were available to serve courts during 2018
- 32 -2018 Open OPG Cases served by OPG Court Visitor trained attorneys
- 30 -Court appointed Guardians ad Litem were emailed Court Visitor Report tutorial, and forms necessary to complete the Court Visitor process in 2018

### **OPG Waiting List – Court Visitor Appointments:**

The OPG waiting list process has been accessed by 40 individuals since its inception. Court Visitors are appointed to serve in each case.

- 4 cases served by volunteer Court Visitors
- 11 cases served by attorneys who have completed the Court Visitor Orientation
- 20 cases served by GALs who have received forms & tutorial from the OPG
- 5 cases not assigned a Court Visitor
- 43% of the OPG waiting list cases appointed Court Visitors were served by Court Visitors trained by the OPG.

**Summary of Individuals Trained by the OPG as Court Visitors:**

- 52 individuals have completed the 11 hour Court Visitor Curriculum provided by the OPG
  - 7 individuals completed Court Visitor Orientation & chose not to serve
  - 11 individuals completed Court Visitor Orientation & served 1-2 cases
  - 9 individuals completed Court Visitor Orientation & served 3-10 cases
  - 6 OPG interns completed Court Visitor Orientation & chose not to serve
  - **19 individuals who completed Court Visitor Orientation continue to serve courts**

## **“Jamal’s” Story**

Prior to guardianship, Jamal sustained multiple injuries in a single vehicle accident where alcohol and speed were suspected. As a result of the accident, he experienced paraplegia, traumatic brain injury (TBI), and other medical issues. After a series of surgeries and a long hospitalization, Jamal was discharged to a rehabilitation center for continued physical, occupational, and speech therapies.

While at the rehabilitation facility, Jamal began displaying verbal and physical aggression consistent with traumatic brain injury (TBI), and refusing assistance with activities of daily living. Jamal developed multiple bedsores and refused medical care; he was hospitalized but subsequently the rehabilitation facility “dumped” him as patient, refusing to allow him to return. Based on a psychiatric assessment indicating Jamal lacked insight into the severity of his medical situation and could not provide informed consent for treatment, the Office of Public Guardian was nominated and appointed on an emergency basis.

The OPG would later discover Jamal’s medical and psychiatric assessments did not take into consideration his cultural values and beliefs: he was a naturalized citizen, English was not his first or second language, and his faith background did not acknowledge mental health issues. While these factors are not excuses for his behavior or actions, they are important considerations as to his frame of mind and his ability to fully engage in the assessments to determine his decision making capacity.

Upon appointment as emergency guardian, the APG consented to life-saving medical treatment. New rehabilitation placement was obtained for continued therapies. Unfortunately, Jamal’s aggressive behavior continued and worsened over time. The APG pushed for Jamal to receive psychiatric treatment, as well as more specialized supports due to the TBI and cultural background; the second facility’s follow through was poor. Jamal continued to display verbal and physical aggression towards the staff. The second rehabilitation facility took him to a different hospital ER, let him out of the van and “dumped” him. Before that hospital could admit him for treatment, Jamal fled utilizing public transportation to go to his apartment, which was being held for him while he completed rehabilitation after his accident. The apartment was not accessible to accommodate his physical disabilities nor equipped to meet his needs. He could not access the toilet, had no food, and slept on a mattress on the floor.

The APG worked tirelessly to try to get him re-hospitalized. Jamal refused hospitalization and local authorities/EMTs would not take him despite the guardianship being in place- Jamal was deemed by the court he did not have the capacity to make his own medical decisions. The APG called APS to request assistance, however, because there was a guardian in place working to provide services, APS did not find him to be a vulnerable individual. The APG cleaned Jamal and provided him clothes and food. He still refused to voluntarily go to the hospital. A neighbor agreed to look in on him. The APG called the police to do a well check on him during the weekend, which occurred but- again Jamal refused assistance. After the weekend, due to Jamal’s physical deterioration and the development of bed sores, the APG called a private ambulance company who agreed, despite his protests, to transport him to the hospital.



Once at the hospital, the APG spent many hours making sure that Jamal was readmitted to the hospital and later discharged to an appropriate facility. It was during this time that the OPG learned that the local police/EMTs had contacted APS, not to report that there were two local facilities who had engaged in patient dumping, but to investigate the APG for neglect- for not obtaining services for him during the weekend. The OPG had been working tirelessly to get Jamal the assistance he needed, but the very entities that had refused to help the him were now accusing the APG being responsible for his situation. Ultimately, the allegations were dismissed as unfounded, but the facilities who engaged in patient dumping were never held accountable.

The APG was eventually able to get Jamal discharged to a third rehabilitation facility, which worked with the APG to develop an appropriate care plan, provide therapies needed, and continue to assess his psychiatric needs. The APG worked with housing to obtain an accessible apartment and reassured Jamal that if he cooperated with services the goal was to get him independent enough to live on his own.

At the time the petition for emergency guardianship was filed a petition for permanent guardianship had also been filed. When the permanent guardianship was adjudicated, Jamal contested it; and was appointed an attorney to represent him. Subsequently, Jamal was reassessed for incapacity- taking into consideration his language of origin and cultural difference. Jamal's assessments indicated he had regained the capacity to make his own decisions, and the permanent guardianship was denied. Jamal moved into his own apartment and the OPG was terminated as his emergency guardian.

## ANNUAL REPORT DATA

The Public Guardianship Act requires the Office of Public Guardian (OPG) to “Report to State Court Administrator, Chief Justice and Legislature on the implementation of the Act on or before January 1 each year.”<sup>9</sup>

The following information is current as of **November 1, 2018**. (\*The statute states “appointed”, the data includes nominations and appointments currently being served in the OPG Pilot program that began November 9, 2015.)

### OPG OPEN CASES

**Total: 259**

#### FULL

##### Guardianships

Full guardianships	87 non-emergency
Successor guardianships	74 non-emergency

##### Conservatorship

Full conservatorship	1 non-emergency
Successor conservatorships	2 non-emergency

##### Guardian/Conservatorships

Full guardianship/conservatorship	35 non-emergency
Successor guardian/conservatorships	41 non-emergency

#### LIMITED

Limited guardianships	6 non-emergency
Limited conservatorship	0 non-emergency
Limited guardianship/conservatorship	2 non-emergency

#### TEMPORARY

Temporary guardianships	7 emergency
Temporary conservatorship	0 emergency
Temporary guardian/conservatorships	4 emergency

## **Disposition of cases between December 2016-November 30, 2017**

**Nominated**      166 Nominations

**Appointed**      24 current non-emergency guardian and/or conservatorships,  
                          9 emergency guardian and/or conservatorships  
**33 Total**

**Pending**        4 non-emergency cases,  
                          4 emergency 5 permanent nominations pending next step, 1 temp nomination-pending  
                          next step due to no capacity filed with the court

Referred to Waiting List 19 emergency, 38 non-emergency

**Closed**         **62 Total**

Termination of G/C case            1 Emergency, 1 non-emergency

Termination of OPG after appointment- Successor Guardian/Conservator appointed- 3 Emergency, 3 non-emergency

Termination of case due to death of ward-Emergency 6, non-emergency 7

Alternative to OPG Guardian/Conservator prior to Appointed- 2 Emergency, 11 non-emergency

No Capacity and closed, OPG denied- Emergency Nominations 13, non-emergency nominations 15

**WAITING LIST STATUS-** listed in separate chart

### Non-Emergency and Emergency Nominations by County

The information below lists data gathered for both non-emergency and emergency Office of Public Guardian (OPG) nomination cases. The cases are for nominations received from December 1, 2017 through October 31, 2018.

### Non-Emergency Cases

The Office of Public Guardian (OPG) has been nominated for a total of 104 non-emergency cases as of October 31, 2018.

The following table represents the 104 non-emergency appointments and pending appointments by county. The status of the type of nomination (full vs. limited, guardianship, conservatorship, or both guardianship and conservatorship).

County	Full	Limited	Guardianship	Conservatorship	Both Guardianship and Conservatorship
Adams	3		2		1
Chase	2				2
Dawson	4		3		1
Dodge	1		1		
Douglas	48		44		4
Hall	4		4		
Harlan	2				2
Holt	1		1		
Kimball	1				1
Knox	1		1		
Lancaster	20		15		5
Lincoln	2		2		
Madison	1		1		
Otoe	1				1
Phelps	1				1
Pierce	1				1
Polk	1		1		
Red Willow	1		1		
Sarpy	4				4
Scotts Bluff	2		1		1
Webster	1		1		
York	1		1		
<b>Totals</b>	104				

### Emergency Cases

As of October 31, 2018, the Office of Public Guardian (OPG) has been nominated for a total of 62 emergency cases so far.

The following table represents the 62 emergency nominations/temporary appointments by county. The status of the type of nomination (guardianship, conservatorship, or both guardianship and conservatorship) is depicted in the chart. Emergency appointments are limited to address the emergency situation.

County	Temporary Guardianship	Temporary Conservatorship	Temporary Guardianship and Conservatorship
Adams			1
Chase			1
Dawson	1		
Douglas	31		2
Greeley	1		
Hall	2		
Harlan			2
Lancaster	14		2
Pierce			1
Polk	1		
Scottsbluff	2		
York	1		
Total	53		9

### Waiting List Cases

As of October 31, 2018 there have been 40 cases referred to the waiting list. The graph below shows the status of those referrals as of October 31, 2018. Ten cases are in the process of receiving a Guardian ad Litem or Court Visitor report to make the determination as to whether or not the case will be placed on the waiting list.

Eleven cases are currently in the 90 day waiting period for either their 1<sup>st</sup> or 2<sup>nd</sup> referral.

Seven cases have been denied to the waiting list. Of those seven, four have had an alternative to OPG appointed. In one case the guardianship was no longer needed. In one case, the OPG was not least restrictive and another, the OPG was no longer being petitioned for appointment.

Thirteen cases have been removed from the waiting list. of those cases, six were removed due to death. One was removed due to a motion to move the ward out of state. One as removed due to an alternative to OPG being appointed. The remaining five were removed due to the OPG not having capacity after the 90 day time frame. Two of the cases removed from the waiting list have been on the waiting list for two 90-day time frames. Once notice of removal had been filed, the petitioning attorney motioned the court to continue placement to waiting list and subsequent hearings were scheduled.

County	Referral To WL	Accepted To WL	Denied To WL	Removal From WL	Accepted From WL
Douglas	7	7	5	7	0
Dawson	1	0	0	0	0
Dodge	0	0	0	1	0
Knox	0	0	0	1	0
Lancaster	0	2	2	4	0
Sarpy	2	1	0	0	0

### Closed Cases

As of October 31, 2018, 68 of the Office of Public Guardian open cases were closed. Thirty-seven nomination cases were closed. Forty-one cases that were open or being worked were closed.

The following table represents the closed cases by county. The reason the case was closed is depicted in the chart by county.

County	Deceased	Court Denied Guardian/Conservatorship	Court Terminated	Alternative To OPG
Totals	32	27	3	16

**Court Denied Guardian/ Conservatorship is defined as not having capacity or the court determined that the guardianship/conservatorship was no longer needed after temp appointment established or prior to the OPG being appointed.**

**Court terminated guardianship/conservatorship is defined as a after the guardianship/conservatorship was established it was no longer needed.**

**Alternative to OPG is defined as after OPG being appointed as Temporary guardianship/conservatorship a private party was able to serve, or prior to OPG being appointed a private party was able to serve.**

### Ward Language

Over the past year, the OPG has served five individuals whose primary language was not English. Two individuals speak Spanish, one person speaks Arabic, one person speaks Sudanese, and one person speaks Vietnamese. This has required the use of interpreters to ensure the OPG is meeting the needs of these individuals.

### Current General Conditions of Wards/Protected Persons

As of October 31, 2018, there were 259 open cases in the Office of Public Guardian (OPG). Of those, 212 were permanent/ongoing appointments and 25 were temporary appointments. Twenty-four cases were in a “pending” status, meaning there had been a non-emergency nomination for the OPG to serve an individual, but the OPG had not yet been appointed by the court to serve the person. There were also 68 cases closed.

The following chart depicts a snapshot of data as of October 31, 2018. Specifically, this data tracks general conditions of people served by the OPG without specifying diagnoses as well as any involvement with the criminal justice system or commitment by the Mental Health Board.

Because a ward or protected person may experience more than one type of category or condition, one will note that the totals under categories and conditions do not add up to the total number of wards/protected persons served within each quarter. Instead, all categories and conditions which a ward/protected person experiences are indicated.

Categories of Experiences/Conditions	Number of individuals with this condition as of October 31, 2018*		
	*includes both open and pending cases (259 total)		
	Non-Emergency* *includes both open and pending cases (248 total)	Emergency* *includes only open temporary cases (11 total)	Total
Cognitive Impairment	142	4	146
Mental Health Diagnosis	192	9	201
Developmental Disabilities	74	0	74
Substance/Alcohol Abuse	83	2	85
Medical Condition	135	8	143
History of Criminal Involvement	49	2	51
History of Mental Health Board Commitment	31	0	31
<b>Totals</b>	<b>706</b>	<b>25</b>	<b>731</b>

## **“Marie’s” Story**

Marie was born in 1922 in Rushville, Nebraska. Marie worked in the medical records department at a couple of local hospitals for many years. She never married and lived with her mother until her mother’s death. She was a devout Catholic and belonged to many clubs in the area. Marie was very savvy with her money and investments. She was securing her future and it paid off when she needed to seek care in a nursing facility.

Since Marie was such a strong, independent woman, she had a hard time accepting that her body and mind began failing her. Marie started experiencing memory issues along with falling. As she began falling in public, she was taken to the hospital a few times. Finally, after her last fall she was transported to the hospital where the hospital determined she was not safe on her own. A report of a vulnerable adult was made to Adult Protective Services.

Adult Protective Services contacted the Office of Public Guardian and initiated an emergency guardianship appointment. An emergency guardian was required to obtain placement for Marie because her memory and fall status would not allow her to return safely to her home. The APG was able to get Marie admitted into a local nursing facility. Marie was agreeable with this placement as she had volunteered there in the past.

After the OPG was appointed as permanent guardian and conservator, the OPG began gathering and securing Marie’s assets. Due to Marie’s memory impairment, she was a poor historian. APG connected with the only local family member of Marie’s, her cousin. Her cousin was able to help APG with some basic family history.

**Marie was proud of the home she lived in prior to her needing care in the nursing home. Her home had been the family home for several generations.** The APG reassured Marie her belongings would be well taken care of at her home. Unfortunately, with Marie’s memory impairment, she wasn’t much for conversation during the APG’s visits. She didn’t remember what she ate for meals, if anyone visited, what activities she had participated in, but she did know that she was well taken care of and liked it there. To the APG’s surprise, Marie never asked or tried to go home.

As her dementia progressed, Marie started to eat less and less, she started to lose weight despite interventions put into place. She suffered a devastating stroke. Hospice services were brought in to keep Marie comfortable and she passed without pain a few days later- 18 months after becoming an OPG ward. Subsequently, the APG worked with her cousin and planned the Catholic mass and funeral that we believed Marie would have planned for herself.

Marie is an example of how “ordinary”, hardworking Nebraskans can get to the place in their lives where the services of the Public Guardian are necessary- people who reach the end of their life alone and in need.



## **OFFICE OF PUBLIC GUARDIAN ADMINISTRATION AND MANAGEMENT SYSTEMS**

### **OPG Financial transactions**

The OPG issued 4,502 checks from EMS, totaling \$1,843,104 from 12/1/17 to 10/31/18. The OPG continues to enter all EMS checks into Union Bank and Trust's (UBT) online positive pay site. This notifies UBT of any checks that have been written from the collective account, and UBT will match the file against any checks presented for payment. When a check is presented to UBT for payment and it was not entered on the positive pay site, the bank will email an exception notice to the Director, Deputy Director, and Financial Operations Manager, who will review the transactions before approving or denying the exceptions.

The OPG is currently exporting ACH (automated) transactions from the EMS system and importing them into UBT's Web Cash Manager application. This file allows transactions to be processed via ACH and provide a less expensive option than writing and mailing checks. Approximately 5,700 ACH transactions, totaling \$1,364,000 were processed from 12/1/17 to 10/31/18.

In total, the OPG processed more than 15,000 transactions in EMS from 12/1/17 to 10/31/18. This includes approximately 4,600 receipt transactions, totaling \$3.2 million; and 10,400 disbursement transactions, totaling \$3.2 million.

### **Social Security**

The Office of Public Guardian (OPG) completed its first application to become an organizational representative payee in November 2015 in a face-to-face interview at the Lincoln Social Security office. Applications are completed by the Associate Public Guardians, reviewed by the Financial Operations Manager, and faxed to the Social Security office in Lincoln. A representative from Social Security calls the OPG to verify all information in the application prior to approval. The OPG continues to work with key contacts in the Lincoln Social Security office to resolve issues related to Social Security applications and benefits. Since the inception of the OPG, we have been selected as payee for 225 SSA beneficiaries. During the period 12/1/17 through 10/31/18, the OPG was selected as payee for 60 SSA beneficiaries.

### **Veterans Administration**

The Office of Public Guardian served as fiduciary payee for fourteen individuals in 2018. Office of Public Guardian representatives are in contact with Veterans Administration representatives as needed to establish fiduciary status and address concerns.

### **Sliding Fee Policy**

The Public Guardianship Act requires the Office of Public Guardian (OPG) to develop guidelines for a sliding scale of fees for public guardians/conservators.<sup>10</sup> The Advisory Council and the OPG developed the following sliding fee policy:

Ward, within the Public Guardian Sliding Fee Scale document, means a minor, protected person or an incapacitated person.

All Public Guardian wards shall be evaluated by the OPG to determine fee eligibility. Evaluation of each ward's estate shall be done prior to the filing of the initial inventory in their case.

The Public Guardian shall petition the court with jurisdiction of the guardianship and/or conservatorship for assessment of fees.

The Public Guardian shall not petition for fees where financial hardship to the ward would result. Financial hardship means that the total value of liquid assets of a living ward would fall below \$5,000 or the ward's estate would otherwise be inadequate to provide or obtain care, assistance, education, training, sustenance, housing, treatment or other goods or services vital to the wellbeing of the ward or his dependents, resulting in the risk of harm to the ward or the ward's dependents.

Liquid Assets means the portion of a ward's estate comprised of cash, negotiable instruments, or other similar property which is readily convertible to cash and has a readily ascertainable fixed value, including savings accounts, checking accounts, certificates of deposit, money market accounts, bonds, publicly traded stocks, or other negotiable securities, and mutual fund shares.

No fees for guardianship and conservatorship services shall be assessed on estates smaller than \$5,000. If the ward's estate is \$5,000 or more at any time during the month, the Public Guardian is entitled to their fee unless it would create a financial hardship for the ward.

Any time, based on exigent circumstances, the Public Guardian may petition the court for additional fees.

Fees shall not be assessed on income or support derived from Medicaid, Supplemental Security Income, or Public Aid. Income or support derived from Social Security and Medicare shall be subject to Public Guardian fee assessment unless the funds have been expressly earmarked for another purpose.

The Public Guardian may waive fees where no substantial guardianship and/or conservatorship services have been provided to the ward.

Notice of the Request for Fees shall be given to the ward and all interested persons at least 14 days prior to the hearing. The notice shall advise the ward that his/her estate will be charged for guardianship and/or conservatorship services.

All wards with liquid assets valued at five thousand dollars (\$5,000) or more on the date that the Office of Public Guardian is appointed shall be assessed a one-time case opening fee for establishment of the case by the Office of Public Guardian. The rate of the case opening fee shall be:

Opening fee for Guardianship .....\$100.00  
Opening fee for Conservatorship .....\$200.00  
Opening fee for Guardianship and Conservatorship ..... \$300.00

Guardianship and Conservatorship Monthly fee based on Total Value of Liquid Assets shall be:

\$5,000 - \$9,999 .....\$40.00  
\$10,000 - \$14,999 .....\$45.00  
\$15,000 - \$19,999 .....\$50.00  
\$20,000 - \$24,999 .....\$55.00  
\$25,000 - \$29,999 .....\$60.00

\$30,000 - \$34,999 .....	\$65.00
\$35,000 - \$39,999 .....	\$70.00
\$40,000 - \$44,999 .....	\$75.00
\$45,000 - \$49,999 .....	\$80.00
\$50,000 - \$54,999 .....	\$85.00
\$55,000 - \$59,999 .....	\$90.00
\$60,000 - \$64,999 .....	\$95.00
\$65,000 - \$69,999 .....	\$100.00
\$70,000 - \$74,999 .....	\$105.00
\$75,000 - \$79,999 .....	\$110.00
\$80,000 - \$84,999 .....	\$115.00
\$85,000 - \$89,999 .....	\$120.00
\$90,000 - \$94,999 .....	\$125.00
\$95,000 - \$99,999 .....	\$130.00
\$100,000 and above .....	\$135.00

During the period 12/1/17 to 10/31/18, the Office of Public Guardian collected guardianship fees from 28 wards, totaling \$15,490.

**Enable Accounts**

As of 9/30/18, the Office of Public Guardian managed 36 Enable accounts totaling \$149,454.

**Audit**

The Public Guardian performs periodic audits of financial and bank records to ensure funds are not used for the benefit of someone other than the ward or protected person and loans of any type are not made from funds. This is completed during the monthly bank reconciliation, when the reconciler reviews all cleared checks on the bank statement for propriety and investigates any unusual transactions. In addition, the Financial Operations Manager periodically runs and reviews receipt/disbursement reports in the financial case management software and investigates any unusual transactions. At least every three years, an external audit of client financial records will be conducted. If the Public Guardian is audited by a governmental or funding entity, that audit may be considered to meet this requirement, as long as the entity is independent of the agency managers or Advisory Council.

## **LEGAL COUNSELS**

The addition of Legal Counsels are a result of the passage of LB 934 (2016) introduced by Senator Colby Coash. Legal Counsels have the ability to serve as both Associate Public Guardian in times when additional coverage is needed to address ward needs and provide legal assistance for issues arising within the Office of Public Guardian (OPG) guardianships. This includes providing legal advice to inform OPG Associate Public Guardians' decision making and court actions that benefit OPG wards and protected persons, including motions to terminate and limit guardianships.

The Public Guardian, Deputy Public Guardian and Legal Counsels will act in compliance with Neb. Rev. § 30-4104 "(3) An associate public guardian legal counsel shall be an attorney licensed to practice law in Nebraska. The deputy public guardian shall be an attorney licensed to practice law in Nebraska unless the State Court Administrator directs otherwise" and "(4) Legal representation provided by the Public Guardian, deputy public guardian, and associate public guardian legal counsel shall be limited to representing the Public Guardian and his or her designees in the roles and responsibilities of a court-appointed guardian or conservator in accordance with the Public Guardianship Act."

### **Legal Action Data (December 2016 – November 2017)**

Legal Counsels and the Deputy Public Guardian attended 223 court hearings regarding actions involving ward and protected persons under the Public Guardianship Act.

Type of Motions drafted or responded to:

- Motion for GAL or Attorney Fees (to be paid by the County or the ward or unclear in the Motion)
- Motion to Continue
- Motion for Psychological Evaluation
- Motion to Proceed In Forma Pauperis
- Motion to Make More Definite and Certain
- Motion to Dispose or Sell Real Property
- Motion to Dispose or Sell Automobile (Mobile Home)
- Motion to Withdraw as Counsel
- Motion to Withdraw as Guardian ad Litem
- Motion to Dismiss
- Motion to Attend Hearing by Phone
- Motion to Terminate Guardianship/Conservatorship
- Motion for Approval of Final Accounting
- Motion for Approval of Annual Accounting and/or Fees
- Motion to Deposit Funds with the Court
- Motion for Access to Accounts
- Request by alleged incapacitated person to Appoint Counsel

Types of legal advice to Associate Public Guardians:

- Complaint procedure against hospitals and facilities
- How to respond to attorneys, Judges, Court Visitors
- Case specific discussion for drafting Associate Public Guardian (and other advocates) affidavits
- General information as to court procedures and legal terminology
- Review and discussion of contracts on behalf of the wards
- Case specific discussion for drafting of demand letters on behalf of the wards
- Case specific discussion to determine when in need of outside legal counsel and to make a request to Director of the Office of Public Guardian
- Case specific discussion to determine if it is necessary to obtain a protection order on behalf of the wards
- Case specific discussion for steps to take leading to dismissal or objection to Office of Public Guardian appointment (and Court Visitor Report)

## RECRUITMENT AND SUPPORT FOR SUCCESSOR GUARDIANS

Once the Public Guardian is appointed as guardian or conservator, the office shall make a reasonable effort to locate a successor guardian or successor conservator. Neb. Rev. Stat. § 30-4114 (1)

### Successor Guardian Recruitment processes:

- Presentations in 102 Guardian/Conservator Education classes in 2018, highlighting need for private Guardians/Conservators, and request for feedback if new Guardian/Conservator expresses interest in the Successor Guardian/Conservator effort.
- Presentations to 15 service groups and organizations addressing the need for successor guardians and conservators, and offering opportunities to volunteer as successor guardians and conservators.
- Relatives & Friends Project:
  - Used reports pulled from our EMS software, created spreadsheet with potential personal network connections in each active ward's file.
  - Generated list of approximately 500 contacts.
  - Conducted interviews with each APG regarding the potential of each entry in spreadsheet to be considered as a successor guardian for the ward.
  - Filtered list to approximately 80 relatives and friends for 53 individuals who might potentially be eligible, available, and approachable about becoming a successor guardian for their relative or friend.
  - Launched process of obtaining contact information for each potential individual to be approached regarding successor guardianship
  - Developed initial communication which included:
    1. Description of the successor guardians' project
    2. Rational for project:
      - Statute requirement & temporary nature of OPG appointment.
      - Guardianship being a personal network responsibility (10,000 family members serve in Nebraska)
    3. Description of supports by OPG to facilitate transition process
      - a. Guardian/Conservator Education
      - b. Obtaining background checks
      - c. Case Transition support
      - d. Legal Filing support
  - Initiated personal contacts after correspondence describing successor guardian project.

### Successor Guardian Data:

- **13** Alternate Guardians located after the OPG was nominated to serve but prior to an OPG appointment. The Court Visitor/Guardian ad Litem interview process has been a key factor in locating alternate guardians after the OPG has been nominated to serve.
- **4** Successor Guardians were located after the OPG was appointed as Temporary/Emergency guardians or conservators but prior to OPG being appointed permanently. These individuals were usually identified within the ward's personal network.
- **1** Successor Guardian was located for a ward after the OPG was appointed as permanent guardian

- **10** individuals have expressed interest in learning more about successor guardianship through recruitment efforts, and have been provided with information about the need for and responsibilities of permanent guardianship and conservatorship.
- **5** Individuals from the public, who have initially expressed interest, have continued to pursue the process ( meeting potential ward matches, and familiarizing themselves with wards and their stories, preparing background checks and completing Guardian/Conservator Education classes)
- **3** Individuals who initially expressed interest in exploring the possibility of becoming a successor guardian, withdrew from the process. Individuals who are initially interested in successor guardianship express concerns about the long term legal nature of such a commitment (“till death do us part”). They also are concerned about their own ability to meet the guardianship needs of individuals with high, complex needs. The fear of “biting off more than they can chew” in a situation where they would make a personal and a legal commitment is daunting.

## Pastor “Mark’s” Story

It is said we are all one event, decision, diagnosis, or tragedy from a completely different life.

Mark made a decision many of us would do in our own lives- he trusted a family member to handle his finances. Mark had done everything right- he had investments, a pension, Social Security, annuities, long term care insurance, health insurance, and a pre-paid burial plan. As he aged, he was slowly convinced to turn over his assets to his only grandchild. She liquidated his assets, stopped paying his bills, had his checks deposited into her accounts, and took out multiple lines of credit in his name. His long term care insurance lapsed, his doctors would no longer see him due to unpaid bills, and his credit was destroyed. He was tens of thousands of dollars in debt. Mark lived with his granddaughter who was supposed to be his caregiver. She was using his money to fund her drug habit. She failed to get him medical care and stopped filling his prescriptions so she could use that money for drugs. They were often evicted- it was not uncommon for Mark to return home to find the locks changed with their belongings inside. **Over time, all of his personal possessions were lost. He had no family photos, important documents, or family heirlooms.**

Mark was a retired minister who came to the OPG as an emergency nomination in June of 2016 after he was identified as a vulnerable adult by APS. Over time, the OPG was able to get him enrolled with Medicaid, pay off old debts to medical providers so they would see him again, and ensure his wishes for burial were financed. The OPG was able to locate a local vendor who would visit him in his nursing home so he could be fitted for a suit to alleviate his concern that he would not be dressed appropriately for his own funeral after officiating funerals for so many others as a minister. Mark was thrilled to have the OPG as his guardian and was always very interested in how the office worked. On multiple occasions, he invited his assigned guardian to come speak at his Lion’s Club meetings about the work done by the OPG.


Mark was an avid reader and wanted his funds used to keep subscriptions up to date for multiple magazines, local newspapers, and newsletters. He loved to discuss religion and politics. Despite jokingly calling himself a “tight wad,” he always had a shopping list of very specific items he wanted purchased, such as a certain brand of after-shave, formal hats, Blue Diamond Almonds, a typewriter, and specific clothing. Mark was an active member of his local Lions Club chapter. He looked forward to attending their annual potlucks, but was concerned that he would not be able to contribute anything since he lived in a nursing home. Mark’s Associate Public Guardian (APG) organized for Valentino’s to deliver pizza to the potluck and Mark was thrilled to see that his pizza contribution was all gone by the time he went through the food line because everyone wanted it. Mark regularly told his APG he was “grateful for your services” and “I feel so fortunate to have you.” He was kind and gracious and thankful for the OPG’s work in his life.

Despite his advanced age, Mark wanted to be an organ donor. He wished to be remembered as being kind, generous, thoughtful of others, and caring for others more than himself. Through pre planning and difficult conversations, Mark’s APG was able to clarify and document all of Mark’s wishes for medical treatment in the late stages of his life, his memorial service, and his burial. The APG was able to ensure Mark’s wishes were carried out and he was buried next to his late wife to whom he was married for 64 years.



**After Mark's passing, his APG was gathering up his belongings and came across The Parable of the Mustard Seed that Mark had saved.** It describes how a small action goes on to provide shelter and care for others. Mark's involvement with the OPG was just that. The small action of a referral to the OPG went on to provide him care and protection to the end of his life. It was an honor and a pleasure to know Mark and for the OPG to serve in this important role.

The Parable of the Mustard Seed



'With what can we compare the kingdom of God, or what parable will we use for it? It is like a mustard seed, which, when sown upon the ground, is the smallest of all the seeds on earth; yet when it is sown it grows up and becomes the greatest of all shrubs, and puts forth large branches, so that the birds of the air can make nests in its shade.'

~ Mark 4:30-32

## **PRIVATE GUARDIAN/CONSERVATOR EDUCATION CLASSES**

In January of 2016, the Office of Public Guardian (OPG) began providing the education and certification required for newly appointed private guardians and conservators. The Public Guardianship Act requires the OPG to maintain training programs for private guardians, successor guardians, and interested parties to ensure successful guardians/conservators.<sup>11</sup>

Between December 1, 2017 through November 30, 2018:

- **102** Guardian/Conservator Education Classes were held
- **25** Nebraska Counties were training sites
- **1,294** new Guardians and Conservators were trained

### **Guardian/Conservator Education Interpreter Usage**

Interpreters are available for Guardian/Conservator Education classes through the Statewide Language Access Service in the Nebraska Supreme Court Administrative Office of the Court

Use of the interpreter service is highlighted below:

- **19** Classes with Spanish interpreters available
- **63** Participants used Spanish Interpreters to complete Guardian/Conservator Education classes

Interpreter services were used by participants speaking the following languages:

- **3** Karen
- **1** Sudanese
- **3** Nepali

### **Data Gathered from Guardian/Conservator Education Surveys**

During Guardian/Conservator Education classes, each participant completed a survey gathering the following data:<sup>12</sup>

#1	Date of Appointment
#2	County where petition was filed
#3	Guardianship/Conservatorship of adult or minor
#4	Type of Guardian or Conservatorship
#5	Specific responsibilities if not a full guardianship
#6	If serving as a full guardian, why not a lesser restrictive option?
#7	Number of interested persons
#8	Relationship of Ward/Protected Person to Guardian or Conservator
#9	Ward/Protected Person's Age
#10	Ward/Protected Person's Gender
#11	Personal Services provided to Ward/Protected Person prior to appointment
#12	Types of Advance Directives in place for Ward/Protected Person
#13	Co-Guardianship, Yes or No
#14	Any other person who considered serving as Guardian or Conservator
#15	Use of no-cost or low cost legal services to file initial petition
#16	Ward/Protected Person's current use of social support/social service programs
#17	Prior to class, Guardian/Conservator's familiarity with process
#18	Difficulty of process to become appointed
#19	What Guardian/Conservator wished they would have known about process before becoming a Guardian/Conservator
#20	Most Helpful information gained from class
#21	What will Guardian/Conservator do differently concerning the Guardian/Conservatorship after the class
#22	Suggestions to improve class

#23	Suggestions on convenience of class sites, times, frequency
#24	Understanding of financial responsibilities (Prior to and after class participation)
#25	Understanding duty to encourage Ward's physical, financial and personal independence (Prior to and after class participation)
#26	Understanding of responsibilities to Court re: filing of annual report, and notifying court of major changes in Ward/Protected Person's life (Prior to and after class participation)
#27	Understanding Ward/Protected Person's rights (Prior to and after class participation)
#28	Understanding Office of Public Guardian's role to assist Guardian/Conservator to full duties (Prior to and after class participation)
#29	Understanding what Guardian/Conservator provides to Ward/Protected Person, and need for more private Guardians/Conservators (Prior to and after class participation)
#30	Age of Guardian/Conservator
#31	Race or Ethnicity of Guardian/Conservator
#32	Gender of Guardian/Conservator
#33	Number of Wards/Protected Persons served by Guardian/Conservator
#34	Is Guardian/Conservator being paid to serve as Guardian/Conservator
#35	Has Guardian/Conservator been paid to act as a representative payee for Ward/Protected Person
#36	How often will Guardian/Conservator interact with Ward/Protected Person on a face to face basis
#37	Does Guardian/Conservator have any specialize background pertaining to guardianship
#38	Interest in serving as Court Visitor
#39	Interest in serving as Successor Guardian

Data from Guardian/Conservator Surveys have been compiled.  
Information below has been collected from the composite data:

- **Is your guardianship of an adult or of a minor? (2018)**

ANSWER CHOICES	RESPONSES	
Adult	60.79%	614
Minor	39.21%	396
<b>TOTAL</b>		<b>1,010</b>

- **What type of guardianship/conservatorship were you appointed? (2018)**

ANSWER CHOICES	RESPONSES	
Guardianship (only)	55.83%	565
Conservatorship (only)	6.42%	65
Guardianship AND Conservatorship	34.39%	348
Other (please specify)	3.36%	34
<b>TOTAL</b>		<b>1,012</b>

- **Is your guardianship/ conservatorship a FULL, LIMITED, or TEMPORARY guardianship/ conservatorship? (2018)**

ANSWER CHOICES	RESPONSES	
Full	86.53%	835
Limited	4.25%	41
Temporary	7.05%	68
Other (please specify)	2.18%	21
<b>TOTAL</b>		<b>965</b>

- **Other: Petition not yet filed or been appointed**

- **What is the relationship of the ward to you? (2018)**

ANSWER CHOICES	RESPONSES	
Sibling	13.34%	137
Parent	14.31%	147
Grandparent	3.41%	35
Child	29.60%	304
Grandchild	12.85%	132
No relation to ward	10.03%	103
Other (please specify)	16.46%	169
<b>TOTAL</b>		<b>1,027</b>

- **Other: Spouse and Extended Family**

- **What is the ward's age? (2018)**

ANSWER CHOICES	RESPONSES	
Under 18	36.49%	374
18-21	20.68%	212
22-34	10.24%	105
35-44	4.68%	48
45-54	3.90%	40
55-64	6.44%	66
65+	17.56%	180
<b>TOTAL</b>		<b>1,025</b>

- **Prior to this class, I have a clear understanding of my financial responsibilities to my ward: (Neb. Rev. Stat. 30-4109 (6)(a)) (2018)**

ANSWER CHOICES	RESPONSES	
Definitely False	8.87%	86
Probably False	12.16%	118
Undecided	12.27%	119
Probably True	35.36%	343
Definitely True	31.34%	304
<b>TOTAL</b>		<b>970</b>

- **AFTER taking this class, I had a clear understanding of my financial responsibilities to my ward: (Neb. Rev. Stat. 30-4109 (6)(a)) (2018)**

ANSWER CHOICES	RESPONSES	
Definitely False	0.33%	3
Probably False	0.66%	6
Undecided	3.49%	32
Probably True	31.22%	286
Definitely True	64.30%	589
<b>TOTAL</b>		<b>916</b>

- **Prior to this class, I understood my responsibilities to the Court, including the filing of an annual report and notifying the Court of any major changes in the life of my ward: (Neb. Rev. Stat. 30-4109 (6)(c)),(7) (2018)**

ANSWER CHOICES	RESPONSES	
Definitely False	9.80%	95
Probably False	14.76%	143
Undecided	11.46%	111
Probably True	32.30%	313
Definitely True	31.68%	307
<b>TOTAL</b>		<b>969</b>

- **AFTER taking this class, I understood my responsibilities to the Court, including the filing of an annual report and notifying the Court of any major changes in the life of my ward: (Neb. Rev. Stat. 30-410 (6)(c)),(7) (2018)**

ANSWER CHOICES	RESPONSES	
Definitely False	0.22%	2
Probably False	0.66%	6
Undecided	2.20%	20
Probably True	24.26%	221
Definitely True	72.67%	662
<b>TOTAL</b>		<b>911</b>

- **Prior to this class, I understood my duty to encourage my ward’s physical, financial, and personal independence, as much as possible: (Neb. Rev. Stat. 30-4109 (6)(b)) (2018)**

ANSWER CHOICES	RESPONSES	
Definitely False	3.24%	31
Probably False	5.11%	49
Undecided	8.56%	82
Probably True	31.73%	304
Definitely True	51.36%	492
TOTAL		958

- **AFTER taking this class, I understood my duty to encourage my ward’s physical, financial, and personal independence, as much as possible: (Neb. Rev. Stat. 30-4109 (6)(b)) (2018)**

ANSWER CHOICES	RESPONSES	
Definitely False	0.22%	2
Probably False	0.44%	4
Undecided	2.42%	22
Probably True	23.13%	210
Definitely True	73.79%	670
TOTAL		908

- **Prior to this class, I understood that my ward retains certain rights and responsibilities, such as the right to counsel and the right to privacy, even while under a guardianship/conservatorship: (Neb. Rev. Stat. 30-4109 (6)(d)) (2018)**

ANSWER CHOICES	RESPONSES	
Definitely False	2.60%	25
Probably False	8.65%	83
Undecided	9.48%	91
Probably True	35.10%	337
Definitely True	44.17%	424
TOTAL		960

- **AFTER taking this class, I understood that my ward retains certain rights and responsibilities, such as the right to counsel and the right to privacy, even while under a guardianship/conservatorship: (Neb. Rev. Stat. 30-4109 (6)(d)) (2018)**

ANSWER CHOICES	RESPONSES	
Definitely False	0.22%	2
Probably False	0.55%	5
Undecided	2.20%	20
Probably True	19.60%	178
Definitely True	77.42%	703
<b>TOTAL</b>		<b>908</b>

- **Prior to this class, I understood the role of the Public Guardian and how they can assist me in the fulfillment of my duties as a private guardian: (Neb. Rev. Stat. 30-4109 (6)(c)) (2018)**

ANSWER CHOICES	RESPONSES	
Definitely False	20.50%	195
Probably False	25.34%	241
Undecided	18.93%	180
Probably True	18.93%	180
Definitely True	16.30%	155
<b>TOTAL</b>		<b>951</b>

- **AFTER taking this class, I understood the role of the Public Guardian and how they can assist me in the fulfillment of my duties as a private guardian: (Neb. Rev. Stat. 30-4109 (6)(c)) (2018)**

ANSWER CHOICES	RESPONSES	
Definitely False	0.33%	3
Probably False	0.89%	8
Undecided	7.54%	68
Probably True	28.05%	253
Definitely True	63.19%	570
<b>TOTAL</b>		<b>902</b>



- **Prior to this class, I had a clear understanding of what a guardian/conservator provides to their ward and the need for more private guardians/conservators: (Neb. Rev. Stat. 30-4109 (7)) (2018)**

ANSWER CHOICES	RESPONSES	
Definitely False	8.56%	82
Probably False	19.94%	191
Undecided	18.68%	179
Probably True	31.32%	300
Definitely True	21.50%	206
TOTAL		958

- **AFTER taking this class, I had a clear understanding of what a guardian/conservator provides to their ward and the need for more private guardians/conservators: (Neb. Rev. Stat. 30-4109 (7)) (2018)**

ANSWER CHOICES	RESPONSES	
Definitely False	0.22%	2
Probably False	0.33%	3
Undecided	3.64%	33
Probably True	28.45%	258
Definitely True	67.36%	611
TOTAL		907

- **After taking this class, I feel prepared to serve as guardian/conservator for my ward:**

ANSWER CHOICES	RESPONSES	
Definitely False	0.00%	0
Probably False	0.33%	3
Undecided	3.67%	33
Probably True	27.44%	247
Definitely True	68.56%	617
TOTAL		900

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<sup>3</sup>Neb. Rev. Stat. §30-4105(5)

<sup>5</sup>Neb. Rev. Stat. §30-4105(7)

<sup>6</sup>Neb. Rev. Stat. §30-4105(8)

<sup>7</sup>Neb. Rev. Stat. §30-4109(2)

<sup>21</sup>Neb. Rev. Stat. § 30-4106.

<sup>22</sup>Neb. Rev. Stat. § 30-4108.

<sup>23</sup>Neb. Rev. Stat. § 30-4106.

<sup>8</sup> Neb. Rev. Stat. §§ 30-4105 (5), 30-4109 (7).

<sup>9</sup> Neb. Rev. Stat. § 30-4111.

<sup>11</sup> Neb. Rev. Stat. § 30-4105 (5) Provide adequate training and support to enhance [guardian/conservator] success.

<sup>12</sup> Neb. Rev. Stat. § 30-4109 (1): Develop a uniform system of reporting and collecting statistical data- regarding guardianship/conservatorship.