



Department of Administration

April 28, 2023

Chief Justice Peter Maassen

Presiding Judges:

Amy Mead

Paul Roetman

Thomas Matthews

Terrence Haas

RE: Effective Immediately the OPA/Public Guardian is Unable to Accept any New Appointments until Further Notice

Dear Justice Maassen and Presiding Judges:

We are writing to inform the Courts that the OPA/Public Guardian is currently in crisis and effective immediately cannot accept any new guardianship and conservatorship appointments until further notice. We can accept appointments that expand authorizations for existing Public Guardian wards, and we can accept the long-term appointments for cases where we are currently temporarily appointed and have previously accepted the appointment.

As we have been alerting the courts for the last several years, the Public Guardian caseloads have become overwhelming. Unfortunately, the unanticipated long-term absence of one of OPA's certified public guardians due to an unexpected recent health crisis has created an untenable staffing situation. The remaining certified public guardians must now absorb the absent public guardian's 85 ward caseload in addition to their current caseloads, pushing case numbers to between 97 and over 100 wards per certified public guardian (see attached addendum).

As you are aware, the State of Alaska has adopted the National Guardianship Association's Standards of Practice and Ethics (attached) for all private, professional guardians. Alaska Statute 13.26.720 states that the Public Guardian has the same powers and duties as private guardians and

AS 13.26.740 requires public guardians to be certified by the National Guardianship Association (NGA) and therefore are governed by their standards.

To be more specific, NGA Standard 23 – Management of Multiple Cases

- I. The guardian shall limit each caseload to a size that allows the guardian to accurately and adequately support and protect the person, that allows a minimum of one visit per month with each person, and that allows regular contact with all service providers.
- II. The size of any caseload must be based on an objective evaluation of the activities expected, the time that may be involved in each case, other demands made on the guardian, and ancillary support available to the guardian.
 - A. The guardian may institute a system to evaluate the level of difficulty of each guardianship case to which the guardian is assigned or appointed.
 - B. The outcome of the evaluation must clearly indicate the complexity of the decisions to be made, the complexity of the estate to be managed, and the time spent. The guardian shall use the evaluation as a guide for determining how many cases the individual guardian may manage.

With average caseloads in the mid-80's normally (already twice the recommendation for public guardians), we have had grave concerns we are not meeting the NGA standards. With the caseloads now even higher, we absolutely cannot meet the NGA Standards.

We feel it is imperative that the courts understand the resulting consequences of the Public Guardian accepting additional appointments without the appropriate staff. The wards and protected persons would only receive the illusion of protection because the Public Guardian cannot carry out the essential tasks to keep them protected, such as obtaining funds, applying for and securing benefits, securing housing, securing food, making informed medical decisions. Acceptance of appointments by the Public Guardian during this time will place the respondents in potentially even worse positions because other resources and options stop being considered by those around them under the belief that the Public Guardian is handling everything.

We want to assure the Courts of several things. First, our current crisis is not because the Public Guardian is not being properly funded. We have made requests for additional positions over the last few years and have received most of these positions. Our staffing issues stem from the retirement and resignations of experienced certified public guardians prior to our restructuring and the lengthy process involved in training and certifying new hires to where they can competently manage a full caseload. As we have told many of the courts, it takes a minimum of two years from the date of hire for a new public guardian to fully replace an experienced public guardian. Unlike with attorneys, there is no pool of experienced guardians and conservators in Alaska from which we can hire. Every new hire must start from scratch to be trained as a public guardian and that on-the-job training takes at least two years.

Based upon the amount of training required, a public guardian hire cannot even be prepared to sit for the certification exam until they have been a PG II for approximately 1 year. This means that every time a certified public guardian leaves, the remaining certified public guardians must absorb the additional cases for at least two years in addition to their own cases and all the new appointments coming to us daily. With the current crisis, we are now down 6 fully certified guardians. The remaining certified public guardians have had to absorb over 300 additional existing cases over the last year on top of the new cases appointed to us. In order to provide the protections required of us by the appointment authorizations for our existing wards and protected persons, we cannot accept any new appointments.

Second, we want to assure the Courts that for us to take this position, things are truly dire. We believe that accepting additional cases at this time not only violates the NGA Standards and NGA Ethics but sets the Agency and the State up to be subjected to numerous negligence lawsuits for our failure to act directly related to the volume of clients we are serving. The Public Guardian is currently appointed to over 1600 individuals with only 17 certified public guardians available to manage that caseload. Losing another certified public guardian because they are petrified of being negligent and costing someone their life because their caseload is unmanageable will only make the situation more dire.

Third, we believe there are some interim solutions that can be employed during the Public Guardian moratorium. We looked to the solutions employed by states who impose case caps on their Public Guardian programs to manage existing petitions when the caps have been met. In those states, such as Nebraska, a Public Guardian waitlist has been developed. Based upon the status of the individual on the waitlist, the Nebraska courts use several options:

1. The courts can wait to adjudicate the case until the Public Guardian has an opening and adjudicate the appointment at that time. In these cases, where there is a legitimate concern that needs to be addressed more quickly, the court visitor is tasked with seeking out an appropriate individual for single transaction authority to meet the most pressing need;
2. The courts can go forward with an incapacity determination, appoint a temporary guardian—such as an individual, or a private guardian ad litem or a private attorney, who may not be willing to serve long term, but is able and willing to serve until the Public Guardian has an opening and these guardians ad litem and attorneys are paid by 12(e) type funding.

We are certainly happy to work with the Court to brainstorm and develop other options while the Public Guardian is unable to accept appointments.

We want the Courts to be aware that our oldest new hire has only been on board since January 2023, and we have another experienced PG II retiring in October. While clients pass away and current appointments get dismissed, we are likely looking at a minimum of 9 to 12 months

before we can accept any new appointments. However, we are working directly with the executive branch to shorten this period to the greatest extent possible.

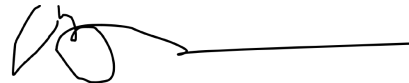
We will certainly notify the court if we have the ability to begin to accept a specific number of cases sooner, but at this time, we believe the average caseload must be in the low 60's for us to effectively meet the NGA standards, protect the clients as obligated, and manage cases when a certified public guardian leaves. Currently, that means a caseload reduction of between 25 to 40 cases per certified public guardian or between 425 to 680 total cases.

We are more than happy to meet regularly with the courts to discuss caseloads and status and anything else related to the Public Guardian crisis. Please let us know how we can best work with you as we face this dire situation so the State of Alaska can adequately protect our most vulnerable adults.

Sincerely,

A handwritten signature in black ink, appearing to read "James Stinson". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

James Stinson
Director

A handwritten signature in black ink, appearing to read "Beth Goldstein". The signature is more stylized and less cursive than the one above, with a long horizontal line extending to the right.

Beth Goldstein
Deputy Director/Public Guardian