

A MEMORIAL

REQUESTING THE NEW MEXICO SUPREME COURT AND ADMINISTRATIVE OFFICE OF THE COURTS TO PROVIDE BASIC INFORMATION REGARDING GUARDIANSHIP, CONSERVATOR AND ELDER ABUSE CASES; REQUESTING THE ADMINISTRATIVE OFFICE OF THE COURTS TO REQUIRE CRIMINAL BACKGROUND AND CREDIT CHECKS OF GUARDIANS AND CONSERVATORS AND TO PROMULGATE PROCEDURES TO TRACK ANNUAL REPORTING BY GUARDIANS AND CONSERVATORS.

WHEREAS, court-appointed guardians step into the shoes of at-risk elders and dependent adults, making judgments about medical care, property, living arrangements, lifestyle and potentially all personal and financial decisions; and

WHEREAS, the need for guardianship monitoring increases as the nation's population ages; and

WHEREAS, according to a 2007 study by the AARP public policy institute entitled, "Guarding the Guardians: Promising Practices for Court Monitoring", the population of elderly people over the age of eighty-five is growing rapidly, with Alzheimer's disease and related dementias becoming more prevalent; and

WHEREAS, responses to a 2010 survey conducted for the joint task force on elders and the courts convened by the conference of chief justices and conference of state court administrators indicate that guardianship filings and

caseloads are increasing; and

WHEREAS, the increasing longevity of dependent adults means that guardianship cases stay open for longer periods of time; and

WHEREAS, it is the responsibility of the court to oversee and monitor guardianship cases to ensure the welfare of protected persons, to discourage and identify neglect, abuse or exploitation by guardians and to sanction guardians who demonstrate malfeasance; and

WHEREAS, New Mexico law requires guardians and conservators to report annually to the court; and

WHEREAS, a guardianship task force was convened pursuant to House Joint Memorial 34, passed in the first session of the forty-eighth legislature, and reported its conclusions and recommendations to the interim legislative health and human services committee in October 2008; and

WHEREAS, one of the guardianship task force's findings revealed that the vast majority of guardians are not filing the required annual report, often because the guardian is unaware of the requirement to do so; and

WHEREAS, the guardianship task force report found that courts rarely impose penalties for failure to file reports and that courts rarely follow up with onsite monitoring of individual guardians, or of those persons under their care, due to lack of resources and funding; and

WHEREAS, New Mexico law does not, under any circumstance, allow a court to waive the requirement that each guardian and conservator file an annual report; and

WHEREAS, the guardianship task force also reported that there is no criminal background check for prospective guardians and that convicted felons are not barred from serving as guardians; and

WHEREAS, according to the guardianship task force, the number of guardianship orders and active guardianship cases in New Mexico was unknown as of late 2008; and

WHEREAS, the 2010 report of the joint task force on elders and the courts similarly found that most state court systems are not currently able to determine the number of guardianship, conservatorship and elder abuse cases that are filed, pending and closed each year; and

WHEREAS, timely, accurate and complete data on the number of guardianship, conservatorship and elder abuse cases is essential in determining the policies, procedures, approaches and resources needed to address these cases effectively and measure the performance of the court; and

WHEREAS, states without a comprehensive system of guardianship monitoring and accountability afford ample opportunity for undetected abuse, neglect and exploitation; and

WHEREAS, while there are many individual judges who are

creative and diligent in providing oversight of guardians and conservators, the need for an ongoing program to monitor guardians must be addressed at a programmatic and budgetary level;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NEW MEXICO that the administrative office of the courts be requested to study this matter and identify actions, to include resources needed, to support a request that the New Mexico supreme court appoint a special auditor to conduct a census of open guardianship and conservator proceedings, by district, throughout the state and grant the special auditor access to the probate court case management system, or to case files if required information is not available through an automated or electronic system, in each district; and

BE IT FURTHER RESOLVED that the administrative office of the courts identify resources necessary to ensure that any guardianship and conservator case census include the civil action number; the case caption; the original file date; the date of the order appointing the guardian or conservator; the date on which the first annual report required by Section 45-5-314 or 45-5-409 NMSA 1978 was or is due; the date filed for all reports, including the annual reports required by Sections 45-5-314 and 45-5-409 NMSA 1978, made by the respective guardian or conservator; and the name and address

of the guardian or conservator; and

BE IT FURTHER RESOLVED that the administrative office of the courts be requested to make provisions for each case management system in each district to identify and track cases of elder abuse to enable the administrative office of the courts to provide the civil action number; case caption; original file date; and status or disposition in an annual report to the legislative health and human services committee; and

BE IT FURTHER RESOLVED that the administrative office of the courts be requested to make its first annual report on elder abuse cases pending at any time during calendar year 2011 through July 1, 2012 to the legislative health and human services committee by November 1, 2012; and

BE IT FURTHER RESOLVED that the administrative office of the courts identify resources or action needed to implement mandatory pre-appointment criminal background and credit checks of all guardians and conservators of adults with limited capacity; and

BE IT FURTHER RESOLVED that the administrative office of the courts be requested to identify existing training programs and additional resources needed to develop and offer a basic training program for guardians and conservators to educate them about their duties and reporting requirements; and

BE IT FURTHER RESOLVED that the administrative office of

the courts be requested to identify rules necessary to require currently serving guardians or conservators who receive financial compensation for their service and who have failed to timely file any annual report with the court as required by law to attend basic training as a condition precedent to receiving future compensation for serving as a guardian or conservator; and

BE IT FURTHER RESOLVED that the administrative office of the courts identify rules necessary to require guardians and conservators appointed after January 1, 2013 to complete basic training before appointment; and

BE IT FURTHER RESOLVED that the administrative office of the courts identify rules and procedures necessary to ensure that all courts appointing guardians or conservators for adults with limited capacity require and track annual reporting by guardians and conservators to the court; and

BE IT FURTHER RESOLVED that the administrative office of the courts be requested to report its findings about resources, rules and procedures needed to implement these requests to the legislative health and human services committee by November 1, 2012; and

BE IT FURTHER RESOLVED that copies of this memorial be transmitted to the New Mexico supreme court, the administrative office of the courts, the interim legislative health and human services committee and the New Mexico

guardianship association.