

**PROPOSED REVISIONS TO THE RULES OF CIVIL PROCEDURE
FOR THE DISTRICT COURTS AND THE CIVIL FORMS**

The Ad hoc Committee on Rules for Mental Health Proceedings has recommended proposed new Rule 1-003.2 NMRA and proposed new Form 4-992 NMRA for the Supreme Court's consideration.

If you would like to comment on the proposed rule and form set forth below before the Court takes final action, you may do so by either submitting a comment electronically through the Supreme Court's web site at <http://nmsupremecourt.nmcourts.gov/> or sending your written comments by mail, email, or fax to:

Joey D. Moya, Clerk
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848
nmsupremecourtclerk@nmcourts.gov
505-827-4837 (fax)

Your comments must be received by the Clerk on or before April 15, 2015, to be considered by the Court. Please note that any submitted comments may be posted on the Supreme Court's web site for public viewing.

[NEW MATERIAL]

1-003.2. Cover sheets for guardianship and conservatorship cases.

A. **Cover sheet required.** A cover sheet substantially in the form approved by the Supreme Court shall be submitted to the court immediately after entry of an order appointing, substituting, or terminating a guardian or conservator. The cover sheet shall be prepared and submitted by the guardian or conservator appointed by the court. Information obtained from the cover sheet is confidential and shall not be disclosed except that it may be disclosed to:

- (1) the parties in the proceeding and their attorneys, unless otherwise ordered by the court; and
- (2) court personnel for case management, data collection, record keeping, and demographic study purposes.

B. **Updating cover sheet required.** The guardian or conservator must complete and submit to the court a new cover sheet upon the occurrence of any of the following events:

- (1) a change of address for the protected person, guardian, or conservator;
- (2) a change of place of residence of the protected person; or
- (3) the death of the protected person.

[Adopted by Supreme Court Order _____, effective _____.]

[NEW MATERIAL]

4-992. Guardianship and conservatorship cover sheet.

[For use with Rule 1-003.2 NMRA]

GUARDIANSHIP AND CONSERVATORSHIP COVER SHEET

Type or print responses.

THIS SECTION FOR OFFICIAL USE ONLY

Case number: _____ Assigned judge: _____ Free process: Y N

Information for court clerk's use.

A. Information regarding the protected person, guardian, and/or conservator

Protected Person

Name (*Last , first, middle*): _____

Other names (*e.g. maiden name*): _____

Address: _____

City/state/zip code: _____

Date of birth: _____

Guardian

Name (*Last , first, middle*): _____

Other names (*e.g. maiden name*): _____

Address: _____

City/state/zip code: _____

Phone number: _____

E-mail address: _____

Type of Guardian (*Select one*):

_____ Professional

_____ Family

_____ Non-family

Conservator

Name (*Last , first, middle*): _____

Other names (*e.g. maiden name*): _____

Address: _____

City/state/zip code: _____

Phone number: _____

E-mail address _____

Type of Conservator (*Select one*):

- Professional
- Family
- Non-family

B. Other appointed or designated agents (*if known*)

(Please provide the following information, if known, for each appointed or designated agent. You may attach additional pages if necessary.)

Name (*Last, first, middle*): _____

Other names (*e.g. maiden name*): _____

Address: _____

City/state/zip code: _____

Phone number: _____

E-mail address: _____

Type of agent (*Select one*):

- Mental health treatment guardian
District Court Case No. (*if known*): _____
- Surrogate healthcare decision maker
- Power of attorney
- Other (*please describe*): _____

C. Type of protective proceeding

(*Select one*)

- Adult Guardianship
- Adult Conservatorship
- Adult Guardianship and Conservatorship
- Other (*please describe*): _____

D. Reason(s) for incapacity

(*Select all that apply*)

- Dementia
- Brain injury
- Developmental disability
- Mental illness
- Drug and or alcohol abuse
- Other (*please describe*): _____

I affirm under penalty of perjury under the laws of the State of New Mexico that the information contained herein is complete and accurate to the best of my knowledge and belief. I acknowledge my responsibility under Paragraph B of Rule 1-003.2 NMRA to file a new cover sheet upon the appointment of a different guardian or conservator, a change of address for the protected person, guardian, or conservator, a change of place of residence for the protected person, the death of the protected person, or the termination of the guardianship or conservatorship.

Signature of [Guardian] [Conservator] [Guardian and Conservator]

Date of signature

[Approved by Supreme Court Order No. _____, effective _____.]

Comment on Proposal 53

From : Amanda H Frazier <albdahf@nmcourts.gov>

Wed, Apr 15, 2015 01:33 PM

Subject : Comment on Proposal 53

To : nmsupremecourtclerk@nmcourts.gov

I have reviewed the form, and this looks very redundant for most of the required annual report that guardians/conservators must already file with the court. It seems that adding some of these questions to the forms may work better than having a new form that is essentially the annual report form. This seems to put yet another burden on people who are already burdened with caring for an incapacitated person, especially for families who are caring for loved ones. I worry that many people will assume this is the report they are required to file, and will stop filing annual reports if they only need to file this when a change occurs. We are already having trouble with families filing annual reports, many will likely confuse the two.

Additionally, I can't tell how this information will be captured in Odyssey to be reported, as there is no place for cover sheets to be filed. Will it go to the judge then, or just be a miscellaneous sheet in the file?

I do see how this would be extremely helpful for the treatment guardians, who have no reporting requirements.

Amanda H. Frazier
PQ Special Master
Second Judicial District Court
841-7410

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APR 15 2015



Administrative Office of the Courts

Supreme Court of New Mexico
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April 15, 2015

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Joey D. Moya, Clerk
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504

SENT VIA E-MAIL
nmsupremecourtclerk@nmcourts.gov

RE: Ad hoc Committee on Rules for Mental Health Proceedings Proposal 53 – Cover Sheet for Guardianship and Conservatorship cases

Dear Mr. Moya:

As the staff attorney assigned to handle Guardianship and Conservatorship issues with the Administrative Office of the Courts, I am writing this letter to oppose the adoption of proposed Rule 1-003.2 NMRA and proposed new Form 4-992 NMRA by the Supreme Court.

Proposed Rule 1-003.2 NMRA

Proposed Rule 1-003.2 NMRA would require a cover sheet be submitted upon “an order appointing, substituting, or terminating a guardian or conservator.” This requirement would result in duplicative filings since Sections 45-5-308 and 45-5-421.1 NMSA 1978 requires that letters of guardianship and conservatorship filed shall contain the names, addresses and telephone numbers of the guardian/conservator; and the name, address and telephone number of the incapacitated person. Whenever a change to the guardian and/or conservator occurs in the case, this information is already required to be reported to the court.

Second, the language of proposed Rule 1-003.2 NMRA states that information contained in the cover sheet is confidential, but may be disclosed to “the parties in the proceedings and their attorneys”. The term “parties in the proceedings” is vague and leaves much room for interpretation. In contested cases involving a parent with dementia, multiple children may be involved in the case and may even be represented by counsel. If a corporate or professional guardian and/or conservator is appointed by the court are the children still considered “parties in the proceedings”? Would they be entitled to information in the cover sheet? The statute also allows interested persons to file a request for notice in the case. Could an interested person be considered a party in the proceedings and have access to the information in the cover sheet?

The language in the proposed rule also seems to contradict Section 45-5-0-303 NMSA 1978:

I. A record of the proceedings shall be made if requested by the alleged incapacitated person or the alleged incapacitated person's attorney or when ordered by the court. Records, reports and evidence submitted to the court or recorded by the court shall be confidential, except that the public shall be granted access to the following information:

- (1) docket entries;*
- (2) date of the proceeding, appointment and termination;*
- (3) duration of the guardianship; and*
- (4) the name and other information necessary to identify the alleged incapacitated person.*

J. Notwithstanding the provisions of Subsection I of this section, a disclosure of information shall not include diagnostic information, treatment information or other medical or psychological information.

Since guardianship and conservatorship cases are sequestered cases, the courts must protect all information in the case and should only release information for very specific reasons. The proposed rule appears to contradict the legislative intent of having information in these cases be safeguarded and sequestered by the court.

Proposed Form 4-992 NMRA

The primary concern with the proposed cover sheet is that it captures more information than is statutorily required and necessary for the courts to maintain. I have confirmed with the Judicial Information Division that cover sheets are not included in the official record of the case. Cover sheets were designed to eliminate the need for court clerks to read through entire pleadings to gather data for entry into the case management system, Odyssey. As the courts move towards electronic records versus paper files, the general practice for state courts is to destroy the cover sheet after the court clerk obtains the information necessary to update the case in Odyssey. Therefore, the information provided on the proposed cover sheet would not likely be retained by the courts and would therefore not be available for future reference or dissemination to parties and attorneys.

I have also confirmed with the Judicial Information Division that Odyssey does not contain specific fields to capture some of specific information requested on the Cover Sheet. For example, Odyssey does not contain any fields to capture information for appointed or designated agents or reasons for incapacity.

Although I appreciate the efforts of the Ad hoc Committee on Rules for Mental Health Proceedings to try to improve the guardianship and conservatorship process, I feel that the proposed Rule 1-003.2 NMRA and proposed new Form 4-992 NMRA would not be beneficial to the judiciary for "case management, data collection, record keeping, and demographic study purposes".

Sincerely,



Patricia M. Galindo, JD

Proposed Rule 1-003.2 NMRA

From : Jeffers, Peggy <pjeffers@nmaq.gov>
Subject : Proposed Rule 1-003.2 NMRA
To : nmsupremecourtclerk@nmcourts.gov

Wed, Apr 15, 2015 09:32 AM

I believe that the proposed R. 1-003.NMRA is a very good idea.

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Peggy Jeffers
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Santa Fe, NM 87504-0848

APR 15 2015

RE: Ad hoc Committee on Rules for Mental Health Proceedings Proposal 53—
Cover sheet for Guardianship and Conservatorship Cases

Dear Mr. Moya:

I am responding to Proposal 53 on behalf of the Adult Protective Proceedings Task Force. The Task Force is comprised of representatives from private law practice and public legal services organizations, including representatives from the New Mexico Guardianship Association, Senior Citizens Law Office, the Legal Resources for the Elderly program and the Elder Section of the State Bar, and Administrative Office of the Courts, among others.

The Task Force recommends that the Supreme Court deny adoption of the proposed rule and form under Proposal 53 at this time. As written, we feel the rule and form are duplicative of information provided in the 90-day and annual reports. They pose confidentiality issues in these sequestered proceedings, and that there is no meaningful way to compile the data being collected at this time.

We recommend and request that the Ad hoc Committee on Rules for Mental Health Proceedings work together with our Task Force to incorporate the information sought in the cover sheet into improved 90-day and Annual Report forms. We also recommend approaching the Administrative Office of the Court to conduct a survey of the judges to ascertain what kind of data they would like to know about guardianship and conservatorship cases, and that recommendations be provided to the AOC about what questions to ask the judges.

We sincerely request the Ad hoc Committee on Rules for Mental Health Proceedings to notify us of future meetings in order for our Task Force representatives to participate.

Respectfully submitted,

Sara R. Traub,
Representative of the Adult Protective Proceedings Task Force

Comments to proposed Rule 1-003.2 NMRA and proposed Form 4-992 NMRA

From : Jodie Schwebel <aztdjos@nmcourts.gov>

Wed, Apr 15, 2015 06:28 PM

Subject : Comments to proposed Rule 1-003.2 NMRA and proposed Form 4-992 NMRA

To : Joey Moya <supjdm@nmcourts.gov>

Dear Mr. Moya - following are comments to the proposed new Rule 1-003.2 NMRA and proposed Form 4-992 NMRA. These comments are mine and do not necessarily reflect the opinions of the 11th Judicial District as a whole.

General comments

"Cover Sheet" is a misnomer. According to the proposed Rule, it is not used at the commencement of the action. If the purpose of this form is to provide the court with updated/current contact information on the protected person, guardian, and/or conservator, then "Information Sheet" is a more accurate description.

It is not clear if the proposed form is used only in adult guardianships/conservatorships or if it also applies to kinship guardianships. Paragraph "C" of the proposed form might lead a user to believe it is only for adult guardianship/conservatorship proceedings, but the proposed Rule does not make that distinction.

Language in the signature block of the proposed form is inconsistent with the proposed Rule. The proposed Rule requires *submission* of the cover sheet; the signature block on the proposed form acknowledges *filing* a new cover sheet.

Neither the proposed Rule nor the proposed form directs the clerks on what to do with the proposed form once it is submitted. In a paperless system, a physical file no longer exists in which to place this form. Does the Court intend 1) for the clerk to destroy the form once Odyssey is updated with the contact information, 2) for the clerk to docket the form in Odyssey (in which case it becomes part of the court record), or 3) to direct the creation of a CRT code allowing the clerk to docket the form in Odyssey without it becoming part of the court record?

Comments to specific paragraphs

Paragraph C – "Type of protective proceeding" is redundant. Following the proposed Rule, by the time the proposed form is submitted to the court, an order has been entered: case type will have already been established in Odyssey.

Paragraph D – "Reason(s) for incapacity" is unnecessary. Following the proposed Rule, by the time the proposed form is submitted to the court, an order has been entered: grounds for the action should already be pled.

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As always, thank you for your consideration.

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