

**PROPOSED AMENDMENTS TO  
THE RULES OF CIVIL PROCEDURE FOR THE DISTRICT COURTS  
PROPOSAL 2018-032**

The Ad Hoc Guardianship and Conservatorship Rules and Forms Committee has recommended adoption of new Rule 1-142 NMRA for the Supreme Court's consideration.

New Rule 1-142 is proposed in response to the recommendation of the New Mexico Adult Guardianship Study Commission to require certification of professional guardians and conservators. The proposed rule sets forth a definition of a "professional guardian or conservator" and requires proof of certification by the Center for Guardianship Certification as a mandatory qualification of a professional guardian or conservator appointed by a court. The proposed rule requires proof within ninety days of the appointment of a professional guardian or conservator that the individual who has been assigned the duties of guardian or conservator is certified. The proposed rule further requires a professional guardian or conservator appointed before the rule takes effect to submit proof of certification within six months of the rule's effective date.

If you would like to comment on the proposed amendments 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://supremecourt.nmcourts.gov/open-for-comment.aspx> 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](mailto:nmsupremecourtclerk@nmcourts.gov)  
505-827-4837 (fax)

Your comments must be received by the Clerk on or before **November 29, 2018**, 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.

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**[NEW MATERIAL]**

**1-142. Guardianship and conservatorship proceedings; proof of certification of professional guardians and conservators.**

A. **Scope.** This rule establishes qualification requirements under Sections 45-5-311 and 45-5-410 NMSA 1978 for an individual or entity who may be appointed as a professional guardian or conservator.

B. **Definition.** For purposes of this rule, a "professional guardian or conservator" means an individual or entity that serves as guardian or conservator for more than two individuals who are not related to the guardian or conservator by marriage, adoption, or third degree of blood or affinity.

C. **Proof of certification.** An order appointing a professional guardian or conservator under Chapter 45, Article 5, Parts 3 or 4 NMSA 1978, shall include a provision that requires the professional guardian or conservator to submit proof that the individual who has been assigned the duties of guardian or conservator for the protected person is certified and in good standing with the Center for Guardianship Certification. The proof required under this paragraph shall be submitted to the court not later than the first to occur of the following:

(1) Ninety (90) days after the filing of the order of appointment; or

(2) The filing of the initial report required under Section 45-5-314(A) NMSA 1978 or the inventory required under Section 45-5-418(A) NMSA 1978.

D. **Continuing duty.** A professional guardian or conservator must submit proof annually that the certification required under Paragraph C of this Rule is in good standing.

E. **Applicability.** This rule shall apply to all professional guardians and conservators appointed on or after the effective date of this rule. Professional guardians or conservators appointed before the effective date of this rule shall provide the proof required under Paragraph C of this rule within six months of the effective date of this rule and as further required by Paragraph D.

[Approved by Supreme Court Order No. \_\_\_\_\_, effective \_\_\_\_\_.]

**Committee commentary.** — The definition of a professional guardian or conservator focuses on the number of non-relatives who are under the care of the guardian or conservator. The definition therefore excludes, for example, a guardian or conservator appointed to care only for relatives, regardless of number. Similarly, the definition excludes a guardian or conservator appointed to care for one or two non-relatives. The definition limits relatives by blood or affinity to the third degree of relationship to the guardian or conservator, which includes the guardian's or conservator's spouse, parent, stepparent, brother, sister, stepbrother, stepsister, half-brother, half-sister, uncle, aunt, niece, nephew, first cousin, or any person denoted by the prefix "grand" or "great," or the spouse or former spouse of the persons specified. *Accord* NMSA 1978, § 40-10B-3(E).

The Center for Guardianship Certification (CGC) provides certification to guardians and conservators who demonstrate "sufficient skill, knowledge and understanding of the universal guardianship principles to be worthy of the responsibility entrusted to him or her." Center for Guardianship Certification, <https://guardianshipcert.org/about-us/>. Certification by the CGC demonstrates that the guardian or conservator has met certain professional and ethical standards, including the following:

Certification entitles the guardian [or conservator] to represent to the courts and the public that he or she is eligible to be appointed, is not disqualified by prior conduct, agrees to abide by universal ethical standards governing a person with fiduciary responsibilities, submits to a disciplinary process, and can demonstrate through a written test an understanding of basic guardianship principles and laws.

Id. To view the CGC's certification requirements, visit <https://guardianshipcert.org/certification-requirements/>.

Under Paragraph C of this rule, an order appointing a professional guardian or conservator shall require the professional guardian or conservator to submit proof that the person who has been assigned the duties of a guardian or conservator has been certified with the CGC. A person assigned the duties of a guardian or conservator is the individual who makes decisions on behalf of the

protected person, including but not limited to the professional guardian's or conservator's employee, subcontractor, agent, case manager, guardianship coordinator, or an individual who signs a report submitted under NMSA 1978, Sections 45-5-314, 45-5-409, or 45-5-418.

[Approved by Supreme Court Order No. \_\_\_\_\_, effective \_\_\_\_\_.]

Google Groups

## Fwd: Open Comment on proposed rules change for Guardianship and Conservatorship

SUPREME COURT OF NEW MEXICO

FILED

Oct 15, 2018 10:55 PM

Martha Brown <marty@mbgcm.com>

Posted in group: nmsupremecourtclerk

OCT 16 2018

----- Forwarded message -----

From: **Martha Brown** <marty@mbgcm.com>

Date: Mon, Oct 15, 2018 at 10:50 PM

Subject: Open Comment on proposed rules change for Guardianship and Conservatorship

To: nmsupremecourtclerk@nmcourts.gov

Cc: Mary Galvez <marygalvez1@hotmail.com>



Hello Ms. Moya:

I would like to comment on the proposed rule that professional guardians and conservators be licensed by the Center for Guardianship Certification. I am in agreement about the certification. However, have two comments re this. When it is a corporate guardian, it is the company that is named as the Guardian and/or Conservator, not an individual staff person for that company. And through professional liability insurance, it is a company that is insured and the staff. I think the wording in the proposed rule change to incorporate something about the "company" or "corporate entity".

I would also recommend it be re-worded to say something to the effect that at least one person in the company that is being named as Guardian and/or Conservator, must be a Certified Guardian and must maintain a current license which should be attached to the annual reports. However, staff who are not certified must be under the supervision and direction of the staff member who is certified.

Best regards,

Marty

Martha J. Brown, MSW, CMC, NCG-Founder, CEO, Professional Geriatric Care Manager

Aging Life Care Professional™ Geriatric Care Management, LLC <http://mbgcm.com/>

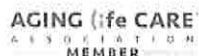
The Silver Runner Transportation and Companion Service <http://TheSilverRunner.com/>

6300 Riverside Plaza Lane, NW, Suite 100, ABQ, NM 87120-1908

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November 1, 2018

NOV - 1 2018



Re: 2018-032-Certification of professional guardians and conservators(NM Rule 1-142-NMRA)

Dear Honorable Supreme Court Justices,

Yes, I agree that guardians and conservators should be certified; however, their certification doesn't guarantee that they will be honest and report accurate information on the annual report to the judge.

For example, **Ayudando Guardians**, my son's former corporate guardian, did not report that my son had been physically assaulted and lived in a bedbug infestation in a boarding home that they placed him in Las Vegas, New Mexico.

Another example is that he was placed in an illegal and incomplete garage conversion in Albuquerque, New Mexico. This structure had many deficiencies such as exposed electrical wiring in the ceiling, no shower, no door leading into the bathroom for privacy with numerous other deficiencies. In fact when I reported these issues to the Albuquerque Building Code Department they discovered that the owner did not have a permit to build any structure on his property.

I had to contact the **DDPC-OOG** to file a grievance against **Ayudando Guardians**. Of course the **DDPC-OOG** did not comply with their own rules and regulations policy; therefore, I filed a grievance against this state agency with HSD. HSD placed them on a "corrective action plan" which merely meant that the **DDPC-OOG** had to complete a template with actions in order to place them in compliance. The **DDPC-OOG** never intervened to resolve my grievance/concerns with **Ayudando Guardians!**

I'm mentioning these examples to illustrate that lengthening the annual report and requiring that guardians and conservators become certified fails to guarantee that the annual report will be accurate and honest. **THE QUALITY OF THE ANNUAL REPORT TO THE COURT OCCURS ONLY IF THE GUARDIAN IS HONEST AND REPORTS ALL INFORMATION** regarding the experiences of the protected person. *Where is the entity that will check to provide oversight that the guardian has complied and reported accurate and crucial information for which the judge should be aware?*

-1-

The protected person needs protection, oversight, and accountability-which are not included in Senate Bill 19. When the New Mexico Supreme Court Justices, District Court Judges, Petitioning Attorneys, and New Mexico Legislators add language to a bill that guarantees these basic human rights and holds any and all perpetrators accountable for violations against the incapacitated individual, then I can proudly say that New Mexico truly cares for ALL its citizens!

Respectfully,  
Lorraine Mendiola  
Lorraine Mendiola  
Associate Legislative Director-AAAPG(Americans Against Abusive Probate Guardianship,N.M.Chapter)  
505-699-3250  
[lorrainemendiola417@gmail.com](mailto:lorrainemendiola417@gmail.com)



November 20, 2018

SUPREME COURT OF NEW MEXICO  
FILED

NOV 20 2018

Joey D. Moya, Clerk  
New Mexico Supreme Court  
PO Box 848  
Santa Fe, New Mexico 87504-0848

Re: Proposed Amendments to the Rules of Civil Procedure for the District Courts; Proposal  
2018-032; New Rule 1-142

Dear Mr. Moya:

Zia Trust, Inc. is a state-chartered financial institution with trust powers currently serving as court appointed conservator in numerous protective proceedings in various judicial districts in the State of New Mexico. As a professional conservator, Zia Trust would like to comment on proposed New Rule 1-142.

Zia Trust, Inc. is in favor of a rule that would require professional guardians and conservators to maintain appropriate and relevant certifications or credentials that evidence competence and specialized training in the area of practice.

However, Zia Trust respectfully suggests that whereas numerous professional conservator appointments name banks, trust companies or other corporate entities as conservator, the certification requirement should be revised to require that with respect to entities appointed as conservator, the certification requirement would be met if at least one individual in a supervisory position maintained the required certification.

Sincerely,

ZIA TRUST, INC.

Elizabeth J. Medina  
Trust Officer

1-800-996-9000 • WWW.ZIATRUST.COM

ALBUQUERQUE, NEW MEXICO  
6301 INDIAN SCHOOL ROAD NE  
SUITE #800  
ALBUQUERQUE, NM 87110  
505 881-3338  
Fax 505-875-0302

SOUTHERN NEW MEXICO  
4131 CAMINO COYOTE  
SUITE A  
LAS CRUCES, NM 88011  
575-522-3448  
Fax 575-522-4135

NORTHERN NEW MEXICO  
613 OLD SANTA FE TRAIL  
SUITE B  
SANTA FE, NM 87505  
505-881-3338  
Fax 505-875-0302

ARIZONA  
11811 NORTH TATUM BLVD  
SUITE #1062  
PHOENIX, AZ 85028  
602-633-7999  
Fax 602-626-3622

NOV 28 2018



A handwritten signature in black ink, appearing to be 'V. Chavez Neumann', written over a horizontal line.

November

To: nmsupremecourtclerk@nmcourts.gov

Re: Comment on Proposed Amendments to the Rules of Civil Procedure For the District Courts Proposal 2018=031

Thank you for allowing us to offer public comment on this change to the certification of legal guardian. Our current contract with the Office of Guardianship calls for all guardianship coordinators to have their certification within 18 months. The change would require all guardianship coordinators to have their certification within 3 months. We recommend a compromise of 12 months.

It is important to remember that The Arc NM is the entity which is appointed as guardians and not the specific guardianship coordinator. All guardianship coordinators receive supervision from a Program Manager and Director of Guardianship. Every guardian receives some type of supervision, but a guardian who is fairly new to the position and is not certified is provided additional supervision.

The three month time period is a probation period for The Arc NM employees. We require that new guardians shadow every other guardian during this time period including both the supervisors. We want the guardians to meet and get to know the protected persons during this time period and to begin to make some decisions while they are still closely supervised. If, instead, this time period is spent studying for and preparing for a test, at the end of the probationary period we will know they can pass a test. We will not be able to adequately measure their judgement, values, interpersonal skills and other qualities which are as important as knowing the standards for guardianship. If they have passed the test and their probationary period, but do not prove to be a satisfactory guardian, The Arc will have paid for the training and testing during this first three month period. This is an unfair financial obligation.

It is important to note that the guardianship coordinator is a position which is on call 24 hours 7 days a week, has a great deal of responsibility, but is, often, paid at what would be an entry level position in most social service agencies. It is our fear that requiring certification within the first 3 months would make this a more challenging position in terms of recruitment. The aim of the amendment is clearly to improve the professionalism of guardians. Yet, it might have an unintended negative impact. This might be especially true in other corporate guardian agencies which hires contractors instead of employees as contractors have to pay for their own training and certification.

Thank you for the consideration of this compromise.

Pamela Stafford  
Director of Public Policy

Veronica Chavez Neumann  
CEO