

N. M. S. A. 1978, § 45-5-310

West's New Mexico Statutes Annotated Currentness

Chapter 45. Uniform Probate Code

▣ Article 5. Protection of Persons Under Disability and Their Property (Refs & Annos)

▣ Part 3. Guardians of Incapacitated Persons (Refs & Annos)

→ § 45-5-310. Temporary guardians

A. When a petition for guardianship has been filed, but adherence to the procedures set out in this section would cause immediate and irreparable harm to the alleged incapacitated person's physical health, the court may appoint a temporary guardian prior to the final hearing and decision on the petition, subject to the requirements of this section.

B. Upon motion of the petitioner, the court shall schedule a hearing on the appointment of a temporary guardian for the earliest possible date, appoint counsel for the alleged incapacitated person and give notice as provided in Section 45-5-309 NMSA 1978. Upon a finding that serious and irreparable harm to the alleged incapacitated person's health would result during the pendency of petition, the court shall appoint a temporary guardian and shall specify the temporary guardian's powers in order to prevent serious and irreparable harm to the alleged incapacitated person. The duration of the temporary guardianship shall not exceed sixty days, except that upon order of the court, the temporary guardianship may be extended for not more than thirty days.

C. A temporary guardian may be appointed without notice to the alleged incapacitated person and his attorney only if it clearly appears from specific facts shown by affidavit or sworn testimony that immediate and irreparable harm will result to the alleged incapacitated person before a hearing on the appointment of a temporary guardian can be held. The alleged incapacitated person shall be notified within twenty-four hours of the appointment of a temporary guardian by the petitioner as provided in Subsection C of Section 45-5-309 NMSA 1978. On two days' notice to the party who obtained the appointment of a temporary guardian without notice, or on such shorter notice to that party as the court may prescribe, the alleged incapacitated person or his counsel may appear and move dissolution or modification of the court's order, and, in that event, the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

D. A temporary guardian is entitled to the care and custody of the alleged incapacitated person, and the authority of any permanent guardian previously appointed by the court is suspended as to those specific matters granted to the temporary guardian by the court. A temporary guardian may be removed by the court at any time. A temporary guardian shall make any report the court requires. In all other respects, the provisions of the Probate Code concerning guardians apply to temporary guardians.

E. Appointment of a temporary guardian shall have the effect of limiting the legal rights of the individual as specified in the court order. Appointment of a temporary guardian shall not be evidence of incapacity.

L. 1975, Ch. 257, § 5-310; L. 1989, Ch. 252, § 11; L. 1993, Ch. 301, § 8.

Formerly 1953 Comp., § 32A-5-310.

HISTORICAL AND STATUTORY NOTES

Uniform Law