

N. M. S. A. 1978, § 45-5-407

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 4. Protection of Property of Persons Under Disability and Minors

→ § 45-5-407. Procedure for court appointment of a conservator

A. Upon receipt of a petition for appointment of a conservator or other protective order because of minority, the court shall set a date for hearing on the matters alleged in the petition. If at any time in the proceeding the court finds the minor is or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the choice of the minor if fourteen years of age or older. An attorney appointed by the court to represent a minor shall represent and protect the interests of the minor.

B. Upon receipt of a petition for appointment of a conservator for reasons other than minority, the court shall set a date for hearing. Unless the person to be protected is already represented by an attorney of his own choice, the court shall appoint an attorney to represent him in the proceeding. The court-appointed attorney shall have the duties of a guardian ad litem as set forth in Section 45-5-404.1 NMSA 1978.

C. If the petition is for the appointment of a conservator for an incapacitated person, the person to be protected shall be examined by a qualified health care professional appointed by the court who shall submit a report in writing to the court. The report shall:

- (1) describe the nature and degree of the person's incapacity, if any, and the level of the intellectual, developmental and social functioning of the person to be protected; and
- (2) contain observations, with supporting data, regarding the ability of the person to be protected to manage his estate or financial affairs.

D. The court shall also appoint a visitor who shall interview the person seeking appointment as conservator and the person to be protected. The visitor shall also visit the present place of residence of the person to be protected. The visitor shall evaluate the needs of the person to be protected and shall submit a written report to the court. The report shall include a recommendation regarding the appropriateness of the appointment of the proposed conservator. The report shall also include recommendations regarding:

- (1) those aspects of his financial affairs that the person to be protected can manage without supervision or assistance;
- (2) those aspects of his financial affairs that the person to be protected could manage with the supervision or assistance of support services and benefits; and
- (3) those aspects of his financial affairs that the person to be protected is unable to manage even with the supervision or assistance of support services and benefits.

Unless otherwise ordered by the court, the appointment of the visitor terminates and the visitor is discharged from his duties upon entry of the order appointing the conservator and acceptance of the appointment by the conservator.

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E. The person to be protected shall be present at the hearing on the issues raised by the petition and any response to the petition, unless the court determines it is not in the best interest of the person for whom a conservator is sought to be present because of a threat to the health or safety of the person for whom a conservator is sought or others as determined by the court. The court upon request or its own motion may conduct hearings at the location of the person to be protected if he is unable to be present in court.

F. The person to be protected shall not be permitted by the court to consent to the appointment of a conservator.

G. The court, at the hearing on the petition for appointment of conservator, shall:

- (1) inquire into the nature and extent of the functional limitations of the person to be protected; and
- (2) ascertain his capacity to manage his financial affairs.

H. If it is determined that the person to be protected possesses the capacity to manage his estate or financial affairs, or both, the court shall dismiss the petition.

I. Alternatively, the court may appoint a full conservator, as requested in the petition, or a limited conservator and confer specific powers of conservatorship after finding in the record based on clear and convincing evidence that:

- (1) the person to be protected is totally incapacitated or is incapacitated only in specific areas as alleged in the petition;
- (2) the conservatorship is necessary as a means of effectively managing the estate or financial affairs, or both, of the person to be protected;
- (3) there are not available alternative resources that enable the effective management of the estate and financial affairs of the person to be protected;
- (4) the conservatorship is appropriate as the least restrictive form of intervention consistent with the preservation of the property of the person to be protected; and
- (5) the proposed conservator is both qualified and suitable and is willing to serve.

J. After hearing, upon finding that a basis for the appointment of a conservator has been established, the court shall make an appointment of a conservator. The court shall appoint a limited conservator if it determines that the incapacitated person is able to manage some but not all aspects of his estate and financial affairs. The court shall specify those powers that the limited conservator shall have and may further restrict each power so as to permit the incapacitated person to care for his estate and financial affairs commensurate with his ability to do so.

K. A person for whom a conservator has been appointed retains all legal and civil rights except those that have been specifically granted to the conservator by the court. The conservator shall exercise his supervisory powers over the estate and financial affairs of the incapacitated person in a manner that is the least restrictive form of intervention consistent with the order of the court.

L. The rules of evidence shall apply and no hearsay evidence that is not otherwise admissible in a court shall be admitted into evidence except as otherwise provided in the Uniform Probate Code.

M. A record of the proceedings shall be made if requested by the person to be protected, his 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:

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- (1) docket entries;
- (2) date of the proceeding, appointment and termination;
- (3) duration of the conservatorship and whether limited or unlimited;
- (4) for a limited conservatorship, the nature of the limitation; and
- (5) the name and other information necessary to identify the alleged incapacitated person.

N. Notwithstanding the provisions of Subsection M of this section, any disclosure of information shall not include any diagnostic information, treatment information or other medical or psychological information.

O. The issue of whether a conservator shall be appointed shall be determined by the court at a closed hearing unless the person to be protected requests otherwise.

P. Upon request of the petitioner or person to be protected, the court shall schedule a jury trial.

Q. Upon entry of an order appointing a conservator, a copy of the order shall be furnished to the person for whom the conservator was appointed and that person's counsel. The order shall contain the name and address of the conservator as well as notice to the person for whom the conservator was appointed of that person's right to appeal the appointment and of that person's right to seek alteration or termination of the conservatorship at any time.

L. 1975, Ch. 257, § 5-407; L. 1989, Ch. 252, § 20; L. 1993, Ch. 301, § 17; L. 1998, Ch. 32, § 4.

Formerly 1953 Comp., § 32A-5-407.

HISTORICAL AND STATUTORY NOTES

Uniform Law


This section is based upon § 5-406 of the Uniform Probate Code. See Volume 8, Pts. I, II, Uniform Laws Annotated, Master Edition, or ULA Database on Westlaw.


This section is also based upon § 2-306 of the Uniform Guardianship and Protective Proceedings Act. See Volume 8A Uniform Laws Annotated, Master Edition, or ULA Database on Westlaw.

CROSS REFERENCES

Rules of Evidence, see NMRA, Rule 1-101

LIBRARY REFERENCES

Guardian and Ward  13(1).

Mental Health  137.

Westlaw Key Number Searches: 196k13(1); 257Ak137.

NOTES OF DECISIONS

Guardian ad litem 1

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1. Guardian ad litem

Appointment as guardian ad litem of minor is position of highest trust, and no attorney should ever blindly enter appearance as guardian ad litem and allow matter to proceed without full and complete investigation into facts and law so that his clients will be fairly and competently represented and their rights fully and adequately protected and preserved. *Bonds v. Joplin's Heirs*, 1958, 64 N.M. 342, 328 P.2d 597. *Infants* 85

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Current through the Second Regular Session of the 47th Legislature
(2006)

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