

# Introduction to the Nebraska Office of Public Guardian

by Michelle Chaffee

## Moral Test of Government and the “Two Faces” of Guardianship

This summer I visited Germany with my family, returning after 40 years of marriage to the places my husband and I had visited as newlyweds while stationed in the U.S. Army. Especially impacting was sharing with our four sons and two daughters-in-law their first direct interaction with historical sights of the Holocaust—seeing it through their eyes, as if for the first time. The places we visited included the Dachau Concentration Camp, the Topography of Terror Documentation Center (the site of the former headquarters of the Secret State Police [the Gestapo], the SS and the Reich

*“It was once said that the moral test of government is how that government treats those who are in the dawn of life, the children; those who are in the twilight of life, the elderly; and those who are in the shadows of life, the sick, the needy and the handicapped.” Hubert H. Humphrey*

Security Main Office, in Berlin), and the home of Dietrich Bonhoeffer (German Lutheran theologian and anti-Nazi dissident hanged by the Gestapo in 1945). The experience was deeply moving to me, especially in light of my recent appointment as the Public Guardian of Nebraska. Each location

held graphic stories: families who were deceived into sending their developmentally disabled children to death in extermination facilities disguised as residential care facilities; posters haranguing the lifetime cost of caring for incapacitated individuals

burdening the “productive Volk community;” the “Charitable Society for Transportation of Sick Persons”—buses that were actually used for transporting patients from the Eichberg State Mental Hospital to Hadamar Euthanasia Centre; and “Operation T4,” which carried out mass murders of ill and disabled individuals. All were stark, deeply disturbing reminders of a government and actions of state entities gone horribly wrong.

The paradox of guardianships, and therefore an area of potential overreach for anyone serving as a guardian/conservator, is described by author Mary Joy Quinn in her book *Guardianships of Adults: Achieving Justice, Autonomy, and Safety*. Ms. Quinn writes, “A key to understanding guardianship and its history is to recognize that it is based on an inherent tension. Guardianship has always had two faces—it is protective yet oppressive, an instrument of beneficence that can at the same time bring a dire loss of rights. Guardianship can be an accommodation, an enabler helping to provide for basic needs and offer essential protections. Without guardianship, vulner-

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able individuals may languish unnecessarily in situations, suffer from lack of appropriate health care, or be subject to abuse and exploitation. Yet the very same institution of guardianship removes fundamental rights, restricting self-determination, freedom to choose, freedom to risk. It has been said to ‘unperson’ an individual, reducing her to the status of a child. Thus, guardianship can “empower” and it can ‘unpower’.”

### Duties and Protections under the Public Guardianship Act

The Nebraska Legislature, in enacting LB 920 (2014), the Public Guardianship Act, introduced by Senator Coash, is crafted to recognize and balance the two sides of guardianship as implemented by Nebraska’s Public Guardian. Under the Public Guardianship Act, Neb. Rev. Stat. §§ 30-4101 through 30-4118, the duties of the Office of Public Guardian include:

- Safeguard the rights of individuals by exploring all options available to support [them] in the least restrictive manner possible and seek full guardianship only as a last resort;<sup>1</sup>
- Model the highest standard of practice for guardians/conservators to improve performance of all guardians/conservators in the state;<sup>2</sup>
- Act as resource to guardians/conservators for education, information, and support to enhance guardian/conservator success;<sup>3</sup>

- Develop and maintain training programs statewide to offer training curricula for private guardians/conservators;<sup>4</sup>

- Recruit and support members of the public and family to serve as guardians or conservators, and make reasonable effort to locate successor guardians/conservators;<sup>5</sup> and

- Develop a uniform system of reporting and collecting statistical data regarding guardianships/conservatorships.<sup>6</sup>

### Nebraska’s Office of Public Guardian

Nebraska’s Office of Public Guardian (OPG) is the 50th of state public guardianship offices in the country and is one of only four public guardianship offices under the judicial branch. The OPG is directly responsible to the Supreme Court Administrator.<sup>7</sup> The OPG is assisted by an Advisory Council, appointed by the Administrator of the Courts. Members of the Advisory Council include representatives from the county court, lawyers, a social worker, and stakeholders with expertise in serving vulnerable adults with developmental disabilities, mental health issues and cognitive impairment.<sup>8</sup> The Advisory Council has been invaluable in assisting the OPG in developing policies and protocols to carry out the intent of the Public Guardianship Act. While the statute requires the Council to meet four times a year, this dedicated group has met monthly since February to provide thoughtful, insightful guidance to the OPG.

The OPG staff includes the Public Guardian as Director of the Office, a Deputy Director, twelve Associate Public Guardians, a Business Manager, an Outreach and Education Coordinator and two support staff.<sup>9</sup> The twelve Associate Public Guardians (APG) provide direct guardianship and conservatorship services to wards and protected persons. The Public Guardianship Act limits guardianships/conservatorships to an average of forty incapacitated individuals<sup>10</sup> per APG. The Associate Public Guardians have vast experience in a wide variety of social services and legal professions, strengthening the knowledge and skills of the OPG team. The APGs’ professional backgrounds include service coordination and direct service for individuals with developmental



*The OPG’s twelve Associate Public Guardians. Front row: Stacey Rotherbam (1 Panhandle, Scottsbluff), Andrew Schill (7 Sarpy County/Falls City, Omaha office), Danielle Schunk (6C East Omaha, South Sioux City), Irene Britt (2 West Central, North Platte); Second row: Erin Wiesen (6D East Omaha, David City), Annette Scarlett (3B MidCentral, Grand Island, Hastings), Michelle Moore (3A MidCentral, Kearney), Lauren Micek (6A Omaha, Douglas County); Back row: Brad Brake (5B East Central, Lincoln/West), Valerie Franssen (5A East Central: Lincoln/South), Chris Casey (4 Northeast, Norfolk), and Jordan Harvey (6B Omaha, Douglas County).*

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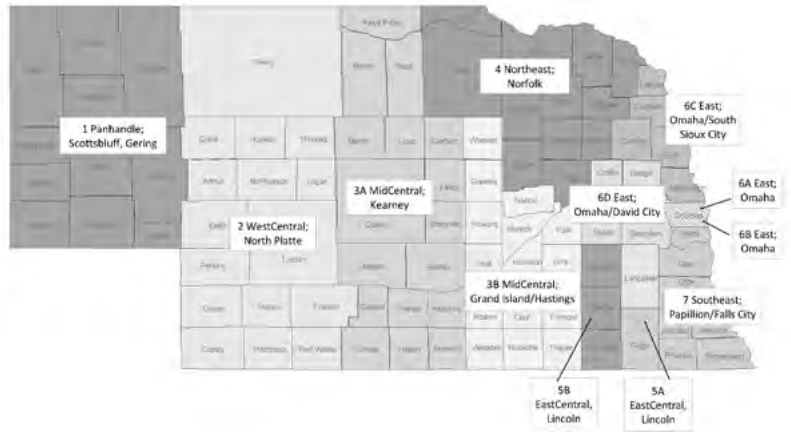
disabilities, counseling for individuals with mental health issues, administration of a specialized care facility for individuals with Alzheimer's, case management provision within Adult Protective Services, and professional educators. Four of the APGs, in addition to the Director and Deputy Director, have law degrees.

Each of the twelve APGs serve a designated geographic service area in the state. There are currently two office locations for APGs. One office is in west Omaha and houses five APGs that serve the eastern area of the state. Two other Associate Public Guardians share Lancaster County and four surrounding counties, and they are located in the OPG main office in the State Capitol in Lincoln. All other APGs work from home offices located near Norfolk, Hastings, Kearney, North Platte, and Scottsbluff.

### Court Visitor: Independent Lynchpin

In researching best practices for serving Nebraska's potentially incapacitated persons in a manner that balances the "two faces" of guardianship, and in accordance with the Legislative intent and requirements of the Public Guardian Act, the OPG researched multiple models of public guardianship. Mary Joy Quinn's *Guardianships of Adults: Achieving Justice, Autonomy, and Safety* states, "Educated, compassionate, and savvy court investigators appear to be the key to ensuring that all due process protections have been observed both in the spirit and the letter of the law. They are the linchpins to providing judges with the best possible overall information about the person with diminished capacity and his wishes."<sup>11</sup> Additionally, the National Probate Court Standard 3.3.4 "Court Visitor" states that probate courts should require a court appointee to visit with the respondent upon the filing of a petition to initiate a guardianship/conservatorship proceeding in order to (1) explain the rights of the respondent, (2) investigate the facts of the petition and (3) determine whether there may be a need for appointment of counsel.

Current Nebraska statutes provide for an appointment of a visitor to conduct an evaluation of the allegations of incapacity and obtain evidence relating to the allegedly incapacitated person's ability to make, communicate, or carry out responsible decisions. The visitor is to interview the allegedly incapacitated person, and other persons and agencies that may provide relevant information and visit the present place of abode of the person alleged to be incapacitated.<sup>12</sup> A visitor shall be trained in law, nursing, social work, mental health, gerontology, or developmental disabilities. The court is to select the visitor who has the expertise to most appropriately evaluate the needs of the person who is allegedly incapacitated. The court shall maintain a current list of persons trained in or having dem-



onstrated expertise in the areas of mental health, intellectual disability, drug abuse, alcoholism, gerontology, nursing, and social work, for the purpose of appointing a suitable visitor.<sup>13</sup>

In implementing the Public Guardianship Act, Nebraska Court Rules have been adopted that will require the utilization of a court visitor/limited guardian ad litem to complete an independent visitor evaluation in every case in which the Public Guardian is nominated to serve as a guardian/conservator. The independent visitor evaluation and information provided to the court will assure, in accordance with the Public Guardianship Act, the OPG is appointed only (1) as a last resort, (2) in the least restrictive manner for individuals whose needs cannot be met through less intrusive means of intervention, and (3) only when others are unwilling, unable or unavailable to serve. Additionally, the use of visitor/limited guardian ad litem screening will provide a process to determine Public Guardian capacity and an equitable, fair allocation for public guardian appointments and acceptance to waiting lists. Finally, having a standardized visitor report form for all OPG cases will provide qualitative, accurate data on OPG resource utilization. This will be especially important for future policy determinations if the OPG reaches capacity and has a waiting list of individuals requiring services.

### Volunteers: Essential Component and Opportunity

In order to assist with the potential increased need for court visitors for the Public Guardianship process, the OPG has developed a Volunteer Court Visitor Program. The OPG Volunteer Court Visitor Program will train visitors in use of the screening tool and completion of the required reporting form. Using these well-trained volunteers will, also, reduce the cost to counties, who are required to pay for visitors and guardians ad litem.<sup>14</sup> The *Adult Guardianship Guide*<sup>15</sup> points out, "In light of budget restrictions, volunteer monitor and visitor programs are becoming more commonplace, as the courts look

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to their local community to help provide oversight.” To recruit volunteer court visitors for the Volunteer Visitor Program, the OPG staff has met with community providers, stakeholders, higher education program training professionals, and advocates of adults with incapacity due to cognitive impairment, mental health issues, developmental disabilities, medical issues, and substance abuse. Additionally, the Office of Public Guardian has developed a training curriculum. The visitor training curriculum consists of 12 online modules and 6 hours of face-to-face training. The 12 online modules include the following: Introduction to Guardianship; Guardianship Authority; Surrogate Decision Making; Conditions of Potentially Incapacitated Persons or Wards; Living Arrangements of Potentially Incapacitated Persons; Common Problems; Abuse, Neglect, and Exploitation; The Interview; Effective Communication; Community Resources; Directory of Legal and Medical Terms; and Introduction to Visitor Screening Tool and Report Form. The curriculum will be available to educate both volunteer court visitors and paid visitors/guardians ad litem appointed by courts. Court rules require all visitors to complete the Visitor/Limited Guardian ad Litem Report form developed for Public Guardian-nominated cases.

### OPG Assistance to Private Guardian and Conservators

In addition to fulfilling its responsibility for direct service as public guardian and public conservator under the Public Guardianship Act, the OPG is fulfilling other roles under the Act as well. In order to maximize resources, facilitate best practices, and enhance opportunity for recruitment of successor guardians/conservators in the private sector,<sup>16</sup> the OPG is implementing a variety of programs, protocols and practices to benefit private guardians and conservators.

The OPG is utilizing software for personal, medical and financial case management that is web-based, providing access 24 hours a day, 7 days a week, to APGs for protected persons’ and wards’ information. In addition, the OPG has invested in software development to provide daily automatic bank imports and exports to the case management software for ease and accuracy of protected persons’ financial oversight. Finally, the OPG has worked with the software provider to export directly from the case management software into Nebraska guardianship and conservatorship forms, including the annual report. The work completed with the software system and bank will allow for centralized court filings and financial case management from the OPG Lincoln office and provide added layers of financial oversight. The centralization of finances and court filings will maximize the time available to APGs to focus on direct, interpersonal interactions with incapacitated adult wards and protected persons. Additionally, the OPG’s goal, after piloting the software development, is to provide the software/financial/court form integration software as an option available at a moderate cost to private guardians and conservators for the care of their wards and protected persons.

Beginning January 2016, the OPG will provide the certification and education required for newly-appointed private guardians and conservators.<sup>17</sup> The Public Guardianship Act requires the OPG to maintain training programs for private guardians, successor guardians, and interested parties to ensure successful guardians/conservators.<sup>18</sup> The curriculum is to include (1) assisting guardians to understand ward disabilities; (2) encouraging independence of ward as appropriate; (3) helping with guardian plans and reports; (4) helping conservators to understand fiduciary duties and accountings; and (5) advising on ways to secure rights, benefits and services for wards and protected persons. Previously, the training has been provided

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by UNL Extension and Volunteers Assisting Seniors. They have done an excellent job, providing training to over 10,000 guardians and conservators in Nebraska. The goal of changing the training process for private guardians, at this time under the OPG, is to develop an ongoing relationship of support for private guardians through the local Associate Public Guardians. The APGs have been meeting with stakeholders, providers and advocates to develop resources for the wards and protected persons they serve and create networks to provide support and information to all guardians and conservators in their service areas. Private guardian/conservator education will be provided by the APGs in each service area. The 2016 Schedule for Private Guardianship and Conservatorship training can be found on the Office of Public Guardianship website at [supremecourt.nebraska.gov/11541/office-public-guardian](http://supremecourt.nebraska.gov/11541/office-public-guardian). Education will include a three-hour face-to-face class. Online registration and payment will be available beginning in November.

### Recruitment and Support for Successor Guardians

In addition to providing direct services as guardian/conservator and providing education to private guardians and conservators, the Office of Public Guardian is also tasked with recruiting Nebraskans to serve as guardians and conservators and successor guardians and conservators for the Public Guardian. Due to the potential of reaching the 480 client maximum capacity, the Public Guardian Act requires the OPG to seek to find replacements, as successor guardians/conservators, within six months of the appointment of the Public Guardian. As discussed above, the OPG is committed to building hubs of information, education and support for private guardians and conservators through relationships with Associate Public Guardians in each service area. It is hoped that through the development of resource assistance, including computerized and electronic support, current guardians and conservators will be less apt to end their participation with their wards and protected persons. Also, to encourage volunteers to serve as guardians and conservators, the OPG believes it is important that volunteers be supported. Accordingly, the OPG and APGs will continue to work towards collaboration, education, and resource development for all guardians and conservators in OPG service areas; such support will be a crucial component in recruitment efforts.

### Partnerships Crucial to Integrity of Nebraska Guardianship/Conservatorship System

The Nebraska legal profession has historically been a crucial component in balancing the “two faces” of guardianships. Attorneys have provided multiple volunteer services toward protection of vulnerable adults in Nebraska. Legal services have included (1) serving as direct guardians and conservators


when there has not been anyone available; (2) participating in Volunteer Lawyers Programs filing petitions for vulnerable adults needing guardianships; and (3) answering legal questions for private guardianship/conservatorship training classes. The assistance of the legal profession will still be an integral part of the Nebraska guardianship/conservatorship process with the Office of Public Guardian. Two areas will be especially critical: the Volunteer Visitor Program, and assistance with filing guardianship and conservatorship petitions when there is no individual to serve as guardian or conservator.

As discussed above, increasing Court Visitor opportunities to support the public guardianship process for vulnerable adults is an additional opportunity for volunteering. The OPG is thankful for the Legal Medical Program attorneys with Legal Aid of Nebraska who have agreed to participate in the Volunteer Visitor Program. Six attorneys have volunteered to be trained and to accept cases serving as volunteer court visitors to assist with the initial appointments in Omaha. Additional private attorneys have recently offered their services as Volunteer Court Visitors and are participating in training. Their involvement will greatly assist the ability of courts to appoint individuals as volunteer court visitors as the OPG begins accepting cases. The OPG is hopeful that others in the legal profession will follow these attorneys’ lead in accepting cases as well. With limited involvement, this is a way in which attorneys, and others interested in the process, can give some of their time and skills to support those who need it most. The OPG Visitor training curriculum qualifies an attorney for 11 hours of CLE—5 hours of distance-learning credit and 6 hours of regular/classroom credit. To encourage volunteer visitor/limited guardian ad litem services for Public Guardian cases, attorneys who agree to volunteer for an OPG case will have the cost of the Visitor training program waived. The OPG Visitor training curriculum will be available across Nebraska on a monthly basis.

In compliance with best practices, the Nebraska Public Guardianship Act does not allow the Office of Public Guardian to file petitions for guardianships and conservatorships. To do so would be a conflict of interest and an overreach by the state—using state powers to request an individual be identified as incapacitated, a guardian/conservator be appointed, and that the state, as the OPG, be named the guardian/conservator. While the OPG is not an appropriate filing entity, there is still a need for petitions to be filed in order for the Public Guardian to be considered. The OPG has been in talks with the NSBA’s Volunteer Lawyers Project and other private attorneys to explore options for a structured approach to filing petitions, and the hope is that collaboration will make that hope a reality. But, at this time, the immediate need is for independent attorneys to file petitions for individuals who might qualify for the Public Guardian to serve as their last resort.

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As the State of Nebraska seeks to implement the Office of Public Guardian, it is imperative to balance the tension inherent in the “two faces” of guardianship. The surest way to maximize the protection and minimize the oppression to the potentially incapacitated persons within the system is the absolute commitment to the rule of law, especially individual civil rights, and to the quality of character and professionalism of those who serve in the system. The Office of Public Guardian is dedicated to implementing the Public Guardianship Act in a manner that both protects and serves vulnerable adults in Nebraska. It will diligently seek to fulfill its responsibilities as Nebraska’s Public Guardian as an essential component in the safety net for vulnerable Nebraskans, a fulcrum to provide support, information, resources and direct services for those who have no other options. However, serving Nebraska citizens who are vulnerable, incapacitated adults in need of assistance will continue to require the joint collaboration, cooperation, commitment and oversight of private individuals, communities, providers, medical practitioners, courts, and the legal profession. Collaboration, especially with the legal profession, as a cornerstone to protect civil rights and support the safety net (both as professionals and as volunteers), will assure the Nebraska guardianship/conservatorship system is one of integrity and quality. Together, we will secure the highest degree of moral government and pledge that vulnerable adults in Nebraska are not “unpersoned”

through Public Guardianships but, rather, that they continue to be “empowered” despite their incapacities. 

## Endnotes

- 1 Neb. Rev. Stat. § 30-4105 (7) (2014).
- 2 Neb. Rev. Stat. § 30-4105 (8) (2014).
- 3 Neb. Rev. Stat. § 30-4105 (6) (2014).
- 4 Neb. Rev. Stat. § 30-4109 (6) (2014).
- 5 Neb. Rev. Stat. § 30-4105 (5) (2014).
- 6 Neb. Rev. Stat. § 30-4109 (1) (2014).
- 7 Neb. Rev. Stat. § 30-4104 (2014).
- 8 Neb. Rev. Stat. § 30-4106 (2014).
- 9 *Id.*
- 10 Neb. Rev. Stat. § 30-4115 (2014).
- 11 Mary Joy Quinn, *Guardianships of Adults: Achieving Justice, Autonomy, and Safety* 146-147 (Springer Publishing Company 2005).
- 12 Neb. Rev. Stat. § 30-2619.01 - 30-2619.03 (2014)
- 13 Neb. Rev. Stat. § 30-2624 (2014)
- 14 Neb. Rev. Stat. § 30-2619.01 (2014).
- 15 National Association of Court Management, *Adult Guardianship Guide: A Guide to Plan, Develop and Sustain a Comprehensive Court Guardianship and Conservatorship Program* 15, (National Association for Court Management 2013-2014).
- 16 Neb. Rev. Stat. §§ 30-4105 (5), 30-4109 (7) (2014).
- 17 Neb. Rev. Stat. §§ 30-4105 (4), 30-4109 (5), 30-4109 (6) (2014).
- 18 Neb. Rev. Stat. § 30-4105 (5) (2014).

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