

Ethics Complaints Filed Against Colorado Office of Public Guardianship

Documents allege OPG's use of office space in Denver City and County Building create conflict of interest

By **Law Week** - July 20, 2020



A local activist on Monday filed an ethics complaint against Colorado's Office of Public Guardianship, alleging an improper relationship between the OPG and Denver based on the office's use of space in the City and County Building.

The OPG is intended to provide guardianship for at-risk adults who need someone to make legal decisions for them but whose family or



friends can't serve as guardian and cannot afford a privately appointed guardian. The office currently comprises Executive Director Sophia Alvarez, four guardians and a support staff member. A five-member commission oversees the OPG. Maureen Welch filed complaints against all the commissioners and Alvarez, as well as assistant attorney general Deborah Enck.

Alvarez started as executive director in October 2019. The OPG began accepting referrals this past spring. Under the statute that created the OPG, although the office is a state entity, it currently operates only in the 2nd Judicial District.

In response to open records requests filed by Welch, Alvarez said the office does not have written records related to any agreement with Denver for use of space in the City and County Building. The complaints include an exhibit of OPG meeting minutes from

Nov. 21, 2019 mentioning that the OPG is temporarily in the City and County Building. The minutes stated there had been discussion of moving the OPG to the Ralph L. Carr Judicial Center, but that likely wouldn't happen for at least another year.

In the complaints, Welch alleges the arrangement creates a conflict of interest and appearance of impropriety by making the OPG, a state agency, beholden to the Denver Probate Court.

"The Colorado Office of Public Guardianship commissioners and the director are unduly influenced because of the free rent arranged by the very court that they will appear in front of for cases," state the



complaints. Such an arrangement shows potential favoritism, according to the documents.

According to the complaint against Enck, the assistant attorney general was “involved and aware of the free rent agreement for the Colorado Office of Public Guardianship.”

Alvarez did not provide comments to Law Week about the complaint specifically naming her. A spokesperson for the Office of the Attorney General declined to comment on the complaint naming Enck.

In May, the Denver auditor released a report criticizing the city for how it has managed its real estate portfolio, saying its strategy for keeping records city-owned and leased property has been “scattershot” and not comprehensive. In an email, director of communications Tayler Overschmidt for the Office of the Auditor said she couldn’t comment on the arrangement between the OPG and Denver since it wasn’t part of the auditor’s scope of work. But she said the issue has been brought to her attention and she confirmed she was not able to find a contract addressing whether the state is paying Denver for the OPG’s use of office space.

City Council member Candi CdeBaca said the OPG’s use of space in the City and County Building isn’t automatically a problem. The City and County Building houses functions of all three government branches, and Denver does have other agreements with the state for use of specific properties, such as for leasing space in the Convention Center as an emergency hospital for COVID-19 patients. But CdeBaca said she’s concerned by the lack of clarity about who authorized the OPG’s use of space in the City and County Building.

“If it’s the court’s space and they have that agreement with [the OPG], then it’s probably not that big of a deal. They should have something



on paper, but it is the court's space," she said. "But it's almost impossible to track down who is lending the space to who."

The issue is of interest to her because she said Denver has not seemed to have a clear system for keeping inventory of its spaces. For example, CdeBaca's office is located in the Department of Motor Vehicles building, which she believes could lend unused space to community organizations that might not be able to afford rent elsewhere, and the city has also leases for use of privately owned space.

"It's just peculiar to have these leases coming up to us for privately owned space that we would use for city business, when we had city-owned spaces that were not being utilized or that we were not charging rent for," CdeBaca said.

Welch has also criticized the OPG for continuing to operate amid the pandemic while other government agencies have had their budgets cut and laid off staff, because the office has not yet been appointed as guardian for any clients.

At the OPG's meeting on Wednesday, Alvarez said she expects the office will have its first ward appointed in August based on a scheduled hearing. In an email, she said as of July 24 the OPG has accepted 13 referrals and of those, four petitions have been filed in probate court. She expects more appointments in September and November.

For the 2019-2020 fiscal year, the OPG received funding from a combination of \$427,000 in general fund money and \$408,386 cash funds from probate filing fees. The office does not have a general fund appropriation for the fiscal year that started July 1, but in a previous



email Alvarez told Law Week the cash funds for the year can cover the lack of general funds.

The pandemic has limited the Denver Probate Court's operations. According to a June 15 order, petitions for emergency guardianships and special conservators are considered essential services for courts to continue hearing, but filings for non-emergency cases made in the spring have seen delays. A June 15 order from the probate court said new case filings were no longer being disrupted.

In an email June 30, Alvarez said while the OPG can't do official case work until the probate court appoints the office as a person's guardian, the OPG can do tasks in the interim such as communicate with assigned court visitors, review their reports and attend hearings.

Referrals have come from a range of sources, such as the Colorado Fund for People with Disabilities, Denver Health, the Department of Veterans Affairs and attorneys whose clients have been found incompetent to stand trial. In a phone interview July 7, Alvarez said the fact that the OPG can't file guardianship petitions for clients it accepts has also emerged as an obstacle in the appointment process, because a person or organization who refers clients to the OPG have to find an attorney to file the petition or file it themselves before the OPG can be appointed as guardian.

Alvarez has been working to come up with a "pool" of attorneys who may be willing to assist with petition filings that nominate the OPG as a guardian. Her efforts include partnering with organizations such as the Medical Legal Partnership find legal representation for petition filing for clients the office has accepted.

She said Medical Legal Partnership has an established relationship with Denver Health, and has told the OPG they are willing to file



guardianship petitions on behalf of Denver Health and nominate the OPG.

“So that’s been something that has worked, but that’s because that was in place – that initial relationship between Denver Health and Medical Legal Partnership,” Alvarez said.

The OPG has also been able to partner with the Colorado Cross-Disability Coalition, she said, which can use mill levy funds to file guardianship petitions for people with developmental disabilities.

“So that was another kind of natural partnership, but that, as you can imagine, is for just select individuals that are only eligible for the mill levy funds,” Alvarez said. She added in an email she plans to also reach out to Metro Volunteer Lawyers and Colorado Legal Services.

Welch told Law Week she believes the challenge of finding attorneys to file petitions is something the OPG should have figured out before it began operating. She said she doesn’t have a personal agenda with her criticisms of the office. “I don’t want these people to think I’m coming after them as a personal vendetta, because it’s not,” Welch said. “This is about people and their civil liberties. ...That’s what I’m fighting for.”

—*Julia Cardi*

