WELCOME TO TODAY'S VAP CLE SESSION

Volunteer Attorney Program of New Mexico Legal Aid

Powers of Attorney: An In-Depth Review & Common Pitfalls

October 20, 2026

This presentation will be recorded and shared along with resource materials

- The presenter will address questions during the presentation and we will also have a designated Q&A segment at the end.
- To receive CLE credit, you must complete the post-session survey at the end.

Agenda

Volunteer Attorney Program of New Mexico Legal Aid



Introduction: Merly Sutton, Paralegal, NMLA Volunteer Attorney Program



Announcements: Marissa Gonzalez, Paralegal, NMLA Volunteer Attorney Program



Presentation: Powers of Attorney: An In-Depth Review & Common Pitfalls
Cristy J. Carbón-Gaul



Q&A Segment: Cristy J. Carbón-Gaul



Closing Remarks: NMLA Volunteer Attorney Program

POAs and Guardianship and Conservatorship

How do you determine incapacity?

- Experience
  - Undue Influence
  - Family Involvement
- Testamentary Capacity
  - Natural Bounty
  - Identifying Assets
- Neuropsychologist

Qualified Healthcare Provider v. Neuropsych exam/primary care physician

Remember- Powers of Attorney are just a part of a complete estate plan

GENERAL DURABLE POWER OF ATTORNEY

- This document handles your financial matters.
- When does it become effective
- Needs to be comprehensive
- Needs to be notarized
- Successor agents

GENERAL DURABLE HEALTH CARE POWER OF ATTORNEY

- You appoint someone to make health care decisions for you when you are unable
- Includes the "living will"
- When does it become effective
- Decisions without a document can only be made in an emergency setting

Statutory Durable General Power of Attorney

Durable General Healthcare Power of Attorney

ADVANCED DIRECTIVE

LIVING WILL

Medical Aid in Dying NMSA 24-7C-3

- A prescribing health care provider may provide a prescription for medical aid in dying medication to an individual only after the prescribing health care provider has:
- A. determined that the individual has:
- (1) capacity;
- (2) a terminal illness;
- (3) voluntarily made the request for medical aid in dying; and
- (4) the ability to self-administer the medical aid in dying medication

Adding provision to HCPOA

I believe in the right to die. If I qualify under Section 24-7C-3 for assisted aid in dying, I ask my agent to assist me in facilitating this.

When you do not have POAS

- Guardianship
- Conservatorship

Guardianship

- **Over the person**
- **End of life decisions**
- **Housing**
- **Caregivers**
- **Medical Staff**
- **Medical Treatments**

Conservatorship

- **Over the finances**

Costs of Proceedings

- Guardian ad Litem
- Visitor
- Petitioner
- Neuropsych

Petitioning Lawyer

- Investigating
- Allegations
- Doctor's report

Filing Emergency (Temporary) v. Permanent

- **When do you rush to Court?**
  - **No documents**
  - **Theft**
  - **Medical emergency and conflict**
  - **Agent unavailable**
  - Financial Abuse
  - Safety
  - Housing

Third Party v. Family Appointment

- Temporary
- Permanent

Corporate Fiduciary versus Family Member

- **Case managers with guardian or agent**
- **Conservator and trustee**
- **How guardian and conservator work together**
- **Family conflict**

Qualified Healthcare Provider v. Neuropsych exam/primary care physician

Guardian ad Litem

- **What is their role**?

GAL

- As an estate planning lawyer, do you represent an interested person to file a petition for a guardianship and/or conservatorship for your own client?
- Can you act as a GAL for your client?
  - NMSA Section 45-5-303 D: Unless an alleged incapacitated person already has an attorney of the alleged incapacitated person's own choice, the court shall appoint an attorney to represent the alleged incapacitated person. The court-appointed attorney in the proceeding shall have the duties of a guardian ad litem, as set forth in Section 45-5-303.1 NMSA 1978.

Respondent Attorney

- Zealously Advocating for the Client
- A respondent lawyer for incapacitated or allegedly incapacitated person must champion the client's expressed preferences and requests, rather than acting as a guardian ad litem who decides what is in the client's "best interest“
- But you also have to keep in mind 16-114

Capacity

A. CLIENT-LAWYER RELATIONSHIP. WHEN A CLIENT'S CAPACITY TO MAKE ADEQUATELY CONSIDERED DECISIONS IN CONNECTION WITH A REPRESENTATION IS DIMINISHED, WHETHER BECAUSE OF MINORITY, MENTAL IMPAIRMENT OR FOR SOME OTHER REASON, THE LAWYER SHALL, AS FAR AS REASONABLY POSSIBLE, MAINTAIN A NORMAL CLIENT-LAWYER RELATIONSHIP WITH THE CLIENT.

B. **PROTECTIVE ACTION.** WHEN THE LAWYER REASONABLY BELIEVES THAT THE CLIENT HAS DIMINISHED CAPACITY, IS AT RISK OF SUBSTANTIAL PHYSICAL, FINANCIAL OR OTHER HARM UNLESS ACTION IS TAKEN AND CANNOT ADEQUATELY ACT IN THE CLIENT'S OWN INTEREST, THE LAWYER MAY TAKE REASONABLY NECESSARY PROTECTIVE ACTION, INCLUDING CONSULTING WITH INDIVIDUALS OR ENTITIES THAT HAVE THE ABILITY TO TAKE ACTION TO PROTECT THE CLIENT AND, IN APPROPRIATE CASES, SEEKING THE APPOINTMENT OF A GUARDIAN AD LITEM, CONSERVATOR OR GUARDIAN.

C. **PROTECTED INFORMATION.** INFORMATION RELATING TO THE REPRESENTATION OF A CLIENT WITH DIMINISHED CAPACITY IS PROTECTED BY RULE 16-106 NMRA OF THE RULES OF PROFESSIONAL CONDUCT. WHEN TAKING PROTECTIVE ACTION PURSUANT TO PARAGRAPH B OF THIS RULE, THE LAWYER IS IMPLIEDLY AUTHORIZED UNDER PARAGRAPH A OF RULE 16-106 NMRA OF THE RULES OF PROFESSIONAL CONDUCT TO REVEAL

Information

Disclosure of information; specific circumstances. A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(1) to prevent reasonably certain death or substantial bodily harm;

(2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;

(3) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;

(4) to secure legal advice about the lawyer's compliance with these rules;

(5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved or to respond to allegations in any proceeding concerning the lawyer's representation of the client;

(6) to comply with other law or a court order; or

(7) to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, but

Visitor

- **What is their Role?**

Cristy J. Carbón-Gaul



The Law Office of Cristy J. Carbón-Gaul

Mailing address:
10515 4th St., NW
Albuquerque, New Mexico 87114

Hand deliveries/ Client Meetings:
10143 4th St., NW
Albuquerque, New Mexico 87114

505.899.5696
cristy@carbon-gaul.com
carbon-gaul.com

Volunteer Attorney Program of New Mexico Legal Aid



Your pro bono pledge will help low-income New Mexicans navigate estate planning matters with dignity, clarity, and peace of mind.

Please monitor your email for opportunities to assist low-income clients in need.

Additional Volunteer Opportunities

Upcoming Events:

In-Person Consultations:

- October 23, 2026 – Rio Rancho Legal Fair
- November 7, 2026 – Alamogordo Legal Fair
- November 13, 2026 – Roswell Legal Fair
- November 19, 2026 – Statewide Teleclinic

Email Molly Wieser, VAP Manager, at MollyW@nmlegalaid.org for additional information or scan the QR code to express interest in volunteering at upcoming events!

THANK YOU FOR JOINING US!

Volunteer Attorney Program of New Mexico Legal Aid

To Receive CLE Credit:

Submit your post-session survey within 24 hours.

Credits are typically filed within 30 days.

To complete the survey, click the link in the chat or scan the QR code:

PRESENTER:

Cristy J. Carbón-Gaul
cristy@carbon-gaul.com

FACILITATED BY:

Marissa Gonzalez, Paralegal
NMLA Volunteer Attorney Program
marissag@nmlegalaid.org

Meryl Sutton
NMLA Volunteer Attorney Program
meryls@nmlegalaid.org