



# Guardianship: Monitoring

Administrative Office of the Courts  
Guardianship Compliance Office

**A GUIDE FOR JUDGES  
AND COURT STAFF**

## GUARDIANSHIP MONITORING

National Probate Court Standard 3.3.17 stipulates that courts should monitor the well being of protected persons and the status of the estate on an ongoing basis. This includes:

- Determining if a less restrictive alternative is appropriate.
- Ensuring that all guardianship plans, inventories, reports and accountings are filed timely.
- Prompt review of the contents of all plans, reports, inventories and accountings.
- Independent investigation of the well being of the protected person and the status of the estate.
- Assure the well being of the protected person and the proper management of the estate, improve the performance of the guardian, and enforcement of the terms of the guardianship order.

### MONITORING RUBRIC

- Compliance Case Review
- Review Hearings
- Counsel for Protected Persons
- Reporting Requirements
- Complaint Process
- Independent Audit & Investigation
- Enforcement of Orders

### Compliance Case Review

Developing a system whereby guardianship files are reviewed annually for compliance allows the court to ensure required documents are filed timely. When the record is out of compliance, the court can set a show cause hearing to address the deficiency with the guardian. The reviewer is also able to review annual accountings and reports of guardians for content and note any red flags that may need to be addressed by the court.

### Review Hearings

Review hearings allow the Judge to interact with the guardian and protected person to assess the protected person's well being and the guardian's performance. Per Supreme Court Statewide Rules for Guardianship, Rule 11 Guardianship Review Hearing, there should be an annual review hearing for Guardian of Estate, and review hearings for Guardian of the Person every three years, or any other time as the court may order. The protected person should attend hearings, unless their appearance may cause physical or mental harm to the protected person.

### Counsel for Protected Person

NRS 159.0485 states that upon the filing of a petition for guardianship, the court shall appoint an attorney for the proposed protected person, and NRS 159.328(a) provides that a protected person has the right to have an attorney at any time during guardianship. Nevada Supreme Court Statewide Rules for Guardianship, Rule 9 Attorney for Protected Person or Proposed Protected Person, outlines the role and duties of the protected person's attorney. Counsel will advocate for the protected person's wishes and ensure their due process rights are protected. The attorney for a protected person cannot also be the attorney for the guardian, nor can they serve as guardian ad litem in the same case or in a related case.

### Reporting Requirements

- Inventory (NRS 159.085):
  - Not later than 60 days after the date of appointment
  - Supplemental Inventory not later than 30 days after property is discovered
- Initial Plan and Budget (NRS 159.0445; Supreme Court Guardianship Rule 6) Not later than 60 days after the appointment
- Report of Guardian (NRS 159.081) Annually, not later than 60 days after the anniversary date of the appointment and within 10 days of moving the Protected Person.
- Accounting (NRS 159.177) :
  - Annually, not later than 60 days after the anniversary date of appointment
  - Upon filing a petition to resign and before resignation is accepted by the court
  - Within 30 days after the date of his or her removal
  - Within 90 days after the date of termination, or death of the protected person
  - At any other time required by law or as the court may order

### Complaint Process

The National Probate Court standard 3.3.18 Complaint Process urges probate courts to establish a clear and easy to use process for communicating concerns about guardianship and the performance of the guardian, and that courts should outline circumstances under which it can receive ex parte communications. Nevada Supreme Court Guardianship Rule 5 Ex Parte Communication provides courts with authority to receive ex parte communications when there are significant concerns related to a guardian's compliance with their statutory duties and responsibilities or the protected persons welfare. Additionally, the rule outlines specific actions a court can take in response to the communication, such as orders to show cause, investigations, audits, refer to law enforcement and/or protective services. The "Guardianship Complaints Bench Card" also provides additional information and resources related to guardianship complaints. The State Guardianship Compliance Office has a hotline where protected persons and interested persons can file a guardianship complaint. The phone number is: 1-883-421-7711.

### Independent Audit and Investigations

National Probate Court Standard 3.3.17 states that courts should have the ability to independently investigate the well being of the protected person, and the estate, as needed. Independent audits and investigations are an important part of any monitoring system. They can be used in response to concerns of guardian performance and provide the court additional information regarding the reported concerns. Audits are able to identify issues related to the estate and the guardian's management of the estate. NRS 159.046 allows for the appointment of investigators in guardianship proceedings. Nevada Supreme Court Guardianship Rule 10 requires courts to order an independent investigation when the location and circumstances of the protected person are unknown to the court and/or parties of record, prior to terminating a guardianship pursuant to NRS 159.1905-.192.

The State Guardianship Compliance Office is able to conduct investigation and audits for any District Court in Nevada.

### Enforcement of Orders

National Probate Court Standard 3.3.19 directs courts to enforce orders by taking prompt and appropriate actions when a guardian fails to perform their duties, upon learning of a missing, neglected or abandoned protected person, or when the protected person's estate is endangered. The actions include the imposition of sanctions, such as suspension, contempt, removal and appointment of a successor guardian. Nevada statutes allow courts to remove a guardian (NRS 159.185-.1857) suspend a sole guardian's authority (NRS 159.1855(3)), revoke letters of guardianship (NRS 159.085(8)). The court can take additional actions under NRS 159.345-.346, to include imposition of a penalty and order restitution of any money misappropriated from the estate, disallow any fees payable to the guardian, remove the guardian, take other action that is proper under the circumstances, and, when an action by a guardian is deemed to be deliberately harmful or fraudulent or to have been committed with malice, the court may also impose twice the actual damages incurred by the protected person and award attorneys fees and costs. Senate Bill 20, as passed during the 80th legislature, allows for courts, when removing a guardian pursuant to NRS 159.185, to appoint a temporary substitute guardian, or a successor guardian, when the guardian is not effectively performing the guardian's duties and the welfare of the protected person requires immediate action.

### References

- American BAR Association Commission on Law and Aging
- Center for Elders and the Courts
- National Probate Court Standards
- Nevada Revised Statutes 159
- Nevada Supreme Court Guardianship Rules
- Nevada Supreme Court Guardianship Compliance Office