Supreme Court of Nevada
ADMINISTRATIVE OFFICE OF THE COURTS

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MEETING SUMMARY

Prepared by Raquel Espinoza, Deborah Crews, and Stephanie Heying
Administrative Office of the Courts

Supreme Court Commission to Study the Administration of Guardianships in Nevada's Courts

Date and Time of Meeting: June 13, 2016, 1:00 p.m. to 4:30 p.m.
Place of Meeting:

Carson City	***Las Vegas***	***Elko***
Nevada Supreme Court 201 South Carson St. Law Library, Room 107	Regional Justice Center 200 Lewis Ave. 17th Floor, Courtroom	Fourth Judicial District Court 571 Idaho Street, Dept. 2

Members Present:

Chief Justice James W. Hardesty, chair
Chief Judge Michael Gibbons
Judge Frances Doherty
Judge Nancy Porter
Judge Cynthia Dianne Steel
Senator Becky Harris
Assemblyman Michael Sprinkle
Assemblyman Glenn Trowbridge
Trudy Andrews
Julie Arnold
Debra Bookout
Kathleen Buchanan (Jeff Wells Proxy)
Rana Goodman
Susan Hoy
Jay P. Raman
Sally Ramm
Terri Russell
Christine Smith
David Spitzer
Kim Spoon
Tim Sutton
Elyse Tyrell

AOC Staff

Raquel Espinoza
Stephanie Heying
Hans Jessup

Call of Roll and Determination of Quorum

Chairman Hardesty called the Commission to Study the Administration of Guardianships in Nevada's Courts (Commission) to order at 1:30 p.m. A quorum was present.

Approval of Meeting Summary from May 20, 2016, meeting

The May 20, 2016, meeting summary was unanimously approved.

Public Comment

Public comment was transcribed verbatim, and is included as a separate attachment to the meeting summary.

Updates

The Commission has held a number of meetings and has discussed a broad range of reforms concerning the administration of guardianships, including statutory changes and court rules. Justice Hardesty is concerned that the Commission still has a number of issues to discuss to complete its work and finalize its report to the Supreme Court by the June 30 deadline. Justice Hardesty posed two options to Commissioners:

1. The Commission could try to conclude all votes and deliberations that are pending by June 21, and produce a report on all matters and recommendations, as soon as he and staff could reasonably complete and edit the report, and provide a copy to the Commission for its review and approval. It would be unrealistic to think that process could be completed before July 31, and could take until August 31. The Commission still has some serious matters that need to be vetted, including the Bill of Rights and the Minor Guardianship Statute.
2. Another alternative would be to submit an interim report by June 30, identifying the votes the Commission has taken to date, and then provide a supplemental report with information from the additional meetings that could take place in July on the pending matters.

Either option would require a request to the Supreme Court to extend the time currently in place for the Commission to complete its work and present its recommendations. Commissioners were asked for their thoughts on the direction of the Commission's work.

Senator Becky Harris agreed the issues are complex and need to be appropriately vetted. She would be willing to sponsor legislation and give the Commission until the end of the year to ease some of the workload the Commissioners are laboring under. Senator Harris suggested concentrating on issues that could be handled by court rule, making decisions on those by the end of July, and then the Commission could begin its work on the statutory changes.

Assemblyman Sprinkle agreed with Senator Harris and said while there are a set of Bill Draft Requests (BDRs) due late summer, he has set some aside for this Commission and those could be submitted in December. He agrees with Senator Harris that the Commission would need to have this right going into the next legislative session. If that requires additional time, then the Commission should extend the deadline to provide additional time to focus on the statutory changes.

Assemblyman Trowbridge agreed with Senator Harris and Assemblyman Sprinkle. The Commission has spent many hours listening to testimony and reviewing best practices to identify issues that are going to help resolve

some of the problems the Commission has heard. He agrees with Senator Harris; the Commission should identify those issues that could be handled judicially versus those that require legislative action. The issue of guardianship is complicated and it is going to take a few legislative sessions to get it totally worked out. Each Commission meeting has resulted in new ideas and suggestions, all of which have merit.

Ms. Sally Ramm thought the Commission had agreed to continue the Guardianship Commission under the aid of the Supreme Court and that commission would continue to update and address the issues in the guardianship area. Ms. Ramm suggested some of the complicated issues could take longer and be addressed by the permanent commission. This assumes the Supreme Court adopts the recommendation for a permanent commission.

Justice Hardesty said following along with the suggestions from the legislators, he would like to focus on those areas that might be approved by the Commission that could be the subject of court rule and then begin discussing the other areas. Justice Hardesty does not think this would go beyond September 30. Justice Hardesty asked Commissioners if they would like to present an interim report that contains a recital of the activity of the Commission and the recommendations the Commission has voted on to date, and then submit another report finalizing the remaining work, or submit one report identifying all the work of the Commission.

Ms. Ramm moved the Commission submit one final report rather than an interim report because it would have more impact if it were one report to include all recommendations for court rules and legislation. This would require asking the Court to extend the Commission's report deadline from June 30 to September 30. Mr. David Spitzer seconded the motion.

Judge Steel added this is such a complex area, and thanked Justice Hardesty. She agrees the Commission should submit one final report in September. The Commission will schedule additional meetings to discuss and finalize its recommendations prior to September 30, if the Court approves the extension.

The Commission unanimously voted in favor of requesting the Commission's final report deadline be extended to September 30, and that one final report be submitted to the Supreme Court by that date. Justice Hardesty would submit the Commission's request to the Supreme Court and Chief Justice Ron Parraguirre.

Bill of Rights

A revised Bill of Rights draft had been provided to Commissioners prior to the meeting. Mr. Brian Lech had also provided a letter with suggested recommendations to the Bill of Rights.

Commissioners had discussed the Bill of Rights draft at the last Commission meeting and had expressed concern that the language was too complex and long. Additionally, there was discussion that some of the rights could be more appropriately placed in statute. Following the meeting, Ms. Barbara Buckley reviewed the Commissioners comments and all jurisdictions with a Bill of Rights, including Texas, Minnesota, Florida, and California. Ms. Buckley revised the draft, incorporating language from California and Minnesota's Bill of Rights, to a shorter version that provides 17 Rights. The document also lists rights that should be added to statute. Commissioners were asked to review the revised Bill of Rights and provide comments to Ms. Buckley prior to the June 21 meeting for discussion. Judge Doherty asked if the Bill of Rights would apply to both minors and adult proceedings. Ms. Buckley stated the Bill of Rights was drafted for adults. Judge Porter was asked to discuss whether there should be a Bill of Rights for minors with the Minor Guardianship Workgroup and report back to the Commission.

Appointment of Counsel

The meeting materials included a two-part proposal under general policy question 3 (2).

Question 3 (2) How and under what circumstances would legal counsel be appointed.

> **Part one – The Commission authorizes the chair to send a letter to County Commissioners to provide financial support to legal aid organizations to make counsel available for all wards until the next legislative session.**
>
> **Part two – The Commission urges the legislature to approve an increase in recording fees of $1.50 pursuant to NRS 247.305 for funds to be distributed by each county to legal aid organizations to provide legal counsel for all wards in guardianship proceedings.**

In a previous meeting, the Commission had discussed the public defender's office being charged with representation for wards. Mr. David Spitzer asked if that was still being considered. Justice Hardesty responded the Indigent Defense Commission had conducted research in this area and the public defender offices throughout the state already have caseloads exceeding ABA standards. Charging the public defenders offices with this task would be a resource issue. Additionally, there is a need for expertise in the area of guardianship and the skill set for a public defender is different from the skill set for someone representing a proposed protected person.

Assemblyman Sprinkle stated this is an extremely important issue and he applauds Justice Hardesty for coming up with the proposals.

> **Assemblyman Sprinkle moved to have the Commission authorize the chair to send a letter to county commissioners to provide financial support through their legal aid organizations to make counsel available for all protected persons until the next legislative session. The Commission urges the legislature to approve an increase of recording fees of $1.50 pursuant to NRS 247.305, to be distributed by each county's legal aid organizations to provide legal counsel for all protected persons in guardianship proceedings. Judge Steel seconded the motion.**

Additional Discussion

Chief Judge Gibbons is concerned there would not be enough representation in the rural counties through the legal aid organizations. Chief Judge Gibbons suggested the motion be amended slightly to include not just legal aid but something similar to allowing a court can appoint an attorney. Under existing law, the court can appoint an attorney but there is no funding mechanism in statute, therefore the county has to pay.

Judge Porter said the Fourth Judicial District has reached a crisis point in terms of representation for minor wards. There is not enough money and the county does not have enough attorneys. Washoe and Nevada Legal Services have worked with and provided services to the court. Washoe Legal Services is trying to find additional funds for the next fiscal year. Additionally, Elko County is experiencing a fiscal crisis and there is no money to pay for additional attorneys. If the court had the resources generated by the proposal, they would first turn to legal aid for assistance.

It is not clear the extent to which legal aid is providing similar sources in other rural counties. Chief Judge Gibbons was concerned that if we restrict this only to legal aid agencies it might leave a gap in services and there might be similar organizations, entities, or individual attorneys who would be available to take appointments.

Justice Hardesty suggested adding a second sentence to Assemblyman Sprinkle's motion. The sentence would read, *in the absence of a legal aid organization in a given judicial district, the court could utilize these funds to appoint counsel.* Judge Porter thought it could also be an issue if there are conflicts of interest. So not only in the absence of legal aid, but in the event of conflicts, the court could utilize these funds to appoint counsel.

Ms. Buckley and Mr. Spitzer were asked if this would affect or influence what they are doing in their areas through this funding source, if it were successful. Ms. Buckley asked if the Commission could work on the language. For example, she does not have a concern allowing counties to have options if legal aid is not available to provide services but she would not want to say conflict because in Clark County conflict appointments are handled through LACSN's Pro Bono Project. Ms. Buckley suggested working on the Clark County issues versus the rural issues. She did think adding language that if legal aid were not available…would provide some flexibility where legal aid is not available and this is something they would support.

Mr. Spitzer agreed with Ms. Buckley. There needs to be some flexibility but we do not want to encroach on the Pro Bono Programs that exist in Clark County. The statute could be modified to make this mandatory versus permissive and if sufficient funds were generated from the proposal, legal aid would go where the money is. If rural counties were required to collect this money and spend it with an appropriate legal aid agency, that could fill the void, at least in the Northern Nevada counties.

The intent of the proposal is that this is mandatory. Justice Hardesty suggested modifying the second paragraph to deal with the absence of legal aid organizations the court could appoint, and if there were additional amendments the Commission would take them up later. Justice Hardesty wants to try to get the counties involved and provide some resources now. Assemblyman Sprinkle and Judge Steel accepted the amendment to the motion. Assemblyman Sprinkle added that this would ultimately have to be passed by the legislature so there will be further avenues that have to be worked on in this area to make sure it reflects exactly what the Commission wants.

Mr. Wells noted there are three organizations in Clark County providing legal aid services to the elderly, and rather than have the money divided three different ways, Commissioners might want to decide on one organization to run the project. Mr. Wells added he would need to abstain from the actual vote.

Justice Hardesty stated the Access to Justice Commission (AJC) was created by the Supreme Court. This Commission is concerned with how filing fees are used to support legal aid organizations, in addition to a number of other issues that deal with access to justice. AJC has been determining how those fees are allocated among the legal aid organizations, consistent with the designation that occurred when those fees were created many years ago. If there is a concern about which legal aid organization should be meeting the service that determination should be made by AJC. Justice Hardesty said if the Commission wants to discuss this further, he could secure that if that is an acceptable part of this motion. Assemblyman Sprinkle stated that could be included in the motion as well.

Mr. Tim Sutton asked to clarify if the revenue would be generated from recorders' fees, as is listed in the materials, or if those fees would come from the Clerk's filing fees under NRS chapter 19. Justice Hardesty said they would come from the recorders' fees under NRS 247.305. Justice Hardesty said the determination of those

fees would go to the legal aid organizations that are working in each county as approved by the AJC. Assemblyman Sprinkle and Judge Steel agreed with the amendment.

Ms. Buckley said Justice Hardesty pointed out the AJC discusses the issue of legal aid entities and the Southern Nevada Law Project and Nevada Legal Services did not think this was the proper time to expand programs. Ms. Buckley said the organizations do have these discussions among themselves before coming forward and that is done through AJC. It is better for the organizations to have a statewide source as opposed to going before the county commission. It is good to have this funding separate.

Mr. Wells said he is happy to let it be he just did not want any answer as to what it was and who would get the funding.

Senator Harris stated the work of the Commission is being taken very seriously at the legislative level. The recommendations that come from this body will be looked at carefully and the hard work that has been done by the Commission would be given a lot of weight at the legislative as it begins its deliberations as to how to move forward on these policy decisions.

The motion in front of the Commission is:

> **The Commission authorizes the chair to send a letter to County Commissioners to provide financial support to legal aid organizations to make counsel available for all protected persons until the next legislative session. The Commission urges the legislature to approve an increase in recording fees of $1.50 pursuant to NRS 247.305 for funds to be distributed by each county to legal aid organizations to provide legal counsel for all proposed protected persons in guardianship proceedings. In the absence of a legal aid organization in a given judicial district, the court may appoint counsel to provide legal services with those funds. The funds for the legal aid organization, in a given judicial district, will be set aside by the Access to Justice Commission of the Nevada Supreme Court.**
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> **Ms. Heying took a roll call vote. Yeas 23, Nays 0, Abstain 1, Absent/Excused 2.**

Question 9 – Does the Commission support a recommendation to adopt Supportive Living Agreements (SLA) similar to the approach taken in Texas, with the exception that the court would retain jurisdiction and inventories and annual reports would be required to be filed with the court?

Justice Hardesty's asked Commissioners if they wanted to get into the details (the form of the agreement or other specific) of SLAs or leave the format of this to be established by court rule.

Ms. Ramm noted Nevada law includes SLAs in the mental health area. The SLAs the Commission is discussing are different and she is concerned the language is going to be confusing between what the Commission is discussing and the residential language included in NRS chapter 433. The Commission should review the language to be sure there are no conflicts.

Justice Hardesty said his point is should the Commission be more specific about what it means by a SLA in this context. The Commission could review the form and others to formulate a form the Commission might recommend. The Commission discussed how the court would retain jurisdiction of a SLA if a guardianship is not approved. In Texas, there is a petition to approve a SLA but once approved the court does not retain jurisdiction. Commissioners had reservations about that process, particularly if there would be no ongoing review, including accountings. Justice Hardesty suggested the Commission discuss what kind of jurisdiction the courts should

retain if a SLA were approved. There is concern that extended oversight of this would discourage some from using the SLA document because documents would still need to be filed, including inventories and accounting, which would make this a guardianship. Commissioners were asked to review the materials so the Commission could possibly make recommendations as to the scope of SLAs at an upcoming meeting.

The Commission discussed anyone could create a Power of Attorney (POA) for financial or health care. An SLA identifies individuals who are choosing to create a team to assist them, understanding their goals and needs. It is similar to a POA but it is more. An SLA could include persons with mild to mid-range autism or persons with communication or intellectual challenges. The person might want their adult parents to continue to help them in the same way they have been while retaining the ability to make and contribute to those decisions. If they do not want this person helping them, they can end the SLA. Another example of how an SLA might be used is a person who is confined to a wheelchair. It might be difficult for them to get transportation to and from some place to pick up paperwork, e.g., medical records, housing application, etc. The SLA could allow a person, who has been identified as a part of the SLA team, to pick the paperwork up, bring it back to the person so they can fill it out, and then the paperwork could be dropped back off to the appropriate agency. The SLA allows the person the ability to live independently but have support. An SLA is a POA with a more global view. An SLA allows a person to maintain their civil rights without being subject to the loss of rights when all they need is verification under a more specific document, under Nevada's chapter to do the footwork needed to effectuate the plan the person already has. It is not a guardianship. It is like a POA. It is under NRS Chapter 159. It is a global planning document and it lets a person continue to maintain control. Commissioners have heard from individuals who have said if they had this option they could have utilized a more private, personally chosen set of individuals to execute their plan of care in a manner allowing them to continue to have control because they understood it. A SLA is for a person who understands these documents, not for people who do not understand the documents. The potential for abuse already potentially exists in the laws Nevada has currently. The SLA is tailored. Social Security Administration has a payee system. The Veteran's Administration has benefit recipients, and the court is not involved in that. An SLA is not meant to garner more authority over individuals but to provide them options and alternatives to guardianships, which have become the default; the only option or alternative for some individuals who cannot get out there and do the work themselves (e.g. pickup/deliver documents).

Ms. Arnold thanked Judge Doherty for the explanation. Ms. Arnold said a SLA mimics a POA and asked if we could not accomplish the same thing within the POA, without creating a separate form and concept. Issuing a POA does not mean you have relinquished those powers and cannot exercise them. Most POAs say I retain the right to act on my own behalf, and if I cannot act on my own behalf, then this person is empowered. At this point, is the SLA form necessary?

Judge Doherty said the SLA form allows the individual the ability to retain the right to control and have person(s) available to support an individual. This is a team approach to decision making. An SLA provides a global remedy to these narrow, silo remedies that already exist. It wraps up, in a better more beneficial package, a plan of care for individuals who are able to maintain but not execute.

Justice Hardesty said his concern with the Texas SLAs is they were not approved by the court and asked if that should be a part of the SLA. The Commission discussed SLAs being required to be enforceable and approved pro-actively by the court. Judge Doherty thought it would be a great Nevada plan to effectuate an alternative to guardianship. As long as we do not effectuate the provisions of NRS Chapter 159 that address their civil rights, she would argue against on-going oversight, such that it would really be a guardianship. A number of examples have been cited where an SLA could be used and a guardianship would not have to be involved.

Justice Hardesty asked Ms. Arnold her thoughts on a provision that is Nevada specific, requiring court approval to be effective. Ms. Arnold said she would have to think about this. She is caught between her concern that the SLA would be introducing an overly helpful neighbor who could turn into an exploiter and her concern over that issue, as balanced by the existence of POAs. She would feel better about the process If there was a vetting process the court engaged in, but that puts a burden on the court and she is not sure the court is equipped to handle this.

There was a discussion about the SLA and its application to a person with a disability. A SLA could support and accommodate an individual with a disability to make life decisions, for those individuals whose disability does not impair their ability to control and share decision-making authority. For example, an 18-year-old with Asperger's may have difficulty communicating but understands what their goals and desires are. Mr. Spitzer suggested making a distinction between disability as it is used in this document, and capacity as it is used in guardianship law. Judge Doherty said she would be happy to distinguish any language.

Ms. Buckley mentioned a recent grant opportunity through the Federal Aging Division that addressed alternatives to guardianships and best practices. Justice Hardesty let the Commission know he had recently received an email from Ms. Penelope Hommel, from the Center of Sociology Gerontology, indicating the Center is about to engage in a national effort to study the administration of guardianships based upon the work of the Commission. A letter was received indicating the Federal Administration on Aging Administration for Community Living seeks to provide national support for the development and delivery of legal services to vulnerable elders and others who might be subject to guardianships. The letter invites Justice Hardesty, as chair of the Commission, on behalf of the Supreme Court to submit and be a participant in this grant. The grant, if awarded to the Center, would provide $100,000 to $125,000 per year for two years to effectuate changes the Commission recommends. This grant would afford an opportunity for the Commission to find ways to implement alternatives to guardianships.

The Commission would defer further discussion of the SLA to the meeting on June 21.

Question 11 – Should the notice requirements in Chapter 159 be amended, and if so how?

The Commission discussed notice requirements as outlined in NRS Chapter 159 in guardianship proceedings. Judge Doherty explained, during the Bench Bar discussions, they found there is no consistent practice in respect to:

1) Actual service of the notice on the person who is facing the guardianship. Sometimes it is served on the person who is the administrator for the nursing home but may or may not be served on the individual person, perhaps based on the assumption that the individual cannot understand. That assumption might be correct, but there is an independent level of decision making that creates an inconsistency with respect to service; either a citation or notice of hearing or copy of the petition. What is the level of expectation of service, and should service be expected absent court waiver of service on a person facing guardianship or service on a person who is the subject of a guardianship? Various discussions the Commission has had regarding service have differed.
2) The petition is not included under statute as a required service on the person facing guardianship. The person facing guardianship receives the citation but there is no requirement that they receive the petition, no requirement that they receive the annual accounting, and no requirement that they receive the underlying pleadings. There is a requirement that the person subject to guardianship receives notice but even that notice is not absolute with respect to the determination of competency. The essence of this change would require service, not only of the notice of hearing and citation in the appropriate

proceeding, but the underlying documents; the accounting, the inventory, on the ward without exception, it is fundamental, regardless of whether the individual is capable of understanding it or not, at least serve it on the person.

Mr. Rowe stated much of the public comment the Commission has heard revolves around the lack of awareness and lack of notice. This would go a long way in eliminating lack of awareness with respect to the person who is subject to guardianship. Someone might be able to get the notice into the right hands if the person does not understand it, this would be critical in order for processes to be done correctly, everyone should receive notice of the appropriate things, whether it is the petition, inventory, or accountings.

Mr. David Spitzer cautioned that some of the documents could contain very personal information. Wards may be private and may want to maintain their finances and personal possessions in a private manner. There may need to be a limitation on the level of detail that may be available as a publicly filed document. Mr. Spitzer would not like to see 20 copies of inventories mailed to a Ward's grandchildren, those documents may contain too much detail.

Ms. Debra Bookout added if notice is being served on the Ward, the attorney for the Ward would also need to be served a notice if there is an attorney or if the attorney is known.

Justice Hardesty said if there is court appointed counsel before the petition begins they would have notice requirements that they can review to determine if they have been satisfied. The Commission did not have additional questions or comments. Further discussion regarding Judge Doherty's observations would continue at the June 21 meeting. Justice Hardesty stated clarification of some of the areas discussed might help frame the issues that would come from Policy Questions 22-25.

Question 26 (2) Does the Commission wish to urge the issue of bond availability to be addressed by the Nevada Legislature?

The Commission had discussed bond requirements at the May 20 meeting. Mr. Jay Raman had expressed concern that bonds might not always be available. Commissioners were asked if they had encountered issues with guardians being able to acquire a bond. Judge Steel and Judge Doherty were not aware of any issues of persons obtaining bonds. Ms. Spoon noted there are times when the amount of the estate is very large therefore; the bonding company does not want to underwrite the bond. This is where a blocked account would come in. Mr. Raman is going to follow up on a list of companies who indicate they write bonds for guardianships in Nevada. He is also going to reach out to the presenters from Florida on this issue and would bring this information to the Commission at an upcoming meeting for discussion prior to making any recommendations to the legislature regarding bond availability.

Question 27 addresses the management/administration of the ward's estate, including process and notice requirements to sell estate assets and personal property.

This topic would be discussed further at the June 21 meeting.

Question 31 - Does the Commission recommend an Office of State Public Guardian (Office) to serve as the public guardian in all counties; the Office would include the retention of accountants, auditors, and investigators to provide support to counties whose population is 100,000 or less?

The Commission had received presentations that several counties contract their public guardian and there had been concerns that abuses have occurred from those relationships. This proposal was made so the Commission could discuss providing public guardian services for rural counties. This would become a statewide and state funded office. Mr. Wells said the proposal states "all counties" and then states "counties whose population is 100,000 or less." Mr. Wells asked if the proposal was intended to exclude Washoe and Clark Counties. If so, he would suggest that is stated in the first part of question. Justice Hardesty agreed the question should be edited.

Ms. Tyrell asked the Commission to define what the Public Guardian's Office does or does not do. This definition would be important before creating the Office.

Mr. Tim Sutton expressed concern regarding each county's expectation of contributions. Nye County's Public Guardian Office is currently funded at $10,000, if the county's contribution is going to exceed that, it is unknown how the County Commissioners would feel about that.

Justice Hardesty asked Mr. Sutton to canvass the rural counties and get an assessment of precisely how they are serviced, how much they contribute, and whether they have contract arrangements with their public guardians. One advantage that was perceived by this proposal is accountants, auditors, and investigators could be hired by the State and made available to a county when needed. It would be difficult for Nye County to secure the services of investigators that the Commission has recommended for guardianships, generally. Nevertheless, having investigators and auditors who are part of a statewide office, is a resource that could be very beneficial to a public guardian and the court handling the cases. Many Commissioners were impressed by the Florida model and their presentation about the investigative services they are able to provide in the guardianship areas. In Florida, they not only provided public guardian services, but investigative and auditing services to rural counties that would be available in urban counties. Mr. Sutton agreed those resources would be beneficial but it would come down to the ability of each county to be able to pay for those services. Mr. Sutton would contact the rural public guardian offices to find out how they are funded, whether they have investigative and auditing resources available, and whether they could benefit from a consolidated source of resources that this state might provide.

Ms. Spoon stated it would be helpful to gain input from the rural counties. Ms. Spoon added Illinois was a pioneer in public guardianships. The state has had the state guardian for rural counties, and the larger counties have their own public guardian. Justice Hardesty asked Mr. Sutton to expand his inquiry to Illinois and find out how Illinois supports its rural efforts.

Assemblyman Sprinkle asked which state division the Office would be implemented within and asked if a revenue source had been identified. Justice Hardesty stated a revenue source had not been identified and where the Office would be located would still need to be discussed. Assemblyman Sprinkle stated it would be highly advisable to identify where within the state government this Office would exist, and have the chosen division be part of the discussion to decide if the division could accept a new branch within the division.

Judge Nancy Porter liked the idea of having access to investigators and accountants; it would be a good idea to have the survey of the rural courts done before the Commission could proceed. She will have the Elko Public Guardian contact Mr. Sutton and provide assistance with the rural court survey. Judge Porter added June 15 is World Elder Abuse Awareness Day.

Commissioners discussed having investigators available could also assist law enforcement in prosecuting cases of abuse, similar to what Florida has done. Ms. Buckley noted Clark County has a big issue with not having enough public guardian services and the county is not accepting cases where there is no pay source. Ms. Buckley

asked if there should be a needs assessment to determine how many cases there are and what the county might have to do to have the resources to fulfill the need. Ms. Buckley noted it would be important to look at how to deal with those issues.

Justice Hardesty said law enforcement in Clark and Washoe County and the District Attorney Offices are interested in getting investigators who have expertise in dealing with guardianship investigations. The two presenters from Florida had a lot of training and background in this area. Justice Hardesty could see a statewide benefit having investigators who specialize in this area, not only to support the guardianship efforts in the rural counties, but also to support the efforts of law enforcement throughout the state.

The Commission discussed the types of cases public guardian offices take. In Clark County about 70 percent of the cases are no to low-income and minimal social security cases. About 30 percent of the cases have assets and the assets are assigned to the Public Guardian's Office by the court.

Ms. Sally Ramm stated the income is not the first qualifier. The first qualifier is that there are no other appropriate and willing parties to be guardian. In cases with assets, there are usually individuals willing to be a guardian but there are fewer people willing to be guardians when a person has fewer assets.

Ms. Lora Myles noted NRS chapter 253 states the public guardian does not have any requirement as to fees or access to income; the only requirement is that if there is no pay source. The public guardian cannot refuse the case. There is no requirement that the public guardian only take cases that do not have money or only take cases that do have money. There have been times the public guardian refused to take a case because the person is an illegal immigrant and could not qualify for any government assistance to pay for their care. The public guardian could become guardian of the person but not of finance, and could assist the nursing home in finding a pay source.

Ms. Ramm quoted NRS 253.200, "Resident of Nevada is eligible to have the public guardian of the county in which he or she resides appointed as his or her temporary…or as their permanent guardian if the proposed ward is a resident of that county and has no nominated person, relative or friend suitable and willing to serve as his or her guardian…or has a guardian who the court determines must be removed pursuant to NRS 159.185." Judge Frances Doherty stated what the NRS means, most significantly, is the absence of money does not bar assistance by the public guardian. Justice Hardesty stated his concern about this issue is the public guardian's operation statewide is inconsistent.

Judge Doherty stated the court maintains jurisdiction to make the decision of appointment to the public guardian. A public guardian might argue, "Don't give us this case, there is nothing we can do to make a difference in the life of this person. You are adding a case that has no outcome that will change as a result of the appointment" and the court would then decide, "I've heard your argument, I'm either appointing you or I'm validating your argument." The court retains jurisdiction to make that appointment in its own judgment.

Ms. Ramm quoted NRS 253.250, "The court may at any time terminate the appointment of a public guardian as an individual guardian of a person or of an estate upon petition by the ward, the public guardian, any interested person or upon the court's own motion if; 1) it appears that the services of the public guardian are no longer necessary; or 2) after exercising due diligence, the public guardian is unable to identify a source to pay for the care of the ward and, as a consequence, continuation of the guardianship would confer no benefit upon the ward." That is a judicial decision not a public guardian decision. Ms. Myles stated it is a judicial decision but what the public guardians have seen is that the court will authorize guardianship of the person and say we will not make you guardianship of the estate.

Mr. James Conway, Director of Washoe Legal Services, said many times individuals will refer a case to the Washoe County Public Guardian's Office (WCPGO) and that office will choose not to file its own guardianship petition and then a third party can petition the court to appoint the WCPGO, as a third party petitioner. Mr. Conway was unaware if that circumstance had ever been contested, if the court would appoint the public guardian, whether or not they would have the ability to refuse the appointment. When discussing what it would mean to accept a case, it would need to be clarified if it is whether the public guardian accepting an appointment from the court or the public guardian having the affirmative duty to file its own first party petition.

Justice Hardesty stated his concern was the fact that a public guardian would not have to provide services to someone in need. Justice Hardesty shared an email he received from Ed Guthrie from Opportunity Village. Opportunity Village services 1091 adults with severe intellectual disabilities, of those 1,091 adults, 398, approximately 36 percent, have a legal guardian. The remaining 693 adults or 64 percent have no legal guardian. Not all of those adults may need a legal guardian but if we assume that half of them do, then 32 percent (346) adults receiving services at Opportunity Village services may not be deemed legally competent to make their own decisions but do not have a legal guardian. Nevada Aging and Disability Services Division serves 3,241 adults with intellectual disabilities throughout all of Nevada, if 32 percent of those adults are not deemed legally competent to make their own decisions, then there are over 1,000 adults with severe intellectual disabilities in Nevada who may need guardians or some sort of supported decision making. What the statistics suggest is that there is a significant demand for these kinds of services and the concern is how that demand would be addressed.

Ms. Myles stated the public guardian might never receive a referral on many of those cases. Public guardians receive referrals from nursing homes, hospitals, senior pathways, senior bridges, and the county jail, but referrals rarely come from places like Opportunity Village.

Ms. Tyrell stated in her office, her retired partner had a long history, and actually has a son with Down's syndrome who is very active in Opportunity Village. They have tried over the years to give opportunities for education. There is a lot of family involvement and some young adults with disabilities on their own at Opportunity Village and their parents have always made their decisions, they use the same doctors and the same support system so when they turn 18 no one thinks twice that the parents do not consider making the decisions and doing the care. Opportunity Village may not be a source for the public guardians because they have family involved. Justice Hardesty stated the concern is that a number of the adults may need guardians and do not have them, and they have people making decisions for them that may be outside of the bounds of what they have the authority to decide.
Judge Steel stated until such time in which the person is denied service, they may not realize they need a guardian. Perhaps things have gone well and the doctors have been cooperating. Judge Steel stated she had a few cases in which young adults were under those circumstances and the parents petition for guardianship, but she had found those are usually not conflicted families. There may be families that do not get the guardianship because they have been told that they cannot get it.

Ms. Smith stated the Law School, in conjunction with the Legal Aid Center of Southern Nevada, conducted guardianship classes at Opportunity Village. Opportunity Village has been notified the Law School and LACSN could return at any time if they would like a presentation. Justice Hardesty asked if there had been a need identified for guardians to be appointed for those cases. Ms. Smith stated they do not delve into that area but she wanted to respond to Ms. Tyrell concerning educating individuals at Opportunity Village.

Mr. John Giomi from the Douglas County SAFE Program found that it has been a systemic problem in Nevada, specifically rural regional mental health, encouraging young adults and their families not to go into a guardianship. The young adults are signing contracts with places like, Going Places, which is a for-profit company that is charging Medicaid $9,500 per month, paid for by the state of Nevada. This is where some of the issues come up. These are the SLAs Ms. Ramm referred to. They are contracts from rural regional health to parents who may be guardians trying to get contracts to take care of their children. It has been a systemic problem in the state of Nevada. That is why the numbers being stated are so high; they encourage them not to go into guardianship and allow these young adult children enter into contracts for $9,500 per month. It is a system that is changing under the current administration of rural regional mental health but it has been a terrible situation in the past where they were encouraging the parents not to get a guardianship.

Judge Doherty stated we are wading into an expansive area. There are hundreds and thousands of people that if the strict definition of guardianship was applied to in Nevada would meet the standards and would be appointed a guardian. There are services and systems in place that create alternatives. Judge Doherty was not familiar with the issues Mr. Giomi presented and was not aware of a case in which there may have been a discouragement of guardianship in Washoe County. Washoe County does have hundreds of families who are not in guardianship court who have self-created, or collaborated with the person they are working with to create an alternative to guardianship with representative payees through the Social Security Administration, Veterans Administration, and Housing Creation. Washoe County's Division of Mental Health has case management workers for individuals who suffer from mental health challenges. Washoe County has many wraparound systems that help direct the guardianship interventions to those who Judge Steel mentioned are unable to access medical care or service because another alternative did not exist.

The Commission deferred further discussion on question 31 until the June 21 meeting. The availability of public guardians will be important going forward as there has been a decline in the number of private professional guardians. Ms. Kim Spoon asked if Mr. Sutton could ask the public guardians whom they serve. Every county has their own policy as to who they serve e.g., some serve those who are 60 and older, some are any age but not those with a mental illness, etc. Mr. Sutton will add eligibility requirements question to his survey.

Policy Question 32 – Does the Commission call upon the Supreme Court to adopt uniform statewide court rules and forms for the processing of guardianship proceedings in all Nevada District Courts?

Justice Hardesty asked if the Commissioners had any comments for question 32. There was no discussion.

> **Jeff Wells moved to call upon the Supreme Court to adopt uniform statewide court rules and forms for the processing of guardianship proceedings in all Nevada District Courts. Assemblyman Trowbridge seconded the motion.**
>
> **Ms. Heying took a roll call vote. Yeas 24, Nays 0, Absent/Excused 2.**

Guardianship Data and Technology Workgroup Memo

The Commission reviewed the Guardianship Data and Technology Workgroup recommendation for a draft court rule regarding NRS 159.057, tracking guardianship cases. Commissioners were asked if they had further comment on the rule. There was no further comment.

> **Judge Doherty moved to approve the draft court rule regarding NRS 159.057. Ms. Elyse Tyrell seconded the motion.**

Ms. Heying took a roll call vote. Yeas 24, Nays 0, Absent/Excused 2.

Minor Guardianship Statute

Judge Porter reported the workgroup continues to work on the draft for the minor guardianship statute. The workgroup met following the May 20 meeting to discuss comments that were provided at the meeting. The workgroup has since received additional comments. The workgroup will be meeting to discuss the additional comments and would provide a revised draft to the Commission at an upcoming meeting.

Attorney and Guardianship Fees

Commissioners had provided a variety of suggestions as to how to approach the attorney fee structure and compensate guardians and those they hire. One reoccurring theme has been whatever fee is going to be charged, and whatever budget is going to be used, it should be approved at the beginning of the guardianship process. Commissioners generally agreed that a budget should be reviewed and approved at the commencement of each case. Commissioners were asked if the recommendation should go further than requiring approval of a fee structure and budget at the beginning of each case by the court e.g., there would be a fee structure and caps, etc.

Mr. Raman had provided recommendations on guardian fees including Florida's fee schedule, which has saved ward's estates up to 50% or more in some cases. The Florida fee schedule says the guardian who has X amount of experience is paid X amount of dollars and it sets hourly rates. There is a lot of work that has gone into setting the fee schedule and it has been in practice for approximately ten years. Mr. Raman does not understand how a fee schedule would have a negative effect on the guardianship industry when Florida has a thriving industry of guardians working under these standards. Justice Hardesty asked Mr. Raman if he was suggesting the Florida schedule be admitted for adoption in Nevada. Additionally, should there be a difference in the way the fee schedule is approached in the urban and rural counties? Mr. Raman thought it could be adopted in Nevada, noting the hourly fees charged in Clark County are higher than those are charged in Florida, yet the cost of living is not higher in Nevada.

The Commission discussed Florida's approach to the fee schedule for guardians. Ms. Tyrell noted when the Commission first began its work there were six private professional guardianship companies in Nevada and now there are only two. Florida's demographic is different than Nevada's as it has been the retirement state of the country for many years and has more services available than Nevada.

The Commission discussed the implementation of statutes and what affects those have had on the guardianship industry. The costs to apply and the requirements for private professional guardians under NRS chapter 628B are different from Florida's costs and requirements. Florida charges $35 to register as a private guardian. Ms. Hoy stated it would cost almost $1,500 this year to register herself, the agency, and one other guardian. Private professional guardians are also required to have an office and cannot work from their homes, which adds to the overhead costs of a private professional guardianship company. The requirements bring the profession to a level of professionalism that was needed but there are additional costs. Ms. Hoy said 15 to 20% of her work had been pro bono because there is no money in the estate. Last quarter, 30 percent of her casework was pro bono. A private professional guardian is there for the person under guardianship from the beginning until the end, and there needs to be some consideration for that as well.

Ms. Spoon said the Florida fee schedule looks good and there are states that follow this model, but there are states that do not because the fee schedule does not work for every state. The Commission needs to consider what will work for Nevada. As a private professional guardian, Ms. Spoon has done her best to keep fees low. Ms. Spoon offered to share her budget with the Commission. Ms. Spoon testified before the legislature last year regarding their insurance costs, which were over $91,000 a year for liability insurance and health insurance for eight employees. Ms. Spoon would suggest that before the Commission decides to cut and cap fees they understand what it costs to run a private professional guardianship business.

Judge Doherty said this is the movement in best practices and nationally this is a new topic. Judge Doherty agrees with Mr. Raman that there should be a fee schedule. The National Center for State Courts (NCSC) recommended the use of a fee schedule for guardians and implementation of a fee schedule for guardians when they came out and evaluated the guardianship process in Washoe County a few years ago. NCSC did not make this recommendation because Washoe County was paying too much in attorney or guardian fees. The recommendation was made because it provides a transparent piece of information by identifying appropriate charges for services. It also provides an objective tool for litigants, court participants, and the court allowing a substantive conversation about fees. A fee schedule provides everyone a tool to say this is what the industry has identified as a reasonable amount. Judge Doherty thought Maricopa County in Arizona used a fee schedule as well. Judge Doherty said having a fee schedule is not an attack on the industry but an attempt to envelope the practice, recognizing what legislation has done to private professional guardian's costs and expenses, validating that and saying what a reasonable charge is. There are rouge charges and they are difficult to address without some guidance on fees that should be charged. An example, guardians charging a fee for visiting someone in a skilled nursing home once a week, there is no real justification for that and best practices suggest once a month visits. If the judge does not have best practices to follow, it is hard to have the conversations about the fees. This would create an objective criteria contributing to the industry being regulated so there can be objective conversations.

The Commission discussed how a fee schedule would be reviewed. Justice Hardesty expressed concern that a fee schedule created legislatively might be more difficult to review regularly. Judge Doherty suggested a fee schedule should be set for review every 24 months, the schedule could be mandatory or recommended, to include a standardized fee, but a guardian or attorney could come to the court and request a fee be modified based on the intricacy of a particular case, and the fee schedule should be created under Supreme Court Rules.

If a fee schedule were adopted the Commission would need to discuss and decide if the fee schedule should be uniform across the state or if it should vary from county to county based upon the financial circumstances of each county. Either way all jurisdictions should have some type of fee schedule and it should be consistent throughout the state. A fee schedule should also accommodate deviations because some cases will be more challenging than others. At a minimum, there should be a waiver to review the fees. There is a difference in approach between a recommended fee schedule and a mandatory fee schedule.

Ms. Hoy stated much like the Florida fee schedule and the different categories and the reasonableness of what is being billed for, it is important for the judge to be able conduct the review. Ms. Hoy asked if this would be statewide or based on each county, and if it would only apply to the private professionals or anyone who serves as a guardian. Ms. Hoy has worked with families who have charged fees greater than private professionals have. Public guardians have their own fee schedule. Judge Doherty said it is commensurate with qualifications and experience and professional skill level; there is going to be a distinction and there might be a distinction between rural and urban, north and south based on the costs of doing business in relation to those regional areas.

Justice Hardesty asked if the Commissioners would want to have fee schedules for guardianships apply for the licensed guardians versus the family guardians. There are many family members charging hefty sums. Judge Doherty said she would welcome a fee schedule for family members. Getting the issues out and starting the recommendations would be very helpful to everyone. Mr. Raman agreed that a fee schedule should also apply to family members.

Judge Porter stated a fee schedule would be useful and helpful for family members, however, it would become more complicated for attorneys and private professional guardians if the fee schedule was a part of statute as it would make it harder to change down the road. Judge Porter suggested it might be better addressed in court rule to make it easier to change when necessary. Judge Porter said there might also be geographic differences to consider, for example, the hourly fee in Clark County might be higher than the hourly fee for an attorney in Ely.

Judge Steel stated it would be helpful to have some kind of guideline or average costs the bench could use as a resource. Judge Steel asked how the fees would be determined and if the Commission would be conducting some research into the fees. Judge Steel suggested the Commission receive input as to what it realistically costs to do business as a private professional guardian. What does it cost the community? What does it cost the private professional guardians? What needs would the family need to be looking at? Judge Steel does have request from family members to receive a guardianship fee of a certain amount monthly. Sometimes they put $1,000 to $1,500 per month to be guardian. She said she thinks they are using the terminology wrong because they are looking at being a caretaker, not a guardian. Judge Steel said they might be misinformed as to what they are asking for and she walks them through the process when they ask for a guardianship fee. There is a lot of misunderstanding and lack of knowledge. Judge Steel would like to see the business plan the private professional guardians are working under the national guardian hourly fee.

Assemblyman Sprinkle stated the arguments received during testimony on Assembly Bill 325 was that there was an understanding there would be a certain level of financial hardship on private professional guardians. However, the intent of the bill was not to put private professional guardians out of business. An important second step to all of this would be that the private professional guardians are at the table and have a voice. If a fee structure would be put together, the valuable and important service they provide would not be removed from the system within the state of Nevada simply because the fees are not there to support them.

Justice Hardesty said he would like to put this into a framework so the Commission could discuss this further at the June 21 meeting. The Commission generally agrees that whatever fee is going to be charged in a given case it should be approved at the commencement of the case and there should be a budget in each case identifying what expenses are known and anticipated, whether they are for the guardian, attorney, or professional fees. There is some interest in a recommended fee schedule as opposed to a required fee schedule. What is unclear, now, is how that schedule would be prepared and how it would be reviewed. It would become a measuring stick for the judges to use against future fee applications. There are mechanisms in place for establishing recommended fee schedules. Justice Hardesty would like to gather some information and explore some of those ideas to see if they would be applicable in Nevada. This is a difficult area; in the attorney fee area it really becomes challenging because, a first year associate will never be charging the same as a partner in a firm. The problem the judges face is whether the task that is being billed should have been done by the associate or should have been done by the partner. That is always going to be a judgment call on the part of the judge; that is what the judge is there for. Should the partner in the firm have sent a follow-up letter to a doctor or was that a task that could have been delegated to an associate? In the context of the guardian, could the guardian's staff have handled a particular task at a lower hourly rate than Ms. Spoon's rate? It becomes difficult to make those kinds of decisions on any type of schedule, but the schedule sets rate and then you have a rate measurement against which to work. Justice Hardesty said if Commissioners are in agreement with that approach we can see if

we can figure out how other states approach recommended fee schedules and share that with the Commission at the next meeting.

Ms. Buckley said that is a good approach; coupled with it there should be some statute to set forth some general principles governing some of the abuses that led to the creation of this Commission. Starting with the recognition that this is the ward's money and we are all but fiduciaries related to that money, that bills will not be run up unnecessarily, and that if there are easier and expeditious ways to resolve disputes they would be undertaken. In cases that were seen early, it was clear to see in some of the bills that the only thing that was going on was to take as much money as possible. Some of that has to be dealt with by the judge, but giving that hammer to the judge…being able to say, your Honor, look at this statute, here are the factors A-E, what we have here is G, that helps. Some of these abusive billing will keep going on unless something is added in that regard.

Justice Hardesty had suggested that at a minimum, the judge should be required to make findings of fact as is required in other civil cases about the approval of fees, whether they are attorney or guardianship fees. The Brunzell v. Golden Gate National Bank requires a judge to make specific determinations in every case in which a fee is going to be awarded. As to the attorney's professional qualifications, the specific nature of the case and the litigation or the work that was performed, the quality, the nature, and the difficulty of the work and the result obtained and the reasonableness of the hourly rate are within number two. Here, there are a couple of refinements, you would have a recommended fee schedule to measure some of this against, but he is suggesting the Commission would still recommend that any application for compensation have to have the same judicial findings in every case. There have been a couple of other things added, for example, fees should be specified within one tenth of an hour increment, no block billing would be permitted including administrative charges, and at least with respect to fee applications, the amount of time spent formulating the fee application would not be compensable it would be a cost of doing business. These are some specifics that would be part of a fee proposal.

Mr. Raman said it comes down to defining what is reasonable in statute. He has seen guardian and attorney billings that include unjustifiable expenses and it gets very expensive on the estate. There is a simple declaration at the end where whoever is billing says "my fee is reasonable" and nobody checks it and there is no voice for the ward to say, wait a minute, none of that occurred or whether it was necessary, or how it benefitted him or her. One of the most important things the Commission can do is finally define what "reasonable fees" are.

Ms. Russell said we are worried about abuse. Maybe this should be approached as what is unreasonable. Mr. Russell was not sure if that would narrow it down and make it easier. She is just suggesting the Commission might want to approach this in another way, rather than what is reasonable, what is unreasonable.

Justice Hardesty said there are uniform rates charged in the communities and as Judge Porter noted earlier, the hourly rate in White Pine County would be different from the hourly rate for an attorney in Clark County. The question is how you establish a recommended fee rate. If you look at the industry at large, you can probably establish a series of rates depending on how long the attorney has been in practice. Justice Hardesty worries about the top end even, because frankly if you have a partner who is billing $1000 per hour, I cannot imagine justifying that hourly rate in a guardianship proceeding. There may be a unique tax problem where you may need to bring in a specialist to deal with that, but goodness sakes if you have someone charging the highest partner billing rate per hour delivering mail, it is pretty egregious. Ms. Russell asked if the judge overseeing the case would look and say, "at this rate we are not going to have any money in six months." Justice Hardesty said that is why you establish the budget requirement. If you are going to run out of money in the first eight months, you should not be doing it. The benefit of the budget is, maybe for the first time for lots of others and especially family, they will be looking at how long it is going to last and for what period of time is this going to go on.

Prioritizing those expenses is a big deal in that process. Professional fees are always scorned but without the professionals, many good things would not happen. Justice Hardesty would not say professionals should not be compensated, they should be, they deserve it and they accomplish wonderful things for their clients without question, but at what level is that done.

Assemblyman Trowbridge said the Commission has been discussing the idea of having a budget that should be adhered to. He said we could all agree that the length of a person's time in practice, their status, or rank should not have any bearing on how they are paid because we should pay based upon the skills, complexity, and time required in completing a task. We can all realize that a forensics accountant that needs to go back and rebuild a person's entire estate needs to be paid more than someone that is writing the checks to pay for a person's electric bill. Having said that, he thinks the Commission needs to have a recommended fee schedule that has judicial review with findings.

Ms. Buckley relayed a comment made to her by a judge. The judge said, I may have a good guardian in front of me, and I may have an attorney in front of me that is charging $600 per hour. I really do not have a problem with that attorney or that guardian's fee, but what I may have a case of is that we have $30,000 in the account. If I approve $600 when I know another attorney can do it for $250 that means that young adult will not get a wheelchair. It is about context. If you have the budget up front, you might prevent that. It is that person's money and if that cost of an attorney could be lower, it may mean the difference in that quality of life of a person and the court needs to that factor that in.

The Commission did not have further questions or comments.

Justice Hardesty said he would respond to the request that Nevada participate in the grant opportunity and submit a request to the Supreme Court, letting them know the Commission voted to extend its deadline to September 30.

The Commissions next meeting will be held next week, June 21, 2016.

Adjournment

The Commission adjourned at 4:30 p.m.