

Nevada Supreme Court

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



December 15, 2015, Meeting Materials

Chief Justice James W. Hardesty, Chair

AGENDA

Supreme Court of Nevada

ADMINISTRATIVE OFFICE OF THE COURTS

ROBIN SWEET
Director and
State Court Administrator



RICHARD A. STEFANI
Deputy Director
Information Technology

JOHN MCCORMICK
Assistant Court Administrator
Judicial Programs and Services

VERISE V. CAMPBELL
Deputy Director
Foreclosure Mediation

MEETING NOTICE AND AGENDA

Name of Organization:

**Supreme Court Commission to Study the Creation and Administration of Guardianships
In Nevada's Courts**

Date and Time of Meeting: December 15, 2015, **11 a.m.** to 4:30 p.m.

Place of Meeting:

LAS VEGAS	CARSON CITY	ELKO
Regional Justice Center Nevada Supreme Court 200 Lewis Ave., 17 th Floor, Courtroom	Nevada Supreme Court 201 S. Carson Street Law Library, Room 107	Fourth Judicial District 571 Idaho Street Dept. 2

AGENDA

- I. Call to Order
 - a. Call of Roll and Determination of Quorum
 - b. Approval of Meeting Summary from November 23, 2015 (for possible action) (*pages 5-17*)

- II. Public Comment
Because of time considerations, the period for public comment by each speaker will be limited to 3 minutes, and speakers are urged to avoid repetition of comments made by previous speakers.

- III. Prioritize Commission Recommendations (for possible action) (*pages 19-32*)

- IV. Subcommittees/Working Group Updates (for possible action)
 - a. Minor Guardianship Statute (*Judge Walker*)
 - b. Data/IT Subcommittee (*Hans Jessup*)

Supreme Court Building ♦ 201 South Carson Street, Suite 250 ♦ Carson City, Nevada 89701 ♦ (775) 684-1700 • Fax (775) 684-1723

Regional Justice Center ♦ 200 Lewis Avenue, 17th floor ♦ Las Vegas, Nevada 89101

c. Eighth and Second Judicial District Working Groups (*Judge Steel & Judge Doherty*)

- V. Discussion on Subject Matter Recommendations (for possible action) (*pages 34-35*)
- VI. Other Business
 - a. Standing Committee on Judicial Ethics – Advisory Opinion JE15-002
 - i. Idaho Rules Ex Parte Communication
- VII. Future Meeting Dates TBD
- VIII. Adjournment

- Action items are noted by (for possible action) and typically include review, approval, denial, and/or postponement of specific items. Certain items may be referred to a subcommittee for additional review and action.
- Agenda items may be taken out of order at the discretion of the Chair in order to accommodate persons appearing before the Commission and/or to aid in the time efficiency of the meeting.
- If members of the public participate in the meeting, they must identify themselves when requested. Public comment is welcomed by the Commission but may be limited to three minutes per person at the discretion of the Chair.
- The Commission is pleased to provide reasonable accommodations for members of the public who are disabled and wish to attend the meeting. If assistance is required, please notify Commission staff by phone or by email no later than two working days prior to the meeting, as follows: Stephanie Heying, (775) 687-9815 - email: sheying@nvcourts.nv.gov
- This meeting is exempt from the Nevada Open Meeting Law (NRS 241.030 (4)(a))
- At the discretion of the Chair, topics related to the administration of justice, judicial personnel, and judicial matters that are of a confidential nature may be closed to the public.
- **Notice of this meeting was posted in the following locations:** Nevada Supreme Court website: www.nevadajudiciary.us; Carson City: Supreme Court Building, Administrative Office of the Courts, 201 South Carson Street; Las Vegas: Regional Justice Center, 200 Lewis Avenue, 17th Floor.

MEETING SUMMARY

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ADMINISTRATIVE OFFICE OF THE COURTS

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MEETING SUMMARY

*Prepared by Stephanie Heying and Raquel Rodriquez
Administrative Office of the Courts*

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

Date and Time of Meeting: November 23, 2015, 1:30 p.m. to 4:30 p.m.

Place of Meeting:

<i>Carson City</i>	<i>Las Vegas</i>	<i>Elko</i>
Nevada Supreme Court 201 South Carson St. 2 nd Floor, Courtroom	Regional Justice Center 200 Lewis Ave. 17 th Floor, Courtroom	Fourth Judicial District Court 571 Idaho Street, Dept. 2

Members Present:

Chief Justice James W. Hardesty, chair	Jay P. Raman
Chief Judge Michael Gibbons	Sally Ramm
Judge Frances Doherty	Kim Rowe
Judge Nancy Porter	Christine Smith
Judge Cynthia Dianne Steel	David Spitzer
Judge Egan Walker	Kim Spoon
Judge William Voy	Timothy Sutton
Assemblyman Michael C. Sprinkle	Susan Sweikert
Assemblyman Glenn E. Trowbridge	Elyse Tyrell
Julie Arnold	AOC Staff
Deborah Bookout	Stephanie Heying
Kathleen Buchanan	Hans Jessup
Rana Goodman	Raquel Rodriquez
Susan Hoy	

I. Call to Order

a. Call of Roll and Determination of Quorum

Chairman Hardesty called the Commission to Study the Creation and Administration of Guardianships (Commission) to order at 1:35 p.m. A quorum was present.

b. Approval of Meeting Summary from October 19, 2015, meeting.

The October 19, 2015 meeting summary was unanimously approved.

II. Public Comment

Public Comments were transcribed verbatim and are included as a separate attachment to the meeting summary.

III. Presentations

Chief Justice Hardesty noted he had reviewed the Supreme Court's docket for the last four years and did not find any appeals asserting a grievance of a probate or guardianship proceeding. It would be good for the Commission to know why there have not been any appeals in this area.

a. Attorney Representation (Barbara Buckley)

Ms. Barbara Buckley, Executive Director of the Legal Aid Center of Southern Nevada (LACSN), provided a presentation on attorney representation for individuals facing guardianship proceedings. Ms. Buckley and her staff have reviewed material on this matter and have met with individuals on national and local levels. Ms. Buckley provided the following suggestions:

1. Do all that is possible to remake the system to avoid issues arising in the first place, thereby reducing litigation and costs associated with it. For an attorney representation project to work, the entire Elder Protective Services (EPS) and court system has to work together to provide the best outcomes for seniors and other vulnerable people facing guardianship. In remaking the system, an attorney should be provided to an individual at the outset to determine if guardianship is needed. Ms. Buckley noted she was pleased to see some of the Commission's recommendations set forth appointment of counsel and the recommendation of having EPS as a neutral agency. EPS has experience working with the vulnerable population and evaluating whether there are less restrictive alternatives to guardianship. Improving the system on the front-end is critical.
2. Create a strong legal representation model for anyone facing guardianship. The LACSN has a great deal of experience in creating new programs to help vulnerable populations. LACSN has 38 attorneys and a staff of 90. Ms. Buckley provided an overview of the programs created by the LACSN:

- Children's Attorneys Project – Represents kids in foster care
- Family Justice Project – Helps victims of domestic violence and vulnerable families with divorce and custody matters.
- Consumer Rights Project – Works with people facing foreclosure, bankruptcy, payday loans, and common fraud.
- Pro Bono Program
- Civil and Family Self-Help Centers in partnership with the Clark County Courts

All programs began with a vision and a need. The first thing that has to be decided is what is the theory of representation for the model of representation? There are two possibilities: (1) A Guardian Ad Litem (GAL) model or an Attorney Representation (AR) model. The AR model is client directed. The attorney represents the client and what they want, not what the attorney thinks they might want, or what they think might be best for the individual facing the guardianship. There is an attorney/client relationship with the person. The other model is a GAL model where the attorney is more of a friend of the court and reports what they think is in the best interest of the respondent or the ward. In this matter, the LACSN would strongly recommend the (AR) client directed model. The attorney's role should include:

- Advising the client of all options as well as the practical and legal consequences of the options and the probability of success in pursuing the options;
- Using language in terms that the client is most likely to understand; and
- Advocating the course of action chosen by the client. If the client does not have the ability to express their wishes, the first course of action should be to provide support to the client needed in the decision making process.

The model contained in the Vermont statute is another option. The statute states the lawyers should:

- Ensure that the wishes of the respondent, including those contained in an advance directive, as to the matter before the court are presented to the court;
- Ensure that there is no less restrictive alternative to guardianship or to the matter before the court;
- Ensure proper due process is followed;
- Ensure that no substantial rights of the respondent are waived;
- Provide that whoever is bringing the petition prove their case by the proper standard of evidence;
- Ensure that the guardian is a qualified person to serve;
- Ensure that the guardian appointed, is compliant with the least restrictive of personal freedoms for anyone facing a guardianship.

The Commission could create a volunteer Guardian Ad Litem program, which would have volunteers visit the senior and provide that best interest information to the court. In child welfare cases, the attorney acts as a client directed attorney putting forth the legal interest of the person before the court, and the GAL program uses volunteers.

Suggestion as to how the model program should work:

- Look at cases without financial resources and cases with financial resources.
- For cases without financial resources, funding should be provided to a non-profit organization who would hire attorneys to represent the Wards or respondents.
- A pro bono component of that would also be created to complement the program..
- Provide training and support to the pro bono attorneys.
 - LACSN offers CLE credits and has created a manual that can be found at www.lacsn.org with a list of frequently asked questions.

The first step is finding the funding for the legal resources. If you do not have the resources, you do not have a program. For cases with financial resources where the estate may be able to pay for an attorney, the Commission might consider something similar that is offered for parents in the child welfare system.

The appointment of representation should be made at the very outset before any order is issued. The attorney should visit with the respondent where they are living to hear what they have to say before any order is issued.

It is also important to ensure there are rights that a lawyer can argue before the court. Nevada has statutory procedures but one of the best ways to ensure an attorney representation is successful is to make clear what rights they are enforcing. The Foster Care Project went to the legislature and created [Nevada's Foster Youth Bill of Rights](#). Creating a Bill of Rights is one way to ensure the rights for individuals facing guardianship. A copy of the Bill of Rights Ms. Buckley drafted would be distributed to members. Some of the rights include:

- The Right to be treated with respect, consideration, and recognition of the respondent's dignity and individuality;
- The Right to have their current and previously stated personal preferences, desires, medical and psychiatric treatment preferences, religious beliefs, living arrangements, and other preferences and opinions given consideration;
- The Right to control the respondent's personal environment based on the respondent's preferences and to never be moved for the guardian's personal convenience;
- The Right to unimpeded, private, and uncensored communication and visitation with persons of the respondent's choice, except that if the guardian determines that certain communication or visitation causes substantial harm to the respondent.

The Commission discussed the scenario when assets of an individual are not known until after the guardianship has been granted. In those cases, an attorney from a non-profit or legal aid organization could be appointed until the asset information is obtained and provided to the court. One concern would be in cases where there is a lot of money – non-profit and legal aid organizations usually litigate cases involving individuals of limited means. When an individual comes to LACSN and applies for

services, they are asked to bring information on their income and an interview is conducted. A mediation program could be instituted for the higher end cases (bi-furcated model).

Judge Porter noted pro bono representation has not been a workable system in the rural counties. Judge Porter has been working with Nevada and Washoe Legal Services to obtain representation for adults and minors in Elko County. There are not enough attorneys in the rural counties to provide representation on a pro bono basis. Legal aid organizations are a critical component of the rural areas for this type of representation.

Ms. Buckley and her staff met with Judge Frances Doherty, Ms. Sally Ramm, and Washoe Legal Services attorneys and observed the process in Washoe County. From day one, a potential Ward is seen by an attorney to find out if they want to contest the guardianship. If the potential Ward does not have capacity, the attorney lets the judge know they were not able to form an attorney/client relationship. The respondents appear in court. The respondents are not easily excused so the court has the opportunity to view the respondent. Before any property is liquidated, there must be a hearing and notice. Judge Doherty added a couple of the significant benefits from the court's point of view of the Washoe model are that the appointment of counsel occurs upon the filing of the petition. There is no delay. Counsel has already met with the respondent and determined whether a relationship could be formed and has reviewed the respondent's environment prior to the first hearing. The court does not have to continue hearings for appointment of counsel.

Judge Doherty noted legal service attorneys have a federal grant that is run through the state and allows them to represent persons 60 years of age and older. Income/size of the estate is not a barrier to representation under this grant. Having the attorneys representing the respondents and present in every single case has been a benefit to the process. The attorneys participate in mediations, they are leaders in settlement conferences, and are negotiators on behalf of their client. The role of the GAL is separate from the role of the attorney. Judge Doherty noted she would like the court to retain the ability to have discretion to appoint a GAL but noted the hearings are more in-depth, substantive, and more areas of law are discussed because the person responding to the guardianship has their own attorney. Judge Doherty is concerned this could be lost if the Commission has to pick a model between a GAL and attorney for the respondent.

The Commission discussed the Vermont statute, which provides a set of objective areas lawyers must advocate; even in instances where the individual might be suffering from Alzheimer's or might not be able to create an attorney/client relationship. Members thought the Vermont statute could be a useful to guide a lawyer in what needs to be done if the client is not able to articulate their wishes. The guidelines do not seem to be so restrictive that they would inhibit an attorney's ability to deal compassionately with a client who may have desires but are not necessarily practicable. There is a middle ground that both the Vermont statute and common decency allows the attorney the ability to have the conversation with the client in terms of what is possible. The Vermont statute is the closest to what is currently practiced in Washoe County. There are so many things that an attorney for a respondent is able to advocate in terms of statute, due process, and substantive medical information,

that their advocacy and the Vermont model fit well together. Judge Doherty added Washoe County is doing almost every subsection already so she is a strong advocate of that statutory provision.

Chief Justice Hardesty noted the Indigent Defense Commission recommended a set of standards and practices that are required in the representation of every defendant in an indigent defense case. Members were asked if they thought the Nevada Supreme Court should develop standards and practices for representation of respondents in guardianship proceedings. The standards would be a set of rules, similar to the rules that govern the defense of indigent defendants. Members discussed and agreed a set of standards and practices for representation would benefit the guardianship system.

Comments regarding the proposal of a set of standards:

- Standards would communicate to the State Bar what the expectations are.
- A set of standards would be appropriate. Concern: In the criminal sphere, there is a funding stream for attorneys that are going to be held to that standard in terms of training and experience. That does not exist, yet, in guardianship. If the system relies on pro bono services it could be an additional monetary burden to have an attorney take a pro bono case and have to meet a certain set of standards.
- This is a highly specialized area of law that involves the need for technical information in medical, psychology, and psychiatry and a set of standards would be supported.
- A set of standards should not be unrealistic or be too burdensome. The set of standards could begin with standards for representation and then standards for training could be added, one-step at a time.
- A set of standards are appropriate but should not discourage people who would otherwise participate in the process.
- The set of standards would not be so high that an attorney would not be capable of meeting them and to accommodate a lesser standard would continue the nebulous manner in which guardianships have evolved over the decades. The clarity of these very simple, very few standards are needed now and would be included in every order appointing representation.
- A set of standards are needed. Courts are putting someone in charge of another person's life and these cases are legally and factually complicated. The set of standards would be important to make sure there are qualified attorneys representing people in these situations.
- A set of standards would be a benefit. Some of the things that need to be addressed are an income stream to get an attorney appointed. The foster care system created a set of standards and once they were in place, the system worked better.
- A set of standards would help when forming a training program and would provide agencies with the information needed to train those individuals. The standards would provide a level of expectation of what judges in all of their districts would be seeing from the attorneys. The standards would fill a void.
- A set of standards is a great way to cover accountability and transparency.

Chief Justice Hardesty noted the attorney/client role is different from the GAL role and asked the members if the Commission should examine a separate role for guardians in cases where GALs would be appointed. In setting up a guardianship structure, you need to reach out to the community. There are resources in the community that could be accessed to provide guardians with appropriate training and backgrounds. Ms. Rana Goodman noted her group has been collecting names of volunteers willing to work as GALs, auditors, etc. Ms. Goodman suggested the volunteers could be trained by the Public Guardian's Office. Ms. Buchanan noted Ms. Goodman has discussed this with her but the Public Guardian's Office is not in a position to train the volunteers; the office does not have the resources. The Commission discussed the importance of this issue and that financial resources/support needs to be provided for the guardianship system. The importance of financial support needs to be conveyed to the county governments.

Mr. Arnold has served as a GAL and an attorney representing a Ward and they are very different roles. The Commission would need to keep this in mind as it reviews the two roles. It is very important a GAL is knowledgeable, trained, and is a professional who is licensed and is under the purview of a Board of Examiners. There should be sanctions if the GAL does not abide by a code of ethics, and they should be accountable to the court and a board. If the GAL is not an attorney, they should be a licensed social worker, marriage and family therapist, or someone with professional training. The Commission discussed the SAFE Program as a possible middle ground. The Commission would continue to vet this process.

The Commission discussed the availability of referrals to EPS to examine less restrictive means when a respondent is the subject of a guardianship. Ms. Ramm explained the statute says the reports go to EPS and if EPS can substantiate there is abuse, neglect, exploitation, isolation, or abandonment then EPS would open a case and work on it. If there is a case where there are no allegations of any kind of abuse or neglect the statutes do not allow EPS to investigate based on – if there was a court order EPS would, but that would require additional resources in the Program which the legislature may or may not approve. Currently, EPS can only investigate cases if there is an allegation of abuse, neglect, exploitation, isolation, or abandonment. There are some limitations on EPS's ability to provide the kind of support that could benefit the guardianship system. The Commission would extend this discussion to future meetings about potential statutory change and the definition in EPS's role in this process.

The Commission discussed sponsoring legislation, including a Bill of Rights to address the issues the Commission has identified. There was a discussion about the revenue resources and the possibility of legislation creating an unfunded mandate.

Judge Doherty stated the discussion has two parts. First, is whether the guardianship court needs an investigative entity to supplement its work in order to assure an appropriate outcome. Second, who is the most appropriate entity based on resources, training, and skill level to conduct the investigation. The Commission identified five entities during the discussion: (1) A GAL as an attorney (2) a GAL as a layperson (3) the SAFE Program (4) Public Guardians (5) EPS. The Commission would need to decide who should conduct the investigations and the nature and extent of the service that the court requires.

The Commission should identify who is the most appropriate entity based on resources to perform that skill. The National Center for State Courts recommends case compliance officers as the investigative entity. More work needs to be done to define the service and then define the provider. It was noted there is a concern of conflating the representation of the respondent with the court's need for input on what action is appropriate and what action should be taken. The investigative services should be separate from the expectations of the respondent in these proceedings and they should have a lawyer who is going to be their advocate.

It was noted Nevada Revised Statute 159.0485 addresses the right to and appointment of counsel so the state may already have a fiscal responsibility that has not been imposed yet.

b. Statutes from Vermont, Arizona, Washington, Texas, Nevada

The Commission referred to these statutes during the presentation on attorney representation.

c. Involuntary Guardianship Referral Process (Richard Black)

Mr. Richard Black gave a presentation on the Involuntary Guardianship Referral Process Clark County, Nevada and Nevada Reform Proposal. Mr. Black provided a flow chart with the current guardianship referral process and a flow chart with a proposed guardianship referral process for involuntary guardianships. Mr. Black noted the genesis of the document came from when his family followed his father-in-law to six different care facilities in Las Vegas. Since the family did not have guardianship and a guardian was in place, they were not allowed to gain any of the medical information, and could not be a part of the discussion concerning his father-in-law's care. That was strictly exclusive to the guardian. There were compromises found and they were given the opportunity to be informed. Mr. Black noted the doctors in Las Vegas were disciplined in honoring HIPAA. Mr. Black noted he has reviewed nearly 100 cases in adult guardianship petitions, particularly the petitions to appoint guardians (PAGs). The PAG is a critical document that justifies the need for a temporary guardianship and the guardian proposing the petition. How are guardians able to obtain these documents from legitimate doctors when Mr. Black and his wife could never get any information from the doctors as to the care of someone under guardianship.

Mr. Black reviewed the current guardianship referral process and noted he had highlighted the process where the system had broken down in red. This includes the process being privately controlled and little court oversight. The rectangles are steps in the process; the diamonds represent decisions that have to be made. Issues include ad hoc...no formal process for healthcare professionals to depend on; likely violations of HIPAA between physicians, lawyers, and guardians; excess private control of the process...no independent investigator, too many lawyers; lack of transparency...referrals with rewards suspected; and the process does not address hospital bed-day priorities and lower costs care options.

Page 4 of Mr. Black's presentation includes a recommended process. The green block at the top right highlights three critical areas that would maximize the protection of the individual and the efficiency of

the process. Hospital requirements are twofold (1) they have an obligation to the insurance companies and (2) they have an obligation to make money. The process should be as sensitive as possible to the patient so the transition should be singular; move from an emergency care facility to a lower cost facility while other facts are discerned. Facts that should be discerned include whether the patient has assets, family, does the person representing that they should be the guardian have criminal intent. The first process is to conduct the capacity assessment. Mr. Black noted in the hundreds of cases he reviewed there is consistently a two-page check-the-block form that the guardian receives. This comes from the hospital or physician but does not provide any insight as to the cause of the incapacitation. When did the incapacitation initiate? Can the person hear? Mr. Black commented some patients cannot hear but no one has conducted a hearing test. Block 1 is the full capacity assessment of the potential Ward conducted by an independent assessor and the primary care physician to make sure the representations in the petition for guardianship are in fact valid. Block 2 includes the independent investigators. This tries to address who makes the assessment and to ensure there is no conflict of interest.

Mr. Black discussed how a guardian should be chosen and noted 98% of the private guardianships in Clark County are held by four guardians. Mr. Black stated there are 25 certified guardians in Clark County and asked why the other 21 guardians had not been solicited to support the effort. Mr. Black suggested transparency could be improved by appointing an independent investigator from EPS. EPS would have a list of private and public guardians that would be assigned on a rotating basis. The list would provide transparency and would be managed by an independent body, e.g. EPS.

Mr. Black reviewed the benefits of the proposed process and offered his services to help in any way.

Benefits:

- Streamlines and improves transparency of what is the need for the Ward, and what is the process for which a guardian will be chosen and assigned;
- Insures a thorough medical and neurological assessment from the onset to help define least restrictive care requirements;
- Insures HIPAA compliance;
- Insures timely identification of appropriate party to support hospital needs;
- Integration of EPS to conduct independent investigations;
- Improves protection of civil rights of the elderly and their estates;
- Removes attorney involvement in routine cases; and
- Insures law enforcement referral if abuse/neglect is suspected.

Commission members discussed the proposed guardianship referral process provided by Mr. Black. Mr. Black was asked if he had spoken to EPS about the staffing that would be required to conduct this level of investigation. Mr. Black responded he had spoken to EPS and said you can use the excuse that we do not have funding but he has ran businesses and funding is a choice; you choose what is important and what is not. The feedback he has taken from his discussions with EPS is there are some restrictions on legislation that they would need some help with. Mr. Black said we are here to promote change that

helps to protect the vulnerable. The budgeting would come along with it. In the cases Mr. Black has reviewed hundreds of thousands of dollars disappeared. Mr. Black stated if the system had been controlled appropriately – he said his family would have been happy to pay for EPS support to get to the bottom of what they knew was going on. In many of these cases when the victim finally had an advocate that did elevate it to EPS the performance was outstanding.

The Commission discussed whether this process contemplates circumstances in which a guardianship is needed but the family cannot be there and/or cannot be the guardian but they might want to be a part of the process in choosing the guardian. The family does not want to allow EPS to choose the next person in line. Mr. Black noted that is a wrinkle that needs to be resolved because there would potentially be cases where a person would want to be a part of the process in choosing the guardian and would not want a third party making that decision.

Mr. Black was asked if other jurisdictions, outside of Nevada, use this proposed process. Mr. Black responded that yes, EPS is brought in early before the guardianship is established to conduct an investigation in other jurisdictions. The mandate for a thorough physical and mental evaluation of the proposed Ward is conducted in many other jurisdictions and some of this is being adopted as best practices from other documents the Commission has read.

Ms. Kim Spoon wanted to clarify a couple of items. First, EPS's present policy would not refer to a private professional guardian. All EPS referrals go to the Public Guardian's Office. Second, Mr. Black noted there are 25 certified guardians in Las Vegas. Not all certified guardians are practicing private guardians. Currently, there are only six private guardianship businesses in Clark County so there might be certified guardians but they might be certified in attorney offices or other public entities. There is also the question about HIPAA policies. The HIPAA policy allows a physician, if they feel there is immediate or imminent threat to a person in their charge, to provide documents to those parties they feel can make a change in that. Guardians fall into that category.

The Commission discussed the current EPS policy of referring public guardians. A number of years ago EPS was referring people to private guardians and the office was receiving many complaints as a result, which is the primary reason for the policy. EPS determined the best and the most transparent practice would be to keep a list and everyone would be referred to the public guardian. The Commission discussed the possibility of EPS reviewing their policy in light of the legislative enactment of licensing private professional guardians.

The Commission discussed the suggestion of a neutral investigation. Mr. Black clarified the independent investigation would occur before the guardianship is ever established, well before the court may ever be involved. Judge Doherty asked if the neutral investigation would be triggered at the time the petition is filed. Mr. Black responded he did not diagram the process that way, but he did not see any limitations that would restrict the court from applying this model even after the PAG has been submitted and potentially honored. Under the proposed model, EPS would be called and investigate the need for a guardianship. Mr. Black noted in other states there is an official alignment between EPS

and the courts and once EPS identifies the guardian, a notice is electronically sent to the court. The judge understands this person is next on the list and if the court needs to select a guardian for the person this is the guardian. The Child Protective Services (CPS) system has a similar process. When there is a removal of the child, it triggers a hearing automatically before a judge, before a petition is even filed. There would need to be a similar mechanism to what Nevada has in the foster care CPS system to cause that to happen.

Mr. Black was asked if there would be a conflict at some juncture if EPS makes the determination as to whether a person needs a public or private guardian, and EPS decides that a family member should not be the guardian because they have information the family has an exploitation background. Would EPS be making all the determinations for the court? Mr. Black responded EPS would make the determination. At this point, it is involuntary and the point is whether it is incognizance or the ward does not want a guardian but they are being drawn into court by son/daughter/caregiver etc. and an independent body should make the assessment on the legitimacy of the petition and the need.

Mr. Black was asked if this process envisions EPS following a court order to do an independent investigation or if the court would have its own independent investigators that would respond to a court order and report to the court. Mr. Black responded he is not an expert in this area but based on what he has seen EPS has the ability to get all the critical documents that would substantiate their decision. EPS could go into the home and go through files, bank, and medical records to determine a person's history.

There was a discussion about whether this process would include EPS evaluating a case where there may be a competing family member. For example, would EPS make the recommendation as to which of the competing family members would be appropriate? Mr. Black responded no, that would be determined by the court and he views those cases as voluntary. Judge Steel stated those cases may not be voluntary. It has been her experience that there are often competing family members and usually in those situations, there are cross allegations of misdeeds. EPS does not provide much information about what they find out when they are doing an investigation so Judge Steel asked if EPS would make a recommendation to the court or make a recommendation in favor of one of the parties. Judge Steel's concern is that much of what EPS does is confidential and there could be an issue of due process for the competing family member. Ms. Arnold noted the CPS model makes a decision as to which relative would have the opportunity with the court to consider placement. It does not rule out someone else coming in and saying they are filing a competing petition. Mr. Black said that is correct. In this process, EPS would investigate and make the recommendation but the judge would make the final decision. Mr. Black noted there are other reform proposals that have been put forth on mandatory mediation that would resolve any issues beforehand so it would not get to this process.

EPS currently serves people over the age of 65. The Commission should review the age requirements for the various agencies including Adult Protective Services (APS).

Other Business

A handout had been provided to the Commission members with a list of all recommendations collated by subjects. Commission members were asked to review the list and let Ms. Heying know if a recommendation was missed.

Chief Justice Hardesty provided a list of general policy questions he would like the Commission to think about prior to the next meeting.

General policy questions:

1. Does the Commission generally favor a recommendation to adopt a Bill of Rights for Wards?
2. Does the Commission endorse the idea that every Ward, regardless of means, is entitled to legal counsel?
3. Should every hearing involving a Ward require the Ward's presence, which can only be exempted upon a medical showing or some other good cause approved by the court?
4. Should notice be required, a period of notice be demonstrated with appropriate summons and affidavits, and the court cannot proceed without that notice? The notice must be documented.
5. Does the Commission endorse the idea that guardianships are only approved through least restrictive means?
6. Does the Commission favor the idea of limited guardianships in circumstances in which the capacity of the individual may not place them in a position where a full guardianship is warranted?
7. Does the Commission favor the idea of changing definitions or terminology?
8. Does the Commission favor the idea of looking at Elder Protective Services (EPS) or some other alternative to conduct investigations independent of the court system?

The Commission had a lot of conversation about how to investigate the circumstances concerning a proposed respondent. On that score, most states are resorting to independent investigations. Those investigations are independent of the court. In Nevada there is a little bit of a complication that was created by a document that has been circulated on the agenda numerous times. The document is an opinion from the Judicial Ethics Commission for the State Judicial Discipline Commission that says, it is an ex parte communication for a judge to engage in communications about the Ward. The Judicial Code also applies those limitations to staff employees of the judge so if the investigators would be working for a judge, judicial department, or judicial district then potentially the judge is violating the current Judicial Canons by engaging in those communications. This raises the issue to look at Elder Protective Services (EPS) or some other alternative to conduct these investigations independent of the court system.

9. Does the Commission favor the idea of an auditing system?
10. Should the Commission require that the judge make individual findings for every kind of petition, require a review by the court and an assurance that there has been an independent review?

Chief Justice Hardesty asked if the Commission would endorse a motion to ask the Supreme Court of Nevada to extend the order by six months in order for the Commission to complete its recommendations.

Judge Dianne Steel moved to extend the Commission by six months. Kathleen Buchanan seconded the motion. The motion was passed unanimously.

Chief Justice Hardesty asked the Commission members to think about the creation of a continuing Elder/Adult Committee of the Nevada Supreme Court to monitor and provide ongoing review of the guardianship system. The Commission would discuss the broader policy questions at the next meeting and review the recommendations provided. The Commission would begin attaching some very specific recommendations to those policies.

The Commission was not able address agenda items IV – VII during this meeting due to time constraints. Agenda items will be moved to the December 15 meeting for discussion.

IV. Future Meeting Dates/Agenda Items

a. December 15, 2015

The next meeting is scheduled for December 15, 2015, and will be an in-person meeting in Las Vegas.

Proposed meeting dates for 2016 would be sent to Commission members.

V. Adjournment

The meeting adjourned at 5:00 p.m.

RECOMMENDATIONS

LIST OF RECOMMENDATIONS AND CATEGORIES FOR THE GUARDIANSHIP COMMISSION

1. DEFINITIONS/TERMINOLOGY

- A. Definition for incompetent.
- B. [NRS 159.019](#), [159.025](#), [159.027](#) – Definitions of “incompetent,” “proposed ward,” and “ward.” Should be updated to reflect more person-centered language.
- C. [NRS 159.0487](#): Change the word “incompetents.”
- D. New definition of incapacity or incompetency based upon several ideas from the conferences and recent re-review of Scottish guardianship laws.
- E. Eliminate use of terms "ward", "incompetent" and "insane" in adult guardianship cases and replace with more commonly acceptable terms as "Respondent" (prior to disposition) (See [National Probate Court Standards](#) (NPCS) 3.3.1(c)(1)), "incapacitated person" or "person under a guardianship" or other more neutralized terms after guardianship issues.
- F. Change the term “ward.” Consider designating a person who may be in need of a guardianship as a Citizen with possible guardianship needs prior to the development of a guardianship, afterward as The Citizen subject to guardianship. The word Citizen serves as a subtle reminder that the subject of the petition has constitutional rights, legal rights and the right to maintain dignity in the proceedings.
- G. Add definitions of guardian ad litem and investigators. (See [NRS 159.033](#), [432B.505](#))
- H. Define methods for jurisdictions to meet and track milestones in guardianship cases consistent with best practices and for purposes of court management. (*Could also fall under data category*)
 - a. Predisposition
 - b. Post-disposition
 - c. Removal/Resignation of Guardian/Termination of Guardianship
- I. Define the interaction between probate/guardianship/trust matters.
- J. Resident Agent: More clarity and expectations. (*Could also fall under requirements category*)
- K. Definitions and terminology should be consistent with physicians’ terminology.
- L. Review and consider Texas Legal Standards Related to Mental Capacity in Guardianship Proceedings.

2. PHYSICIAN’S CERTIFICATE

- A. Define a formal incognizance assessment for proposed ward by a certified neurologist/psychiatrist and the ward’s primary care physician.
- B. Improve substantive requirements of Physicians Certificate. (See NPCS 3.3.9 narrative)
- C. Mandatory and well-defined capacity assessments by a certified neurologist/psychiatrist, the Ward’s primary care physician, and family.
- D. Determine whether the certificate of physician should be filed under confidential protection. The document has not usually been authenticated at the time of a temporary guardianship request.

3. PERSON-CENTERED PLANNING & SUPPORTED DECISION-MAKING PROTOCOL

- A. Develop and adopt a "person-centered" evaluation to incorporate levels of capacity.
- B. Person-centered planning includes rules, statutes, and care planning that puts the wishes, needs, values, and life-experience of the person facing guardianship before the efficiency of the court or the convenience of the guardian.
 - a. Supported Decision-Making
- C. Supported Decision-Making Protocol (See [Page 19 -28 of HB 39 Chapter 1357 Supported Decision-Making Agreement Act, Texas](#))
 - a. Establish legal framework for a supported decision-making agreement
 - b. Ensure protections are in place to reduce abuse or exploitation through such an agreement.
- D. Enhance statutory emphasis on court's responsibility to identify less restrictive alternatives to guardianships. (See NPC 3.3.10)
- E. Determination of whether or not a ward should have a guardianship.
- F. Determine the necessity of services.
- G. [NRS 159.054](#): Include alternatives to guardianship in the statutes, possibly here.
- H. [NRS 159.0755 – 159.111](#): Powers and Duties of Guardian: Review carefully, keeping in mind that there are different categories of guardian, e.g. family, public, private, and looking at the language to change it to being centered on the person under guardianship and not on the efficiency of the court system or the convenience of the guardian.
- I. Insure process pursues the "least restrictive alternative" to guardianship and protects the vulnerable person's civil rights, estate, and estate directives.

4. RIGHT TO NOTICE

- A. Define a formal notification process and assure that all interested family members are notified and that ward or an advocate for the ward is present for all court hearings. Ward should be present for at least the initial hearing (in person or by Skype).
- B. Mailing Matrix
- C. IT data screen for purpose of court notices. (*Could also fall under data category*)
- D. Affidavit regarding what was done to discover parties with right to notice.
- E. [NRS 159.034](#), [159.0345](#): Providing notice. Statute should be reviewed to include privacy issues and timing.
- F. [NRS 159.074](#): Copy of order of appointment to be served upon ward. Include people on whom the notice of the hearing is served.
- G. Contacting Family Members prior to establishing Guardianship: Petitioners should detail the steps they have taken to locate family members in their petition.
- H. Signed USPS receipts for notices of hearings presented to the court guaranteeing family was identified and formally notified.
- I. Collect the e-mail address for persons who should be or have requested notice of hearings and court compliance correspondence.

5. **TEMPORARY GUARDIANSHIPS**

- A. [NRS 159.0523](#), [159.0235](#): Temporary guardianship. Review statutes to address timing of hearings, notice, duties of guardian, and level of proof.
- B. Enhance limitations on Emergency Appointment of Temporary Guardian. (See NPC3 3.3.6)
- C. Very little discussion has focused on care of the senior BEFORE they become wards in the first place. Last month, one of the judges from up north made a great point about guardians who search the home, purse or other personal items to garner information about a POTENTIAL ward. She stated that "this act is violating their civil rights." I would also suggest that doctors signing the "check the box" diagnosis prior to temporary guardianship also violate [HIPAA](#) laws. Therefore, no guardianship, temporary or other should be effective for 48 hours and notification of family should be proven & mandatory. (*Could also fall under right to notice category*)
- D. Formal needs assessment and notification process (including having the ward presented to the court) before an involuntary temporary guardianship is established. (*Could also fall under right to notice category*)

6. **MINOR GUARDIANSHIP STATUTE**

- A. Separate guardianship statutes for minors and adults creating NRS 159A and 159B.
- B. Revise relevant statutes to address minor guardianships.
- C. Separate statutes governing guardianship over minors and those governing guardianship over adults.
- D. Focus on issues for minors (1) regarding temporary guardianship by removing the requirement of an agency letter or police report (perhaps a standard of reasonableness and/or best interest of the child would be appropriate); (2) creation of a presumption in favor of guardianship if the parents have been absent from the child's life for a year or more; (3) creation of an omnibus department for the rural counties; (4) application of the Uniform Child Custody Jurisdiction and Enforcement Act [UCCJEA](#) to minor guardianships; and (5) a provision regarding the award of visitation and child support. Judge Walker and I have been working on entirely new statutes for minors, but I feel that is too large a project for the limited time we have. Additionally, there are good, workable provisions in the current statutes, so a complete overhaul is probably unnecessary.
- E. Review and implement NPC3 protocols for proceedings regarding guardianships for minors at NPC3 3.5.
- F. Consider adding someone from the [Governor's Council on Developmental Disabilities](#) to the work group for statutes on guardianship over minors. Contact is Sherry Manning, Executive Director, at smanning@dhhs.nv.gov.
- G. Consider sub-categories for the statute ([NRS 159](#)) to include: Definitions; Administrative Responsibilities (process/procedure); Global Guardianship Requirements; Adult Guardianship requirements; Minor Guardianship requirements.

7. COUNSEL/REPRESENTATION/GAL

- A. Develop legislation and process for appointment of counsel for adults and minors.
- B. Appoint counsel for all adult Respondents who cannot afford representation or who otherwise cannot access their own attorney. (See NPC 3.3, NPC 3.3.5; [NRS 159.0535](#))
- C. Representation for people facing guardianship is essential and should not depend on the inconsistent funding sources of grants and donations.
- D. Establish procedure for court to appoint Guardian, Guardian Ad Litem, and Attorney on a rotational basis.
- E. Appoint counsel, the GR and the Attorney/Client Relationship. Court appointed attorneys for GR need to have a clear understanding as to when an attorney-client relationship can be established.
 - a. The attorney has an ethical obligation to determine whether the client (proposed Ward) can engage in an attorney-client relationship. How can the lawyer do this? Does the attorney have to go beyond the interview with the prospective client? Should the attorney seek input from the client's family or friends? What does the physician's certificate opine on this issue? What if the client does have some level of an impairment?¹
 - b. Does the attorney² have to determine that the client with diminished capacity³ has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client's own well-being?
- F. Utilization of a GAL just before the utilization of appointed counsel or that both be appointed.
- G. Any proposal to fund appointed counsel should include funding for the appointment of a GAL.
- H. GAL Program: Virginia Court System has a viable model program.
- I. Create a Guardian or Attorney Ad Litem for Incapacitated Persons (Adults)
- J. Create a Guardian or Attorney Ad Litem for Children
- K. Attorneys should not be allowed to represent a client in a lawsuit, or any action, and then turn around and be named as a beneficiary of the client's estate. This gives the appearance of undue influence. This becomes even more concerning when their client is referred over for guardianship when the case settles.
- L. An attorney who represents a guardianship should not also serve as counsel for the trustee of the trust. This is a conflict of interest.
- M. [NRS 159.1853](#): Petition for removal. Add that the person under guardianship may hire their own attorney, or ask for the appointment of an attorney, regardless of having been judged to need a guardian.

¹ The [Nevada Rules of Professional Conduct](#) direct that if a client has diminished capacity, a lawyer "shall as far as reasonably possible, maintain a normal client-attorney relationship with the client." NRPC 1.14

² The attorney has to effectively communicate with the client. The client has to be able to participate intelligently in decisions concerning the objectives of the representation and the means by which such objectives can be achieved.

³ The [Uniform Health Care Decisions Act](#) provides that "capacity means the ability to understand the significant benefits, wishes and alternatives to proposed health care and to make and communicate a health care decision." Capacity in that context of living in the community and without help involves some if not all of the same capacity issues. If a GR does not have such capacity, can he or she have an attorney/client relationship?

- N. No attorney should be allowed to withdraw from a case when representing a ward unless another attorney is available to replace him/her. It leaves a ward, already in a vulnerable position, totally in a helpless state.
- O. Establish limit on income for free legal representation.
- P. Limits should be set on amount appointed attorneys can be paid (can also be under "Fees" category)
- Q. The Court should appoint a Guardian Ad Litem (GAL) in each case. A GAL's role is to act in the Guardianship Respondent's (GR) (proposed Ward's) best interest. The role of the GAL and of appointed Counsel conflict and these roles cannot be served by the same attorney. In order to determine the best interest of the GR, the GAL must first come to an understanding of the GR's wishes. The wishes of the GR maybe set forth in prior documents or by prior communications with family. The GAL then needs to determine if the GR's interest can be fulfilled and if not what is in the GR's best interest if the GR's wishes cannot be fulfilled (i.e. lack of money, etc.) The GAL is to try and implement the advanced planning of the GR to the greatest extent possible. The GAL can also recommend new guardianship solutions.
 - a. If counsel is to be appointed for the GR, there needs to be a uniform understanding of the duties of such counsel.
 - b. If the GR's (Ward's) counsel believes the GR can participate in his or her case, and if the GR is going to object to the appointment of a guardian, the best and most cost effective way to deal with the challenge is to have the GR;s counsel ask the Court to have the GR examined by a physician, psychiatrist, or neuropsychologist. Under this framework, the initial physician's certificate and needs assessment filed with the Court would establish a rebuttable presumption that a guardian is needed subject to the exams requested by the GR's counsel. This eliminates the cost of dueling doctors in the courtroom. The physician/expert appointed by the Court would be paid from the GR's estate. Please note that the doctor's testimony is not the only evidence of a need for a guardianship.

8. SPECIAL GUARDIANSHIP/LIMITED GUARDIANSHIP

- A. Revise the language in [NRS 159.0801](#) to provide that special guardianship authorities are those specified in the order granting special guardianship and those granted upon further petition, notice, and determination of the court.
- B. The Courts need to utilize [NRS 162A.250 \(2\)](#) to a greater extent. Under this statute, a Court can allow an agent to retain specific powers.
- C. In the absence of utilizing [NRS 162A.250 \(2\)](#), the Court would appoint the petitioner/proposed guardian as the general guardian of the estate subject to the Ward's ability, to fully or with assistance, to carry out those areas of decision making reserved to the Ward. If the guardian determined that the Ward could not carry out a reserved area of decision-making, the guardian would file a report to the Court. This would not require an immediate hearing, but would be addressed by the Court at the next hearing on the case. IN the interim, the guardian would seek the Ward's input to the extent possible in said area of decision-making. This would reduce fees and costs.

9. COURTS

- A. Develop an evaluation system to measure the court's efficiency.
- B. Discuss and provide guidance on the court's duties to the ward.
 - a. Court must look out for the ward when it comes to whether they need guardianship or not.
 - b. Court must look out for the ward when it comes to costs incurred by the ward at the direction of the guardian.
- C. Formalize Family Court's role/responsibility in reporting and supporting criminal prosecution of identified exploitation by private professional guardians. Sanctions and misdemeanor charges are inadequate when the ward's estate has been fraudulently taken or misused.
- D. The Court needs to be much more of an advocate of what is in the best interest of the ward when it comes to the Wards:
 - a. Health;
 - b. Placement; and
 - c. Finances.
- E. Ensure judicial court clerk staff ratio is in conformity with guardianship workload assignment. (Suggestion at this time one court clerk for every 500 cases.)
- F. Statutes for minors and adults should require a hearing on the annual statement of condition of the ward, with the ward present unless the court orders otherwise.

10. INVESTIGATORS/COMPLIANCE

- A. Have bonded/certified independent investigators.
- B. Separate the investigation function from the guardianship function, including money for the court to pay for investigators. Investigations prior to granting guardianships are a best practice in all cases, and essential in contested cases.
- C. Require appointment of court investigator, third party investigator or court visitor upon filing of all petitions for guardianships. (See NPC 3.3.4; [NRS 159](#))
- D. Investigations prior to granting guardianships are a best practice in all cases, and essential in contested cases.
 - a. Guardians ad litem (GAL) would be effective in providing this service, as well as trained investigators who are not appointed as guardian ad litem. Appointing an attorney to do this work is not necessary, and is not a good expenditure of legal resources.
 - b. Volunteer GAL programs work. They must be supervised. Training is critical. And, the court order giving them authority to act must delineate clearly the boundaries of the work they do. The GAL work should terminate when the guardianship begins, unless the court determines otherwise as an exception.
 - c. Who should the GAL volunteers report to? Perhaps a paid leader of the organization who then interfaces with the court. The volunteers themselves should have no ex-parte discussions with the court.
 - d. Funding should not depend on the inconsistent sources of grants and donations.
- E. Establish a formal assessment procedure to be conducted by Senior Protective Services, Children's Protective Services, or a court-appointed investigator for each involuntary guardianship.

- F. Compliance Officers/Investigators assigned to each court to ensure timelines defined by NRS are complied with in accordance with law.
- G. Establish an independent compliance office with the ability/responsibility to report to Family Court/law enforcement and file charges if NRS is not being adhered to by guardians/attorneys.
- H. Ensure each jurisdiction is staffed with sufficient ratio of case compliance officers capable of supporting judicial responsibilities for review, management and competent oversight of guardianship caseload. (Suggestion at this time one case compliance officer for every 500 cases).
- I. Integrate an independent investigator, preferably Elder Protective Services as part of the needs assessment, investigation, and guardian nomination.
- J. Independent family court compliance officers with the obligation to file complaints to law enforcement of NRS violations by guardians and their attorneys.
- K. A case compliance officer is needed to make sure that appropriate and timely steps are taken by the guardian in carrying out his/her/their/its responsibilities.
- L. Private Professional Guardians as state licensed, nationally certified, background checked professionals should have the ability to investigate guardianship referrals they receive as long as they use legal means to obtain the information required by statute to be presented to the Court through a petition for guardianship.
- M. If investigations are to be done by a third party, investigations in guardianship cases need to be done once a referral is received as the information is needed in order to complete a petition to present to the Court. If investigations will not be allowed by those who want to proceed with the guardianship process, then:
 - a. Referrals for Private Professional Guardians (PPG's) are to go to which ever PPG a party wishes to refer to. This allows for PPG's to be validated for their service to the community as most referrals are done through word of mouth. The PPG is to do an intake that assists them in deciding whether or not the referral is a proper referral to pursue in terms of the PPG's experience and abilities including meeting with the referred party. If the PPG decides the referral is applicable to the PPG's practice, that intake would then be provided to the Guardianship Investigator to trigger the investigative procedure.
 - b. Public Guardian's offices should also be allowed to do their own intake, including meeting the referred party, and after completing the intake, provide it to the Guardianship Investigator to trigger the investigative procedure.
 - c. Other parties pursuing guardianships would complete an intake form for the Guardianship Investigator as well.
 - d. The Guardianship Investigator is to be an employee of either the District Court or the Aging and Disability Division for the State of NV. This person would be specifically trained to do guardianship investigations. As a general employee of the Court or Division (not Elder Protective Services), age of the referred party should not be an issue, nor would a pay source be an issue. This person would have the authority to obtain medical and financial records, estate plans and order evaluations required by statute. This person would be required only to obtain information and not form an opinion as to the appropriateness of the referral. The investigator would have two weeks to complete the investigation with extensions as needed or to be done sooner

if the referral is an emergency. In an emergency, the investigator would complete a preliminary investigation to substantiate the emergency situation and again order any evaluation required by statute. All information gathered would then be given back to the party pursuing the guardianship.

- e. The person or entity pursuing the guardianship would then decide whether or not they have sufficient information obtained from the investigator to continue the guardianship process. If so, a petition is completed and filed with the Court. The investigator is to be notified and given a copy of the petition to ensure that the information obtained in the investigation is the same information in the petition. If the party who initiated the investigation does not pursue the guardianship, that information is to be provided to the investigator with the reasons why.
- f. Once the investigation has been completed, no party, entity, or agency should be deciding whether a guardianship is suitable or not, but should base the decision to go forward on whether or not: (1) the Public Guardian, PPG, or other potential guardian is equipped to meet the needs of the referred party; (2) there is sufficient information required by statute; (3) the situation meets other statutory requirements to proceed; or (4) an alternative option has been found to meet the needs of the referred party.
- g. If the investigator believes a case not being pursued does have sufficient information to go before the Court, that investigator can then send the information to the court compliance officer, or an appointed clerk to complete an application to the Court similar to a TPO process as the referred party is seen as an at risk person in the community. It is important that the decision as to whether or not a guardianship is appropriate is to be decided only by a judge with the information provided by the investigator, by information provided in the petition, by the representation of the respondent's appointed attorney, and by the respondent's input as well.

11. FEES

- A. Create a standard fee structure.
- B. Publish a standard fee schedule for professional Guardian, Guardian Ad Litem and Attorney.
- C. A fee schedule for guardians.
- D. Fees: Private Guardian fees should be standardized throughout the State of Nevada. Public Guardian fees determined by their operational budget.
- E. Determine excessiveness of fees, which is only addressed by the court if someone complains.
- F. Prohibit guardians/attorneys from using the ward's estate to pay for their own personal legal fees. This is a business expense, not the ward's responsibility.
- G. The guardian has the fiduciary responsibility to care for the ward and the ward's estate. If he/she is not going to do that, they have failed in their fiduciary duty and should not be paid for failure. If the guardian has left bills unpaid for the ward for family to pay, while charging the estate excessive fees for administrative duties, those bills should be charged back and deducted from the accounting.
- H. Each side, ward and guardian pays their own legal fees.
- I. Court scrutinize fiscal appropriateness of the performance of services:
 - a. Whether an attorney needed in a real estate transaction.
 - b. Whether the Guardian should have tasked a PCA with doing something, rather than charging the full guardian's hourly rate.

- J. Eliminate guardian's ability to access estate funds to pay for litigation defending their position. Legal fees should be an overhead expense not a specific Ward paid expense.

12. BILLINGS

- A. Scrutinize billings -The current guardianship system is set up in a way where, if the court is not examining fees and questioning things, sua sponte, it is the wolf guarding the hen house. It is implicit that when the court is looking at 'reasonable fees' that not only the money, but the services charged for must be actually reasonable and necessary.
- B. Billing: Appropriate billing practices:
 - a. Best Interest, best practice, by utilizing cost effective services when appropriate. This would include billing at a tiered rate depending on the complexity of the task.
 - b. Duplication of service is not appropriate.

13. ACCOUNTINGS

- A. [NRS 159.176 – 159.184](#): Accountings: Review for length of time between accountings, requiring hearings regarding the accountings, and when the hearings should be noticed and held. Also, review "Compensation and expenses of guardian."
- B. Establish a statewide web-based guardianship accounting program with receipt logging and auditing capability.
- C. Budgets
 - a. Mandated, or requested by jurisdiction
 - b. Forms
 - c. Pursuant to noticed hearing or approved unless challenged?
- D. Accounting's *that were un-challenged*, yet no one seems to understand that they were not challenged due to the cost to the ward of doing so.
- E. Statewide web-based guardianship accounting software with expense reporting, receipt logging and auditing capability. Continue with integration of Dept. of Business and Industry as defined in the new licensing law.

14. INVENTORY

- A. Establish procedure for having family review/verify ward's initial inventory to insure accuracy.

15. BONDS

- A. [NRS 159.065](#), [159.067](#), [159.069](#), [159.071](#): Bonds. Review for amounts, and to insure that all people under guardianship are properly protected.
- B. Mandate bond and set standardized protocols for determining the amount of bond on all cases - require specific findings of fact and conclusions of law if bond is not imposed or is smaller than standardized amount. (See NPCS 3.3.15)
- C. The courts should in all (but spousal cases) require appropriate bonding or blocked accounts over the Ward's assets.

16. ANNUAL REPORTS ON CONDITION OF THE PERSON AND THE SPECIAL ADVOCATES FOR ELDERS PROGRAM (SAFE)

- A. Annual reports help the Court have a better understanding of the Ward's ongoing and possible changing needs. An annual report is particularly helpful if the Ward is still living alone in the community.
- B. A supplement to the annual report is the utilization of a "Special Advocate for Elders" (SAFE) project. SAFE was developed to provide additional oversight of the Ward's interest and needs in a guardianship proceeding. The SAFE program would recruit community volunteers who receive training in the guardianship process. SAFE's should not be used as a GAL because of a lack of experience and in-depth training.

17. MANAGEMENT OF ESTATE/SALE OF PERSONAL PROPERTY

- A. [NRS 159.0755](#): Administration of Smaller Estates: Review for amount and types of assets covered and for the level of vulnerability of the person under guardianship.
- B. [NRS 159.113 – 159.125](#): Management of Estate: Review carefully, keeping in mind that there are different categories of guardian, e.g. family, public, private, and looking at the language to change it to being centered on the person under guardianship and not on the efficiency of the court system or the convenience of the guardian. (*Could also fall under the person-centered category*)
- C. [NRS 159.1535 – 159.156](#): Sale of Personal Property: Include a provision that the property of the person under guardianship may not be purchased by the guardian or by anybody related to or in business with the guardian.

18. REQUIREMENTS/BACKGROUND CHECKS/REFERRAL PROCESS

- A. Proposed guardians should be required to undergo a background check including fingerprinting.
- B. Require background checks for all guardians. (See NPCS 3.3.12)
- C. Public and professional private guardians should be required to report their annual certification to a state agency.
- D. Prohibit the appointment of guardians over a specific age (i.e. Mancarelli case).
- E. Private Professional Guardians should be degreed and hold the appropriate certifications. I can think of no other profession that we would allow a person in a power position over medical, financial and social that does not require these qualifications.
- F. Guardians should not serve as guardian and as trustee. This is a clear conflict of interest.
- G. Proposed guardianship referral process.

19. PUBLIC GUARDIAN

- A. Public Guardians should never be challenged by Private Guardians to assume a case because the funds have been depleted. In the event, a Private Guardian closes their practice, the decision for the Public Guardian to inherit their cases should be mutually agreed upon. The Public Guardian must be able to effectively and efficiently manage an influx of cases to serve the individuals best interest.
- B. [NRS 253.250](#) Allows the public guardian to refuse to accept a person needing guardianship if they cannot find a source to pay for the care of that person. This leaves the most vulnerable

people without any assistance. While it is understood that the public guardian's office cannot take the responsibility to pay for the care of people in this situation, a solution must be found for vulnerable and older people who are left out of any public services.

20. TRAINING AND CURRICULUM

- A. Develop curriculum and method for educating parents and schools on alternatives to guardianships
- B. Develop curriculum and method for training law enforcement on elder/vulnerable exploitation.
- C. Require training for all non-professional guardians and regulate training for professional guardians. (See NPCS 3.3.11, NPCS 3.3.14)
- D. Mandatory POST training for elder abuse and neglect including financial abuse. Require certification of guardians and require annual continuing education standard.
- E. Establish a guardianship education/training program for family members and concerned citizens. This alone might eliminate some grievances and concerns.
- F. Educational class or training regimen be created for judges, and if appropriate court staff, on what to look for or how to review inventories and accountings.
- G. Take the training for guardianship certification away from the Pennsylvania center. Why does Nevada law mandate all people wishing to be certified go through a center in Pennsylvania who will only take certification away if a guardian if convicted of a felony, and will not even sanction for proven wrong doing?
- H. The Nevada Revised Statutes now allow the Court to direct that training be offered to guardians. This could be done in each District on a quarterly basis to a small group of recently appointed guardians. The training would be done by attorneys and others selected by the presiding judge.
- I. Communication training for judges and lawyers. Any education in this area will help all involved have a better understanding of communication with the population and its possible limitations in a court setting.

21. TRAINING/VOLUNTEERS

- A. Companionship
- B. Shopping Trips
- C. Beauty shop/"Feel Good –Look Good"

22. SENIOR ABUSE/NEGLECT/EXPLOITATION/COMPLIANT PROCESS

- A. Direction in statute regarding agency with responsibility to investigate allegations.
- B. Whether a negotiated "recovery" action mitigates against the criminal allegations.
- C. Develop complaint process for incapacitated person or interested persons to pursue concern through expedited process with the Court. (See NPCS 3.3.18)
- D. Specifically prioritize guardianship court's jurisdiction to hear related matters of abuse, neglect, third party fraud and tort claims involving incapacitated person.
- E. Define a grievance/complaint procedure and dispute resolution process for family members and citizens who have concerns about guardianship issues. Identify a contact person to which a family member/concerned citizen could report urgent concerns about the ward/guardian.

- F. Formalize Family Court's role or obligation to support criminal prosecution of suspected exploitation.
- G. Guardians should be required by law, just like a priest, attorney, doctor, or teacher to report abuse.

23. GUARDIANSHIP REVIEW TEAM/ROUND TABLE/COMMITTEE

- A. Create a guardianship review team to determine the gaps in reporting.
- B. Conduct two round tables a year including guardians, law enforcement, and attorneys.
- C. Create a committee of guardians, attorneys, law enforcement, judges, and law school representative(s) to develop the educational program and plan for ongoing education.

24. WARD'S BILL OF RIGHTS

- A. Ward's Bill of Rights - One of the ideas that came out of the two conferences was to incorporate the [NGA Standards of Practice](#) in a new Ward's Bill of Rights.
 - a. Something along the line of: "A Ward has the right to have a guardian who complies with the following standards...." Something we will have to work on and probably easier than codifying the Standards. It was mentioned that too many objections could be raised to codifying the standards, but no one really wants to object to a Bill of Rights! The Bill of Rights could come from the Supreme Court, as in Texas ([SB 1882](#)), or from the Legislature.

25. CASELOADS/CASE MANAGEMENT

- A. Reduction of Caseloads: No guardian should have more cases than they are capable of managing. Therefore, if resources prohibit appropriate staffing levels, a wait list should be implemented, whether it is a governmental agency or a private practitioner. A person-centered approach for those under guardianship is critical in delivering services to meet mandated laws their best interest. (*Could also fall under person-centered approach category*)
- B. Identify reasonable caseload for judicial officer overseeing guardianship cases and enforce such caseload limitations statewide. (Suggestion: at this time one judicial officer for every 500 cases)
- C. Establish a limitation of caseload per private professional guardian.

26. STANDARDIZED FORMS

- A. Develop current standardized forms and appoint an office responsible for regular review and to update as needed.
- B. Require statewide-standardized forms in guardianship matters to ensure conformity with statutory requirements and consistency of oversight.
- C. Healthcare directives as a required part of the standardized forms.

27. DATA

- A. Develop a statewide data base system for tracking and reporting.
- B. Develop standardized data to include reflection of best practices.
- C. Ensure each jurisdiction's IT Department is adequately staffed and trained to accommodate significant workload and management load responsibilities of guardianship cases.
- D. Request that the State Court Administrator require the use of an information sheet to gather necessary guardianship information, which may then be used by the court to manage guardianship cases throughout the life of the case.
- E. Courts create the following reports to be reviewed by each District's Administrator or Chief Judge at least quarterly.
 - a. Time to disposition
 - b. Age of Active Pending Case
 - c. Clearance Rates

28. MEDIATION

- A. Mandatory mediation in contested guardianship cases and before assignment of a guardian ad litem or temporary guardian. Educate the parties on process and costs of private guardianship outside the court and objectively seek a resolution directly between the parties petitioning. Remove the attorneys from this process.
- B. Mediation with family plus the ward versus guardianship.
- C. In all contested cases, mediation should be the first step in resolving the issue presented.

29. GRANTS/FINANCIAL SUPPORTS

- A. Research to determine if there are grants for law enforcement of guardianship exploitation.
- B. Ensure guardianship stakeholders are financially supported to execute necessary responsibilities (i.e. Elder Protective Service, Child Protective Services, Office of Public Guardian, Office of District Attorney and Court Appointed Counsel) to perform statutorily required functions.

30. CONFIDENTIALITY/MEDIA

- A. Confidentiality. Would the Courts be interested in designating all/or a portion of the case as automatically sealed? (*Documents. I.e. will, estate planning...*)
- B. Media. Could the Rules require more time for notice to guardianship participants prior to a hearing to permit a meaningful opportunity to support or object to the Media in the courtroom?
- C. Adult guardianship cases should not be automatically closed and sealed.
- D. If the committee adopted the [Nevada Supreme Court's guidelines](#) on cameras in the courtroom, it would solve a lot of problems. Guidelines include pool shooting, at least a 24 - hour notice to the court of wanting cameras in the courtroom to allow for a hearing.

31. FACILITIES/VETERANS

- A. Treatment of the treatment of the “ward”, what, why, how, and how is the treatment of the wards in the facilities they are currently in.
- B. All veterans should first be being taken to the VA for treatment when they are entitled to it. This is a benefit they earned and is not deducted from their estate. Some are not taken by their guardian because the location is not convenient, that is unacceptable.
- C. Some are being denied visitors where the law says that cannot be denied.
- D. Some group homes are not providing sanitary conditions, sufficient food, etc. Calls to the ombudsman help a little, but they are short staffed. Basically, these wards overall are warehoused and no one seems to care.

32. OTHER

- A. [NRS 159.044](#): Is it good practice to allow the guardian 120 days after appointment to provide information that should be included in the petition?
- B. [NRS 159.062](#): Guardian nominated by will. Add other advance directives documents, e.g. trust, power of attorney. (See [NRS 162A.250](#))
- C. Confirm rules of evidence apply in contested guardianship hearings including right to confront witnesses and challenge evidence. (See 14 Amendment to U.S. Constitution, NPCA 3.3.9)
- D. Confirm which standard of evidence applies to matters outside determination of whether Respondent meets criteria for a guardianship and guardianship is necessary to protect Respondent or Respondent's estate.
- E. Develop statutory process by which guardians are notified of all civil and criminal actions in which persons under a guardianship are involved.

GENERAL POLICY QUESTIONS

General policy questions:

1. Should the Nevada Supreme Court establish a permanent Commission to address issues of concern to the elderly, including continue review of Guardianship Rules/processes in Nevada?
2. Does the Commission favor a recommendation to adopt a Bill of Rights for Wards?
3. Does the Commission recommend the idea that every Ward, regardless of means, is entitled to legal counsel? How and under what circumstances should an attorney be appointed?
4. Does the Commission favor a Guardian Ad Litem program similar to Virginia or under some other model? How and under what circumstances should a GAL be appointed?
5. Does the Commission recommend the use, where available of volunteers or programs similar to SAFE to assist proposed wards and the Court in a guardianship proceeding?
6. Does the Commission favor the idea of changing definitions or terminology? Should the Commission recommend changes to the Physician Certificate and if so how?
7. Does the Commission wish to make recommendations concerning the confidentiality of all or some of the proceedings in guardianship cases?
8. Does the Commission recommend changes to the process for the appointment of temporary guardianships? If so, how should that process be modified?
9. Does the Commission support a recommendation to adopt Supportive Living Agreements similar to the approach taken in Texas?
10. Should every hearing involving a Ward require the Ward's presence, which can only be exempted upon a medical showing or some other good cause approved by the court?
11. Should the notice requirements in Chapter 159 be amended and if so how?
12. Does the Commission favor the idea of limited guardianships in circumstances in which the capacity of the individual may not place them in a position where a full guardianship is warranted?
13. Does the Commission favor so called "person-centered planning" and determinations by the Court that guardianships are approved only for "least restrictive alternatives"?
14. Does the Commission wish to make recommendations concerning the use, timing, scope, process and participants in mediation in guardianship proceedings?
15. Should the Court be required to make specific findings in any order appointing a guardian that includes a conclusion that no other least restrictive means are available to address the needs of the proposed ward?
16. Does the Commission recommend rules to evaluate Court supervision of guardianships including training, staffing, scheduling and caseload limits?
17. Does the Commission favor the use of Elder Protective Services (EPS) or some other entity independent of the court system to conduct investigations as necessary?
18. Does the Commission favor the use of auditors independent of the Court system to evaluate financial records, fee requests and other petitions/motions raising financial issues concerning the ward?
19. Does the Commission favor recommendations concerning the training, licensure or other matters pertaining to the practice of private professional guardians?

20. Does the Commission wish to make recommendations concerning the use, timing, training, or caseloads of the Public Guardians?
21. Does the Commission wish to make recommendations concerning the use and appointment of private professional guardians?
22. Does the Commission wish to make recommendations concerning the fee structure to compensate guardians and others they hire?
23. Does the Commission wish to make recommendations concerning the process, notice and findings required for the approval of fees to guardians and others they hire?
24. Does the Commission wish to make recommendations concerning the process and timing for filing and evaluating an inventory for the ward?
25. Does the Commission wish to make recommendations concerning the process, timing, notice and findings the Court must make concerning accountings of the ward's estate?
26. Does the Commission wish to make any recommendations in the use of bonds and the allocation of costs for bonds in guardianship appointments?
27. Does the Commission wish to make recommendations concerning the management/administration of the wards estate including the process and notice requirements to sell estate assets?
28. Does the Commission wish to make recommendations concerning the data used to manage guardianship cases?
29. Does the Commission wish to make recommendations concerning the use of forms in guardianship proceedings?

RESOURCES AND REFERENCES

Expanded explanation of recommendations from email correspondence

Judge Doherty

Supportive Decision Making Agreement protocol. It is in the Texas material from the last meeting and the language is located in Chapter 1357, Subchapter A, pages 86-92. You may be interested to note Virginia, Massachusetts, Australia and Canada have language or draft language in their statutes for this protocol as an alternative to guardianship.

Another limitation our statute has is the absence of provisions for a "limited guardianship". We *do* have a "special guardianship" which is described largely as that which would be considered a "limited" guardianship (see generally NRS 159.087, 159.026, 159.054(2) and 159.0795) until one reads NRS 159.0801(1) which provides that "except when responding to an emergency, a special guardian of the person of limited capacity *shall* apply to the court for instruction or approval *before* commencing *any* act relating to the person of limited capacity." Emphasis added. In the circumstance of a special guardianship over the estate, the special guardian may be granted "a special guardian of a person of limited capacity the power to manage and dispose of the estate of the ward pursuant to NRS 159.117 and 159.175, inclusive and perform any other act relating to the ward *upon specific instruction or approval of the court.* NRS 159.0801(2).

I am not sure how to read all special guardianship provisions together but there is enough incongruity that utilization of the less restrictive guardianship oversight, whether called limited or special, is itself limited. I would suggest we revise the language in NRS 159.0801 to provide that special guardianship authorities are those specified in the order granting special guardianship and those granted upon further petition, notice and determination of the court.

Terri Russell

I have three recommendations.

First on senior abuse, neglect, exploitation:

I think guardians should be required by law, just like a priest, attorney, doctor, or teacher to report abuse.

As we discussed in the meeting held at the Reno Airport, guardians are not part of the abuse statues. If they see it, whether they caused it or not, they are not required to report it to authorities. I think the law needs to be re-written to include that and it needs to be done in 2017 legislative session.

Under Media:

I strongly disagree that adult guardianship cases should be automatically closed and sealed. As discussed, without the media looking into these cases, this committee would not have been formed. The media has access to criminal complaints, affidavit for probable cause, temporary protection orders, even protection order work sheets. They are rarely redacted, and if they are, it is typically a social security number. These guardianship cases, while complex, in essence, are no different in their personal information than a TPO or probable cause affidavit. They aren't pleasant, but they do paint of picture of the case and circumstances surrounding guardianships. Who are we protecting by automatically sealing these records? The ward, certainly not. Not if he or she is being abused, neglected or exploited. It only serves to protect the abuser, and quite frankly the court itself if it is not doing the

job of overseeing and cracking down on those who seek to take advantage of the ward. Is that what the court wants? To cover its actions with no public scrutiny? Why? Sealed records would negate anything this committee would do or attempt to do to repair this broken system.

Barring the Media

I think if this committee simply adopts the Nevada Supreme Court's guidelines on cameras in the courtroom, it would solve a lot of problems. Again, while delicate in their information, these cases should be treated no differently than any other adult case. Guidelines include pool shooting, at least a 24 hour notice to the court of wanting cameras in the courtroom to allow for a hearing.

By treating these cases differently than any other court case, we set them aside. They are treated differently. We run the risk of making extra rules and exemptions all of which have created the mess we currently face. By bringing adult guardianships out of the shadows and applying existing laws, asking questions, and getting back on track, abuses, trampling of legal rights, and exploitation no longer have to be the norm in adult guardianship cases.

Submitted, with respect,

Terri Russell/KOLO

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HENRY W. CAVALLERA

November 23, 2015

HONORABLE JAMES W. HARDESTY
Chief Justice
Nevada Supreme Court
201 South Carson Street, Suite 250
Carson City, NV 89701-4702

Re: Commission on Guardianships

Dear CHIEF JUSTICE HARDESTY and Commission Members:

The Courts have an important obligation to censure the integrity of the protective care system embodied in NRS 159.

I suggest the following policies and procedures; many of these are already in place in some of our Courts:

1. Case Management by the Courts.

a) A case compliance officer is needed to make sure that appropriate and timely steps are taken by the guardian in carrying out his/her/their/its responsibilities. This prevent a case from becoming stale. If a guardian does not stay engaged with the Court, the more likely mischief will ensue.

b) The Courts should in all (but spousal cases) require appropriate bonding or blocked accounts over the ward's assets. Blocked account could be for all of the ward's assets less enough of the assets and income to pay for the ward's care for the following year. For years I have seen many cases, including my own, in which bonds/blocked accounts are not utilized. I believe there is a case in the State of Washington

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that makes a lawyer for the guardian liable if adequate bonds, etc. are not advocated for by the attorney.

c) Training of Guardian. The Nevada Revised Statutes now allow for the Court to direct that training be offered to guardians. This could be done in each District on a quarterly basis to a small group of recently appointed guardians. The training would be done by attorneys and others selected by the presiding judge.

2. The Adjudication Phase.

My thoughts here may not be shared by all. However, I am quite concerned about costs in these proceedings and the effects of traditional litigation on families.

a) The Court should appoint a guardian *ad litem* (GAL) in each case. A GAL's role is to act in the Guardianship Respondent's (GR) (proposed Ward's) best interest. The role of GAL and of appointed Counsel conflict and these roles cannot be served by the same attorney. In order to determine the best interest of the GR, the GAL must first come to an understanding of the GR's wishes. The wishes of the GR maybe set forth in prior documents or by prior communications with family. The GAL then needs to determine if the GR's interest can be fulfilled and if not what is in the GR's best interest if the GR's wishes cannot be fulfilled (i.e. lack of money, etc.) The GAL is to try and implement the advanced planning of the GR to the greatest extent possible. The GAL can also recommend new guardianship solutions.

b) If counsel is to be appointed for the GR, there needs to be a uniform understanding of the duties of such counsel. See Attachment 1.

c) If the GR's (ward's) counsel believes the GR can participate in his or her case, and if GR is going to object to the appointment of a guardian, the best and most cost effective way to deal with the challenge is to have the GR's counsel ask the Court to have the GR examined by a physician, psychiatrist, or neuropsychologist. Under this framework, the initial physician's certificate and needs assessment filed with the Court would establish a rebuttable presumption that a guardian is needed subject to the exams requested by the GR's counsel.

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This eliminates the cost of dueling doctors in the courtroom. The physician/expert appointed by the Court would be paid from the GR's estate. Please note that the doctor's testimony is not the only evidence of a need for a guardianship. See Attachment 2.

Consider the following hypothetical:

Daughter (D) sees counsel because her father (F) has not been paying his bills, has not been taking his medications, has wandered from the home having to be returned by neighbors and by law enforcement to his residence. Technically, daughter (D) is the client of the attorney she retained and she is responsible for fees and costs to her attorney. As we all know, the Court may allow the guardian to have attorney's fees and costs reimbursed from her father's estate if the Court deems the filing of the petition for guardianship and the granting of the guardianship was appropriate in the premises.

Father (F) is appointed counsel (AC). AC at the hearing (or before) objects to the initial physician's certificate being admitted into evidence as hearsay requiring the daughter to pay the cost of having the physician come into court to testify. The estimated cost of this is \$2,000. D cannot afford this cost and drops the case. F returns to his residence. He wanders into the street is struck by a car and dies. Under the solution presented of the initial physician's certificate creating a rebuttable presumption as to the need for the guardian, this would not occur because the AC could request an independent physician to be utilized and paid from the GR's estate. Of course this is not a perfect solution. (i.e. indigent persons.)

3. Appointed Counsel, the GR and the Attorney-Client Relationship. Court appointed attorneys for GR need to have a clear understanding as to when an attorney-client relationship can be established.

a) The attorney has an ethical obligation to determine whether the client (proposed ward) can engage in an attorney-client relationship. How can the lawyer do this? Does the attorney have to go beyond the interview with the perspective client? Should the attorney seek input from the client's family or friends? What does the physician's certificate opine on this

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issue? What if the client does have some level of an impairment?

The Nevada Rules of Professional Conduct direct that if a client has diminished capacity, a lawyer "shall as far as reasonably possible, maintain a normal client-attorney relationship with the client". NRPC 1.14.

Does the attorney have to determine that the client with diminished capacity has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client's own well-being?

b) The attorney has to effectively communicate with the client. The client has to be able to participate intelligently in decisions concerning the objectives of the representation and the means by which such objectives can be achieved. See Attachment 3.

c) The Uniform Health Care Decisions Act provides that "capacity means the ability to understand the significant benefits, wishes and alternatives to proposed health care and to make and communicate a health care decisions. I submit that capacity in the context of living in the community and without help involves some if not all of the same capacity issues. If a GR doesn't have such capacity, can he or she have an attorney-client relationship?

4. Mediation in Guardianship Cases. In all contested cases, mediation should be the first step in resolving the issues presented. As noted in Attachment 3, mediation encourages consensus building within the family setting and fosters the preservation of relationships with family and friends. A skilled mediator should promote a collaborative process to reach solutions. Mediation can explore alternative to guardianship. See Attachments 4 and 5.

5. Limited Guardianship. Limited guardianship have long been advocated and have been available in Nevada since 1981. In the early 1980's, I did approximately 15 of such cases for parents of sons and daughters who had developmental disabilities. Typically, I asked the Court to establish a limited guardianship and reserve to the adult/child/ward the ability to make decisions over certain aspects of their lives.

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In each case the parent(s)/guardians had to obtain supplemental orders to expand their authority when it became clear that their child could not fully make decision in the area reserved to them for their own decision making. Each of these cases were ultimately converted to a "general guardianship" to avoid attorney's fees and costs. As a result, I stopped doing limited guardianships.

Now a "Physician's Certificate with Needs Assessment" is presented in an initial petition for a guardianship. See Attachment 6. Whether or not this type of form continues to be used or is expanded, this document assesses the disabled person's capacities in certain areas of decision making.

In order to avoid the problems, my clients encountered in the early 1980's, I suggested the following:

a) The Courts need to utilize NRS 162A 250.2 to a greater extent. Under this statute, a Court can allow an agent to retain specific powers.

b) In the absence of utilizing NRS 162A 250.2, the Court would appoint the petitioner/proposed guardian as the general guardian of the estate subject to the ward's ability, to fully or with assistance, to carry out those areas of decision making reserved to the ward. If the guardian determined that the ward could not carry out a reserved area of decision making, the guardian would file a report to the Court. This would not require an immediate hearing, but would be addressed by the Court at the next hearing on the case. In the interim, the guardian would seek the ward's input to the extent possible in said area of decision making. This would reduce fees and costs.

6. Post Adjudication of Guardianship, Annual Reports on the Condition of the Person and the Special Advocates for Elders Program. An emerging issue in the 1990's was the guardian's ongoing relationship with the ward. An annual report of the guardian was implemented. See Attachment 7 The annual reports helps the Court have a better understanding of the ward's ongoing and possible changing needs. An annual report is particularly helpful if the ward is still living alone in the community.

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A supplement to the annual report, is the utilization of a "Special Advocate for Elders" (SAFE) project. SAFE was developed to provide additional oversight of the ward's interest and needs in a guardianship proceeding. It was utilized in the Second Judicial District Court (Washoe County) for about eight years. The SAFE program would recruit community volunteers who receive training in the guardianships process. SAFE volunteers serve as a secondary set of "eyes and ears" to make sure that the ward's needs are being met. These volunteers can be extremely helpful in cases where family members are representing themselves (pro per) and in cases in which the ward's is to remain in the community by himself or herself. Remember an impaired person in the community alone or with marginal help, is most at risk. SAFE's should not be used as a Guardian *ad litem* because of a lack of experience and in depth training.

7. Communication Training for Judges and Lawyers. I recently noted that the Northern Nevada Chapter of the Alzheimer's Association was offering "communication training" for families with members having dementia. If family members need communication training, then I suggest that Judges and lawyers obtain such training. I have had person's with dementia tell me how much value they had in the stock market but did not know the name of a spouse. I have had persons with cognitive deficits having the ability to focus on care needs but be unable to carry out bill paying. Sometimes persons can recite facts appropriately but not consistently. Any education in this area will help all involved have a better understanding of communication with the population and it's possible limitations in a court setting.

8. Public Funding of Appointed Counsel Should Include Guardian Ad Litem Funding. As noted above, I recommended the utilization of a Guardian *ad litem* just before the utilization of appointed counsel or that both be appointed. The number of non-litigated cases will far exceed the number of litigated cases. Any proposal to fund appointed counsel should include funding for the appointment of a guardian *ad litem*. (GAL)

9. Capacity Issues. Attached hereto as Attachment 8 is an article about cognitive issues for consideration.

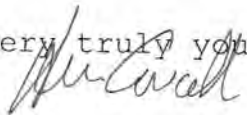
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Conclusion

The public policy behind the State of Nevada's guardianship statutes is to protect an impaired person "who is unable without assistance" to "properly manage and take care of himself or herself or his or her property or both".

The statutory framework is a protective proceeding.

The above proposals are submitted with the intention of putting the proper balance in the system between the guardianship respondent's interest and carrying out the public policy of the State of Nevada.

Very truly yours,


HENRY CAVALLERA, ESQ.

HWC/

THE GUARDIANSHIP CASE

I WHO ARE THE GUARDIANS?

SPOUSE	FAMILY	PRIVATE PROF.	PUBLIC GUARD	OTHER	ATTORNEY REPRESENTED	PRO PER
X					X	
X						X
	X				X	
	X					X
		X			X	
			X		X	
				X	X	
				X		X

II(a) WHERE DO GUARDIANS COME FROM

- IN AREA
- IN STATE/OUT OF AREA
- OUT OF STATE

II(b) THE WARDS

- AT HOME W/ FAMILY
- HOME ALONE
- FACILITY

III COURT OVERSIGHT MECHANISMS:

- COMPLIANCE OFFICER / CASE REVIEW PERSON
- BONDS OR BLOCKED ACCOUNTS OR COMBINATION
- TRAINING REQUIREMENT FOR GUARDIANS
- GUARDIANS SIGN ACKNOWLEDGEMENT OF RESPONSIBILITIES
- MONITOR THE FILING OF PROOF OF BLOCKED ACCOUNTS
- ANNUAL REPORT OF PERSON
- ANNUAL ACCOUNTING OF THE ESTATE
- REPORT IF WARD MOVED TO SECURE FACILITY
- PETITION IF WARD TO BE MOVED OUT OF STATE

IV COURT TOOLS TO UTILIZE LIMITED GUARDIANSHIPS

* NRS 162 ; PRIORITY EXPERIENCE TRYING TO DEVELOP LIMITED GUARDIANSHIPS

V TOOLS ATTORNEY CAN DEVELOP TO KEEP ELIGIBLE OUT OF GUARDIANSHIP

* EXPAND THE DURABLE POWER OF ATTORNEY TO INCLUDE THE FOLLOWING DIRECTIVES (NO LEGISLATION REQUIRED):

PLACEMENT ISSUES - DIRECTIVE

CAREGIVER DIRECTIVE

POLEST DIRECTIVE

PALLIATIVE CARE DIRECTIVE

OTHER

VI THE ADJUDICATION PHASE OF THE CASE

PETITION WITH PHYSICIAN'S CERTIFICATE

* GUARDIAN AD LITEM (BEST INTEREST)

* APPOINTED COUNSEL - STANDARD NEEDS TO BE DEVELOPED AS TO WHEN THIS IS APPROPRIATE

RESOLUTION MECHANISMS

* MEDIATION

CONTESTED HEARING

VII POST ADJUDICATION -

* GUARDIAN AD LITEM

* SAFE VOLUNTEER

VISITOR PROGRAM

GUARDIAN VISITATION REQUIREMENT

OUT OF AREA / OUT OF STATE MONITORING

VIII COMMUNICATION WITH DEMENTIA VICTIMS

JUDGES AND ATTORNEYS NEED EDUCATION,
ALZHEIMER'S ASSOCIATION JUST GAVE CLASSES
FOR FAMILY MEMBERS. MAYBE THE PROFESSIONALS
NEED IT TOO

IX

REMEMBER PUBLIC POLICY.

ASSIST PERSONS WHO BY REASON OF MENTAL
ILLNESS (INCAPACITY) MENTAL DEFICIENCY, DISEASE,
WEAKNESS OF MIND OR OTHER CAUSE (ARE) UNABLE
WITHOUT ASSISTANCE, TO MANAGE AND TAKE
CARE OF HIMSELF OR HERSELF OR HIS OR HER PROPERTY, OR
BOTH



Submitted by: Barbara E. Buckley, Esq.

Date: November 23, 2015

Bill of Rights for Individuals Facing Guardianship

The State of Nevada recognizes the following rights of individuals facing or under a guardianship:

- (1) The Right to have a guardianship that encourages the development or maintenance of maximum self-reliance and independence in the respondent with the eventual goal, if possible, of self-sufficiency;
- (2) The Right to be treated with respect, consideration, and recognition of the respondent's dignity and individuality;
- (3) The Right to reside and receive support services in the most integrated setting, including home-based or other community-based settings, as required by Title II of the Americans with Disabilities Act (42 U.S.C. Section 12131 et seq.);
- (4) The Right to have their current and previously stated personal preferences, desires, medical and psychiatric treatment preferences, religious beliefs, living arrangements, and other preferences and opinions given consideration;
- (5) The Right to financial self-determination for all public benefits after essential living expenses and health needs are met and to have access to a monthly personal allowance;
- (6) The Right to receive timely and appropriate health care and medical treatment that does not violate the respondent's rights granted by the constitution and laws of this state and the United States;
- (7) The Right to exercise full control of all aspects of life not specifically granted by the court to the guardian;
- (8) The Right to control the respondent's personal environment based on the respondent's preferences and to never be moved for the guardian's personal convenience;
- (9) The Right to complain or raise concerns regarding the guardian or guardianship to the court, including living arrangements, retaliation by the guardian, conflicts of interest between the guardian and service providers, or a violation of any rights under this section;

- (10) The Right to have a copy of the guardianship order and letters of guardianship and contact information for the court that issued the order and letters;
- (11) The Right to receive notice in the respondent's native language, or preferred mode of communication, and in a manner accessible to the respondent, of a court proceeding to continue, modify, or terminate the guardianship and the opportunity to appear before the court to express the respondent's preferences and concerns regarding whether the guardianship should be continued, modified, or terminated;
- (12) The Right to have a court investigator, attorney, or guardian ad litem appointed by the court to investigate a complaint received by the court from the respondent or any person about the guardianship;
- (13) The Right to participate in social, religious, and recreational activities, training, employment, education, habilitation, and rehabilitation of the respondent's choice in the most integrated setting;
- (14) The Right to self-determination in the substantial maintenance, disposition, and management of real and personal property after essential living expenses and health needs are met, including the right to receive notice and object about the substantial maintenance, disposition, or management of clothing, furniture, vehicles, and other personal effects;
- (15) The Right to personal privacy and confidentiality in personal matters, subject to state and federal law;
- (16) The Right to unimpeded, private, and uncensored communication and visitation with persons of the respondent's choice, except that if the guardian determines that certain communication or visitation causes substantial harm to the respondent:
 - (A) the guardian may limit, supervise, or restrict communication or visitation, but only to the extent necessary to protect the respondent from substantial harm; and
 - (B) the respondent may request a hearing to remove any restrictions on communication or visitation imposed by the guardian under Paragraph (A);
- (17) The Right to petition the court and retain counsel of the respondent's choice to represent the respondent's interest for capacity restoration, modification of the guardianship, the appointment of a different guardian, or for other appropriate relief under this subchapter;
- (18) The Right to vote in a public election, marry, and retain a license to operate a motor vehicle, unless restricted by the court;
- (19) The Right to personal visits from the guardian or the guardian's designee at least once every three months, but more often, if necessary, unless the court orders otherwise;

- (20) The Right to be informed of the name, address, phone number, and purpose of the State of Nevada Division of Aging Ombudsman, an organization whose mission is to protect the rights of, and advocate for, persons with disabilities, and to communicate and meet with representatives of that organization;
 - (21) The Right to be informed of the name, address, phone number, and purpose of an independent living center, an area agency on aging, an aging and disability resource center, and the local mental health and intellectual and developmental disability center, and to communicate and meet with representatives from these agencies and organizations;
 - (22) The Right to be informed of the name, address, phone number, and purpose of the Division of Financial Institutions and the procedure for filing a complaint against a licensed guardian;
 - (23) The Right to contact the Department of Family and Protective Services to report abuse, neglect, exploitation, or violation of personal rights without fear of punishment, interference, coercion, or retaliation; and
 - (24) The Right to have the guardian, on appointment and on annual renewal of the guardianship, explain the rights delineated in this subsection in the respondent's native language, or preferred mode of communication, and in a manner accessible to the respondent.
 - (25) The Right to not have their estate overbilled or overcharged, including paying high fees for ministerial tasks.
- (c) This section does not supersede or abrogate other remedies existing in law.

Texas HB 39 Supported Decision-Making Agreement

SECTION 23. Subtitle I, Title 3, Estates Code, is amended by adding Chapter 1357 to read as follows:

CHAPTER 1357. SUPPORTED DECISION-MAKING AGREEMENT ACT SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1357.001. **SHORT TITLE.** This chapter may be cited as the Supported Decision-Making Agreement Act.

Sec. 1357.002. **DEFINITIONS.** In this chapter:

- (1) "Adult" means an individual 18 years of age or older or an individual under 18 years of age who has had the disabilities of minority removed.
- (2) "Disability" means, with respect to an individual, a physical or mental impairment that substantially limits one or more major life activities.
- (3) "Supported decision-making" means a process of supporting and accommodating an adult with a disability to enable the adult to make life decisions, including decisions related to where the adult wants to live, the services, supports, and medical care the adult wants to receive, whom the adult wants to live with, and where the adult wants to work, without impeding the self-determination of the adult.
- (4) "Supported decision-making agreement" is an agreement between an adult with a disability and a supporter entered into under this chapter.
- (5) "Supporter" means an adult who has entered into a supported decision-making agreement with an adult with a disability.

Sec. 1357.003. **PURPOSE.** The purpose of this chapter is to recognize a less restrictive substitute for guardianship for adults with disabilities who need assistance with decisions regarding daily living but who are not considered incapacitated persons for purposes of establishing a guardianship under this title.

SUBCHAPTER B. SCOPE OF AGREEMENT AND AGREEMENT REQUIREMENTS

Sec. 1357.051. **SCOPE OF SUPPORTED DECISION-MAKING AGREEMENT.** An adult with a disability may voluntarily, without undue influence or coercion, enter into a supported decision-making agreement with a supporter under which the adult with a disability authorizes the supporter to do any or all of the following:

- (1) provide supported decision-making, including assistance in understanding the options, responsibilities, and consequences of the adult 's life decisions, without making those decisions on behalf of the adult with a disability;
- (2) subject to Section 1357.054, assist the adult in accessing, collecting, and obtaining information that is relevant to a given life decision, including medical, psychological, financial, educational, or treatment records, from any person;

- (3) assist the adult with a disability in understanding the information described by Subdivision (2); and
- (4) assist the adult in communicating the adult's decisions to appropriate persons.

Sec. 1357.052. AUTHORITY OF SUPPORTER. A supporter may exercise the authority granted to the supporter in the supported decision-making agreement.

Sec. 1357.053. TERM OF AGREEMENT. (a) Except as provided by Subsection (b), the supported decision-making agreement extends until terminated by either party or by the terms of the agreement.

(b) The supported decision-making agreement is terminated if:

- (1) the Department of Family and Protective Services finds that the adult with a disability has been abused, neglected, or exploited by the supporter; or
- (2) the supporter is found criminally liable for conduct described by Subdivision (1).

Sec. 1357.054. ACCESS TO PERSONAL INFORMATION.

(a) A supporter is only authorized to assist the adult with a disability in accessing, collecting, or obtaining information that is relevant to a decision authorized under the supported decision-making agreement.

(b) If a supporter assists an adult with a disability in accessing, collecting, or obtaining personal information, including protected health information under the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) or educational records under the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g), the supporter shall ensure the information is kept privileged and confidential, as applicable, and is not subject to unauthorized access, use, or disclosure.

(c) The existence of a supported decision-making agreement does not preclude an adult with a disability from seeking personal information without the assistance of a supporter.

Sec. 1357.055. AUTHORIZING AND WITNESSING OF SUPPORTED DECISION-MAKING AGREEMENT.

(a) A supported decision-making agreement must be signed voluntarily, without coercion or undue influence, by the adult with a disability and the supporter in the presence of two or more subscribing witnesses or a notary public.

(b) If signed before two witnesses, the attesting witnesses must be at least 14 years of age.

Sec. 1357.056. FORM OF SUPPORTED DECISION-MAKING AGREEMENT.

(a) Subject to Subsection

(b), a supported decision-making agreement is valid only if it is in substantially the following form:

SUPPORTED DECISION-MAKING AGREEMENT

Appointment of Supporter

I, (insert your name), make this agreement of my own free will.

I agree and designate that: _____

Name: _____

Address: _____

Phone Number: _____

E-mail Address: _____

is my supporter. My supporter may help me with making everyday life decisions relating to the following:

Y/N obtaining food, clothing, and shelter

Y/N taking care of my physical health

Y/N managing my financial affairs.

My supporter is not allowed to make decisions for me. To help me with my decisions, my supporter may:

1. Help me access, collect, or obtain information that is relevant to a decision, including medical, psychological, financial, educational, or treatment records;
2. Help me understand my options so I can make an informed decision; or
3. Help me communicate my decision to appropriate persons.

Y/N A release allowing my supporter to see protected health information under the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) is attached.

Y/N A release allowing my supporter to see educational records under the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g) is attached.

Effective Date of Supported Decision-Making Agreement This supported decision-making agreement is effective immediately and will continue until (insert date) or until the agreement is terminated by my supporter or me or by operation of law.

Signed this _____ day of _____, 20____

Consent of Supporter

I, (name of supporter), consent to act as a supporter under this agreement.

(signature of supporter) (printed name of supporter)
Signature

(my signature) (my printed name)

(witness 1 signature) (printed name of witness 1)

(witness 2 signature) (printed name of witness 2)

State of _____

County of _____

This document was acknowledged before me on _____ (date)

by _____ and _____

(name of adult with a disability) (name of supporter)

(signature of notarial officer)

(Seal, if any, of notary) _____

(printed name)

My commission expires: _____

WARNING: PROTECTION FOR THE ADULT WITH A DISABILITY IF A PERSON WHO RECEIVES A COPY OF THIS AGREEMENT OR IS AWARE OF THE EXISTENCE OF THIS AGREEMENT HAS CAUSE TO BELIEVE THAT THE ADULT WITH A DISABILITY IS BEING ABUSED, NEGLECTED, OR EXPLOITED BY THE SUPPORTER, THE PERSON SHALL REPORT THE ALLEGED ABUSE, NEGLECT, OR EXPLOITATION TO THE DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES BY CALLING THE ABUSE HOTLINE AT 1-800-252-5400 OR ONLINE AT WWW.TXABUSEHOTLINE.ORG.

(b) A supported decision-making agreement may be in any form not inconsistent with Subsection (a) and the other requirements of this chapter.

SUBCHAPTER C. DUTY OF CERTAIN PERSONS WITH RESPECT TO AGREEMENT

Sec. 1357.101. RELIANCE ON AGREEMENT; LIMITATION OF LIABILITY.

(a) A person who receives the original or a copy of a supported decision-making agreement shall rely on the agreement.

(b) A person is not subject to criminal or civil liability and has not engaged in professional misconduct for an act or omission if the act or omission is done in good faith and in reliance on a supported decision-making agreement.

Sec. 1357.102. REPORTING OF SUSPECTED ABUSE, NEGLECT, OR EXPLOITATION. If a person who receives a copy of a supported decision-making agreement or is aware of the existence of a supported decision-making agreement has cause to believe that the adult with a disability is being abused, neglected, or exploited by the supporter, the person shall report the alleged abuse, neglect, or exploitation to the Department of Family and Protective Services in accordance with Section [48.051](#), Human Resources Code.

SECTION 24. (a) Except as otherwise provided by this section, the changes in law made by this Act apply to:

- (1) a guardianship created before, on, or after the effective date of this Act; and
- (2) an application for a guardianship pending on, or filed on or after, the effective date of this Act.

- (b) Sections [1054.004](#) and [1054.054](#), Estates Code, as amended by this Act, apply only to a guardianship proceeding for which a court has appointed a guardian ad litem or attorney ad litem to represent the interests of a proposed ward on or after the effective date of this Act.
- (c) Sections [1054.201](#), [1101.101](#), [1101.103](#), [1101.151](#), [1101.152](#), and [1101.153](#), Estates Code, as amended by this Act, apply only to a guardianship proceeding filed on or after the effective date of this Act. A guardianship proceeding filed before the effective date of this Act is governed by the law in effect on the date the proceeding was filed, and the former law is continued in effect for that purpose.
- (d) Section [1101.001](#), Estates Code, as amended by this Act, applies only to an application for the appointment of a guardian filed on or after the effective date of this Act. An application for the appointment of a guardian filed before the effective date of this Act is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.
- (e) Section [1202.051](#), Estates Code, as amended by this Act, applies only to an application for the restoration of a ward's capacity or the modification of a ward's guardianship that is filed on or after the effective date of this Act. An application for the restoration of a ward's capacity or the modification of a ward's guardianship that is filed before the effective date of this Act is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.
- (f) Sections [1202.151](#), [1202.152](#), [1202.153](#), [1202.154](#), and [1202.156](#), Estates Code, as amended by this Act, apply only to a proceeding for the restoration of a ward's capacity or the modification of a ward's guardianship that is filed on or after the effective date of this Act. An application for the restoration of a ward's capacity or the modification of a ward's guardianship that is filed before the effective date of this Act is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

SECTION 25. This Act takes effect September 1, 2015.

LINKS TO RESOURCES

- **Nevada Revised Statute**
 - Nevada Revised Statute [Chapter 159](#) – Guardianships
 - Nevada Revised Statute [Chapter 162A](#) – Power of Attorney for Financial Matters and Durable Power of Attorney for Health Care Decisions
 - Nevada Revised Statute [Chapter 253](#) – Public Administrators and Guardians
 - Nevada Revised Statute [Chapter 432B](#) – Protection of Children from Abuse and Neglect
- **Court Rules**
 - [Nevada Supreme Court Rules](#)
 - [Nevada Rules of Civil Procedure](#)
 - [Nevada Rules of Professional Conduct](#)
- **2015 Legislation on Guardianships**
 - [AB 325](#)
 - [SB 262](#)
- **National Guardianship Association Standards of Practice**
http://www.guardianship.org/guardianship_standards.aspx Standards of Practice Checklist Link (last on the list)
- **National Probate Court Standards (see sections 3.3 – 3.5, pages 42-100)**
<http://tinyurl.com/oxa7ko9>
- **National Association for Court Management – Adult Guardianship Guide**
https://nacmnet.org/sites/default/files/publications/AdultGuardianshipGuide_withCover.pdf
- **National Resource Center for Supported Decision-Making**
 - <http://supporteddecisionmaking.org>
 - <http://supporteddecisionmaking.org/state-review/nevada>
- **Justice Department’s September 30, 2015 News Release**
<http://www.justice.gov/opa/pr/justice-department-and-corporation-national-and-community-service-expand-their-partnership>
- **Uniform Law Commission – The National Conference of Commissioners on Uniform State Laws**
 - [Adult Guardianship and Protective Proceedings Jurisdiction Act \(UGPAA\)](#)
- **Texas Guardianship Cases: Improving Court Processes and Monitoring Practices in Texas Courts** [Guardianship Study](#)
- **Judicial Determination of Capacity of Older Adults in Guardianship Proceedings: A Handbook for Judges** [Judicial Determination of Capacity of Older Adults in Guardianship Proceedings](#)
- **Appointment of Counsel**
 - [Vermont Title 14 Descendants’ Estates and Fiduciary Relations Chapter 111 Guardianships § 3065](#)
 - [Arizona Revised Statutes § 14-5303](#)
 - [Washington Statute – RCW 11.88.045](#)
 - [Texas Statute – Title 3 Estate Codes Guardianship and Related Procedures – Chapter 1054](#)
 - [Nevada Statute – NRS 159.0485](#)

- **Guardianship Legislation – Texas**
 - HB 39 <http://www.legis.state.tx.us/BillLookup/History.aspx?LegSess=84R&Bill=HB39>
 - SB 1882 Bill of Rights
<http://www.capitol.state.tx.us/BillLookup/History.aspx?LegSess=84R&Bill=SB1882>
- **Guardian Ad Litem**
 - [Virginia's Judicial System](#)
- **Uniform Health Care Decisions Act**
 - [Uniform Health Care Decisions Act](#)