

Nevada Supreme Court

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



October 19, 2015, Meeting Materials

Chief Justice James W. Hardesty, Chair

AGENDA

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

Date and Time of Meeting: October 19, 2015, 1:30 p.m. to 4:30 p.m.

Place of Meeting:

Carson City	Las Vegas	Elko
Nevada Supreme Court 201 S. Carson Street Courtroom	Regional Justice Center 200 Lewis Avenue 17 th Floor, Courtroom	Fourth Judicial District Court 571 Idaho Street Dept. 2

AGENDA

- I. Call to Order
 - A. Call of Roll and Determination of Quorum
 - B. Approval of Meeting Summary from September 16, 2015 (for possible action) (*pages 5-25*)
- 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. Presentation
 - A. Texas Guardianship Laws 2015 (**David Slayton, Administrative Director, Texas Office of Court Administration**) (*pages 27-31*)
 - B. Law Enforcement/Prosecution Response to Guardianships (**Jay Raman**) (*pages 33-48*)
 - C. Medical versus Legal Terminology (**Kim Rowe & Elyse Tyrell**) (*pages 50-80*)
 - D. Overview Revisions to the Uniform Guardianship and Protective Proceeding Act (UGPPA) (**Lora Myles**) (*pages 82-88*)
 - E. Second and Eighth Judicial District's Guardianship Working Groups (**Judge Doherty and Judge Steel**)

- IV. Subcommittee Updates (for possible action)
 - A. Minor Guardianships (Judge Walker, Judge Voy & Judge Porter)
 - B. Data/IT Subcommittee (Hans Jessup, chair)

- V. Discussion and Possible Action on Recommendations (for possible action)
 - A. Temporary/Emergency Guardianships
 - i. Nevada Statute (pages 90-94)
 - ii. Investigations/Investigators (page 95)
 - B. Attorney Representation (page 97)
 - i. Guardian Ad Litem (page 98)
 - ii. Washington Statute (pages 99-101)
 - C. Power of Attorney Statutory Provisions (pages 103-131)
 - i. Nevada Statute

- VI. Appointment of Subcommittees/Working Groups and Discussion of Workplan (Outline) (for possible action)
 - A. Workplan/Outline (pages 133-143)

- VII. Other Business (for possible action)
 - A. Fees
 - i. Arizona's Statute (pages 72-76 September 16 meeting materials)
 - ii. Nevada's Statute (pages 77-78 September 16 meeting materials)
 - B. Standing Committee on Judicial Ethics – Advisory Opinion JE15-002 (pages 130-134 August 17 meeting materials)
 - i. Idaho Rules Ex Parte Communication (pages 83-90 September 16 meeting materials)
 - C. Clark County Administrative Order: 15-08 (pages 92-93 September 16 meeting materials)
 - D. Long Term Care Crisis (pages 95-96 September 16 meeting materials)

- VIII. Future Meeting Dates/Agenda Items
 - A. November 4, 2015 – Video Conference
 - B. November 23, 2015 – Video Conference
 - C. December 15, 2015 – Las Vegas

- IX. 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.*

- X. 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

Supreme Court of Nevada
ADMINISTRATIVE OFFICE OF THE COURTS

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MEETING SUMMARY

*Prepared by Raquel Rodriquez and Stephanie Heying
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: September 16, 2015, 10:30 a.m. to 4:30 p.m.

Place of Meeting: Reno/Tahoe International Airport
The River Room
2001 E. Plumb Lane
Reno, NV

Members Present:

Chief Justice James W. Hardesty, chair
Chief Judge Michael Gibbons
Judge Frances Doherty
Judge Nancy Porter
Judge Cynthia Dianne Steel
Judge Egan Walker
Senator Becky Harris
Assemblyman Michael C. Sprinkle
Assemblyman Glenn E. Trowbridge
Trudy Andrews
Julie Arnold
Debra Bookout
Kathleen Buchanan
Rana Goodman
Susan Hoy
Jay P. Raman

Sally Ramm
Kim Rowe
Terri Russell
David Spitzer
Kim Spoon
Timothy Sutton
Susan Sweikert
Elyse Tyrell
Christine Smith

AOC Staff

Stephanie Heying
Hans Jessup
Raquel Rodriquez

- I. Call to Order
 - a. Call of Roll and Determination of Quorum

The meeting was called to order at 10:30 a.m. and it was determined there was a quorum.

b. Approval of Meeting Summary from August 17, 2015

The meeting summary from the August 17, 2015, meeting was unanimously approved.

II. Public Comment

Chief Justice Hardesty noted the Commission has had two extensive public comment sessions during its two prior meetings. Public comments would be limited to three minute limitation per speaker. Public comments were transcribed verbatim and are included as a separate attachment to the meeting summary.

III. Presentations

Prior to the public comment and the presentations Chief Justice Hardesty reviewed areas in which he would like the Commission to have discussion and propose, debate, and vote on possible revisions to the temporary guardianship statutes as well as a discussion and possible recommendations on prospective fees.

Chief Justice Hardesty had appointed a subcommittee, chaired by Hans Jessup, to review data and information technology systems. The subcommittee was encouraged to solicit information from the Commission in areas where data needs to be addressed and improved upon. The Commission needs to understand where we are in respect to our data collection and IT systems in both the rural and urban counties. The subcommittee would provide a report at the next meeting. Chief Justice Hardesty asked Judge Porter to reach out to the rural judges, letting them know they would be receiving requests from the subcommittee about some of the issues surrounding guardianship data and how it is collectively preserved and accounted for.

Chief Justice Hardesty has requested the Supreme Court endorse an order directed at all the District Courts in Nevada, requiring the courts to undertake a "scrubbing" of their dockets for guardianship cases. The order would be issued to all District Courts, requiring the courts to review and evaluate all pending guardianship files and provide a report to the Supreme Court, as soon as reasonable and practical, on the status of each of those files.

a. Overview – Standards of Practice

i. Public Guardianships

Ms. Kathleen Buchanan provided an overview of the Public Guardians how the Public Guardian's Office (Office), its mission, services offered, its role and when and why the office gets involved, and Nevada Revised Statute (NRS) Chapter 253, which governs the Office. Ms. Buchanan noted she would also reference the Clark County's Public Guardians Office (CCPGO) to illustrate a point or forms used in guardianships.

The Office provides a valuable public service, and it is unique in its ability to care and provide for individuals who could potentially be left without assistance. As a governmental agency, the Office has the ability to provide continuity of services as the office is not dependent on any one individual or partnership. The Office has an established system in place to transfer duties from one public guardian to another with minimal or no impact to the continuity of care for individuals under guardianship. The public guardian does not have the burden of looking at services rendered from a financial perspective as the Office is non-profit. Public guardians serve based upon need and ability to effectively benefit the individual. Every person served under guardianship is insured and protected by the public guardian General Bond. Likewise, internal and external audits are available and utilized. As a governmental agency, the Office has strict accountability to county management, county leaders and the community, as well as providing transparency and the work performed. Fee schedules are approved annually by the Board of County Commissioners.

The Mission Statement: To protect the social wellbeing, economic welfare and dignity of citizens while ensuring services are provided with integrity and accountability by court appointment for vulnerable individuals.

The Public Guardian's Office provides guardianship services for individuals who are legally determined to be incapable of managing their own affairs. This population typically has unique needs, requiring extensive coordination of services due to cognitive impairments. CCPGO also provides a voluntary 60+ Representative Payeeship Program, offering money management assistance for those over the age of sixty. It is a free public service offered to assist individuals in maintaining lives in a least restrictive setting.

The Public Guardian's Office gets involved when individuals are legally determined to be incapable of caring for themselves. The Office is court-appointed when no family members or friends are able, willing, or appropriate to serve on behalf of the proposed individual. This important public service is critical in assisting those with cognitive impairments. By serving as the individual's guardian, the Office is able to advocate in the best interest of the ward for healthcare and financial needs which are critical in restoring their quality of life.

Ms. Buchanan reviewed referrals, the individuals served by the Office, the role of the public guardian, how finances are handled, Medicaid/County Compliance (funds below \$2,000), the guardianship training programs, the 60+ Representative Payeeship Service, and public guardians.

Ms. Buchanan provided an example of the Clark County fee schedule. The Clark County Board of County Commissioners reviews and approves the fee schedule at their annual operating budget for the Office during a public hearing every May. The billable rate for the CCPGO is calculated annually based upon the aforementioned operating budget; without consideration of a profit. It is solely based upon covering the annual budgeted cost of the operation of the Department. Professional staff is given an hourly rate while support staff performs the work at no charge. The annual fee schedule is taken for public comment and the Board of County Commissioners approves this every June.

The fee schedule includes the hourly rate for the public guardian. The public guardian might charge

that fee 1 to 3 times a year and includes attending court hearings or reviewing legal documents (e.g. annual accounting report). Fees also include a case management supervisor, case management, accountant, estate coordinator and estate technician.

The rates for Fiscal Year 2015 are as follows:

Public Guardian	\$230
Case Management Supervisor	\$150
Case Management	\$100
Accountant	\$135
Estate Coordination	\$115
Estate Technician	\$105

The Office charges by the actual work performed, so if it takes a minute to work on the case or seven minutes, that is what is logged into the system. The hourly rate would be prorated. The money collected is intended to cover the actual cost of the Office. The case manager does most of the work on the case and they are intimately involved in everything that occurs. The rates have dropped in 2016, if a position in the office is vacant, the rates would change due to the vacant position. The billing reflects the breakdown versus a flat fee, which would be included in the annual report to the court. The report does not provide detail of the tasks that were completed; the detail is within the Office. The fees go to the General Fund, also known as the Taxpayer Fund. The Office is not able to collect a fee from most cases. Ms. Buchanan said she prepared statistics about a month ago and 79%--79.6% were Medicaid County cases and the rest were exploitation cases which came to the Office for one reason or another.

It was noted not all Public Guardian Offices in the State have a county budget – some have to support the Office through fees. The Commission discussed how counties determine their fee schedules. Clark County's fee schedule is determined by the Clark County Budget Office. Washoe County has an approved fee schedule but members were not sure who sets the schedule, which is significantly lower than the fee schedule in Clark County. Elko County approves the fees, but there is no fee schedule. Most wards in Elko County are indigent. The Public Guardian's Office in Douglas County charges \$85 an hour; that was an amount determined by the judges after researching what other guardians were charging. Very few of the wards can pay so the Public Guardian's Office is subsidized by the county. Nye County has an informal fee schedule, as most of the clients are not able to pay anyway. Pamela Webster is the Nye County Manager and has been appointed the public guardian but the bulk of the work is handled through the Director of Health and Human Services. In the rare case a person does have assets available, Health and Human Services has requested a rate of \$47 per hour. Chief Justice Hardesty would like the Commission to vet the issue of fees.

The Commission discussed the number of wards under the Office. Clark County has about 400 wards under their supervision and Washoe County has about 190 wards, this includes the Medicaid population. The Commission discussed concerns that, although the population in Clark County is 5 times that of Washoe County, the Office only has twice the number of wards. The Office addresses all referrals but does not have the resources to accommodate all wards. There are not enough case managers to address all the cases and referrals waiting for them.

The Commission discussed caseloads. Ms. Buchanan noted the Office's case count is anywhere from 52 to 55. There was discussion about what the case loads were in other districts. The Commission would work on getting this information. Judge Walker noted that there are no minor guardianships being handled through the Office and this is an area the Commission should review. There is supervision under NRS Chapter 432 for guardianship as a permanency plan for children. The Commission discussed how the determination is made as to whether a case would be handled by the Office versus an outside case management organization. Ms. Buchanan explained CCPGO would take the emergency cases first. They would then consider the cases where a person is in a protected setting, such as nursing home.

The Commission discussed what happens if a ward is under a private guardian and a ward's estate no longer has money to pay for the private guardian. Ms. Spoon responded her office still keeps the guardianship, even after funds are gone. They do not receive money from 10-15% of their caseload. Legislation was passed, a few years ago, stating private guardians could not terminate a guardianship due to lack of funds. Ms. Susan Hoy added it has been the practice within her office that once they are appointed, they are appointed. Their duty is not based on the size of the estate but to the ward. About 20% of the wards in Ms. Hoy's office have exhausted their resources.

Ms. Buchanan reviewed NRS 253.175 - Appointment of deputies, NRS 253.190 – Records, including the retention of financial records, NRS 253.200 - Qualifications of person for whom a public guardian may be appointed, and the petition for appointment, NRS 253.210 – Powers, duties, rights and responsibilities of the public guardian, and NRS 253.215 – Legal Assistance.

Under NRS 253.215, when necessary for the proper administration of the guardianship, a public guardian might retain qualified, experienced attorneys and rotate their employment. As an example, Clark County utilizes the services of 14 private practicing attorneys. Any attorney fees must be paid from the assets of the individual being served. In many of the cases, funds are limited and much of the work is completed by private guardians is pro bono. Upon approval of the Board of County Commissioners, the Office might obtain assistance from the Office of the District Attorney of the County.

The Washoe County District Attorney's (DAs) Office has 1.5 DAs assigned to guardianship cases and in Clark County the CCPGO utilizes 14 private attorneys. It would be interesting to get a comparison of the two systems in efficiencies, expertise, and costs. Ms. Buchanan explained the Attorney General's Office might also represent the CCPGO when they have a case within Desert Regional, which is a State Agency.

The Commission discussed the availability of representation for a ward. In Washoe County attorneys are available for a ward 60 and older; a child typically is represented by an attorney or an advocate in Nevada Revised Statute 432B cases. In Clark County the appointment of counsel for a ward is primarily a pro bono appointment or a volunteer. In Douglas County every minor ward has a Child Appointed Special Advocate (CASA) and the adult wards are provided advocates from the Senior Advocates for Elders (SAFE) Program, if the ward chooses. Chapter 159 allows for the Court to appoint an attorney, but it does not provide for a payment mechanism for the attorney, that means some pro bono attorneys or the Court might order the County to pay for it.

Assemblyman Sprinkle suggested the Commission needs to have a far more in depth discussion on appointing attorneys for the wards, not just that they could have an attorney, but an actual mandate. This is serious and needs to be looked at for possible legislation during the next session. Chief Justice Hardesty noted this is why the Washington Statute was included in the meeting materials. This topic is a critical point and needs to be addressed by the Commission and Legislature.

Ms. Spoon added the Commission should also consider the ward being represented by a guardian ad litem. It was noted the Washington and Arizona statutes break the distinction between an attorney representing the ward and a guardian ad litem.

There was a question as to whether Chief Justice Hardesty, needed a motion with respect to ensuring representation of each person who is responding to a guardianship, either the initiation or an ongoing proceeding. Chief Justice Hardesty said the Commission would take this subject back up when they discuss temporary guardianships and appointment of counsel for the wards.

Ms. Buchanan continued her presentation and reviewed NRS 253.230. The public guardian is appointed as an individual guardian, the costs incurred in the appointment proceedings and the administrative cost of the guardian services are not chargeable against the income or the estate of the individual unless the court determines at any time that that individual is financially able to pay all or part of the cost. Any fees collected are deposited to the County General Fund.

The reasonable value of the public guardian's service is rendered without cost to an individual and shall be allowed as a claim against the estate of an individual, upon approval of the Court. Money received in payment of a claim against the estate of an individual shall be deposited by the Public Guardian, to the credit of the County General Fund or any other County Fund, as determined by the Board of County Commissioners. A public guardian may file with the Board of County Commissioners a request for an advance of money to pay necessary expenses incurred or to be incurred by the public guardian during a guardianship. The Board may approve or deny their request. If the Board approves their request, the Board shall determine the amount to be advanced and the advancement of that amount to the public guardian. For example, Clark County has an Impressed Account, which the Board of County Commissioners has approved. The Board of County Commissioners of any County may establish a revolving fund to be used to provide advances to the public guardian. The public guardian must reimburse the County for any advance provided from the assets of the estate of the individual as soon as and to the extent that the assets become available. Examples of that would be exploitation or home owner's insurance.

The Board of County Commissioners may establish regulations for the form of any reports of budgets made by the public guardian, review reports of budgets submitted to the Board by the public guardian, and at any time investigate any guardianship for which the public guardian has been appointed.

The court may, at any time, terminate the appointment of a public guardian as an individual guardian of a person or of an estate upon petition by the individual, the public guardian, or any interested person or upon the Court's own motion. Per statute, if after exercising due diligence the public

guardian is unable to identify a paying source for the care of the individual and as a consequence continuation of the guardianship would offer no benefit upon the individual, the guardianship may be terminated.

Ms. Buchanan reviewed the forms which include the acknowledgement forms, Certificate of Incapacity.

ii. Rural Public Guardian

Judge Porter provided an overview of the Elko County Public Guardian. The public guardian has suggested a statewide repository where all public guardians report their certification. The public guardian must have a background check every four years and is required to take continuing education classes to maintain certification. It would be important for all public guardians to hold the same qualifications. Elko County does not have many attorneys who know how to process guardianship cases, and the ones that do work pro-bono because there are not enough funds. The public guardian has run into issues with trying to get clients in to see doctors for medical certification because no doctors in Elko are currently accepting Medicare. The public guardian tries to contact a client's family using various resources. The public guardian handles all documentation including the petition, the citation, the order appointing guardian, the accountings, etc. There had been problems with having clients approved through Medicaid, in one occasion it took about 10 months to gain approval. The public guardian has made burial arrangements for some clients in order to have them qualified for Medicare. The process of receiving physical therapy services has also been difficult, while the client awaits Medicare approval, but within the last three months there had been some improvements with that process. The public guardian makes sure the client is safe and if they are not, she would make arrangements to have them situated in an assisted living facility or nursing home. The public guardian's goal is to place a client in the least restrictive place appropriate to the client's needs. The public guardian would also acquire information from bank statements to locate the client's assets and be able to protect and allocate those assets appropriately. Once a client is settled in a nursing home the public guardian makes sure the clients' needs are met. The public guardian sets quarterly care plans which include meeting with the client's nurse, certified nurse assistant, social worker, dietician, and activities person to review a client's condition, medications, hospital visits, etc. Judge Porter reported the particular ward was limited by the county to 25 wards, the public guardian has one half-time staff person for assistance. Judge Porter expressed that although there have been reports of unscrupulous guardians in Nevada, there are good things being done by guardians which need to be spoken of also. Chief Justice Hardesty thanked Judge Porter for her report to the Commission and asked if there were any questions. There were no questions from the Commission for Judge Porter.

iii. Private Professional Guardian

Ms. Kim Spoon and Ms. Susan Hoy gave a presentation to the Commission on professional guardians. Much of the work professional guardians do is similar to that of family guardians, only with more clients. All guardians must follow NRS 159; public and private agencies do the same work with some differences such as individual county requirements and policies.

Ms. Spoon reviewed why professional guardians and guardian case managers do the work that they do, including being able to save lives by being able to intervene and get the medical help needed for persons who have been neglectful of themselves or neglected by others. Guardians can make a real difference. There are also downsides to becoming a public guardian including, the difficulty in explaining actions to those who do not understand what guardians are doing as guardians are bound by privacy laws, the job of guardianship is 24-hours a day, every day and it can be physically and emotionally taxing. Guardians depend on medical and legal counsel for advice on making decisions for a client but ultimately the guardian must be the one to make final decisions. Guardians deal with frightened and confused individuals who sometimes do not have the cognitive ability to understand the changes happening to and around them, this could be very challenging. Guardians face dangers such as biohazard situations, hoarding disasters, dangerous or dead animals, physical hazards, unpleasant smells and other unpleasant circumstances. Other troublesome situations guardians encounter are situations in which a ward makes statements regarding negative events or problems and a guardian must validate what their client is saying. In some cases, reports made from a ward might not be true and if not validated could lead to torn family relationships and vilification of caregivers or guardians, due to miscommunication or unverified information.

Most guardianships begin as referrals. Referrals are brought from different areas such as attorneys, families, friends, hospitals, banks, service agencies, social workers, etc. Referrals could include adults, children, or infants from anywhere in the state. Sometimes county agencies have restrictions regarding the referrals, which are accepted depending on the age of the person needing guardianship and if the person has property or resides in their county. The majority of guardianships are for the aging or those suffering from dementia or other disability, other referrals include the mentally ill, individuals with traumatic brain injuries, intellectually or physically disabled individuals, or minors with financial circumstances.

The referrals begin the investigation process. Investigations include interviews which are conducted to receive as much information as possible about the ward regarding themselves, their family, their friends, their neighbors, their medical personnel, or any other information which could be helpful to understand why a guardianship would be needed. Guardianships should always be the last resort in dealing with a person's crisis. Investigations help with looking into other alternatives for guardianship including looking into possible estate plans. Professional guardians also need to look at alternatives for their appointment due to the cost to the tax payer or the ward's estate. In some cases referrals do not go forward because the investigations by professional guardians found other types of intervention which would be more appropriate for certain individuals than guardianship would have been. In other instances, other guardians are appointed after an investigation is conducted because the investigations lead to finding other individuals who could be a more appropriate guardian for that individual. In other cases, even when a potential ward has family, those family members are not made their guardian because it would not be appropriate for their circumstances, it changes the dynamics of the family, family members might not feel comfortable taking on such a role, or could cause resentment and misunderstandings amongst loved ones, other times, the family could be the problem and a guardian is needed to intervene.

Ms. Spoon stated keeping wards privacy intact is a top priority for guardians. Guardians must be careful to not overstep boundaries when obtaining information needed for proposed wards. Some potential wards might fall under the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rules for permitted uses and disclosures. Most of the time guardians are able to gather information through HIPAA, which helps to establish the guardianship. Professional guardians are often times called to handle a serious threat to health or safety due to a medical or financial emergency. A guardian must be able to decide how emergent a situation might be and decide whether a temporary or general guardianship would be necessary. Guardians must be able to explain, using statutory language, why the proposed ward is in a substantial and immediate risk of physical harm or is in immediate need of medical attention, is presenting a threat to himself or others, or is being subjected to abuse, neglect, or exploitation. All the documentation helps to clarify the need for guardianship as required by law.

Guardians do not make the decision of whether or not a proposed ward does in fact need to be under guardianship. Guardians do gather and present documentation to a judge who makes an informed decision based on the facts presented. If a judge decides guardianship is the only route that makes sense for the proposed ward, an attorney is contacted to assist with documentation, and guardianship takes place. Guardians continue to search for a ward's family and continue seeking documentation even after a guardianship has been formally established. Many guardianship referrals do not go forward because often times a professional guardian is able to find other alternatives after conducting an investigation. There was a question if there was an independent agency which conducted the investigations for a company. Ms. Spoon clarified that each company would conduct their own investigations; there are no court investigators to conduct the investigations for her company. However, each agency, whether public or private would each conduct their own investigations as well.

Ms. Susan Hoy discussed the duties and tasks of a guardian that are tied in with NRS 159. There are four duties of the guardian which include the person, finances, property and legal requirements. There are differences between duties and tasks for a guardian; every duty by NRS 159 requires a task to complete it, at times, these tasks come off as intrusive. Guardians consistently visit a ward to assess their living situations, their overall health, and their condition to determine if guardianship remains an appropriate setting. A guardian attends and coordinates all doctor and physician visits and follow-up care ordered by a physician, a wards' health and well-being is constantly monitored. A guardian is tasked in making decision for someone whom they have not known for very long. A guardian must ask very personal questions in order to gain insight into whom a person was or is as an individual and ties in with NRS 159, as far as duties, tasks, standards, and ethics. Guardians become private investigators in the sense that they seek information in any way they could to gain important insight, this might come off as intrusive, but it is important to the client, the court, the family, and the guardian. A guardian must also document every task and duty for accountability to the court and family.

Ms. Hoy discussed the importance of mail routing. It is common for mail to be rerouted, even if a ward remains residing in their home through the guardianship process, in order to ensure bills are paid, to marshal and preserve life insurance policies, to manage additional financial accounts, and to find other assets. When considering redirecting mail to an address other than the wards, a guardian makes the decision based on Nevada Statutes. Ms. Hoy summarized NRS 159.109 stating, the guardian of the

estate shall examine each claim presented to the guardian for payment, the claim is either examined and allowed or examined and rejected. Thereafter, whether approval is allowed or rejected the decision shall be subscribed with a date, if allowed, and if rejected, a guardian notifies a claimant that there claim has been rejected. Guardians must examine all bills because it is their duty to protect the ward's funds. Guardians base their examinations of the bills on past usage, occupancy of the home, and what time of year it is to determine if the bill is appropriate. Through the examination process, guardians have caught neighbors stealing power and water, leaks, and air conditioning issues and have been able to solve the problems in a timely manner.

Guardians must also make sure a ward receives their personal mail. When a person remains in their own home or is moved into an assisted living facility, a guardian could have mail temporarily redirected and notifies all the business providers and all the family. After 60-90 days the mail forward could be cancelled and the ward would begin to receive mail at their personal residence. Guardians make arrangements to deliver unopened, personal mail to the ward. If there is a change in residence, a guardian notifies friends and family of the change and provides clear direction to the facility to give the ward their personal mail.

Making decisions for someone else and their life holds a tremendous amount of responsibility. All professional guardians must follow the statutes relating to guardianships and must adhere to the standards of ethics for professional guardianship work. Guardians have the responsibility and liability of making decisions for others; guardians are also held to a higher standard than non-professional guardians in relationship to their actions. Professional guardians ultimately answer to the courts and the communities which they serve. The three principles of decision-making for guardians are: informed consent, substitute judgment, and best interest.

Ms. Spoon provided an overview for the Commission regarding death and dying while in a guardianship. The process of preparing for death and dying can be very difficult for a guardian although a guardian must remain as professional as possible through the process. Part of the duties for a guardian is to make the death process as dignifying and painless as possible. It is important that a ward advocates for the needs and wishes of the clients, some of whom can no longer speak for themselves. Guardians deal with the family's grief process and make sure to include the family in the process as long as it is appropriate to include them. For the most part, guardians are the final decision makers in regards to end-of-life decisions. Not only do guardians keep constant contact with hospice agencies, nurses, and doctors, they must also provide living wills, durable power of attorney, and Physician Order for Life Sustaining Treatment (POLST) forms for all clients. Guardians do their best to prepare for the death of a ward by working on finding information in regards to the ward's wishes. A guardian might also validate those wishes with family and friends who might be aware of the ward's wishes because often times a ward does not remember or might not have the ability to make a clear decision. Only when family is not available or appropriate to make decisions regarding payment of funeral services ahead of time, the memorial, the types of urns or coffins, obituaries, a guardian would make those decision, often times, a guardian would only make those decisions if the family does not have the funds or if the family and the ward cannot make the decisions. At the time of death a ward ensures the final wishes are carried out. A guardian might have the task of shipping coffins or ashes to other states,

arranging out-to-sea scatterings, or any other last-wish arrangements. Death is usually the most frequent reason for the termination of a guardianship.

Chief Justice Hardesty asked if there were standards in place, nationally or elsewhere, which regulate caseloads for private guardians. Ms. Spoon stated there is not an exact reason for the caseloads for a private guardian but usually the caseload amount is no more than 25 cases per guardian. The caseload is really determined by the type of cases, some cases might be more complex than others. Ms. Spoon stated her office has about 15-25 caseloads per guardian but every company is different. Ms. Hoy stated her office handles about 30-35 cases per guardian.

Chief Justice Hardesty asked for clarification regarding the investigative process and when in the investigative process does a ward begin to have representation. Ms. Spoon stated, in her office, a guardian immediately informs the office if a potential ward has an attorney and notifies the attorney of the investigation. At times, potential wards do not have an attorney when the process begins but the petition asks for the ward to be represented, that is usually when a ward begins having representation. Chief Justice Hardesty asked how a guardian gains access to physician certificates and other documents without legal permissions. Ms. Spoon clarified how a guardian receives important information depends on how the initial referral was received. For example, if a referral is provided by a nursing home, the nursing homes often provides a physician's certificate to the guardian, other times; it might be extremely difficult for a ward to gain access to the information. Ms. Spoon noted many times the guardian would seek to obtain a physician's statement through a psychologist in order to also assess the competency issues. Chief Justice Hardesty asked how a guardian handles situations in which families are not in agreement of whether or not a potential ward should or should not be in a guardianship. Ms. Spoon stated that is why conducting evaluations are so important. Evaluating a potential ward gives everyone involved insight into whether or not guardianship would be appropriate. Chief Justice Hardesty asked what steps are taken to validate the investigation, and asked if there was any other accountability for decisions made, informed consent and accountings, other than the court's oversight. Ms. Spoon stated there was no accountability for guardians besides the court.

Ms. Rana Goodman expressed concern regarding how guardians classify the severity of dementia to justify guardianship and asked if guardians brought their wards before the judge during hearings. Ms. Spoon stated that in the north, and by state law, a guardian is required to have the ward present for all guardianship hearings, guardianships are established under traceable evidence not on the classification of the severity of a person's dementia.

Judge Frances Doherty stated, as a judicial officer, it has been challenging to address justifying having individuals come into someone's life that they do not know and engage in an investigation. Guardianship investigations happen without being under a code of law of search and seizure or warrants. Guardians are put in a position of going through a person's residence or purse, securing a person's money, securing a person's medical information, and even gaining information from a person's family and neighbors, all without any type of constitutional contemplation of protection and inconsistent of statute protocol. Once the investigation takes place a judicial officer is then asked to pay for the services through billing even though the work was done prior to the person becoming the subject of the guardianship, if awarded. The investigation process currently has no official oversight

because there is no system in place for it. Judge Doherty would like for the Commission to focus significant attention to protocols.

Ms. Julie Arnold stated the Commission would need to pay close attention to instances in which a family member might not provide assistance or accurate information because that family member would benefit from the potential ward not being placed in a guardianship situation. Ms. Arnold stated guardianships are not based on how good a person is on a good day, rather how bad a person could get on a bad day, in terms of forgetfulness or dementia. On a good day a person might live a relatively normal life but on a bad day a person could endanger themselves or others.

Ms. Terri Russell asked if a guardian could look into a case and decide if placing a potential ward into guardianship would be appropriate or not. Ms. Spoon stated a guardian does not make the decision of whether or not it is appropriate for a person to be placed into guardianship; the decision of placing a person in guardianship is ultimately up to the judge. Ms. Russell asked if Ms. Spoon's office provided guardianship for people on Medicaid. Ms. Spoon stated about 80%, or more, of their clients do have Medicare, however Medicare does not cover the cost of guardians or other fees. Ms. Russell asked how much money played into establishing guardianship for a person and if there was a difference in establishing guardianship if a person were indigent. Ms. Spoon replied stating, for their private practice, the judge would not allow for the case to be taken by the office if funds were not available to pay for services, unless the private guardian had agreed to take the case pro-per. Ms. Russell asked if money was a factor in distinguishing between private and public guardianship cases. Ms. Spoon stated money was a general factor in those cases. Ms. Russell asked if private guardians were under the mandated reporting law. Ms. Spoon stated private guardians are mandated reporters and work closely with elder protective services.

Chief Judge Gibbons stated a guardian must have evidence to present before a judge in court in order to establish guardianship. In order to provide evidence, a guardian must conduct an investigation, unfortunately there is little oversight. Chief Judge Gibbons stated the Commission would need to review each process for guardianship in order to find effective remedies to eliminate insufficient oversight. Ms. Elyse Tyrell stated as attorneys representing a proposed guardian, attorneys are ethically obligated to refuse a case which does not have merit. The statutes are clear in stating every petition for guardianship must include a certificate, without a certificate an attorney cannot petition for guardianship with merit. If an attorney is seeking fees for themselves or for the services of the clients a judge does review the fees.

Chief Justice Hardesty asked the Commission to review NRS 159.0523 which outlines requirements for temporary guardianship. The statute imposes on the petitioner a duty to support the petition with documentation that must basically consist of two things; a copy of the birth certificate of the proposed ward or documentation verifying their age, and a certificate signed by a physician. Chief Justice Hardesty asked how a guardian secures a certificate from a non-primary physician over a proposed ward. Ms. Kim Rowe stated often times a guardian does not gain access to the documentation, other times the documents are provided by a proposed ward's family member who might have health care power of attorney. Concern was expressed about the language in subsection 1 (a) that allows a letter signed by "any governmental agency" in this State which conducts

investigations. Chief Justice Hardesty asked what the probable cause is for allowing guardians to search a proposed ward's home and should that standard be a standard the Commission examines. Chief Justice Hardesty expressed concern about how the guardianship process begins statutorily. Judge Egan Walker stated tension stems from conflict of interest and the Commission might consider reaching out to the legislature for assistance balancing inherent conflicts of interests. Ms. Spoon added that guardians do not invade homes, guardians ask to come into the home and often times begin the process with the reporting party present. Judge Doherty stated there have been cases where an invasion of a person's home and personal property happens, but the focus for the Commission needs to be on how to avoid the invasions to continue happening and build a better system.

b. Training and Education

Christine Smith, Associate Dean for Public Service Compliance and the Administration at the William S. Boyd School of Law (Law School) provided information on states' development of educational materials and training in the area of guardianships. Dean Smith provided a list that is categorized by state judiciary and affiliates, other state offices, agencies, and their affiliates, state or local bar associations, non-profit, non-governmental organizations and law schools. Much of the education and training available are web resources and links to other web resources, pamphlets, brochures, manuals, and videos. Some states offer continuing legal education credits and a number of law schools have clinical programs and/or specialty clinics that are helping with guardianship issues. In addition, some distance learning courses are being offered and conferences are being held across the country.

Dean Smith provided information on the Thomas and Mack Legal Clinic, which offers the Family Justice Clinic. The Clinic receives referrals from the Eighth Judicial District Juvenile Court and handles guardianship abuse and neglect cases. The Clinic has also represented clients in special immigration juvenile status cases that have involved petitions for guardianship. The Law School has a Community Service Program where students are required to teach free legal education classes under the supervision of an attorney. One of the classes is a guardianship class, which has been offered for a number of years. Over 4,000 people have attended the guardianship class since its inception. In 2014, 292 people attended the class, and 194 have attended the class in the current calendar year.

Dean Smith explained the guardianship classes provide information on guardianships and forms for people who are interested in becoming a guardian. The Clark County Public Guardian's Office also offers classes on guardians which are centered on the practical approach. It was suggested attendees should participate in both classes offered by the Law School and the Public Guardian's Office. Washoe County's Public Guardian's Office has worked with Judge Doherty to present a class on public guardians as well. Each pro se guardian family member, whether they are represented by counsel or not, are required by the court in Washoe County to attend the guardianship class offered by the Washoe County Public Guardian's Office. Judge Porter also requires those appointed as guardians to attend a class taught by the Elko County Public Guardian's Office.

Dean Smith noted the Legal Aide Center of Southern Nevada as one of the Law Schools primary partners is the Legal Aide Center of Southern Nevada. Individuals can become eligible for a pro bono attorney if they come to the class and fill out an intake form. The Second and Eighth Judicial District

Courts have pro per packets available for those who cannot afford an attorney. Judge Porter noted Elko is working on a packet.

The Commission discussed statutes that allow third year law students to appear in court, supervised. This could be a solution to getting representation for the wards. Dean Smith agreed that is something that could be considered. Once a student completes their first program of teaching free legal education classes, interested students are paired up with attorneys in the pro bono project, working with Melanie Kushnir. There have been some guardianship cases in the past. The law student could be certified under the student practice rule and could go to court with their attorney mentor.

c. Perspective from Care Facilities

Mr. Kim Rowe provided an overview on guardianships from the care facilities perspective. Mr. Rowe represents hospitals, long-term acute care hospitals, skilled nursing facilities, and assisted living facilities (facilities). The facilities pay Mr. Rowe's fees; they do not come from a ward's estate. The same is true of a private guardian. The facilities interact with court appointed guardians in a variety of ways. The vast majority of those interactions have been good, as long as the facility has a copy of the guardianship order and is aware of the scope of the guardian's authority. There have been occasions when the health care providers or facilities have to question whether or not a court appointed guardian is acting in the best interest of a ward, typically in regards to a placement decision. For example, the guardian would like to go home, but there are times when the home might not be safe or you might come across a guardian that has other motivations. The guardian might be advocating for the patient to come home but it may not be in the best interest of the ward. This is often not the first time the person has been in a facility. There are often repeated admissions that indicate something might not be right. The facilities try to communicate this information appropriately, including consults with the family. The facilities do everything they can to work through the problem. Facilities are mandatory reporters. If the facility suspects a situation could be neglectful or is potentially abusive they are required, by statute, to report to Child or Elder Protective Services. Child or Elder Protective Services would conduct their own investigation. This does not happen often, when it does reports have to be made to the appropriate agencies. There are times when the facility might come to an impasse with respect to a court appointed guardian and a petition for removal is filed. Typically, if a situation like that were to occur Mr. Rowe would request a guardian ad litem (GAL), so there is someone to advocate for the ward, because the person being contested would get an attorney involved so there should be an independent GAL. Overall, the interactions with the court appointed guardians, from a facilities standpoint, have been very productive and work well.

Oftentimes, the patient has been in a facility for some time or multiple times and the facility has had the opportunity to observe what is happening with this patient. If there are family and friends, the facilities have had the opportunity to talk to them and identify when a guardian might be necessary. One of the unfortunate things the facilities have seen happen is there are less family and friends willing to be involved for the patient, so there might not be anyone to advocate for the patient. The facilities work with the patient to get a safe discharge. Sometimes the facilities are not able to get a safe discharge because it is no longer safe for the patient to be functioning on their own. In these cases, Mr. Rowe would typically petition for the appointment for a public guardian because there is no one else to

serve as guardian. After completing the investigative report the facility provides Mr. Rowe with the referral application. The referral application typically includes a physician's certificate as well as backup information to provide detailed information about what has been going on. Mr. Rowe tries to find and notify any family. If family cannot be located the petition would be filed. Typically, the Public Guardian's Office would be appointed guardian for the person and sometimes the estate. The petition and medical information is filed under seal (parties to the case do have access). Mr. Rowe and Mr. David Spitzer have discussed this over time and concluded filing this information under seal is better for the ward. Mr. Rowe suggested this might be another area the Commission would like to review and possibly make it required by statute.

Mr. Rowe submits the petition requesting appointment of a guardian rather than the proposed or public guardian. Mr. Rowe has found his office can move more quickly and there are times when his office can get the guardian appointed and place the ward in the least restrictive environment to provide services the ward needs. Mr. Rowe's office can do that in 45-60 days or less, depending on the information they have; the Public Guardian's Office could take 4-8 months.

Once Mr. Rowe files the petition the Washoe County Public Guardian's Office (WCPGO) is notified. The WCPGO is represented by the Washoe County District Attorney's Office. An attorney from Washoe Legal Services (WLS) is appointed to represent the ward. The public guardian, ward, and the facility all have representation during the first hearing before the court. The facility, WLS, WCPGO, the DA, and the court all want what is best for the ward. They are able to work through a lot of the problems and cut them off at the pass.

Mr. Rowe has, on occasion, petitioned a private guardian. It is an unusual circumstance but there are occasions when the person in the facility is not a resident of Washoe County or there might be potential end-of-life decisions that would be presented before the court.

Mr. Rowe stated from the perspective of the facilities temporary guardianships are a very extraordinary remedy, and is not something that is considered lightly. Temporary guardianships have evolved over the last 20 years. It used to be a fairly routine practice for facilities to request the appointment of a temporary guardian to try and facilitate rapid placements or do other things. Over time, the courts have raised the standards. Temporary guardianships need to be an emergency situation that require very immediate attention, not just a matter of moving a ward to a less restrictive environment. Mr. Rowe noted in addition to being extraordinary circumstances the statutes should be narrowly drafted to give authority to consent to what needs to be consented to. The facilities rarely ask for control over estate. The facilities do run into end-of-life decisions in which the guardian might not be acting consistently with the patients wishes (e.g., power of attorney).

The Commission discussed the process in which WLS is notified of their client once Mr. Rowe's submits the petition. If a ward is over the age of 60, the court would enter an order as soon as Mr. Rowe files a petition and Mr. Rowe would receive notice that WLS has been appointed. WLS is able to retrieve documents from the e-flex filing system once they are appointed to the case. If there is anything WLS does not have Mr. Spitzer would contact Mr. Rowe and they would exchange information and start

working towards what the hearing would look like. Oftentimes, they already know what the case would look like and what the patient really wants prior to the hearing.

Mr. Spitzer has had a couple of cases in which the petition was submitted by someone other than Mr. Rowe's client. There are a couple private attorneys who are close to Mr. Rowe's standards, in terms of the way they practice, and Mr. Spitzer has taken their invitation to ask for the appointment of counsel at filing of the initial petition. Judge Doherty acts on that right away and produces an order appointing WLS and the two attorneys by name who participates in the program. This gives them the ability to access otherwise protected, confidential information. The attorneys meet with the facilities and review medical records, prior to the first hearing on the petition.

Chief Justice Hardesty noted it is routine in Washoe County, at least in the last few months, to have counsel appointed for a ward as soon as a petition is filed. WLS is also providing this assistance to Judge Porter in Elko. Chief Justice Hardesty would like to develop a similar program in Southern Nevada in partnership with the Legal Aid Center of Southern Nevada, so that wards are provided counsel at the outset. In a system that is so dependent on pro bono legal services, the better alternative would be to get the legal aid organizations involved as the mainstay for a good part of this work, which would require some changes. The Commission has discussed providing counsel to the ward at the outset. The Commission should also research alternatives to legal aid organizations for representation.

IV. Scope of Commission

a. Goals/Objectives

A mission/objective statement was included in the meeting materials. The statement was largely taken from the Supreme Court order, Administrative Docket 507, which created the Commission.

During the first Commission meeting members were canvassed to find out what they would like the Commission to accomplish. Judge Steel and Judge Doherty provided additional detailed outlines of the objectives. This information was combined into a working document to provide the Commission some direction as to how the Commission might approach each identified issue. Commission members were asked if they had any amendments, edits, and/or comments to the outline.

Judge Egan Walker noted the statute for temporary guardianships has a section for minors and a section for adults. Section 1 (a) of NRS 159.052 requires documentation to show that the proposed ward faces a substantial and immediate risk of physical harm or needs immediate medical attention and lacks capacity to respond to the risk of harm or obtain the necessary medical attention. Judge Walker added children are legally incompetent and this statute, to a large degree, is an adult statute that was gerrymandered to fit children. Judge Walker suggested the Commission separate minor guardianships from adult guardianships, creating NRS 159A and 159B. There was agreement among the Commission members that minor guardianships should be separated from the adult guardianships. Chief Justice Hardesty suggested creating a separate outline to deal with minors. It is apparent, in the context of minors, that the standard is different; the documentation is less. Chief Justice Hardesty asked Judge Walker, Judge Voy, and Judge Porter to take a look at the provisions and provide a

proposal as to how the temporary guardian statute dealing with minors might be approached differently. This might be the first section of what would be NRS 159A.

Ms. Rana Goodman noted many times when a person comes out of a guardianship they often do not have money; the estate is gone. Ms. Goodman suggested adding a section to II (C) (vi) to develop some kind of funding for the ward until social security (usually takes 30-60 days) or other benefits begin again. Chief Justice Hardesty suggested adding a bullet point, under the subsection that discusses winding up of affairs, to include a place for post termination aftercare. Ms. Goodman agreed.

Section III (B) (v) "can't" would be replaced with "can".

Judge Walker moved to approve the outline. Dean Smith seconded. The outline was unanimously approved by the Commission.

The Commission discussed the outline further. Items I and II, dealing with the development and definitions for data collection, would be under the purview of the Data/IT Subcommittee. Many of the items on the outline could be addressed as a committee of the whole, without the appointment of subcommittees. Subcommittees might be appointed if there is a need to look into specific information or subparts of the information further.

The Commission discussed NRS 159.0523 – Temporary Guardian for Adult Ward. Members were asked to provide conceptual changes the Commission could recommend to the statute and possible Supreme Court Rules. Chief Justice Hardesty noted the National Standards state a temporary guardianship is intended for an emergency process and is not intended as an additional investigative tool. It appears the Nevada statute is much broader than the emergency process. The Commission might want to consider recommendations to narrow the purpose of the statute. The additional items that stood out were the absence of any representation for the ward in this process and ex parte relief. The statute does not specify whether hearings should be on the record, if there should be a record, if the record should be reviewable, and if the ward should be present. These should be included as a requirement in the statute, if medically possible. The notice provisions are a concern including subsection 2(b) which allows the court to say you do not have to give notice if the court is satisfied that the person has tried in good faith to notify the person...or giving notice to those persons is not feasible. The Commission should review the statute and make recommendations to modify the notice provisions.

The Commission discussed how to approach the investigation portion and the concern that guardians, all well intended, acting upon an appropriate referral undertake the investigation, which provides the potential guardian access to a host of information that the allegedly incompetent ward cannot legitimately consent to. How should the investigation take place? If there is reasonable cause to believe someone should be subject to a guardianship the investigation process could start upon an appropriate showing and allow the investigation to take place through court appointed investigators, who are hired by the county or the state to undertake those investigations. This would remove the guardians from the investigation process, as they are serving as guardians not investigators. This could be a C-Change in the way guardianships are approached and the ward would be assured representation under this plan. The Commission was asked to vet the ideas presented.

Ms. Kim Spoon noted when her office is conducting an investigation for guardianships they find the medical field is equally troubled with what they have to do and how they are required to provide the information. The medical field would be open to having some type of authority to provide this information too, outside of the proposed guardian.

Assemblyman Michael Sprinkle noted based on the conversations it would seem the most consternation is over the investigation and the lack of oversight. Assemblyman Sprinkle agreed with the recommendations Chief Justice Hardesty had proposed; taking the investigative phase away from the proposed guardian would provide additional oversight. Assemblyman Sprinkle also agreed there would need to be some type of representation for the wards from the outset.

Ms. Julie Arnold suggested providing recommendations that would provide physicians guidelines as to what competent and non-competent mean. We need to define capacity for the purposes of whether or not a person needs a guardian. Chief Justice Hardesty suggested conducting research in this area. Mr. Rowe noted Nevada statutes use the term incompetent, which is a defined term. Physicians are trained to deal with the terms of capacity/incapacity and competent/incompetent differently than lawyers. Chief Justice Hardesty asked Mr. Rowe and Ms. Elyse Tyrell to research how other states might be addressing this and how this could be reconciled. It was suggested the mental health field be taken into consideration as well.

The Commission discussed the fiscal impacts, including the costs of legal representation for each ward at the outset and the investigator for the court, which would require additional judicial resources. Chief Justice Hardesty noted if the State is going to enact statutes that empower the judiciary to take away a person's freedom and property, then it would seem that the State has to confront the question as to how to get access to legal services and conduct a proper investigation before that happens. Ms. Tyrell noted funding would also need to be discussed for the GALs.

The Commission discussed the conflict that could arise if a person served as both the attorney and GAL to the ward. Mr. Spitzer stated Washoe County does draw a bright-line in that regard. A part of that is due to funding because Aging and Disability Services funds attorneys for the ward but does not fund GALs. The distinction is quite profound. A GAL is mandated by the court to investigate and express the best interest of the client; an attorney for the ward is required to first develop an attorney/client relationship, which is not always possible depending on the person's degree of capacity or competence. A GAL reports the best interest of the ward to the court; an attorney reports what the client's wishes are to the court.

A copy of Washington State's statute regarding counsel for guardians was provided in the materials. The statute raised an interesting issue: what do you do when the condition of the ward affects the ability of the attorney to form an attorney/client relationship. There is some material from the American Bar Association that discusses this issue.

There was a discussion about the establishment of qualifications for the GAL. Chief Judge Gibbons mentioned NRS 432B includes requirements for a GAL. Judge Walker appoints Court Appointed Special

Advocates (CASA) as a GAL under NRS 432B. Judge Walker stated the Commission could develop a mechanism and an expectation that there would be representation and the Commission could fine-tune those cases where both a GAL and an attorney might be appropriate for the ward.

The Commission discussed the Senior Advocate for Elders (SAFE) Program. Washoe County started the SAFE Program many years ago and was a model for the SAFE Program in Douglas County. The SAFE Program in Washoe County lost its funding and is no longer operating. The Program had two staff members and an annual budget around \$100,000. The Program had 50 volunteer advocates, many of which were retired. The program served 150 wards with the 50 volunteer advocates and their training program was 40 hours. Judges expressed their appreciation for this resource when the Program was operating. The SAFE Program in Douglas County is a similar model to the Court Appointed Special Advocates (CASA) for children. SAFE advocates do have access to financial information of the wards once appointed. Training is similar to the CASA training. Both programs are volunteer dependent and if the administration of the program were to collapse, then the program would collapse, and if volunteers diminish the services provided are lost.

Judge Steel noted the attorney and the GAL do not have to be mutually exclusive; there could be both in certain circumstances, one looking out for the best interest of the ward and the other reporting to the court, making sure reporting requirements e.g. accounting reports are being completed and submitted to the court. This would need to be structured to insure the GAL could file reports to the court or file a request of accounting.

Ms. Goodman mentioned if a training program were developed she has 200 seniors who are looking to volunteer to help wards.

The Commission would review the SAFE Program and reach out to those who have knowledge about the Program to find out what worked well and what did not. Mr. Hank Cavallero stated when the SAFE Program was developed by Mr. Jerry Nance, now deceased, Mr. Nance was a lawyer and a psychologist and he developed this program and a training manual.

Ms. Terri Russell suggested labeling temporary guardianships emergency guardianships. Ms. Russell mentioned she would also like the hearing on record to be reviewable and part of the public record. There was a discussion about the sealing of records. On the one side there should be public access to records so that people, including reporters, could report on the subject. On the other side there are people that steal other's identities or exploit them and if certain medical and/or financial information is publically available this could be a disservice to the ward. Judge Steel has appointed a committee to review confidentiality and the media; what records should be accessible and what records should be restricted or should be sealed by statute or court rule.

Ms. Sally Ramm suggested the Commission review the timing of the temporary guardianship. Is 10 days long enough for temporary guardianship, and is the five month duration too long?

There are a number of items the Commission would need to pull together prior to the next meeting. The members were satisfied with the approach to the temporary guardianship statute. Mr. Rowe noted he would not want to make the temporary guardianship statute too restrictive.

Ms. Susan Sweikert noted she did not see where a complaint process was addressed. It was noted the complaint process would be a part of the administration of the guardianship, which could occur at any time while the ward is under guardianship.

Chief Justice Hardesty stated he is not satisfied with the notice process and is concerned with its enforcement. It is agreed that notice should always be provided; it is only in exceptional circumstances where a notice to a particular person would not be given upon an appropriate showing. The Commission agreed.

Ms. Sweikert noted the Commission needs to be sure to include the specificity of what needs to be done for the emergency temporary guardianship. Chief Justice Hardesty said that is the scope of the order which should be narrowly tailored for the emergency that is being presented.

Assemblyman Trowbridge said a comprehensive list of goals would make it easier to identify the most appropriate areas where things need to be addressed by court order, court rule, statute, etc. Chief Justice Hardesty said that would be a part of the process. For example, the manner in which hearings are conducted could be the subject of interim rules adopted by the Supreme Court. Chief Justice Hardesty is concerned with the diverse way guardianships are administered throughout the state.

The Commission would discuss these items further at its next meeting on October 19, 2015, and begin outlining its recommendations.

- V. National Best Practices and Related Resources
 - a. National Guardianship Association – Standard of Practice Checklist
 - b. National Probate Court Standards (Sections 3.3 to 3.5)
 - c. National Association for Court Management – Adult Guardianship Guide
 - d. Washington State Statute Requiring Counsel
 - e. Legislation Summary by Erica F. Woods, Esq.

VI. Appointment of Subcommittees (Working Groups)

There were no additional appointments of subcommittees during the September 16 meeting.

- VII. Discussion and Possible Action on Recommendations
 - a. Temporary Guardianships
 - i. Nevada Statute
 - ii. Terri Russell's Recommendations
 - b. Fees
 - i. Arizona Statute
 - ii. Nevada Statute

- c. Standing Committee on Judicial Ethics – Advisory Opinion JE15-002
 - i. Idaho Rules Ex Parte Communication

VIII. Other Business

- a. Clark County Administrative Order: 15-08
- b. Long Term Care Crisis

IX. Future Meeting Dates/Agenda Items

- a. October 19, 2015
- b. November 4, 2015
- c. November 23, 2015
- d. December 15, 2015

X. Adjournment

The meeting was adjourned at 4:20 p.m.

TEXAS GUARDIANSHIP INFO

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**Texas is the first state to recognize supported decision-
making as alternative to guardianship**

Blog Healthcare Law Insights

Husch Blackwell LLP

USA September 15 2015

Effective Sept. 1, 2015, there are significant changes to Texas Guardianship laws. For the first time, probate courts must consider alternatives to guardianship, and supports and services available to the proposed ward before a guardianship is created. Two new alternatives to appointing a guardian now exist: Designation of Guardian Before the Need Arises and Alternate Forms of Decision-Making Based on Person-Centered Planning; and Supported Decision Making Agreement. *Tex. Est. Code §§ 1002.0015 & 1357.001.*

The law now includes a new section on Supports and Services, defined as available formal and informal resources and assistance that enable an individual to:

1. Meet his/her needs for food, clothing, or shelter;
2. Care for his/her physical or mental health;
3. Manage his/her financial affairs; or
4. Make personal decisions regarding residence, voting, operating a motor vehicle, and marriage. *Tex. Est. Code § 1002.031.*

Before Appointing a Guardian, the probate court must find by clear and convincing evidence that alternatives to guardianship and supports and services have been considered and determined not to be feasible. If the court grants a

Limited guardianship, the court must specifically state whether the proposed ward lacks the capacity with or without supports and services to make personal decisions regarding residence. *Tex. Est. Code § 1101.101(a)(D) & (E); (c)*. In addition, an Order for Full Guardian must specify that the ward does not have the capacity to make personal decisions regarding residence. *Tex. Est. Code § 1101.151(b)(5)*.

Before appointing a guardian, the court must make a reasonable effort to consider the ward's preference of the person to be appointed guardian regardless of whether the person was designated by the ward before the need arises. A guardian has the right to decide where the ward resides but may only place a ward in a more restrictive placement if the guardian provides notice to the court, the ward and any person who has requested notice and the court orders the placement after a hearing if the ward or another person objects to the proposed placement in a timely manner. *Tex. Est. Code § 1151.051(e)*

A guardianship shall be closed when the court finds that the ward has sufficient capacity with supports and services to care for himself or herself and to manage his or her property. *Tex. Est. Code § 1202.001(b)(2)*. For the first time, a ward or any interested person may petition the court for the full or partial restoration of rights, including the right to decide their residence if he or she has sufficient capacity with or without supports and services. *Tex. Est. Code § 1202.051(3)*

Texas is the first state to recognize supported decision-making as a substitute for guardianship. Supported decision-making is 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." *Tex. Est. Code § 1357.002(3)* The reason for this is to "to enable an adult to make life decisions, including decisions related to where he/she 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." *Tex. Est. Code § 1357.003 (new section)*

For the first time, there is now a BILL OF RIGHTS FOR PERSONS UNDER GUARDIANSHIP. *Tex. Est. Code § 1151.35*, including the right of a ward to complain or raise concerns regarding the guardian or guardianship to the court, including living arrangements, retaliation by guardian, conflicts of interest between the guardian and service providers, or a violation of any of the Bill of Rights; to vote unless restricted by the court, and to petition the court and retain counsel of his/her choice who is certified, to represent ward's interest in the termination or modification of guardianship, the appointment of a different guardian or other appropriate relief under the Bill of Rights, including transition to a supported decision-making agreement.

Husch Blackwell LLP - Deborah C. Hiser

Texas Judicial Council - Elders Committee Report – August 22, 2014

Charge: Assess the ways in which the Texas courts interact with the elderly, including guardianship, probate, elder abuse and other proceedings, and identify judicial policies or initiatives that could be enacted to protect and improve the quality of life for the elderly in Texas.

Members:

Hon. Polly Spencer, Chair
Judge, Probate Court #1, Bexar County
Hon. Glenn D. Phillips
Presiding Judge, City of Kilgore
Hon. Kelly Moore
Judge, 121st Judicial District, Terry & Yoakum
Ms. Allyson Ho
Morgan Lewis, Dallas

Meetings:

January 30, 2014 — The committee discussed its mission and members of the public testified before the committee.

August 15, 2014 — A committee workgroup meeting was held to discuss supporting legislative proposals. The committee supports the concepts in the following proposals:

Legislative Proposals:

1. **An act relating to the determination of incapacity in a guardianship proceeding and the findings and proof required prior to the appointment of a guardian of the person or estate.**
 - Defines supports and services – formal and informal resources and assistance that enable an individual to meet his or her needs for food, clothing, or shelter, to care for his or her physical or mental health, to manage his or her financial affairs or to make personal decisions regarding residence, voting, operating a motor vehicle and marriage
 - Before appointing a guardian, the court must find by clear and convincing evidence that alternatives to guardianship that would avoid the need for appointment of a guardians have been explored and determined to not be feasible and that supports and services available to the proposed ward that would avoid the need for the appointment of a guardian have been explored and determined to not be feasible
 - Includes a modification to the Certificate of Medical Examination requiring a statement about the possibility of improvement and, if improvement is possible, the addition of a time frame for re-evaluating the individual to determine if the guardianship continues to be appropriate

2. An act relating to an applicant's and guardianship ad litem's duties in guardianship proceedings and required training.

- Requires that the applicant or applicant's attorney certify that the guardianship is necessary and that alternatives to guardianship and supports and services have been investigated
- Requires that the guardian ad litem evaluate the necessity of the guardianship and evaluate alternatives to guardianship
- Requires that the applicant's attorney must be certified as having successfully completed a course of study in guardianship law
- Increases the number of hours required for certification from three to four

3. An act relating to the recognition of a supported decision-making agreement as an alternative to a guardianship for adults with disabilities.

- Recognizes a less restrictive alternative to guardianship for adults with disabilities who need assistance with decisions regarding daily living but who do not wish to delegate authority over those decision to an agent
- An adult with a disability may voluntarily authorize his or her supporter to:
 - Assist with understanding the options, responsibilities and consequences to make life decisions related to supports and services, place of residence, and place of employment
 - Assist the adult in accessing, collecting or obtaining information relevant to the decision including medical, psychological, financial, educational, or treatment records
 - Assist the adult with a disability in understanding the information
 - Assist the adult in communicating the decision to other person

4. An act relating to the recognition of guardianship alternatives for adults with disabilities.

- Before the initiation of a guardianship proceeding or the appointment of a guardian, a court must make a finding that no less restrictive alternatives exist to resolve the need for a guardianship

5. **An act relating to supports and services designed to limit power or authority of a guardian over an incapacitated person and to develop or maintain the maximum self-reliance and independence in an incapacitated person.**
 - Requires the attorney ad litem and guardian ad litem to investigate whether the guardianship is necessary or the specific powers or duties of the guardian be limited if the incapacitate person or ward received supports and services

6. **An act relating to decisions about a ward's residence**
 - Requires the court to design a guardianship to encourage the development or maintenance of maximum self-reliance and independence in the incapacitated person including decisions regarding residence

Support of Funding Proposals:

The Elders Committee recommends that the Judicial Council support the Office of Court Administration's legislative appropriations request exceptional item request entitled "*Enhance Judicial Services to the Elderly and Incapacitated.*" This request is to "initiate a new pilot program to place Guardianship Compliance Specialists across the state to review guardianship filings for the elderly and incapacitated to determine if guardians are following statutorily-required procedures, to review annual reports filed by the guardians, and to ensure that exploitation and/or neglect of persons under guardianship (wards) is not occurring." The total amount of this request is \$1.1 million in the next biennium.

ELDER / VULNERABLE EXPLOITATION



Elder / Vulnerable Exploitation – Law Enforcement and District Attorney Perspectives



Chief Deputy District Attorney
Jay P. Raman

Elder / Vulnerable Exploitation Topics

- 1) The Law
- 2) Perspectives
- 3) Private Professional Guardianship Exploitation
- 4) Family member Guardianship Exploitation

The mission is clear

- **NRS 200.5091 Policy of State.** It is the policy of this State to provide for the cooperation of law enforcement officials, courts of competent jurisdiction and all appropriate state agencies providing human services in identifying the abuse, neglect, exploitation and isolation of older persons and vulnerable persons through the complete reporting of abuse, neglect, exploitation and isolation of older persons and vulnerable persons.

Elder/Vulnerable Exploitation: The Law

“Exploitation” means any act taken by a person who has the trust and confidence of an older person or a vulnerable person or any use of the power of attorney or guardianship of an older person or a vulnerable person to:

- (a) Obtain control, through deception, intimidation or undue influence, over the older person’s or vulnerable person’s money, assets or property with the intention of permanently depriving the older person or vulnerable person of the ownership, use, benefit or possession of his or her money, assets or property; or
- (b) Convert money, assets or property of the older person or vulnerable person with the intention of permanently depriving the older person or vulnerable person of the ownership, use, benefit or possession of his or her money, assets or property.

- NRS 200.5092

Elder/Vulnerable Exploitation: The Law

- NRS 200.5092 allows for broad spectrum of criminal activity to be prosecuted as Elder / Vulnerable Person Exploitation or Abuse
- The penalties (most severe provide for 8-20 years prison, per count) are rightfully harsh
- The Statute was designed to include people who exploit through guardianship
- Question: Did the taking of the wards money provide a benefit the ward, or the suspect? Was it excessive or justifiable?

My Perspective (DA)

- The public hates elder exploitation /abuse
 - Victims have worked hard all their lives to make their nest egg
 - Someone comes in and destroys that
 - People feel sorry for the Victim, want to punish the suspect
 - People also wouldn't want this to happen to them/their family members when they get older or vulnerable
- People are extremely mad at the previous guardianship system here in Clark County
- These types of cases have very high jury appeal

My Perspective (DA)

- Many older victims will fall into both categories of victim
- A: Older (60 years or older)
- B: Vulnerable
- “Vulnerable person” means a person 18 years of age or older who:
 - (a) Suffers from a condition of physical or mental incapacitation because of a developmental disability, organic brain damage or mental illness; or
 - (b) Has one or more physical or mental limitations that restrict the ability of the person to perform the normal activities of daily living.

My Perspective (DA)

- Older people are treated the same as vulnerable, because it is presumed that they are susceptible to the same abuse vulnerable people are – there are many undiagnosed vulnerable who are elderly
- There is a recognized gray-area of where vulnerable starts
- Common aging diseases make older people more vulnerable
- We only need one, age, mental or physical issue

My Perspective (DA)

- Exploitation of vulnerable or older person cases likely will be proved circumstantially
- If the Victim is suffering from a mental condition that is severe enough to classify them as 'vulnerable', it is possible they may not be competent to be a witness
- Even if some valuable information could be testified to by the vulnerable person, it has to be accounted for that there may be a degradation in the Victim's mental state, or they may pass away
- Because it is likely the Victim will not be called as a witness, the case is approached the same even if the Victim has passed away

My Perspective (DA)

- Types of cases worked on for exploitation theft and fraud
 - Guardians
 - Private Professional, Private individual (friend or girlfriend), family member
 - Caregiver
 - Attorneys

Law Enforcement Perspectives

- Elder / Vulnerable Person cases are difficult cases to investigate
 - Unique issues present in these cases
 - Cases come from multiple departments within the same police department

Suggestions to prevent crime / improve ability to investigate

- The Court must examine the fees guardians charge
 - Proper scrutiny of invoices can and would prevent theft
- Requirement of sufficiently detailed explanation of actual activity being billed for is helpful, including if service was provided by person other than guardian (specific times, locations, events)

Law Enforcement Perspectives

Suggestions to prevent crime / improve ability to investigate

- Enforcement of time frames for filing documents, inventory and annual accountings reduces window for theft from wards, and also presents more evidence if those filings were falsified
- Court enforcement of required 'blocked' of accounts or having bonds in place is important
- Within the proposed budget for ward's expenses, more attention should be paid to things classified as 'miscellaneous' expenses and fees – those may lack paper trail, could lend to fraud

Law Enforcement Perspectives

Suggestions to prevent crime / improve ability to investigate

- Notification of interested parties (family) should be investigated and verified. Generic examples that have been tendered to guardianship court before that they couldn't identify any family members to notify, does not reveal the lengths to which the guardian conducted their search
- Standards should be set up to show to what length should search for family be done
- Standards should be set up on what occurs with wards estate once they pass away, if no heirs

Private Professional Guardianship Exploitation: Patience Bristol



Case Study: Patience Bristol

- Well established Private Professional Guardian working for guardianship company / running her own also
- “Professional Fiduciary Services of Nevada”
- “Guardianship Solutions, Inc.”
- Previous employment at Clark County Public Guardian’s Office
- Previous employment at Child Protective Services
- Criminal case involved 4 wards, both elderly and vulnerable people

Patience Bristol: Victims Ly and Nguyen

- -An Thi Ly was a vulnerable person, age 55
- -Lung Van Nguyen was an elderly/vulnerable person, age 80
- Ly and Nguyen were a married couple
- Ly would care for her husband, Nguyen as she was in better health and he was in poor health
- Ly suffered a stroke which rendered her unable to communicate and incompetent to manage her own affairs
 - A doctor at Spring Valley Hospital conducted the evaluation, made determination

Patience Bristol: Victims Ly and Nguyen

- Nguyen suffered from advanced dementia
 - Diagnosed by a doctor
- When Ly was hospitalized and no one to care for Nguyen he was admitted to a care facility for hospice care

Timeline

- March 4, 2013 – Patience Bristol appointed guardian for Ly
- March 20, 2013 – Patience Bristol appointed guardian for Nguyen
- May 25, 2013 – Nguyen dies
- (Patience Bristol is guardian for Nguyen only for approximately 2 mo.)

Patience Bristol: Victims Ly and Nguyen

- When Bristol was appointed in March 2013 Ly and Nguyen's combined liquid assets were \$243,000 in two bank accounts
- Bristol closed those accounts, transferred to a US Bank account on March 20, 2013 (same day appointed for Nguyen), Bristol is sole signer "Anh Thy Ly c/o Patience M. Bristol, Guardian"
- May 9, 2013 Bristol closes the US Bank account, transfers to Nevada State Bank
- Between March 20 and June 11, 2013, Bristol removes over \$155,000 through a series of cash withdrawals and check payments
- Only \$52,000 was used for the benefit of Ly & Nguyen

Patience Bristol: Victim Dutton

- Jean Dutton, a vulnerable person age 50, was appointed a guardian in 2010 – Patience Bristol
- Dutton's money was at Bank of Nevada from 2010 – March 2013
- Bristol then moves the money to US Bank, and then two months later moves the money to Nevada State Bank
- Dutton had approximately \$100,000 at the time the money was moved

Patience Bristol: Victim Dutton

- Bristol removed \$32,000 over 46 transactions from March to June 2013
- This occurred sometimes on a daily basis
- Many of the cash withdrawal slips had notations such as “medications,” “personal spending,” and “personal items” suggesting it was used for the benefit of Dutton
- Dutton was interviewed in August 2013 – said during that timeframe had seen Bristol only 1x
 - She provided him with nothing
 - Facility Dutton stayed at confirmed the same, they had to step in and provide hygiene items because guardian wasn't

Patience Bristol: Victim Dutton

- During the timeframe, Bristol paid less than \$1,000 for the benefit of Dutton (phone bill, bank fees, and an assistant)
- Bristol paid herself \$5,792.00 for guardianship services during the period
 - Yet she did not meet with Dutton or provide any guardianship services on his behalf
 - Was not even returning Dutton's phone calls
- Total amount stolen from Dutton
\$38,494

Patience Bristol: Victim Berger

- Kristina Berger was a vulnerable person who's previous guardian was her mother, until her mother passed away in 2008
- Patience Bristol was appointed successor guardian
- In March 2013 two checks were deposited in Berger's bank account, \$5,000 from Berger's father, and \$500 from her special needs trust
- All of the money was withdrawn through 16 cash withdrawals in March and April 2013
- Berger had not seen Bristol from February 2013 to May 2013, in May Bristol gave Berger three small checks for personal needs – they bounced

Patience Bristol: Victim Berger

- Besides stealing the \$5,500, Bristol:
- Took personal property that belonged to Berger, including heirlooms and other jewelry
- Bristol took 57 items of her and Dutton's and pawned them at pawnshops all over the valley
- After all of this, Berger was able to identify only 12 of her items at pawnshops
- For those 12 items that could be identified, Bristol had received \$5,000 from pawnshops
- Search warrant of Bristol's home uncovered several more pieces of Berger's and Dutton's jewelry

Patience Bristol: Victim Berger

- The approximately 30 pieces of jewelry taken from Berger were valued at \$47,873
- Emotional impact of this Victim's case more damaging than the financial impact
- Many of the jewelry items that could not be recovered from pawnshops were fond memories that Berger had of her mother
- Berger said that Bristol had been emotionally terrorizing her
- Berger's father only sent the \$5,500 (later stolen) at the request of Bristol, saying that she needed the money to meet Berger's basic needs

Patience Bristol: Victims

When Bristol was later interviewed:

- Admitted she had a gambling problem, spent much of her wards money at bars around the valley
- Admitted that she falsely represented money taken that should have gone to funeral expenses (for Nguyen) or pre-need burial policy

Total amount stolen from

Ly and Nguyen: \$102,511


Dutton: \$38,494

Berger: \$19,475*

Patience Bristol: Fate

- Patience Bristol was charged with numerous counts of Exploitation of Elderly, Exploitation of Vulnerable, Burglary, and Obtaining Money Under False Pretenses
- In relatively quick fashion, she pled guilty to Exploitation of Elderly/Vulnerable Person
- She is serving 3-8 years in prison

8 THE STATE OF NEVADA,
9 Plaintiff,
10 -vs-
11 PATIENCE MARIE BRISTOL,
12 #1495888
13 Defendant.

MFA
Guilty Plea Agreement
3312643


CASE NO: C-13-294881-1
DEPT NO: XI

14 GUILTY PLEA AGREEMENT
15 I hereby agree to plead guilty to: EXPLOITATION OF ELDERLY/VULNERABLE
16 PERSON (Category B Felony - NRS 200.5092, 200.5099), as more fully alleged in the
17 charging document attached hereto as Exhibit "1".
18 My decision to plead guilty is based upon the plea agreement in this case which is as
19 follows:
20 Both parties recommend a sentence of three (3) to eight (8) years in the Nevada
21 Department of Corrections. Additionally, both parties stipulate to a restitution figure of
22 \$160,480.19 (\$102,511.19 to AHN THI LY and LUNG VAN NGUYEN; \$38,494.00 to
23 JEAN DUFTON & \$19,475.00 to KRISTINA BERGER), with an Own Recognizance

Family member guardian exploitation



Family member exploitation

- Family member exploitation cases are more difficult to prove under Nevada's elder exploitation statute. "As used in this subsection, "undue influence" does not include the normal influence that one member of a family has over another."
- BUT not under a Guardianship Scenario:
- (a) Obtain control, through deception, intimidation or undue influence
–Would not normally apply to guardianship
- SO:
- (b) Convert money, assets or property of the older person or vulnerable person with the intention of permanently depriving the older person or vulnerable person of the ownership, use, benefit or possession of his or her money, assets or property.

Elder / Vulnerable Exploitation – Law Enforcement and District Attorney Perspectives



Chief Deputy District Attorney
Jay P. Raman

MEDICAL/LEGAL TERMINOLOGY

NR Aug-03

Capacity and Competence

Lo, Bernard. *Resolving Ethical Dilemmas: A Guide for Clinician, 2nd Editions*. Lippincott Williams & Wilkins, 2000: 80-93.
<http://www.som.ucsf.edu/som/education/gme/links/riskmanagement.asp>
<http://manuals.ucsfmedicalcenter.org/AdminManual/AdminManualHome.htm>

Key Points:

- **Capacity: decision-making ability, determined by any attending physician**
- **Competence: capacity to make medical decision, determined by the courts**
- **Assess capacity even when patient agrees with your recommendations**
- **Consult psychiatry, ethics committee, and/or risk management in difficult situations**

1. Capacity

- Balance autonomy with harm
- Usually not challenged when the patient agrees with the physician, but still should be assessed
- Standards
 - Makes and communicates a choice
 - Appreciates
 - Medical situation and prognosis
 - Nature of recommended care
 - Alternative courses of care
 - Risks, benefits, and consequences of each alternative
 - Decisions are consistent with patient's values and goals
 - Decisions do not result from delusions
 - Uses reasoning to make a choice
- Standards may be stricter when options have greater risk
- Questions
 - "Tell me what you believe is wrong with your health now."
 - "What is [] likely to do for you?"
 - "What do you believe will happen if you do not have []?"
 - "If these benefits or risks occurred, how would your everyday activities be affected?"
 - "Tell me how you reached your decision. Help me understand your decision."
- Mental status tests: can have abnormal tests but have capacity and be deemed competent
- Restrictions on refusal of care (based on prior cases):
 - Communicable diseases
 - Pregnancy
 - Treating competent patients for their own benefit
- Documentation
- Surrogate decision-making and substituted judgment: what decision would the patient make if he/she were capable?

2. Who determines capacity: attending physicians – housestaff under attendings in an urgent situation

- Psychiatry: helpful for additional documentation in difficult evaluations
 - 5150: 72 hour legal hold placed on person who "as a result of a mental disorder, is a danger to others or to himself or herself, or gravely disabled"
 - Age >21 with Alzheimer's, brain injuries, or other organic brain disorders or intoxication may be held under 5150

3. Competence: patient has the capacity to make informed decisions about medical interventions

- Determined by the courts, but in practice determined *de facto* by physicians
- Can be competent in one realm, but not another

4. Resources

- Risk management: 353-1842, website above
- Ethics committee: Bernie Lo

Definitions of incapacity/incompetence

NRS 1.427 “Incapacitated” defined. “Incapacitated” means unable to perform the duties of office because of advanced age or mental or physical disability.

(Added to NRS by [1997, 1087](#); A [2009, 1338](#))

NRS 3.092 Retirement because of incapacity, disability or advanced age.

1. A district judge who has served as a district judge, a judge of the Court of Appeals or a justice of the Supreme Court in any one or more courts for a period or periods aggregating 5 years or more and who becomes permanently incapacitated, physically or mentally, to perform the duties of office may retire from office regardless of age.

2. Any district judge who retires pursuant to the provisions of subsection 1 or who is retired because of advanced age or physical or mental disability pursuant to [Section 21 of Article 6](#) of the Constitution of the State of Nevada is entitled to receive annually from the State of Nevada, a pension for the remainder of his or her life, the same pension the judge would receive under [NRS 3.090](#) based on his or her years of service but without regard to his or her age.

3. Any judge, or a guardian of a judge on behalf of the judge if the judge is unable to act, who desires to retire voluntarily must give notice in writing to the Governor. The Governor shall appoint three physicians licensed to practice medicine in the State of Nevada to examine the judge and report the results to the Governor in writing. If a majority of the physicians is of the opinion that the judge is permanently incapacitated, physically or mentally, the Governor shall approve the retirement. The judge or a guardian of the judge must file with the Executive Officer of the Public Employees’ Retirement Board an affidavit setting forth the fact of the judge’s retirement and the years he or she has served in either or both of such courts.

NRS 41.300 Insane persons; presumption of legal capacity on discharge. After a person’s insanity has been judicially determined, such person can make no conveyance or other contract, or delegate any power or waive any right until the person’s restoration to presumed legal capacity, or until the person has been judicially declared to be sane. A certificate from the superintendent or resident physician of the insane asylum to which such person may have been committed showing that such person had been discharged therefrom shall establish the presumption of legal capacity in such person from the time of such discharge.

[1:23:1941; 1931 NCL § 3536]

NRS 41.310 Adjudication of sanity. The district courts of the several counties shall have jurisdiction to hear and determine the question as to whether or not a person, previously adjudicated to be insane, shall be adjudicated to be sane.

[2:23:1941; 1931 NCL § 3536.01]

NRS 41.320 Petition seeking restoration of status as sane; notice. Any person, on behalf of an alleged insane person, may file a petition in the district court seeking an order restoring the alleged insane person to the status of a sane person. Upon the filing of the petition for that purpose, the clerk shall give such notice of the filing of the same as the court may order.

[3:23:1941; 1931 NCL § 3536.02]

NRS 41.325 Notice of adjudication of sanity to be given to Administrative Officer and Medical Director of Northern Nevada Adult Mental Health Services. After any proceeding in which a person, previously adjudicated to be insane, is adjudicated to be sane, the clerk of the district court shall immediately notify the Administrative Officer and the Medical Director of Northern Nevada Adult Mental Health Services of the adjudication.

(Added to NRS by 1959, 851; A 1973, 92, 1218; [1985, 231](#); [2001, 1116](#))

NRS 111.679 Capacity to make or revoke. The capacity required to make or revoke a deed upon death is the same as the capacity required to make a will.

(Added to NRS by [2011, 1349](#))

NRS 141.060 Incapacity of joint personal representatives. If one of several personal representatives of the same estate to whom letters have been granted dies, becomes incapacitated or disqualified, or otherwise becomes incapable of executing the duties of the office, or if the letters are revoked or annulled according to law with respect to one personal representative, the remaining personal representative shall proceed and complete the administration of the estate.

[90:107:1941; 1931 NCL § 9882.90]—(NRS A [1999, 2282](#))

NRS 159.019 “Incompetent” defined. “Incompetent” means an adult person who, by reason of mental illness, mental deficiency, disease, weakness of mind or any other cause, is unable, without assistance, properly to manage and take care of himself or herself or his or her property, or both. The term includes a person who is mentally incapacitated.

(Added to NRS by 1969, 412; A [1999, 1396](#); [2003, 1770](#))

NRS 159.022 “Limited capacity” defined. A person is of “limited capacity” if:

1. The person is able to make independently some but not all of the decisions necessary for the person’s own care and the management of the person’s property; and

2. The person is not a minor.

(Added to NRS by [1981, 1931](#); A [1999, 1396](#); [2003, 1771](#))

NRS 160.070 Evidence of necessity for guardian for incompetent. If a petition is filed for the appointment of a guardian of a mentally incompetent ward, a certificate of the Secretary or a representative of the Secretary, setting forth the fact that such person has been rated incompetent by the Department of Veterans Affairs on examination in accordance with the laws and regulations governing the Department of Veterans Affairs and that the appointment of a guardian is a condition precedent to the payment of any money due such person by the Department of Veterans Affairs, constitutes prima facie evidence of the necessity for such appointment.

[6:28:1929; NCL § 9553]—(NRS A [1995, 1079](#))

NRS 162A.070 “Incapacity” defined. “Incapacity” means the inability of an individual to manage property or business affairs because the individual:

1. Has an impairment in the ability to receive and evaluate information or make or communicate decisions even with the use of technological assistance;

NRS 166A.100 “Incapacitated” defined. “Incapacitated” means lacking the ability to manage property and business affairs effectively by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, disappearance, minority or other disabling cause.

(Added to NRS by [2007, 285](#))

NRS 166.040 Competency of settlor; writing required; circumstances when writing meets requirements for trust to be created for benefit of settlor; settlor’s ability to hold other powers.

1. Any person competent by law to execute a will or deed may, by writing only, duly executed, by will, conveyance or other writing, create a spendthrift trust in real, personal or mixed property for the benefit of:

(a) A person other than the settlor;

(b) The settlor if the writing is irrevocable, does not require that any part of the income or principal of the trust be distributed to the settlor, and was not intended to hinder, delay or defraud known creditors; or

(c) Both the settlor and another person if the writing meets the requirements of paragraph (b).

NRS 293.5415 Circumstances in which person adjudicated mentally incompetent declared ineligible to vote; certain judicial findings required. A person is not ineligible to vote on the ground that the person has been adjudicated mentally incompetent unless a court of competent jurisdiction specifically finds by clear and convincing evidence that the person lacks the mental capacity to vote because he or she cannot communicate, with or without accommodations, a specific desire to participate in the voting process and includes the finding in a court order.

(Added to NRS by [2013, 59](#))

NRS 293.542 Duty of court to provide notification of judicial finding that person lacks mental capacity to vote. Within 30 days after a court of competent jurisdiction issues an order stating that the court specifically finds by clear and convincing evidence that a person lacks the mental capacity to vote because he or she cannot communicate, with or without accommodations, a specific desire to participate in the voting process, the court shall provide a certified copy of the order to:

1. The county clerk of the county in which the person is a resident; and
2. The Office of the Secretary of State.

(Added to NRS by [1997, 2776](#); A [2013, 59](#))

NRS 412.2645 Person may not be tried or punished while incompetent.

1. A person may not be tried or adjudged to punishment under this Code while incompetent.
2. For the purposes of this section, a person is incompetent when presently suffering from a mental disease or defect rendering the person unable to understand the nature of the proceedings against that person or to conduct or cooperate intelligently in the defense of the case.

(Added to NRS by [2013, 1098](#))

NRS 432B.070 "Mental injury" defined. "Mental injury" means an injury to the intellectual or psychological capacity or the emotional condition of a child as evidenced by an observable and substantial impairment of the ability of the child to function within a normal range of performance or behavior.

(Added to NRS by [1985, 1369](#))

NRS 433.099 "Intellectual disability" defined. "Intellectual disability" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

(Added to NRS by 1975, 1591; A [2013, 662](#))—(Substituted in revision for NRS 433.174)

NRS 433.5473 "Person with a disability" defined. "Person with a disability" means a person who:

1. Has a physical or mental impairment that substantially limits one or more of the major life activities of the person;
2. Has a record of such an impairment; or
3. Is regarded as having such an impairment.

(Added to NRS by [1999, 3230](#))

NRS 615.120 "Physical or mental disability" defined. "Physical or mental disability" means a physical or mental condition which materially limits, contributes to limiting or, if not corrected, will probably result in limiting an individual's activities or functioning. It includes behavioral disorders characterized by deviant social behavior or impaired ability to carry out normal relationships with family and community which may result from vocational, educational, cultural, social, environmental or other factors.

(Added to NRS by 1967, 828)

Social Security

Official Social Security Website

Program Operations Manual System (POMS)

TN 30 (03-04)

GN 00502.300 Digest of State Guardianship Laws

A. Background

Based on regional chief counsel opinions, we have compiled a digest (see GN 00502.300 C.) of State guardianship laws that provide summary information on the State laws concerning the appointment of guardians and other persons who are placed in charge of the affairs of an adult who is incapable of managing his/her affairs. Rather than finding legal incompetence, many States now strive for limited guardianships when the individual retains some ability to manage his/her affairs. Each State synopsis provides the conditions under which the ruling/appointment constitutes a finding of legal incompetency. Where applicable, each synopsis also provides the conditions under which the ruling/appointment may NOT constitute a finding of legal incompetency or under which the ruling/appointment might indicate the need for a representative payee. Cautions have been footnoted.

B. Procedure

Use the digest to determine if the court order of the appointment of a guardian means the beneficiary is legally incompetent. If, based on the State digest, the court order finds the beneficiary to be legally incompetent, develop and appoint a representative payee for the beneficiary.

If the court does NOT find the beneficiary legally incompetent in its order, use the digest to determine if the court order otherwise indicates the need for a representative payee. Also consider other evidence of capability (see GN 00502.020 - GN 00502.070).

C. EXHIBIT – DIGEST OF STATE GUARDIANSHIP LAWS

State	State Rulings on Incompetency and Person Appointed
Alabama	<p>Conditions Under Which Ruling/Appointment Constitutes a Finding of Legal Incompetency: Appointment of a guardian for incapacitated persons (lacking the capacity to make responsible decisions) or conservator for persons unable to manage property and business affairs effectively.</p> <p>Terms for Person Appointed: Guardian, Conservator</p> <p>Conditions Under Which Ruling/Appointment Might Not Constitute a Finding of Legal Incompetency: Appointment of a limited guardian or limited conservator requires a case-by-case analysis to determine if the incapacity or inability directly renders the claimant unable to handle benefit payments.</p> <p>Terms for Person Appointed: Limited Guardian, Limited Conservator</p>
Alaska	<p>Conditions Under Which Ruling/Appointment Constitutes a Finding of Legal Incompetency: Appointment of guardian for an incapacitated person. (An incapacitated person lacks the ability to provide the essential requirements for the person’s health or safety). Appointment of a conservator to manage the estate and/or affairs of a protected person.</p> <p>Term for Person Appointed: Guardian, Full Guardian, Conservator</p> <p>Conditions Under Which Ruling/Appointment Might Not Constitute a Finding of Legal Incompetency: Appointment of a partial guardian who has fewer than all of the legal duties and powers of a full guardian. The court order must be reviewed carefully to determine whether it establishes legal incompetency or whether it otherwise indicates the need for a payee.</p> <p>Term for Person Appointed: Partial Guardian</p>

<p>State American Samoa</p>	<p>State Rulings on Incompetency and Person Appointed</p> <p>Conditions Under Which Ruling/Appointment Constitutes a Finding of Legal Incompetency: Appointment of guardian for a person mentally or physically incompetent to manage his own property.</p> <p>Term for Person Appointed: Guardian</p> <p>Conditions Under Which Ruling/Appointment Might Not Constitute a Finding of Legal Incompetency: Appointment of guardian not made under American Samoa Code Annotated §§ 40.0401 - 40.0410.</p>
<p>Arizona</p>	<p>Conditions Under Which Ruling/Appointment Constitutes a Finding of Legal Incompetency: Appointment of guardian for an incapacitated person. An incapacitated person is one who is impaired by reason of mental illness, mental deficiency, mental disorder, physical illness or disability, chronic use of drugs, chronic intoxication or other cause, except minority, to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person.</p> <p>Term for Person Appointed: Guardian</p>
<p>Arkansas</p>	<p>Conditions Under Which Ruling/Appointment Constitutes a Finding of Legal Incompetency: Appointment of guardian due to incapacitation by reason of a disability such as mental illness, physical illness, chronic use of drugs, or chronic intoxication, to the extent of lacking sufficient understanding or capacity to make or communicate decisions to meet essential requirements for his health or safety or to manage his estate.</p> <p>Terms for Person Appointed: Guardian, Temporary Guardian (90 days).</p> <p>Conditions Under Which Ruling/Appointment Might Not Constitute a Finding of Legal Incompetency: Appointment of guardian or conservator due to advanced age or physical disability. The court order must be reviewed carefully to determine whether it contains a finding of legal</p>

State	<p>State Rulings on Incompetency and Person Appointed incompetency or whether it otherwise indicates the need for a payee Terms for Person Appointed: Guardian, Conservator</p>
California	<p>Conditions Under Which Ruling/Appointment Constitutes a Finding of Legal Incompetency: Appointment of conservator of the person or a conservator of the estate (or both) where there is a finding of incompetency. Generally, the appointment of a conservator of the person is for a person who is unable to provide properly for his or her personal needs, and the appointment of a conservator of the estate is for the person who is substantially unable to manage his or her own financial resources or resist fraud or undue influence.</p> <p>Terms for Person Appointed: Conserver of the Person, Conservator of the Estate, Conservator of the Person & Estate.</p> <p>Conditions Under Which Ruling/Appointment Might Not Constitute a Finding of Legal Incompetency: Appointment of a limited conservator for a developmentally disabled adult. The appointment does not preclude the limited conservatee from entering into transactions or types of transactions, except as provided by the court order appointing the limited conservator.</p> <p>Terms for Person Appointed: Limited Conservator</p>
Colorado	<p>Conditions Under Which Ruling/Appointment Constitutes a Finding of Legal Incompetency: Appointment of a guardian. Guardians are appropriate only for incapacitated persons.</p> <p>Terms for Person Appointed: Guardian</p> <p>Conditions Under Which Ruling/Appointment Might Not Constitute a Finding of Legal Incompetency: Appointment of a conservator or the entry of another protective order is not a determination of legal incompetence. However, the appointment of a conservator may be evidence of a beneficiary's inability to manage or direct the management</p>

State	State Rulings on Incompetency and Person Appointed of financial affairs or benefits. Further development regarding the need for a representative payee is required. Term for Person Appointed: Conservator, Limited Conservator
Connecticut	Conditions Under Which Ruling/Appointment Constitutes a Finding of Legal Incompetency: A court ruling or appointment finds the person is incapable of caring for himself or herself or incapable of managing or directing the management of his/her financial affairs or benefits. Terms for Person Appointed: Conservator of the Person, Conservator of the Estate, Plenary Guardian, Limited Guardian
Delaware	Conditions Under Which Ruling/Appointment Constitutes a Finding of Legal Incompetency: Appointment of a guardian does not necessarily constitute a finding of legal incompetence. Guardianship appointments must be individually analyzed and court contact will be required to determine if legal incompetency was found. Term for Person Appointed: Guardian, Guardian of the Person Conditions Under Which Ruling/Appointment Might Not Constitute a Finding of Legal Incompetency: Appointment of a guardian of the property does not constitute a finding of legal incompetence, although it may indicate the need for a representative payee. Term for Person Appointed: Guardian of the Property
District of Columbia	Conditions Under Which Ruling/Appointment Constitutes a Finding of Legal Incompetency: Appointment of a guardian or conservator for an "incapacitated individual" does not automatically constitute a finding of legal incompetence. An individual found incapacitated shall retain all legal rights and abilities other than those expressly limited or curtailed in the order of appointment of a guardian or in a protective order. The

<p>State</p>	<p>State Rulings on Incompetency and Person Appointed court order should be analyzed and/or court contact made to determine competency. Term for Person Appointed: Guardian, Limited Guardian, Conservator, Limited Conservator</p>
<p>Florida</p>	<p>Conditions Under Which Ruling/Appointment Constitutes a Finding of Legal Incompetency: Order appointing a plenary guardian of an incapacitated person (one who lacks the capacity to manage property or meet essential health and safety requirements). Order appointing limited guardian of incapacitated person (when the lack of capacity affects the ability to manage benefits). Term for Person Appointed: Guardian, Plenary Guardian, Limited Guardian Conditions Under Which Ruling/Appointment Might Not Constitute Legal Incompetency: Order appointing a limited guardian over an incapacitated person for whom the court order does not specifically delegate rights affecting the ward's ability to manage finances and property. Term for Person Appointed: Limited Guardian, Conservator, Guardian of the Property</p>
<p>Georgia</p>	<p>Conditions Under Which Ruling/Appointment Constitutes a Finding of Legal Incompetency: Appointment of a guardian for an adult incapacitated by reason of mental illness, mental retardation, mental disability, physical illness or physical disability, chronic use of drugs or alcohol, or other cause. Such adult lacks sufficient understanding or capacity to make significant responsible decisions concerning his or her person or is incapable of communicating them. Appointment of a guardian for an adult incapable of managing his or her estate. Terms for Person Appointed: Guardian over the Person and/or Guardian over the Property. Conditions Under Which Ruling/Appointment Might Not Constitute Legal Incompetency: Appointment of a</p>

State	<p>State Rulings on Incompetency and Person Appointed guardian over the property based upon detention by a foreign power or disappearance. Terms for Person Appointed: Guardian over the Property</p>
Guam	<p>Conditions Under Which Ruling/Appointment Constitutes a Finding of Legal Incompetency: Appointment of a guardian for an insane or incompetent individual. An incompetent person is any person who by reason of old age, disease, weakness of mind or other cause, is unable, unassisted, to properly manage and take care of himself or his property. Term for Person Appointed: Guardian, General Guardian, Special Guardian</p>
Hawaii	<p>Conditions Under Which Ruling/Appointment Constitutes a Finding of Legal Incompetency: Appointment of a guardian for an incapacitated person. An incapacitated person is one who is impaired by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, or other cause (except minority) to the extent that the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning one's person. Term for Person Appointed: Guardian of the Person Conditions Under Which Ruling/Appointment Might Not Constitute a Finding of Legal Incompetency: Appointment of a guardian which specifies areas in which the ward shall retain the power to make and carry out decisions concerning himself or herself.</p>
Idaho	<p>Conditions Under Which Ruling/Appointment Constitutes a Finding of Legal Incompetency: Appointment of a guardian for an incapacitated person. Incapacitated person is one who is impaired, except by minority, to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person. The term shall not refer to a</p>

State	<p>State Rulings on Incompetency and Person Appointed developmentally disabled person. Appointment of a conservator for a protected person who is unable to manage his or he property and affairs effectively. Term for Person Appointed: Guardian, Conservator</p>
Illinois	<p>Conditions Under Which Ruling/Appointment Might Indicate a Need for a Payee: Appointment of a plenary guardian for a disabled person. All other guardianship appointments are ordered only to the extent necessitated by the individual's actual mental, physical and adaptive limitations, and must be analyzed on a case-by-case basis. Terms for Person Appointed: Plenary Guardian Conditions Under Which Ruling/Appointment Might Not Constitute Legal Incompetency: Appointment of a limited or temporary guardian. The limited guardianship removes from the disabled person only that authority which the court specifically gives to the limited guardian through a written order. Court contact may be necessary to determine if legal incompetency has been found. Terms for Person Appointed: Limited Guardian, Temporary Guardian</p>
Indiana	<p>Conditions Under Which Ruling/Appointment Constitutes a Finding of Legal Incompetency: Court ruling or appointment finding the person legally incapacitated. An incapacitated person is an individual who (1) cannot be located upon reasonable inquiry; (2) has a developmental disability; or (3) because an incapacity (such as insanity, mental illness, mental deficiency, physical illness, infirmity, habitual drunkenness, excessive use of drugs, incarceration, confinement, detention, duress, fraud, undue influence of others) is unable to provide self-care and/or manage his/her property, in whole or in part. Terms for Person Appointed: Guardian, Limited Guardian, Temporary Guardian, Successor Guardian, Conservator</p>
Iowa	<p>Conditions Under Which Ruling/Appointment Constitutes a Finding of Legal Incompetency: A court</p>

<p>State</p>	<p>State Rulings on Incompetency and Person Appointed ruling or appointment of a guardian includes a finding that the individual is incompetent or is of unsound mind. A court appointment is made for a person whose decision-making capacity is so impaired he is unable to provide for personal safety or necessities or is unable to make, communicate or carry out important decisions concerning his personal affairs. Term for Person Appointed: Guardian Conditions Under Which Ruling/Appointment Might Not Constitute a Finding of Legal Incompetency: An appointment of a guardian or conservator that does not include a finding of incompetency must be individually analyzed and court contact will be required to determine if legal incompetency was found. Term for Person Appointed: Limited Guardian, Temporary Guardian, Standby Guardian, Conservator, Limited Conservator, Temporary Conservator, Standby Conservator</p>
<p>Kansas</p>	<p>Conditions Under Which Ruling/Appointment Constitutes a Finding of Legal Incompetency: Court ruling or appointment finds the person to be incompetent or an adult with impairment in need of a guardian or a conservator. An adult with such an impairment is one whose ability to receive and evaluate relevant information, or to effectively communicate decisions, or both, even with the use of assistive technologies or other supports, is impaired such that the person lacks the capacity to manage such person's estate, or to meet essential needs for physical health, safety or welfare, and who is in need of a guardian or a conservator, or both. Terms Related to Person Responsible for Guardianship: Guardian, Conservator Conditions Under Which Ruling/Appointment Might Not Constitute a Finding of Legal Incompetency: Court appoints a temporary guardian or temporary conservator. Analyze each case individually and contact the court if you</p>

<p>State</p>	<p>State Rulings on Incompetency and Person Appointed need more information to determine the need for a representative payee. Terms Related to Person Responsible for Guardianship: Limited Guardian, Limited Conservator, Temporary Guardian, Temporary Conservator, Standby Guardian, Ancillary Conservator, Standby Conservator</p>
<p>Kentucky</p>	<p>Conditions Under Which Ruling/Appointment Constitutes a Finding of Legal Incompetency: Court ruling or appointment finds the individual totally disabled to manage financial affairs and/or totally disabled to manage personal affairs. Terms for Person Appointed: Guardian, Conservator, Curator (not Curator of/for convict) Conditions Under Which Ruling/Appointment Might Not Constitute Incompetency: Court ruling or appointment finds individual partially disabled. A case-by-case analysis and court contact will be required to determine if legal incompetence was found or if the ruling/appointment otherwise indicates the need for a payee. Terms for Person Appointed: Partial Guardian, Partial Conservator, Limited Guardian, Limited Conservator</p>
<p>Louisiana</p>	<p>Conditions Under Which Ruling/Appointment Constitutes a Finding of Legal Incompetency: Court ruling or appointment finds, due to an infirmity, a person is unable consistently to make reasoned decisions regarding the care of his person and property, or to communicate those decisions, and whose interests cannot be protected by less restrictive means. Such a person is adjudged a full interdict. Term for Person Appointed: Curator Conditions Under Which Ruling/Appointment May Not Constitute a Finding of Legal Incompetency: Court ruling or appointment adjudges the person to be a limited interdict. Terms for Person Appointed: Curator, Limited Curator</p>

<p>State</p> <p>Maine</p>	<p>State Rulings on Incompetency and Person Appointed</p> <p>Conditions Under Which Ruling/Appointment Constitutes a Finding of Legal Incompetency: Court ruling or appointment finds the person legally incapacitated. An incapacitated person is any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic drug use, chronic intoxication or other cause except minority to the extent he lacks sufficient understanding or capacity to make or communicate responsible decisions regarding his person.</p> <p>Terms for Persons Appointed: Guardian, Fiduciary</p> <p>Conditions Under Which Ruling/Appointment May Not Constitute a Finding of Legal Incompetency: A protective order may or may not indicate that the protected person lacks the ability to effectively manage or apply his estate to necessary ends. Legal competency must be determined on a case-by-case basis.</p> <p>Terms for Persons Appointed: Conservator</p>
<p>Maryland</p>	<p>Conditions Under Which Ruling/Appointment Constitutes a Finding of Legal Incompetency: Appointment of a guardian of the person. Such an appointment is based on a finding that a person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person, including provisions for health care, food, clothing, or shelter, because of any mental disability, disease, habitual drunkenness, or addiction to drugs, and that no less restrictive form of intervention is available which is consistent with the person's welfare and safety.</p> <p>Terms for Person Appointed: Guardian of the person</p> <p>Conditions Under Which Ruling/Appointment Might Not Constitute a Finding of Legal Incompetency: A court appointment of a guardian of an individual's property has no bearing the issue of capacity of the alleged disabled person to care for his own person.</p> <p>Terms for Person Appointed: Guardian of the property</p>

<p>State Massachusetts</p>	<p>State Rulings on Incompetency and Person Appointed</p> <p>Conditions Under Which Ruling/Appointment Constitutes a Finding of Legal Incompetency: A court ruling or appointment finds the person legally incompetent and appoints a guardian. An incompetent person is defined as a mentally ill person; mentally retarded person; a person unable to make or communicate informed decisions due to physical incapacity or illness; a person who by reason of mental weakness, mental retardation or physical incapacity is unable to properly care for their property.</p> <p>Terms for Persons Appointed: Guardian, Conservator</p>
<p>Michigan</p>	<p>Conditions Under Which Ruling/Appointment Constitutes a Finding of Legal Incompetency: A court appointment of a plenary guardian for a developmentally disabled individual, a full guardian for a legally incapacitated individual, or a conservator for a protected individual.</p> <p>Terms for Person Appointed: Plenary Guardian, Full Guardian, Temporary Guardian of an Incapacitated Person, Conservator for a Protected Person.</p> <p>Conditions Under Which Ruling/Appointment Might Not Constitute a Finding of Legal Incompetency: A court appointment of a partial guardian for a developmentally disabled individual, a limited guardian for an individual who lacks some capacity, a conservator for an individual who has requested one because of age or physical infirmity, or a limited conservator with limited responsibilities. An order of commitment or a judicial order or other determination that a person requires treatment or hospitalization does not constitute a finding of incompetency.</p> <p>Terms for Person Appointed: Limited Guardian, Partial Guardian, Limited Conservator, Temporary Guardian, Testamentary Guardian, Conservator</p>
<p>Minnesota</p>	<p>Conditions Under Which Ruling/Appointment Constitutes a Finding of Legal Incompetency: A court appointment of a guardian for a person ruled to be incapacitated. An incapacitated person is a person who, for</p>

State	<p>State Rulings on Incompetency and Person Appointed</p> <p>reasons other than being a minor, (1) lacks sufficient understanding or capacity to make or communicate responsible personal decisions; and (2) has demonstrated deficits in behavior which evidence an inability to meet personal needs for medical care, nutrition, clothing, shelter, or safety.</p> <p>Terms for Person Appointed: Guardian, Temporary Substitute Guardian</p> <p>Conditions Under Which Ruling/Appointment Might Not Constitute a Finding of Legal Incompetency: A court appointment of a conservator for a protected person. Unlike the court appointment of a guardian, the appointment of a conservator does not require a judicial finding that the person is incapacitated.</p> <p>The appointment of a guardian by a parent's or spouse's will is not a determination of incapacity; however, the guardian must go to the court to confirm the appointment.</p> <p>Terms for Person Appointed: Guardian, Limited Guardian, Conservator, Limited Conservator, Emergency Guardian</p>
Mississippi	<p>Conditions Under Which Ruling/Appointment Constitutes a Finding of Legal Incompetency: A court ruling or appointment of a guardian or conservator over the person.</p> <p>Terms for Person Appointed: Guardian, Guardian of the Person, Conservator of the Person</p> <p>Conditions Under Which Ruling/Appointment Might Not Constitute a Finding of Legal Incompetency: A court appointment of a conservator for reasons of advanced age, physical incapacity or mental weakness.</p> <p>Terms for Person Appointed: Conservator</p>
Missouri	<p>Conditions Under Which Ruling/Appointment Constitutes a Finding of Legal Incompetency: A court ruling or appointment finds the person is legally incapacitated and appoints a guardian or conservator.</p>

<p>State</p>	<p>State Rulings on Incompetency and Person Appointed</p> <p>Terms for Person Appointed: Guardian conservator</p> <p>Conditions Under Which Ruling/Appointment Might Not Constitute a Finding of Legal Incompetency: The court finds a person partially incapacitated, disabled, or partially disabled, or the court appoints a limited guardian, or limited conservator. Analyze each case individually and contact the court if you need more information to determine legal competency.</p> <p>Terms for Person Appointed: Limited Guardian, Limited Conservator.</p>
<p>Montana</p>	<p>Conditions Under Which Ruling/Appointment Constitutes a Finding of Legal Incompetency: None.</p> <p>An incapacitated person for whom a guardian has been appointment is not presumed to be incompetent. Please contact the court for additional information in determining in capability.</p> <p>Terms for Person Appointed: Full Guardian, Limited Guardian</p>
<p>Nebraska</p>	<p>Conditions Under Which Ruling/Appointment Constitutes a Finding of Legal Incompetency: A court ruling or appointment appoints or qualifies a person as guardian of an incapacitated person. An incapacitated person is any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause (except minority) to the extent that the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning himself or herself.</p> <p>Terms for Person Appointed: Guardian</p> <p>Conditions Under Which Ruling/Appointment Might Not Constitute a Finding of Legal Incompetency: A court order appoints a limited guardian or limited conservator, whose duties shall be specified in the letters of appointment of the Guardian or Conservator or appoints a guardian or conservator for specified areas.</p>

State	<p>State Rulings on Incompetency and Person Appointed</p> <p>Analyze each case individually and contact the court if you need more information to determine legal competency.</p> <p>Terms for Person Appointed: Limited Guardian, Conservator, Limited Conservator, Temporary Conservator</p>
Nevada	<p>Conditions Under Which Ruling/Appointment Constitutes a Finding of Legal Incompetency: A court ruling or appointment finds the beneficiary incompetent. An incompetent person includes any person who, by reason of mental illness, mental deficiency, advanced age, disease, weakness of mind or any other cause, is unable, without assistance, properly to manage and take care of himself or his property</p> <p>Terms for Person Appointed: Guardian, Guardian of the Person, Guardian of the Estate, or Guardian of the Person and Estate, General Guardian, Guardian ad Litem</p> <p>Conditions Under Which Ruling/Appointment Might Not Constitute a Finding of Legal Incompetency: The court will appoint a special guardian if it finds that the person for whom a guardian is sought is of limited capacity and in need of a special guardian. The court will not appoint a guardian for a person whom the court finds competent and not in need of a guardian.</p> <p>Terms for Person Appointed: Special Guardian</p>
New Hampshire	<p>Conditions Under Which Ruling/Appointment Constitutes a Finding of Legal Incompetency: A court ruling or appointment that finds the person legally incapacitated and appoints a guardian.</p> <p>Terms for Persons Appointed: Guardian of the Person, Guardian of the Person and Estate.</p> <p>Conditions Under Which Ruling/Appointment Might Not Constitute a Finding of Legal Incompetency: An appointment of a conservator.</p> <p>Terms for Persons Appointed: Conservator</p>
New Jersey	

<p>State</p>	<p>State Rulings on Incompetency and Person Appointed Conditions Under Which Ruling/Appointment Constitutes a Finding of Legal Incompetency: A court ruling or appointment finds the person incapacitated and appoints a guardian. An incapacitated person is a person who is impaired by reason of mental illness or mental deficiency to the extent that he or she lacks sufficient capacity to govern himself or herself and manage his or her affairs. Terms for Person Appointed: Guardian, Testamentary Guardian, Guardian for Person, Guardian for Estate, Guardian for Person and Estate. Conditions Under Which Ruling/Appointment Might Not Constitute a Finding of Legal Incompetency: The appointment of a guardian ad litem is not any indication of incompetence or incapacity.</p>
<p>New Mexico</p>	<p>New Mexico recognizes limited conservatorship for specified purposes, tailored to the individual case when the incapacitated person can manage some but not all aspects of their financial affairs. Conditions Under Which Ruling/Appointment Constitutes a Finding of Legal Incompetency: A court ruling or appointment of a guardian based on a finding that the person has partial or complete functional impairment by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause, except minority, to the extent that the person is unable to manage his or her personal affairs or unable to manage his or her estate or financial affairs or both. Terms for Person Appointed: Guardian, Limited Guardian Conditions Under Which Ruling/Appointment Might Not Constitute a Finding of Legal Incompetency: A court appointment of a conservator where a person has property that may be wasted or dissipated, funds are needed for his support or that of his dependents, AND for reasons such as confinement, detention by a foreign power, or</p>

State	<p>State Rulings on Incompetency and Person Appointed</p> <p>disappearance, he is incapacitated or unable to manage his estate and financial affairs effectively.</p> <p>Terms for Person Appointed: Conservator, Temporary Conservator</p>
New York	<p>Conditions Under Which Ruling/Appointment Constitutes a Finding of Legal Incompetency: Court order appointing a guardian refers to the individual as a "person with incapacities."</p> <p>Terms for Person Appointed: Guardian</p> <p>Conditions Under Which Ruling/Appointment Might Not Constitute a Finding of Legal Incompetency: The appointment of a guardian (on or after April 1, 1993) or conservator does not indicate a person is legally incompetent. Examine the court documents for a determination of legal competency and contact the court if you need more information to determine the need for a representative payee.</p> <p>Terms for Person Appointed: Guardian, Conservator, Guardian ad Litem</p>
North Carolina	<p>Conditions Under Which Ruling/Appointment Constitutes a Finding of Legal Incompetency: A court ruling or appointment of a guardian finding the adult incompetent. An incompetent adult is an adult or emancipated minor who lacks sufficient capacity to manage his or her own affairs or to make or communicate important decisions concerning such person, family, or property, due to mental illness, mental retardation, epilepsy, cerebral palsy, autism, inebriety, senility, disease, injury, or similar cause or condition.</p> <p>Terms for Person Appointed: General Guardian, Guardian of the Person, Public Guardian, Ancillary Guardian</p> <p>Conditions Under Which Ruling/Appointment Might Not Constitute a Finding of Legal Incompetence are: A court ruling or appointment where there are express terms of limitation on the guardian's powers or duties. An</p>

<p>State</p>	<p>State Rulings on Incompetency and Person Appointed appointment for a temporary period prior to adjudication of incompetence. Term for Person Appointed: Guardian, Guardian of the Person, Guardian of the Estate, Interim Guardian</p>
<p>North Dakota</p>	<p>Conditions Under Which Ruling/Appointment Might Constitute a Finding of Legal Incompetency: A court ruling or appointment indicates that a person is mentally incompetent. Terms for Person Appointed: Full Guardian, Limited Guardian. Conditions Under Which Ruling/Appointment Might Not Constitute a Finding of Legal Incompetency: Appointment of a conservator Terms for Person Appointed: Conservator</p>
<p>Ohio</p>	<p>Conditions Under Which Ruling/Appointment Constitutes a Finding of Legal Incompetency: A court ruling or appointment of a guardian constitutes an adjudication of incompetency. An incompetent is a person who, because of mental or physical illness or disability, mental retardation, or chronic substance abuse, is so mentally impaired that he is incapable of taking proper care of self or property or fails to provide for his/her family or others for whom he/she is charged by law to provide. Terms for Person Appointed: Guardian, Interim Guardian, Emergency Guardian, Guardian of Estate or Person or both, Limited Guardian Conditions Under Which Ruling/Appointment Might Not Constitute a Finding of Legal Incompetency: An appointment of a conservator does not constitute a finding of incompetency. A <u>competent</u> adult may petition the court to place his or her person and/or any or all real or personal property under a conservatorship for a definite or indefinite period of time. Terms for Person Appointed: Conservator</p>

<p>State</p>	<p>State Rulings on Incompetency and Person Appointed</p>
<p>Oklahoma</p>	<p>Conditions Under Which Ruling/Appointment Constitutes a Finding of Legal Incompetency: A court ruling or appointment finds the person is legally incapacitated. An incapacitated individual is 18 or older and is incapacitated due to mental illness, mental retardation or developmental disability, physical illness or disability, drug or alcohol dependency, or a similar cause AND the individual lacks capacity to meet essential requirements for health and safety, or is unable to manage finances.</p> <p>Term for Person Appointed: Guardian</p> <p>Conditions Under Which Ruling/Appointment Might Not Constitute a Finding of Legal Incompetency: A court ruling or appointment finds the person to be partially incapacitated and impaired only to extent that person is unable to meet essential requirements for physical health or safety, or to manage finances or the person is incapacitated due to physical disability.</p> <p>Terms for Person Appointed: Conservator, Guardian, Limited Guardian, Special Guardian</p>
<p>Oregon</p>	<p>Conditions Under Which Ruling/Appointment Constitutes a Finding of Legal Incompetency: A court ruling or appointment finds the person to be incapacitated. Incapacity is a condition in which a person's ability to receive and evaluate information effectively or to communicate decisions is impaired to such an extent that the person presently lacks the capacity to meet the essential requirements for the person's physical or safety. In addition, Oregon's Letters of Guardianship and Letters of Conservatorship are legal evidence of incapability for the purpose of determining the need for a representative payee, even if the letters do not specify that the beneficiary is financially incapable or legally incompetent.</p> <p>Terms for Appointed: Conservator, Guardian</p>
<p>Pennsylvania</p>	<p>Conditions Under Which Ruling/Appointment Constitutes a Finding of Legal Incompetency: A court</p>

<p>State</p>	<p>State Rulings on Incompetency and Person Appointed ruling or appointment finding a person totally incapacitated. An incapacitated person is an adult whose ability to receive and evaluate information effectively and communicate decisions in any way is impaired to such a significant extent that he is partially or totally unable to manage his financial resources or to meet essential requirements for his physical health and safety.</p> <p>Terms for Person Appointed: Plenary Guardian</p> <p>Conditions Under Which Ruling/Appointment Might Not Constitute a Finding of Legal Incompetency: A court ruling or appointment finds the person "partially incapacitated" and appoints a limited guardian of person or estate. Except in areas designated by court order as areas over which the legal guardian has power, a partially incapacitated person retains all legal rights.</p> <p>Terms for Person Appointed: Limited Guardian of Person, Limited Guardian of Estate</p>
<p>Puerto Rico</p>	<p>Conditions Under Which Ruling/Appointment Constitutes a Finding of Legal Incompetency: A court ruling or appointment finds the person to be an unemancipated minor, an insane or demented person, a deaf and dumb person who cannot understand or communicate effectively by any means, or a prodigal or habitual drunkard.</p> <p>Terms for Person Appointed: Tutor, Guardian, Testamentary Tutor, Testamentary Tutor over the Person, Testamentary Tutor over the Property, Testamentary Tutor over the Person and the Property</p>
<p>Rhode Island</p>	<p>Conditions Under Which Ruling/Appointment Constitutes a Finding of Legal Incompetency: A court ruling or appointment finds the person to be totally incapacitated.</p> <p>Terms for Persons Appointed: Guardian, Good Samaritan Guardian</p> <p>Conditions Under Which Ruling/Appointment Might Not Constitute a Finding of Legal Incompetency: A court</p>

<p>State</p>	<p>State Rulings on Incompetency and Person Appointed ruling or appointment finds the person to be less than totally incapacitated. Terms for Persons Appointed: Limited Guardian, Temporary Guardian, Guardian ad Litem, Conservator, Good Samaritan Guardian</p>
<p>South Carolina</p>	<p>Conditions Under Which Ruling/Appointment Constitutes a Finding of Legal Incompetency: A court ruling or appointment finding the person to be incapacitated by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, or other cause (except minority) to the extent that he/she lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his/her person or property Terms for Person Appointed: Guardian, Conservator Conditions Under Which Ruling/Appointment Might Not Constitute a Finding of Legal Incompetency: A court ordering the appointment of a limited guardian explaining the specific legal disabilities to which a partially disabled ward is subject. Analyze each case individually and contact the court if you need more information to determine the need for a representative payee. Terms for Person Appointed: Limited Guardian</p>
<p>South Dakota</p>	<p>Conditions Under Which Ruling/Appointment Constitutes a Finding of Legal Incompetency: An appointment of a guardian or conservator of a protected person contains a finding of legal incompetence. Terms for Person Appointed: Guardian</p>
<p>Tennessee</p>	<p>Conditions Under Which Ruling/Appointment Constitutes a Finding of Legal Incompetency: A court ruling or appointment finding the person disabled and in need of full supervision, protection and assistance by reason of mental illness, physical illness or injury, developmental disability, or other physical or mental incapacity.</p>

<p>State</p>	<p>State Rulings on Incompetency and Person Appointed Terms for Person Appointed: Conservator, Guardian ad Litem, Guardian (for veterans), Public Guardian Conditions Under Which Ruling/Appointment Might Not Constitute a Finding of Legal Incompetency: Court orders or appointments that find a disabled person in need of partial supervision, protection and assistance by reason of mental illness, physical illness or injury, developmental disability or other physical or mental incapacity. Terms for Person Appointed: Conservator, Guardian ad Litem, Guardian (for veterans), Public Guardian</p>
<p>Texas^{1, 2}</p>	<p>Conditions Under Which Ruling/Appointment Constitutes a Finding of Legal Incompetency: A court ruling or appointment finding the person to be incapacitated. An incapacitated person is an adult person who, because of physical or mental condition, is substantially unable to provide his food, clothing, or shelter, to care for his physical health, or to manage his financial affairs; OR a person who must have a guardian to receive funds from a governmental source. Term for Person Appointed: Guardian Conditions Under Which Ruling/Appointment Might Not Constitute a Finding of Legal Incompetency: A court finding that the individual lacks capacity to do some, but not all, of the tasks necessary to care for himself or manage his property, and the court appoints a guardian with limited powers as specified in the court order. Terms for Person Appointed: Guardian, Limited guardian, Temporary guardian</p>
<p>U.S. Virgin Islands</p>	<p>Conditions Under Which Ruling/Appointment Constitutes a Finding of Legal Incompetency: A court order or appointment finding the person to be an insane person, an idiot, a lunatic, a person incapable of conducting their own affairs, a spendthrift, or a mentally incompetent veteran.</p>

<p>State</p>	<p>State Rulings on Incompetency and Person Appointed Terms for Person Appointed: Guardian, Testamentary Guardian Conditions Under Which Ruling/Appointment Might Not Constitute a Finding of Legal Incompetency: The court ruling or appointment appoints a "guardian ad litem."</p>
<p>Utah</p>	<p>Conditions Under Which Ruling/Appointment Might Not Constitute a Finding of Legal Incompetency: A court ruling or appointment finding the person incapacitated. A guardian of an incapacitated person has only those powers, rights, and duties respecting the incapacitated person or ward in the order of appointment. Contact the court for additional information when using this evidence to assist in a determination of the degree of incapacitation. Terms for Person Appointed: Guardian, Temporary Guardian</p>
<p>Vermont</p>	<p>Conditions Under Which Ruling/Appointment Constitutes a Finding of Legal Incompetency: A court ruling or appointment of a total guardian for a ward. A ward is a mentally disabled person who is at least 18 years old, is mentally ill or mentally retarded or the person is unable to manage, without supervision of a guardian, some or all aspects of his or her personal care or financial matters. Terms for Persons Appointed: Total Guardian Conditions Under Which Ruling/Appointment Might Not Constitute a Finding of Legal Incompetency: A court ruling or appointment of a limited guardian or a guardian for a spendthrift. Terms for Persons Appointed: Limited Guardian, Temporary Guardian, Public Guardian</p>
<p>Virginia</p>	<p>Conditions Under Which Ruling/Appointment Constitutes a Finding of Legal Incompetency: A court ruling or appointment that finds that a person is incapacitated. An incapacitated person is an adult who has</p>

State	<p>State Rulings on Incompetency and Person Appointed</p> <p>been found by a court to be incapable of receiving and evaluating information effectively or responding to people, events, or environments to such an extent that the individual lacks the capacity to (i) meet the essential requirements for his health, care, safety, or therapeutic needs without the assistance or protection of a guardian or (ii) manage property or financial affairs or provide for his or her support or for the support of his legal dependents without the assistance or protection of a conservator.</p> <p>Terms for Person Appointed: Conservator, Guardian</p> <p>Conditions Under Which Ruling/Appointment Might Not Constitute a Finding of Legal Incompetency:</p> <p>Appointments of "limited" and "temporary" guardians and conservators should be reviewed for findings of incapacity. A finding that the individual displays poor judgment, alone, shall not be considered sufficient evidence that the individual is an incapacitated person.</p> <p>Terms for Person Appointed: Limited Guardian, Temporary Guardian, Limited Conservator, Temporary Conservator</p>
Washington	<p>Conditions Under Which Ruling/Appointment Constitutes a Finding of Legal Incompetency: A court ruling or appointment finds that a person is incapacitated (by reason of minority or mental illness, developmental disability, senility, habitual drunkenness, excessive use of drugs, other mental incapacity), with respect to either managing his or her property or caring for himself or herself, or both.</p> <p>Terms for Person Appointed: Guardian, Limited Guardian</p>
West Virginia	<p>Conditions Under Which Ruling/Appointment Constitutes a Finding of Legal Incompetency: A court ruling or appointment specifies that the appointment is because the "protected person" is mentally incompetent. A protected person is an adult individual, eighteen years of age or older, who has been found by a court, because of mental impairment, to be unable to receive and evaluate</p>

<p>State</p>	<p>State Rulings on Incompetency and Person Appointed information effectively or to respond to people, events, and environments to such an extent that the individual lacks the capacity: (A) To meet the essential requirements for his or her health, care, safety, habilitation, or therapeutic needs without the assistance or protection of a guardian; or (B) to manage property or financial affairs or to provide for his or her support or for the support of legal dependents without the assistance or protection of a conservator. Terms for Person Appointed: Guardian, Conservator Conditions Under Which Ruling/Appointment Might Not Constitute a Finding of Legal Incompetency: A court ruling or appointment of a guardian that specifies that the appointment is because the "protected person" is mentally handicapped or mentally retarded, the appointment of a guardian would not constitute a finding of legal incompetence. Court should appoint least restrictive guardianship or conservatorship possible. Terms for Person Appointed: Limited Guardian, Limited Conservator, Temporary Guardian, Temporary Conservator</p>
<p>Wisconsin</p>	<p>Conditions Under Which Ruling/Appointment Constitutes a Finding of Legal Incompetency: A court ruling or appointment finds the person to be incompetent or a spendthrift. An incompetent person is one whom a court has found substantially incapable self-care or of managing his/her property because of infirmities of aging, developmental disabilities, or other like incapacity. A spendthrift is a person who, because of intoxicants or drugs, gambling, idleness, debauchery, or other wasteful conduct, is unable to attend to business or is likely to affect the health, life, or property of himself/herself or others so as to endanger his/her own support or the support of his/her dependents, or to expose the public to such support. Terms for Person Appointed: Guardian, Standby Guardian</p>

<p>State</p>	<p>State Rulings on Incompetency and Person Appointed Conditions Under Which Ruling/Appointment Might Not Constitute a Finding of Legal Incompetency: A court finding of limited incompetency will specify the legal rights the person remains competent to exercise. Terms for Person Appointed: Temporary Guardian, Limited Guardian of Property, Conservator</p>
<p>Wyoming</p>	<p>Conditions Under Which Ruling/Appointment Constitutes a Finding of Legal Incompetency: A court ruling or appointment finds the person to be incompetent Terms Related to Person Responsible for Guardianship: Guardian, Conservator, Guardian of the Estate, Guardian of the Property, Temporary Guardian. Conditions Under Which Ruling/Appointment Might Not Constitute a Finding of Legal Incompetency: A court ruling or appointment may appoint a guardian on voluntary petition if the petitioner is not a mentally incompetent person. Terms Related to Person Responsible for Guardianship: Guardian, Limited Guardian</p>

Footnotes:

[1]

If the court order for guardian, curator or conservator does not state the individual is incapable by reason of unsound mind or one of the terms which indicates unsound mind, the court must be contacted to determine if mental incompetency was addressed. It cannot be assumed that the appointment of a guardian, curator or conservator equates to a finding of legal incompetency.

[2]

The appointment of a conservator constitutes a finding of legal incompetency only if the order specifics that the court determined that the person was unable to manage his/her property or affairs effectively because of conditions which are listed

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MEMO UNIFORM GUARDIANSHIP & PROTECTIVE PROCEEDING ACT (UGPPA)

MEMO

To: Drafting Committee to Revise or Amend the Uniform Guardianship and Protective Proceeding Act (UGPPA)
Cc: Observers for the Drafting Committee to Revise or Amend the UGPPA
From: David English (Chair) and Nina Kohn (Reporter)
Date: September 30, 2015
Re: Visual Guide to the September 2015 Draft Revision

I. OVERVIEW OF MEMO

This memo provides five charts, one for each Article of the UGPPA, that show how the sections of the 1997 Revised Act were reorganized or renamed in the September 2015 Draft Revision.

Where the provisions in both versions of the Act are the same in their order and in their title, the chart reports that there is “No change to number or title.” Where there is a change to the numbering but not the title, the new section number is noted and the chart reads “Same title.” The most common reason for reordering sections was to create parallelism among Articles 2, 3, and 4 to make the Act more user-friendly. Where the change in ordering was simply for this purpose, no special explanation is provided. By contrast, explanations for these changes are provided where the change was for a reason other than merely creating parallelism.

II. CHARTS OF REVISIONS BY ARTICLE

ARTICLE I: GENERAL PROVISIONS

1997 Act Section	Current Section	Explanation
SECTION 101. SHORT TITLE.	No change to number or title.	
SECTION 102. DEFINITIONS.	No change to number or title.	
SECTION 103. SUPPLEMENTAL GENERAL PRINCIPLES OF LAW APPLICABLE.	No change to number or title.	
SECTION 104. FACILITY OF TRANSFER.	SECTION 120. Same title.	Provision moved to the end of Article 1 because it only applies to minors; title modified to reflect this limitation.
SECTION 105. DELEGATION OF POWER BY PARENT OR GUARDIAN.	SECTION 209. DELEGATION OF POWERS BY PARENT OR GUARDIAN OF PROTECTED MINOR. SECTION 314: DELEGATION BY GUARDIAN.	Created specific delegation sections to allow duties to be tailored to the type of guardianship.

SECTION 106. SUBJECT-MATTER JURISDICTION.	SECTION 104. Same title.	
SECTION 107. TRANSFER OF JURISDICTION.	SECTION 105. Same title.	
SECTION 108. VENUE.	SECTION 106. Same title.	
SECTION 109. PRACTICE IN COURT.	SECTION 107. Same title.	
SECTION 110. LETTERS OF OFFICE.	SECTION 108. Same title.	
SECTION 111. EFFECT OF ACCEPTANCE OF APPOINTMENT.	SECTION 109. Same title.	
SECTION 112. TERMINATION OF OR CHANGE IN GUARDIAN'S OR CONSERVATOR'S APPOINTMENT.	SECTION 110. ADDITIONAL OR SUCCESSOR APPOINTEE. SECTION 317. TERMINATION OR MODIFICATION OF GUARDIANSHIP. SECTION 431. TERMINATION OR MOFICATION OF CONSERVATORSHIP.	The provisions in 112 which applied across types of appointments were kept in Article 1. The other provisions were merged into Section 317 and Section 431 to avoid confusion and to avoid the possibility of internally inconsistent language.
SECTION 113. NOTICE.	SECTION 112. GENERAL NOTICE REQUIREMENT.	Section renamed to reflect the fact that specific notice requirements can be found in subsequent articles.
SECTION 114. WAIVER OF NOTICE.	SECTION 113. Same title.	
SECTION 115. GUARDIAN AD LITEM.	SECTION 114. Same title.	
SECTION 116. REQUEST FOR NOTICE; INTERESTED PERSONS.	SECTION 115. Same title.	
SECTION 117. MULTIPLE APPOINTMENTS OR NOMINATIONS.	SECTION 116. Same title.	

ARTICLE 2: GUARDIANSHIP OF MINOR

1997 Act Section	Current Section	Explanation
SECTION 201. APPOINTMENT AND STATUS OF GUARDIAN.	SECTION 201. APPOINTMENT AND STATUS OF GUARDIAN OF MINOR.	"Of Minor" language added to title for clarity.
SECTION 202. PARENTAL APPOINTMENT OF GUARDIAN.	SECTION 202. PARENTAL APPOINTMENT OF GUARDIAN OF MINOR.	"Of Minor" language added to title for clarity.

SECTION 203. OBJECTION BY MINOR OR OTHERS TO PARENTAL APPOINTMENT.	No change to number or title.	
SECTION 204. JUDICIAL APPOINTMENT OF GUARDIAN: CONDITIONS FOR APPOINTMENT.	SECTION 204. JUDICIAL APPOINTMENT OF GUARDIAN OF MINOR: CONDITIONS FOR APPOINTMENT.	“Of Minor” language added to title for clarity.
SECTION 205. JUDICIAL APPOINTMENT OF GUARDIAN: PROCEDURE.	SECTION 205. JUDICIAL APPOINTMENT OF GUARDIAN OF MINOR: PROCEDURE.	“Of Minor” language added to title for clarity.
SECTION 206. JUDICIAL APPOINTMENT OF GUARDIAN: PRIORITY OF MINOR’S NOMINEE; LIMITED GUARDIANSHIP.	SECTION 206. JUDICIAL APPOINTMENT OF GUARDIAN OF MINOR: PRIORITY OF MINOR’S NOMINEE; LIMITED GUARDIANSHIP.	“Of Minor” language added to title for clarity.
SECTION 207. DUTIES OF GUARDIAN.	SECTION 207. DUTIES OF GUARDIAN OF PROTECTED MINOR.	“Of Protected Minor” language added to title for clarity.
SECTION 208. POWERS OF GUARDIAN.	SECTION 208. POWERS OF GUARDIAN OF PROTECTED MINOR.	“Of Protected Minor” language added to title for clarity.
SECTION 209. RIGHTS AND IMMUNITIES OF GUARDIAN.	SECTION 209. RIGHTS AND IMMUNITIES OF GUARDIAN OF PROTECTED MINOR.	“Of Protected Minor” language added to title for clarity.
SECTION 210. TERMINATION OF GUARDIANSHIP; OTHER PROCEEDINGS AFTER APPOINTMENT.	SECTION 210. TERMINATION OF GUARDIANSHIP OF PROTECTED MINOR; OTHER PROCEEDINGS AFTER APPOINTMENT.	“Of Protected Minor” language added to title for clarity.

ARTICLE 3: GUARDIANSHIP OF INCAPACITATED PERSON (renamed “GUARDIANSHIP OF PERSONS NEEDING PROTECTION” in the September 2015 revision).

1997 Act Section	Current Section	Explanation
SECTION 301. APPOINTMENT AND STATUS OF GUARDIAN.	No change to number or title.	
SECTION 302. APPOINTMENT OF GUARDIAN BY WILL OR OTHER WRITING.	Eliminated	Eliminated per discussion at spring 2015 meeting.

SECTION 303. APPOINTMENT OF GUARDIAN BY WILL OR OTHER WRITING; EFFECTIVENESS; ACCEPTANCE; CONFIRMATION.	Eliminated	Eliminated per discussion at spring 2015 meeting.
SECTION 304. JUDICIAL APPOINTMENT OF GUARDIAN: PETITION	SECTION 302. ORIGINAL PETITION FOR APPOINTMENT OF GUARDIAN.	The term "judicial" was eliminated to reflect that in this revision all guardianships for adults must be approved by a court.
SECTION 305. JUDICIAL APPOINTMENT OF GUARDIAN: PRELIMINARIES TO HEARING.	SECTION 304. PRELIMINARIES TO HEARING; APPOINTMENT OF LAWYER; APPOINTMENT OF [VISITOR].	The term "judicial" was eliminated to reflect that in this revision all guardianships for adults must be approved by a court. The title was then expanded to reference key provisions.
SECTION 306. JUDICIAL APPOINTMENT OF GUARDIAN: PROFESSIONAL EVALUATION.	SECTION 305. PROFESSIONAL EVALUATION.	The term "judicial" was eliminated to reflect that in this revision all guardianships for adults must be approved by a court.
SECTION 307. CONFIDENTIALITY OF RECORDS.	SECTION 306. Same title.	
SECTION 308. JUDICIAL APPOINTMENT OF GUARDIAN: PRESENCE AND RIGHTS AT HEARING.	SECTION 307. PRESENCE AND RIGHTS AT HEARING.	The term "judicial" was eliminated to reflect that in this revision all guardianships for adults must be approved by a court.
SECTION 309. NOTICE.	SECTION 303. Same title.	
SECTION 310. WHO MAY BE GUARDIAN: PRIORITIES.	SECTION 308. Same title.	
SECTION 311. FINDINGS; ORDER OF APPOINTMENT.	SECTION 309. ORDER OF APPOINTMENT.	Title changed to reflect the fact that this section details what the court must put in the order. What the court must find to grant a guardianship is set forth in Section 301.
SECTION 312. EMERGENCY GUARDIAN.	SECTION 310. Same title.	
SECTION 313. TEMPORARY SUBSTITUTE GUARDIAN.	SECTION 311. Same title.	
SECTION 314. DUTIES OF GUARDIAN.	SECTION 312. Same title.	

SECTION 315. POWERS OF GUARDIAN.	SECTION 313. Same title.	
SECTION 316. RIGHTS AND IMMUNITIES OF GUARDIAN; LIMITATIONS.	SECTION 315. COMPENSATION, RIGHTS AND IMMUNITIES OF GUARDIAN; LIMITATIONS.	“Compensation” added to title to reflect expanded provisions related to compensation.
SECTION 317. REPORTS; MONITORING OF GUARDIANSHIP.	SECTION 316. Same title.	
SECTION 318. TERMINATION OR MODIFICATION OF GUARDIANSHIP.	SECTION 317. Same title.	

ARTICLE 4: PROTECTION OF PROPERTY OF PROTECTED PERSON ((renamed “CONSERVATORSHIP AND PROTECTION OF PROPERTY” in the September 2015 revision).

1997 Act Section	Current Section	Explanation
SECTION 401. PROTECTIVE PROCEEDING.	SECTION 401. APPOINTMENT AND STATUS OF CONSERVATOR; OTHER PROTECTIVE ORDER.	Title revised for clarity and parallelism with Article 3.
SECTION 402. JURISDICTION OVER BUSINESS AFFAIRS OF PROTECTED PERSON.	SECTION 104. SUBJECT MATTER JURISDICTION.	This revision merges the provisions of Section 402 into Section 104.
SECTION 403. ORIGINAL PETITION FOR APPOINTMENT OR PROTECTIVE ORDER.	SECTION 402. Same title.	
SECTION 404. NOTICE.	SECTION 403. Same title.	
SECTION 405. ORIGINAL PETITION: MINORS; PRELIMINARIES TO HEARING.	SECTION 404. PRELIMINARIES TO HEARING ON CONSERVATORSHIP FOR MINOR.	Title modified for clarity.
SECTION 406. ORIGINAL PETITION: PRELIMINARIES TO HEARING.	SECTION 405. PRELIMINARIES TO HEARING ON CONSERVATORSHIP FOR ALLEGED PERSON IN NEED OF PROTECTION; APPOINTMENT OF LAWYER; APPOINTMENT OF [VISITOR]	Title changed to include new person-first language, and key issues included in section.
SECTION 407. CONFIDENTIALITY OF RECORDS.	No change to number or title	

SECTION 408. ORIGINAL PETITION: PROCEDURE AT HEARING.	SECTION 408. PRESENCE AND RIGHTS AT HEARING.	Title changed to parallel the parallel provision in Article 3 and to better reflect the section's content.
SECTION 409. ORIGINAL PETITION: ORDERS.	SECTION 410. ORDER OF APPOINTMENT.	Title changed to parallel the parallel provision in Article 3.
SECTION 410. POWERS OF COURT.	SECTION 411. Same title.	
SECTION 411. REQUIRED COURT APPROVAL.	SECTION 412. POWERS REQUIRNG COURT APPROVAL.	Title modified for clarity.
SECTION 412. PROTECTIVE ARRANGEMENTS AND SINGLE TRANSACTIONS.	SECTION 413. Same title.	
SECTION 413. WHO MAY BE CONSERVATOR: PRIORITIES.	SECTION 409. Same title.	
SECTION 414. PETITION FOR ORDER SUBSEQUENT TO APPOINTMENT.	No change to number or title.	
SECTION 415. BOND.	SECTION 415. BOND; ASSET PROTECTION ARRANGEMENTS.	Title expanded to reflect provisions for protective arrangements other than bonds.
SECTION 416. TERMS AND REQUIREMENTS OF BOND.	No change to number or title.	
SECTION 417. COMPENSATION AND EXPENSES.	SECTION 417. COMPENSATION AND EXPENSES OF CONSERVATOR.	Title expanded for clarity.
SECTION 418. GENERAL DUTIES OF CONSERVATOR; PLAN.	No change to number or title.	
SECTION 419. INVENTORY; RECORDS.	No change to number or title.	
SECTION 420. REPORTS; APPOINTMENT OF [VISITOR]; MONITORING.	SECTION 423. Same title.	
SECTION 421. TITLE BY APPOINTMENT.	SECTION 424. Same title.	
SECTION 422. PROTECTED PERSON'S INTEREST INALIENABLE.	SECTION 425. Same title.	
SECTION 423. SALE, ENCUMBERANCE, OR OTHER TRANSACTION INVOLVING CONFLICT OF INTEREST.	SECTION 426. Same title.	
SECTION 424. PROTECTION OF PERSON DEALING WITH CONSERVATOR.	SECTION 427. Same title.	

SECTION 425. POWERS OF CONSERVATOR IN ADMINISTRATION.	SECTION 420. Same title.	
SECTION 426. DELEGATION.	SECTION 421. DELEGATION BY CONSERVATOR.	Title expanded for clarity.
SECTION 427. PRINCIPLES OF DISTRIBUTION BY CONSERVATOR.	SECTION 422. Same title.	
SECTION 428. DEATH OF PROTECTED PERSON.	No change to number or title.	
SECTION 429. PRESENTATION AND ALLOWANCE OF CLAIMS.	No change to number or title.	
SECTION 430. PERSONAL LIABILITY OF CONSERVATOR.	No change to number or title.	
SECTION 431. TERMINATION OF PROCEEDINGS.	SECTION 431. TERMINATION OR MODIFICATION OF CONSERVATORSHIP.	Title expanded to include modification.
SECTION 432. REGISTRATION OF GUARDIANSHIP ORDERS.	SECTION 118. REGISTRATION OF ORDERS.	Moved to Article 1 because applies across guardianships and conservatorships.
SECTION 433. REGISTRATION OF PROTECTIVE ORDERS.	SECTION 118. REGISTRATION OF ORDERS.	Moved to Article 1 because applies across guardianships and conservatorships.
SECTION 434. EFFECT OF REGISTRATION.	SECTION 119. EFFECT OF REGISTRATION OF ORDERS.	Moved to Article 1 because applies across guardianships and conservatorships.

ARTICLE 5: MISCELLANEOUS PROVISIONS

1997 Act Section	Current Section	Explanation
SECTION 501. UNIFORMITY OF APPLICATION AND CONSTRUCTION.	No change to number or title.	
SECTION 502. SEVERABILITY CLAUSE.	No change to number or title.	
SECTION 503. EFFECTIVE DATE.	No change to number or title.	
SECTION 504. REPEAL.	No change to number or title.	

STATUTES TEMPORARY GUARDIANSHIP INVESTIGATORS

NRS 159.052 Temporary guardian for minor ward who is unable to respond to substantial and immediate risk of physical harm or to need for immediate medical attention: Petition for appointment; conditions; required notice; extension; limited powers.

1. A petitioner may request the court to appoint a temporary guardian for a ward who is a minor and who is unable to respond to a substantial and immediate risk of physical harm or to a need for immediate medical attention. To support the request, the petitioner must set forth in a petition and present to the court under oath:

(a) Documentation which shows that the proposed ward faces a substantial and immediate risk of physical harm or needs immediate medical attention and lacks capacity to respond to the risk of harm or obtain the necessary medical attention. Such documentation must include, without limitation:

(1) A copy of the birth certificate of the proposed ward or other documentation verifying the age of the proposed ward; and

(2) A letter signed by any governmental agency in this State which conducts investigations or a police report indicating whether the proposed ward presents a danger to himself or herself or others, or whether the proposed ward is or has been subjected to abuse, neglect or exploitation; and

(b) Facts which show that:

(1) The petitioner has tried in good faith to notify the persons entitled to notice pursuant to [NRS 159.047](#) by telephone or in writing before the filing of the petition;

(2) The proposed ward would be exposed to an immediate risk of physical harm if the petitioner were to provide notice to the persons entitled to notice pursuant to [NRS 159.047](#) before the court determines whether to appoint a temporary guardian; or

(3) Giving notice to the persons entitled to notice pursuant to [NRS 159.047](#) is not feasible under the circumstances.

2. The court may appoint a temporary guardian to serve for 10 days if the court:

(a) Finds reasonable cause to believe that the proposed ward is unable to respond to a substantial and immediate risk of physical harm or to a need for immediate medical attention based on the age of the proposed ward and other factors deemed relevant by the court; and

(b) Is satisfied that the petitioner has tried in good faith to notify the persons entitled to notice pursuant to [NRS 159.047](#) or that giving notice to those persons is not feasible under the circumstances, or determines that such notice is not required pursuant to subparagraph (2) of paragraph (b) of subsection 1.

3. Except as otherwise provided in subsection 4, after the appointment of a temporary guardian, the petitioner shall attempt in good faith to notify the persons entitled to notice pursuant to [NRS 159.047](#), including, without limitation, notice of any hearing to extend the temporary guardianship. If the petitioner fails to make such an effort, the court may terminate the temporary guardianship.

4. If, before the appointment of a temporary guardian, the court determined that advance notice was not required pursuant to subparagraph (2) of paragraph (b) of subsection 1, the petitioner shall notify the persons entitled to notice pursuant to [NRS 159.047](#) without undue delay, but not later than 48 hours after the appointment of the temporary guardian or not later than 48 hours after the petitioner discovers the existence, identity and location of the persons entitled to notice pursuant to that section. If the petitioner fails to provide such notice, the court may terminate the temporary guardianship.

5. Not later than 10 days after the date of the appointment of a temporary guardian pursuant to subsection 2, the court shall hold a hearing to determine the need to extend the temporary guardianship. Except as otherwise provided in subsection 7, if the court finds by clear and convincing evidence that the proposed ward is unable to respond to a substantial and immediate risk of physical harm or to a need for immediate medical attention, the court may extend the temporary guardianship until a general or special guardian is appointed pursuant to subsection 8.

6. If the court appoints a temporary guardian or extends the temporary guardianship pursuant to this section, the court shall limit the powers of the temporary guardian to those necessary to respond to the substantial and immediate risk of physical harm or to a need for immediate medical attention.

7. The court may not extend a temporary guardianship pursuant to subsection 5 beyond the initial period of 10 days unless the petitioner demonstrates that:

- (a) The provisions of [NRS 159.0475](#) have been satisfied; or
- (b) Notice by publication pursuant to [N.R.C.P. 4\(e\)](#) is currently being undertaken.

8. The court may extend the temporary guardianship, for good cause shown, for not more than two successive 60-day periods, except that the court shall not cause the temporary guardianship to continue longer than 5 months unless extraordinary circumstances are shown.

(Added to NRS by [1981, 1932](#); A [1997, 1194](#); [1999, 1397](#); [2001, 871](#); [2003, 1776](#); [2007, 2026](#); [2009, 1649](#); [2013, 910](#))

NRS 159.0523 Temporary guardian for adult ward who is unable to respond to substantial and immediate risk of physical harm or to need for immediate medical attention: Petition for appointment; conditions; required notice; extension; limited powers.

1. A petitioner may request the court to appoint a temporary guardian for a ward who is an adult and who is unable to respond to a substantial and immediate risk of physical harm or to a need for immediate medical attention. To support the request, the petitioner must set forth in a petition and present to the court under oath:

(a) Documentation which shows the proposed ward faces a substantial and immediate risk of physical harm or needs immediate medical attention and lacks capacity to respond to the risk of harm or obtain the necessary medical attention. Such documentation must include, without limitation, a certificate signed by a physician who is licensed to practice medicine in this State or who is employed by the Department of Veterans Affairs, a letter signed by any governmental agency in this State which conducts investigations or a police report indicating:

(1) That the proposed ward is unable to respond to a substantial and immediate risk of physical harm or to a need for immediate medical attention;

(2) Whether the proposed ward presents a danger to himself or herself or others; and

(3) Whether the proposed ward is or has been subjected to abuse, neglect or exploitation; and

(b) Facts which show that:

(1) The petitioner has tried in good faith to notify the persons entitled to notice pursuant to [NRS 159.047](#) by telephone or in writing before the filing of the petition;

(2) The proposed ward would be exposed to an immediate risk of physical harm if the petitioner were to provide notice to the persons entitled to notice pursuant to [NRS 159.047](#) before the court determines whether to appoint a temporary guardian; or

(3) Giving notice to the persons entitled to notice pursuant to [NRS 159.047](#) is not feasible under the circumstances.

2. The court may appoint a temporary guardian to serve for 10 days if the court:

(a) Finds reasonable cause to believe that the proposed ward is unable to respond to a substantial and immediate risk of physical harm or to a need for immediate medical attention; and

(b) Is satisfied that the petitioner has tried in good faith to notify the persons entitled to notice pursuant to [NRS 159.047](#) or that giving notice to those persons is not feasible under the circumstances, or determines that such notice is not required pursuant to subparagraph (2) of paragraph (b) of subsection 1.

3. Except as otherwise provided in subsection 4, after the appointment of a temporary guardian, the petitioner shall attempt in good faith to notify the persons entitled to notice pursuant to [NRS](#)

[159.047](#), including, without limitation, notice of any hearing to extend the temporary guardianship. If the petitioner fails to make such an effort, the court may terminate the temporary guardianship.

4. If, before the appointment of a temporary guardian, the court determined that advance notice was not required pursuant to subparagraph (2) of paragraph (b) of subsection 1, the petitioner shall notify the persons entitled to notice pursuant to [NRS 159.047](#) without undue delay, but not later than 48 hours after the appointment of the temporary guardian or not later than 48 hours after the petitioner discovers the existence, identity and location of the persons entitled to notice pursuant to that section. If the petitioner fails to provide such notice, the court may terminate the temporary guardianship.

5. Not later than 10 days after the date of the appointment of a temporary guardian pursuant to subsection 2, the court shall hold a hearing to determine the need to extend the temporary guardianship. Except as otherwise provided in subsection 7, the court may extend the temporary guardianship until a general or special guardian is appointed pursuant to subsection 8 if:

(a) The court finds by clear and convincing evidence that the proposed ward is unable to respond to a substantial and immediate risk of physical harm or to a need for immediate medical attention; and

(b) The extension of the temporary guardianship is necessary and in the best interests of the proposed ward.

6. If the court appoints a temporary guardian or extends the temporary guardianship pursuant to this section, the court shall limit the powers of the temporary guardian to those necessary to respond to the substantial and immediate risk of physical harm or to a need for immediate medical attention.

7. The court may not extend a temporary guardianship pursuant to subsection 5 beyond the initial period of 10 days unless the petitioner demonstrates that:

(a) The provisions of [NRS 159.0475](#) have been satisfied; or

(b) Notice by publication pursuant to [N.R.C.P. 4\(e\)](#) is currently being undertaken.

8. The court may extend the temporary guardianship, for good cause shown, for not more than two successive 60-day periods, except that the court shall not cause the temporary guardianship to continue longer than 5 months unless extraordinary circumstances are shown.

(Added to NRS by [2001, 867](#); A [2003, 1778](#); [2007, 2028](#); [2009, 1650](#); [2013, 912](#))

NRS 159.0525 Temporary guardian for ward who is unable to respond to substantial and immediate risk of financial loss: Petition for appointment; conditions; required notice; extension; limited powers.

1. A petitioner may request the court to appoint a temporary guardian for a ward who is unable to respond to a substantial and immediate risk of financial loss. To support the request, the petitioner must set forth in a petition and present to the court under oath:

(a) Documentation which shows that the proposed ward faces a substantial and immediate risk of financial loss and lacks capacity to respond to the risk of loss. Such documentation must include, without limitation, a certificate signed by a physician who is licensed to practice medicine in this State or who is employed by the Department of Veterans Affairs, a letter signed by any governmental agency in this State which conducts investigations or a police report indicating:

(1) That the proposed ward is unable to respond to a substantial and immediate risk of financial loss;

(2) Whether the proposed ward can live independently with or without assistance or services; and

(3) Whether the proposed ward is or has been subjected to abuse, neglect or exploitation;

(b) A detailed explanation of what risks the proposed ward faces, including, without limitation, termination of utilities or other services because of nonpayment, initiation of eviction or foreclosure proceedings, exploitation or loss of assets as the result of fraud, coercion or undue influence; and

(c) Facts which show that:

(1) The petitioner has tried in good faith to notify the persons entitled to notice pursuant to [NRS 159.047](#) by telephone or in writing before the filing of the petition;

(2) The proposed ward would be exposed to an immediate risk of financial loss if the petitioner were to provide notice to the persons entitled to notice pursuant to [NRS 159.047](#) before the court determines whether to appoint a temporary guardian; or

(3) Giving notice to the persons entitled to notice pursuant to [NRS 159.047](#) is not feasible under the circumstances.

2. The court may appoint a temporary guardian to serve for 10 days if the court:

(a) Finds reasonable cause to believe that the proposed ward is unable to respond to a substantial and immediate risk of financial loss; and

(b) Is satisfied that the petitioner has tried in good faith to notify the persons entitled to notice pursuant to [NRS 159.047](#) or that giving notice to those persons is not feasible under the circumstances, or determines that such notice is not required pursuant to subparagraph (2) of paragraph (c) of subsection 1.

3. Except as otherwise provided in subsection 4, after the appointment of a temporary guardian, the petitioner shall attempt in good faith to notify the persons entitled to notice pursuant to [NRS 159.047](#), including, without limitation, notice of any hearing to extend the temporary guardianship. If the petitioner fails to make such an effort, the court may terminate the temporary guardianship.

4. If, before the appointment of a temporary guardian, the court determined that advance notice was not required pursuant to subparagraph (2) of paragraph (c) of subsection 1, the petitioner shall notify the persons entitled to notice pursuant to [NRS 159.047](#) without undue delay, but not later than 48 hours after the appointment of the temporary guardian or not later than 48 hours after the petitioner discovers the existence, identity and location of the persons entitled to notice pursuant to that section. If the petitioner fails to provide such notice, the court may terminate the temporary guardianship.

5. Not later than 10 days after the date of the appointment of a temporary guardian pursuant to subsection 2, the court shall hold a hearing to determine the need to extend the temporary guardianship. Except as otherwise provided in subsection 7, the court may extend the temporary guardianship until a general or special guardian is appointed pursuant to subsection 8 if:

(a) The court finds by clear and convincing evidence that the proposed ward is unable to respond to a substantial and immediate risk of financial loss; and

(b) The extension of the temporary guardianship is necessary and in the best interests of the proposed ward.

6. If the court appoints a temporary guardian or extends the temporary guardianship pursuant to this section, the court shall limit the powers of the temporary guardian to those necessary to respond to the substantial and immediate risk of financial loss, specifically limiting the temporary guardian's authority to take possession of, close or have access to any accounts of the ward or to sell or dispose of tangible personal property of the ward to only that authority as needed to provide for the ward's basic living expenses until a general or special guardian can be appointed. The court may freeze any or all of the ward's accounts to protect such accounts from loss.

7. The court may not extend a temporary guardianship pursuant to subsection 5 beyond the initial period of 10 days unless the petitioner demonstrates that:

(a) The provisions of [NRS 159.0475](#) have been satisfied; or

(b) Notice by publication pursuant to [N.R.C.P. 4\(e\)](#) is currently being undertaken.

8. The court may extend the temporary guardianship, for good cause shown, for not more than two successive 60-day periods, except that the court shall not cause the temporary guardianship to continue longer than 5 months unless extraordinary circumstances are shown.

(Added to NRS by [2001, 869](#); A [2003, 1779](#); [2007, 2029](#); [2009, 1652](#); [2013, 914](#))

NRS 159.192 Termination of temporary guardianship.

1. If a temporary guardianship is terminated and a petition for a general or special guardianship has not been filed:

(a) The temporary guardian shall immediately turn over all of the ward's property to the ward; or

(b) If the temporary guardian is awaiting certification from the appropriate authority acknowledging that the guardian has no further liability for taxes on the estate, the temporary guardian shall seek approval from the court to maintain possession of all or a portion of the ward's property.

2. If a temporary guardianship is terminated and a petition for general or special guardianship has been filed, the temporary guardian of the estate may:

(a) Continue possessing the ward's property; and

(b) Perform the duties of guardian for not more than 90 days after the temporary guardianship is terminated or until the court appoints another temporary, general or special guardian.

3. If the death of a ward causes the termination of a temporary guardianship before the hearing on a general or special guardianship:

(a) The temporary guardian of the estate may:

(1) Continue possessing the ward's property; and

(2) Except as otherwise provided in this paragraph, perform the duties of guardian for not more than 90 days after the date of the termination of the temporary guardianship or until the court appoints a personal representative of the estate, if any. If the temporary guardian is awaiting certification from the appropriate authority acknowledging that the guardian has no further liability for taxes on the estate and it will take longer than 90 days after the date of the termination of the temporary guardianship to receive such certification, the temporary guardian must seek approval from the court to maintain possession of all or a portion of the ward's property until certification is received.

(b) If no personal representative has been appointed pursuant to [chapter 138](#) or [139](#) of NRS, the temporary guardian shall pay all of the final expenses and outstanding debts of the ward to the extent possible using the assets in the possession of the temporary guardian.

(Added to NRS by [2003, 1767](#))

NRS 159.046 Appointment, duties and compensation of investigators.

1. Upon filing of the petition, or any time thereafter, the court may appoint one or more investigators to:

(a) Locate persons who perform services needed by the proposed ward and other public and private resources available to the proposed ward.

(b) Determine any competing interests in the appointment of a guardian.

(c) Investigate allegations or claims which affect a ward or proposed ward.

2. An investigator may be an employee of a social service agency, family service officer of the court, public guardian, physician or other qualified person.

3. An investigator shall file with the court and parties a report concerning the scope of the appointment of the guardian and any special powers which a guardian would need to assist the proposed ward.

4. An investigator who is appointed pursuant to this section is entitled to reasonable compensation from the estate of the proposed ward. If the court finds that a person has unnecessarily or unreasonably caused the investigation, the court may order the person to pay to the estate of the proposed ward all or part of the expenses associated with the investigation.

(Added to NRS by [1981, 1932](#); A [2003, 1773](#))

STATUTES
ATTORNEY REPRESENTATION
GUARDIAN AD LITEM
WASHINGTON

NRS 159.0485 Proposed adult ward advised of right to counsel; appointment, duties and compensation of attorney for adult ward or proposed adult ward.

1. At the first hearing for the appointment of a guardian for a proposed adult ward, the court shall advise the proposed adult ward who is in attendance at the hearing or who is appearing by videoconference at the hearing of his or her right to counsel and determine whether the proposed adult ward wishes to be represented by counsel in the guardianship proceeding. If the proposed adult ward is not in attendance at the hearing because the proposed adult ward has been excused pursuant to [NRS 159.0535](#) and is not appearing by videoconference at the hearing, the proposed adult ward must be advised of his or her right to counsel pursuant to subsection 2 of [NRS 159.0535](#).

2. If an adult ward or proposed adult ward is unable to retain legal counsel and requests the appointment of counsel at any stage in a guardianship proceeding and whether or not the adult ward or proposed adult ward lacks or appears to lack capacity, the court shall, at or before the time of the next hearing, appoint an attorney who works for legal aid services, if available, or a private attorney to represent the adult ward or proposed adult ward. The appointed attorney shall represent the adult ward or proposed adult ward until relieved of the duty by court order.

3. Subject to the discretion and approval of the court, the attorney for the adult ward or proposed adult ward is entitled to reasonable compensation and expenses. Unless the court determines that the adult ward or proposed adult ward does not have the ability to pay such compensation and expenses or the court shifts the responsibility of payment to a third party, the compensation and expenses must be paid from the estate of the adult ward or proposed adult ward, unless the compensation and expenses are provided for or paid by another person or entity. If the court finds that a person has unnecessarily or unreasonably caused the appointment of an attorney, the court may order the person to pay to the estate of the adult ward or proposed adult ward all or part of the expenses associated with the appointment of the attorney.

(Added to NRS by [1999, 1396](#); A [2003, 1776](#); [2009, 2521](#); [2013, 910](#))

NRS 159.0455 Appointment, duties and compensation of guardians ad litem.

1. On or after the date of the filing of a petition to appoint a guardian:

(a) The court may appoint a person to represent the ward or proposed ward as a guardian ad litem;
and

(b) The guardian ad litem must represent the ward or proposed ward as a guardian ad litem until relieved of that duty by court order.

2. Upon the appointment of the guardian ad litem, the court shall set forth in the order of appointment the duties of the guardian ad litem.

3. The guardian ad litem is entitled to reasonable compensation from the estate of the ward or proposed ward. If the court finds that a person has unnecessarily or unreasonably caused the appointment of a guardian ad litem, the court may order the person to pay to the estate of the ward or proposed ward all or part of the expenses associated with the appointment of the guardian ad litem.

(Added to NRS by [2003,1758](#))

WASHINGTON STATE

RCW 11.88.045

Legal counsel and jury trial — Proof — Medical report — Examinations — Waiver.

(1)(a) Alleged incapacitated individuals shall have the right to be represented by willing counsel of their choosing at any stage in guardianship proceedings. The court shall provide counsel to represent any alleged incapacitated person at public expense when either: (i) The individual is unable to afford counsel, or (ii) the expense of counsel would result in substantial hardship to the individual, or (iii) the individual does not have practical access to funds with which to pay counsel. If the individual can afford counsel but lacks practical access to funds, the court shall provide counsel and may impose a reimbursement requirement as part of a final order. When, in the opinion of the court, the rights and interests of an alleged or adjudicated incapacitated person cannot otherwise be adequately protected and represented, the court on its own motion shall appoint an attorney at any time to represent such person. Counsel shall be provided as soon as practicable after a petition is filed and long enough before any final hearing to allow adequate time for consultation and preparation. Absent a convincing showing in the record to the contrary, a period of less than three weeks shall be presumed by a reviewing court to be inadequate time for consultation and preparation.

(b) Counsel for an alleged incapacitated individual shall act as an advocate for the client and shall not substitute counsel's own judgment for that of the client on the subject of what may be in the client's best interests. Counsel's role shall be distinct from that of the guardian ad litem, who is expected to promote the best interest of the alleged incapacitated individual, rather than the alleged incapacitated individual's expressed preferences.

(c) If an alleged incapacitated person is represented by counsel and does not communicate with counsel, counsel may ask the court for leave to withdraw for that reason. If satisfied, after affording the alleged incapacitated person an opportunity for a hearing, that the request is justified, the court may grant the request and allow the case to proceed with the alleged incapacitated person unrepresented.

(2) During the pendency of any guardianship, any attorney purporting to represent a person alleged or adjudicated to be incapacitated shall petition to be appointed to represent the incapacitated or alleged incapacitated person. Fees for representation described in this section shall be subject to approval by the court pursuant to the provisions of RCW [11.92.180](#).

(3) The alleged incapacitated person is further entitled to testify and present evidence and, upon request, entitled to a jury trial on the issues of his or her alleged incapacity. The standard of proof to be applied in a contested case, whether before a jury or the court, shall be that of clear, cogent, and convincing evidence.

(4) In all proceedings for appointment of a guardian or limited guardian, the court must be presented with a written report from a physician licensed to practice under chapter [18.71](#) or

18.57 RCW, psychologist licensed under chapter 18.83 RCW, or advanced registered nurse practitioner licensed under chapter 18.79 RCW, selected by the guardian ad litem. If the alleged incapacitated person opposes the health care professional selected by the guardian ad litem to prepare the medical report, then the guardian ad litem shall use the health care professional selected by the alleged incapacitated person. The guardian ad litem may also obtain a supplemental examination. The physician, psychologist, or advanced registered nurse practitioner shall have personally examined and interviewed the alleged incapacitated person within thirty days of preparation of the report to the court and shall have expertise in the type of disorder or incapacity the alleged incapacitated person is believed to have. The report shall contain the following information and shall be set forth in substantially the following format:

- (a) The name and address of the examining physician, psychologist, or advanced registered nurse practitioner;
- (b) The education and experience of the physician, psychologist, or advanced registered nurse practitioner pertinent to the case;
- (c) The dates of examinations of the alleged incapacitated person;
- (d) A summary of the relevant medical, functional, neurological, or mental health history of the alleged incapacitated person as known to the examining physician, psychologist, or advanced registered nurse practitioner;
- (e) The findings of the examining physician, psychologist, or advanced registered nurse practitioner as to the condition of the alleged incapacitated person;
- (f) Current medications;
- (g) The effect of current medications on the alleged incapacitated person's ability to understand or participate in guardianship proceedings;
- (h) Opinions on the specific assistance the alleged incapacitated person needs;
- (i) Identification of persons with whom the physician, psychologist, or advanced registered nurse practitioner has met or spoken regarding the alleged incapacitated person.

The court shall not enter an order appointing a guardian or limited guardian until a medical or mental status report meeting the above requirements is filed.

The requirement of filing a medical report is waived if the basis of the guardianship is minority.

(5) During the pendency of an action to establish a guardianship, a petitioner or any person may move for temporary relief under chapter 7.40 RCW, to protect the alleged incapacitated person from abuse, neglect, abandonment, or exploitation, as those terms are defined in RCW 74.34.020, or to address any other emergency needs of the alleged incapacitated person. Any

alternative arrangement executed before filing the petition for guardianship shall remain effective unless the court grants the relief requested under chapter [7.40](#) RCW, or unless, following notice and a hearing at which all parties directly affected by the arrangement are present, the court finds that the alternative arrangement should not remain effective.

[2001 c 148 § 1; 1996 c 249 § 9; 1995 c 297 § 3; 1991 c 289 § 4; 1990 c 122 § 6; 1977 ex.s. c 309 § 5; 1975 1st ex.s. c 95 § 7.]

Notes:

Intent -- 1996 c 249: See note following RCW [2.56.030](#).

Effective date -- 1990 c 122: See note following RCW [11.88.005](#).

Severability -- 1977 ex.s. c 309: See note following RCW [11.88.005](#).

STATUTES POWER OF ATTORNEY

NRS CHAPTER 162A POWER OF ATTORNEY FOR FINANCIAL MATTERS AND DURABLE POWER OF ATTORNEY FOR HEALTH CARE DECISIONS

GENERAL PROVISIONS

NRS 162A.010 Definitions. As used in this chapter, unless the context otherwise requires, the words and terms defined in [NRS 162A.020](#) to [162A.160](#), inclusive, have the meanings ascribed to them in those sections. (Added to NRS by [2009, 174](#))

NRS 162A.020 “Acknowledged” defined. “Acknowledged” means purportedly verified before a notary public or other individual authorized to take acknowledgments. (Added to NRS by [2009, 174](#))

NRS 162A.030 “Agent” defined. “Agent” means a person granted authority to act for a principal under a power of attorney, whether denominated an agent, attorney-in-fact or otherwise. The term includes an original agent, co-agent, successor agent and a person to which an agent’s authority is delegated. (Added to NRS by [2009, 174](#))

NRS 162A.040 “Durable” defined. “Durable,” with respect to a power of attorney, means not terminated by the principal’s incapacity. (Added to NRS by [2009, 175](#))

NRS 162A.050 “Electronic” defined. “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities. (Added to NRS by [2009, 175](#))

NRS 162A.060 “Good faith” defined. “Good faith” means honesty in fact. (Added to NRS by [2009, 175](#))

NRS 162A.070 “Incapacity” defined. “Incapacity” means the inability of an individual to manage property or business affairs because the individual:

1. Has an impairment in the ability to receive and evaluate information or make or communicate decisions even with the use of technological assistance; or
2. Is:
 - (a) Missing;
 - (b) Detained, including incarcerated in a penal system; or
 - (c) Outside the United States and unable to return. (Added to NRS by [2009, 175](#))

NRS 162A.080 “Person” defined. “Person” means an individual, corporation, business trust, estate, trust, partnership, limited-liability company, association, joint venture, public corporation, government or governmental subdivision, agency or instrumentality, or any other legal or commercial entity. (Added to NRS by [2009, 175](#))

NRS 162A.090 “Power of attorney” defined. “Power of attorney” means a writing or other record that grants authority to an agent to act in the place of the principal, whether or not the term “power of attorney” is used. (Added to NRS by [2009, 175](#))

NRS 162A.100 “Presently exercisable general power of appointment” defined. “Presently exercisable general power of appointment,” with respect to property or a property interest subject to a power of appointment, means power exercisable at the time in question to vest absolute ownership in the principal individually, the principal’s estate, the principal’s creditors or the creditors of the principal’s estate. The term includes a power of appointment not exercisable until the occurrence of a specified event, the satisfaction of an ascertainable standard, or the passage of a specified period only after the occurrence of the specified event, the satisfaction of the ascertainable standard or

the passage of the specified period. The term does not include a power exercisable in a fiduciary capacity or only by will. (Added to NRS by [2009, 175](#))

NRS 162A.110 “Principal” defined. “Principal” means an individual who grants authority to an agent in a power of attorney. (Added to NRS by [2009, 175](#))

NRS 162A.120 “Property” defined. “Property” means anything that may be the subject of ownership, whether real or personal, or legal or equitable, or any interest or right therein. (Added to NRS by [2009, 175](#))

NRS 162A.130 “Record” defined. “Record” means information which is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form. (Added to NRS by [2009, 175](#))

NRS 162A.140 “Sign” defined. “Sign” means, with present intent to authenticate or adopt a record:

1. To execute or adopt a tangible symbol; or
2. To attach to or logically associate with the record an electronic sound, symbol or process. (Added to NRS by [2009, 175](#))

NRS 162A.150 “State” defined. “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. (Added to NRS by [2009, 175](#))

NRS 162A.160 “Stocks and bonds” defined. “Stocks and bonds” means stocks, bonds, mutual funds, and all other types of securities and financial instruments, whether held directly or indirectly, or in any other manner. The term does not include commodity futures contracts and call or put options on stocks or stock indexes. (Added to NRS by [2009, 175](#))

POWER OF ATTORNEY (UNIFORM ACT)

General Provisions

NRS 162A.200 Applicability. [NRS 162A.200](#) to [162A.660](#), inclusive, apply to all powers of attorney except:

1. A power to the extent it is coupled with an interest in the subject of the power, including a power given to or for the benefit of a creditor in connection with a credit transaction;
2. A power to make health care decisions;
3. A proxy or other delegation to exercise voting rights or management rights with respect to an entity; and
4. A power created on a form prescribed by a government or a governmental subdivision, agency or instrumentality for a governmental purpose. (Added to NRS by [2009, 176](#))

NRS 162A.210 Power of attorney is durable; exceptions. A power of attorney created under [NRS 162A.200](#) to [162A.660](#), inclusive, is durable unless it expressly provides that it is terminated by the incapacity of the principal. (Added to NRS by [2009, 176](#))

NRS 162A.220 Execution of power of attorney; certification of competency of principal required under certain circumstances; certain persons not to be named as agent; exceptions; penalty for misuse of power of attorney.

1. A power of attorney must be signed by the principal or, in the principal's conscious presence, by another individual directed by the principal to sign the principal's name on the power of attorney. A signature on a power of attorney is presumed to be genuine if the principal acknowledges the signature before a notary public or other individual authorized by law to take acknowledgments.

2. If the principal resides in a hospital, residential facility for groups, facility for skilled nursing or home for individual residential care, at the time of execution of the power of attorney, a certification of competency of the principal from a physician, psychologist or psychiatrist must be attached to the power of attorney.

3. If the principal resides or is about to reside in a hospital, assisted living facility or facility for skilled nursing at the time of execution of the power of attorney, in addition to the prohibition set forth in [NRS 162A.840](#) and except as otherwise provided in subsection 4, the principal may not name as agent in any power of attorney for any purpose:

- (a) The hospital, assisted living facility or facility for skilled nursing;
- (b) An owner or operator of the hospital, assisted living facility or facility for skilled nursing; or
- (c) An employee of the hospital, assisted living facility or facility for skilled nursing.

4. The principal may name as agent any person identified in subsection 3 if that person is:

- (a) The spouse, legal guardian or next of kin of the principal; or
- (b) Named only for the purpose of assisting the principal to establish eligibility for Medicaid and the power of attorney complies with the provisions of subsection 5.

5. A person may be named as agent pursuant to paragraph (b) of subsection 4 only if:

- (a) A valid financial power of attorney for the principal does not exist;
- (b) The agent has made a good faith effort to contact each family member of the principal identified in the records of the hospital, assisted living facility or facility for skilled nursing, as applicable, to request that the family member establish a financial power of attorney for the principal and has documented his or her effort;

(c) The power of attorney specifies that the agent is only authorized to access financial documents of the principal which are necessary to prove eligibility of the principal for Medicaid as described in the application for Medicaid and specifies that any request for such documentation must be accompanied by a copy of the application for Medicaid or by other proof that the document is necessary to prove eligibility for Medicaid;

(d) The power of attorney specifies that the agent does not have authority to access money or any other asset of the principal for any purpose; and

(e) The power of attorney specifies that the power of attorney is only valid until eligibility of the principal for Medicaid is determined or 6 months after the power of attorney is signed, whichever is sooner.

6. A person who is named as agent pursuant to paragraph (b) of subsection 4 shall not use the power of attorney for any purpose other than to assist the principal to establish eligibility for Medicaid and shall not use the power of attorney in a manner inconsistent with the provisions of subsection 5. A person who violates the provisions of this subsection is guilty of a category C felony and shall be punished as provided in [NRS 193.130](#).

7. As used in this section:

- (a) "Assisted living facility" has the meaning ascribed to it in [NRS 422.2708](#).
- (b) "Facility for skilled nursing" has the meaning ascribed to it in [NRS 449.0039](#).
- (c) "Home for individual residential care" has the meaning ascribed to it in [NRS 449.0105](#).
- (d) "Hospital" has the meaning ascribed to it in [NRS 449.012](#).
- (e) "Residential facility for groups" has the meaning ascribed to it in [NRS 449.017](#). (Added to NRS by [2009, 176](#); [A 2011, 698](#); [2013, 923](#))

NRS 162A.230 Validity of power of attorney.

1. A power of attorney executed in this State on or after October 1, 2009, is valid if its execution complies with [NRS 162A.220](#).

2. A power of attorney executed in this State before October 1, 2009, is valid if its execution complied with the law of this State as it existed at the time of execution.

3. A power of attorney executed other than in this State is valid in this State if, when the power of attorney was executed, the execution complied with:

(a) The law of the jurisdiction that determines the meaning and effect of the power of attorney pursuant to [NRS 162A.240](#); or

(b) The requirements for a military power of attorney pursuant to 10 U.S.C. § 1044b.

4. Except as otherwise provided by specific statute other than the provisions of [NRS 162A.200](#) to [162A.660](#), inclusive, a photocopy or electronically transmitted copy of an original power of attorney has the same effect as the

original power of attorney. An agent shall furnish an affidavit to a third party on demand stating that the instrument relied on is a true copy of the power of attorney and that, to the best of the agent's knowledge, the principal is alive and the relevant powers of the agent have not been altered or terminated. (Added to NRS by [2009, 176](#))

NRS 162A.240 Meaning and effect of power of attorney. The meaning and effect of a power of attorney is determined by the law of the jurisdiction indicated in the power of attorney and, in the absence of an indication of jurisdiction, by the law of the jurisdiction in which the power of attorney was executed. (Added to NRS by [2009, 177](#))

NRS 162A.250 Nomination of guardian of estate; relation of agent to court-appointed guardian.

1. In a power of attorney, a principal may nominate a guardian of the principal's estate for consideration by the court if guardianship proceedings for the principal's estate or person are begun after the principal executes the power of attorney.

2. If, after a principal executes a power of attorney, a court appoints a guardian of the principal's estate, the power of attorney is terminated, unless the court allows the agent to retain specific powers conferred by the power of attorney. In the event the court allows the agent to retain specific powers, the agent shall file an accounting with the court and the guardian on a quarterly basis or such other period as the court may designate. (Added to NRS by [2009, 177](#); A [2013, 925](#))

NRS 162A.260 Time at which power of attorney is effective.

1. A power of attorney is effective when executed unless the principal provides in the power of attorney that it becomes effective at a future date or upon the occurrence of a future event or contingency.

2. If a power of attorney becomes effective upon the occurrence of a future event or contingency, the principal, in the power of attorney, may authorize one or more persons to determine in a writing or other record that the event or contingency has occurred.

3. If a power of attorney becomes effective upon the principal's incapacity and the principal has not authorized a person to determine whether the principal is incapacitated, or the person authorized is unable or unwilling to make the determination, the power of attorney becomes effective upon a determination in a writing or other record by a physician, psychiatrist or licensed psychologist that the principal is incapacitated.

4. A person authorized by the principal in the power of attorney to determine that the principal is incapacitated may act as the principal's personal representative pursuant to the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as amended, and applicable regulations, to obtain a determination of incapacity. (Added to NRS by [2009, 177](#))

NRS 162A.270 Termination of power of attorney or authority of agent.

1. A power of attorney terminates when:

- The principal dies;
- The principal becomes incapacitated, if the power of attorney is not durable;
- The principal revokes the power of attorney;
- The power of attorney provides that it terminates;
- The limited purpose of the power of attorney is accomplished; or
- The principal revokes the agent's authority or the agent dies, becomes incapacitated or resigns, and the power of attorney does not provide for another agent to act under the power of attorney.

2. An agent's authority terminates when:

- The principal revokes the authority;
- The agent dies, becomes incapacitated or resigns;
- An action is filed for the dissolution or annulment of the agent's marriage to the principal or their legal separation, unless the power of attorney otherwise provides; or
- The power of attorney terminates.

3. Unless the power of attorney otherwise provides, an agent's authority is exercisable until the authority terminates under subsection 2, notwithstanding a lapse of time since the execution of the power of attorney.

4. Termination of an agent's authority or of a power of attorney is not effective as to the agent or another person that, without actual knowledge of the termination, acts in good faith under the power of attorney. An act so performed, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.

5. Incapacity of the principal of a power of attorney that is not durable does not revoke or terminate the power of attorney as to an agent or other person that, without actual knowledge of the incapacity, acts in good faith under the power of attorney. An act so performed, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.

6. The execution of a power of attorney does not revoke a power of attorney previously executed by the principal unless the subsequent power of attorney provides that the previous power of attorney is revoked or that all other powers of attorney are revoked. (Added to NRS by [2009, 177](#))

NRS 162A.280 Co-agents and successor agents.

1. A principal may designate two or more persons to act as co-agents. Unless the power of attorney otherwise provides, each co-agent may exercise its authority independently.

2. A principal may designate one or more successor agents to act if an agent resigns, dies, becomes incapacitated, is not qualified to serve or declines to serve. A principal may grant authority to designate one or more successor agents to an agent or other person designated by name, office or function. Unless the power of attorney otherwise provides, a successor agent:

- (a) Has the same authority as that granted to the original agent; and
- (b) May not act until all predecessor agents have resigned, died, become incapacitated, are no longer qualified to serve or have declined to serve.

3. Except as otherwise provided in subsection 4 and in the power of attorney, an agent that does not participate in or conceal a breach of fiduciary duty committed by another agent, including a predecessor agent, is not liable for the actions of the other agent.

4. An agent that has actual knowledge of a breach or imminent breach of fiduciary duty by another agent shall notify the principal and, if the principal is incapacitated, take any action reasonably appropriate in the circumstances to safeguard the principal's best interest. An agent that fails to notify the principal or take action as required by this subsection is liable for the reasonably foreseeable damages that could have been avoided if the agent had notified the principal or taken such action. (Added to NRS by [2009, 178](#))

NRS 162A.290 Reimbursement of agent. Unless the power of attorney otherwise provides, an agent is entitled to reimbursement of expenses reasonably incurred on behalf of the principal. (Added to NRS by [2009, 178](#))

NRS 162A.300 Agent's acceptance of appointment. Except as otherwise provided in the power of attorney, a person accepts appointment as an agent under a power of attorney by exercising authority or performing duties as an agent or by any other assertion or conduct indicating acceptance. (Added to NRS by [2009, 178](#))

NRS 162A.310 Duties of agent.

1. Notwithstanding provisions in the power of attorney, an agent that has accepted appointment shall:
 - (a) Act in accordance with the principal's reasonable expectations to the extent actually known by the agent and, otherwise, in the principal's best interest;
 - (b) Act in good faith; and
 - (c) Act only within the scope of authority granted in the power of attorney.
2. Except as otherwise provided in the power of attorney, an agent that has accepted appointment shall:
 - (a) Act loyally for the principal's benefit;
 - (b) Act so as not to create a conflict of interest that impairs the agent's ability to act impartially in the principal's best interest;
 - (c) Act with the care, competence and diligence ordinarily exercised by agents in similar circumstances;
 - (d) Keep a record of all receipts, disbursements and transactions made on behalf of the principal;
 - (e) Cooperate with a person that has authority to make health care decisions for the principal; and

(f) Attempt to preserve the principal's estate plan, to the extent actually known by the agent, if preserving the plan is consistent with the principal's best interest based on all relevant factors, including:

- (1) The value and nature of the principal's property;
- (2) The principal's foreseeable obligations and need for maintenance;
- (3) Minimization of taxes, including income, estate, inheritance, generation-skipping transfer and gift taxes;

and

- (4) Eligibility for a benefit, a program or assistance under a statute or regulation.

3. An agent that acts in good faith is not liable to any beneficiary of the principal's estate plan for failure to preserve the plan.

4. An agent that acts with care, competence and diligence for the best interest of the principal is not liable solely because the agent also benefits from the act or has an individual or conflicting interest in relation to the property or affairs of the principal.

5. If an agent is selected by the principal because of special skills or expertise possessed by the agent or in reliance on the agent's representation that the agent has special skills or expertise, the special skills or expertise must be considered in determining whether the agent has acted with care, competence and diligence under the circumstances.

6. Absent a breach of duty to the principal, an agent is not liable if the value of the principal's property declines.

7. An agent that exercises authority to delegate to another person the authority granted by the principal or that engages another person on behalf of the principal is not liable for an act, error of judgment or default of that person if the agent exercises care, competence and diligence in selecting and monitoring the person.

8. Except as otherwise provided in the power of attorney, an agent is not required to disclose receipts, disbursements or transactions conducted on behalf of the principal unless ordered by a court, or requested by the principal, a guardian or other fiduciary acting for the principal, a governmental agency having authority to protect the welfare of the principal or, upon the death of the principal, by the personal representative or successor in interest of the principal's estate. If so requested, within 30 days the agent shall comply with the request or provide a writing or other record substantiating why additional time is needed and shall comply with the request within an additional 30 days. (Added to NRS by [2009, 178](#))

NRS 162A.320 Exoneration of agent. A provision in a power of attorney relieving an agent of liability for breach of duty is binding on the principal and the principal's successors in interest, except to the extent the provision:

1. Relieves the agent of liability for breach of duty committed dishonestly, with an improper motive or with reckless indifference to the purposes of the power of attorney or the best interest of the principal; or

2. Was inserted as a result of an abuse of a confidential or fiduciary relationship with the principal. (Added to NRS by [2009, 180](#))

NRS 162A.330 Judicial relief.

1. The following persons may petition a court to construe a power of attorney or review the agent's conduct, and grant appropriate relief:

- (a) The principal or the agent;
- (b) A guardian or other fiduciary acting for the principal;
- (c) A person authorized to make health care decisions for the principal;
- (d) The principal's spouse, parent or descendant;
- (e) An individual who would qualify as a presumptive heir of the principal;
- (f) A person named as a beneficiary to receive any property, benefit or contractual right on the principal's death or as a beneficiary of a trust created by or for the principal that has a financial interest in the principal's estate;
- (g) A governmental agency having regulatory authority to protect the welfare of the principal;
- (h) A person asked to accept the power of attorney; or
- (i) The principal's caregiver or another person who demonstrates sufficient interest in the principal's welfare.

2. Upon motion by the principal, the court shall dismiss a petition filed under this section, unless:

- (a) The court finds that the principal lacks capacity to revoke the agent's authority or the power of attorney; or

(b) A governmental agency has asserted abuse by the agent regarding the agent's actions under the power of attorney. (Added to NRS by [2009, 180](#))

NRS 162A.340 Liability of agent. An agent that violates [NRS 162A.200](#) to [162A.660](#), inclusive, is liable to the principal or the principal's successors in interest for the amount required to:

1. Restore the value of the principal's property to what it would have been had the violation not occurred; and
2. Reimburse the principal or the principal's successors in interest for the attorney's fees and costs paid on the agent's behalf. (Added to NRS by [2009, 180](#))

NRS 162A.350 Resignation of agent; notice. Unless the power of attorney provides a different method for an agent's resignation, an agent may resign by giving notice to the principal and, if the principal is incapacitated:

1. To a co-agent or successor agent; or
2. If there is no person described in subsection 1, to:
 - (a) The principal's spouse, parent or descendant;
 - (b) The principal's caregiver;
 - (c) Another person reasonably believed by the agent to have sufficient interest in the principal's welfare; or
 - (d) A governmental agency having authority to protect the welfare of the principal. (Added to NRS by [2009, 180](#))

NRS 162A.360 Acceptance of and reliance upon acknowledged power of attorney.

1. A person that in good faith accepts an acknowledged power of attorney without actual knowledge that the signature is not genuine may rely upon the presumption under [NRS 162A.220](#) that the signature is genuine.

2. A person that in good faith accepts an acknowledged power of attorney without actual knowledge that the power of attorney is void, invalid or terminated, that the purported agent's authority is void, invalid or terminated, or that the agent is exceeding or improperly exercising the agent's authority may rely upon the power of attorney as if the power of attorney were genuine, valid and still in effect, the agent's authority were genuine, valid and still in effect, and the agent had not exceeded and had properly exercised the authority.

3. A person that is asked to accept an acknowledged power of attorney may request, and rely upon, without further investigation:

- (a) An agent's certification under penalty of perjury of any factual matter concerning the principal, agent or power of attorney;
- (b) An English translation of the power of attorney if the power of attorney contains, in whole or in part, language other than English; and
- (c) An opinion of counsel as to any matter of law concerning the power of attorney if the person making the request provides in a writing or other record the reason for the request.

4. An English translation or an opinion of counsel requested under this section must be provided at the principal's expense unless the request is made more than 10 business days after the power of attorney is presented for acceptance. If the request is made more than 10 business days after presentation of the power of attorney, the party requesting the translation shall pay for the translation.

5. For purposes of this section, a person that conducts activities through employees is without actual knowledge of a fact relating to a power of attorney, a principal or an agent if the employee conducting the transaction involving the power of attorney is without actual knowledge of the fact. (Added to NRS by [2009, 181](#))

NRS 162A.370 Liability for refusal to accept acknowledged power of attorney.

1. Except as otherwise provided in subsection 2:
 - (a) A person shall either accept an acknowledged power of attorney, or request a certification, a translation or an opinion of counsel pursuant to [NRS 162A.360](#), not later than 10 business days after presentation of the power of attorney for acceptance;
 - (b) If a person requests a certification, a translation or an opinion of counsel pursuant to [NRS 162A.360](#), the person shall accept the power of attorney not later than 5 business days after receipt of the certification, translation or opinion of counsel; and

(c) A person may not require an additional or different form of power of attorney for authority granted in the power of attorney presented.

2. A person is not required to accept an acknowledged power of attorney if:

(a) The person is not otherwise required to engage in a transaction with the principal in the same circumstances;

(b) Engaging in a transaction with the agent or the principal in the same circumstances would be inconsistent with federal law;

(c) The person has actual knowledge of the termination of the agent's authority or of the power of attorney before exercise of the power;

(d) A request for a certification, a translation or an opinion of counsel pursuant to [NRS 162A.360](#) is refused;

(e) The person in good faith believes that the power is not valid or that the agent does not have the authority to perform the act requested, whether or not a certification, a translation or an opinion of counsel has been requested or provided pursuant to [NRS 162A.360](#); or

(f) The person makes, or has actual knowledge that another person has made, a report pursuant to [NRS 200.5093](#) stating a good faith belief that the principal may be subject to abuse, neglect, exploitation or isolation by the agent or a person acting for or with the agent.

3. A person that refuses in violation of this section to accept an acknowledged power of attorney is subject to:

(a) A court order mandating acceptance of the power of attorney; and

(b) Liability for reasonable attorney's fees and costs incurred in any action or proceeding that confirms the validity of the power of attorney or mandates acceptance of the power of attorney. (Added to NRS by [2009, 181](#))

NRS 162A.380 Principles of law and equity. Unless displaced by a provision of [NRS 162A.200](#) to [162A.660](#), inclusive, the principles of law and equity supplement [NRS 162A.200](#) to [162A.660](#), inclusive. (Added to NRS by [2009, 182](#))

NRS 162A.390 Laws applicable to financial institutions and entities. [NRS 162A.200](#) to [162A.660](#), inclusive, does not supersede any other law applicable to financial institutions or other entities, and the other law controls if inconsistent with [NRS 162A.200](#) to [162A.660](#), inclusive. (Added to NRS by [2009, 182](#))

NRS 162A.400 Remedies under other law. The remedies under [NRS 162A.200](#) to [162A.660](#), inclusive, are not exclusive and do not abrogate any right or remedy under the laws of this State other than [NRS 162A.200](#) to [162A.660](#), inclusive. (Added to NRS by [2009, 182](#))

Authority

NRS 162A.450 Grant of specific authority.

1. An agent under a power of attorney may do the following on behalf of the principal or with the principal's property only if the power of attorney expressly grants the agent the authority and exercise of the authority is not otherwise prohibited by another agreement or instrument to which the authority or property is subject:

(a) Create, amend, revoke or terminate an inter vivos trust;

(b) Make a gift;

(c) Create or change rights of survivorship;

(d) Create or change a beneficiary designation;

(e) Delegate authority granted under the power of attorney;

(f) Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan;

(g) Exercise fiduciary powers that the principal has authority to delegate; or

(h) Disclaim property, including a power of appointment.

2. Notwithstanding a grant of authority to do an act described in subsection 1, unless the power of attorney otherwise provides, an agent that is not a spouse of the principal may not exercise authority under a power of attorney to create in the agent, or in an individual to whom the agent owes a legal obligation of support, an interest

in the principal's property, whether by gift, right of survivorship, beneficiary designation, disclaimer or otherwise. (Added to NRS by [2009, 182](#))

NRS 162A.460 Grant of general authority; incorporation of authority.

1. Except as otherwise provided in [NRS 162A.450](#), if a power of attorney grants to an agent authority to do all acts that a principal could do or refers to general authority or cites a section of [NRS 162A.200](#) to [162A.660](#), inclusive, in which the authority is described, the agent has the general authority described in [NRS 162A.200](#) to [162A.660](#), inclusive.

2. A reference in a power of attorney to any part of a section in [NRS 162A.200](#) to [162A.660](#), inclusive, incorporates the entire section as if it were set out in full in the power of attorney.

3. A principal may modify authority incorporated by reference.

4. Except as otherwise provided in [NRS 162A.450](#), if the subjects over which authority is granted in a power of attorney are similar or overlap, the broadest authority controls.

5. Authority granted in a power of attorney is exercisable with respect to property that the principal has when the power of attorney is executed or acquires later, whether or not the property is located in this State and whether or not the authority is exercised or the power of attorney is executed in this State.

6. An act performed by an agent pursuant to a power of attorney has the same effect and inures to the benefit of and binds the principal and the principal's successors in interest as if the principal had performed the act. (Added to NRS by [2009, 182](#))

NRS 162A.470 Construction of authority generally. Except as otherwise provided in the power of attorney, by executing a power of attorney that incorporates by reference a subject described in [NRS 162A.200](#) to [162A.660](#), inclusive, or that grants to an agent authority to do all acts that a principal could do pursuant to this chapter, a principal authorizes the agent to:

1. Demand, receive and obtain, by litigation or otherwise, money or another thing of value to which the principal is, may become or claims to be entitled, and conserve, invest, disburse or use anything so received or obtained for the purposes intended;

2. Contract in any manner with any person, on terms agreeable to the agent, to accomplish a purpose of a transaction and perform, rescind, cancel, terminate, reform, restate, release or modify the contract or another contract made by or on behalf of the principal;

3. Execute, acknowledge, seal, deliver, file or record any instrument or communication the agent considers desirable to accomplish a purpose of a transaction, including creating at any time a schedule listing some or all of the principal's property and attaching it to the power of attorney;

4. Initiate, participate in, submit to alternative dispute resolution, settle, oppose, propose or accept a compromise with respect to a claim existing in favor of or against the principal or intervene in litigation relating to the claim;

5. Seek on the principal's behalf the assistance of a court or other governmental agency to carry out an act authorized in the power of attorney;

6. Engage, compensate and discharge an attorney, accountant, discretionary investment manager, expert witness or other advisor;

7. Prepare, execute and file a record, report or other document to safeguard or promote the principal's interest under a statute or regulation;

8. Communicate with any representative or employee of a government or governmental subdivision, agency or instrumentality on behalf of the principal;

9. Access communications intended for, and communicate on behalf of, the principal, whether by mail, electronic transmission, telephone or other means; and

10. Do any lawful act with respect to the subject and all property related to the subject. (Added to NRS by [2009, 183](#))

NRS 162A.480 Real property.

1. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to real property authorizes:
 - (a) The agent to demand, buy, lease, receive, accept as a gift or as security for an extension of credit, or otherwise acquire or reject an interest in real property or a right incident to real property;
 - (b) The agent to:
 - (1) Sell;
 - (2) Exchange;
 - (3) Convey with or without covenants, representations or warranties;
 - (4) Quitclaim;
 - (5) Release;
 - (6) Surrender;
 - (7) Retain title for security;
 - (8) Encumber;
 - (9) Partition;
 - (10) Consent to partitioning;
 - (11) Subject to an easement or covenant;
 - (12) Subdivide;
 - (13) Apply for zoning or other governmental permits;
 - (14) Plat or consent to platting;
 - (15) Develop;
 - (16) Grant an option concerning;
 - (17) Lease;
 - (18) Sublease;
 - (19) Contribute to an entity in exchange for an interest in that entity; or
 - (20) Otherwise grant or dispose of,
Ê an interest in real property or a right incident to real property;
 - (c) The agent to pledge or mortgage an interest in real property or right incident to real property as security to borrow money or pay, renew or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;
 - (d) The agent to release, assign, satisfy or enforce by litigation or otherwise a mortgage, deed of trust, conditional sale contract, encumbrance, lien or other claim to real property which exists or is asserted;
 - (e) The agent to manage or conserve an interest in real property or a right incident to real property owned or claimed to be owned by the principal, including:
 - (1) Insuring against liability or casualty or other loss;
 - (2) Obtaining or regaining possession of or protecting the interest or right by litigation or otherwise;
 - (3) Paying, assessing, compromising or contesting taxes or assessments or applying for and receiving refunds in connection with them; and
 - (4) Purchasing supplies, hiring assistance or labor, and making repairs or alterations to the real property;
 - (f) The agent to use, develop, alter, replace, remove, erect or install structures or other improvements upon real property in or incident to which the principal has, or claims to have, an interest or right;
 - (g) The agent to participate in a reorganization with respect to real property or an entity that owns an interest in or right incident to real property and receive, and hold, and act with respect to stocks and bonds or other property received in a plan of reorganization, including:
 - (1) Selling or otherwise disposing of them;
 - (2) Exercising or selling an option, right of conversion or similar right with respect to them; and
 - (3) Exercising any voting rights in person or by proxy;
 - (h) The agent to change the form of title of an interest in or right incident to real property; and
 - (i) The agent to dedicate to public use, with or without consideration, easements or other real property in which the principal has, or claims to have, an interest.

2. Every power of attorney, or other instrument in writing, containing the power to convey any real property as agent or attorney for the owner thereof, or to execute, as agent or attorney for another, any conveyance whereby any real property is conveyed, or may be affected, must be recorded as other conveyances whereby real property is conveyed or affected are required to be recorded.

3. No such power of attorney or other instrument, recorded in the manner prescribed in subsection 2, shall be deemed to be revoked by any act of the principal, until the instrument containing such revocation is deposited for record in the same office in which the instrument containing the power is recorded. (Added to NRS by [2009, 184](#))

NRS 162A.490 Tangible personal property. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to tangible personal property authorizes:

1. The agent to demand, buy, receive, accept as a gift or as security for an extension of credit, or otherwise acquire or reject ownership or possession of tangible personal property or an interest in tangible personal property;

2. The agent to:

- (a) Sell;
- (b) Exchange;
- (c) Convey with or without covenants, representations or warranties;
- (d) Quitclaim;
- (e) Release;
- (f) Surrender;
- (g) Create a security interest in;
- (h) Grant options concerning;
- (i) Lease;
- (j) Sublease; or
- (k) Otherwise dispose of,

È tangible personal property or an interest in tangible personal property;

3. The agent to grant a security interest in tangible personal property or an interest in tangible personal property as security to borrow money or pay, renew or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;

4. The agent to release, assign, satisfy or enforce by litigation or otherwise, a security interest, lien or other claim on behalf of the principal, with respect to tangible personal property or an interest in tangible personal property;

5. The agent to manage or conserve tangible personal property or an interest in tangible personal property on behalf of the principal, including:

- (a) Insuring against liability or casualty or other loss;
- (b) Obtaining or regaining possession of or protecting the property or interest, by litigation or otherwise;
- (c) Paying, assessing, compromising or contesting taxes or assessments, or applying for and receiving refunds in connection with taxes or assessments;
- (d) Moving the property from place to place;
- (e) Storing the property for hire or on a gratuitous bailment; and
- (f) Using and making repairs, alterations or improvements to the property; and

6. The agent to change the form of title of an interest in tangible personal property. (Added to NRS by [2009, 185](#))

NRS 162A.500 Stocks and bonds. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to stocks and bonds authorizes the agent to:

- 1. Buy, sell and exchange stocks and bonds;
- 2. Establish, continue, modify or terminate an account with respect to stocks and bonds;
- 3. Pledge stocks and bonds as security to borrow, pay, renew or extend the time of payment of a debt of the principal;
- 4. Receive certificates and other evidences of ownership with respect to stocks and bonds; and

5. Exercise voting rights with respect to stocks and bonds in person or by proxy, enter into voting trusts and consent to limitations on the right to vote. (Added to NRS by [2009, 186](#))

NRS 162A.510 Commodities and options. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to commodities and options authorizes the agent to:

1. Buy, sell, exchange, assign, settle and exercise commodity futures contracts and call or put options on stocks or stock indexes traded on a regulated option exchange; and

2. Establish, continue, modify and terminate option accounts. (Added to NRS by [2009, 186](#))

NRS 162A.520 Banks and other financial institutions.

1. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to banks and other financial institutions authorizes the agent to:

(a) Continue, modify and terminate an account or other banking arrangement made by or on behalf of the principal;

(b) Establish, modify and terminate an account or other banking arrangement with a bank, trust company, savings and loan association, credit union, thrift company, brokerage firm or other financial institution selected by the agent;

(c) Contract for services available from a financial institution, including renting a safe deposit box or space in a vault;

(d) Withdraw, by check, order, electronic funds transfer or otherwise, money or property of the principal deposited with or left in the custody of a financial institution;

(e) Receive statements of account, vouchers, notices and similar documents from a financial institution and act with respect to them;

(f) Enter a safe deposit box or vault and withdraw or add to the contents;

(g) Borrow money and pledge as security personal property of the principal necessary to borrow money or pay, renew or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;

(h) Make, assign, draw, endorse, discount, guarantee and negotiate promissory notes, checks, drafts and other negotiable or nonnegotiable paper of the principal or payable to the principal or the principal's order, transfer money, receive the cash or other proceeds of those transactions, and accept a draft drawn by a person upon the principal and pay it when due;

(i) Receive for the principal and act upon a sight draft, warehouse receipt or other document of title whether tangible or electronic, or other negotiable or nonnegotiable instrument;

(j) Apply for, receive and use letters of credit, credit and debit cards, electronic transaction authorizations and traveler's checks from a financial institution and give an indemnity or other agreement in connection with letters of credit; and

(k) Consent to an extension of the time of payment with respect to commercial paper or a financial transaction with a financial institution.

2. An agent who is not the spouse of the principal must not be listed on any account as a cosigner with right of survivorship, but must be listed on the account solely as power of attorney. (Added to NRS by [2009, 186](#))

NRS 162A.530 Operation of entity or business. Subject to the terms of a document or an agreement governing an entity or an entity ownership interest, and unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to operation of an entity or business authorizes the agent to:

1. Operate, buy, sell, enlarge, reduce or terminate an ownership interest.

2. Perform a duty or discharge a liability and exercise in person or by proxy a right, power, privilege or option that the principal has, may have or claims to have.

3. Enforce the terms of an ownership agreement.

4. Initiate, participate in, submit to alternative dispute resolution, settle, oppose, propose or accept a compromise with respect to litigation to which the principal is a party because of an ownership interest.

5. Exercise in person or by proxy, or enforce by litigation or otherwise, a right, power, privilege or option the principal has or claims to have as the holder of stocks and bonds.
6. Initiate, participate in, submit to alternative dispute resolution, settle, oppose, propose or accept a compromise with respect to litigation to which the principal is a party concerning stocks and bonds.
7. With respect to an entity or business owned solely by the principal:
 - (a) Continue, modify, renegotiate, extend and terminate a contract made by or on behalf of the principal with respect to the entity or business before execution of the power of attorney;
 - (b) Determine:
 - (1) The location of its operation;
 - (2) The nature and extent of its business;
 - (3) The methods of manufacturing, selling, merchandising, financing, accounting and advertising employed in its operation;
 - (4) The amount and types of insurance carried; and
 - (5) The mode of engaging, compensating and dealing with its employees and accountants, attorneys or other advisors;
 - (c) Change the name or form of organization under which the entity or business is operated and enter into an ownership agreement with other persons to take over all or part of the operation of the entity or business; and
 - (d) Demand and receive money due or claimed by the principal or on the principal's behalf in the operation of the entity or business and control and disburse the money in the operation of the entity or business.
8. Put additional capital into an entity or business in which the principal has an interest.
9. Join in a plan of reorganization, consolidation, conversion, domestication or merger of the entity or business.
10. Sell or liquidate all or part of an entity or business.
11. Establish the value of an entity or business under a buy-out agreement to which the principal is a party.
12. Prepare, sign, file and deliver reports, compilations of information, returns or other papers with respect to an entity or business and make related payments.
13. Pay, compromise or contest taxes, assessments, fines or penalties and perform any other act to protect the principal from illegal or unnecessary taxation, assessments, fines or penalties with respect to an entity or business, including attempts to recover, in any manner permitted by law, money paid before or after the execution of the power of attorney. (Added to NRS by [2009, 187](#))

NRS 162A.540 Insurance and annuities. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to insurance and annuities authorizes the agent to:

1. Continue, pay the premium or make a contribution on, modify, exchange, rescind, release or terminate a contract procured by or on behalf of the principal which insures or provides an annuity to either the principal or another person, whether or not the principal is a beneficiary under the contract;
2. Procure new, different and additional contracts of insurance and annuities for the principal and the principal's spouse, children and other dependents, select the amount, type of insurance or annuity, and mode of payment and name one or more beneficiaries in accordance with the principal's established estate plan and any restrictions to designate beneficiaries contained within the power of attorney;
3. Pay the premium or make a contribution on, modify, exchange, rescind, release or terminate a contract of insurance or annuity procured by the agent;
4. Apply for and receive a loan secured by a contract of insurance or annuity;
5. Surrender and receive the cash surrender value on a contract of insurance or annuity;
6. Exercise an election;
7. Exercise investment powers available under a contract of insurance or annuity;
8. Change the manner of paying premiums on a contract of insurance or annuity;
9. Change or convert the type of insurance or annuity with respect to which the principal has or claims to have authority described in this section;
10. Apply for and procure a benefit or assistance under a statute or regulation to guarantee or pay premiums of a contract of insurance on the life of the principal;

11. Collect, sell, assign, hypothecate, borrow against or pledge the interest of the principal in a contract of insurance or annuity;
12. Select the form and timing of the payment of proceeds from a contract of insurance or annuity; and
13. Pay, from proceeds or otherwise, compromise or contest, and apply for refunds in connection with, a tax or assessment levied by a taxing authority with respect to a contract of insurance or annuity or its proceeds or liability accruing by reason of the tax or assessment. (Added to NRS by [2009, 188](#))

NRS 162A.550 Estates, trusts and other beneficial interests.

1. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to estates, trusts and other beneficial interests authorizes the agent to:
 - (a) Accept, receive, receipt for, sell, assign, pledge or exchange a share in or payment from the fund;
 - (b) Demand or obtain money or another thing of value to which the principal is, may become or claims to be entitled by reason of the fund, by litigation or otherwise;
 - (c) Exercise for the benefit of the principal a presently exercisable general power of appointment held by the principal;
 - (d) Initiate, participate in, submit to alternative dispute resolution, settle, oppose, propose or accept a compromise with respect to litigation to ascertain the meaning, validity or effect of a deed, will, declaration of trust, or other instrument or transaction affecting the interest of the principal;
 - (e) Initiate, participate in, submit to alternative dispute resolution, settle, oppose, propose or accept a compromise with respect to litigation to remove, substitute or surcharge a fiduciary;
 - (f) Conserve, invest, disburse or use anything received for an authorized purpose; and
 - (g) Transfer an interest of the principal in real property, stocks and bonds, accounts with financial institutions or securities intermediaries, insurance, annuities and other property to the trustee of a revocable trust created by the principal as settlor or grantor.
2. As used in this section, "estates, trusts and other beneficial interests" means a trust, probate estate, escrow, custodianship or fund from which the principal is, may become or claims to be entitled to a share or payment. (Added to NRS by [2009, 189](#))

NRS 162A.560 Claims and litigation. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to claims and litigation authorizes the agent to:

1. Assert and maintain before a court or administrative agency a claim, claim for relief, cause of action, counterclaim, offset, recoupment or defense, including an action to recover property or other thing of value, recover damages sustained by the principal, eliminate or modify tax liability, or seek an injunction, specific performance or other relief;
2. Bring an action to determine adverse claims or intervene or otherwise participate in litigation;
3. Seek an attachment, garnishment, order of arrest or other preliminary, provisional or intermediate relief and use an available procedure to effect or satisfy a judgment, order or decree;
4. Make or accept a tender, offer of judgment or admission of facts, submit a controversy on an agreed statement of facts, consent to examination and bind the principal in litigation;
5. Submit to alternative dispute resolution, settle, and propose or accept a compromise;
6. Waive the issuance and service of process upon the principal, accept service of process, appear for the principal, designate persons upon which process directed to the principal may be served, execute and file or deliver stipulations on the principal's behalf, verify pleadings, seek appellate review, procure and give surety and indemnity bonds, contract and pay for the preparation and printing of records and briefs, and receive, execute and file or deliver a consent, waiver, release, confession of judgment, satisfaction of judgment, notice, agreement or other instrument in connection with the prosecution, settlement or defense of a claim or litigation;
7. Act for the principal with respect to bankruptcy or insolvency, whether voluntary or involuntary, concerning the principal or some other person, or with respect to a reorganization, receivership or application for the appointment of a receiver or trustee which affects an interest of the principal in property or other thing of value;

8. Pay a judgment, award or order against the principal or a settlement made in connection with a claim or litigation; and

9. Receive money or other thing of value paid in settlement of or as proceeds of a claim or litigation. (Added to NRS by [2009, 189](#))

NRS 162A.570 Personal and family maintenance. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to personal and family maintenance authorizes the agent to perform the acts necessary to maintain the customary standard of living of the principal, including, but not limited to, authorizing the agent to:

1. Make periodic payments of child support and other family maintenance required by a court or governmental agency or an agreement to which the principal is a party;

2. Provide normal domestic help, usual vacations and travel expenses, and funds for shelter, clothing, food, appropriate education, including postsecondary and vocational education, and other current living costs for the principal;

3. Pay expenses for necessary health care and custodial care on behalf of the principal;

4. Act as the principal's personal representative pursuant to the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as amended, and applicable regulations, in making decisions related to the past, present or future payment for the provision of health care consented to by the principal or anyone authorized under the law of this State to consent to health care on behalf of the principal;

5. Continue any provision made by the principal for automobiles or other means of transportation, including registering, licensing, insuring and replacing them;

6. Maintain credit and debit accounts for the convenience of the principal and open new accounts; and

7. Continue payments incidental to the membership or affiliation of the principal in a religious institution, club, society, order or other organization or to continue contributions to those organizations. (Added to NRS by [2009, 190](#))

NRS 162A.580 Benefits from governmental programs or civil or military service.

1. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to benefits from governmental programs or civil or military service authorizes the agent to:

(a) Enroll in, apply for, select, reject, change, amend or discontinue, on the principal's behalf, a benefit or program;

(b) Prepare, file and maintain a claim of the principal for a benefit or assistance, financial or otherwise, to which the principal may be entitled under a statute or regulation;

(c) Initiate, participate in, submit to alternative dispute resolution, settle, oppose, propose or accept a compromise with respect to litigation concerning any benefit or assistance the principal may be entitled to receive under a statute or regulation;

(d) Receive the financial proceeds of a claim, and conserve, invest, disburse or use for a lawful purpose anything so received;

(e) Execute vouchers in the name of the principal for allowances and reimbursements payable by the United States or a foreign government or by a state or subdivision of a state to the principal, including allowances and reimbursements for transportation and for shipment of household effects; and

(f) Take possession and order the removal and shipment of property of the principal from a post, warehouse, depot, dock or other place of storage or safekeeping, either governmental or private, and execute and deliver a release, voucher, receipt, bill of lading, shipping ticket, certificate or other instrument for that purpose.

2. As used in this section, "benefits from governmental programs or civil or military service" means any benefit, program or assistance provided under a statute or regulation including Social Security, Medicare and Medicaid. (Added to NRS by [2009, 191](#))

NRS 162A.590 Retirement plans.

1. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to retirement plans authorizes the agent to:

- (a) Select the form and timing of payments under a retirement plan and withdraw benefits from a plan;
- (b) Make a rollover, including a direct trustee-to-trustee rollover, of benefits from one retirement plan to another;
- (c) Establish a retirement plan in the principal's name and name one or more beneficiaries in accordance with the principal's established estate plan and any restrictions to designate beneficiaries contained within the power of attorney;
- (d) Make contributions to a retirement plan;
- (e) Exercise investment powers available under a retirement plan; and
- (f) Borrow from, sell assets to or purchase assets from a retirement plan.

2. As used in this section, "retirement plan" means a plan or account created by an employer, the principal or another individual to provide retirement benefits or deferred compensation of which the principal is a participant, beneficiary or owner, including a plan or account under the following sections of the Internal Revenue Code:

- (a) An individual retirement account under section 408 of the Internal Revenue Code, 26 U.S.C. § 408, as amended;
- (b) A Roth individual retirement account under section 408A of the Internal Revenue Code, 26 U.S.C. § 408A, as amended;
- (c) A deemed individual retirement account under section 408(q) of the Internal Revenue Code, 26 U.S.C. § 408(q), as amended;
- (d) An annuity or mutual fund custodial account under section 403(b) of the Internal Revenue Code, 26 U.S.C. § 403(b), as amended;
- (e) A pension, profit-sharing, stock bonus or other retirement plan qualified under section 401(a) of the Internal Revenue Code, 26 U.S.C. § 401(a), as amended;
- (f) A plan under section 457(b) of the Internal Revenue Code, 26 U.S.C. § 457(b), as amended; and
- (g) A nonqualified deferred compensation plan under section 409A of the Internal Revenue Code, 26 U.S.C. § 409A, as amended. (Added to NRS by [2009, 191](#))

NRS 162A.600 Taxes. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to taxes authorizes the agent to:

- 1. Prepare, sign and file federal, state, local and foreign income, gift, payroll, property, Federal Insurance Contributions Act and other tax returns, claims for refunds, requests for extension of time, petitions regarding tax matters and any other tax-related documents, including receipts, offers, waivers, consents, including consents and agreements under section 2032A of the Internal Revenue Code, 26 U.S.C. § 2032A, as amended, closing agreements, and any power of attorney required by the Internal Revenue Service or other taxing authority with respect to a tax year upon which the statute of limitations has not run and the following 25 tax years;
- 2. Pay taxes due, collect refunds, post bonds, receive confidential information, and contest deficiencies determined by the Internal Revenue Service or other taxing authority;
- 3. Exercise any election available to the principal under federal, state, local or foreign tax law; and
- 4. Act for the principal in all tax matters for all periods before the Internal Revenue Service or other taxing authority. (Added to NRS by [2009, 192](#))

NRS 162A.610 Gifts.

- 1. Unless the power of attorney otherwise provides, an agent has no authority to make a gift to any party on behalf of the principal.
- 2. If the power of attorney grants the agent the authority to make gifts, the agent may:
 - (a) Make outright to, or for the benefit of, a person, a gift of any of the principal's property, including by the exercise of a presently exercisable general power of appointment held by the principal, in an amount per donee not to exceed the annual dollar limits of the federal gift tax exclusion under section 2503(b) of the Internal Revenue Code, 26 U.S.C. § 2503(b), as amended, without regard to whether the federal gift tax exclusion applies to the gift or, if the principal's spouse agrees to consent to a split gift pursuant to section 2513 of the Internal Revenue Code, 26

U.S.C. § 2513, as amended, in an amount per donee not to exceed twice the annual federal gift tax exclusion limit; and

(b) Consent, pursuant to section 2513 of the Internal Revenue Code, 26 U.S.C. § 2513, as amended, to the splitting of a gift made by the principal's spouse in an amount per donee not to exceed the aggregate annual gift tax exclusions for both spouses.

3. An agent may make a gift of the principal's property only as the agent determines is consistent with the principal's objectives if actually known by the agent and, if unknown, as the agent determines is consistent with the principal's best interest based on all relevant factors, including:

- (a) The value and nature of the principal's property;
- (b) The principal's foreseeable obligations and need for maintenance;
- (c) Minimization of taxes, including income, estate, inheritance, generation-skipping transfer and gift taxes;
- (d) Eligibility for a benefit, a program or assistance under a statute or regulation; and
- (e) The principal's personal history of making or joining in making gifts.

4. As used in this section, a gift "for the benefit of" a person includes a gift to a trust, an account under the Uniform Transfers to Minors Act, and a tuition savings account or prepaid tuition plan as defined under section 529 of the Internal Revenue Code, 26 U.S.C. § 529, as amended. (Added to NRS by [2009, 192](#))

Form

NRS 162A.620 Power of attorney. A document substantially in the following form may be used to create a statutory form power of attorney that has the meaning and effect prescribed by [NRS 162A.200](#) to [162A.660](#), inclusive:

STATUTORY FORM POWER OF ATTORNEY

THIS IS AN IMPORTANT LEGAL DOCUMENT. IT CREATES A DURABLE POWER OF ATTORNEY FOR FINANCIAL MATTERS. BEFORE EXECUTING THIS DOCUMENT, YOU SHOULD KNOW THESE IMPORTANT FACTS:

1. THIS DOCUMENT GIVES THE PERSON YOU DESIGNATE AS YOUR AGENT THE POWER TO MAKE DECISIONS CONCERNING YOUR PROPERTY FOR YOU. YOUR AGENT WILL BE ABLE TO MAKE DECISIONS AND ACT WITH RESPECT TO YOUR PROPERTY (INCLUDING YOUR MONEY) WHETHER OR NOT YOU ARE ABLE TO ACT FOR YOURSELF.

2. THIS POWER OF ATTORNEY BECOMES EFFECTIVE IMMEDIATELY UNLESS YOU STATE OTHERWISE IN THE SPECIAL INSTRUCTIONS.

3. THIS POWER OF ATTORNEY DOES NOT AUTHORIZE THE AGENT TO MAKE HEALTH CARE DECISIONS FOR YOU.

4. THE PERSON YOU DESIGNATE IN THIS DOCUMENT HAS A DUTY TO ACT CONSISTENT WITH YOUR DESIRES AS STATED IN THIS DOCUMENT OR OTHERWISE MADE KNOWN OR, IF YOUR DESIRES ARE UNKNOWN, TO ACT IN YOUR BEST INTERESTS.

5. YOU SHOULD SELECT SOMEONE YOU TRUST TO SERVE AS YOUR AGENT. UNLESS YOU SPECIFY OTHERWISE, GENERALLY THE AGENT'S AUTHORITY WILL CONTINUE UNTIL YOU DIE OR REVOKE THE POWER OF ATTORNEY OR THE AGENT RESIGNS OR IS UNABLE TO ACT FOR YOU.

6. YOUR AGENT IS ENTITLED TO REASONABLE COMPENSATION UNLESS YOU STATE OTHERWISE IN THE SPECIAL INSTRUCTIONS.

7. THIS FORM PROVIDES FOR DESIGNATION OF ONE AGENT. IF YOU WISH TO NAME MORE THAN ONE AGENT YOU MAY NAME A CO-AGENT IN THE SPECIAL INSTRUCTIONS. CO-AGENTS ARE NOT REQUIRED TO ACT TOGETHER UNLESS YOU INCLUDE THAT REQUIREMENT IN THE SPECIAL INSTRUCTIONS.

8. IF YOUR AGENT IS UNABLE OR UNWILLING TO ACT FOR YOU, YOUR POWER OF ATTORNEY WILL END UNLESS YOU HAVE NAMED A SUCCESSOR AGENT. YOU MAY ALSO NAME A SECOND SUCCESSOR AGENT.

9. YOU HAVE THE RIGHT TO REVOKE THE AUTHORITY GRANTED TO THE PERSON DESIGNATED IN THIS DOCUMENT.

10. THIS DOCUMENT REVOKES ANY PRIOR DURABLE POWER OF ATTORNEY.

11. IF THERE IS ANYTHING IN THIS DOCUMENT THAT YOU DO NOT UNDERSTAND, YOU SHOULD ASK A LAWYER TO EXPLAIN IT TO YOU.

1. DESIGNATION OF AGENT.

I,
(insert your name) do hereby designate and appoint:

Name:
Address:
Telephone Number:

as my agent to make decisions for me and in my name, place and stead and for my use and benefit and to exercise the powers as authorized in this document.

2. DESIGNATION OF ALTERNATE AGENT.

(You are not required to designate any alternative agent but you may do so. Any alternative agent you designate will be able to make the same decisions as the agent designated above in the event that he or she is unable or unwilling to act as your agent. Also, if the agent designated in paragraph 1 is your spouse, his or her designation as your agent is automatically revoked by law if your marriage is dissolved.)

If my agent is unable or unwilling to act for me, then I designate the following person(s) to serve as my agent as authorized in this document, such person(s) to serve in the order listed below:

A. First Alternative Agent

Name:
Address:
Telephone Number:.....

B. Second Alternative Agent

Name:
Address:
Telephone Number:.....

3. OTHER POWERS OF ATTORNEY.

This Power of Attorney is intended to, and does, revoke any prior Power of Attorney for financial matters I have previously executed.

4. NOMINATION OF GUARDIAN.

If, after execution of this Power of Attorney, incompetency proceedings are initiated either for my estate or my person, I hereby nominate as my guardian or conservator for consideration by the court my agent herein named, in the order named.

5. GRANT OF GENERAL AUTHORITY.

I grant my agent and any successor agent(s) general authority to act for me with respect to the following subjects:

(INITIAL each subject you want to include in the agent's general authority. If you wish to grant general authority over all of the subjects you may initial "All Preceding Subjects" instead of initialing each subject.)

- [.....] Real Property
- [.....] Tangible Personal Property
- [.....] Stocks and Bonds
- [.....] Commodities and Options
- [.....] Banks and Other Financial Institutions

- [.....] Safe Deposit Boxes
- [.....] Operation of Entity or Business
- [.....] Insurance and Annuities
- [.....] Estates, Trusts and Other Beneficial Interests
- [.....] Legal Affairs, Claims and Litigation
- [.....] Personal Maintenance
- [.....] Benefits from Governmental Programs or Civil or Military Service
- [.....] Retirement Plans
- [.....] Taxes
- [.....] All Preceding Subjects

6. GRANT OF SPECIFIC AUTHORITY.

My agent MAY NOT do any of the following specific acts for me UNLESS I have INITIALED the specific authority listed below:

(CAUTION: Granting any of the following will give your agent the authority to take actions that could significantly reduce your property or change how your property is distributed at your death. INITIAL ONLY the specific authority you WANT to give your agent.)

- [.....] Create, amend, revoke or terminate an inter vivos, family, living, irrevocable or revocable trust
- [.....] Make a gift, subject to the limitations of NRS and any special instructions in this Power of Attorney
- [.....] Create or change rights of survivorship
- [.....] Create or change a beneficiary designation
- [.....] Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan
- [.....] Exercise fiduciary powers that the principal has authority to delegate
- [.....] Disclaim or refuse an interest in property, including a power of appointment

7. LIMITATION ON AGENT'S AUTHORITY.

An agent that is not my spouse MAY NOT use my property to benefit the agent or a person to whom the agent owes an obligation of support unless I have included that authority in the Special Instructions.

8. SPECIAL INSTRUCTIONS OR OTHER OR ADDITIONAL AUTHORITY GRANTED TO AGENT:

9. DURABILITY AND EFFECTIVE DATE. (INITIAL the clause(s) that applies.)

- [.....] DURABLE. This Power of Attorney shall not be affected by my subsequent disability or incapacity.
- [.....] SPRINGING POWER. It is my intention and direction that my designated agent, and any person or entity that my designated agent may transact business with on my behalf, may rely on a written medical opinion issued by a licensed medical doctor stating that I am disabled or incapacitated, and incapable of managing my affairs, and that said medical opinion shall establish whether or not I am under a disability for the purpose of establishing the authority of my designated agent to act in accordance with this Power of Attorney.

[.....] I wish to have this Power of Attorney become effective on the following date:

[.....] I wish to have this Power of Attorney end on the following date:

10. THIRD PARTY PROTECTION.

Third parties may rely upon the validity of this Power of Attorney or a copy and the representations of my agent as to all matters relating to any power granted to my agent, and no person or agency who relies upon the representation of my agent, or the authority granted by my agent, shall incur any liability to me or my estate as a result of permitting my agent to exercise any power unless a third party knows or has reason to know this Power of Attorney has terminated or is invalid.

11. RELEASE OF INFORMATION.

I agree to, authorize and allow full release of information, by any government agency, business, creditor or third party who may have information pertaining to my assets or income, to my agent named herein.

12. SIGNATURE AND ACKNOWLEDGMENT. YOU MUST DATE AND SIGN THIS POWER OF ATTORNEY. THIS POWER OF ATTORNEY WILL NOT BE VALID UNLESS IT IS ACKNOWLEDGED BEFORE A NOTARY PUBLIC.

I sign my name to this Power of Attorney on
..... (date) at (city), (state)

(Signature)

CERTIFICATE OF ACKNOWLEDGMENT OF NOTARY PUBLIC

(You may use acknowledgment before a notary public instead of the statement of witnesses.)

State of Nevada }
}ss.
County of..... }

On this day of, in the year, before me, (here insert name of notary public) personally appeared (here insert name of principal) personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that he or she executed it. I declare under penalty of perjury that the person whose name is ascribed to this instrument appears to be of sound mind and under no duress, fraud or undue influence.

NOTARY SEAL
(Signature of Notary Public)

IMPORTANT INFORMATION FOR AGENT

1. Agent's Duties. When you accept the authority granted under this Power of Attorney, a special legal relationship is created between you and the principal. This relationship imposes upon you legal duties that continue until you resign or the Power of Attorney is terminated or revoked. You must:

- (a) Do what you know the principal reasonably expects you to do with the principal's property or, if you do not know the principal's expectations, act in the principal's best interest;
- (b) Act in good faith;
- (c) Do nothing beyond the authority granted in this Power of Attorney; and
- (d) Disclose your identity as an agent whenever you act for the principal by writing or printing the name of the principal and signing your own name as "agent" in the following manner:

(Principal's Name) by (Your Signature) as Agent

2. Unless the Special Instructions in this Power of Attorney state otherwise, you must also:

- (a) Act loyally for the principal's benefit;
- (b) Avoid conflicts that would impair your ability to act in the principal's best interest;
- (c) Act with care, competence, and diligence;
- (d) Keep a record of all receipts, disbursements and transactions made on behalf of the principal;
- (e) Cooperate with any person that has authority to make health care decisions for the principal to do what you know the principal reasonably expects or, if you do not know the principal's expectations, to act in the principal's best interest; and
- (f) Attempt to preserve the principal's estate plan if you know the plan and preserving the plan is consistent with the principal's best interest.

3. Termination of Agent's Authority. You must stop acting on behalf of the principal if you learn of any event that terminates this Power of Attorney or your authority under this Power of Attorney. Events that terminate a Power of Attorney or your authority to act under a Power of Attorney include:

- (a) Death of the principal;
- (b) The principal's revocation of the Power of Attorney or your authority;
- (c) The occurrence of a termination event stated in the Power of Attorney;
- (d) The purpose of the Power of Attorney is fully accomplished; or
- (e) If you are married to the principal, your marriage is dissolved.

4. Liability of Agent. The meaning of the authority granted to you is defined in [NRS 162A.200](#) to [162A.660](#), inclusive. If you violate [NRS 162A.200](#) to [162A.660](#), inclusive, or act outside the authority granted in this Power of Attorney, you may be liable for any damages caused by your violation.

5. If there is anything about this document or your duties that you do not understand, you should seek legal advice. (Added to NRS by [2009, 193](#))

Miscellaneous Provisions

NRS 162A.650 Uniformity of application and construction. In applying and construing [NRS 162A.200](#) to [162A.660](#), inclusive, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among the states that enact it. (Added to NRS by [2009, 207](#))

NRS 162A.660 Relation to Electronic Signatures in Global and National Commerce Act. [NRS 162A.200](#) to [162A.660](#), inclusive, modifies, limits and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §§ 7001 et seq., but does not modify, limit or supersede section 101(c) of that Act, 15 U.S.C. § 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that Act, 15 U.S.C. § 7003(b). (Added to NRS by [2009, 207](#))

DURABLE POWER OF ATTORNEY FOR HEALTH CARE DECISIONS

NRS 162A.700 Applicability. [NRS 162A.700](#) to [162A.860](#), inclusive, apply to any power of attorney containing the authority to make health care decisions.

(Added to NRS by [2009, 198](#); A [2013, 925](#))

NRS 162A.710 Definitions. As used in [NRS 162A.700](#) to [162A.860](#), inclusive, unless the context otherwise requires, the words and terms defined in [NRS 162A.720](#) to [162A.780](#), inclusive, have the meanings ascribed to them in those sections. (Added to NRS by [2009, 198](#); A [2013, 925](#))

NRS 162A.720 "Attending physician" defined. "Attending physician" means the physician who has primary responsibility for the treatment and care of the patient. (Added to NRS by [2009, 198](#))

NRS 162A.730 "Declaration" defined. "Declaration" means a writing executed in accordance with the requirements of [NRS 449.600](#). (Added to NRS by [2009, 198](#))

NRS 162A.740 "Health care facility" defined. "Health care facility" includes:

1. Any medical facility as defined in [NRS 449.0151](#); and
2. Any facility for the dependent as defined in [NRS 449.0045](#). (Added to NRS by [2009, 198](#); A [2011, 91](#))

NRS 162A.750 "Life-sustaining treatment" defined. "Life-sustaining treatment" means a medical procedure or intervention that, when administered to a patient, serves only to prolong the process of dying.

(Added to NRS by [2009, 198](#))

NRS 162A.760 “Provider of health care” defined. “Provider of health care” has the meaning ascribed to it in [NRS 629.031](#).

(Added to NRS by [2009, 198](#))

NRS 162A.770 “Qualified patient” defined. “Qualified patient” means a patient, 18 years of age or older, who has executed a declaration and who has been determined by the attending physician to be in a terminal condition.

(Added to NRS by [2009, 198](#))

NRS 162A.780 “Terminal condition” defined. “Terminal condition” means an incurable and irreversible condition that cannot be cured or modified by any known current medical therapy or treatment, and which, without the administration of life-sustaining treatment, will in the opinion of the attending physician result in death within a relatively short time period. (Added to NRS by [2009, 198](#))

NRS 162A.790 Execution of power of attorney; acknowledgment; witnesses; certification of competency required for certain principals; validity of power of attorney executed outside this State.

1. Any adult person may execute a power of attorney enabling the agent named in the power of attorney to make decisions concerning health care for the principal if that principal becomes incapable of giving informed consent concerning such decisions.

2. A power of attorney for health care must be signed by the principal. The principal’s signature on the power of attorney for health care must be:

- (a) Acknowledged before a notary public; or
- (b) Witnessed by two adult witnesses who know the principal personally.

3. Neither of the witnesses to a principal’s signature may be:

- (a) A provider of health care;
- (b) An employee of a provider of health care;
- (c) An operator of a health care facility;
- (d) An employee of a health care facility; or
- (e) The agent.

4. At least one of the witnesses to a principal’s signature must be a person who is:

- (a) Not related to the principal by blood, marriage or adoption; and
- (b) To the best of the witnesses’ knowledge, not entitled to any part of the estate of the principal upon the death of the principal.

5. If the principal resides in a hospital, residential facility for groups, facility for skilled nursing or home for individual residential care, at the time of the execution of the power of attorney, a certification of competency of the principal from a physician, psychologist or psychiatrist must be attached to the power of attorney.

6. A power of attorney executed in a jurisdiction outside of this State is valid in this State if, when the power of attorney was executed, the execution complied with the laws of that jurisdiction or the requirements for a military power of attorney pursuant to 10 U.S.C. § 1044b.

7. As used in this section:

- (a) “Facility for skilled nursing” has the meaning ascribed to it in [NRS 449.0039](#).
- (b) “Home for individual residential care” has the meaning ascribed to it in [NRS 449.0105](#).
- (c) “Hospital” has the meaning ascribed to it in [NRS 449.012](#).
- (d) “Residential facility for groups” has the meaning ascribed to it in [NRS 449.017](#).

(Added to NRS by [2009, 198](#); A [2013, 925](#))

NRS 162A.800 Nomination of guardian of person; relation of agent to court-appointed guardian; duties of guardian.

1. In a power of attorney for health care, a principal may nominate a guardian of the principal’s person for consideration by the court if guardianship proceedings for the principal’s person are begun after the principal executes the power of attorney.

2. If, after a principal executes a power of attorney for health care, a court appoints a guardian of the principal's person, the power of attorney is terminated. The guardian shall follow any provisions contained in the power of attorney for health care delineating the principal's wishes for medical and end-of-life care. (Added to NRS by [2009, 199](#))

NRS 162A.810 Time at which power of attorney is effective.

1. A power of attorney for health care is effective when executed unless the principal provides in the power of attorney that it becomes effective at a future date or upon incapacity.

2. If a power of attorney for health care becomes effective upon the principal's incapacity, the power of attorney becomes effective upon a determination in a writing or other record by a physician, psychiatrist or licensed psychologist that the principal is incapacitated.

3. An agent named in the power of attorney for health care may act as the principal's personal representative pursuant to the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as amended, and applicable regulations, to obtain a determination of incapacity. (Added to NRS by [2009, 199](#))

NRS 162A.815 Acceptance and reliance upon acknowledged power of attorney.

1. A physician, health care facility or other provider of health care that in good faith accepts an acknowledged power of attorney for health care without actual knowledge that the signature is not genuine may rely upon the presumption that the signature is genuine.

2. A physician, health care facility or other provider of health care that in good faith accepts an acknowledged power of attorney for health care without actual knowledge that the power of attorney for health care is void, invalid or terminated, or that the purported agent's authority is void, invalid or terminated, may rely upon the power of attorney for health care as if the power of attorney for health care were genuine, valid and still in effect, and the agent's authority was genuine, valid and still in effect.

3. A physician, health care facility or other provider of health care that in good faith accepts an acknowledged power of attorney for health care is not subject to civil or criminal liability or discipline for unprofessional conduct for giving effect to a declaration contained within the power of attorney for health care or for following the direction of an agent named in the power of attorney for health care. (Added to NRS by [2013, 923](#))

NRS 162A.820 Termination of power of attorney or authority of agent.

1. A power of attorney for health care terminates when:

- (a) The principal dies;
- (b) The principal revokes the power of attorney;
- (c) The power of attorney includes a termination date; or
- (d) The principal revokes the agent's authority or the agent dies, becomes incapacitated or resigns, and the power of attorney does not provide for another agent to act under the power of attorney.

2. An agent's authority under a power of attorney for health care terminates when:

- (a) The principal revokes the authority;
- (b) The agent dies, becomes incapacitated or resigns;
- (c) An action is filed for the dissolution or annulment of the agent's marriage to the principal, unless the power of attorney otherwise provides; or
- (d) The power of attorney includes a termination date.

3. Unless the power of attorney for health care otherwise provides, an agent's authority is exercisable until the authority terminates under subsection 2, notwithstanding a lapse of time since the execution of the power of attorney.

4. Termination of an agent's authority or of a power of attorney for health care is not effective as to the agent or another person that, without actual knowledge of the termination, acts in good faith under the power of attorney. An act so performed, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.

5. An execution of a power of attorney for health care automatically revokes any previous power of attorney to make health care decisions.

6. If a power of attorney for health care terminates while the principal is unable to make decisions concerning health care, the power of attorney for health care remains valid until the principal is again able to make such decisions. (Added to NRS by [2009, 199](#))

NRS 162A.830 Co-agents and successor agents.

1. A principal may designate two or more persons to act as co-agents. Unless the power of attorney for health care otherwise provides, each co-agent may exercise its authority independently.

2. A principal may designate one or more successor agents to act if an agent resigns, dies, becomes incapacitated, is not qualified to serve or declines to serve. Unless the power of attorney for health care otherwise provides, a successor agent:

- (a) Has the same authority as that granted to the original agent; and
- (b) May not act until all predecessor agents have resigned, died, become incapacitated, are no longer qualified to serve or have declined to serve. (Added to NRS by [2009, 200](#))

NRS 162A.840 Persons not eligible for designation as agent.

1. Except as otherwise provided in subsection 2, a principal may not name as agent in a power of attorney for health care:

- (a) His or her provider of health care;
- (b) An employee of his or her provider of health care;
- (c) An operator of a health care facility; or
- (d) An employee of a health care facility.

2. A principal may name as agent any person identified in subsection 1 if that person is the spouse, legal guardian or next of kin of the principal. (Added to NRS by [2009, 200](#))

NRS 162A.850 Agents: Prohibited acts; decisions concerning use or nonuse of life-sustaining treatment.

1. The agent may not consent to:

- (a) Commitment or placement of the principal in a facility for treatment of mental illness;
- (b) Convulsive treatment;
- (c) Psychosurgery;
- (d) Sterilization;
- (e) Abortion;
- (f) Aversive intervention, as that term is defined in [NRS 449.766](#);
- (g) Experimental medical, biomedical or behavioral treatment, or participation in any medical, biomedical or behavioral research program; or
- (h) Any other treatment to which the principal, in the power of attorney for health care, states that the agent may not consent.

2. The agent must make decisions concerning the use or nonuse of life-sustaining treatment which conform to the known desires of the principal. The principal may make these desires known in the power of attorney for health care. (Added to NRS by [2009, 200](#))

NRS 162A.860 Power of attorney: Form. The form of a power of attorney for health care may be substantially in the following form, and must be witnessed or executed in the same manner as the following form:

DURABLE POWER OF ATTORNEY
FOR HEALTH CARE DECISIONS

WARNING TO PERSON EXECUTING THIS DOCUMENT

THIS IS AN IMPORTANT LEGAL DOCUMENT. IT CREATES A DURABLE POWER OF ATTORNEY FOR HEALTH CARE. BEFORE EXECUTING THIS DOCUMENT, YOU SHOULD KNOW THESE IMPORTANT FACTS:

1. THIS DOCUMENT GIVES THE PERSON YOU DESIGNATE AS YOUR AGENT THE POWER TO MAKE HEALTH CARE DECISIONS FOR YOU. THIS POWER IS SUBJECT TO ANY LIMITATIONS OR STATEMENT OF YOUR DESIRES THAT YOU INCLUDE IN THIS DOCUMENT. THE POWER TO MAKE HEALTH CARE DECISIONS FOR YOU MAY INCLUDE CONSENT, REFUSAL OF CONSENT OR WITHDRAWAL OF CONSENT TO ANY CARE, TREATMENT, SERVICE OR PROCEDURE TO MAINTAIN, DIAGNOSE OR TREAT A PHYSICAL OR MENTAL CONDITION. YOU MAY STATE IN THIS DOCUMENT ANY TYPES OF TREATMENT OR PLACEMENTS THAT YOU DO NOT DESIRE.
2. THE PERSON YOU DESIGNATE IN THIS DOCUMENT HAS A DUTY TO ACT CONSISTENT WITH YOUR DESIRES AS STATED IN THIS DOCUMENT OR OTHERWISE MADE KNOWN OR, IF YOUR DESIRES ARE UNKNOWN, TO ACT IN YOUR BEST INTERESTS.
3. EXCEPT AS YOU OTHERWISE SPECIFY IN THIS DOCUMENT, THE POWER OF THE PERSON YOU DESIGNATE TO MAKE HEALTH CARE DECISIONS FOR YOU MAY INCLUDE THE POWER TO CONSENT TO YOUR DOCTOR NOT GIVING TREATMENT OR STOPPING TREATMENT WHICH WOULD KEEP YOU ALIVE.
4. UNLESS YOU SPECIFY A SHORTER PERIOD IN THIS DOCUMENT, THIS POWER WILL EXIST INDEFINITELY FROM THE DATE YOU EXECUTE THIS DOCUMENT AND, IF YOU ARE UNABLE TO MAKE HEALTH CARE DECISIONS FOR YOURSELF, THIS POWER WILL CONTINUE TO EXIST UNTIL THE TIME WHEN YOU BECOME ABLE TO MAKE HEALTH CARE DECISIONS FOR YOURSELF.
5. NOTWITHSTANDING THIS DOCUMENT, YOU HAVE THE RIGHT TO MAKE MEDICAL AND OTHER HEALTH CARE DECISIONS FOR YOURSELF SO LONG AS YOU CAN GIVE INFORMED CONSENT WITH RESPECT TO THE PARTICULAR DECISION. IN ADDITION, NO TREATMENT MAY BE GIVEN TO YOU OVER YOUR OBJECTION, AND HEALTH CARE NECESSARY TO KEEP YOU ALIVE MAY NOT BE STOPPED IF YOU OBJECT.
6. YOU HAVE THE RIGHT TO REVOKE THE APPOINTMENT OF THE PERSON DESIGNATED IN THIS DOCUMENT TO MAKE HEALTH CARE DECISIONS FOR YOU BY NOTIFYING THAT PERSON OF THE REVOCATION ORALLY OR IN WRITING.
7. YOU HAVE THE RIGHT TO REVOKE THE AUTHORITY GRANTED TO THE PERSON DESIGNATED IN THIS DOCUMENT TO MAKE HEALTH CARE DECISIONS FOR YOU BY NOTIFYING THE TREATING PHYSICIAN, HOSPITAL OR OTHER PROVIDER OF HEALTH CARE ORALLY OR IN WRITING.
8. THE PERSON DESIGNATED IN THIS DOCUMENT TO MAKE HEALTH CARE DECISIONS FOR YOU HAS THE RIGHT TO EXAMINE YOUR MEDICAL RECORDS AND TO CONSENT TO THEIR DISCLOSURE UNLESS YOU LIMIT THIS RIGHT IN THIS DOCUMENT.
9. THIS DOCUMENT REVOKES ANY PRIOR DURABLE POWER OF ATTORNEY FOR HEALTH CARE.
10. IF THERE IS ANYTHING IN THIS DOCUMENT THAT YOU DO NOT UNDERSTAND, YOU SHOULD ASK A LAWYER TO EXPLAIN IT TO YOU.

1. DESIGNATION OF HEALTH CARE AGENT.

I,

(insert your name) do hereby designate and appoint:

Name:

Address:

Telephone Number:

as my agent to make health care decisions for me as authorized in this document.

(Insert the name and address of the person you wish to designate as your agent to make health care decisions for you. Unless the person is also your spouse, legal guardian or the person most closely related to you by blood, none of the following may be designated as your agent: (1) your treating provider of health care; (2) an employee of your treating provider of health care; (3) an operator of a health care facility; or (4) an employee of an operator of a health care facility.)

2. CREATION OF DURABLE POWER OF ATTORNEY FOR HEALTH CARE.

By this document I intend to create a durable power of attorney by appointing the person designated above to make health care decisions for me. This power of attorney shall not be affected by my subsequent incapacity.

3. GENERAL STATEMENT OF AUTHORITY GRANTED.

In the event that I am incapable of giving informed consent with respect to health care decisions, I hereby grant to the agent named above full power and authority: to make health care decisions for me before or after my death, including consent, refusal of consent or withdrawal of consent to any care, treatment, service or procedure to maintain, diagnose or treat a physical or mental condition; to request, review and receive any information, verbal or written, regarding my physical or mental health, including, without limitation, medical and hospital records; to execute on my behalf any releases or other documents that may be required to obtain medical care and/or medical and hospital records, EXCEPT any power to enter into any arbitration agreements or execute any arbitration clauses in connection with admission to any health care facility including any skilled nursing facility; and subject only to the limitations and special provisions, if any, set forth in paragraph 4 or 6.

4. SPECIAL PROVISIONS AND LIMITATIONS.

(Your agent is not permitted to consent to any of the following: commitment to or placement in a mental health treatment facility, convulsive treatment, psychosurgery, sterilization or abortion. If there are any other types of treatment or placement that you do not want your agent's authority to give consent for or other restrictions you wish to place on his or her agent's authority, you should list them in the space below. If you do not write any limitations, your agent will have the broad powers to make health care decisions on your behalf which are set forth in paragraph 3, except to the extent that there are limits provided by law.)

In exercising the authority under this durable power of attorney for health care, the authority of my agent is subject to the following special provisions and limitations:

5. DURATION.

I understand that this power of attorney will exist indefinitely from the date I execute this document unless I establish a shorter time. If I am unable to make health care decisions for myself when this power of attorney expires, the authority I have granted my agent will continue to exist until the time when I become able to make health care decisions for myself.

(IF APPLICABLE)

I wish to have this power of attorney end on the following date:

6. STATEMENT OF DESIRES.

(With respect to decisions to withhold or withdraw life-sustaining treatment, your agent must make health care decisions that are consistent with your known desires. You can, but are not required to, indicate your desires below. If your desires are unknown, your agent has the duty to act in your best interests; and, under some circumstances, a judicial proceeding may be necessary so that a court can determine the health care decision that is in your best interests. If you wish to indicate your desires, you may INITIAL the statement or statements that reflect your desires and/or write your own statements in the space below.)

(If the statement reflects your desires, initial the box next to the statement.)

1. I desire that my life be prolonged to the greatest extent possible, without regard to my condition, the chances I have for recovery or long-term survival, or the cost of the procedures. []

2. If I am in a coma which my doctors have reasonably concluded is irreversible, I desire that life-sustaining or prolonging treatments not be used. (Also should utilize

provisions of [NRS 449.535](#) to [449.690](#), inclusive, if this subparagraph is initialed.) [.....]

3. If I have an incurable or terminal condition or illness and no reasonable hope of long-term recovery or survival, I desire that life-sustaining or prolonging treatments not be used. (Also should utilize provisions of [NRS 449.535](#) to [449.690](#), inclusive, if this subparagraph is initialed.) []

4. Withholding or withdrawal of artificial nutrition and hydration may result in death by starvation or dehydration. I want to receive or continue receiving artificial nutrition and hydration by way of the gastrointestinal tract after all other treatment is withheld..... []

5. I do not desire treatment to be provided and/or continued if the burdens of the treatment outweigh the expected benefits. My agent is to consider the relief of suffering, the preservation or restoration of functioning, and the quality as well as the extent of the possible extension of my life. []

(If you wish to change your answer, you may do so by drawing an "X" through the answer you do not want, and circling the answer you prefer.)

Other or Additional Statements of Desires:.....

7. DESIGNATION OF ALTERNATE AGENT.

(You are not required to designate any alternative agent but you may do so. Any alternative agent you designate will be able to make the same health care decisions as the agent designated in paragraph 1, page 2, in the event that he or she is unable or unwilling to act as your agent. Also, if the agent designated in paragraph 1 is your spouse, his or her designation as your agent is automatically revoked by law if your marriage is dissolved.)

If the person designated in paragraph 1 as my agent is unable to make health care decisions for me, then I designate the following persons to serve as my agent to make health care decisions for me as authorized in this document, such persons to serve in the order listed below:

A. First Alternative Agent

Name:
Address:
Telephone Number:

B. Second Alternative Agent

Name:
Address:
Telephone Number:

8. PRIOR DESIGNATIONS REVOKED.

I revoke any prior durable power of attorney for health care.

9. WAIVER OF CONFLICT OF INTEREST.

If my designated agent is my spouse or is one of my children, then I waive any conflict of interest in carrying out the provisions of this Durable Power of Attorney for Health Care that said spouse or child may have by reason of the fact that he or she may be a beneficiary of my estate.

10. CHALLENGES.

If the legality of any provision of this Durable Power of Attorney for Health Care is questioned by my physician, my agent or a third party, then my agent is authorized to commence an action for declaratory judgment as to the legality of the provision in question. The cost of any such action is to be paid from my

estate. This Durable Power of Attorney for Health Care must be construed and interpreted in accordance with the laws of the State of Nevada.

11. NOMINATION OF GUARDIAN.

If, after execution of this Durable Power of Attorney for Health Care, incompetency proceedings are initiated either for my estate or my person, I hereby nominate as my guardian or conservator for consideration by the court my agent herein named, in the order named.

12. RELEASE OF INFORMATION.

I agree to, authorize and allow full release of information by any government agency, medical provider, business, creditor or third party who may have information pertaining to my health care, to my agent named herein, pursuant to the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as amended, and applicable regulations.

(YOU MUST DATE AND SIGN THIS POWER OF ATTORNEY)

I sign my name to this Durable Power of Attorney for Health Care on (date) at (city), (state)

(Signature)

(THIS POWER OF ATTORNEY WILL NOT BE VALID FOR MAKING HEALTH CARE DECISIONS UNLESS IT IS EITHER (1) SIGNED BY AT LEAST TWO QUALIFIED WITNESSES WHO ARE PERSONALLY KNOWN TO YOU AND WHO ARE PRESENT WHEN YOU SIGN OR ACKNOWLEDGE YOUR SIGNATURE OR (2) ACKNOWLEDGED BEFORE A NOTARY PUBLIC.)

CERTIFICATE OF ACKNOWLEDGMENT OF NOTARY PUBLIC

(You may use acknowledgment before a notary public instead of the statement of witnesses.)

State of Nevada }
}ss.
County of..... }

On this..... day of....., in the year..., before me,..... (here insert name of notary public) personally appeared..... (here insert name of principal) personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that he or she executed it. I declare under penalty of perjury that the person whose name is ascribed to this instrument appears to be of sound mind and under no duress, fraud or undue influence.

NOTARY SEAL
(Signature of Notary Public)

STATEMENT OF WITNESSES

(You should carefully read and follow this witnessing procedure. This document will not be valid unless you comply with the witnessing procedure. If you elect to use witnesses instead of having this document notarized, you must use two qualified adult witnesses. None of the following may be used as a witness: (1) a person you designate as the agent; (2) a provider of health care; (3) an employee of a provider of health care; (4) the operator of a health care facility; or (5) an employee of an operator of a health care facility. At least one of the witnesses must make the additional declaration set out following the place where the witnesses sign.)

I declare under penalty of perjury that the principal is personally known to me, that the principal signed or acknowledged this durable power of attorney in my presence, that the principal appears to be of sound mind and under no duress, fraud or undue influence, that I am not the person appointed as agent by this document and that I am not a provider of health care, an employee of a provider of health care, the operator of a community care facility or an employee of an operator of a health care facility.

Signature: Residence Address:
Print Name:
Date:

Signature: Residence Address:
Print Name:
Date:

(AT LEAST ONE OF THE ABOVE WITNESSES MUST ALSO SIGN THE FOLLOWING DECLARATION.)

I declare under penalty of perjury that I am not related to the principal by blood, marriage or adoption and that to the best of my knowledge, I am not entitled to any part of the estate of the principal upon the death of the principal under a will now existing or by operation of law.

Signature:

Signature:

Names: Address:.....
Print Name:
Date:

COPIES: You should retain an executed copy of this document and give one to your agent. The power of attorney should be available so a copy may be given to your providers of health care.

(Added to NRS by [2009, 201](#); A [2013, 926](#))

WORK PLAN

COMMENTS RECEIVED FROM JUDGE DOHERTY AND JUDGE STEEL

Judge Frances Doherty - Listed below are additional areas of consideration for the Guardianship Commission's work. I have noted when the recommendation is specifically consistent with that of the National Probate Court Standards (NPCS) and the applicable section or sections. The first suggestion addresses statewide IT proposals which were developed with the assistance of Craig Franden and are consistent with some, although not all of the practices we have implemented. The IT proposals are not in any particular order of priority. My suggestions are reflective of my views and not necessarily of the entire District since limited time has prevented my review of all suggestions with my colleagues. Most of my suggestions address adult guardianship matters but have substantial crossover to minor guardianship cases. Thank you for this opportunity. (**Judge Doherty's suggestions/comments in black**)

Judge Dianne Steel - Prior to accountability there needs to be clarity on expectations and requirements. A review by the Commission of current Nevada Revised Statutes and District Court Rules will undoubtedly reveal areas that can be improved on the State and District levels. It will be necessary for all three branches of government to coordinate a successful restructuring of guardianship. (**Judge Steel's suggestions/comments in blue**)

- I. **DEVELOP STANDARDIZED DATA OUTSIDE OF THE USJR TO INCLUDE REFLECTION OF BEST PRACTICES¹:**
 - A. Record and report data regarding use of alternative dispute resolution. (See NPCS 2.5, 3.3.2, 3.3.10)
 - A monthly count of mediation and settlement conferences. Count each scheduled proceeding once, regardless of the duration of days.
 - B. Record and report statewide data on entry of orders regarding least restrictive oversight including nature and extent of guardianship order: person, person & estate or limited guardianship. (See NPCS 3.3.2, 3.3.10)
 - C. A monthly count of the distinct order types by the following:
 - Order Appointing Guardian of the Estate and Person
 - Order Appointing Guardian of the Estate
 - Order Appointing Guardian of the Person
 - Order Appointing Guardian – Limited
 - Order Appointing Guardian - Special
 - D. Record and report entry of orders denying guardianship and diverting or redirecting guardianship petitions to less restrictive plan of care(See NPCS 3.3.2, 3.3.10);
 - E. Record and report data on cases in which incapacitated person has counsel, and/or when orders enter appointing court appointed counsel, guardian ad litem and/or investigators. (See NPCS 3.3.5 & NRS 159.0455, NRS 159.046, NRS 159.0483, NRS159.0485) (This one should be handled some type of 'order appointing special party' or similar. This should be a count of the number of cases where a separate order is filed appointing. May need a separate order code for each party type.)

¹ Sections I and II would be addressed by the Data/IT Subcommittee appointed prior to the September 16, 2015, meeting.

- F. Record and report data on clearance rate for newly filed cases from date of filing to date of entry of dispositional order. (See NPCS 3.3.3). (This would involve a calculation of by the number of distinct cases disposed, divided by the number of new cases/petitions filed. This will result in a clearance rate percentage).
- G. Record and report of entry of ex parte orders and temporary orders prior to adjudicatory hearing (See NPCS 3.3.6) (Report the monthly number of temporary guardianships ordered).
- H. Record and report hearing data on filings and dispositions of temporary and permanent guardianship petitions. (This may also be a milestone tracking mechanism). (See NPCS 3.3.8)
- I. Monthly count of the initial permanent hearing after petition filed. According to best practice, the hearing should be held 'expeditiously'. (See NPCS 3.3.8(A))
- J. Monthly report on presence/absence of Respondent (ward/proposed incapacitated person) (See NPCS 3.3.8(B))
- K. Monthly report on presence of proposed guardian at hearing. (See NPCS 3.3.8(C))
- L. Record and report relevant demographic data to assist Court in managing overarching matters effecting incapacitated persons, i.e.:
 - Report type of placement of incapacitated person: locked facility, acute care facility, skilled care facility, assisted living, group home, relative care, independent living;
 - Report type of guardian: relative/spouse; private guardian; public guardian; institutional fiduciary;
 - Report age of incapacitated person, broken into 10 year increments;
 - Incapacitated persons (ward) residing out of state;
 - One or more guardians residing out of state.
- M. Consider recording and reporting assumption of jurisdiction over private trusts.
- N. [Update systems to implement triggers when guardianship is granted to detect compliance or failure to comply with a statutory deadline.](#)
- O. [Uniform Statewide Case Management System.](#)
- P. [Uniform USJR measures in compliance with statutory mandates.](#)

II. DEFINE METHODS FOR JURISDICTIONS TO MEET AND TRACK "MILESTONES" IN GUARDIANSHIP CASES CONSISTENT WITH BEST PRACTICES AND FOR PURPOSES OF COURT MANAGEMENT - POTENTIAL STATUTORY MILESTONES LISTED BELOW²:

A. PREDISPOSITION:

- i. Citation issued and appropriately noticed prior to Hearing on Petition – NRS 159.034, NRS 159.047, and NRS 159.0475.
- ii. Proof of Notice of Hearing filed 10 days prior to hearing by Petitioner - NRS 159.034.
- iii. Nevada is Respondent's (proposed ward's) home state or has property here - NRS 159.1998
- iv. Petition filed in county where Respondent (proposed ward) resides - NRS 159.037
- v. 10 day extension hearing conducted on all ex parte ordered temporary guardianships - NRS 159.052

² Sections I and II would be addressed by the Data/IT Subcommittee appointed prior to the September 16, 2015, meeting.

- vi. Permanent hearing conducted and Respondent (proposed ward) present or excused - NRS 159.0535
 - a. Respondent (ward) advised of right to counsel - NRS 159.0535
 - b. investigator appointed
 - c. Guardian ad Litem appointed
 - vii. Order dismissing, granting, limiting guardianship entered
 - a. Bond addressed
 - b. Firearms addressed
 - c. Voting privileges addressed
 - d. Summary estate addressed
 - e. Incapacitated person served within 5 days - NRS 159.074
 - f. Notice of Entry of Order filed with Court - NRS 159.074
 - g. Order contains names, addresses and telephone number of guardian, incapacitated person's (ward's) attorney and investigator. - NRS 159.074
 - h. Appeal filed within 30 days of entry of order - NRS 159.325.
- B. POST DISPOSITION:**
- i. Acknowledgement of Receipt of Instructions filed (Washoe County)
 - ii. Letters issued
 - Required Bond posted
 - iii. Letters filed with Office of Recorder in real estate cases - NRS 159.087(1)
 - iv. Initial Inventory filed 60 days from order - NRS159-085
 - v. Annual Report of Person filed within 60 days of anniversary of order appointing - NRS 159.081(1)(a)
 - vi. Annual Accounting filed on non-summary estates within 60 days of anniversary of order appointing - NRS 159.177, NRS 159.081(5)
 - vii. Hearing conducted on non-summary annual accountings - NRS 159.181.
- C. REMOVAL/RESIGNATION OF GUARDIAN/TERMINATION OF GUARDIANSHIP:**
- i. Petition to Remove
 - Citation issued NRS 159.1855
 - ii. Petition to Resign
 - iii. Citation issued pursuant to NRS 159.1873(2)
 - iv. Successor guardian appointed prior to discharge - NRS 159.1875(1)
 - v. Accounting and hearing by resigning guardian must be completed - NRS 159.1877(1)
 - vi. Petition to Terminate Guardianship
 - If incapacitated person (ward) dies, interested parties must be informed within 30 days - NRS 159.073(1)(c)(V)
 - Order terminating guardianship entered - NRS 159.1855(2) & 159.187(2)
 - Final accounting filed
 - Hearing conducted - NRS 159.1855(2) & 159.187(2)
 - Winding up of affairs within 180 days of termination or, 90 days of appointment of successor trustee - 159.193
 - Order discharging guardian and exonerating bond upon verification and completion of winding up of affairs. NRS 159.199

- Post termination aftercare - Develop funding for the ward until social security or other benefits begin or are reinstated for the person (social security benefits often takes 30-60 days).

SUBSTANTIVE LAW PROPOSALS

III. DEFINITIONS/TERMS ([NRS 159.013 – 159.033](#))

- A. 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 NPC 3.3.1(c)(1)), "incapacitated person" or "person under a guardianship" or other more neutralized terms after guardianship issues.
- B. Terms of art could be re-expressed in a more modern style of language for better understanding by today's user.
- C. Restate vague language, such as that found in the Guardian ad litem and appointment counsel references to place accountability for resources.

IV. TEMPORARY GUARDIANSHIPS ([NRS 159.052](#), [159.0523](#), [159.0525](#))

- A. Enhance limitations on Emergency Appointment of Temporary Guardian. (See NPC 3.3.6)
- B. Currently the guardianship is for 10 days and notice must be accomplished within 2 days. From the judicial perspective the timing is short, especially for the first extension hearing. The extension hearing must be noticed and held within 10 days.
 - i. So, if the court signs the 10 day temporary order on Monday, notice mailed by Wednesday for the hearing on the 10th day, Thursday – there are frequently no other persons present at the extension hearing.
 - ii. To shorten the term of the 10 day emergency date would risk the ability of those with a right to notice from receiving service.
 - iii. At the temporary extension, the petition can be extended for 30 to 60 days. If notice was too short for appearances, objections or competing petitions, effectively, the petition is continued without objection. Without an investigator, the court could be perceived as standing in the shoes of an advocate if the order is denied.
 - iv. No hearing date is required for the extension hearing. If the Ward's emergency has passed or if the Ward dies during this time, there is no responsibility on the part of the guardian to return to court.
 - v. The temporary Guardian can petition for a second extension, often ex parte, and may remain the temporary guardian for up to 5 months with judicial findings.
 - vi. There is no required deadline to file the initial Citation after the Petition has been filed. For this reason, every temporary letter of guardianship should display an expiration date consistent with the designation in the Order of Temporary Guardianship.

V. APPOINTMENT OF GUARDIANS FOR ADULTS ([NRS 159.0487 – 159.075](#))

- A. Enhance statutory emphasis on court's responsibility to identify less restrictive alternatives to guardianships. (See NPC 3.3.10)
- B. Create mandatory findings necessary to impose temporary guardianships, extensions of guardianship or permanent guardianships.
 - i. For appointment of guardians
 - ii. For access to assets or disposal of personal property

iii. To proceed in a case without counsel or Guardian ad litem for the ward.

VI. APPOINTMENT OF GUARDIANS FOR MINORS ([NRS 159.0483](#), [159.052](#), [159.061](#), [159.186](#), [159.205](#), [159.215](#))

- A. Create a separate statute to address guardians for minors separate from adult guardianships, i.e., NRS 159A Minors, NRS 159B Adults. This would include separating the temporary guardianships as well.
- B. Review and implement NPCS protocols for proceedings regarding guardianships for minors at NPCS 3.5.
- C. State legislation to separate adult guardianship sections from minor guardianships will re-focus the attention of the guardianship partners on what is needed for improvement, and identify gaps in each area that needs to be filled.
- D. The Legislature repealed NRS 159.059 in one bill and amended it in another. Guardian qualifications for the two areas are different. NRS 159.059 contained the requirement for adult and minor guardianship; however, minor guardianship qualifications were not readdressed.
- E. Segregated subjects will also provide a more user friendly document for citizens who may get lost in the back and forth of the two age-related guardianships, while trying to determine which statutes overlap both.
 - i. Especially true for unrepresented persons trying to navigate statutes.
 - ii. Restructuring the statute will allow quicker access to the necessary areas for either a person looking to be a guardian over a minor or an adult.

VII. APPOINTMENT OF COUNSEL/RIGHT TO COUNSEL ([NRS 159.0485](#), [159.0535](#))

- A. Appoint counsel for all adult Respondents who cannot afford representation or who otherwise cannot access their own attorney. (See NPCS 3.3, NPCS 3.3.5; NRS 159.0535)
- B. Address appointment of counsel for every Ward at the inception of a petition. A statute without funding is not effective. Wards deserve legal protection, even when they have competency issues and cannot ask for or understand the need for an attorney.
 - i. Create a meaningful canvass to determine whether or not the Ward wants an attorney and knows there is a right to counsel. Mandate an attorney or Guardian ad litem for the Ward in the event of trial or evidentiary hearing.

VIII. APPOINTMENT OF GUARDIAN AD LITEM ([NRS 159.0455](#), [159.095](#))

- A. Appoint a Guardian ad litem for every Ward at the inception of the case. A statute without a program to provide GAL's or funding to acquire GAL's is not effective. It is important for the court to know what is in the best interests of the Ward which may be in conflict with the Ward's wishes.
- B. Restate vague language, such as that found in the Guardian ad litem and appointment counsel references to place accountability for resources.

IX. QUALIFICATIONS FOR GUARDIANSHIP ([NRS 159.059](#))

- A. Require background checks for all guardians. (See NPCS 3.3.12)
- B. The Legislature repealed NRS 159.059 in one bill and amended it in another. Guardian qualifications for the two areas are different. NRS 159.059 contained the requirement for both; however, minor guardianship qualifications were not readdressed. (This was also included under section V).

X. PRIVATE PROFESSIONAL GUARDIANS ([NRS 159.0595](#))

- A. Number of Wards
- B. Licensing Board
- C. Definitions
- D. Reasonable
- E. Personal Mail
- F. Standardized Fee Schedule (Guardians/Attorneys)
 - i. Caps.
 - ii. Billing: Only the Guardian and the Ward's Counsel can petition for fees.
 - iii. Fee schedule.
 - iv. Per statute, the Ward never bears the cost for a Petition which does not result in a guardianship.
- G. **BURDEN OF PROOF:** Depending on the petition before the court, the person seeking to create, end or change the Guardianship usually has the burden to show their prayer should be granted by the court. The Court should determine which party has the burden of proof prior to a bench trial or evidentiary hearing.
- H. **STANDARD OF PROOF:** Currently, the standard of proof is clear and convincing evidence. The Commission may want to look at lessening the standard for ending the Guardianship on Petition by the Ward

XI. INVESTIGATOR ([NRS 159.046](#), [159.074](#))

- A. 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)
- B. Mandate available resources to investigate circumstances in a case from the inception through the final accounting. The court must be able to direct or refer a case to an independent investigator to insure the safety of a Ward's person and estate. The costs of the investigator can be recaptured from the estate or paid by the County depending on circumstances. A Ward should not have to possess a sufficient estate before the court can mandate investigation. The Court cannot look to the estate for payment prior to the appointment of a guardian over the estate. Most abuses of the Ward's person or estate are usually within 20 days of the filing of the petition, and prior to the court's ability to sua sponte order protection.
 - i. Social well-being investigator (post-certification may be necessary where investigators are going out into the field).
 - a. Are allegations of physical abuse accurate?
 - b. Have all family members been notified of the guardianship case? As the court cannot appoint anyone who has not petitioned for guardianship, notification will at least inform family members and interested parties of the opportunity to object to or support the current proposed guardian. They may also consider their own petition for guardianship of the proposed Ward.
 - c. Is the Ward being intimidated or overwhelmed?
 - ii. Financial investigator
 - a. Is someone taking financial advantage of the Ward's estate?
 - b. Is the Ward paying bills and attending to business?

- iii. Fraud investigator
 - a. Has someone taken the Ward's estate under false presences?
 - b. Has the Ward's identity been compromised?

XII. PROCEDURES FOR GUARDIANSHIP PROCEEDINGS (PETITION/HEARINGS) ([NRS 159.034 - 159.0486](#))

- A. Confirm rules of evidence apply in contested guardianship hearings including right to confront witnesses and challenge evidence. (See 14 Amendment to U.S. Constitution, NPCS 3.3.9)
- B. 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.
- C. Specifically prioritize guardianship court's jurisdiction to hear related matters of abuse, neglect, third party fraud and tort claims involving incapacitated person.
- D. Mandate court review of every petition within 2 judicial days of filing, and take available, appropriate and jurisdictional action. (I.e. refer to independent investigation for report to parties or to an appropriate governmental agency.)
- E. The current petition utilized by Clark County follows the statute in required language in order presented by the statute.
 - i. Additional information could be designated by Eighth Judicial District Court Rule (EDCR).
 - ii. Special format could be designated by EDCR.
 - iii. Forms are available, however, the area of guardianship is complicated and complex as it should be to avoid violating a person's Constitutional Rights without good cause. Many proposed guardians/objectors cannot complete the forms and often the court will obtain additional information from the parties at the initial hearing.
 - iv. The only person required to complete the petition is the proposed guardian, with assistance of an attorney if retained, and the Doctor to supply meager information to support the claims in the petition.
 - v. Since the Doctor and the proposed guardian prepare independent documents, the corroboration of information is helpful to the court's determination regarding the necessity of a guardianship.
 - vi. To require more involvement of additional persons could be problematic where the proposed Ward has few or no family members available to assist with personal medical or estate issues.

XIII. PHYSICIANS' CERTIFICATE: The certificate currently utilized by Clark County has been revised several times, and, unfortunately, they are all still in use. A consistent form would be helpful. The statement is formulated to inform the court that a doctor, or other "qualified person," has diagnosed the proposed ward with a physical or mental health problem without exposing every detail of the Ward's personal health status for public consumption. The physician is required to state whether the patient can attend the hearing, whether the patient is a danger to him/herself or others and if the patient required a guardian over the person, the estate or the person or estate. ([NRS 159.044](#), [159.0523](#), [159.0525](#), [159.0535](#))

- A. Improve substantive requirements of Physicians Certificate. (See NPCS 3.3.9 narrative)
- B. The certificate must be prepared, signed and filed prior to an order for guardianship if the guardianship is not by consent of the Ward.

- C. Due to the nature of the content, it should be filed under seal. Filing the certificate under seal, with any medical evaluation/diagnosis would give the court more information to determine whether or not to grant an emergency temporary guardianship.
- D. The certificate as it now stands is more like a recapitulation, without the supporting documentation.
- E. The court needs to insure that the Ward is protected under the HIPAA laws. The current status could be violating the federal protection of a patient. The information is collected and filed prior to any form of guardianship, pursuant to statute and definitely without the consent of the Ward.
- F. The petition should also follow HIPAA law and refer the court, decision maker, to the sealed certificate.
- G. The check boxes are easy, however, to require that a doctor dictate the diagnosis, have the diagnosis transcribed and prepared for an emergency could endanger the patient who many need immediate court assistance. There must be a compromise that will enable the court to have enough information, enable the doctor to inform the court and supply support for anyone who has the right to be notified the comfort that the Ward is protected and the Order has a basis upon which to issue.
- H. Doctor's notes, when included in the description portion of the certificate are all but impossible to read.
- I. The minimal information in a Physician's Certificate was an effort to protect the Ward's privacy. Additional information in the Physician's Certificate (which is currently open to public inspection) decreases the Ward's privacy. The question is: Where should the balance point be placed?
- J. Clear up any ambiguity regarding when, and on what standard a Ward may be excused from any hearing.
- K. Physician to determine whether the Ward has demonstrated poor judgment or is truly incapacitated.
- L. Include definitions on Certificate regarding definitions such as legal capacity; contractual capacity; incapacity.

XIV. COMPLIANCE: Mandate a system to be identified to insure compliance with statutory deadlines for reporting and accounting. Compliance can be one of the most fleeting events to capture in Guardianship cases. The Court can create programs to include all possible events which need to be watched by the courts. Even though the statutes spell out the times for compliance, and the orders state the expectations, it is still a problem for the court to monitor every guardianship case. A reminder letter to the guardian from a compliance officer when a filing event has been missed and a follow up citation from the court could remedy many oversights, which can be very costly to the Ward's person and estate.

- A. In-house compliance officer (responding to the court) to maintain records and insure documents are:
 - ii. Timely filed, and
 - iii. Information is completed (Has a recapitulation been included in the accounting, do the figures add up, do they reconcile with prior accountings?)
 - iv. As there is no court hearing required for the annual Report of the Guardian regarding the Ward's person, the compliance officer should review the report for completion of information; refer to court if information is not sufficient. The court

can determine whether to refer the report to an independent investigator for further information, or to cite the parties in for a more detailed review.

- B. Public Compliance Officer to monitor and review concerns of the public regarding the guardianship process, to audit the court's efficiency and to work with independent investigator where necessary. Public Compliance Officer may also review petitions as they would be public record once filed.

XV. FIDUCIARY REPORTS/ANNUAL ACCOUNTING/COMPENSATION: Preparation of reports is a drain on the ward's assets. The more "work" required on behalf of the ward, the fewer volunteers to perform guardianship services without payment. The courts currently have the power to order less time between reports, but should do so only if it benefits the ward. The increase in number of reports will also increase the use of judicial resources, compliance officers and court hearings. ([NRS 159.065](#), [159.067](#), [159.069](#), [159.071](#), [159.0755](#), [NRS 159.105](#), [159.176](#), [159.177](#), [159.179](#), [159.181](#), [159.183](#), [159.184](#))

- A. 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)
- B. Consider appropriate sanctions for failure to comply with timely account and report filing.

XVI. TRAINING AND EDUCATION ([NRS 159.0592](#))

- A. Require training for all non-professional guardians and regulate training for professional guardians. (See NPCS 3.3.11, NPCS 3.3.14)
- B. Clark County has two training programs in existence. UNLV Law School, in conjunction with Legal Aid of Southern Nevada, conducts training which focuses on how to become a guardian and how to file specific motions when you are a guardian or seeking to challenge the actions of a guardian.
- C. The Public Guardian's Office offers training on the rights, duties and responsibilities of guardians.
- D. Provided training and education regarding Guardianship
 - i. CLE Credits
 - ii. Clear up misinformation
 - iii. Produce
 - iv. Bench/Bar meetings

XVII. ADMINISTRATIVE PROPOSALS

- A. 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)
- B. Ensure judicial court clerk staff ratio is in conformity with guardianship workload assignment. (Suggestion at this time one court clerk for every 500 cases.)
- C. Ensure each jurisdiction's IT Department is adequately staffed and trained to accommodate significant workload and management load responsibilities of guardianship cases.
- D. 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).
- E. 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.

- F. Require statewide standardized forms in guardianship matters to ensure conformity with statutory requirements and consistency of oversight.
- G. Develop District Court Rules to address the standard of practice statewide will provide more consistency and predictability when multiple jurisdictions are involved in one person's life.
- H. Develop local rules to address the particular dynamics of a court in order to address the regional needs and available resources.
 - i. Judicial Districts have financial and population challenges. Permitting a district to take advantage of all of its strengths and to analyze weaknesses for greater efficiency will better serve the community.
 - ii. Local rules are easier to adjust to accommodate for any unintended consequences of new requirements.

XVIII. PRIVACY CONCERNS: There needs to be a balance of information which is public and that is sealed. When a will is filed in the court proceeding, it places the Ward at risk, especially where the Ward, while competent, has dis-inherited a relative. Placing trust and estate planning information in the public portion of the file, also places the Ward at potential risk of identity fraud or damage to assets.

- A. Bank/financial account statements should not be attached to an Accounting unless the account number (and social security number if on the document) has been redacted or at least partially redacted. The name should be left on the account, but the mailing address should be removed.
- B. Discovery requests could request non-redacted information if there is any question of authenticity.

XIX. FAMILY INVOLVMENT: Family constellations are complex. That said, every member should have the ability to present information to the court; they should have information regarding the court process and procedure. This will require education.

- A. Family members who are not chosen as guardians should still have access to information presented to the court and be able to weigh in on future issues. Unless they specifically waive notice, notice of any court pleading or report should also be served on non-guardian family members.
- B. As far as consultation, the court cannot mandate the nature of a family relationship, but can encourage the exchange of information between family members in the best interest of the Ward.

XX. FAMILY MEDIATOR PROGRAM: A mandated program could work with the families and assist the court in educating the family members about their rights and mediate visitation that is beneficial to the Ward. There would need to be additional staffing and training in jurisdictions that already have statutory mediation programs for custody.

- A. Currently, in Clark County, the UNLV Boyd Law School, in conjunction with the Legal Aide Center of Southern Nevada, provides opportunities for mediation with law students, supervised by a law professor. This is not available in summer sessions.
- B. Mandated mediation would overwhelm the law school mediation program and would require more Family Mediation Center staff members. The Family Mediation Center (FMC) currently provides two to three mediations a month.

XXI. MISCELLANEOUS

- A. Develop statutory process by which guardians are notified of all civil and criminal actions in which persons under a guardianship are involved.
- B. Develop complaint process for incapacitated person or interested persons to pursue concern through expedited process with the Court. (See NPC 3.3.18)

XXII. MODEL COURT PROGRAM created by the National Association for Court Management. We should strive to maintain the goals of the Model Court, and reach out for their assistance.

- A. Clark County in compliance with model court
 - i. Annual Reports of the Guardian re: Ward's status
 - ii. Court Performance Measures (Currently self-imposed)
 - iii. Notice
 - iv. Consideration of less restrictive alternatives
 - v. Prompt hearings
 - vi. Clear and Convincing evidence standard
 - vii. Training for Guardians (Currently by community partners)
 - viii. Standardized forms
 - ix. E-Filing
 - x. Available Alternative Dispute Resolution Techniques (minimal)
 - xi. Sustainability Evaluations (RE proposed budgets)
 - xii. Contempt Citations for Deficiencies (Out of compliance)
 - xiii. Freezing Assets and Suspending Letters on Showing of Exploitation or Mismanagement
 - xiv. Show Cause Hearings for Leaving the Jurisdiction
- B. Partial adherence with Model Court
 - i. Compliance oversight
 - ii. Availability of forms and ease of use
 - iii. Service
 - iv. Citizen Complaints
 - v. Notice that the Guardian is leaving the jurisdiction
 - vi. Judicial training
- C. Goals to adhere to model court
 - i. Evaluations: to measure court's efficiency
 - ii. Attorneys for wards
 - iii. Independent investigators
 - iv. Independent auditors
 - v. Volunteer program to meet with Wards
 - vi. Plan presented by Guardian for "Person Only" plan
 - vii. Volunteer guardians
 - viii. Fee schedule
 - ix. Differentiated Case Management (triage emergency cases)