Nevada Supreme Court

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

September 16, 2015, Meeting Materials

Chief Justice James W. Hardesty, Chair

AGENDA

Supreme Court of Nevada

ADMINISTRATIVE OFFICE OF THE COURTS

ROBIN SWEET
Director and
State Court Administrator

JOHN MCCORMICK
Assistant Court Administrator
Judicial Programs and Services

RICHARD A. STEFANI
Deputy Director
Information Technology

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: September 16, 2015, 10:30 a.m. to 4:30 p.m.

Place of Meeting:

Reno
Reno/Tahoe International Airport 2001 E. Plumb Lane The River Room

AGENDA

I. Call to Order
   A. Call of Roll and Determination of Quorum
   B. Approval of Meeting Summary from August 17, 2015 (for possible action) (*pages 5-11*)

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. Presentations
   A. Overview - Standards of Practice
      1. Public Guardianships (Kathleen Buchanan, Tim Sutton, Judge Nancy Porter) (pages 39 -43 of the 8/17/15 meeting materials)
      2. Private Guardianships (Kim Spoon and Susan Hoy) (*pages 45-83 of the 8/17/15 meeting materials*)
   B. Training and Education (Christine Smith) (*pages 85-101 of the 8/17/15 meeting materials*)
   C. Perspective from Care Facilities (Kim Rowe) (*pages 103-117 of the 8/17/15 meeting materials*)

IV. Scope of Commission
   A. Goals/Objectives (for possible action) (*pages 13-24*)

V. National Best Practices and Related Resources
   A. National Guardianship Association – Standards of Practice Checklist
   B. National Probate Court Standards (Sections 3.3 - 3.5)
   C. National Association for Court Management – Adult Guardianship Guide
   D. Washington State Statute Requiring Counsel (*pages 26-28*)
   E. Legislation Summary by Erica F. Woods, Esq. (*pages 30-60*)

VI. Appointment of Subcommittees (Working Groups) (for possible action) (*page 62*)

VII. Discussion and Possible Action on Recommendations (for possible action)
   A. Temporary Guardianships
      1. Nevada's Statute (*pages 64-69*)
      2. Terri Russell's Recommendations (*pages 70-71*)
   B. Fees
      1. Arizona's Statute (*pages 72-76*)
      2. Nevada's Statute (*pages 77-78*)
   C. Standing Committee on Judicial Ethics – Advisory Opinion JE15-002 (*pages 130-134 of 8/17/15 meeting materials*)
      1. Idaho Rules Ex Parte Comunication (*pages 83-90*)

VIII. Other Business
   A. Clark County Administrative Order: 15-08 (*pages 92-93*)
   B. Long Term Care Crisis (*pages 95-96*)

IX. Future Meeting Dates/Agenda Items
   A. October 19, 2015 – Video Conference
   B. November 4, 2015 – Video Conference
   C. November 23, 2015 – Video Conference
   D. Decmeber 15, 2015 – Las Vegas

X. 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.*

XI. 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.

JULY 15, 2015, MEETING SUMMARY

Supreme Court of Nevada
ADMINISTRATIVE OFFICE OF THE COURTS

ROBIN SWEET
Director and
State Court Administrator

JOHN MCCORMICK
Assistant Court Administrator
Judicial Programs and Services

RICHARD A. STEFANI
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Deputy Director
Foreclosure Mediation

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

Date and Time of Meeting: August 17, 2015, 1:30 p.m. to 4:30 p.m.

Place of Meeting:

Carson City	***Las Vegas***	***Reno***	***Elko***
Nevada Supreme Court 201 South Carson St. 2nd Floor, Courtroom	Regional Justice Center 200 Lewis Ave. 17th Floor, Courtroom	Second Judicial District Court Family Court One Sierra Street Third Floor, Courtroom 6	Fourth Judicial District Court 571 Idaho Street, Dept. 2

Members Present

Chief Justice James W. Hardesty, chair
Chief Judge Michael Gibbons
Judge Frances Doherty
Judge Nancy Porter
Judge Cynthia Dianne Steel
Judge William Voy
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
Robin Sweet

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

Chairman Hardesty called the Commission to Study the Creation and Administration of Guardianships (Commission) to order at 1:30 p.m. Ms. Stephanie Heying called the role and determined a quorum was present.

Chief Justice Hardesty noted agenda item VI - Discussion Draft/Interim Emergency Recommendations of the agenda. This will be a reoccurring agenda item that would allow the Commission to discuss and consider an interim emergency recommendation. Example, there had been activity in the various judicial districts around the state dealing with guardianships; the activity had raised questions from members of the public. One item concerned circumstances in which Judge Steel had to recuse, what would be the process for transferring cases in the event of a recusal. The Eighth Judicial District entered an administrative order which changed the recusal process for the assignment of cases and that order was included in the meeting materials. The topic on recusals and reassignment of cases for the adult guardianships would continue to be discussed and a plan would need to be deliberated concerning juvenile guardianships as well.

Chief Justice Hardesty discussed the "scrubbing" of the court's dockets in the case management system in the various judicial districts to determine how many open guardianship cases there are pending statewide. The Commission might not be able to collect this information within the six month time period and might have to go beyond that time period to collect this information. The goal would be to know how many cases are pending, what has happened in the cases, and require the status of guardianship proceedings for each court.

Chief Justice Hardesty let the Commission members know its work had attracted national attention from the media. There had been a request to film the proceedings of the Commission as part of a future documentary. Chief Justice Hardesty had consented to the request on the condition that the media comply with the Supreme Court Rules governing cameras.

   b. Approval of Meeting Summary from July 15, 2015

The July 15 meeting summary was unanimously approved with no edits.

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

Chief Justice Hardesty stated he would accept public comment at the beginning of the meeting, instead of at the end in order to allow the public to have enough time to speak, considering length of the agenda. Chief Justice Hardesty asked the members of the public to limit their public comment to 3 minutes. There was no public comment in Reno. Judge Gibbons stated Attorney Lora Myles would begin public comments from Carson City. Public comment was also received by multiple individuals in Las Vegas. The public comments were transcribed verbatim and are included as a separate attachment to the meeting summary.

III. Presentations

Chief Justice Hardesty called the Commission back to order after a brief recess. Chief Justice Hardesty discussed addressing areas of improvement through the guardianship system to gain insight from those involved in the system. Members of the Commission had been asked to provide information on specific areas within the guardianship system. Due to the length of public comment the Commission would not have sufficient time to

hear all the presentations, and review the goals and objectives identified by Judge Dianne Steel, Judge Frances Doherty and Commission members. Agenda items that were not covered at today's meeting would be moved to the September 16 agenda.

a. Fees

Ms. Debra Bookout provided a presentation on the fee process in guardianship proceedings. Ms. Bookout asked Commission members to examine the memo in the meeting materials, which provide idea as to what other states do regarding fees. Ms. Bookout added there are three main ways states structure their fees; a court is to determine what is reasonable and just, some states set caps, while other states assess rates. There were three factors which the courts analyze to determine what is a reasonable standard regarding fees; the type and complexity of the services performed, the usual and customary fees charged in the relevant community and the locality of similar services, and the actual time expended and the work actually performed. With respect to states that set rates, the range was between 40-85 dollars per hour in comparison to rates from Clark County which are between 120-180 dollars per hour charged by a guardian. Ms. Bookout stated the factors that are considered to determine reasonableness by the states are very similar to those used by the National Standards.

Chief Justice Hardesty stated the courts are called upon to award reasonable attorney's fees, when allowed, in a statute or contract, however, under Nevada's case law it is required for the district courts to make specific findings concerning each factor in the event a person would like to challenge the award of fees, one can determine if the decision made on any factor was supported by evidence contained in the record in support of the fee. In other contexts, the district courts had not made specific findings of fact for other areas, for example; in litigation cases. Chief Justice Hardesty asked the lawyers and judges of the panel to share their experience regarding whether the district courts were making findings of fact when presented with fee requests, addressing each factor.

Judge Steel shared her brief experience had been that no one objects on behalf of the ward, frequently there would be a case that had been going on for a long period of time which had three or more accountings which no one objects, therefore that becomes the reasonableness for that specific ward. Often times a ward will pass away before a budget is presented, thus, there would be no information regarding what anticipated costs may be for a person. Judge Steel stated the rates she had seen for guardian fees were between $400-700 per month, but did not have guidance to know if the rate being charged would be considered reasonable. Judge Nancy Porter stated she primarily sees public guardianship cases for adults; very few of those adults have assets by which to pay a fee. A public guardian will often ask in a petition for $50 a month when and if funds become available, which rarely funds ever become available. Judge Porter shared her experience with a particular adult guardianship case pertaining to a young man who does have significant assets. Judge Porter stated she does get fee requests for that particular gentleman. Judge Porter appointed an attorney for the young man and does get bills from the attorney and the people managing his assets, a hearing takes place so that everyone involved in the case may be heard and have the opportunity to discuss the reasonableness of those fees. Judge Doherty stated her court reviews the fee requests for guardians and attorneys in detail. Fee requests which are largely unsupported prior to the case being filed or the guardianship order being entered are excluded. Fee requests are approved upon known guardianship hourly rates which have been presented to the court and for attorneys, fee requests are approved based on regular practice. Fee requests which have been rejected have been based on the size of the estate, are requests which have been submitted in the form of blocked billing statements, are requests submitted in the form of standardized administrative fees which have not been broken out, and are fees which have gone beyond the scope of the guardian's authority. Judge Doherty added the court holds hearings on fee requests for attorneys and guardians, whether contested or not. Judge Walker stated his court had had only one fee request for juvenile guardianship proceedings. Like Judge Doherty, the fee requests were subject upon a public hearing and examination relative to the amount of the request, the size of the estate, and

reasonableness of the fees. Judge Voy stated he had not received fee requests for juvenile guardianships. Ms. Elyse Tyrell stated there had been questions regarding fees even when there was no objection. Ms. Tyrell stated attorney fees for wards have been reduced after a court reviews fees and determines fees do not benefit a ward. Chief Justice Hardesty stated he would ask district courts to provide copies of fee applications to see how they are handled and how fee factors are applied.

Chief Justice Hardesty asked the Commission to deliberate regarding the different approaches used to compensate people; the debate for this topic would be thoroughly discussed at the upcoming meeting in September. Nevada's current statute calls for reasonable compensation for guardianship services; Chief Justice Hardesty noted some counties did not have an established hourly rate for compensating individuals. Chief Justice Hardesty asked for information regarding private guardian representatives to determine how fees are established and where the process for establishing fees had derived from. Chief Justice Hardesty noted rates differ throughout the state and he would like the Commission to determine why rates differ from one county to the next and discuss the possibility of standardized rates for guardians. The dramatic differences between Nevada's rates and other state's rates begs questions regarding how the rates were established, what had the basis for the rates been, and what was the process for establishing rates. Chief Justice Hardesty asked why there was a significant difference in approach to the establishment of rates that are used in a probate proceeding as opposed to a guardianship proceeding. Chief Justice Hardesty asked the Commission to be prepared to discuss reasonable fee compensation and discuss a fixed rate or reconciling the probate rates going forward. Chief Justice Hardesty stated he was concerned regarding language in Nevada Revised Statute (NRS) 159.183 which states a guardian *must* be allowed reasonable compensation; in most statutes the fees awarded are discretionary not compulsory. Chief Justice Hardesty questioned NRS 159.183 (1)(C) which states "reasonable expenses incurred in retaining accountants, attorney, appraisers or other professional services" but does not necessarily compel the court apply specific factors in establishing fees. Chief Justice Hardesty stated he was troubled by the thought that practice in establishing fees is different than what the statute says and allows for a different approach. Chief Justice Hardesty stated the fee area is a topic which would require concentration from the Commission and the Commission would need to discuss in September and deliberate over possible recommendations. Chief Justice Hardesty stated the issue regarding fees could bring statutory changes and recommended the Supreme Court could enter a rule for district court judges to evaluate fee requests, whether opposed or not, and must be the subject of a public hearing in which a judge must make reviewable findings with respect to fee request. Chief Justice Hardesty asked Chief Judge Michael Gibbons what the approach in the establishment of fees had been in Douglas County. Chief Judge Gibbons stated the first issue was who would get notice of fee requests. Local district court rules had been modified to include a subsection for guardianships to ensure notice was given to all that should have it and no fee could be paid without court approval. Unfortunately, most guardianship fees are uncontested and the court has very little information to determine if fees are accurate. Chief Judge Gibbons reported Douglas County had adopted the Special Advocates For Elders (SAFE) program and asked volunteer advocates to take on the role to examine fee requests. The SAFE program had two paid personnel, a coordinator and an auditor, which reviewed fee requests to corroborate whether or not there was anything unusual about them. Looking at the information one could see a flaw in the system and fees would need to get a closer look. Chief Judge Gibbons shared that in Douglas County when a new public guardian arrived with her council the court set the rate she could charge when a ward possessed assets. The rate was set at $85 per hour based on other states and counties and comparing the rates to those of private guardians. Chief Justice Hardesty expressed concern regarding the fluctuation of fees from one county to the next in the same state. Ms. Terri Russell asked if and how the Commission could look into the relationship between a guardian and the accountant, attorney, or assessor they choose to hire. Why are certain accountants or assessors chosen? Chief Justice Hardesty stated Ms. Russell had pointed out relevant concerns. Chief Justice Hardesty noted language in NRS 159.183 (1)(C) which are issues not reviewed by the court. The Commission deliberated on the differences in procedures for probate and guardianship cases and determined the court does not approve accountants, attorneys, assessors, etc., because the fees for those individuals go uncontested. Ms.

Tyrell stated there was an Eighth Judicial District Rule which caps what a realtor's commission can be in either probate or guardianship cases. According to the rule the realtor's commission must be disclosed in the confirmation of sales but the court does not approve which realtor is selected for each case. Chief Justice Hardesty stated the court should expect a guardian to be able to explain why they hired a certain professional and what services the professional provided to be able to independently assess reasonableness of the fee charged for the services. Judge Doherty added the Commission could think about including the percentage aspect as an option which may benefit a ward more than hourly guardianship rates. Ms. Tyrell asked the Commission to be considerate of the fact that each case is different and include many variables which affect cases differently, and the Commission should maintain an open mind to the differences of each case. Chief Justice Hardesty stated finding answers as to why there are drastic differences between the guardianship approach and the probate approach would be a priority for the Commission. Judge Egan Walker asked the Commission to review the guardianship process and consider better alignment of interest of parties to better serve the ward. Chief Justice Hardesty agreed and stated the court could be more proactive if the information regarding fees for hired professionals was disclosed in advance through enforcement of prior approvals, Chief Justice Hardesty stated time periods for the submission of fee requests would be another subject to consider. Ms. Kim Spoon stated it would be important to define the different fees that may be addressed in a fee request to make information clear for guardians regarding the award of fees and what expectations the court has in regard to certain fees. Chief Justice Hardesty noted the Commission would need to discuss what timing should be expected for fee requests. Ms. Spoon stated her business had been seeking fee requests which awarded fees once the parties became aware of the services they would be providing. Fees would be awarded before the services were provided in anticipation of hearings and other court appearances because being paid once a year would not be conducive to maintaining a business. Chief Justice Hardesty asked the Commission if there were further questions or comments regarding fees, there were no further questions or comments from the Commission.

b. Overview - Standards of Practice
   i. Public Guardianships
   ii. Private Guardianships
   iii. Temporary Guardianships

Ms. Sally Ramm provided an overview of temporary guardianships. Ms. Ramm reviewed a number of states and included the Commission on Law and Aging's graph, which she provided in the materials. In her review, Ms. Ramm found in almost every area Nevada law falls in line with the other states in regards to their guardianship statutes. The one exception is the duration of the temporary guardianship, Nevada's is 120 days. Most states require a report from a physician and are required to make a determination of incapacity before the temporary guardianship is issued. The State of Oregon oppoints a visitor, which Ms. Ramm thought is a volunteer prior to the temporary orders. California probate court does not permit the temporary conservatorship to sell or relinquish any lease/estate or real or personal property during the temprorary guardianship, unless it is necessary. The California probate court has court investigators to go prior to and during the temporary guardianship and during the permanent guardianship. The investigators interview multiple people and collect collect information that is provided to the court. If the Commission considers the use of investigators in its recommendations it needs to consider the peceived or actual conflict of interest in having investigators who work for the court. Washington is the only state that Ms. Ramm found where an attorney is appointed for the potential ward or the alleged incapacitated person at public expense. The state pays for the attorney. If the ward has the ability to pay then the ward is asked to reimburse for the attorney fees.

Chief Justice Hardesty asked if California was the only state that limits the ability of the temporary guardian to dispose of assets during the temporary guardianship. Chief Justice Hardesty thought Arizona included this in

their statute as well. Ms. Ramm said it was possible. She included statutes that she thought were unique to each state.

Chief Justice Hardesty found the differences in the standard of proof interesting among the different jurisdictions. Nevada is clear and convincing, correct? Judge Doherty said yes, for the temporary, but ex parte is reasonable cause to believe substantial and immediate risk will occur with respect to medical or personal care, so it is a lower standard. Chief Justice Hardesty noted the Commission should evaluate and consider elevating the standard of proof. The areas of concern regarding temporary guardianship include is the notice and method by which this process begins and regardless of what is done in other states it seems that a temporary guardianship should commence only with the most notice conceivable for our judicial process. Counsel should be provided to each ward. Chief Justice Hardesty noted he favored Washington's statute and suggested the Commission review this statute further.

It was noted that California and Arizona put a semi-freeze on the use of the assets during the time of the temporary guardianship. Commission members were asked if there is a reason why assets would need to be sold/liquidated during a temporary guardianship. Judge Doherty said under the spousal impoverishment provision which is a motivator for the filing of temporary guardianships because under federal law spouses are able to protect up to $125,000 of assets for the stay at home spouse and up to $2300 and something for monthly income. The temporary orders are often motivated by the need to segregate that income and asset resource so that the person for whom the guardianship is sought will qualify sooner rather than later for Medicaid. The assets are no liquidated under a temporary guardianship but the court does address couples and their assets and resources and segregate them to the community spouse if seeking Medicaid. Medicaid approves within the month that the person is eligble so if you do not have that court order recognizing the division of assets and the segregation of those assets they will not be approved in the month that they sought Medicaid. The temporary guardianships are specifically limited to a very specific purpose often dealing with placement. Elyse Tyrell added at times they cannot place wards without funds so there are times where they will request, and they are clear in their initial petition, for temporary guardianship the access which is needed because the ward cannot go from the hospital to the facility or could be at risk of being evicted from the facility for lack of payment.

There is a "spend down" to qualify for Medicaid. When we say "spend down" a person may have to spend down to get them under the $2000 thresehold for Medicaid. This will be put in the order and the specifics on what they are spending down on. Public guardians in Elko make funeral arrangments to spend down.

Chief Justice Hardesty said he would like to make some recommendations regarding temporary guardianships at the September meeting and added he thinks it is an area that is handled differently throughout the state and thinks it is something that could be the subject of Supreme Court rules. Chief Justice Hardesty would like the Commission to make recommendations concerning some restraints around the operation of temporary guardianships on September 16.

c. Training and Education
d. Perspective from Care Facilities

IV. Scope of Commission (for possible action)
A. Commission Members Feedback
- Goals/Objectives

B. Standing Committee on Judicial Ethics – Advisory Opinion JE15-002
C. Clark County Administrative Order: 15-08

V. National Best Practices and Related Resources
- D. *National Guardianship Association – Standards of Practice Checklist*
- E. *National Probate Court Standards (Sections 3.3 - 3.5)*
- F. *National Association for Court Management – Adult Guardianship Guide*

VI. Appointment of Subcommittees (Working Groups) (for possible action)

VII. Discussion Draft/Interim Emergency Recommendations (for possible action)

Chief Justice Hardesty mentioned item six Discussion Draft/Interim Emergency Recommendations of the agenda. In the event the Commission would consider a recommendation to be in the nature of some emergency action that specific recommendation would be added to the interim emergency recommendations agenda item to later be deliberated on. Chief Hardesty reported there had been an activity in the various judicial districts around the state dealing with guardianships; the activity had raised questions from members of the public. One issue was concerning circumstances in which Judge Steel had to recuse, what would be the process for transferring cases in the event of a recusal. An administrative order had been entered in the 8th Judicial District which changed the recusal process for the assignment of cases and that order was included in the meeting materials. The topic on recusals and reassignment of cases for the adult guardianships would continue to be discussed and a plan would need to be deliberated concerning juvenile guardianships as well.

Chief Justice Hardesty asked if any members had any emergency recommendations for the Supreme Court today. No recommendations.

VIII. Other Business

IX. Future Meeting Dates/Agenda Items
- G. September 16, 2015 – Reno

The meeting on September 16, 2015 will be held at the Reno/Tahoe International Airport. Meeting details would be provided to members prior to the meeting.

- H. October 19, 2015 – Video Conference
- I. November 4, 2015 – Video Conference
- J. November 18, 2015 – Video Conference

Chief Justice Hardesty has a scheduling conflict and let Commission members know we would need to reschedule the November 18 meeting. Chief Justice Hardesty suggested changing the meeting date to November 23. A revised calendar notice would be sent to members confirming the date.

- K. Decmeber 15, 2015 – Las Vegas

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

XI. Adjournment

The meeting was adjourned at 4:55 p.m.

GOALS/OBJECTIVES

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

The Commission to Study the Administration of Guardianships in Nevada's Courts will commence a substantive review of the guardianship system in Nevada by studying and making appropriate recommendations for statewide policies and procedures concerning the creation and administration of guardianships, including, but not limited to, the procedures used to provide notice and the evidence required to create guardianships, the training and appointment of guardians, the protections needed for wards and their family members, the accountability and performance required of guardians and expected of courts, the use of technology to assist in documenting, tracking and monitoring guardianships, and the identification of resources necessary to assist the court system to meet the required objectives.

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 PRACTICES:

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.)

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 BELOW:

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
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 DISPOSTION:

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

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 NPCS 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.

TEMPORARY GUARDIANSHIPS (NRS 159.052, 159.0523, 159.0525)

A. Enhance limitations on Emergency Appointment of Temporary Guardian. (See NPCS 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't 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.

IV. APPOINTMENT OF GUARDIANS (NRS 159.0487 – 159.075)

A. Enhance statutory emphasis on court's responsibility to identify less restrictive alternatives to guardianships. (See NPCS 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.

V. APPOINTMENT OF GUARDIANS FOR MINORS (NRS 159.0483, 159.052, 159.061, 159.186, 159.205, 159.215)

A. Review and implement NPCS protocols for proceedings regarding guardianships for minors at NPCS 3.5.

B. 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.
C. 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.

VI. 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.

VII. 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.

VIII. 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.

IX. 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

X. 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 NPCS 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 writing 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?

XI. 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.

XII. 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.

XIII. 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.

XIV. 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.

XV. 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

XVI. 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.

XVII. **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.

XVIII. **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.

XIX. **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.

XX. **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 NPCS 3.3.18)

XXI. **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)

WASHINGTON STATUTE

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.

LEGISLATION SUMMARY

LEGISLATION SUMMARY

Prepared by

Erica F. Wood, Esq.
Assistant Director
Commission on Law and Aging
American Bar Association
1050 Connecticut Avenue, #400
Washington DC 20036
erica.wood@americanbar.org
(202)662-8693 Phone

This 2015 legislative summary includes information on 32 state enactments on adult guardianship from 17 states, as compared 19 enactments from 16 states in 2014. Texas alone passed a total of ten bills – a "big set of enactments for the big state," especially including measures on individual rights and less restrictive alternatives, and enacting the nation's first statutory recognition of supported decision-making agreements. Nevada made significant changes, including a licensure requirement. Florida made extensive amendments affecting the selection and authority of guardians. The Ohio Supreme Court approved a long-awaited set of standards for guardians. Two states passed the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

This summary, including any updated information as of December 2015, will be posted as "Directions of Reform: State Adult Guardianship Legislation – 2015" at http://www.americanbar.org/groups/law_aging/resources/guardianship_law_practice.html

Among those who contributed to or were helpful in the legislative summary were Sally Ramm (Elder Rights Attorney, Nevada Aging and Disability Services Division); Steve Fields (Court Administrator/Senior Attorney, Tarrant County Probate Court, Texas); Charles Golbert (Office of Cook County Public Guardian, Illinois); and Julia Nack (Central Ohio Area Agency on Aging). If you know of additional state adult guardianship legislation enacted in 2015, please contact erica.wood@americanbar.org. The views expressed in the legislative summary have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and should not be construed as representing the policy of the American Bar Association.

I. Pre-Adjudication Issues

Over the past 25 years, legislative changes have sought to bolster safeguards

in proceedings for the appointment of a guardian or conservator. Additionally, states continue to make various procedural "tweaks" to clarify requirements, promote effective administration, or address inconsistencies.

1. Counsel for Respondent. Perhaps the most basic procedural right of respondents in guardianship proceedings is right to counsel. Both the Uniform Guardianship and Protective Proceedings Act and the National Probate Court Standards provide for appointment of counsel. State guardianship laws address the right to, and appointment of, counsel -- although the role of counsel differs substantially with some states requiring counsel as vigorous advocate and others specifying that counsel should act as guardian ad litem. See state-by-state chart at: http://www.americanbar.org/groups/law_aging/resources/guardianship_law_practice.html . In 2015, four states addressed the right to and role of counsel:

- *Texas SB 1876* – Requirement for Rotational Appointment. The Senate Committee analysis for SB 1876 explains that "For more than two decades there has been controversy regarding favoritism, cronyism, and nepotism in court appointments. The occurrence, possibility, or even the appearance of some attorneys and judges colluding to profit from these appointments simply is unacceptable and undermines the public's confidence in the entire judicial system . . . ." Thus, SB 1876 requires the court to use rotation lists for the appointment of most attorneys and guardians ad litem, professional guardians, and mediators. However, it maintains the judge's discretion to appoint a particular person on a complex matter where the person has specialized training or skills; and provides that a person not on the list or whose name is not first may be appointed if the parties agree and the court approves.

- *DC B20-0710* – Role of Counsel. This bill made significant changes clarifying the role of counsel for the respondent. The new language sets of the role of a guardian ad litem to "prosecute or defend the best interests" of the individual. The role of counsel is to represent the person's "expressed wishes." If the individual is unconscious or incapable of expressing wishes, counsel is to "advocate zealously for the result that is the least restrictive option . . . consistent with the subject's interests as determined by the guardian ad litem."

- *North Dakota SB 2168* – Role of Counsel. North Dakota also clarified that the duties of the guardian ad litem are distinct from the duties of an attorney. The guardian ad litem is to advocate for the best interests of the individual; may not represent the person in a legal capacity; must explain rights including the right to

retain an attorney; and must submit a written report responding to the petition. (The guardian ad litem serves in addition to a visitor and clinical professional.)

- *Washington SB 5607* – Post-Appointment Representation. This bill provides that "for any hearing to modify or terminate a guardianship, the incapacitated person shall be given reasonable notice of the hearing and of the incapacitated person's right to be represented at the hearing by counsel of his or her own choosing." This important provision addresses the very significant issue of post-appointment representation of individuals subject to guardianship. SB 5607 applies to both restoration and modification, providing for court-appointed counsel anytime a guardianship will be modified, for example changing a limited guardianship to a full guardianship and vice versa.

- *Washington SB 5647* – Pro Se Cases. This bill focuses on guardianship cases in which litigants are *not* represented by an attorney, and are acting *pro se*. In Washington, courthouse facilitator programs exist in counties across the state. These programs provide information to litigants about how to pursue legal actions, offering any needed forms and information about court rules and procedures. The bill allows each county to establish a guardianship courthouse facilitator program for pro se guardianship cases. Courts may impose a surcharge of up to $20 or user fees to pay for the program.

2. Procedural Changes. Over the past 25 years, most states have made changes in pre-appointment requirements for the petition, notice, guardian ad litem and hearing.

- *North Dakota SB 2168* makes the following changes (in addition to the provisions concerning counsel above) –
  - The petition must include the name and address of any current conservator, any agent under a financial or health care power of attorney, and any representative payee.
  - The petition must state that less intrusive alternatives have been considered.
  - The petition must attach a recent clinical statement on the physical, mental and emotional limitations of the individual if available.
  - Written reports and clinical information are confidential and may not be disclosed to the public.
  - The proposed guardian must attend the hearing unless excused by the court for good cause.

- *Texas HB 1438.* As part of its ongoing review of Texas probate, guardianship and trust law, the Texas State Bar Section on Real Estate, probate, and Trust Law proposed a number of procedural revisions to adult guardianship law. (As summarized by the Texas Legislative Update, Steve Fields, Tarrant County Probate Court):

  - Protections in Court-Initiated Cases. Texas law includes a unique provision allowing a court to take action if it "has probable cause to believe" that a person within its jurisdiction "is an incapacitated person" and does not have a guardian. The court may appoint a guardian ad litem or court investigator to determine if appointment of a guardian is necessary HB 1438 provides that the person has the right to petition the court to have the appointment set aside; and the order appointing the guardian ad litem or court investigator must include a statement of this right. Additionally, on the initial meeting, the guardian ad litem or court investigator must provide a copy of any "information letter" submitted by an interested person, as well as the appointment order, and must discuss the contents with the person.

  - Relatives Named in Petition. HB 1438 specifies the relatives "within the third degree by consanguinity" to be named in the petition, including great-grandparents and great-grandchildren.

  - Intervention by Third Parties. HB 1438 sets out a process for "intervention by an interested person," requiring a timely motion to intervene served on the parties and accompanied by a pleading that sets out the grounds for the intervention and the purposes for it is sought. The bill specifies that the court has discretion to grant or deny the intervention motion, and must consider whether it would unduly delay or prejudice adjudication of the parties' rights.

  - Duration of Temporary Order. HB 1438 clarifies the term of a temporary guardianship, which is to expire of the earliest of: the conclusion of a hearing challenging a petition; at the date a permanent guardian is appointed; or at the 12-month anniversary of the qualification of the temporary guardian, unless the term is extended by court order.

- Recusal of Statutory Probate Court Judges. In Texas, only ten of the state's 254 counties have statutory probate courts. In the remainder, guardianship is heard in general jurisdiction courts. HB 1438 makes changes in the process for recusal of statutory probate court judges.

3. Emergency guardianships. In emergency situations, state law statute and eventually the court must make a difficult balance between procedural safeguards and prevention of irreparable harm. An emergency guardianship, sometimes established without full procedural protections, may open the door for a plenary and permanent appointment. In the landmark 1991 case *Grant v. Johnson,* a federal district court declared the Oregon temporary guardianship statute unconstitutional in that it did not provide minimum due process protections. Following the *Grant* decision, a number of states revised their temporary guardianship provisions. For an updated (through 2014) chart on state emergency guardianship provisions, see: http://www.americanbar.org/groups/law_aging/resources/guardianship_law_practice.html

- *Florida HB 5*:
  - Requires that notice of the filing of a petition for appointment of an emergency temporary guardian be served on the respondent unless the petitioners shows it would cause substantial harm; and
  - Prohibits a court from giving an emergency temporary guardian preference in the appointment of a permanent guardian.

- *North Dakota SB 2168:*
  - Changes the time limit for an emergency guardian from "not to exceed sixty days" to "not to exceed ninety days."
  - Provides that notice of a hearing on the emergency guardianship petition must be given to the individual's spouse if any, as well as the individual.
  - Specifies that if a conservator has not been appointed and the emergency guardian has financial authority, the order must state that the guardian shall safeguard any assets, and may spend the assets only for the necessary support and care of the individual.

- *Illinois HB 2505* clarifies that a temporary guardian has the limited powers and duties specifically enumerated by the court order.

- *Ohio Sup. R. 66.03* requires probate courts to adopt local rules to address emergency guardianship procedures.

5. Court Visitor for Minors in Transition. In many cases the parents of minors with intellectual disabilities file for guardianship upon (or in some states just before) the child turns 18 – but often may not consider other decision-making options or whether the scope of the order may be limited. The need for adult guardianship *should not be an assumption* and the transition year should offer opportunities to examine the choices.

- *Oregon SB 590* – Court Visitor for Minors. In Oregon, a court visitor is required in a guardianship proceeding for an adult. SB 590 requires the court to appoint a visitor in cases where a respondent is more than 16 years old and the court determines that the respondent is likely to have a guardian when the respondent reaches adulthood.

II. Multi-Jurisdictional Issues

In our increasingly mobile society, adult guardianships often involve more than one state, raising complex jurisdictional issues. For example, many older people own property in different states. Family members may be scattered across the country. Frail, at-risk individuals may need to be moved for medical or financial reasons. Thus, judges, guardians, and lawyers frequently are faced with problems about which state should have initial jurisdiction, how to transfer a guardianship to another state, and whether a guardianship in one state will be recognized in another.

Such jurisdictional quandaries can take up vast amounts of time for courts and lawyers, cause cumbersome delays and financial burdens for family members, and exacerbate family conflict – aggravating sibling rivalry as each side must hire lawyers to battle over which state will hear a case and where a final order will be lodged. Moreover, lack of clear jurisdictional guideposts can facilitate "granny snatching" and other abusive actions.

1. Background on Uniform Act. To address these challenging problems, the Uniform Law Commission in 2007 approved the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA). The UAGPPJA seeks to clarify jurisdiction and provide a procedural roadmap for addressing dilemmas where more than one state is involved, and to enhance communication between courts in different states. Key features include:

- Determination of initial jurisdiction. The Act provides procedures to resolve controversies concerning initial guardianship jurisdiction by designating one state –

and one state only – as the proper forum. It sets out a schema for determining a person's "home state" and if none then a "significant jurisdiction state" in which a proceeding should be heard.

- Transfer. The Act specifies a two-state procedure for transferring a guardianship or conservatorship to another state, helping to reduce expenses and save time while protecting persons and their property from potential abuse.

- Recognition and enforcement of a guardianship or protective proceeding order. UAGPPJA helps to facilitate enforcement of guardianship and protective orders in other states by authorizing a guardian or conservator to register orders in the second state.

- Communication and cooperation. The Act permits communication between courts and parties of other states, records of the communications, and jurisdiction to respond to requests for assistance from courts in other states.

- Emergency situations and other special cases. A court in the state where the individual is physically present can appoint a guardian in the case of an emergency. Also, if the individual has real or tangible property located in a certain state, the court in that jurisdiction can appoint a conservator for that property.

2. Passage of Uniform Act by States. As it is jurisdictional in nature, the UAGPPJA cannot work as intended – providing uniformity and reducing conflict – unless all or most states adopt it. See "Why States Should Adopt the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act," http://uniformlaws.org/Narrative.aspx?title=Why%20States%20Should%20Adopt%20UAGPPJA.

- In 2008, five states (Alaska, Colorado, Delaware, Utah, and the District of Columbia) quickly adopted the Act.
- In 2009, the eight states adopting the Act include Illinois, Minnesota, Montana, Nevada, North Dakota, Oregon, Washington, and West Virginia.
- In 2010, seven states adopted the Act, including Alabama, Arizona, Iowa, Maryland, Oklahoma, South Carolina, and Tennessee.
- In 2011 another ten states enacted the UAGPPJA, including Arkansas, Idaho, Indiana, Kentucky, Missouri, Nebraska, New Mexico, South Dakota, Vermont, and Virginia.

- In 2012, six states passed the Uniform Act, including Connecticut, Hawaii, Maine, New Jersey, Ohio, and Pennsylvania.
- In 2013, two additional states, Wyoming and New York, joined the list
- In 2014, three states passed the Uniform Act, including Mississippi, Massachusetts and California.

In 2015, two states passed the Uniform Act, bringing the total to 42 states plus the District of Columbia and Puerto Rico – and leaving nine states/jurisdictions remaining – Florida, Georgia, Kansas, Louisiana, Michigan, North Carolina, Texas, Virgin Islands and Wisconsin.

- ✓ *New Hampshire passed SB 209* which was signed by the Governor in June.
- ✓ *Rhode Island passed SB 525* which was signed by the Governor in July.

3. Additional Texas Jurisdictional Measures. Although Texas has not passed the Uniform Act, *Texas HB 1438* includes several provisions relating to multi-state or multi-county cases.

- ➢ A guardian appointed in another state may file an application with a court in the county where the individual resides in Texas, or is intended to reside, to have the guardianship transferred to Texas.
- ➢ A guardian of estate from another state may sell a persons' interest in real property located in Texas without a Texas guardianship if the person's interest is less than $100,000 and the proceeds are put in the court's registry in Texas.
- ➢ When a guardianship is transferred to another court, the bond in the original court is to remain in effect until the judge in the new court sets the amount of a new or amended bond.

III. Choice of Guardian

Bills on choice of guardian target guardian certification and licensure; standards and training; requirements for court selection of guardians; and guardian background checks. This year in Nevada, actions by Coalition of family advocates, along with press stories highlighting harmful deficiencies in the state's guardianship system, resulted in the creation of a Supreme Court Commission, plus the passage of two important bills targeting requirements for, and selection of, a guardian.

("Supreme Court Creates Guardianship Commission," http://nvcourts.gov/Supreme/News/Supreme_Court_Creates_Guardianship_Commission, June 8, 2015.)

1. Guardian Certification/Licensure. The Center for Guardianship Certification (CGC) has a national certification process that requires applicants to pass a test, meet minimum eligibility requirements, pay a fee, and make attestations about their background. As of July 2015, CGC had approved over 1,480 National Certified Guardians and 68 National Master Guardians throughout the country. In addition, CGC has state-specific testing in California, Florida, and Oregon.

Beyond the CGC efforts, a number of states have enacted their own guardian certification or licensure programs. Arizona was the first state to implement a state program, and has established specific requirements for all fiduciaries other than family members who serve as guardian or conservator. This year Nevada enacted a licensure requirement for private professional guardians.

- *Nevada AB 325*- Licensure. The new provisions establish a licensure requirement for private professional guardians which covers business practices. However, such guardians also must continue to be certified by CGC. A summary by Sally Ramm includes the follow points:

  - Licensure Requirement. The new law includes penalties and fines for being unlicensed. District Courts may not appoint a private professional guardian who is unlicensed. Courts must examine their active guardianship cases as they come up for annual review to determine if an unlicensed private professional guardian has been appointed and must appoint a different guardian pending the professional's licensing.
  - Conflict of Interest. The guardian may have no interest, financial or otherwise, direct or indirect, in any business transaction or activity with the guardianship. This includes the private professional guardian's spouse and other relatives. The bill delineates bonding and insurance requirements.
  - Separate Accounts. The private professional guardian must maintain a separate guardianship account for each individual, in a name sufficient to distinguish it from the personal or general checking account of the licensee; and the account must be designated as a guardianship account. The guardian must keep clear and complete records of all transactions.
  - Examination of Accounts. The guardianship records and accounts may be examined by the Commissioner of the Financial Institutions Division at any

time to ensure compliance. Copies of all of the Commissioner's reports will be sent to the District Courts.

- Action Against Licensee. The Commissioner may take administrative action against a licensee, including revoking or suspending the license -- for refusing to submit records for examination, materially and willfully breaching fiduciary duties, or engaging in material conflicts of interest. The law includes provisions for due process for the licensee if these actions are taken.
- Complaints. If a verified complaint against the business practices of a private professional guardian is filed, the Commissioner must send a copy of the complaint and a notice of the date of hearing to the Attorney General.

- *Washington SB 5607.* Washington has an existing guardian certification program. This bill provides (among other provisions described below) that the state's Certified Professional Guardianship Board may send the court a grievance it has received concerning a guardian case with a request for court review and action, as with any other complaint the court receives.

2. Guardian Standards and Training. The Ohio Subcommittee on Adult Guardianship of the Supreme Court's Children and Families Section considered the issue of guardian standards for a number of years, leading to the long-awaited release of a draft set of rules in 2014, which were approved by the Supreme Court in March 2015.

- The Rules draw on many of the National Guardianship Association *Standards of Practice*, especially as to avoidance of conflict of interest, exercise of due diligence, person-centered planning, use of the least restrictive choice, monitoring and coordinating of services and benefits, and prohibition of providing direct services. (See references to many aspects of the Ohio Rules throughout this Summary.)

- The Rules require at Sup. R. 66.06 & 66.07 that all guardians, including family guardians, complete a pre-appointment approved six-hour training course, as well as a three-hour continuing education course annually.

3. Court Selection of Guardian. Most state statutes include a hierarchical list of relatives and others for court selection as guardian, building in sufficient court discretion to act in the person's best interest. In 2015 Nevada, Florida and Texas made important changes in court selection of a guardian:

- *Nevada SB 262* revises requirements for court selection of a guardian, including (as summarized by Sally Ramm):
  - Preference; Qualifications. The court must give preference to a nominated person or a relative, in that order of preference, whether or not the nominated person or relative is a resident of the state. The new provisions set out considerations in determining whether the nominated person or relative is qualified and suitable for appointment, including whether the person has been judicially determined to have committed abuse, neglect, exploitation, isolation or abandonment of a child or adult; and whether the person has been convicted of a felony.
  - Two or More Nominated, Qualified Persons. If the court finds that two or more nominated persons are qualified and suitable, the court may appoint them as co-guardians, or give preference if a person has been nominated in a will, trust or other written instrument that is part of the adult's established estate plan, executed by the adult while the adult had capacity.
  - Non-Resident Appointments. The court must not give preference to a resident of Nevada over a nonresident if the court determines that: (1) the nonresident is more qualified and suitable to serve; and (2) the distance between the proposed guardian's place of residence and the adult's place of residence will not affect the guardian's ability to make decisions and respond to needs quickly because: (a) a Nevada care provider is giving the adult continuing care and supervision; (b) the adult is in a Nevada secured residential long-term care facility; or (c) the proposed guardian will move to Nevada within 30 days of appointment.
  - Registered Agent; Training. A non-resident guardian must designate a registered agent for service of process. The court may require the guardian to complete training under Nevada law.
  - Last Resort Appointment. If the court finds that there is no suitable nominated person or relative to appoint, the court then may appoint a public guardian (if the person qualifies); a private fiduciary who obtains a bond and is a Nevada resident; a licensed professional guardian; or a person not qualified for appointment only under certain circumstances.

- *Florida HB 5*- Rotation System. This bill requires that if a court does not use a rotation system for the appointment of a professional guardian, it must make specific findings of fact concerning why the guardian was selected, referencing each factor the law sets out for consideration. The bill also requires a court to consider wishes of the respondent's next of kin if the respondent cannot express a preference concerning who should be appointed. Finally, the bill allows for

appointment of certain for-profit agencies as guardian with a fiduciary bond and liability insurance.

- *Texas HB 1876* – Rotation Lists. SB 1876 requires that the court use rotation lists for the appointment of professional, registered guardians; yet maintains the judge's discretion to appoint a particular guardian with special skills on a complex matter, or to appoint a guardian whose name is not first on the rotation if the parties agree and the court approves.

- *Texas HB 39*- Person's Preference. Existing Texas law requires that before appointing a guardian, a court must consider the person's preference in who should be selected to serve. HB 39 states that the court must consider the preference "regardless of whether the person has designated by declaration a guardian before the need arises. . . ."

4. Guardian Background Checks. An increasing number of states have begun to enact criminal and other accountability background checks for prospective guardians. (See state law chart at http://www.americanbar.org/content/dam/aba/administrative/law_aging/2013_04_CHARTFelony&Backgroundcheck.authcheckdam.pdf). Currently pending federal legislation (S.1614 sponsored by Sen. Klobuchar of Minnesota) references background checks of potential guardians and conservators as a needed reform.

- *DC B20-0710* requires a guardian to disclose his or her criminal history and to submit to local and federal criminal history checks; and requires that the court consider the criminal history when selecting a guardian.

- *Texas HB 1438*. Existing Texas law requires criminal background checks on private professional guardians and certain persons employed by private professional guardians. HB 1438 requires criminal background checks for family guardians as well.

- *Ohio Sup. R. 66.05(A)*. The new Supreme Court Rules require a criminal background check for all guardians, including family guardians. For an attorney, the court may accept a Supreme Court certificate of good standing.

IV. Guardian Actions

1. Authority to Make Residential Decisions. Few things are as important as where you live, where you call home. One of the toughest tasks of a guardian often is determining where the person will live, and seeking the least restrictive setting while considering risks. Most guardianship statutes give little guidance to the guardian on residential decision-making standards. In 2015, several bills addressed residential choices:

- *Florida HB 5* directs the guardian to evaluate the person's medical options, financial resources and desires in making residential decisions. Also, drawing on the NGA *Standards of Practice*, the guardian must advocate for the person in institutional and residential settings; acquire an understanding of available residential options, and if appropriate, give priority to home and community-based settings.

- *Texas HB 39* requires that, except in emergency, a guardian must give notice to the court, and to any person who has requested notice, before placing the person in a more restrictive setting. The court may hold a hearing, or must hold a hearing if any person objects, before the eighth business day after the receipt of notice.

- *Ohio Sup. R. 66.08(E)* requires guardians to report a change of the person's residence to court; and provides that a change of residence to a more restrictive setting must be approved by the court.

- *DC B20-0710* prohibits guardians from imposing unreasonable confinement or involuntary seclusion, "including forced separation from other persons or the restriction of . . . access to email, phone calls, and mail" unless the power is expressly set forth in the order.

2. Visitation by Family/Friends. Visits by family members and friends is basic to quality of life. The NGA *Standards of Practice* state that "the guardian shall promote social interactions and meaningful relationships consistent with the preferences of the person . . ." and "the guardian shall encourage and support the person in maintaining contact with family and friends, as defined by the person, unless it will substantially harm the person" (Std #4). Federal nursing home regulations specify that the resident has the right to visitation, and the facility must provide immediate access to any resident by immediate family members or other relatives, subject to the resident's right to deny or withdraw consent at any time (42 CFR §483.10).

Radio celebrity Casey Kasem had Parkinson's disease and dementia, and his second wife, serving as guardian, isolated him from the adult children of his first marriage. After his death, the adult children began seeking measures in Texas, Iowa, California and other states to bring the issue of visitation before the courts.

- *Texas HB 2665* authorizes the child of an individual under guardianship to file an application in court requesting access to the person, including visitation and communication. Upon the application, the court must schedule a hearing within 60 days, but if the person's health is in significant decline or death is imminent, the court must schedule an emergency hearing within 10 days after the application. The guardian must be personally served with the application and cited to appear at least 21 days before the date of the hearing or as soon as practicable in case of emergency. The court order may prohibit the guardian from preventing access, and specify the terms of access. However, the court also may consider whether visitation should be limited by presence of a third person, or whether visitation should be suspended or denied.

  Additionally, HB 2665 requires the guardian to inform as soon as practicable the person's spouse, parents, siblings and children if the person dies, is admitted to a medical facility for three days or more, if the residence has changed, or if the person is staying at a location other than the person's residence for more than a week. The guardian also must inform the relatives of funeral arrangements.

- *Iowa SF 306* recognizes an express right of adults under guardianship to "communication, visitation, or interaction with other persons." The bill further provides that in the absence of an ability to consent to such communication or visitation, consent may be presumed by a guardian or a court based on the adult's prior relationship. A court may deny visitation only upon a showing of good cause by the guardian.

- *California AB 1085*, another bill enacted in response to the isolation of Casey Kasem, states that "every adult in this state has the right to visit with and receive mail and telephone or electronic communication from whomever he or she so chooses, unless a court has specifically ordered otherwise." The bill clarifies that a conservator's [guardian of adult] control does not extend to personal rights retained by the conservatee, including the right to receive visitors, calls and personal mail. The court may issue an order that specifically directs the conservator to allow visitors, call and mail. Additionally, the conservator must provide notice of a conservatee's death to all persons entitled to notice.

Other bills concerning visitation include:

- *Florida HB 5*, similar to the NGA *Standards of Practice*, requires guardians to allow the individual to maintain contact with family and friends, except where contact may harm the person (but the court may review such decisions upon petition by an interested party).

- *Ohio Sup. R. 66.09(E)* requires the guardian to "foster and preserve positive relationships in the ward's life unless such relationships are substantially harmful to the ward. A guardian shall be prepared to explain the reasons a particular relationship is severed and not in the ward's best interest."

3. Guardian Visits to Individual. Provision for regular, personal visits by the guardian is a pillar of quality for guardianship services. Without regular, personal communication, a guardian will not be able to identify the person's changing condition, needs, preferences, values and supports. The NGA *Standards of Practice* require the guardian to visit monthly (Std. #13(IV).

- *Ohio Sup. R. 66.09(F).* The new Ohio Supreme Court Rules require the guardian to meet with the person at least once prior to appearing before the court for an appointment; and following appointment to visit "not less than once quarterly or as determined by the probate division. . . ." A Supreme Court fact sheet states that "The rule does not suggest that a visit by proxy fulfills the requirement" (http://supremecourt.ohio.gov/Boards/judCollege/adultGuardianship/FAQ.asp).

- *Texas HB 634* gives the guardian of a prison inmate the same visitation rights as the inmate's next of kin.

4. Health Care Decision-Making. Perhaps one of the most controversial or "hottest" topics in the guardianship arena is the authority of guardians to make health care decisions for incapacitated persons. Which decisions can guardians make independently and which require approval by the court? What standards are guardians to use?

- *Florida HB 5* addresses guardian duties concerning health care decisions. Drawing on the NGA *Standards of Practice*, it provides that guardians must:

  - Make provisions for medical services; and

- To the extent possible, acquire a clear understanding of the risks and benefits of a recommended course of treatment.

5. Access to APS Records. In Illinois, and generally, records concerning reports of abuse, neglect, financial exploitation or self-neglect are confidential and not to be disclosed except as specifically authorized.

- *Illinois SB 1309* provides access to APS records for a representative of the public guardian investigating the appropriateness of a guardianship or while pursuing a petition for guardianship.

6. Authority of Agents vs Guardians. Financial and health care powers of attorney are important planning tools that can reduce or avoid the need for guardianship. Yet in some instances, ironically, courts quash the agent's power upon the appointment of a guardian. Of course sometimes possible abuse or exploitation is involved and the agent must be stopped. A key guardianship topic is the extent to which, and under what circumstances, agent authority "trumps" that of a guardian. A recent ABA Commission on Law and Aging article and chart explores the authority of guardians and health care agents, at: http://www.americanbar.org/publications/bifocal/vol_36/issue_6_august2015/health-care-decision-making-authority-guardians-agents.html .

- *Florida HB 5* addresses the issue for both financial and health care agents:
  - Under previous Florida law, an agent's powers are suspended upon commencement of a guardianship proceeding pending determination of incapacity. HB 5 specifies that if the agent is a relative, the powers are not automatically suspended; and instead, a party seeking to suspend the powers of a relative agent must file a motion setting out the reasons for suspension. The court must schedule an expedited hearing on the motion, and the court order must set forth what powers the agent is permitted to exercise pending the outcome of the guardianship petition.
  - As to health care agents, the bill states that the court must specify in the order what authority the guardian may exercise and what authority a health care agent designated previously by the person is to continue. Any order modifying the authority of the agent must be supported by specific findings of fact.

V. Fees for Guardians and Attorneys

Payment of attorney fees, as well as court fees and costs, is a significant factor in bringing a guardianship proceeding. Moreover, guardian fees can be substantial, and fee disputes have been frequent.

- *Maryland SB 216* concerns payment of guardian and attorney fees through deductions of the income of a Medicaid beneficiary who has a guardian. The bill specifies that the deduction is $50 per month.

- *Texas HB 1438* provides that court costs including costs of a guardian ad litem, attorney, court visitor, mental health professional and interpreter can now be paid out of a management trust if the court determines it is in the person's best interest.

- *Texas SB 1369* requires courts to submit compensation information on appointments of attorneys, guardians ad litem, guardians, mediators and competency evaluators to the Office of Court Administration.

- *Florida HB 5:*
  - Prohibits a court from authorizing payment of the emergency temporary guardian's fees and attorney fees until the final report is filed at the conclusion of the emergency guardianship.
  - Provides that the court may make a finding in the absence of expert testimony as to the reasonableness of fees requested by a guardian or attorney.
  - Addresses fees of the examining committee. If the guardianship petition is dismissed or denied, the committee fees are paid as "expert witness" fees. If the petitioner filed a petition in bad faith and the state has paid the examining committee members, the petitioner must reimburse the state.

- *Ohio Supreme Court Rules.* The new Ohio Rules include several provisions relating to fees:
  - Guardians who receives fees other than through the guardianship must report this to the probate court.
  - Guardians may not receive incentives or compensation from any direct service provider serving the individual.
  - Guardians must itemize all services and expenses relating to the guardianship.
  - Guardians serving ten or more individuals must submit to the court an annual fee schedule that differentiates guardianship fees from legal or other direct service fees.

VI. Rights of Individuals

Writings and enactments over the past 25 years have heightened awareness that guardianship removes or infringes on fundamental rights, that some basic rights should be retained statutorily, and that limited guardianship can allow the person to retain rights in areas in which he or she can make decisions.

1. Bill of Rights. At least three states have statutory provisions listing rights of individuals with guardians. Florida sets out basic rights at *Fla. Stat*. Sec. 744.3215. Minnesota has a statutory "bill of rights for wards and protected persons" at *Minn. Stat.* 524.5-120, which provides that "the ward/protected person retains all rights not restricted by court order and these rights must be enforced by the court," and enumerates 14 specific rights. Michigan in 2012 created a new provision summarizing and reiterating within a single section the basic rights of individuals at *M.C.L.A.* 700.5306a.

- *Texas SB 1882* enacts a new subchapter (1151.351of the Estates Code) on "Rights of Ward," setting out a total of *24 distinct rights*. The person retains all rights under law "except where specifically limited by a court-ordered guardianship." The rights include:

  - Procedural -- right to: a copy of the guardianship order, letters and contact for the court; notice in accessible manner; court investigator, guardian ad litem or attorney appointed to investigate complaint; petition court and retain counsel of choice.

  - Services -- right to: reside and receive support services in the most integrated setting; timely and appropriate health care and medical treatment; complain or raise concerns about guardianship services; participate in activities, training, employment, education, habilitation and rehabilitation in most integrated setting; personal visits from guardian or designee at least once every three months or more often if necessary unless the court determines otherwise.

  - Information and Communication -- right to: privacy and confidentiality; private communication and visitation with persons of choice, except if guardian determines substantial harm; contact information for named

advocates and resources; have guardian explain rights upon annual renewal of guardianship.

- Self-Determination -- right to: guardian that encourages maximum self-reliance and independence with goal of self-sufficiency; be treated with respect, recognition of dignity and individuality; consideration of personal preferences; full control of all aspects of life not specifically granted to the guardian; self-determination in management of property after essential living and health needs met; vote, marry and retain drivers license unless restricted by court.

- *Florida HB 5* requires court consideration of the person's unique needs and abilities and states that the court may remove only such rights as the person is not able to exercise.

2. Least Restrictive Alternatives. The "least restrictive alternative" doctrine, first established in 1960 by the U.S. Supreme Court, limits state intervention in individual rights and liberties to only what is necessary for the health and welfare of the individuals. This principle has been statutorily applied to state intervention in the form of guardianship proceedings. The Uniform Guardianship and Protective Proceedings Act requires a court visitor report to specify "whether less restrictive means of intervention are available." Most state guardianship laws similarly emphasize exploration of less restrictive decisional options before the filing for, and appointment of, a guardian.

- *Texas HB 39* targets the principle of less restrictive alternatives through a number of important related provisions:
  - Lists "alternatives to guardianship" as including medical powers of attorney, durable financial powers of attorney, declaration for mental health treatment, representative payee, joint bank account, management trust, special needs trust, designation of guardian before need arises, and supported decision-making agreements.
  - Defines "supports and services" to include formal and informal resources and assistance that enable a person to: meet the need for food, clothing or shelter; care for physical or mental health; mange financial resources; or make personal decisions.
  - Requires the petition to state whether alternatives were examined and would suffice.
  - Requires the attorney ad litem to discuss with the person whether the attorney thinks a guardianship is necessary, whether alternatives would meet the need,

and specific powers or duties that should be limited if the person receives supports and services.

- Requires a guardian ad litem to investigate whether a guardianship is necessary and evaluate alternatives and supports and services that would avoid the need for a guardianship, and to report this information to court.
- Requires the physician's certificate to state whether a guardianship is necessary and whether specific powers or duties should be limited if the person receives supports and services.
- Requires the court, before appointing a guardian, to find by clear and convincing evidence that alternatives that would avoid the need for guardianship have been considered and determined not feasible; and that available supports and services that would avoid guardianship have been considered and determined not feasible.
- Requires an attorney for the petitioner to be certified by the State Bar and complete four hours of training including one hour on alternatives to guardianship and available supports and services. Specifies that attorneys ad litem and guardians ad litem now must have four hours of training instead of three, with the fourth hour on alternatives and supports and services.

3. Visitation Rights. See above Sec. IV(2) on Visitation, describing bills that passed in response to the isolation of celebrity Casey Kasem. For example, California AB 1085, clearly provides that "every adult in this state has the right to visit with and receive mail and telephone or electronic communication from, whomever he or she so chooses, unless a court has specifically ordered otherwise."

4. Changes in Terminology. Many states are making changes in language to reflect preferred terminology ("people first" language) more in line with individual self-determination and rights.

- *Indiana SB 420* changes the term "mental retardation" to "intellectual disability" throughout the code.

- *Illinois HB 4049* changes the term "disabled person" to "person with disabilities" and "the mentally and developmentally disabled" to "persons with mental and developmental disabilities." Thus, the title of the adult guardianship section of the code is changed from "Guardians for Disabled Adults" to "Guardians for Adults with Disabilities." The term "alleged disabled person" is changed to "alleged person with a disability," and "disabled person" is now "person with a disability."

VII. Capacity Issues

1. Supported Decision-Making. A recent shift in the decision-making landscape is the advent of "supported decision-making." The United Nations Convention on the Rights of Persons with Disabilities recognizes in Article 12 that persons with disabilities have the "legal capacity" and the right to make their own decisions, and that governments have the obligation to support them in doing so. For people with cognitive, intellectual or psychosocial disabilities, Article 12 is critical to self-determination and equality. This year Texas enacted several provisions bolstering the supported decision-making concept.

- *Texas SB 1881 (HB 39)* is a pioneering bill, the *first in the nation to recognize supported decision-making agreements.* The bill defines "supported decision-making" as "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." The bill:
  - States that its purpose is to "recognize a less restrictive alternative to guardianship" for adults who need assistance but are not "incapacitated persons."
  - Allows an adult with a disability to "voluntarily, without undue influence or coercion, enter into a supported decision-making agreement with a supporter" and sets out the scope of the agreement.
  - Sets out the role of the supporter to assist "without making . . . decisions on behalf of the adult;" aid in accessing and collecting information; aid in understanding the information, options, responsibilities and consequences; and aid in communicating the adult's decisions to third parties.
  - Provides that the agreement is terminated if adult protective services finds the supporter has abused, neglected or exploited the adult or is found criminally liable for such conduct.
  - Allows the supporter access to information protected by HIPAA but the supporter must ensure the information is kept confidential.
  - Provides an agreement form yet specifies that the agreement is valid if it "substantially" follows the form.
  - Includes a warning on the form that if a third party believes the supporter is abusing, neglecting or exploiting the adult, the person must report to adult protective services, and giving the APS hotline number and website.

- States that a third party who receives an original or copy of the agreement must rely on it and is not liable for good faith actions in such reliance.

2. Diminished Capacity and Limited Guardianship. In addition to the landmark bill recognizing supported decision-making agreements, *Texas HB 39* provides that if the court finds that the person lacks capacity to do some but not all of the tasks necessary to care for self or manage property, the court must specifically state whether the person lacks sufficient capacity, *with supports and services*, to make decisions concerning: residence; voting; operating a motor vehicle; and marriage. The court may appoint a limited guardian.

3. Capacity to Make Residential Decisions. Because of the importance of residential decisions, *Texas HB 39* highlights the capacity and right to make these fundamental choices throughout the bill.

- The court must start by presuming that the person retains the capacity to make residential decisions.
- The court's finding must specifically state whether the person lacks sufficient capacity with supports and services to make residential decisions, as well as to vote, drive or marry.
- The court order must specify whether the person retains the right to make "personal decisions regarding residence."

4. Capacity to Execute a Will. (Based on summary by Charles Golbert) Illinois enacted a presumption concerning capacity to execute a will or codicil, as well as an exception to the presumption. The new language establishes a rebuttable presumption that a will or codicil is void if executed after the judicial determination of a judge that the person is "a person with a disability" for whom a guardian is appointed. The presumption applies if there is a plenary guardian of the estate or a limited guardian of the estate and the court found that the person lacks testamentary capacity. The presumption can be overcome by clear and convincing evidence that the person had testamentary capacity at the time the will or codicil was executed.

However, the new act also includes an exception that allows a court to authorize a person under guardianship to execute a will or codicil upon a verified petition by the plenary or limited guardian of the estate or the request of the individual. The petition or request must be accompanied by a current physician's report stating that the person has testamentary capacity. The court must authorize the guardian to retain independent counsel for the person for the execution of the will or codicil.

5. Restoration to Capacity. While it is most common for a guardianship to end upon the death of the individual, all state statutes provide for termination of a guardianship upon finding that the person has sufficient capacity to manage his or her personal and/or financial affairs. Restoration proceedings are under increasing focus -- especially for younger individuals with intellectual disabilities, mental illness or head injuries who may be able to make decisions on their own with adequate family and community support. For a recent article examining restoration of rights, see Cassidy, Jenica, "Restoration of Rights in the Termination of Adult Guardianship," 23 *The Elder Law Journal* 1, 83-122 (2015).

- *Washington SB 5607* sets out a complaint procedure for the modification or termination of a guardianship, providing for:
  - Reasonable notice of the hearing to the individual for a hearing to modify or terminate a guardianship.
  - Court-appointed counsel anytime a guardianship may be modified or terminated -- for example changing a limited guardianship to a full guardianship and vice versa.
  - Submission of a complaint by an unrepresented person to the court. Within 14 days, the court must enter an order for one or more of the following: direct the guardian to appear at a hearing or provide a written report; appoint a guardian ad litem; dismiss the complaint if without merit; defer consideration to the next scheduled hearing, or other action. If the court finds the complaint is without justification or to harass or delay, the court may levy sanctions.

- *Texas HB 39* adds significant requirements concerning the re-evaluation of individuals, and the modification or termination of the order.
  - The bill requires the physician's certificate to state whether improvement in the person's condition and mental functioning is possible and if so, to state the period in which the person should be re-evaluated to determine whether guardianship is still needed. If the period is less than one year, the court order must include the due date for an updated physician's certificate.
  - A petition for a modification of the court order, or termination and restoration of rights, is to request a court finding that the person has capacity, or *sufficient capacity with supports and services*, to care for self and/or manage property.
  - The court is to hear evidence on whether the guardianship is necessary and the specific powers or duties of the guardian that should be limited *if the person receives supports and services.*
  - A guardianship must be terminated if the court finds by a preponderance of the evidence that the person's condition *with supports and services* warrants a

modification or restoration. The court order must state any necessary supports and services needed.

- *DC B20-0710* requires regular court review of adult guardianship cases. It provides that every three years, a court "case reviewer" who is a licensed social worker must investigate the continued need for a guardian.
  - The case reviewer's report must include the individual's "expressed preferences" concerning the continued scope and duration of the guardianship, and any statement by the person or other interested party requesting continuation, modification or termination.
  - Within 90 days after the submission of the report, the court must hold a hearing if the person requests it or if the reviewer recommends modification or termination.

- *North Dakota SB 2168* also requires regular court review but the guardianship order is effective for up to five years. At least ninety days before the expiration, the court must request information regarding whether the need for guardianship continues, and if so, the court may appoint a guardian ad litem, visitor or both, and must hold a hearing on the continuation for up to another five years.

- *Florida HB 5* addresses the evidentiary standard needed for restoration to capacity. Previously, Florida law was silent on the evidentiary standard. The new law makes a welcome clarification in stating that the burden of proof for restoration of capacity and rights is by a preponderance of the evidence -- a lesser standard than the clear and convincing evidence required for appointment of a guardian. The bill also requires the court to make specific findings of fact regarding capacity; and to give priority to suggestions of capacity on the court calendar.

  Additionally, HB 5 requires the guardian to assist the person in developing or regaining capacity; and to notify the court if the guardian thinks the person may have capacity to exercise any of the removed rights

- *Ohio Sup. R. 66.08(D)* states that a guardian must "seek to limit or terminate" the guardianship and promptly notify the court of any changes in the person's ability, the availability of less restrictive alternatives, and whether a plenary guardianship no longer is in the person's best interest.

6. Advanced Age. Three decades ago many states included "advanced age" in the definition of an "incapacitated person" for whom a guardian may be appointed. Over the years, this blatantly age-discriminatory term has been removed in all but a very few statutes. The phrase remained in the North Dakota law until it was removed by *North Dakota 2168.*

VIII. Guardian and Fiduciary Misconduct

The 2010 Government Accountability Office report entitled *Guardianships: Cases of Financial Exploitation, Neglect, and Abuse of Seniors* (http://www.gao.gov/Products/GAO-10-1046) "could not determine whether allegations of abuse by guardians are widespread," but the report identified hundreds of such allegations by guardians in 45 states and DC between 1990 and 2010. The GAO examined 20 cases in which criminal or civil penalties resulted, and found that guardians engaged in significant exploitation of assets.

Within the past couple of years, several high profile media stories have spotlighted serious flaws and sometimes abuse in guardianship practice, especially in Ohio (*The Columbus Dispatch*), Nevada (*KTNV ABC News*) and Florida (*Sarasota Herald Tribune*). Bonds, restricted accounts, required reporting of abuse, criminal penalties, third party notice, specific record-keeping requirements, tracking of guardians with multiple cases, and complaint procedures are examples of approaches to address fiduciary misconduct.

- *Texas HB 1438* authorizes the court to sign an order before a guardian is appointed requiring the safekeeping of person's assets in specified financial institutions, which would reduce amount of bond of the guardian of estate.

- *Nevada AB 325*, establishing a guardian licensing requirement, sets out key requirements to address fiduciary misconduct, including bonding and insurance provisions, strong language prohibiting conflicts of interest, requirements for separate fiduciary accounts for each case, and provision for administrative examination of the accounts (see above under Choice of Guardian, Licensing & Certification).

- *Florida HB 5* explicitly prohibits abuse, neglect or exploitation of an individual by a guardian. Any person believing that a guardian is abusing, neglecting or exploiting the individual under guardianship must report to the Department of Children and Families. HB 5 also makes guardians subject to specified criminal

penalties for breaching certain fiduciary duties, including committing fraud in securing their appointment; and abusing their powers, or wasting, embezzling, or intentionally mismanaging the assets.

- *North Dakota SB 2168* requires that a copy of the court order appointing a guardian must be served to parties given notice – thus positioning these third parties with information needed to better track any fiduciary misconduct.

- *Ohio Sup. R. 66.03* requires local probate courts to establish a process for submitting complaints concerning the performance of guardians. The court must give prompt consideration to the complaint, maintain a record, take appropriate action, and notify the complainant and the guardian of the disposition.

- *Ohio Sup. R. 66.05(B)* requires probate courts to maintain a roster of guardian serving ten or more individuals. These guardians must certify in their reports that they are not aware of any circumstances that could disqualify them. The court must review the roster annually for compliance.

- *Washington SB 5607* (see above) provides that the state's Certified Professional Guardianship Board may send the court a grievance it has received concerning a guardian case with a request for court review and action, as with any other complaint the court receives.

- *Virginia HB 1798* concerns conservators or guardians of estates that do not exceed $25,000, who under existing law may qualify by giving bond without security. The bill sets out requirements for a certificate of qualification issued by the court.

IX. Post-Adjudication/Monitoring Issues

During the past 15 years, many states have sought to strengthen the court's tools for oversight of guardians (See *Guarding the Guardians: Promising Practices for Court Monitoring,* http://assets.aarp.org/rgcenter/il/2007_21_guardians.pdf.) Several 2015 bills addressed court oversight tools.

1. Reporting Requirements; Court Review. All states require guardians to submit personal status reports and conservators (guardians of property) to submit accountings regularly -- generally annually.

- *North Dakota SB 2168* requires the guardian to provide an inventory within 90 days of appointment. It also specifies that a guardian report must include any change in residence and the reasons for the change, any medical treatment, any expenditure and income affecting the person, any sale or transfer of property, and any exercise of legal authority by the guardian. The guardian must send the report not only to the court and the individual, but to any interested persons designated by the court order.

- *Iowa HB 159* clarifies that if a combined petition for both guardianship and conservatorship is filed, the administration is to be treated by the court as one proceeding with one docket number, but separate reporting requirements for conservatorships and guardianships continue to apply in such a combined petition.

- *Ohio Sup. R. 66.08(G)* requires a guardian of the person to file a guardianship plan with the court as an addendum to the annual report. A guardian of the estate "may be required" to file an annual guardianship plan. The plans must state the guardian's goals for meeting the person's personal and financial needs.

- *DC B20-0719* concerns regular court review of adult guardianship cases. It provides that every three years, a court "case reviewer" who is a licensed social worker must investigate the continued need for a guardian; and the court must hold a hearing in certain instances. (See "Restoration" above.)

- *Florida HB 5* changes the time when a guardian of the person must file an annual guardianship plan.

- *Texas HB 1438* allows a guardian of the person filing an annual report electronically to use an unsworn declaration instead of the sworn declaration previously required.

2. Court Guardianship Data; Records. Tackling guardianship oversight is difficult without adequate data. Many states do not collect or compile state-level data on adult guardianship. A 2010 resolution by the Conference of Chief Justices confirmed the compelling need for solid statistics and urged state courts to collect and report data on guardianship cases (National Center for State Courts, *Adult Guardianship Court Data and Issues: Results from Online Surveys,* 2010*).*

- *Texas SB 1369* requires courts to report annually on appointments of attorneys, guardians, guardians ad litem, mediators and competency evaluators, or indicate

that no such appointments were made. The Office of Court Administration is to post the information collected; and to conduct an interim study concerning an attorney billing system.

- *Texas HB 3424* addresses a situation in which emergency personnel encounter an adult with a mental illness or disability but are unable to identify the person or determine if there is a guardian, and who the guardian is. The bill requires courts with guardianship jurisdiction to compile and provide to the Department of Public Safety the names of adults under guardianship and the names and contact information of the guardians. The Department must develop and maintain a computerized central database accessible only to emergency service providers.

- *Texas HB 1337* requires convalescent homes, nursing homes, and assisted living facilities to keep guardianship orders for residents in the resident's medical records, and authorizes adult protective services to inspect the order when investigating a report of abuse, neglect or exploitation.

- *Texas Appropriations for Compliance Project.* The Texas legislature provided funding for the Office of Court Administration to conduct a Guardianship Compliance Pilot Project addressing the need for better records, databases and review in counties without probate courts.

3. Guardianship Study. *Montana SJR 22* requests a study of whether the state's guardianship proceedings, programs and services are adequate to meet the needs. The study is to be conducted by the Children, Families, Health, and Human Services Interim Committee. The study is to examine:

- Existing guardianship laws;
- Guardianship services available through the Department of Public Health and Human Services;
- Local efforts to provide guardianship services;
- Funding needs for guardianship services; and
- Efforts in other states to establish statewide guardianship programs or improve services, and recommendations of national groups.

The study must include: the Department of Public Health and Human Services, District Court judges, county attorneys, private attorneys, area agencies on aging, the State Bar, and representatives of other groups including advocates for elders and individuals with disabilities and that represent hospitals, health care and mental health care providers, and family members.

Table: State Adult Guardianship Legislation at a Glance: 2015

State	Legislation	Code Section Amended	Provisions
CA	AB 1085	CA Probate Code 2351 & 2361	Ensures visitation rights of persons under guardianship.
DC	B20-0710	DC Code Chap 20, Title 21	Concerns counsel, court review, and criminal history checks.
FL	HB 5	Amends many sections of FL guardianship code	Provides for rotational selection of guardians; and explicitly prohibits abuse.
IL	HB 2505	755 ILCS 5/11a-4	Concerns powers and duties of temporary guardian.
IL	HB 4049		Makes terminology changes throughout code.
IL	SB 0090	755ILCS 5/11a-18(d-5)	
IL	SB 1309	320 ILCS 20/8(1.5)	Concerns public guardian access to APS records.
IN	SB 420		Changes disability terminology.
IA	HB 159	Iowa Code §633.27A	Specifies separate reporting requirements for conservatorships and guardianships.
IA	SF 306	Iowa Code 633.635	Ensures visitation rights of persons under guardianship.
MD	SB 216	Md. Code Ann. Health-General, 15-122.3	Specifies amount of deduction from income of Medicaid beneficiaries for guardian or attorney fee.
MT	SJR 22		Requests a study of the state's guardianship proceedings, programs and services.
NV	AB 325	NRS Chapter 159	Establishes a licensure requirement for private professional guardians.
NV	SB 262	NRS Chapter 159	Addresses the court's selection of and requirements for a guardian.
NH	SB 209		Adopts the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act

ND	SB 2168	N.D. Cent. Code 30.1-28	Makes procedural changes in guardianship appointment and reporting process.
OH	Sup. R. 66.01 – 66.09		Adopts standards for guardians and requirements for courts.
OR	SB 590	ORS 125.055 & 125.150	Requires a court visitor for respondents over age 16 transitioning to adulthood.
RI	SB 525		Adopts the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act
TX	HB 1438	Multiple TX code sections	Makes a number of procedural revisions in adult guardianship law.
TX	SB 1876	Changes in TX Government Code	Requires rotational appointment of attorneys, guardians ad litem, mediators and professional guardians.
TX	HB 39	Numerous changes in TX Estates Code	Emphasizes use of alternatives, as well as supports and services, to avoid guardianship; makes other changes.
TX	SB 1881	TX Estates Code, new chapter 1357	Recognizes supported decision-making agreements.
TX	SB 1882	TX Estates Code Chapter 1151, subchapter H	Establishes a bill of rights for individuals under guardianship.
TX	HB 2665	TX Estates Code 1151.055	Concerns visitation rights for relatives of person under guardianship.
TX	HB 634	TX Government Code 511.009(a)	Concerns visitation rights of guardian of prison inmate.
TX	HB 1337	TX Health & Safety Code 242.019	Requires keeping guardianship order in long-term care facility records, for inspection by APS when investigating abuse.
TX	SB 1369	TX Government Code 36.001 et seq.	Requires courts to report on appointments of guardians, attorneys ad litem, guardians ad litem, mediators, competency evaluators.
TX	HB 3424	TX Estates Code 1053.106	Concerns development of a database of guardians and individuals under guardianship.
VA	HB 1798	Va. Code 64.2-	Sets out requirements for

		1411	certificates of qualification for guardians and conservators to qualify without bond for estates that do not exceed $25,000.
WA	SB 5607	RCW 11.88.120	Sets out complaint procedure for modification or termination of guardianship.
WA	SB 5647	RCW 11.88	Authorizes guardianship courthouse facilitator program for services to pro se litigants.

LIST OF POSSIBLE SUBCOMMITTEES

LIST OF POSSIBLE SUBCOMMITTEES

1. **Accountability/Process**
    a. **Temporary Guardianships (Subcommittee #1)**
    b. **Predisposition (Subcommittee #2)**
        i. Petition for guardianship
        ii. Physician's Certificate (Review Forms)
        iii. Appointment of Guardian ad litem
        iv. Appointment of Investigators
        v. Issuance of Citation
        vi. Right to counsel/Appointment of counsel
        vii. Finding and order of the court upon petition
            1. Dismissal of petition
            2. Appointment of Special or General Guardian
        viii. Burden of Proof/Standard of Proof
        ix. Appointment of Guardianship (Qualification of guardians)
            1. Public
            2. Professional
    c. **Postdisposition (Subcommittee #3)**
        i. Inventory
        ii. Investigators/Compliance Officers
        iii. Fiduciary/Accounting Requirements
            1. Fees/Billing
    d. **Powers and Duties of Guardians (Subcommittee #4)**
    e. **Removal/Resignation of Guardian/Termination of Guardianship (Subcommittee?)**
        i. Petition to remove
        ii. Petition to resign
        iii. Citation
        iv. Successor guardian appointed
        v. Accounting and hearing by resigning guardian
        vi. Petition to terminate guardianship
2. **IT/Data Systems (Subcommittee #5)**
3. **Training and Education (Subcommittee #6)**
4. **Legislation Proposals/Administration Proposals (Recommendations from work of other subcommittees)**
    a. Separate Minor from Adult Guardianship **(Subcommittee #7)**
    b. District Court Rules/Local Court Rules
5. **Programs (This could come as a recommendation from one of the other subcommittees)**
    a. Family Mediator Program
    b. Model Court Program
    c. Special Advocates for Elders (SAFE) Programs and related programs

TEMPORARY GUARDIANSHIP

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)

Heying, Stephanie

From: Terri Russell <Terri.Russell@kolotv.com>
Sent: Thursday, August 27, 2015 12:00 PM
To: Heying, Stephanie
Cc: Terri Russell
Subject: Temp Guardian Recommendations

TEMP GUARDIANSHIP RECOMMENDATIONS

Honorable Judge James Hardesty

Judge Hardesty,

At your request I am writing a series of recommendations concerning temporary guardianships and fee schedules charged by those guardians.

I believe the committee is trying to come up with standards that are fair and equitable to both the guardian and the ward--balancing the financial value of the ward's estate and compensating the guardian's duties and responsibilities for executing that estate.

As we have seen, there are and have been abuses within the system. My first recommendation would be any other experts the guardian brings into the process should be examined by the court to make sure the additional personnel needed--a lawyer, real estate agent, accountant, are not partnerships. Rather they should operate at an arm's length transaction. This will prevent any conflict of interest. While it was noted in the August meeting there are few objections in court about additional experts brought into the process and paid for their expertise, I believe it's because in many of those cases there is no one around to advocate for the ward.

Fee schedules for additional experts may be easier to determine because typically certain experts have their fee for hour charge, or can take a percentage of the total cost of an outcome.

Guardians should be required to state their fee per hour prior to appointment. Such fees should be within an acceptable range and in the end should probably not exceed a certain percentage of the ward's estate or a certain amount of money which ever is less. In Washoe County as you know the court has the guardian state how much they will need for a certain period of time. It is given, the rest of the estate is closed off to the guardian's access. That policy might want to be implemented statewide.

Just what is an acceptable fee? or percentage?

Since guardianship is such a serious business, I suggest they as a whole be treated as such. Attorneys, doctors, real estate agents, accountants, even contractors have a regulating board. I suggest such a board be set up under the Division of Business and Industry to license private guardians. The board, consisting of an attorney, doctor, accountant, real estate agent, someone from a licensed adult care facility, as well as two representatives from the private guardian industry would also set fees, renew, suspend, and revoke licenses as well as place private guardians on probation. Such decisions would be based on a guardian's performance over a year period and any complaints filed against the private guardian. The board could meet perhaps four times a year. How to pay for such a board and its activities could come from fees assessed. On what, I'm not clear yet. The board would work with the court to keep it updated.

In some of the material you provided a best practices piece from Oregon recommended not to, in essence reinvent the wheel. To make recommendations that could be executed so to realize some success. Concepts that would cost a lot of money or legislation it said, avoid; as those best practices would not see the light of day. My suggestion may be doing just that.

However, when you consider Washington State pays private guardians, and then gets its money back when the estate settles you can see some states have taken this industry seriously and treat it as a critical profession. In other words, the difficult can be overcome. Nevada might want to attempt such a policy concerning paying private guardians up front.

It was noted that criminal defendants receive an attorney to represent them if they cannot afford one. The more serious the case, the more scrutiny is paid to the pre trail and status hearings, along with proceedings during trial. Much

is based to what Nevada's Supreme and Appeals Court may direct their attention later down the road. It's all for the defendant.

Shouldn't the same type of energy be placed on the ward's behalf? The only offense they've committed is being sick.

Submitted with Respect,

Terri Russell

FEES

Arizona § 14-5109. Disclosure of compensation; determining reasonableness and necessity

A. When a guardian, a conservator, an attorney or a guardian ad litem who intends to seek compensation from the estate of a ward or protected person first appears in the proceeding, that person must give written notice of the basis of the compensation by filing a statement with the court and providing a copy of the statement to all persons entitled to notice pursuant to §§ 14-5309 and 14-5405. **The statement must provide a general explanation of the compensation arrangement and how the compensation will be computed.**

. . .

C. Compensation paid from an estate to a guardian, conservator, attorney or guardian ad litem **must be reasonable and necessary**. To determine the reasonableness and necessity of compensation, the court must consider the best interest of the ward or protected person. The following factors may be considered to the extent applicable:

1. Whether the services provided any benefit or attempted to advance the best interest of the ward or protected person.
2. The **usual and customary fees charged in the relevant professional community for the services**.
3. The size and composition of the estate.
4. The extent that the services were provided in a reasonable, efficient and cost-effective manner.
5. Whether there was appropriate and prudent delegation to others.
6. Any other factors bearing on the reasonableness of fees.

D. The person seeking compensation has the burden of proving the reasonableness and necessity of compensation and expenses sought.

Pursuant to Rule 33(F) of the Arizona Rules of Probate Procedure, the court shall follow the statewide fee guidelines for determining “reasonable compensation” set forth in ACJA (Arizona Code of Judicial Administration) § 3-303. Those fee guidelines apply to all court appointed fiduciaries, specifically guardians.

Compensation shall meet the following requirements, ACJA §3-303(D)(2):

a. All fee petitions shall comply with Rule 33 of the Arizona Rules of Probate Procedure.

b. All hourly billing shall be in an increment to the nearest one-tenth of an hour, with no minimum billing unit in excess of one-tenth of an hour. **No "value billing" for services rendered is permitted, rather than the actual time expended**.

c. **"Block billing" is not permitted**. Block billing occurs when a timekeeper provides only a total amount of time spent working on multiple tasks, rather than an itemization of the time expended on a specific task.

d. Necessary travel time and waiting time may be billed at 100% of the normal hourly rate, except for time spent on other billable activity; travel time and waiting time are not necessary when the service can be more efficiently rendered by correspondence or electronic communication, for example, telephonic court hearings.

e. Billable time that benefits multiple clients, including travel and waiting time, shall be appropriately apportioned among each client.

f. Billable time does not include:

(1) Time spent on billing or accounts receivable activities, including time spent preparing itemized statements of work performed, copying, or distributing statements; however, time spent drafting the additional documents that are required by court order, rule, or statute, including any related hearing, is billable time. The court shall determine the reasonable compensation, if any, in its sole discretion, concerning any contested litigation over fees or costs; and

(2) Internal business activities of the Professional, including clerical or secretarial support to the Professional.

g. The **hourly rate charged for any given task shall be at the authorized rate, commensurate with the task performed**, regardless of whom actually performed the work, but clerical and secretarial activities are not separately billable from the Professional. The Professional shall abide by the following requirements:

(1) An attorney may only bill an attorney rate when performing services that require an attorney; a paralegal rate when performing paralegal services; a fiduciary rate when performing fiduciary services; and shall not charge when performing secretarial or clerical services, for example and

(2) A fiduciary may only bill a fiduciary rate when performing services that require the skill level of the fiduciary; a companion rate when performing companion services; a bookkeeper rate when performing bookkeeping and bill-paying services for a client; and shall not charge when performing secretarial or clerical services, for example. …

The court shall further consider the following factors in determining what constitutes reasonable compensation, pursuant to ACJA § 3-303(D)(3):

a. The **usual and customary fees or market rates charged in the relevant professional community for such services**. Pursuant to Rule 10.1, Arizona Rules of Probate Procedure, market rates for goods and services are a proper and ongoing consideration for the court in Title 14 proceedings.

. . .

c. Common fiduciary services rendered in a routine guardianship or conservatorship engagement. The fiduciary shall provide a reasonable explanation for exceeding these services. The **common fiduciary services** are:

(1) Routine bookkeeping, such as disbursements, bank reconciliation, data entry of income and expenditures, and mail processing: four (4) hours per month, at a commensurate rate for such services;

(2) Routine shopping: six (6) hours per month if the ward is at home, and two (2) hours per month if the ward is in a facility, at a commensurate rate for such services;

(3) One routine personal visit per month by the fiduciary to the ward or protected person;

(4) Preparation of conservator’s account and budget: five (5) hours per year;

(5) Preparation of annual guardianship report: two (2) hours per year; and

(6) Marshalling of assets and preparation of initial inventory: eighty (80) hours.

d. Not more than one attorney may bill for attending hearings, depositions, and other court proceedings on behalf of a client, nor bill for staff to attend, absent good cause;

e. Each fiduciary and guardian ad litem shall not bill for more than one person to attend hearings, depositions, and other court proceedings on behalf of an Estate, absent good cause. This provision does not preclude an attorney, who represents a fiduciary or guardian ad litem, from submitting a separate bill.

f. The total amount of all annual expenditures, including reasonable professional fees, may not deplete the Estate during the anticipated lifespan of the ward or protected person, until and unless the conservator has disclosed that the conservatorship has an alternative objective, such as planned transition to public assistance or asset recovery, as set forth in the disclosure required by Rule 30.3 of the Arizona Rules of Probate Procedure.

g. The request for compensation in comparison to the previously disclosed basis for fees, any prior estimate by the Professional, and any court order;

h. The expertise, training, education, experience, and skill of the Professional in Title 14 proceedings;

i. Whether an appointment in a particular matter precluded other employment;

j. The **character of the work to be done**, including difficulty, intricacy, importance, necessity, time, skill or license required, or responsibility undertaken;

k. The conditions or circumstances of the work, including emergency matters requiring urgent attention, services provided outside regular business hours, potential danger (for example: hazardous materials, contaminated real property, or dangerous persons), or other extraordinary conditions;

l. The **work actually performed, including the time actually expended, and the attention and skill-level required for each task**, including whether a different person could have rendered better, faster, or less expensive service;

m. The result, specifically whether benefits were derived from the efforts, and whether probable benefits exceeded costs;

n. Whether the Professional timely disclosed that a projected cost was likely to exceed the probable benefit, affording the court an opportunity to modify its order in furtherance of the best interest of the Estate;

o. The **fees customarily charged and time customarily expended for performing like services** in the community;

p. The degree of financial or professional risk and responsibility assumed; and

q. The fidelity and loyalty displayed by the Professional, including whether the Professional put the best interest of the Estate before the economic interest of the professional

NRS 159.105 Payment of claims of guardian, claims arising from contracts of guardian and claims for attorney's fees; report of claims and payment.

1. Other than claims for attorney's fees that are subject to the provisions of subsection 3, a guardian of the estate may pay from the guardianship estate the following claims without complying with the provisions of this section and NRS 159.107 and 159.109:

(a) The guardian's claims against the ward or the estate; and

(b) Any claims accruing after the appointment of the guardian which arise from contracts entered into by the guardian on behalf of the ward.

2. The guardian shall report all claims and the payment of claims made pursuant to subsection 1 in the account that the guardian makes and files in the guardianship proceeding following each payment.

3. Claims for attorney's fees which are associated with the commencement and administration of the guardianship of the estate:

(a) May be made at the time of the appointment of the guardian of the estate or any time thereafter; and

(b) May not be paid from the guardianship estate unless the payment is made in compliance with the provisions of this section and NRS 159.107 and 159.109.

(Added to NRS by 1969, 420; A 2003, 1789)

NRS 159.107 Presentment and verification of claims. Except as provided in NRS 159.105, all claims against the ward, the guardianship estate or the guardian of the estate as such shall be presented to the guardian of the estate. Each such claim shall be in writing, shall describe the nature and the amount of the claim, if ascertainable, and shall be accompanied by the affidavit of the claimant, or someone on behalf of the claimant, who has personal knowledge of the fact. The affidavit shall state that within the knowledge of the affiant the amount claimed is justly due, no payments have been made thereon which are not credited and there is no counterclaim thereto, except as stated in the affidavit. If such claim is founded on a written instrument, the original or a copy thereof with all endorsements shall be attached to the claim. The original instrument shall be exhibited to the guardian or the court, upon demand, unless it is lost or destroyed, in which case the fact of its loss or destruction shall be stated in the claim.

(Added to NRS by 1969, 421)

NRS 159.109 Examination and allowance or rejection of claims by guardian.

1. A guardian of the estate shall examine each claim presented to the guardian for payment. If the guardian is satisfied that the claim is appropriate and just, the guardian shall:

(a) Endorse upon the claim the words "examined and allowed" and the date;

(b) Officially subscribe the notation; and

(c) Pay the claim from the guardianship estate.

2. If the guardian is not satisfied that the claim is just, the guardian shall:

(a) Endorse upon the claim the words "examined and rejected" and the date;

(b) Officially subscribe the notation; and

(c) Not later than 60 days after the date the claim was presented to the guardian, notify the claimant by personal service or by mailing a notice by registered or certified mail that the claim was rejected.

(Added to NRS by 1969, 421; A 2003, 1790)

NRS 159.111 Recourse of claimant when claim rejected or not acted upon.

1. If, not later than 60 days after the date the claim was presented to the guardian, a rejected claim is returned to the claimant or the guardian of the estate fails to approve or reject and return a claim, the claimant, before the claim is barred by the statute of limitations, may:

(a) File a petition for approval of the rejected claim in the guardianship proceeding for summary determination by the court; or

(b) Commence an action or suit on the claim against the guardian in the guardian's fiduciary capacity and any judgment or decree obtained must be satisfied only from property of the ward.

2. If a claimant files a request for approval of a rejected claim or a like claim in the guardianship proceeding for summary determination, the claimant shall serve notice that he or she has filed such a request on the guardian.

3. Not later than 20 days after the date of service, the guardian may serve notice of objection to summary determination on the claimant. If the guardian serves the claimant with notice and files a copy of the notice with the court, the court shall not enter a summary determination and the claimant may commence an action or suit on the claim against the guardian in the guardian's fiduciary capacity as provided in subsection 1.

4. If the guardian fails to serve the claimant with notice of objection to summary determination or file a copy of the notice with the court, the court shall:

(a) Hear the matter and determine the claim or like claim in a summary manner; and

(b) Enter an order allowing or rejecting the claim, either in whole or in part. No appeal may be taken from the order.

(Added to NRS by 1969, 421; A 2003, 1790)

NEVADA PUBLIC GUARDIAN FACTS

County provided:	*Office Space*	*Storage Space*	*Phone*	*Cell Phone*	*Copier*	*Fax*	*Computers*	*Vehicle*
Churchill	Y	Y	Y	Y	Y	Y	Y	Y
Clark	Y	Y	Y	Y	Y	Y	Y	Y
Carson City	Y	N	Y	Y	Y	Y	Y	N
Douglas	Y	N	Y	N	Y	Y	Y	N
Elko	Y	N	Y	N	Y	Y	Y	Y
Esmeralda	Y	N	Y	N	Y	Y	Y	Y
Eureka	Y	N	Y	N	Y	Y	Y	Y
Humboldt	Y	Y	Y	N	Y	Y	Y	N
Lander	Y	Y	Y	N	Y	Y	Y	N
Lincoln	Y	Y	Y	N	Y	Y	Y	N
Lyon	Y	Y	Y	Y	Y	Y	Y	Y
Mineral	Y	Y	Y	N	Y	Y	Y	N
Nye	Y	Y	Y	N	Y	Y	Y	Y
Pershing	Y	Y	Y	Y	Y	Y	Y	Y
Storey	N	N	N	N	N	N	N	N
Washoe	Y	N	Y	Y	Y	Y	Y	Y
White Pine	Y	Y	Y	Y	Y	Y	Y	N

Nevada Public Guardians Facts

August 2015

County	# PG Staff	# PG Staff	# Wards (active cases)	# Wards on Medicaid	Budget	Under another county office's budget	fees recieved in 2014
Churchill	**Shannon Ernst**	**2**	**13**	**11**	**9,960.***	**Human Services**	**4,200.**
Clark	**Kathleen Buchanan**	**21**	**399**	**282**	**2,400,000.**	**No**	**524,000.**
Carson City - Storey	**Deborah Marzoline**	**3**	**68**	**58**	**—**	**No**	**104,000.**
Douglas	**Claudette Springmeyer**	**2**	**38**	**27**	**82,100.**	**No**	**8,560.**
Elko	**Kathleen Jones**	**1.5**	**25**	**24**	**0**	**Human Services**	**6,000.**
Esmeralda	**Danielle Johnson**	**1**	**1**	**1**	**0**	**District Attorney**	**0**
Eureka	**Pernecia Johnson**	**1**	**2**	**1**	**0**	**Clerk/Treasurer**	**0**
Humboldt	**Michael McDonald**	**1.5**	**7**	**7**	**0**	**District Attorney**	**0**
Lander	**Theodore Herrera**	**1**	**1**	**1**	**0**	**District Attorney**	**0**
Lincoln	**Daniel Hooge**	**2**	**2**	**2**	**5,000.***	**District Attorney**	**0**
Lyon	**Sherry Stone**	**1**	**24**	**22**	**128,330.**	**No**	**6,158.**
Mineral	**Michael C. James**	**2**	**13**	**13**	**110,000.**	**No**	**0**
Nye	**Pamela Webster**	**2**	**12**	**9**	**1,000.**	**Human Services**	**430.**
Pershing	**Bryce Shields**	**1.5**	**20+**	**20+**	**0**	**District Attorney**	**0**
Storey	**Deborah Marzoline**	**2.5**	**3**	**3**	**20,000.**	**No**	**0**
Washoe	**Susan DeBoer**	**15**	**188**	**148**	**1,716,769.**	**No**	**182,731.49**
White Pine	**Michael Wheable**	**1.5**	**4**	**4**	**0**	**District Attorney**	**0**

**does not include staffing expenses*

IDAHO ADMINISTRATIVE RULE 54.1

West's Idaho Code Annotated
Idaho Court Rules
Idaho Court Administrative Rules
Rules Governing the Administration and Supervision of the Unified and Integrated Idaho Judicial System
Part V. Other Court Standards and Procedures

Administrative Rule 54.1

Rule 54.1. Ex Parte Communication

Currentness

A. In order to carry out the court's oversight role in monitoring compliance in conservatorship or guardianship proceedings, communications which might be considered ex parte communications under Canon 3(B) of the Code of Judicial Conduct, may be received and reviewed by the court under the provisions of this rule.

B. If the communication raises a concern about a guardian or conservator's compliance with their statutory duties and responsibilities, the court may:

1. Review the court file and take any action that is supported by the record, including ordering a status report, inventory, or accounting;

2. Appoint a Guardian ad Litem;

3. Refer the communication to a court investigator, visitor, attorney, or Guardian ad Litem for further action;

4. Refer the matter to the appropriate law enforcement agency or prosecutor's office;

5. Refer the matter to the appropriate licensing agency;

6. Refer the matter to appropriate agencies, including but not limited to child or adult protective services;

7. Set a hearing regarding the communication, compel the guardian or conservator's attendance, and/or require a response from the guardian or conservator concerning the issues raised by the communication;

8. Decline to take further action on the communication, with or without replying to the person or returning any written communication received from the person.

C. If the communication does not raise issues of compliance and would otherwise be prohibited ex-parte communication under Canon 3(b) of the Code of Judicial Conduct, the court shall:

1. Return the written communication to the sender, if known; and

2. Disclose the communication to the guardian or conservator, Guardian ad Litem, and all parties and their attorneys.

D. The court shall disclose any ex parte communication reviewed under section 2 of this rule, and any action taken by the court, to the guardian or conservator, Guardian ad Litem, and all parties and their attorneys, unless the court finds good cause to dispense with disclosure. If the court dispenses with disclosure, it must make written findings in support of its determination of good cause and preserve the communication received and any response made by the court. The court may place its findings and the preserved communication under seal or otherwise secure their confidentiality.

Credits
[Adopted May 15, 2013, effective July 1, 2013.]

Administrative Rule 54.1, ID R ADMIN Rule 54.1
Current with amendments received through 6/15/15

End of Document

Guardianship and Conservatorship Complaint Process

Nanci Thaemert
Idaho Supreme Court
Guardianship and Conservatorship Manager
(208) 947-7458; nthaemert@idcourts.net

Purpose and Goal

Purpose:

Provide a standardized procedure for complaints against guardians or conservators appointed by the court.

Goal:

To protect the health, safety or assets of a person under guardianship or conservatorship and to streamline a process to get concerns addressed.

IDAHO COURT ADMINISTRATIVE RULE 54.1

The court can review communication from the public which might be considered ex parte:

1) To carry out the court's oversight role in guardianship/conservatorship cases; and

2) When the communication is about the statutory responsibilities of a guardian or conservator.

CLERK PROCEDURES

Receiving Complaints

1. No in-person or telephonic complaints.
2. Direct the public to the location of the form and the mailing address: http://www.isc.idaho.gov/guardianship/complaintprocess
3. Recommend one individual in each county assigned to process complaints.

Case Number:_____

COMPLAINT ABOUT A GUARDIAN OR CONSERVATOR

ROA: CGCO- Complaint about a Guardian or Conservator

Please answer each question. If you do not know the answer or it is not applicable please write "Unknown" or "N/A." The court may not review this complaint if you do not fill in each blank.

Ward

Name of Ward: _____

County where case is filed: _____Case Number: _____

(Note: You can check the Idaho State Repository if above is unknown: www.idcourts.us/repository)

Complainant

Your Name: _____

Your Address: _____

Your Phone Number (___)_____Your Email: _____

Your relationship to the ward or to the case: _____

_____

Guardian or Conservator

Type of Case: ☐ Guardianship ☐ Conservatorship ☐ Both

Name of Guardian or Conservator _____

Guardian or Conservator Address: _____

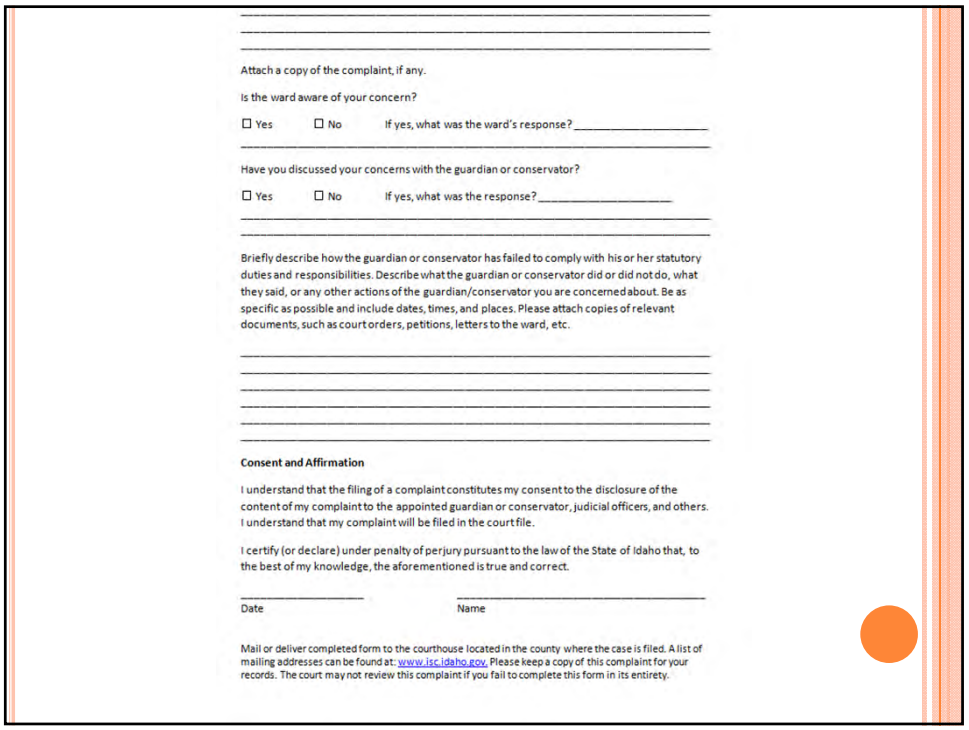
Phone Number (___)_____Email: _____

Description of your complaint

Have you notified or sent a complaint to other authorities? ☐ Yes ☐ No

If yes, include the name of the authority (example: Adult Protection services, nursing home staff, law enforcement, Attorney General's Office, Idaho State Bar, a Licensing Board) and date you complained or sent complaint and result?

_____



_____

_____

_____

Attach a copy of the complaint, if any.

Is the ward aware of your concern?

☐ Yes ☐ No If yes, what was the ward's response? _____

_____

Have you discussed your concerns with the guardian or conservator?

☐ Yes ☐ No If yes, what was the response? _____

_____

_____

Briefly describe how the guardian or conservator has failed to comply with his or her statutory duties and responsibilities. Describe what the guardian or conservator did or did not do, what they said, or any other actions of the guardian/conservator you are concerned about. Be as specific as possible and include dates, times, and places. Please attach copies of relevant documents, such as court orders, petitions, letters to the ward, etc.

_____

_____

_____

_____

_____

_____

Consent and Affirmation

I understand that the filing of a complaint constitutes my consent to the disclosure of the content of my complaint to the appointed guardian or conservator, judicial officers, and others. I understand that my complaint will be filed in the court file.

I certify (or declare) under penalty of perjury pursuant to the law of the State of Idaho that, to the best of my knowledge, the aforementioned is true and correct.

_____ _____

Date Name

Mail or deliver completed form to the courthouse located in the county where the case is filed. A list of mailing addresses can be found at: www.isc.idaho.gov. Please keep a copy of this complaint for your records. The court may not review this complaint if you fail to complete this form in its entirety.

CLERK PROCEDURES

Processing Complaints

1. File stamp and enter documents in ROA
2. 3 working days to send a notice letter of receipt to the complainant and the GAL if one is appointed
3. If complete, send to assigned magistrate judge for review
4. If form is incomplete, mail the standardized letter to the complainant explaining the form is incomplete and include a blank form

COURTDISTRICT JUDICIAL DISTRICT COURT, STATE OF IDAHO
IN AND FOR THE COUNTY OF COURTCOUNTY
COURTSTREETADDRESS
COURTCITY, IDAHO COURTZIP

CASESTYLE1
CASESTYLE2
CaseStyle3

Case No: CaseNumber

RECEIPT OF GUARDIAN OR CONSERVATOR COMPLAINT FORM

TO: Complainant
CC: Guardian ad Litem

RE: Receipt of Guardian or Conservator Complaint Form

The Court has received the complaint you filed about a guardian or conservators failure to comply with statutory duties and responsibilities. The Court has 12 working days to take action on your complaint. Once the assigned judge has reviewed the complaint we will notify you of the action taken and outcome, if any.

Thank you for your interest in this matter.

TodayDateLong

UserNameFirstFirst
Deputy Clerk

COURTDISTRICT JUDICIAL DISTRICT COURT, STATE OF IDAHO
IN AND FOR THE COUNTY OF COURTCOUNTY
COURTSTREETADDRESS
COURTCITY, IDAHO COURTZIP

CASESTYLE1
CASESTYLE2
CaseStyle3

Case No: CaseNumber

NOTIFICATION OF MISSING INFORMATION

TO:

RE: Missing Information on Guardian or Conservator Complaint Form

The court is unable to review the complaint you filed about a guardian or conservator's failure to comply with statutory duties and responsibilities because the form was incomplete.

I have enclosed a blank complaint about a guardian or conservator form. Please answer each question. If you do not know the answer or it is not applicable please write "Unknown" or "N/A."

Retain a copy for your records.

TodayDateLong

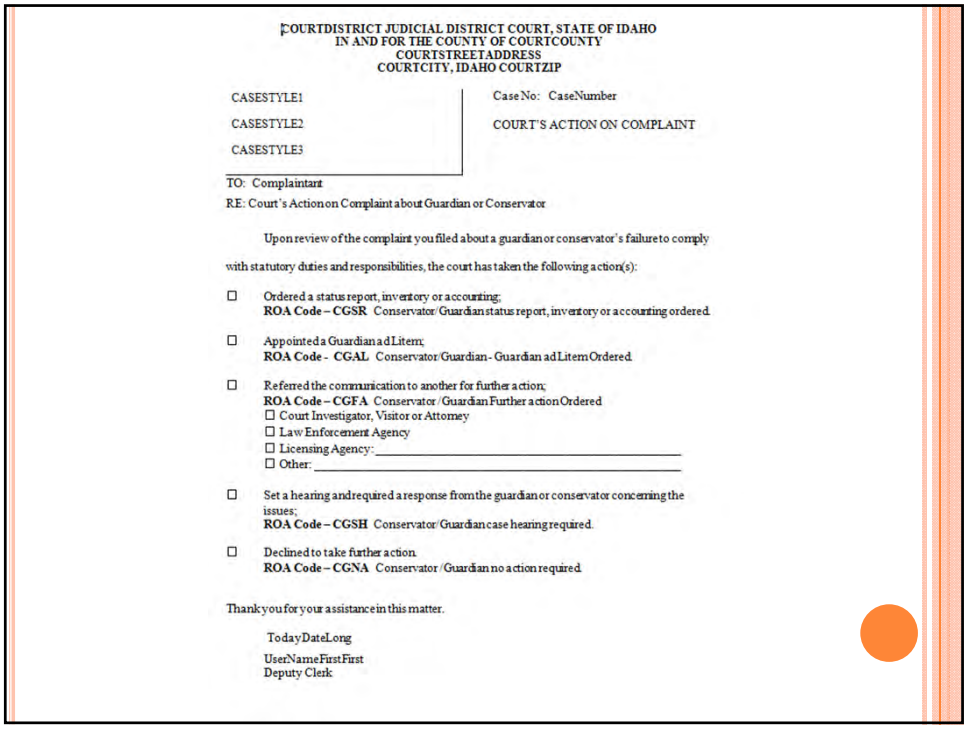
UserNameFirstFirst
Deputy Clerk

CLERK PROCEDURES

Processing Complaints con't

5. Within 10 working days the magistrate judge can:
   a) Order a hearing or additional reports;
   b) Appoint a GAL;
   c) Refer to a court visitor, attorney or appointed GAL;
   d) Refer to agency; and/or
   e) Decline to take further action.

6. Within 3 working days the clerk will send a standardized letter of action taken.



COURTDISTRICT JUDICIAL DISTRICT COURT, STATE OF IDAHO
IN AND FOR THE COUNTY OF COURTCOUNTY
COURTSTREETADDRESS
COURTCITY, IDAHO COURTZIP

CASESTYLE1
CASESTYLE2
CASESTYLE3

Case No: CaseNumber

COURT'S ACTION ON COMPLAINT

TO: Complaintant

RE: Court's Action on Complaint about Guardian or Conservator

Upon review of the complaint you filed about a guardian or conservator's failure to comply with statutory duties and responsibilities, the court has taken the following action(s):

☐ Ordered a status report, inventory or accounting;
ROA Code – CGSR Conservator/Guardian status report, inventory or accounting ordered.

☐ Appointed a Guardian ad Litem;
ROA Code - CGAL Conservator/Guardian - Guardian ad Litem Ordered.

☐ Referred the communication to another for further action;
ROA Code – CGFA Conservator /Guardian Further action Ordered
☐ Court Investigator, Visitor or Attorney
☐ Law Enforcement Agency
☐ Licensing Agency: _____
☐ Other: _____

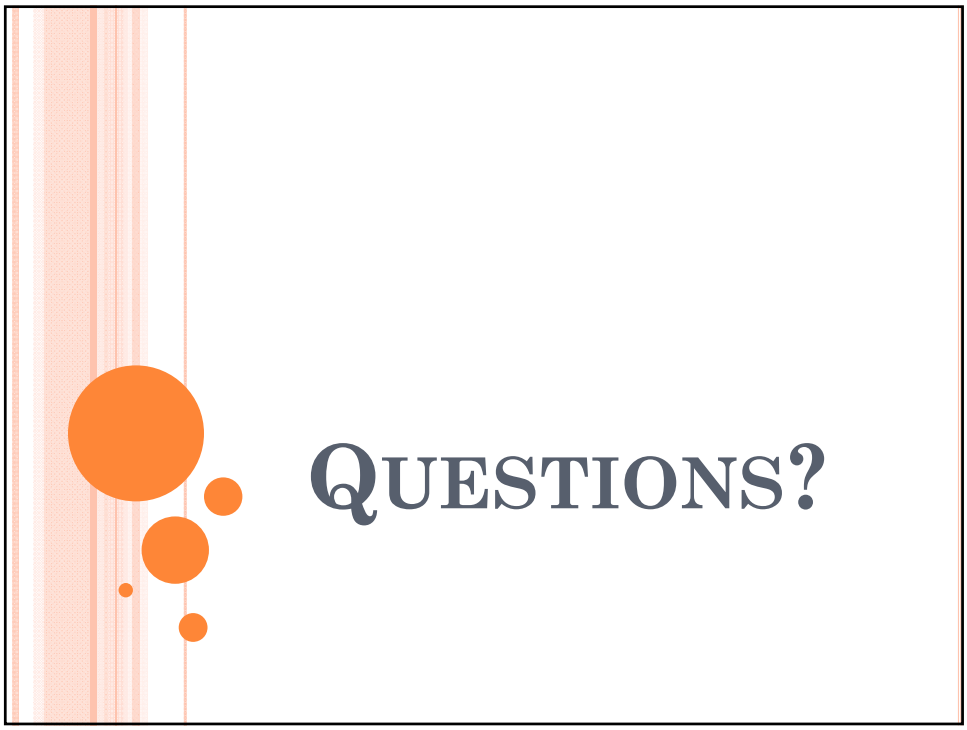
☐ Set a hearing and required a response from the guardian or conservator concerning the issues;
ROA Code – CGSH Conservator/Guardian case hearing required.

☐ Declined to take further action.
ROA Code – CGNA Conservator /Guardian no action required.

Thank you for your assistance in this matter.

TodayDateLong

UserNameFirstFirst
Deputy Clerk



ADMINISTRATIVE ORDER 15-08

FILED

2015 AUG -6 P 4:29

DISTRICT COURT
CLARK COUNTY, NEVADA

CLERK OF THE COURT

IN THE MATTER OF Guardianship and Probate Case Recusals and Disqualifications

Administrative Order: 15-08

WHEREAS, Rule 1.30 of the Rules of Practice for the Eighth Judicial District Court of the State of Nevada ("EDCR") charges the Chief Judge of the Eighth Judicial District Court with various responsibilities, such as supervising the administrative business of the court, ensuring the quality and continuity of its services, supervising its calendar, reassigning cases as convenience or necessity requires, assuring the court's duties are timely and orderly performed, and otherwise facilitating the business of the court; and,

WHEREAS, on May 21, 2015, the Court, by way of Administrative Order 15-06, assigned all adult guardianship matters to Department G of the Family Division, however Administrative Order 15-06 did not specify a process for assigning cases in the event Department G recuses or is disqualified from hearing a particular case; and,

WHEREAS, on September 15, 2011, the Court, by way of Administrative Order 2011-05, assigned all probate matters to Department 26 of the Civil/Criminal Division and by way of Administrative Order 15-02 ordered that Department 11 of the Civil/Criminal Division shall be the alternate to Department 26 in circumstances where a disqualification or recusal occurs on a probate matter; and,

WHEREAS, EDCR 1.60 gives the Chief Judge authority to assign or reassign all cases pending in the district. Therefore,

IT IS HEREBY ORDERED, pursuant to EDCR 1.30(b), that in adult guardianship cases where Department G either recuses or is disqualified, the case from which

Department G recuses or is disqualified shall be randomly re-assigned to one of three departments consisting of the Presiding Judge of the Family Division, Department 26, and Department 27. And,

IT IS FURTHER ORDERED, pursuant to EDCR 1.30(b), that in probate cases where Department 26 either recuses or is disqualified, the case from which Department 26 recuses or is disqualified shall be randomly re-assigned to one of three departments consisting of the Civil Presiding Judge, Department 4, and Department 27.

Entered this _____ day of AUG 0 6 2015, 2015.

By: _____
DAVID BARKER
Chief Judge
Eighth Judicial District Court

LONG-TERM CARE CRISIS

September 2nd, 2015

To whom it may concern;

I am writing to you today so that I may voice my frustrations with the long term care community in this state. My job as a social worker at an acute care hospital is to find placement for many of our patients. Some of these patients are brought in by their families or caregivers. Some are "dropped off" by a long term care facility that is not able to handle their care, usually a mental health, dementia or a non-compliant issue. After the patient is medically clear, the nursing home often refuses to take them back, stating there are no beds available.

At this moment there are approximately 16 persons waiting for either a guardian, institutional Medicaid and/or placement. The Public Guardians office in Clark County takes about 6 months to get a patient approved. Medicaid takes about 4 or more months for approval. Both of these entities approvals are based on if we have all the information required. If we don't, the patients are denied, hence their stay is much longer. Out of these 16 persons that are here waiting for placement, only one has full mental capacity. The rest have had psychiatric assessment by qualified psychiatrists and are found to be without capacity to make their own medical decisions and a surrogate decision make must be assigned to these people.

Let me explain about some of these patients. Most are homeless. They have been on the streets drinking and/or using drugs for many years. Normally Metro brings them to our emergency department where they are medically cleared by a physician. However, they do not have the capacity part and therefore are not able to be safely discharged back out into the community. Once we have the psychiatrist deem them to be without capacity, we look for family and we rarely find anyone that knows the person. We try to find out as much as possible about the person, income, if they have insurance, where they come from, etc. We apply in their behalf for SSI, SSD or SSA if they don't have it and that is IF we can find a name, date of birth and a social security number. We then apply for a guardian and institutional Medicaid. Herein lies an issue we have been having. When Medicaid finally approves them for Fee For Service Medicaid, or straight Medicaid, within a month, they are then moved to an HMO, either HPN Smart Choice or Amerigroup. Then, because these people do not have a skilled need, meaning they are not going to a nursing home for therapy, wound care, etc., just long term care, the HMO's won't pay for them to go. So we have to spend another few weeks to months "flipping" them back to fee for service.

Once everything is finally in place, the patient has a guardian, paysource, Medicaid, etc. We are finally ready to start referring them out to a long term care facility. We have a list of every facility in Nevada. Normally we start by calling all the facilities in Clark County including Boulder City, Mesquite and Pahrump. Once in a great while, we get lucky and someone has a bed. However, most of the time, I hear the same thing "no Medicaid beds" "no long term care beds". If by chance they do have a bed, they take a look at these patients and see that they are homeless, alcoholics, drug addicts and cigarette smokers and they deny the patient. I also have the admissions people saying things like "we can not accommodate this patient or we can not provide the care they need". Most of the patients are non-

medical, mostly dementia and pose no threat. Most of these patients have been here on average of 7-10 months and have not smoked, drank or used drugs since they came in. One place even stated that he doesn't want to deal with the guardians office.

After we try everything locally, we start looking in the rural areas and Northern Nevada where we get the same type of denials. Once we have exhausted the list for Nevada, we then have to apply to the Long Term Support Services RN in Carson City to start looking out of state. However, if they have a guardian, we must also have the guardian go before the judge to get permission to take the patient to another state. This often takes another 6 to 8 weeks on average.

Once that hurdle is clear and we are given the go ahead, I basically get the same answer from the out of state facilities that are on the list. There are 19 that are contracted with Nevada Medicaid, but when I call these facilities, they tell me they can't take the patients or they don't have beds and they are also facing a crisis with their own people as well as Nevada.

This is exhausting, frustrating work. These patients are taking up almost a year in an acute care bed and running up bills in excess of $100,000 +. These are people who can't live alone any longer. Most would be able to go to group homes, except they don't have the money and the program through Medicaid to place them in group homes has a waiting list of close to a year. Also, there are at least three, maybe more of the long term facilities in Las Vegas that are no longer excepting long term care patients. They are turning their facilities into short term rehabs. I don't know how many beds that we are losing, but with a bed shortage in the first place, it's now a crisis situation.

I need to know what the State of Nevada is going to do about this? We can't have demented, non-medical patients take up acute care medical beds. Hospitals are being pushed and shoved around to spends hundreds of dollars without being reimbursed. Medicaid pays only 3 months retroactivley, but what about the other 6-9 months? We get nothing.

We are in crisis here. I need your assistance in waging this war to either have Medicaid pay more as they are for mental health patients, or to open a long term care facility run by the state and county, if need be to house these individuals. Not only is this an issue for us who can go home at night, but to be a person with dementia, have no home and to be left in a hospital for months at a time, it isn't right. I hate to see these people who, after being here for so long, that if a bed is found we all of the sudden take them away from the staff and others they know and place them in a strange environment. How scary that would be. I wouldn't want my parent to have to go through that as it is horribly traumatic.

I hope you don't toss this on a "to do" pile. Today is the day something needs to be done. We all know about our baby boomers situation. This is not going to get better, and in fact, get much, much worse if we don't do something today.

Sincerely,

Sharon Braun-Pope, LSW, BSW

702-610-8830