

# **Nevada Supreme Court**

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



**August 17, 2015, Meeting Materials**

**Chief Justice James W. Hardesty, Chair**

## TABLE OF CONTENTS

AGENDA .....	2
MEETING SUMMARY.....	5
FEES.....	16
NGA FEE STANDARDS .....	33
PUBLIC GUARDIANS .....	39
PRIVATE GUARDIANS.....	46
TRAINING AND EDUCATION.....	85
CARE FACILITIES .....	103
GOALS/OBJECTIVES.....	119
JUDGE DOHERTY'S OUTLINE .....	125
ADVISORY OPINION JE15-002 .....	131
ADMINISTRATIVE ORDER 15-08.....	136
VERBATIM PUBLIC COMMENTS 7/15/15 MEETING.....	138
WRITTEN COMMENTS FROM PUBLIC .....	155

# **AGENDA**

ADMINISTRATIVE OFFICE OF THE COURTS

ROBIN SWEET  
Director and  
State Court Administrator



RICHARD A. STEFANI  
Deputy Director  
Information Technology

JOHN MCCORMICK  
Assistant Court Administrator  
Judicial Programs and Services

VERISE V. CAMPBELL  
Deputy Director  
Foreclosure Mediation

**MEETING NOTICE AND AGENDA**

Name of Organization:

**Supreme Court Commission to Study the Creation and Administration of Guardianships**

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

**Place of Meeting:**

<b>Carson City</b>	<b>Las Vegas</b>	<b>Reno</b>	<b>Elko</b>
Nevada Supreme Court 201 S. Carson Street Courtroom	Regional Justice Center 200 Lewis Avenue 17 <sup>th</sup> Floor, Courtroom	Second Judicial Family Court 1 S. Sierra Street Third Floor, Courtroom 6	Fourth Judicial District Court 571 Idaho Street Dept. 2

**AGENDA**

- I. Call to Order
  - A. Call of Roll and Determination of Quorum
  - B. Approval of Meeting Summary from July 15, 2015 (for possible action) (*Pages 5 – 10*)
  
- II. Presentations
  - A. Fees (*Pages 16 -37*)
  - B. Overview - Standards of Practice
    - Public Guardianships (*Pages 39 – 43*)
    - Private Guardianships (*Pages 45 – 83*)
    - Temporary Guardianships
  - C. Training and Education (*Pages 85 – 101*)
  - D. Perspective from Care Facilities (*Pages 103 – 117*)
  
- III. Scope of Commission (for possible action)
  - A. Commission Members Feedback
    - Goals/Objectives (*Pages 119 – 128*)
  - B. Standing Committee on Judicial Ethics – Advisory Opinion JE15-002 (*Pages 130 – 134*)
  - C. Clark County Administrative Order: 15-08 (*Pages 136 – 137*)

Commission to Study the Administration of Guardianships in Nevada's Courts  
August 17, 2015, Agenda and Meeting Materials

- IV. 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*
- V. Appointment of Subcommittees (Working Groups) (for possible action)
- VI. Discussion Draft/Interim Emergency Recommendations (for possible action)
- VII. Other Business
- VIII. Future Meeting Dates/Agenda Items
  - A. September 16, 2015 – Reno
  - B. October 19, 2015 – Video Conference
  - C. November 4, 2015 – Video Conference
  - D. November 18, 2015 – Video Conference
  - E. December 15, 2015 – Las Vegas
- IX. Public Comment (*Pages 138-155*)  
*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.*
- X. Adjournment

- Action items are noted by (for possible action) and typically include review, approval, denial, and/or postponement of specific items. Certain items may be referred to a subcommittee for additional review and action.
- Agenda items may be taken out of order at the discretion of the Chair in order to accommodate persons appearing before the Commission and/or to aid in the time efficiency of the meeting.
- If members of the public participate in the meeting, they must identify themselves when requested. Public comment is welcomed by the Commission but may be limited to three minutes per person at the discretion of the Chair.
- The Commission is pleased to provide reasonable accommodations for members of the public who are disabled and wish to attend the meeting. If assistance is required, please notify Commission staff by phone or by email no later than two working days prior to the meeting, as follows: Stephanie Heying, (775) 687-9815 - email: [sheying@nvcourts.nv.gov](mailto: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](http://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, 17<sup>th</sup> Floor.

## **MEETING SUMMARY**

ADMINISTRATIVE OFFICE OF THE COURTS

ROBIN SWEET  
Director and  
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**MEETING SUMMARY**

Name of Organization:

**Supreme Court Commission to Study the Creation and Administration of Guardianships**

**Date and Time of Meeting:** July 15, 2015, 1:30 p.m. to 4:30 p.m.

**Place of Meeting:** Regional Justice Center  
200 Lewis Avenue  
17<sup>th</sup> Floor, Courtroom  
Las Vegas, Nevada

**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

I. Call to Order

Chairman Hardesty called the Commission to Study the Creation and Administration of Guardianships (Commission) to order at 1:30 p.m.

II. Welcome and Introduction of Commission Members

Chief Justice Hardesty welcomed members to the Commission. Chief Justice Hardesty stated he had empaneled this Commission to evaluate guardianship activity within Nevada, including an evaluation of statewide rules and supervision of guardianship proceedings. Chief Justice Hardesty noted he is a member of the Conference of Chief Justices (CCJ). The CCJ has been reviewing the impact on the elderly in association with conservatorships and guardianship proceedings as well as the disadvantaged and juveniles for the past 4-6 years. The judiciary is charged with administering the guardianship process and system in Nevada and it is time for the court to test whether Nevada's guardianship process, for both adults and minors, meets, fails to satisfy, or exceeds national best practices. Chief Justice Hardesty stated part of the Commission's responsibility is to evaluate whether the system does or does not exceed national best practices, whether or not improvements should be made, and whether those improvements should be statutory, rule, or resource based. The Commission would need to evaluate the data systems and information that is used to make critical and important case management decisions in this process. The Commission has a unique opportunity to address a critical area of law in Nevada, and to make significant, far reaching improvements to the way guardianship proceedings are administered.

Commission members were asked to introduce themselves and provide a brief biography, including what their association/connection is in regards to guardianships, and who they represent.

III. Public Comment

IV. Scope of Commission

- a. Commission Members Feedback
  - i. Goals/Objectives

Chief Justice Hardesty stated it is important for the Commission to consider its approach to this work. There are many issues that need to be reviewed and it is critical that the Commission approach this effort from a scholastic standpoint. Commission members were provided links to a number of national best practices that would be informative to the Commission as it starts its work. It is important to recognize that there may be differences in the way Nevada's courts approach the same subject matter. It would be important for the Commission to develop a unified approach to tackle this particular legal subject matter. There are statutes that govern what should be done in guardianships but the local approaches may be different and the Commission should identify whether that is a result of inadequacy of resources or if that is custom and practice.

Commission members were asked to provide their thoughts on what they perceive the Commission's goals/objectives should be. Below is a summarized list of the Commission member's goals/objectives for this Commission:

- **Processes/Accountability**
  - Create a more standardized process that focuses on accountability.
    - Create rules that focus on accountability.
    - Develop Standards of practice.



- Create greater accountability on authority with the court, assets, and competency for the guardianships.
  - Provide for better definitions so there is less room to presume things are being done incorrectly.
  - Limit the number of wards that a guardian may monitor.
  - Additional processes to better protect the ward from the inception of the guardianship.
- **Investigations/Compliance**
  - Good faith investigations.
  - Investigations to ensure reasonable or suitable family members have been considered.
  - Compliance Officers to review and track documents, including accounting documents.
  - Investigation position(s) created with the court system. (California has a court investigator to check every guardian report that comes into the court to make sure it is appropriate.)
  - Create two licensed positions, investigate misrepresentation.
  - Temporary Guardianships
    - Review the length of time they can be in effect.
- **Certificates/Petitions**
  - Review certificates. (Concern does not have to be official.)
  - Examine the contents of the petition and the circumstances and requirements that are expected of the person who files the petition and the maker under oath.
    - Does Rule 11 (Civil Procedures) apply to the petitions?
    - Petitions are inadequate in the way they are built and accepted.
    - Petitions are inadequate in the number of people required to complete the petition.
  - Review current physician statement (too easy) – check boxes.
- **Fiduciary Reports/Oversight**
  - Require fiduciary reports more often than every 12 months.
  - Create something similar to a physician's licensing board. (Example: If there is a bad guardian other states could be notified.)
    - Public hearing if someone noticed for being a bad guardian.
- **Guardian Ad Litem**
  - Consider their role in adult guardianships.
  - Best interest of the ward.
- **Counsel**
  - Counsel for ward from the beginning of the process.
- **Fees/Billing**
  - Create standardized fee schedule.
  - Include caps on what can be charged.
  - What does the term "reasonable" mean in terms of fees? How is "reasonable" fee determined?
  - Attorney fees/costs.
    - Division of the fee/risk (Example: If a petition is denied the guardian or attorney who filed the petition should bear the costs, not the ward).
- **Statutory language**
  - Develop a separate statutory scheme to handle minor guardianships.
    - Minors are currently included in the same guardianship statutes as adults. Separate issues.
  - Burden of proof/Standard of proof

- How does the current statutory language impact or compare to the burden of proof and expectations in other areas of law?
- How does the current statutory language impact or compare to the standard of proof and expectations in other areas of law?
- Review current statutes to be sure they are more person centered versus institution focused.
- Civil Gideon Rights – Right to Counsel
- Update statutory language. (Current statutes include language from 1956).
- Consistency – Everyone seeing same laws and interpreting them the same way.
- Laws strengthened to allow prosecution in cases that have contentious issues with exploiters.
- Brighter line between what is poor judgment and incapacity.
  - What makes someone incapacitated and in need of a guardian.
  - Define legal capacity for physicians.
- **IT System**
  - Up to date IT systems to track guardianships.
  - Develop Statewide Case Management System.
- **Training and Education**
  - Identify what education and training is currently available.
  - Provide education and training to:
    - Wards
    - Guardians
    - Families
    - Attorneys
    - Judges
    - Courts
    - Law Enforcement
  - CLE Credits
  - Clear up misinformation that is out there.
  - Provide training and education through various entities including the UNLV Boyd School of Law.
- **Privacy concerns**
  - Personal/financial information included on forms.
  - Physician's certificates include personal medical information. (May be federally protected under HIPAA)
- **Family Involvement**
  - Making sure families are more comfortable in the process. (Education/Training)
  - Make sure families are heard.
  - If family is not chosen as guardian they should still be consulted.
  - Create a Family Mediator Program to work with the courts and the families.
  - Make sure personal mail goes to wards.

Chief Justice Hardesty asked Mr. Kim Rowe to provide an overview of what Mr. Rowe's clients perspective is regarding guardianships, including any challenges and how they interact with the guardianship system. Ms. Debra Bookout was asked to provide information on states' approaches to compensation schedules at the next Commission meeting. Ms. Kim Spoon and Ms. Susan Hoy were asked to prepare a presentation for the next meeting on private professional guardians. Ms. Kathleen Buchanan was asked to prepare a presentation on public guardians for the next meeting. Mr. Tim Sutton was asked to collaborate with Ms. Buchanan. Judge

Porter would reach out to the public guardian in Elko and provide information on their process. Ms. Christine Smith was asked to research what formal education is provided to guardians, lawyers, and judges in other states and to provide this information at the next Commission meeting.

b. Background

i. Nevada Revised Statute Chapter 159

Chief Justice Hardesty stated he wanted the Commission members to have a starting point as to what the statutory expectations are in Nevada Revised Statute (NRS) Chapter 159. Items such as requirements for bonds, accountability of fees, fee structures, etc. are being reviewed and adopted in other states but are absent from our statutory structure and scheme. Chief Justice Hardesty's expectation going forward is to draw on statutes from other jurisdictions that have confronted this subject recently.

Judge Frances Doherty and Judge Dianne Steel provided an overview of NRS Chapter 159 and the guardianship process in their court.

Judge Doherty noted it is interesting, from a legislative point of view, that Nevada has this relatively living modern statute but we are really working in a very ancient area of law. This law is steeped in the history of English and American law, and focuses on two institutions that are really the same, family and property. When the evolution of Nevada's statute occurred the State was pulling information from all those historical ways of protecting family and property as well as passing property; the statute has shadows of that throughout. The statute includes antiquated words i.e., "ward" because we are working in an old fashioned area. The area, statutorily, has an impact on all of these other areas constitutionally. A guardianship is a substitution of decision making for person and property. That substitution means we are all directly interfering with the constitutional rights of privacy, freedom of movement, and decision making. NRS Chapter 159 includes all sorts of things that are not found in any other statute. There is mandatory right to counsel for persons who are proposed to be under a guardianship, appointment of investigators, and appointment of guardian ad litem (GAL), so we have these triggers. There is a higher standard of proof. The evolution of the statute suggests the State made it harder to do this. The State raised the civil standard of proof because this is a very significant piece of law. In many ways, the Nevada Legislature created a body of work that recognizes the gravity of this statute.

Judge Doherty reviewed the guardianship process in the Second Judicial District Court (Court). The Court developed an outline that pro pers could use as a guide to how the guardianship process works. The outline and information on adult guardianship, including forms, can be found on the court's website at <https://www.washoecourts.com/index.cfm?page=guardianship>. The Guardianship Flow Chart is an interactive document that links to instructions, applicable statutes, and forms. Additionally, the court refers to the ward as a person that is proposed to be under the guardianship ("person").

There are three types of Guardians: guardian of the person, guardian of the estate, and guardian of the person and estate. If the person is a minor the substitution of authority would be with the minor and the minor's estate by a third person other than the minor's parent.

The petition for appointment of guardian is outlined in NRS 159.044. Once a guardianship petition is filed, the judicial department who oversees guardianships sets a hearing date and a citation is issued to notify the ward and the ward's relatives, within the second degree of consanguinity, of the upcoming hearing date. The citation is mailed 20 days prior to the hearing. The petition must notify the "person" who the guardian is and who the

proposed overseer of their estate would be. The petition must include the "person's" address, addresses of family members, the reason for the guardianship, and a letter from a doctor or any qualified person. The statute is supposed to trigger, by the court, a guardian ad litem appointment, and investigative appointment, if appropriate. Washoe County lacks the money for those resources but there is a grant through the federal government that provides the resources. Once the petition is filed with the court, counsel is appointed for the "person." That relationship is initiated with an attorney/client interview. During the interview, the "person" would determine whether or not they accept or decline appointment of counsel, or maybe the attorney/client relationship cannot be formed. By the time the parties come in for the first return date (return on the petition) there is counsel with the "person." The attorney would let the court know if they have met with the "person," and the outcome of the meeting. This allows the process to move fairly quickly and provides the "person" representation. It also allows for earlier case planning. Contested cases are immediately sent to the mandatory mediation program. The "person's", family, and proposed guardian all go to the mandatory mediation. If a resolution does not appear to exist, an adjudicatory hearing might be requested. The mediation is not funded by the court. Mediations are either funded through a neighborhood mediation service, for low-income participants, or charged to the estate (reasonable fee).

Judge Steel stated the Eighth Judicial District Court basically starts the guardianship process the same way as the Second Judicial District Court. There is an initial petition where details are provided about the guardianship and the determination of whether the guardianship is general administration or summary administration. The court differentiates between those two, which statutorily provide different kinds of powers (temporary, special, and general). The same information is asked of the proposed guardians and wards, as was noted at the Second Judicial District Court. The forms used are unique in that they talk about the guardian first and the ward later; Judge Steel suggested that order should be flipped. Information is asked about the ward and the court considers whether a temporary guardianship (ten days) is appropriate. If a temporary guardianship is awarded then the guardian would need to come back in in ten days to get further extensions of guardianship. There are limitations as to how many times a court might extend a temporary guardianship. The court requires the physician's certificate. When people come to the court they are notified that even if they did not file anything they are welcome to speak to the court and they might want to get a competing petition for guardianship versus stating they do not want a particular person to be the guardian. The citations are issued to the ward, person(s) seeking the guardianship, and family members within two degrees of consanguinity. Guardianships were more private back in the day than they are now. Now guardianships are more public, which is something the Commission might want to review. Judge Steel noted the Eighth Judicial District's oldest guardianship case goes back to 1956, and it is still open and active. The letters of guardianship read precisely the same way then as they do now. Judge Steel suggested the Commission review the letters to be sure the information that should be provided is being provided. Letters of guardianship include: temporary/extension (expiration date suggested for outside world), general/special guardianship (no powers/limitations designated in the letters), a notice in the letters as to blocked or bonded account requirements, if any (the court does not have a lot of guidance on this), reference that the underlying Order of Guardianship can be requested and reviewed on the letters.

Judge Doherty provided a brief overview of the provisions for temporary guardianships as outlined in NRS Chapter 159.

Types of hearings include: citation hearing (court decides petition requests to appoint guardian), inventory/budget hearings, accounting hearing (guardian sets annual hearing and court reviews assets/debts), sale of real estate on notice, petition for special request (move/sell or divide assets/conduct business/oversee investments, etc.), removal of guardian, termination of guardianship, bench trial/evidentiary hearings.

Judge Doherty explained during the guardianship hearing the “person” must attend the hearing. The “must” is as strong as whether or not the person is able to attend and, if they do not attend is there a legitimate, objectively confirmed reason why they did not attend, i.e. note from a doctor. Attendance and participation are critical for the decision makers and for everyone else in the court room. At the end of the hearing the court would dismiss the petition, enter a limited guardianship order, or grant a general guardianship over the person or estate or both. The order is expected to come out from the court in 5 days. The order should contain the name of the guardian and is served to the person who is now under the guardianship and family within two degrees of consanguinity. Once a guardianship order is issued the bond is addressed and letters of guardianship are issued. Guardians are expected to file an inventory within 60 days of the original order and a report of the person and estate is required annually. At the end of the guardianship the court holds the guardian accountable to ensure the estate and all the affairs are managed properly, or could be ratified by the court. The case is then closed by the court.

Judge Nancy Porter provided an overview of the guardianship process in the Fourth Judicial District Court, in Elko. Judge Porter noted the process is similar to the Second and Eighth Judicial Districts. There are fewer resources in the smaller counties, although Judge Porter noted the court does have attorneys that would represent proposed wards. Judge Porter primarily sees pro pers and the court receives a lot of ex parte request for guardianships, particularly for children. The ex parte requests often meet the reasonable cause standard on paper but it is often a different story when they get to court and there is the clear and convincing evidence standard. The court has tried to make the process user friendly for the pro pers, so they can come to court and know how to present to the court. The court does have a process to appoint guardian ad litem for child wards.

Judge Steel noted Clark County has a self-help center that is very well put together. The court does need more attorneys that would be available to assist the wards, as well as additional guardian ad litem and investigators. The court has good forms available and Judge Steel is able to tender orders of the court from the bench. The court is working together with community members to improve resources for the guardianship process.

Judge Egan Walker is responsible for conducting minor guardianship hearings in the Second Judicial District Court. Judge Walker noted NRS Chapter 159 assumes children are small adults. The current process of guardianships for minors is similar to that of adults but children have different needs and different requirements, therefore there should be different systems. Judge Walker suggested the Commission review the statute and separate minors from adults. He also suggested examining the appointment of guardian ad litem. NRS Chapter 432B requires the court to appoint a guardian ad litem for every child in a dependency case. The subset of guardianships and guardian ad litem in Chapter 159 need to be better defined and described for users and the children we serve.

Judge William Voy had spoken to Judge Walker and they agreed it might be the right time to separate minor guardianships from the adult guardianship statute so that the statute reflects the procedures and oversight required for issues that are unique to minor guardianships. Judge Voy added NRS 432B includes a third type of guardianship for minors in dependency cases. According to statistics, he acquired earlier in the day, it would appear that 500 minors are under a 432B guardianship at any given time. This type of guardianship occurs when a child is brought to the court in neglect and abuse cases and the court finds placement with a relative and the relative receives guardianship. Judge Voy would like to review the particular statute to allow courts the jurisdiction to continue oversight of those types of guardianships. There also needs to be more oversight for guardianships.

The Commission discussed the court's IT processes and their case management systems (CMS) and whether or not they were equipped to handle the volume of guardianship cases the larger courts receive. Judge Doherty noted the CMS responsibility of the court is challenging. The court's Director of IT, Craig Franden, and Craig Smith, IT Compliance, have spent the last two years creating a system that would track the various trigger points in each guardianship case, i.e. 10-day temporary petition, 20-day citation, 60-day inventory, etc. In addition there would be triggers for late filed or unfiled documents, inventories, or accounting reports. An efficient CMS and IT Division is vital for the courts. The Second Judicial District has worked on this project for the last two years and they are still not there. It is challenging on the resources of the court. Improving upon the limitation of technology is their number one priority. Judge Porter does not have an IT or CMS in place. Judge Porter has been working with her staff to put their own system in place, which at this point includes court staff keeping a calendar of the items that are due in each case. Judge Porter is seeing 4-5 new petitions. The calendar process would become increasingly difficult as the court receives and handles more guardianship cases. Judge Steel said the Eighth Judicial District has its own IT Department and she has begun sending a referral to the compliance officer who tickles all the statutory dates that need to be complied with. There are a lot of moving parts in the guardianship cases and they all need to be effective and efficient. Judge Walker noted the Second Judicial District does not have a system to track the minor guardianship cases at this time. The court does have a robust data base and highly skilled IT department but they have to build the mechanisms to track the cases, numbers, closures, and compliance requirements. Minor guardianship cases should close at age 18. Judge Voy added minor guardianships are tracked in the same CMS as adult guardianship cases. The IT department will let each judge know if a minor is aging out and the judge has to handle each case. Some cases still have to be handled by hand because there is no way to tickle the case.

Chief Judge Gibbons noted when the Special Advocates for Elders (SAFE) Program in Douglas County was first formed the initial assignment was to go through old files and see which ones should have had hearings and which ones had not. The court began to make sure parties did not leave the court without an understanding of when their next court date was scheduled. The court required a blank area on all orders where the court could set the next hearing date so that the parties had something in writing prior to leaving the court. This was particularly helpful with the annual review hearings. By reviewing the files the court was able to determine which cases were still active, which were inactive and clear the inactive cases out.

## ii. 2015 Legislation

### 1. Senate Bill 262

Senator Becky Harris provided an overview of Senate Bill 262 (SB 262). The bill was an attempt on the part of the Legislature to address a lot of the concerns that the Commission has heard today. The bill creates preferences for appointing guardians for adults. The bill allows for nonresidents to be appointed guardians. The previous statutory language required the guardian to reside in the State of Nevada. The bill considers whether the nominated person has engaged in the habitual use of alcohol or any controlled substances during the previous 6 months, whether the nominated person has been judicially determined to have committed abuse, neglect, exploitation, isolation or abandonment of a child, his or her spouse, his or her parent or any other adult, or the nominated person is incompetent or has a disability. If two or more nominated persons are qualified the court may appoint a co-guardian or appoint in order of preference listed in SB 262. The bill includes a list of considerations for the court including any nomination or request for the appointment as guardian by the adult, any nomination or request for appointment as guardian by a relative, the relationship by blood, adoption, marriage or domestic partnership (the bill outlines the preference the court may consider), any

recommendation made by a master or special master of the court, and any request for appointment of any other interested person that the court deems appropriate. The court may not give preference to a resident guardian over a nonresident guardian if the court determines the nonresident guardian is more qualified and suitable and the distance from the proposed guardian's place of residence and the adult's place of residence will not affect the quality of the guardianship. That was a specific attempt to allow adult children, who may not be able to move to Nevada and the parent decides to reside in Nevada, to have some decision-making ability. Senator Harris noted when the bill was being drafted legal language was used, including the term ward. She understands that may be offensive to some but that is not the intent. In order to keep the conversation on task, and correctly identify the parties, Senator Harris asked that the Commission be allowed to use the terminology, as it would be helpful for purposes of the Commission's discussions as the Commission moves forward. Senator Harris noted she has set aside a bill draft for the next legislative session to address the issues that arise during the Commission's discussions, including any terminology. Senator Harris added SB 262 was unanimously passed and there is a strong desire on the part of the legislators to recognize that there are some problems in Nevada that need to be addressed, in regards to the guardianships, and the legislators are invested to finding appropriate solutions.

#### 1. Assembly Bill 325

Assemblyman Michael Sprinkle stated Assembly Bill 325 (AB 325) was amended during the end of the 2015 Legislative Session so that the language did not conflict with SB 262. This was a joint effort. The intent of AB 325 was to have a licensure process for private professional guardians. The licensing is overseen by the Department of Business and Industry. The bill primarily looks at the fiduciary responsibilities of private professional guardians. While doing research for the bill Assemblyman Sprinkle found when a problem arises and family members realize there is a need to act because something is being done inappropriately, the process to go back to the court is burdensome. The intent of the bill was to alleviate some of that burden. The bill provides an avenue for complaints to be registered and reviewed. If there is inappropriate activity the private professional guardian's licensure could be at stake. Assemblyman Sprinkle stated he made a commitment to the families that came to him and the private professional guardians. The Commission needs to realize what needs to be done and why licensure is needed.

#### c. General Discussion – National Best Practices and Related Resources

The agenda had included links to various national best practices. Chief Justice Hardesty highlighted the National Guardianship Association's (NGA) Standards of Practice Checklist and the National Probate Court Standards, sections 3.3 through 3.5. The NGA Checklist identifies 25 areas in which the guardianship is either in compliance or not in compliance with relationship to the court, the person, and the decision making person, etc. This could be used as a quick reference point to evaluate whether or not Nevada's system is equipped to respond to this type of checklist approach. The National Probate Court Standards outline the standards that should be expected of courts to follow and properly manage guardianships, awards of fees and costs, and ensuring the assets and the well-being of the ward. Commission members were asked to review these documents as a starting point that could be used to measure Nevada's system against.

#### V. General Discussion

- A. Procedures Used to Provide Notice and Evidence Required to Create Guardianships
- B. Training and Appointment of Guardians
- C. Protections Needed for Wards and their Family Members

- D. Accountability and Performance Required of Guardians and Expected of Courts
- E. Use of Technology to Assist in Documenting, Tracking, and Monitoring Guardianships
  - Case Management and IT Systems
- F. Identification of Resources Necessary to Assist Court System to Meet Required Objectives
  - 1. Court Budgets
  - 2. Staffing
    - a. Administrative Support
    - b. Investigatory
    - c. Third Party Resources

These items were discussed throughout the Commission meeting and are included in the meeting summary. The Commission would be discussing these items in more detail in future meetings.

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

The Commission did not appoint subcommittees during the July 15 meeting.

- VII. Other Business

- VIII. Future Meeting Dates/Agenda Items (for possible action)

Future Commission meetings will be held on:

- Monday, August 17, 2015
- Wednesday, September 16, 2015
- Monday, October 19, 2015
- Wednesday, November 4, 2015
- Wednesday, November 18, 2015
- Tuesday, December 15, 2015

- IX. 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.*

Public comments were received at the beginning of the meeting under agenda item III.

- X. Adjournment

The meeting was adjourned at 5:19 p.m.



## **FEES**

## MEMORANDUM

To: Chief Justice James W. Hardesty

From: Debra Bookout

Date: August 3, 2015

Re: Guardianship Fees in other States

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The following is a sample of other States' statutes governing guardianship fees. I included the statutory language in Nevada for reference. I also included rules and other resources, where available, which provide further guidance to the court's determination as to the reasonableness of a guardian's fees. Most States' statutes require that the fees be "reasonable" or "just and reasonable". Some states allow the determination of what is reasonable to be at the local level by local rule, while others provide for that analysis within the State statute or other State rules. Finally, other States allow for flat fees which vary depending on the value of the estate and still others actually set hourly rates for fees which vary depending on experience.

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### Nevada NRS 159.183

1. Subject to the discretion and approval of the court and except as otherwise provided in subsection 4, a guardian must be allowed:
  - (a) **Reasonable compensation** for the guardian's services;
  - (b) Necessary and reasonable expenses incurred in exercising the authority and performing the duties of a guardian; and
  - (c) Reasonable expenses incurred in retaining accountants, attorneys, appraisers or other professional services.

2. Reasonable compensation and services **must be based upon similar services performed for persons who are not under a legal disability**. In determining whether compensation is reasonable, the court may consider:
  - (a) The nature of the guardianship;
  - (b) The **type, duration and complexity of the services required**; and
  - (c) Any other relevant factors.

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**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

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**Washington § 11.92.180.**

Compensation and expenses of guardian or limited guardian--Attorney's fees—  
Department of social and health services clients paying part of costs—Rules

A guardian or limited guardian shall be allowed such compensation for his or her services as guardian or limited guardian as the court shall deem **just and reasonable**. Guardians and limited guardians shall not be compensated at county or state expense. Additional compensation may be allowed for other administrative costs, including services of an attorney and for other services not provided by the guardian or limited guardian. ... In all cases, compensation of the guardian or limited guardian and his or her expenses including attorney's fees shall be fixed by the court and may be allowed at any annual or final accounting; but at any time during the administration of the estate, the guardian or limited guardian or his or her attorney may apply to the court for an allowance upon the compensation or necessary expenses of the guardian or limited guardian and for attorney's fees for services already performed. ...

According to the Washington Certified Professional Guardian Manual 2007, the factors applied in determining reasonable compensation for guardians are found in the Rules of Professional Conduct that govern the reasonableness of attorneys' fees. RPC 1.5(a) (1)-(8) provides:

- (a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:
  - (1) the **time and labor required, the novelty and difficulty of the questions involved and the skill requisite to perform** the legal service properly;
  - (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
  - (3) the **fee customarily charged in the locality for similar legal services**;
  - (4) amount involved and the results obtained;
  - (5) the time limitations imposed by the client or by the circumstances;
  - (6) the nature and length of the professional relationship with the client;
  - (7) the experience, reputation, and ability of the lawyer or lawyers performing the services;
  - (8) whether the fee is fixed or contingent; and

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**Colorado** § 15-10-602. Recovery Of Reasonable Compensation And Costs.

- (1) A fiduciary and his or her lawyer are entitled to **reasonable compensation** for services rendered on behalf of an estate.

. . .
- (4) A person's entitlement to compensation or costs shall not limit or remove a court's inherent authority, discretion, and responsibility to determine the reasonableness of compensation and costs when appropriate.

. . .



- (7) (a) Except as otherwise provided in part 5 of this article or in this part 6, a nonfiduciary or his or her lawyer is not entitled to receive compensation from an estate.

...

(c) In determining a reasonable amount of compensation or costs, the court may take into account, in addition to the factors set forth in **section 15-10-603(3)**:

- (I) The value of a benefit to the estate, respondent, ward, or protected person;
- (II) The number of parties involved in addressing the issue;
- (III) The efforts made by the lawyer or person not appointed by the court to reduce and minimize issues; and
- (IV) Any actions by the lawyer or person not appointed by the court that unnecessarily expanded issues or delayed or hindered the efficient administration of the estate.

§15-10-603. Factors In Determining Reasonableness Of Compensation And Costs

- (3) The court shall consider all of the factors described in this subsection (3) in determining the reasonableness of any compensation or cost. The court may determine the weight to be given to each factor and to any other factor the court considers relevant in reaching its decision:
- (a) The **time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform** the service properly;
  - (b) The likelihood, if apparent to the fiduciary, that the acceptance of the particular employment will preclude the person employed from other employment;
  - (c) (I) The **compensation customarily charged in the community for similar services** with due consideration and allowance for the complexity or uniqueness of any administrative or litigated issues, the need for and local availability of specialized knowledge or expertise, and the need for

and advisability of retaining outside fiduciaries or lawyers to avoid potential conflicts of interest;

(II) As used in this subsection (3), unless the context otherwise requires, “community” means the general geographical area in which the estate is being administered or in which the respondent, ward, or protected person resides.

- (d) The nature and size of the estate, the liquidity or illiquidity of the estate, and the results and benefits obtained during the administration of the estate;
- (e) Whether and to what extent any litigation has taken place and the results of such litigation;
- (f) The life expectancy and needs of the respondent, ward, protected person, devisee, beneficiary, or principal;
- (g) The time limitations imposed on or by the fiduciary or by the circumstances of the administration of the estate;
- (h) The adequacy of any detailed billing statements upon which the compensation is based;
- (i) Whether the fiduciary has charged variable **rates that reflect comparable payment standards in the community for like services**;
- (j) The **expertise, special skills, reputation, and ability of the person performing the services** and, in the case of a fiduciary, whether and to what extent the fiduciary has had any prior experience in administering estates similar to those for which compensation is sought;
- (k) The terms of a governing instrument;
- (l) The various courses of action available to a fiduciary or an individual seeking compensation for a particular service or alleged benefit and whether the course of action taken was reasonable and appropriate under the circumstances existing at the time the service was performed; and

- (m) The various courses of action available to a fiduciary or an individual seeking compensation for a particular service or alleged benefit and the cost-effectiveness of the action taken under the circumstances existing at the time the service was performed.

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**California** § 2623. Compensation And Expenses Of Guardian Or Conservator

- (a) Except as provided in subdivision (b) of this section, the guardian or conservator shall be allowed all of the following:
  - (1) The amount of the reasonable expenses incurred in the exercise of the powers and the performance of the duties of the guardian or conservator (including, but not limited to, the cost of any surety bond furnished, reasonable attorney's fees, and such compensation for services rendered by the guardian or conservator of the person as the **court determines is just and reasonable**).
  - (2) Such compensation for services rendered by the guardian or conservator as the **court determines is just and reasonable**. . . .

§ 2640. Petition by guardian or conservator of estate

- (a) At any time after the filing of the inventory and appraisal, but not before the expiration of 90 days from the issuance of letters or any other period of time as the court for good cause orders, the guardian or conservator of the estate may petition the court for an order fixing and allowing compensation to any one or more of the following:
  - (1) The guardian or conservator of the estate for services rendered to that time.
  - (2) The guardian or conservator of the person for services rendered to that time.
  - . . .
- (c) Upon the hearing, the court shall make an order allowing (1) any compensation requested in the petition the court determines is **just and reasonable** to the

guardian or conservator of the estate for services rendered or to the guardian or conservator of the person for services rendered, or to both, and (2) any compensation requested in the petition the court determines is reasonable to the attorney for services rendered to the guardian or conservator of the person or estate or both. The compensation allowed to the guardian or conservator of the person, the guardian or conservator of the estate, and to the attorney may, in the discretion of the court, include compensation for services rendered before the date of the order appointing the guardian or conservator. The compensation allowed shall thereupon be charged to the estate. Legal services for which the attorney may be compensated include those services rendered by any paralegal performing legal services under the direction and supervision of an attorney. The petition or application for compensation shall set forth the hours spent and services performed by the paralegal.

California Rules of Court, Rule 7.756. Compensation of conservators and guardians

(a) **Standards for determining just and reasonable compensation**

The court may consider the following nonexclusive factors in determining just and reasonable compensation for a conservator from the estate of the conservatee or a guardian from the estate of the ward:

- (1) The size and nature of the conservatee's or ward's estate;
- (2) The benefit to the conservatee or ward, or his or her estate, of the conservator's or guardian's services;
- (3) The necessity for the services performed;
- (4) The conservatee's or ward's anticipated future needs and income;
- (5) The **time spent** by the conservator or guardian in the performance of services;
- (6) **Whether the services performed were routine or required more than ordinary skill** or judgment;
- (7) **Any unusual skill, expertise, or experience brought to the performance** of services;

- (8) The conservator's or guardian's estimate of the value of the services performed; and
- (9) The **compensation customarily allowed by the court in the community** where the court is located for the management of conservatorships or guardianships of similar size and complexity.

**(b) No single factor determinative**

No single factor listed in (a) should be the exclusive basis for the court's determination of just and reasonable compensation.

**(c) No inflexible maximum or minimum compensation or maximum approved hourly rate**

This rule is not authority for a court to set an inflexible maximum or minimum compensation or a maximum approved hourly rate for compensation.

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**Ohio Sup R 73. Guardian's compensation**

**(A) Setting of compensation**

Guardian's compensation shall be set by local rule.

**(B) Itemization of expenses**

A guardian shall itemize all expenses relative to the guardianship of the ward and shall not charge fees or costs in excess of those approved by the probate division of a court of common pleas.

Montgomery County, Ohio, Court of Common Pleas, Probate Division, Superintendence Rule 73.1, provides for Guardian's Compensation as follows:

- (A) The compensation that may be taken by guardians as a credit in their accountings, without application and order first obtained, must be less than or equal to that provided by the following schedule:
  - (1) 5% of income from intangible investments and deposits and all installment receipts, such as Social Security or Veteran's Benefits.

- (2) 10% of gross rentals from real estate actually managed by the guardian (5% if proceeds of a net lease).
- (3) \$2.50 per thousand dollars of intangible personal property investments and deposits for each year of the accounting period.
- (4) 1% of distribution of personal property corpus at conclusion of the guardianship.

Medina County, Ohio, Court of Common Pleas, Probate Division, Local Rule 73.1 Guardian's compensation

- (A) Guardian's compensation for services as guardian of the estate in non-indigent guardianships shall be computed annually upon application and entry and shall be supported by calculations and documentation. The following fee schedule shall apply unless extraordinary fees are requested. Extraordinary fee applications shall be set for hearing unless hearing is waived by the Court.
  - (1) Income/Expenditure Fee. Excluding income from rental real estate, four percent (4%) of the first \$10,000 of income received, plus three percent (3%) of the balance in excess of \$10,000, and four percent (4%) of the first \$10,000 of expenditures except expenditures pertaining to rental real estate, plus three percent (3%) of the balance in excess of such \$10,000. If the guardian manages rental real estate, a fee amounting to ten percent (10%) of gross rental real estate income may be allowed. If the guardian receives net income from rental real estate actively managed by others, then the guardian shall treat such net income as ordinary income. No fee shall be allowed to the guardian on expenditures pertaining to rental real estate. As used in this rule, "income" shall mean the sum of income as defined in [Section 1340.03 O.R.C.](#), plus pension benefits, plus net gains from the sale of principal. Assets held by the ward at the date of appointment are deemed to be principal and not income.
  - (2) Principal Fee. \$3.00 per thousand for first \$200,000 of fair market value, and \$2.00 per thousand on the balance of the corpus, unless otherwise ordered.
  - (3) Principal Distribution Fee. \$3.00 per thousand for the first \$200,000 of fair market value of corpus distributed upon the termination of the

guardianship, and \$2.00 per thousand on the balance of the corpus distributed upon the termination of the guardianship, unless otherwise ordered.

Medina County, Ohio, Court of Common Pleas, Probate Division, Local Rule 73.2, Guardian's compensation in **indigent guardianships** provides:

In guardianship case where the ward has been declared indigent by the court, compensation for the attorneys appointed as guardians shall be computed as follows: Fifty dollars (\$50.00) per hour compensation for in-court services rendered by the attorney/guardian; Forty dollars (\$40.00) per hour compensation for out-of-court services rendered by the attorney/guardian.

Attorney/guardians shall receive a maximum of Five Hundred Dollars (\$500.00) in compensation in such cases in the first one-year period computed from the date of appointment to the date of the application for fees and a maximum of Three Hundred Dollars (\$300.00) each year thereafter, unless extraordinary fees have been separately applied for and approved by the court.

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**Texas** § 1155.002. Compensation for Certain Guardians of the Person

- (a) The court may authorize compensation for a guardian serving as a guardian of the person alone from available funds of the ward's estate or other funds available for that purpose. **The court may set the compensation in an amount not to exceed five percent of the ward's gross income.**
- (b) If the ward's estate is insufficient to pay for the services of a private professional guardian or a licensed attorney serving as a guardian of the person, the court may authorize compensation for that guardian if funds in the county treasury are budgeted for that purpose.

§ 1155.003. Compensation for Guardian of the Estate

- (a) The guardian of an estate is entitled to **reasonable** compensation on application to the court at the time the court approves an annual or final accounting filed by the guardian under this title.

- (b) A **fee of five percent of the gross income of the ward's estate and five percent of all money paid out of the estate**, subject to the award of an additional amount under [Section 1155.006\(a\)](#) following a review under [Section 1155.006\(a\)\(1\)](#), is considered reasonable under this section if the court finds that the guardian has taken care of and managed the estate in compliance with the standards of this title.

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**Florida § 744.108.** Guardian and attorney fees and expenses

- (1) A guardian, or an attorney who has rendered services to the ward or to the guardian on the ward's behalf, is entitled to a **reasonable fee for services** rendered and reimbursement for costs incurred on behalf of the ward.
- (2) When fees for a guardian or an attorney are submitted to the court for determination, the court shall consider the following criteria:
- (a) The **time and labor** required;
  - (b) The **novelty and difficulty of the questions involved and the skill required to perform** the services properly;
  - (c) The likelihood that the acceptance of the particular employment will preclude other employment of the person;
  - (d) The **fee customarily charged in the locality for similar services**;
  - (e) The nature and value of the incapacitated person's property, the amount of income earned by the estate, and the responsibilities and potential liabilities assumed by the person;
  - (f) The results obtained;
  - (g) The time limits imposed by the circumstances;
  - (h) The nature and length of the relationship with the incapacitated person; and
  - (i) The experience, reputation, diligence, and ability of the person performing the service. ...



The Joint Circuit Workgroup on Guardian Fees 2004, a collaboration between the Sixth and Thirteenth Judicial Circuits, proposed an Experience Based Fee and other Rules to address inequities in fees.

The Workgroup proposed the following experienced based fees:

1. Professional guardians with 0-5 years are entitled to bill at a rate of \$40.00 per hour.
2. Professional guardians with 6-9 years of experience are entitled to bill at a rate of \$55.00 per hour.
3. Professional guardians with 10 or more years of experienced are entitled to bill at a rate of \$70.00 per hour.

The Workgroup also proposed other rules designed to address inequities in fees. For example, it recommended that fees for bill paying should not exceed two billable hours per month; that guardians be required to list actual mileage for travel so that the court is able to assess whether the time charged was reasonable; that for shopping a two standard “per month” fee cap be imposed at the rate of 2.5 hours each month for a ward in a home and 1.0 hour per month for a ward in a facility; fees for copying/faxing/filing should be capped at 1.0 hour per month. The Workgroup’s proposals went into effect in January 2005.

The Probate Division of the 17<sup>th</sup> Judicial Circuit for Broward County, Florida, Handbook for Guardians 2012 provides:

The fee payable to nonprofessional guardians is Broward County is currently \$30 per hour. Professional Guardians fees are generally \$60 per hour for years zero to five as a professional guardian and generally \$85 per hour for five or more years as a professional guardian. ...

## **NGA FEE STANDARDS**

Standards of Practice, National Guardianship Association

**⊗ NGA Standard 22 – Guardianship Service Fees**

- I. Guardians are entitled to reasonable compensation for their services.
- II. The guardian shall bear in mind at all times the responsibility to conserve the person's estate when making decisions regarding providing guardianship services and charging a fee for those services.
- III. All fees related to the duties of the guardianship must be reviewed and approved by the court. Fees must be reasonable and be related only to guardianship duties.
- IV. The guardian shall:
  - A. Disclose in writing the basis for fee (e.g., rate schedule) at the time of the guardian's first appearance in the action,
  - B. Disclose a projection of annual fiduciary fees within 90 days of appointment,
  - C. Disclose fee changes,
  - D. Seek authorization for fee-generating actions not contained in the fiduciary's appointment, and
  - E. Disclose a detailed explanation for any claim for fiduciary fees.
- V. A guardian shall report to the court any likelihood that funds will be exhausted and advise the court whether the guardian intends to seek removal when there are no longer funds to pay fees. A guardian may not abandon the person when estate funds are exhausted and shall make appropriate succession plans.
- VI. A guardian may seek payment of fiduciary fees from the income of a person receiving Medicaid services only after the deduction of the personal needs allowance, spousal allowance and health care insurance premiums.
- VII. Factors to be considered in determining reasonableness of the guardian's fees include:
  - A. Powers and responsibilities under the court appointment;
  - B. Necessity of the services;
  - C. The request for compensation in comparison to a previously disclosed basis for fees, and the amount authorized in the approved budget, including any legal presumption of reasonableness or necessity;
  - D. The guardian's expertise, training, education, experience, professional standing, and skill, including whether an appointment in a particular matter precluded other employment;
  - E. The character of the work to be done, including difficulty, intricacy, importance, time, skill, or license required, or responsibility undertaken;
  - F. The conditions or circumstances of the work, including emergency matters requiring urgent attention, services provided outside of regular business hours,

Standards of Practice, National Guardianship Association

potential danger (e.g., hazardous materials, contaminated real property, or dangerous persons), or other extraordinary conditions;

- G. 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 the service better, cheaper, faster;
  - H. The result, specifically whether the guardian was successful, what benefits to the person were derived from the efforts, and whether probable benefits exceeded costs;
  - I. Whether the guardian timely disclosed that a projected cost was likely to exceed the probable benefit, affording the court the opportunity to modify its order in furtherance of the best interest of the estate;
  - J. The fees customarily paid, and time customarily expended, for performing like services in the community, including whether the court has previously approved similar fees in another comparable matter;
  - K. The degree of financial or professional risk and responsibility assumed;
  - L. The fidelity and loyalty displayed by the guardian, including whether the guardian put the best interests of the estate before the economic interest of the guardian to continue the engagement; and
  - M. The need for a local availability of specialized knowledge and the need for retaining outside fiduciaries to avoid conflict of interest.
- VIII. Fees or expenses charged by the guardian shall be documented through billings maintained by the guardian. If time records are maintained, they shall clearly and accurately state:
- A. Date and time spent on a task,
  - B. Duty performed,
  - C. Expenses incurred,
  - D. Collateral contacts involved, and
  - E. Identification of individual who performed the duty (e.g., guardian, staff, volunteer).
- IX. All parties should respect the privacy and dignity of the person when disclosing information regarding fees.

**⊗ NGA Standard 23 – Management of Multiple Guardianship Cases**

- I. The guardian shall limit each caseload to a size that allows the guardian to accurately and adequately support and protect the person, that allows a minimum of one visit per month with each person, and that allows regular contact with all service providers.

NATIONAL PROBATE COURT STANDARDS

## STANDARD 3.1.3 REPRESENTATION BY A PERSON HAVING SUBSTANTIALLY IDENTICAL INTEREST

**Probate courts should allow representation by a person having substantially identical interest, where appropriate.**

### COMMENTARY

Often, in probate proceedings, interested persons are minors or incapacitated adults, unborn, unascertained, or persons whose addresses are unknown. In order for probate courts to have jurisdiction to enter a fully binding order, their interests must be represented by others—for example, “a trust providing for distribution to the settlor’s children as a class with an adult child being able to represent the interests of children who are either minors or unborn.”<sup>75</sup> Both the Uniform Probate Code and the Uniform Trust Code embrace this concept of virtual representation<sup>76</sup> as well as in some state statutes,<sup>77</sup> but it has also been recognized without explicit statutory support.<sup>78</sup>

Before allowing someone to represent others in this manner, probate courts should conduct a careful examination to ensure that the interests are truly identical, and when the trustee of a testamentary trust and the personal representative are the same person, a potential conflict of interest exists, and the beneficiaries, if incapacitated, should be represented by an independent person. The question of virtual representation may also arise in connection when an earlier judgment is challenged by someone who was not formally represented. In the latter situation, the probate court may decide that the challenge is barred because the challenger was virtually represented by another at the time of the prior decree.

## \* STANDARD 3.1.4 ATTORNEYS’ AND FIDUCIARIES’ COMPENSATION

- A. Attorneys and fiduciaries should receive reasonable compensation for the services performed.**
- B. In order to enhance consistency in compensation and reduce the burden on probate courts of determining compensation in each case, probate courts or the state Administrative Office of the Courts should consider establishing fee guidelines or schedules.**
- C. When a dispute arises that cannot be settled by the parties directly or by means of alternative dispute resolution, probate courts should determine the reasonableness of fees.**

### COMMENTARY

Attorneys and fiduciaries are entitled to receive fair compensation for the time, effort and expertise they are providing.<sup>79</sup> However, defining what is reasonable compensations for the services rendered can be a complex, thorny determination. One way of limiting the need for probate courts to engage in the review of fees on a case-by-case basis is through the use of fee schedules or guidelines set either by statute or court rule. Ohio, for example, has established a fee schedule by statute.<sup>80</sup> Such schedules help to ensure fairness and consistency. In establishing a fee schedule or guideline, it is essential that the fees set are reasonable and reflect or relate to customary time involvement so as not to discourage well qualified individuals from serving as fiduciaries or counsel in probate matters.

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<sup>75</sup> UNIF. TR. CODE comment to §304 (2010).

<sup>76</sup> UNIF. TR. CODE §304 (2010); UNIF. PROB. CODE §1-403(2) (iii) (2008).

<sup>77</sup> See, e.g., NY Surr. Ct. Proc. Act § 315 (McKinney 1981); UNIF. PROB. CODE § 1-403 (2008).

<sup>78</sup> See WILLIAM M. MCGOVERN ET AL., *WILLS, TRUSTS AND ESTATES* 703 (1988).

<sup>79</sup> UNIF. PROB. CODE 3-179 (2008); UNIF. TR. CODE §708 (2010).

<sup>80</sup> Probate Court of Montgomery County, Ohio. *Computation of Fiduciary Fees in Estate Cases*,

[http://www.mcoho.org/government/probate/docs/estate/APPENDIX\\_D\\_Computation\\_of\\_Fiduciary\\_Fees.pdf](http://www.mcoho.org/government/probate/docs/estate/APPENDIX_D_Computation_of_Fiduciary_Fees.pdf) (Jun. 25, 2012).

### Section 3.1

When there is no guideline, in reviewing a request for a fee in excess of the scheduled amount due to the provision of extraordinary services, or when a dispute arises that requires court intervention, the factors that a probate court may consider include:

- The usual and customary fees charged within that community
- Responsibilities and risks (including exposure to liability) associated with the services provided
- The size of the estate or the character of the services required including the complexity of the matters involved
- The amount of time required to perform the services provided
- The skill and expertise required to perform the services
- The exclusivity of the service provided
- The experience, reputation and ability of the person providing the services
- The benefit of the services provided.<sup>81</sup>

Time expended should not be the exclusive criterion for determining fees. Probate courts should consider approving fees in excess of time expended where the fee is justified by the responsibility undertaken, the results achieved, the difficulty of the task, and the size of the matter. Conversely, a mere record of time expended should not warrant an award of fees in excess of the worth of the services performed.

In many cases, it may be helpful for probate courts to require a fiduciary, at the time of appointment or first appearance in a matter, to disclose the basis for fees (e.g., a rate schedule). Probate courts may also direct that a fiduciary submit a projection of the annual fees within 90 days of appointment, disclose changes in the fee schedule and estimate, seek authorization for fee-generating actions not included in the appointment order, and provide a detailed explanation for any fees claimed.<sup>82</sup>

The services should be rendered in the most efficient and cost-effective manner feasible. For example, the proper delegation of work to paralegals, acting under the supervision of an attorney, reduces the cost of services, and a requested allowance for such services should be approved.<sup>83</sup> Probate courts should not penalize firms that reduce expenses by prudently employing paralegals or using other appropriate methods by disallowing these expenses.

In most estates, the fiduciary will retain an attorney to perform necessary legal services. The dual appointment of one person as both fiduciary and attorney may result in significant savings for the estate and should not be discouraged by denial of compensation, though the fees requested as fiduciary and as attorney should be differentiated and must still be reasonable. In most estates, the fiduciary will retain an attorney to perform necessary legal services. The dual appointment of one person as both fiduciary and attorney may result in significant savings for the estate and should not be discouraged by denial of compensation, though the fees requested as fiduciary and as attorney should be differentiated and must still be reasonable. When a person acts both as fiduciary and attorney, probate courts should be alert for the possibility that there may be a conflict of interest and that having the fiduciary serve in a dual capacity will best meet the needs of the person, trust, or estate.<sup>84</sup>

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<sup>81</sup> See generally MODEL CODE OF PROF'L CONDUCT R. 1.5(a) (2007).

<sup>82</sup> THIRD NATIONAL GUARDIANSHIP SUMMIT, *supra*, note 6, at Standard 3.1, 2012 UTAH L.Rev., at 1193-1194.

<sup>83</sup> See, e.g., CAL. PROB. CODE § 10811(b) (West 1993).

<sup>84</sup> See NATIONAL GUARDIANSHIP ASSOCIATION, STANDARDS OF PRACTICE Standard 16(2) (J). [http://www.guardianship.org/guardianship\\_standards.htm](http://www.guardianship.org/guardianship_standards.htm)

**NATIONAL PROBATE COURT STANDARDS**

When requesting fees in excess of a schedule or guideline, the attorney or fiduciary has the burden of proving the reasonableness of the fees requested. Probate courts may consider factors that made the provision of services more complicated, including the threat or initiation of litigation; the operation of a business; or extensive reporting and monitoring requirements. Improper actions by a fiduciary or a lawyer may justify a reduction or denial of compensation.<sup>85</sup>

Generally, probate courts are not involved in reviewing fees in unsupervised estates unless the matter is appropriately brought before the court. In extreme cases, however, even though the administration is unsupervised, a probate court may review compensation on its own motion where the personal representative is the drafting attorney or the will contains an unusually generous fee provision. Similarly, probate courts may review fees if the court observes a pattern of fee abuse.

In supervised administration of estates, unless all affected parties consent, attorneys and fiduciaries seeking payment of fees from an estate should submit to the probate court sufficient evidence to allow it to make a determination concerning compensation. [See Standard 3.2.1 for a discussion of the distinction between these two types of estate administration.]

Fee disputes can be particularly acrimonious and can involve litigation costs eventually borne by the estate or the parties far in excess of the amount in controversy. Probate courts should identify, encourage and provide opportunities for early settlement or disposition of these disputes through settlement conferences and alternative dispute resolution procedures.

## **STANDARD 3.1.5 ACCOUNTINGS**

- A. As required, probate courts should direct fiduciaries to provide detailed accountings that are complete, accurate and understandable.**
- B. Probate courts should have the ability to review fiduciary accountings as required.**

### **COMMENTARY**

Unless specified by statute, the format for accountings should be established by statute, the probate court or the state Administrative Office of the Courts. An accounting should include all assets, the distribution of those assets, the payments of debts and taxes, and all transactions by the fiduciary during the administration of the estate. Categorical reporting of expenditures should not be permitted in order to lessen opportunities for theft or fraud. Receipts for all expenditures and documentation of all revenue should be provided upon request. While requiring detailed information, the schedules and text of the accountings (including the formats used) should be readily accessible and understandable to all interested persons, particularly those persons with limited experience with and knowledge of estates and trusts. Although the court reviews many accountings, others are prepared for beneficiary use and review in unsupervised estates and trusts. Several jurisdictions have developed forms for fiduciaries to use in providing accountings including DC, FL, ID, OH, and PA.<sup>86</sup>

Unless waived, the fiduciary should distribute copies of status reports and accountings to all persons interested in the estate. The accounting entity, not the probate court, should have the responsibility for distributing the accountings to interested persons, and should incur the cost as an expense of administration. Probate court staff should review accountings individually or through an automated review process if the accounting is submitted electronically. [See Standard 3.3.17]

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<sup>85</sup> See MCGOVERN, *supra*, note 78, at 626-27.

<sup>86</sup> See e.g., D.C. Courts, *Search Court Forms*, <http://www.dccourts.gov/internet/formlocator.jsf> (Jun. 25, 2012); Fla. Courts, *E-Filing Forms*, <http://www.17th.flcourts.org/index.php/component/content/article/34-17th-fl-courts/166-e-filing-forms> (Jun. 25, 2012); The Philadelphia. Courts, Forms Center, <http://www.courts.phila.gov/forms> (Jun. 25, 2012). See also Standard 3.3.16.

## **PUBLIC GUARDIANS**



## PUBLIC GUARDIANS

### **NRS 253.150 Establishment of office by county commissioners; appointment, designation or contract; compensation.**

1. The board of county commissioners of each county shall establish the office of public guardian.
2. The board of county commissioners shall:
  - (a) Appoint a public guardian, who serves at the pleasure of the board, for a term of 4 years from the day of appointment;
  - (b) Designate an elected or appointed county officer as ex officio public guardian;
  - (c) Pursuant to the mechanism set forth in [NRS 244.1507](#), designate another county officer to execute the powers and duties of the public guardian;
  - (d) Except in a county whose population is 100,000 or more, contract with a private professional guardian to act as public guardian; or
  - (e) Contract with the board of county commissioners of a neighboring county in the same judicial district to designate as public guardian the public guardian of the neighboring county.
3. The compensation of a public guardian appointed or designated pursuant to subsection 2 must be fixed by the board of county commissioners and paid out of the county general fund.
4. As used in this section, "private professional guardian" means a person who receives compensation for services as a guardian to three or more wards who are not related to the person by blood or marriage. The term does not include:
  - (a) A governmental agency.
  - (b) A banking corporation, as defined in [NRS 657.016](#), or an organization permitted to act as fiduciary pursuant to [NRS 662.245](#) if it is appointed as guardian of an estate only.
  - (c) A trust company, as defined in [NRS 669.070](#).
  - (d) A court-appointed attorney licensed to practice law in this State.(Added to NRS by 1977, 486; A [1989, 1041](#); [2003, 804](#); [2007, 2489](#); [2009, 593](#))

### **NRS 253.160 Bond; oath.**

1. Upon taking office, a public guardian shall file with the county clerk a general bond in an amount fixed by the board of county commissioners payable to the State of Nevada with sureties approved by the board of county commissioners. The premium for the bond shall be paid from the general funds of the county and be conditioned upon the public guardian's faithful performance of his or her duties.
  2. The general bond and oath of office of a public guardian are in lieu of the bonds and oaths required of private guardians.
  3. The oath and bond of an elected or appointed public officer designated public guardian or designated to execute the powers and duties of the public guardian pursuant to paragraph (b) or (c) of subsection 2 of [NRS 253.150](#) are in lieu of the bonds and oaths required of private guardians. The court may require such a designee to execute a separate bond for any guardianship in the manner prescribed in [NRS 159.065](#).
- (Added to NRS by 1977, 486; A
- [1989, 1041](#)
- ;
- [2009, 594](#)
- )

### **NRS 253.170 Vacancy.**

1. If a vacancy occurs in the office of public guardian before the expiration of a normal term, the vacancy shall be filled promptly by the board of county commissioners.
  2. The board of county commissioners may designate any qualified person to serve as acting public guardian until a vacancy in such office is filled.
- (Added to NRS by 1977, 486; A
- [2003, 805](#)
- )

**NRS 253.175 Deputies: Appointment; oath; recording of appointment; liability of public guardian; compensation.**

1. A public guardian shall appoint one or more deputies to perform the duties of the public guardian in his or her absence. A deputy so appointed may transact all official business relating to the office of the public guardian to the same extent as the public guardian, except that the deputy is not authorized to employ or terminate the employment of subordinates in the office. Before entering upon the discharge of his or her duties, each deputy must take and subscribe to the constitutional oath of office. The appointment of a deputy must not be construed to confer upon that deputy policymaking authority for the office of the county public guardian or the county by which the deputy is employed.

2. Each appointment must be in writing and recorded, with the oath of office of that deputy, in the office of the county recorder. Any revocation or resignation of an appointment must be recorded in the office of the county recorder.

3. The public guardian is responsible on his or her official bond for any official malfeasance or nonfeasance of his or her deputies and may require a bond for the faithful performance of the official duties of his or her deputies.

4. The compensation of a deputy public guardian must be fixed by the board of county commissioners and paid out of the county general fund.

(Added to NRS by [2003, 804](#); A [2005, 683](#); [2007, 2489](#))

**NRS 253.180 Subordinates, consultants and assistants.** Within the limits of appropriations for his or her office, a public guardian may:

1. Employ such subordinates, including, without limitation, deputies appointed pursuant to [NRS 253.175](#), as authorized by the board of county commissioners and as necessary for the proper performance of his or her duties.

2. Contract for the services of consultants or assistants.

(Added to NRS by 1977, 486; A [2003, 805](#))

**NRS 253.190 Records.** A public guardian shall:

1. Keep financial and other appropriate records concerning all cases in which he or she is appointed as an individual guardian; and

2. Retain:

(a) All such financial records for each case for at least 7 years after the date of the transaction that is recorded in the record; and

(b) All other records for each case for at least 7 years after the termination of the guardianship pursuant to [chapter 159](#) of NRS.

(Added to NRS by 1977, 487; A [2009, 2271](#))

**NRS 253.200 Qualifications of person for whom public guardian may be appointed; petition for appointment; accounting and report to be filed by temporary guardian in certain circumstances.**

1. A resident of Nevada is eligible to have the public guardian of the county in which he or she resides appointed as his or her temporary individual guardian pursuant to [NRS 159.0523](#) or [159.0525](#).

2. A resident of Nevada is eligible to have the public guardian of a county appointed as his or her permanent or general individual guardian if the proposed ward is a resident of that county and:

(a) The proposed ward has no relative or friend suitable and willing to serve as his or her guardian; or

(b) The proposed ward has a guardian who the court determines must be removed pursuant to [NRS 159.185](#).

3. A person qualified pursuant to subsection 1 or 2, or anyone on his or her behalf, may petition the district court of the county in which he or she resides to make the appointment.

4. Before a petition for the appointment of the public guardian as a guardian may be filed pursuant to subsection 3, a copy of the petition and copies of all accompanying documents to be filed must be delivered to the public guardian or a deputy public guardian.

5. Any petition for the appointment of the public guardian as a guardian filed pursuant to subsection 3 must include a statement signed by the public guardian or deputy public guardian and in substantially the following form:

The undersigned is the Public Guardian or a Deputy Public Guardian of ..... County. The undersigned certifies that he or she has received a copy of this petition and all accompanying documents to be filed with the court.

6. A petition for the appointment of the public guardian as permanent or general guardian must be filed separately from a petition for the appointment of a temporary guardian.

7. If a person other than the public guardian served as temporary guardian before the appointment of the public guardian as permanent or general guardian, the temporary guardian must file an accounting and report with the court in which the petition for the appointment of a public guardian was filed within 30 days of the appointment of the public guardian as permanent or general guardian.

8. In addition to [NRS 159.099](#), a county is not liable on any written or oral contract entered into by the public guardian of the county for or on behalf of a ward.

9. For the purposes of this section:

(a) Except as otherwise provided in paragraph (b), the county of residence of a person is the county to which the person moved with the intent to reside for an indefinite period.

(b) The county of residence of a person placed in institutional care is the county that was the county of residence of the person before the person was placed in institutional care by a guardian or agency or under power of attorney.

(Added to NRS by 1977, 487; A [1999, 920](#); [2007, 2490](#); [2009, 2272](#))

**NRS 253.210 Powers, duties, rights and responsibilities.**

1. A person appointed as public guardian or designated as acting public guardian succeeds immediately to all powers and duties of the individual guardianships created by appointments of the public guardian as guardian for particular wards.

2. In the administration of any guardianship to which the public guardian is appointed pursuant to subsection 1, the public guardian has all powers, duties, rights and responsibilities contained in titles 12 and 13 of NRS.

(Added to NRS by 1977, 487; A 1979, 994)

**NRS 253.215 Legal assistance.**

1. When necessary for the proper administration of a guardianship, a public guardian may:

(a) Retain an attorney to assist him or her if the attorney practices law in the county and is qualified by experience and willing to serve or rotate this employment among attorneys who practice law in the county and who are qualified by experience and willing to serve; or

(b) Upon approval of the board of county commissioners, obtain assistance from the office of the district attorney of the county.

2. Any attorney's fee must be paid from the assets of the ward.

(Added to NRS by 1983, 1597; A [2007, 2491](#))

**NRS 253.220 Investigation of financial status, assets and personal and family history of person for whom public guardian has been appointed.** A public guardian may investigate the financial status, assets and personal and family history of any person for whom the public guardian has been appointed as guardian, without hiring or being licensed as a private investigator pursuant to [chapter 648](#) of NRS. In connection with the investigation, the public guardian may require any ward or any spouse, parent, child or other kindred of the ward to give any information and to execute and deliver any written requests or authorizations necessary to provide the public guardian with access to records, otherwise confidential, which are needed by the public guardian. The public guardian may obtain information from any public record office of the State or any of its agencies or subdivisions upon request and without payment of any fees.

(Added to NRS by 1977, 487; A [2007, 2491](#); [2009, 2273](#))

**NRS 253.230 Allocation of costs incurred in appointment proceedings and administrative costs.**

1. Except as otherwise provided in [NRS 253.215](#), if a public guardian is appointed as an individual guardian the costs incurred in the appointment proceedings and the administrative costs of the guardian's services are not chargeable against the income or the estate of the ward unless the court determines at any time that the ward is financially able to pay all or part of the costs.

2. The financial ability of the ward to pay such costs shall be measured according to his or her ability to compensate a private guardian. This ability depends upon:

- (a) The nature, extent and liquidity of the ward's assets;
- (b) The ward's disposable net income;
- (c) The nature of the guardianship;
- (d) The type, duration and complexity of the services required; and
- (e) Any other foreseeable expenses.

(Added to NRS by 1977, 487; A 1983, 1597)

**NRS 253.240 Value of guardian's services allowable as claim against ward's estate; deposit of money received by public guardian.** The reasonable value of a public guardian's services rendered without cost to a ward shall be allowed as a claim against the estate of the ward upon the approval of the court. Money received in payment of a claim against the estate of the ward shall be deposited by the public guardian to the credit of the county general fund or any other county fund, as determined by the board of county commissioners.

(Added to NRS by 1977, 487; A [2007, 2491](#))

**NRS 253.243 Request for advance of money to pay expenses of guardianship; payment of advances; reimbursement of advances from assets of estate of ward.**

1. A public guardian may file with the board of county commissioners a request for an advance of money to pay necessary expenses incurred, or to be incurred, by the public guardian during a guardianship. The board may approve or deny the request. If the board approves the request, the board shall determine the amount to be advanced and advance that amount to the public guardian.

2. The board of county commissioners of any county may establish a revolving fund to be used to provide advances to the public guardian pursuant to subsection 1. If the board has established a revolving fund pursuant to this subsection, the board shall pay any advance approved pursuant to subsection 1 from the revolving fund to the extent that there is sufficient money in the revolving fund to pay the advance. After the money in the revolving fund has been exhausted, the board shall pay any advance, or any part of an advance, approved by the board from the general fund of the county. If the board has not established a revolving fund pursuant to this subsection, the board shall pay any advance approved pursuant to subsection 1 from the general fund of the county.

3. The public guardian must reimburse the county for any advance provided pursuant to subsection 1 from the assets of the estate of the ward as soon as, and to the extent that, the assets become available. If the board of county commissioners has established a revolving fund pursuant to subsection 2, the board shall deposit in the revolving fund the money obtained from a reimbursement provided pursuant to this subsection. If the board has not established a revolving fund pursuant to subsection 2, the board shall deposit in the general fund of the county the money obtained from a reimbursement provided pursuant to this subsection.

(Added to NRS by [2007, 2486](#))

**NRS 253.245 Reports and budgets to and investigations by board of county commissioners.**

1. The board of county commissioners may:

- (a) Establish regulations for the form of any reports or budgets made by the public guardian.
- (b) Review reports or budgets submitted to the board by the public guardian.

2. The board of county commissioners may at any time investigate any guardianship for which the public guardian has been appointed.

(Added to NRS by [2007, 2487](#))

**NRS 253.250 Termination of appointment.** The court may, at any time, terminate the appointment of a public guardian as an individual guardian of a person or of an estate upon petition by the ward, the public guardian, any interested person or upon the court's own motion if:

- 1. It appears that the services of the public guardian are no longer necessary; or
- 2. After exercising due diligence, the public guardian is unable to identify a source to pay for the care of the ward and, as a consequence, continuation of the guardianship would confer no benefit upon the ward.

(Added to NRS by 1977, 487; A [2009, 2273](#))

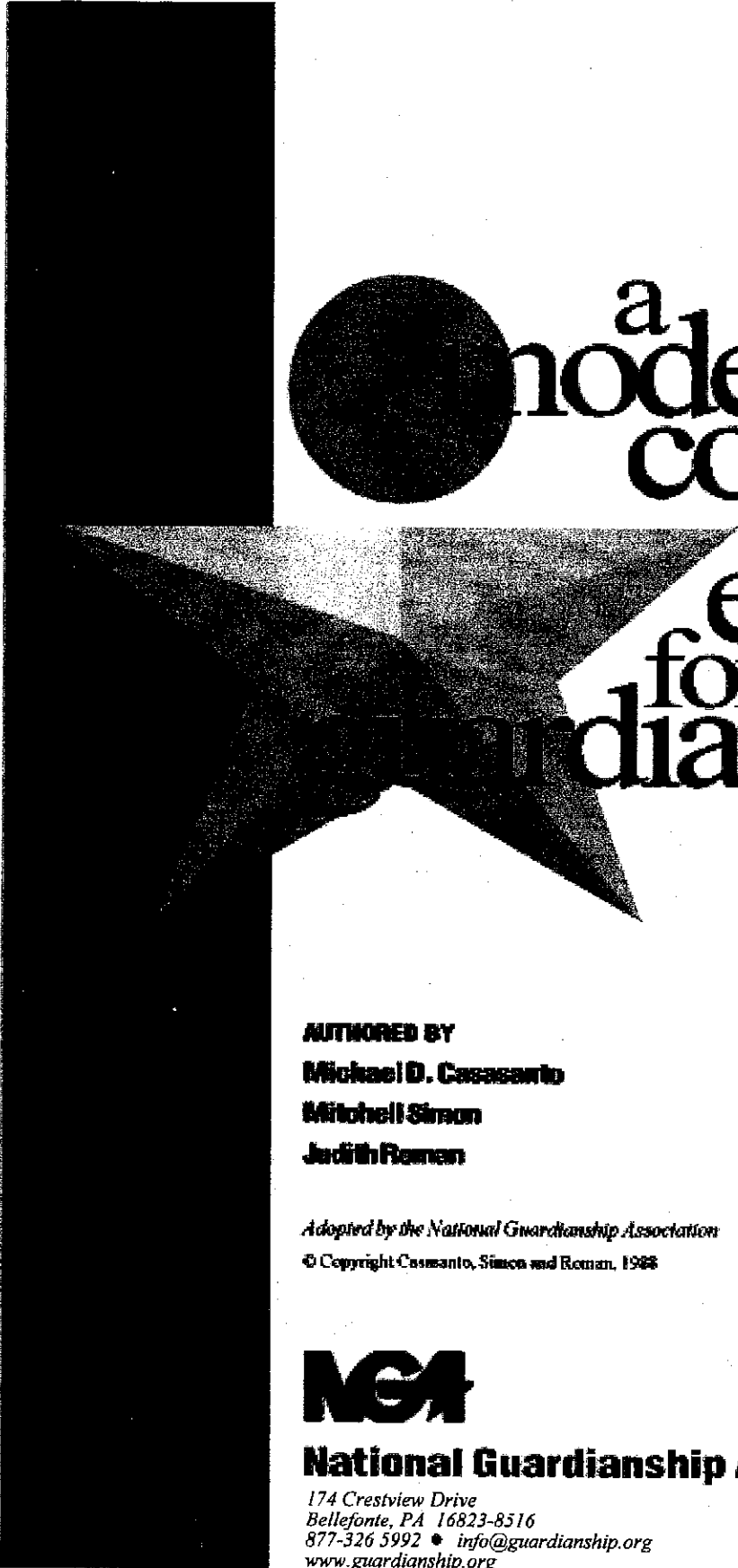
## **PRIVATE GUARDIANS**

**HANDOUTS FOR THE PRESENTATION BY SUSAN HOY AND KIM SPOON  
AUGUST 17, 2015**

**EXHIBIT 1            A MODEL CODE OF ETHICS FOR GUARDIANS**

**EXHIBIT 2            GUARDIANSHIP-AN OVERVIEW USED BY GUARDIANSHIP  
SERVICES OF NEVADA, INC. FOR INSERVICES AND SEMINARS**

**EXHIBIT 3            AN EXAMPLE OF VARIOUS WORKING FORMS USED BY NEVADA  
GUARDIAN SERVICES' STAFF FOR CASE MANAGEMENT AND  
TRACKING PURPOSES**



a  
model  
code  
of  
ethics  
for  
guardians

**AUTHORED BY**

**Michael D. Casasanto**

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*Adopted by the National Guardianship Association*

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## **L Introduction**

The concept of guardianship has a very early origin. The literature from Rome at the time of Cicero notes procedures to protect the property of incompetent persons; no such provisions were made for protection of the person. Under our Anglo-Norman legal tradition, the King, acting under the doctrine of *parens patriae*, was the protector of his subjects. While guardianship in England applied both to the person and the estate, the primary purpose of the power was to prevent incompetent persons from becoming public charges or squandering their resources to the detriment of their heirs.<sup>1</sup>

It is not surprising in light of this genesis that reform of the basic process by which guardianships are imposed has been a relatively recent development<sup>2</sup>. While much scholarly and judicial time has been devoted to the debate over the procedural protections to be afforded incompetent persons prior to imposition of a guardianship, insufficient work has been done to guide the actions of guardians who are charged with the enormous responsibility of substituting their judgment for that of another human being. The purpose of the Model Code is to suggest ethical and legal standards designed to simplify and improve this decision making process.

Since the Model Code is designed to address the guardian-ward relationship, we have assumed that the underlying adjudication of incompetency is accurate and made in accordance with procedural due process<sup>3</sup>. Therefore, the question of whether a guardianship should have been imposed at all is beyond the scope of this article<sup>4</sup>.

We have not, however, assumed that all guardianships are necessarily limited to those functions that the individual is incapable of actually performing, since "limited guardianship" is not the norm in all states. In a survey conducted in 1984, Casasanto, Newman and Saunders found that the forty-one states responding to their survey, thirteen had no provision for limited guardianship<sup>6</sup>. Therefore, the Model Code provides a framework for making decisions both on behalf of individuals who are deemed incompetent under a statute providing for plenary guardianship but who clearly retain the functional ability to make certain decisions, and for individuals, with a narrowly limited guardianship. This distinction is significant since the ability of the ward to participate in a decision making process will vary depending on the situation. For example, the Model Code suggests that an ethical guardian should look more closely at, and possibly defer to, the expressed wishes of a ward with an overbroad guardianship in those areas where functional competence still exists. Based on the above, the Code, in some situations, adopts what may on first blush look like an anomalous position by mandating deference to the currently expressed wishes of a legally incompetent person. We believe, however, this is mandated by the important ethical precept that the individual's rights of self-determination should be observed whenever possible.

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1. S. Brakel & R. Rock, *The Mentally Disabled and the Law* 250 (Rev. ed. 1971).
  2. See, e.d., Frolik, "Plenary Guardianship: An Analysis, A Critique and a Proposal for Reform," 23 *Ariz. L. Rev.* 599 (1981). During this session of Congress, the late Congressman Claude Pepper introduced a bill seeking to establish federal procedural protections in guardianship cases. The National Guardianship Rights Act H.R. 1702, 101st Cong., 1st Sess., 135 Cong. Rec. E 1071-01 (1989).
  3. For a thorough discussion of some of the procedural questions still presented by many current guardianship statutes, see, for example, Frolik, *supra* note 2, at 599; "Horstman, Protective Services for the Elderly: The Limits of *Parens Patriae*," 40 *Mo. L. Rev.* 215 (1975).
  4. For a guide to assessing when an individual needs a guardian, see, for example, Casasanto, Covert, Saunders & Simon, "Individual Functional Assessment: An Instruction Manual," 11 *Mental and Physical Disability L. Rep.* 670 (1987).
  5. Frolik, *supra* note 2; Casasanto, Newman, Saunders, *Limited Guardianship: A State Survey (1984)* (Copies available from the New Hampshire Office of Public Guardian, 6 White Street, Concord, NH 03301).
  6. Casasanto, Newman, Saunders, *supra* note 4.



Additionally, we have tried to keep the requirements of the Code limited to fundamental precepts so that it is applicable to family and volunteer guardians, as well as to guardianship organizations. Public guardians and similar organizations should certainly meet the requirements of this Code, but may need to adopt further standards in light of the particular dangers and issues presented in these types of arrangements.<sup>7</sup>

## **A. Guardianship Models**

Scholars and courts have debated at some length whether a guardian should behave like a parent and act in the ward's best interest or attempt to act as a surrogate and make the decision that most closely approximates the decision the ward would have made in the situation at hand. This debate is best put in perspective by closely evaluating the underlying cause of the disability. Only by understanding the current and past functional status of the ward can a guardian apply the proper standards to the decision. The following examples, taken from the files of the New Hampshire Office of Public Guardian, may assist the reader in understanding the methodology of decision making which applies to the major groups in need of guardianship. Individuals with impairments other than those described below can be evaluated by reference to the most closely analogous group.

**CASE 1** – Mary L. is a 49-year-old resident of a state institution for the retarded. Her current diagnosis is profound mental retardation with a convulsive disorder. Mary was considered to be developing normally until the age of four when she reportedly “struck her head falling down stairs.” Shortly thereafter she had a seizure. Seizure medications were administered; however, she failed to tolerate them. Due to the high degree of care needed, the constant monitoring of her blood levels, and subsequent adjustments in type and dosage of medication, Mary was placed in an institution at the age of five by her family. There has been no family contact since shortly after Mary's placement in the institution. At the present time, Mary can indicate certain preferences for various types of food, but has demonstrated no ability to communicate preferences relating to more complex decisions.

**CASE 2** – John L. is a highly intelligent 29-year-old man diagnosed as having bipolar disorder. The preferred course of treatment for John is the drug Lithium Carbonate. When John is taking his prescribed medication, he is a highly functional member of society. He is employed by a computer firm and earns a high salary; he also has an excellent relationship with his family and carries on an active social life. He maintains close contact with his psychiatrist and is reported to have excellent insight into his illness. However, two to three times per year, John discontinues taking his medication. While the reasons for this are unclear, this non-compliance leads to extremely bizarre and erratic behaviors and often concludes with a period of involuntary hospitalization. Examples of such behaviors include John's belief that he is an “operative” in the Central Intelligence Agency who must “clean up” the drug trafficking in New York City. At times John carries firearms and dresses in army fatigues in an attempt to “hunt down” drug dealers. To maintain his “investigative” efforts, John spends money at exorbitant rates, oftentimes writing bad checks and using personal and employer credit cards well beyond credit limits. These behaviors typically bring him to the attention of the police and result in involuntary institutionalization and treatment. Once John receives sufficient medication, he expresses remorse for his behavior and asks that he not be allowed to cease taking his medication in the future. These manic phases have taken a serious toll on John's professional, social and financial life. Nevertheless during the beginning phases of medication noncompliance, John will not heed anyone's requests to continue taking his medication as prescribed.

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7. *Surrogate Decision Making for Adults: Model Standards to Ensure Quality Guardianship and Representative Payeeship Services*, Subcomm. on Housing and Consumer Interests of the House Select Comm. on Aging, 100th Cong., 1st Sess. (Comm. Print 1988).



**CASE 3** – Alice H. is a 94-year-old resident of a county nursing home. She raised a family of four children and was an active and vocal participant in community projects. Four years ago, prior to being admitted to the nursing home, Alice fell and suffered a broken hip. She refused all treatment for her condition and consequently became bedridden. Friends and various social service providers ensured Alice's well-being until the combination of her physical and mental condition made this task overwhelming. In 1980 she was admitted to a county nursing home despite her protests. Soon after her admission, she began to suffer memory loss and seemed to lose her sense of humor. The staff attributed this to the stress caused by her transfer. However, the deficits became worse and after a thorough examination, Alice was diagnosed as having Alzheimer's Disease. She is now in the third stage of the disease and has virtually no ability to make decisions for herself.

## 1. Best Interest Standard

The Best Interest Standard mirrors the view that the guardian's duties are akin to those imposed on a parent. Under this standard, the charge of the guardian is to make an independent decision on behalf the ward which will be in the ward's best interest as defined by more objective, societally shared criteria<sup>8</sup>. This type of decision making is most appropriate for individuals without previous competency. The profoundly retarded individual described in Case 1, above, seems to meet this standard.

In developing the Model Code, we have been guided by our belief that the use of the Best Interest Standard is a last resort, to be utilized only in cases where there is no previous competency or where the ward gave no indication of preference which could guide the guardian in making the decision. The position finds support in the report of the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research (hereinafter referred to as "Report of the President's Commission")<sup>9</sup>. The Commission stated that:

[When] possible, decision making for incapacitated patients should be guided by the principle of substitute judgment, which promotes the underlying values of self-determination and well-being better than the Best Interest Standard does. When a patient's likely decision is unknown, however, a surrogate decision maker should use the Best Interest Standard and choose a course that will promote the patient's well-being as it would probably be conceived by a reasonable person in the patient's circumstances.<sup>10</sup>

It is important to understand that even in the situation described in Case 1, we do not believe it is ethical to simply use the Best Interest Standard to authorize custodial care and protection. The last decade has reflected a growing belief that all individuals are entitled to assistance in developing their abilities and capabilities.<sup>11</sup> We have tried to incorporate this belief in the Model Code by reflecting an ethical requirement for a guardian to apply the Best Interest Standard in accord with the goal of providing individualized habilitation and education.

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8. Compare Dussult, "Guardianship and Limited Guardianship in Washington State: Application for Mentally Retarded Citizens," 13 *Conz. L. Rev.* 585 (1978) with Gauvey, Leviton, Shuger & Sykes, "Informed and Substitute Consent to Health Care Procedures; a Proposal for State Legislation," 15 *Harv. J. Legis.* 431 (1978); See also *Matter of Conroy*, 98 N.J. 321, 486 A.2d 1209 (1985).

9. President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research, *Deciding to Forego Life-Sustaining Treatment*, at 1341 (1983) (hereinafter referred to as Report of the President's Commission).

10. *Id.* at 136.

11. See *Pennsylvania Assn. for Retarded Children v. Pennsylvania*, 334 F. Supp. 1257 (E.D. Pa. 1971); Frolik, *supra* note 2.



It is now likely in many states that an individual like the one described in Case 1 will be able to live in the community, with the support from various agencies and programs and with the aid of a guardian who, in the absence of family, will be responsible for making best interest decisions for the individual. Such a disabled person is likely to have changing needs as the years go by, and may have expanding capabilities, based on the level of habilitative services available in the community. A guardian in this situation would need to monitor services being provided, develop an on-going relationship with service providers and attempt to maximize opportunities for the ward's personal growth. Such a ward may benefit from a series of placements, depending upon the success of habilitation efforts, each less restrictive than the last, and each allowing more independent functioning than the last. It is incumbent on the guardian for such a developmentally disabled person to encourage personal growth, rather than simply allow the ward to remain static.<sup>12</sup>

## **2. Substituted Judgement**

The principal of substituted judgement requires the surrogate to attempt to reach the decision the incompetent person would make if that person were able to choose<sup>13</sup>. Use of this model for decision making allows the guardian to make decisions in accord with the incompetent person's own definition of well-being. It is critical to note that this model can only be used if the guardian, through available sources of information, is able to determine the prior preferences of the ward<sup>14</sup>. The Model Code, based as it is on the belief that this type of decision making should be utilized if possible, imposes a duty on guardians to attempt to find this information.

Since this model of decision making is ethically preferred, and since a guardian may not have had a prior relationship with the ward, the guardian will often need to look to others for assistance in learning about the ward's preferences. Relatives, friends, caretakers, and other interested persons may provide some insight as to how the ward would feel or behave in a certain set of circumstances. The ward's own behavior and choices prior to the onset of the incapacity may provide some clues, if known or discoverable. The ward, even if unable to participate fully, may indicate certain preferences by verbal or nonverbal communications. To the greatest extent possible, the guardian must exercise substituted decision making in light of all that he or she can learn about the ward's prior feelings and preferences, and should decide based on how the ward would decide if able. It is essential, though, to recognize that the guardian is the only one who makes the decision, and the guardian is the one who bears the ultimate responsibility for the decision made on behalf of the ward. Substituted judgments made after consideration of all available information about the ward are more likely to be decisions which the ward would make if able.

This situation is best understood by reference to Case 3 described above. In this case, the ward was certainly competent prior to the progression of her Alzheimer's Disease and provided much available information on her thought process. Guardians should ethically defer to this in most situations.

## **B. Intermittent Incompetence**

Case 2 presents one of the most difficult dilemmas a guardian may face, that of the individual who has a cyclical impairment such as severe depression. The problem is that neither model of guardianship offers a satisfactory set of principals to guide the guardian.

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12. See *Guardianship of the Mentally Impaired: A Critical Analysis*, National Center for Law and the Handicapped (May, 1977).

13. Report of the President's Comm., *supra* note 8, at 132.

14. *Id.* at 133.



Certainly, in this type of case the best interest model does not apply; the individual described in Case 2 has expressed his wishes on numerous occasions. Similarly, the substituted judgment model is not wholly applicable, since the individual is at times functionally, though not legally, competent. Therefore, the ethical principles favoring self-determination seem to dictate that the wishes expressed by the person be adhered to if a person is in a lucid state, despite the judicial determination that he is incompetent.<sup>15</sup>

The Model Code recognizes these situations and reflects the conclusion that a guardian is obligated, in limited situations, to respect the wishes of the ward even if contrary to the guardian's notion of best interest. One could argue that this principle is really just an application of the principle of substituted judgment, with the judgment being based on present competent statements, rather than past expressions. It matters not which concepts are used; the key point is to understand that the Model Code is based in part on the belief that self-determination and encouragement of growth of the ward through increased participation in decision making whenever possible are ethically required.

The above view may create some thorny problems for the guardian. For example, in a state that grants only plenary guardianships, the court would seem to be justified in holding the guardian responsible for the consequences of any decision within the guardian's power. If the guardian defers to the wishes of a ward, resulting in a decision contrary to that thought by the guardian to be the ward's best interest, the guardian may face potential liability. We believe, however, this is not a problem, since even in states with plenary guardianship statutes, there seems to be little dispute that the actual decision is informed by the concept of substituted judgement.<sup>16</sup>

## II. The Model Code

### Preamble

In its purest form, guardianship represents an exercise of the state's *parens patriae* authority to protect individuals who are incapable of making decisions for themselves. In theory, the concept of guardianship is rooted in the moral duty of beneficence. Under this theory, individuals subject to guardianship are entitled to enhanced protection from the state. That is, since the imposition of guardianship involves the removal of fundamental rights from the individual ward, the guardian is required to exercise the highest degree of trust, loyalty and fidelity in making decisions on behalf of the ward. Indeed, these requirements can be viewed as a kind of *quid pro quo* due the ward for such a fundamental imposition on his or her liberty and autonomy. This obligation for enhanced protection has been increasingly recognized in recent years by the on-going revisions to state guardianship statutes which require additional procedural protections for the proposed ward in guardianship hearings and also by the growing trend toward limited guardianship. Such changes are also the result of reported, wide spread abuses in the guardianship process as well as the increased use of guardianship—especially public guardianship—for elderly citizens who, due to advances in medical technology, are living longer lives, but are increasingly subject to chronic illnesses or conditions that oftentimes result in periods of incapacity prior to death.

In its' widest application, the imposition of guardianship bestows grave and far-reaching authority upon the person appointed as guardian. The authority of the guardian may encompass the control of

15. This same analysis may apply to individuals whose guardianships are overbroad due to the lack of a "limited" guardianship statute. See *supra* notes 5 and 6. On issues in which the ward is functionally able to make an informed decision, the same ethical principles seem to require deference to the ward despite the adjudication of incompetency. *Id.*

16. See *supra* notes 7 and 8.



the ward's bodily integrity, place of residence and personal finances. The potential scope of this authority is vast and requires the guardian to act with the greatest degree of care and circumspection. The potential for abuse of this power, whether deliberate or well-meaning, must be appreciated, acknowledged and guarded against. The guardian is in all cases a representative of the interests of the ward and shall represent only the interests of the ward.

The purpose of this Code of Ethics is to provide principles and guidelines for guardians. Since the primary duty of a guardian is to make decisions on behalf of a ward, the first section of this Code addresses general guidelines for decision making. In subsequent sections, specific subject areas are examined. Inasmuch as the areas in which a guardian may be required to make decisions are so broad, it is not possible to address all possible situations in this Code. Rather, the reader should refer to Rule 1 for guidance in situations not specifically addressed in the Code.

### **Rule 1 - Decision-Making: General Principles:**

**A GUARDIAN SHALL EXERCISE EXTREME CARE AND DILIGENCE WHEN MAKING DECISIONS ON BEHALF OF A WARD. ALL DECISIONS SHALL BE MADE IN A MANNER WHICH PROTECTS THE CIVIL RIGHTS AND LIBERTIES OF THE WARD AND MAXIMIZES INDEPENDENCE AND SELF-RELIANCE.**

- 1.1 The guardian shall make all reasonable efforts to ascertain the preferences of the ward, both past and current, regarding all decisions which the guardian is empowered to make.
- 1.2 The guardian shall make decisions in accordance with the ascertainable preferences of the ward, past or current, in all instances except those in which a guardian is reasonably certain that substantial harm will result from such a decision.
- 1.3 When the preferences of the ward cannot be ascertained, a guardian is responsible for making decisions which are in the best interests of the ward.
- 1.4 The guardian shall be cognizant of his or her own limitations of knowledge, shall carefully consider the views and opinions of those involved in the treatment and care of the ward, and shall also seek independent opinions when necessary.
- 1.5 The guardian must recognize that his or her decisions are open to the scrutiny of other interested parties and, consequently, to criticism and challenge. Nonetheless, the guardian alone is ultimately responsible for decisions made on behalf of the ward.
- 1.6 A guardian shall refrain from decision making in areas outside the scope of the guardianship order and, when necessary, assist the ward by ensuring such decisions are made in an autonomous fashion.

**Comment:** Decision making is the fundamental responsibility of a guardian. At the inception of, and for the duration of the guardianship, the guardian is empowered to make legally binding decisions on behalf of the ward. While statutes governing guardianship vary from state to state, the obligation of a guardian to make reasoned and principled decisions remains constant. The primary component of such decisions is contained in the duty of the guardian to ascertain the preferences, opinions, and beliefs (hereinafter referred to solely as "preferences") of the ward and to have these preferences reflected in the decision that is made. The ability of a guardian to ascertain the preferences of the ward may vary according to both the type and nature of the ward's disability. Indeed, it is sometimes not possible to



obtain a reliable indication of the past or present position of the ward concerning the decision at hand. Nevertheless, the guardian has an affirmative obligation to make a diligent effort to involve the ward in the decision making process. This process begins with a thorough investigation of the historical preferences of the ward. Clear statements of choice regarding, for example, medical care are highly desirable but are, in point of fact, rarely available. More often the guardian must go beyond this and extrapolate from information obtained concerning the values and lifestyle of the ward.

When making a decision on behalf of a ward, the guardian also has an obligation to thoroughly investigate the current preferences of the ward. A prerequisite to accomplishing this is the ability to conduct a careful interview of the ward. This requires the guardian to be educated and trained in the field of disabilities as well as in interview techniques, whenever possible. Family members, friends or other non-professional guardians who do not have detailed knowledge of interview techniques should attempt to utilize people with such expertise to acquire the necessary information. The ethical obligations involved in the guardian/ward relationship are discussed in the next section of this Code. However, a fundamental principle of this relationship is that the guardian make every effort to familiarize him/herself with the ward and develop a personal relationship in the event one does not already exist. Limitations on the involvement of the ward in decisions are ethically justifiable only in limited circumstances as discussed herein.

The obligation to inform and involve the ward in decision making increased in direct proportion to the significance of the decision. The determination of the relative significance of the decision must be made from both an objective and subjective point of view. That is, a guardian must recognize that the obligation to inform and involve the ward in decisions does not only increase when the decision is factually significant (e.g., consent to major surgery); the guardian must also view the decision from the ward's standpoint. For example, a request by a nursing home for permission to relocate a ward to a different room may appear minor to the guardian but may, in fact, be critical to the ward. This underscores the importance of the guardian forming as close a personal relationship with the ward and his or her caregivers as is possible under the circumstances.

There are occasions when it may be justifiable for the guardian to override the preferences of the ward. This justification is limited to decisions in which the guardian is reasonably certain that substantial harm will result if a decision is made in accordance with the preference of the ward. The discretion allowed the guardian pursuant to this standard is further limited by the relative capacity of the ward when the preference was voiced.

In situations where the ward is unable to provide any indication of prior or current preferences and reliable or relevant background information does not exist or is not forthcoming, the guardian is responsible for making a decision which is in the best interest of the ward. The guardian should consider what choice or decision a reasonable person in similar circumstances would make. Decisions of this nature should not be made in a vacuum, and the guardian has an affirmative obligation to seek insight from all available sources. The guardian must work closely with the ward's caregivers to obtain information about the decision and its potential impact upon the ward. Also, whenever possible the guardian should look to others who may have expertise about the decision at hand. Furthermore, depending upon the relative significance of the decision, the guardian may be required to request the court with jurisdiction over the guardianship to review the matter. An example of this type of situation might be the decision to withhold food and hydration in a state without settled law on this issue. The guardian may also inform either the ward's attorney or any other representative of the decision so that those persons may have the opportunity to review the guardian's actions. Although this may not be legally required, this type of "third-party" informal review may be ethically required in certain significant decisions. If the ward is not represented by counsel the guardian may want to retain counsel or request that counsel be appointed on behalf of the ward. The guardian shall recognize, however, that unless otherwise addressed by statute, it is the



guardian's responsibility to make the decision and to be accountable for it.

The guardian must be aware of the constraints imposed by the guardianship order and must be careful not to make decisions that are beyond the scope of authority granted by the court. Furthermore, the guardian must recognize that the ward may remain entitled to make legally binding decisions independent of the guardian. Indeed, upon request of the ward, the guardian has an obligation to assist the ward in making such decisions by ensuring that the ward is free from undue influence and has access to as much information as possible concerning the alternatives and likely outcome of his or her decision.

## **Rule 2 - Relationship Between Guardian and Ward:**

**THE GUARDIAN SHALL EXHIBIT THE HIGHEST DEGREE OF TRUST, LOYALTY, AND FIDELITY IN RELATION TO THE WARD.**

- 2.1 The guardian shall protect the personal and pecuniary interests of the ward and foster the ward's growth, independence and self reliance to the maximum degree.
- 2.2 The guardian shall scrupulously avoid conflict of interest and self-dealing in relations with the ward.
- 2.3 The guardian shall vigorously protect the rights of the ward against infringement by third parties.
- 2.4 The guardian shall, whenever possible, provide all pertinent information to the ward unless the guardian is reasonably certain that substantial harm will result from providing such information.

**Comment:** The relationship between a guardian and ward is fiduciary in nature. It is based upon trust and is characterized by the high degree of dependency of the ward and authority of the guardian. With the imposition of guardianship, the ward's legal status is reduced to that of a child. The law places a special trust and confidence in a guardian and requires that his or her actions and motives be beyond reproach. The fiduciary obligation embodied in the guardian/ward relationship has a wide penumbra of meaning and is, of necessity, proportioned to the occasion. A guardian is required to constantly achieve a balance between the seemingly contradictory duties to protect the ward and to respect and encourage the ward's independence. There is no clear formula for achieving or maintaining this balance. Nevertheless, the guardian must always be mindful of the trust inherent in the relationship and always should act in equity and good conscience.

The protection of the personal and pecuniary interests of the ward is the foremost obligation of the guardian and must always guide his or her motivations and actions. Acting within the scope of the guardianship order, the guardian has the authority to make legally binding decisions on behalf of the ward. These decisions are broad in scope and may involve the ability to control fundamental aspects of the life of another human being. The authority of a guardian may encompass the ability to make decisions concerning the treatment and care of the ward, where the ward shall live, care and management of the ward's estate, and the exercise of the legal rights of the ward. In short, a guardian is entrusted with the custody and control of the ward's person and estate. In light of these broad and far-reaching powers (which, outside of the context of the authority of government to intervene pursuant to its police powers, are unheard of in the western world), the guardian has an obligation to make well-reasoned decisions and ensure no undue harm befalls the ward.

In addition, the guardian must always act within the limitations and scope of the guardianship order. The guardian must exercise care to avoid intentional or unintentional waiver, surrender, impairment or alteration of the ward's rights outside of the guardianship order.





The guardian must subordinate his or her public or private interests to his or her fiduciary obligation to the ward whenever there is the potential for conflict of interest between guardian and ward. Where the guardian appears to have interests which are adverse to those of the ward, the guardian shall take all necessary measures to remedy the conflict immediately. Also, depending on the nature of the actual or potential harm to the ward resulting from the conflict, the guardian shall take whatever action is necessary to ensure third-party review of the situation. This may involve notifying the court, retaining legal counsel on behalf of the ward, resigning the guardianship, or any other remedy which is just and equitable for the ward.

The guardian is also responsible for protecting the rights of the ward's person and estate from infringement by third parties. When necessary, an attorney or other agent shall be retained by the guardian to represent and advocate on behalf of the ward in negotiations or litigation. In such cases it is the guardian, acting in the interest of the ward, who is the client. Nevertheless, it is the responsibility of the guardian to use due diligence in determining and utilizing the preferences of the ward in accordance with this Code. It is recognized that often a guardian will be a professional person and will have specialized knowledge of the law or of some other substantive area concerning the person or estate of the ward, and may therefore be held to a higher standard of diligence than the lay person guardian. Notwithstanding specialized knowledge, a guardian shall not provide direct services to the ward for a fee without the express knowledge and permission of the court having jurisdiction over the guardianship. Since the guardian, in the eyes of the law, stands in the shoes of the ward for the purpose of making legally binding decisions, this would result in the guardian becoming his or her own client and thus violate the prohibition against conflict of interest.

Inherent in the guardian's obligation to exhibit the highest degree of trust, loyalty and fidelity in relation to the ward is the requirement that the guardian share pertinent information with the ward about his or her condition and financial status as well as any decisions the guardian is contemplating or may have actually made. To the extent the ward is able to participate, there exists an informative duty on the part of the guardian to share relevant information with the ward and thus aim toward the goal of joint decision making. The guardian shall use common sense and tact in sharing information, and shall be mindful of the fact that certain information may be upsetting to the ward. The guardian shall attempt to minimize the negative impact of sensitive information by his or her manner of presentation, and shall anticipate the potential need for support and counseling for the ward who reacts adversely to such information. Maintaining a close working relationship with caregivers and other service providers may be helpful in this regard.

To the extent that the interested ward remains uninformed about the facts of his or her condition and the limitations imposed by that condition, and to the extent that the ward lacks information regarding the various options available, the ward will be unable to participate in even a minimally meaningful way in decisions which affect his or her personal affairs and quality of life. Similarly, to the extent that the guardian remains uninformed about the ward's capabilities, wishes, goals, ideas, and needs, the guardian will be limited in his or her own ability to exercise substituted judgment when this shall be necessary, or even to advocate for the ward's best interest in decision making.

Where advice from experts, input from caregivers, and insight from friends and relatives combine with common sense to dictate that the ward is likely to suffer substantial harm from learning facts relative to his or her condition, the guardian may appropriately withhold such potentially damaging information.

### **Rule 3 - Custody of the Person; Establishing a Place of Abode:**

THE GUARDIAN SHALL ASSUME LEGAL CUSTODY OF THE WARD AND SHALL ENSURE THE WARD RESIDES IN THE LEAST RESTRICTIVE ENVIRONMENT AVAILABLE.



- 3.1 The guardian shall be informed and aware of the options and alternatives available for establishing the ward's place of abode.
- 3.2 The guardian shall make decisions in conformity with the preferences of the ward in establishing the ward's place of abode unless the guardian is reasonably certain that such a decision will result in substantial harm.
- 3.3 When the preferences of the ward cannot be ascertained or where they will result in substantial harm, the guardian shall make decisions with respect to the ward's place of abode which are in conformity with the best interests of the ward.
- 3.4 The guardian shall not remove the ward from his or her home or separate the ward from family and friends unless such removal is necessary to prevent substantial harm. The guardian shall make every reasonable effort to ensure the ward resides at home or in a community setting.
- 3.5 The guardian shall seek professional evaluations and assessments wherever necessary to determine whether the current or proposed placement of the ward represents the least restrictive environment available to the ward. The guardian shall work cooperatively with community based organizations which may be available to assist in ensuring that the ward resides in a non-institutional environment.
- 3.6 The guardian shall have a strong preference against placement of the ward in an institution or other setting which provides only custodial care.
- 3.7 The guardian shall monitor the placement of the ward on an on-going basis to ensure its continued appropriateness, and shall consent to changes as they become necessary or advantageous for the ward.
- 3.8 In the event that the only available placement is not the most appropriate and least restrictive, the guardian shall advocate for the ward's rights and negotiate a more desirable placement with a minimum of delay, retaining legal counsel to assist if necessary.

**Comment:** In establishing the place of abode for the ward, the guardian has an obligation to become as familiar as possible with the available options and alternatives for placement of the ward. The guardian must have a thorough knowledge of community services in order to ensure that the ward's right to live in the least restrictive environment available is upheld. For purposes of this code, the least restrictive environment is considered to be the placement that least inhibits the ward's freedom of movement, informed decision making and participation in the community, while achieving the purposes of habilitation and normalization. The guardian, in establishing the place of abode for the ward, undertakes the difficult task of ensuring the protection of the ward while at the same time maximizing the ward's freedom and independence.

There are many factors to be considered by the guardian in making decisions concerning placement. Foremost, the guardian must determine the preferences of the ward whenever possible. The guardian should bear in mind that, while a decision to change residence is critical for any individual, it is especially so for a disabled person. It is not unusual for a ward to be anxious and upset about a potential change. He or she may be used to the dependency fostered in an institutional setting and react negatively to even the thought of moving. In some instances the ward may be so unhappy in his or her current environment as to be unrealistic about what the move portends. The guardian is therefore cautioned to use care and circumspection in attempting to ascertain the preferences of the ward. Treatment staff, family, friends and others familiar to the ward may prove invaluable in assisting to discern the



ward's position by providing the ward with a sense of the conditions surrounding the placement in terms he or she will understand, and by evaluating his or her reaction to this information. Such individuals may arrange for the ward to visit the proposed placement location to reassure the ward about the transition process. Once the preferences of the ward can be determined, the guardian must make decisions in conformity with such preferences unless the guardian is reasonably certain that substantial harm will result. When preferences of the ward cannot be ascertained, the guardian is required to make decisions which are in conformity with the best interests of the ward. Please see the Comment to Rule 1 for guidance in making such decisions.

In considering a choice of placement location for a ward, the guardian shall also consider the needs of the ward as determined by professionals. This may include assessment of the ward's functional ability, his or her health status, and treatment and habilitation needs. The guardian should not hesitate to request clarification of the assessment or evaluation and should always reserve the right to seek additional and/or independent assessment or evaluation whenever necessary.

The guardian shall not act to remove the ward from his or her home or separate the ward from family and friends unless the guardian is reasonably certain that substantial harm will result unless such action is taken. Whenever such drastic measures become necessary, the guardian shall seek to have his or her actions reviewed by a third-party, even though this may not be required by law. This review shall take place prior to the removal or separation or, if the decision is made pursuant to an emergency, immediately thereafter. The nature of third-party review will vary depending on the particular circumstances. For example, third-party review may be made by the court having jurisdiction over the guardianship or the ward's attorney or other representative. Should none of the above individuals be available or appropriate in a specific case, the review may then be informal, such as an in-depth discussion with an individual knowledgeable about the ward's condition and desires.

Similarly, if not already required by statute or rule, the guardian shall not place the ward in an institution or any other setting which provides only custodial care, without third-party review. A third-party review is required even if the ward consents to the actions of the guardian.

The guardian shall do his or her utmost in ensuring that the ward resides in an optimal setting and shall work closely with community based organizations in achieving this goal. The guardian shall advocate for the ward's right to receive services in the least restrictive environment available and shall not hesitate to retain legal counsel to assist in this effort.

#### **Rule 4 - Custody of the Person: Consent to Care, Treatment and Services**

THE GUARDIAN SHALL ASSUME RESPONSIBILITY TO PROVIDE INFORMED CONSENT ON BEHALF OF THE WARD FOR THE PROVISION OF CARE, TREATMENT AND SERVICES AND SHALL ENSURE THAT SUCH CARE, TREATMENT AND SERVICES REPRESENTS THE LEAST RESTRICTIVE FORM OF INTERVENTION AVAILABLE.

- 4.1 The guardian shall make decisions in conformity with the preferences of the ward when providing consent for the provision of care, treatment and services, unless the guardian is reasonably certain that such decisions will result in substantial harm to the ward.
- 4.2 When the preferences of the ward cannot be ascertained or will result in substantial harm, the guardian shall make decisions with respect to care, treatment and services which are in conformity with the best interests of the ward.



- 4.3 In the event the only available treatment, care or services is not the most appropriate and least restrictive, the guardian shall advocate for the ward's right to a more desirable form of treatment, care or services, retaining legal counsel to assist if necessary.
- 4.4 The guardian shall seek professional evaluations and assessments whenever necessary to determine whether the current or proposed care, treatment and services represent the least restrictive form of intervention available.
- 4.5 The guardian shall work cooperatively with individuals and organizations which may be available to assist in ensuring the ward receives care, treatment and services which represent the least restrictive form of intervention available and are consistent with the wishes or best interests of the ward.
- 4.6 The guardian shall not consent to sterilization, electro-convulsive therapy, experimental treatment or service without seeking review by the court or the ward's attorney or other representative.
- 4.7 The guardian shall be familiar with the law of the state regarding the withholding or withdrawal of life-sustaining treatment.
- 4.8 The guardian shall monitor the care, treatment and services the ward is receiving to ensure its continued appropriateness, and shall consent to changes as they become necessary or advantageous to the ward.

**Comment:** The ethical precepts contained in rules 4. 1-4. 5 are simply another application of the decisional factors discussed in the previous sections. A guardian when making treatment decisions, as when making decisions concerning where the ward should live, must gather all available information and must attempt to abide by the preferences of the ward if ascertainable and not likely to cause substantial harm. See Comments to Rules 1-3.

Beyond the basic standards for decision making, this set of rules also recognizes the controversial nature of certain forms of care and singles them out for third-party review. For example, debate has raged in the courts and community concerning whether a woman with developmental disabilities has her "rights" protected or infringed by sterilization. Does sterilization violate her right to procreate? Does it permit a woman who has been unable to properly utilize contraceptives to pursue a full sex life without unwanted pregnancy? This type of treatment also presents an often difficult dilemma for the guardian: is this irrevocable decision truly in the ward's best interest or a device to simplify the guardian's responsibilities to the ward?

Regardless of how these questions are answered, the Model Code requires the ethical guardian to seek some form of appropriate third-party review. The form of this review will vary depending on the particular requirements of state law—for example, the requirement or lack thereof of court approval. If there is no court requirement, an ethical guardian will still seek informal consultation with an appropriate individual, such as the ward's attorney, doctor or family member.

The issue of withholding and withdrawing life support is governed predominantly by state law. Since a guardian who complies with ethical standards which violate state law can still be held liable for his or her actions, we have not attempted to address this issue in the Code. Rather, an ethical guardian in an area such as this, where ethical precepts have been pre-empted by state law, will look to that law for guidance.

### **Rule 5 - Management of the Estate:**

THE GUARDIAN OF THE ESTATE SHALL PROVIDE COMPETENT MANAGEMENT OF THE PROPERTY AND INCOME OF THE ESTATE. IN THE DISCHARGE OF THIS DUTY, THE GUARDIAN SHALL EXERCISE INTELLIGENCE, PRUDENCE AND DILIGENCE AND AVOID ANY SELF-INTEREST.



- 5.1 Upon appointment, the guardian shall take steps to inform himself or herself of the statutory requirements for managing a ward's estate.
- 5.2 The guardian shall manage the income of the estate with the primary goal of providing for the needs of the ward, and in certain cases, the needs of the ward's dependents for support and maintenance.
- 5.3 The guardian has a duty to exercise prudence in the investment of surplus funds of the estate.
- 5.4 Where the liquid estate of the ward is sufficient, the guardian may make such gifts as are consistent with the wishes or past behavior of the ward, bearing in mind both the foreseeable requirements of the ward and the tax advantages of such gifts.
- 5.5 There shall be no self-interest in the management of the estate by the guardian; the guardian shall exercise caution to avoid even the appearance of self-interest.

**Comment:** The requirements imposed on a guardian vary according to the state of appointment. Therefore, a guardian must, at the outset, discover the particular legal requirements governing the guardian's actions. The guardian functions as the arm of the court, and as such, is accountable to the court for his or her actions. Certain obligations exist by virtue of statute and others may be granted or assigned by the court. These rules and comments do not reflect the specific law of any state. Rather, they address some of the broad ethical questions implicit in the role of guardian. A guardian must be sure to check the law of his or her state before relying on the principles contained herein.

The guardian must seek to obtain all available income for the ward. If the ward's own funds are inadequate to provide for the needs of the ward, the guardian will find it both prudent and necessary to seek income supplementation via various income maintenance and insurance programs available through federal, state and local resources. Public benefits may not only be helpful, but essential to the guardian in providing for the needs of the ward. The guardian is, therefore, under a positive obligation to investigate their availability and seek such assistance on behalf of the ward.

Collection of the ward's debts is the responsibility of the guardian. Receipt of funds on the ward's behalf discharges the debtor of his or her obligation. To the extent necessary or appropriate to the individual case, the guardian may employ an attorney to handle the debt collection function on the ward's behalf. In all such cases, transactions are negotiated and carried out in the name of the ward.

The guardian must use the ward's income to provide for his or her needs. The guardian undertakes the responsibility to settle the ward's outstanding accounts, first from the income of the estate, and then via sale of personal property, with license from the court. Only to the extent that debts cannot be covered through these avenues may the guardian seek permission to encumber or sell real estate.

Although possession of the real estate of the ward is in the hands of the guardian, title resides with the ward. Any plan to convey the ward's real estate must be contemplated only as necessary to provide for the care and maintenance of the ward, or in cases where the sale is demonstrably in the ward's best interest.

Exchange or partition of the ward's real estate must be considered only for the purpose of securing the funds necessary for the support of the ward, or for purposes otherwise in the ward's best interests. Since "license" of the court is often needed to dispose of real estate, the guardian should carefully check local requirements prior to selling or encumbering real property.



The guardian may mortgage the property of the ward only in accord with state law and only when necessary, based on insufficiency of the income of the estate to maintain and support the ward; to discharge other obligations, liens and mortgages; to extend the length or reduce the rate of interest of the existing mortgage; or to finance improvement to the property with an eye toward increasing the value of the real estate as an asset of the estate. On the other hand, in most states, the guardian does possess the power and right to lease the property with the goal of maximizing the income of the estate. Such a lease may be made in the name of the guardian and enforced by the guardian. Any warranties, therefore, are made by the guardian, and not by the ward or on his behalf. Any covenants or easements are likewise made by the guardian in his or her own name, and with the expectation that they will terminate upon the termination of the guardianship relationship.

Should there be surplus funds in the estate, the guardian must invest such funds prudently. While caution is essential in choosing non-speculative opportunities for investment, diligent attention should be paid to opportunities which may result in a high rate of return. The prudent guardian will seek such opportunities to maximize the estate. The deposit of funds in interest bearing accounts is a safe investment, but one which may be less likely than others to maximize the return to the estate. Such deposits, and all other investments as well, must be made in good faith and in the name of the ward. Disclosure by the guardian of his fiduciary role is essential evidence of such good faith. In no case should the ward's funds be mingled with those of the guardian, and they must be clearly identifiable at all times.

Funds loaned for investment purposes must be secured by sufficient collateral. Purchase of stock in private corporations, particularly when the guardian is also a stockholder, should be avoided, due to both the risky nature of such investments and the possible appearance of impropriety and self-interest on the part of the guardian. The guardian must exercise absolute good faith, reasonable judgment, discretion, and diligence. He or she must also reject speculative or risky investments as well as those which imply favoritism in favor of opportunities, which are likely to produce an income as large as possible while still being reasonably safe.

Charitable contributions may be made, with court approval in some jurisdictions, in such a manner as to perpetuate the former practices of the ward, or consistent with a substituted judgment as to their benefit to the ward's current or future situation. Non-charitable gifts, such as those gifts which might be made to family members or close friends, may be made from the surplus income of the estate if the guardian is in possession of demonstrable evidence that the ward would make such gifts. Where the guardian himself or herself, is among the potential donees of such gifts, consideration should be given to seeking independent representation for the ward from an attorney or a guardian ad litem, depending on local practice. In any case, court authorization of such a gift should be sought by the prudent guardian to avoid the appearance of any impropriety. In all cases, court authorization of such a gift should be sought by the prudent guardian to avoid the appearance of any impropriety. In all cases, the guardian may be held to a thorough knowledge of the principles and practices of estate planning, including the tax consequences, in the carrying out of planned giving. If the guardian does not have such expertise, he or she must seek professional advice before deciding to make any gifts.

The application of surplus income of the estate to the support and maintenance of the ward's dependents may be an issue of importance in certain cases where the ward is bound by custom, duty, or law to provide for his or her dependents. In such a case, the guardian shall first see to the current and future needs of the ward, and then may apply the surplus to the support of others to discharge the obligations of the ward. A substituted judgment in this regard must be supported by sufficient evidence to demonstrate to the court its propriety. In no case shall a guardian approve or allow support to himself or herself from the income of the ward's estate. Only to the extent that the expenses of the guardianship itself are met by the guardian shall he or she seek reimbursement or approval from the court for such expenses.



While it is understood that the guardian must take responsibility and bear liability for his or her own negligent acts, the prudent guardian will scrupulously avoid even the appearance of self dealing in the decisions he or she makes concerning the financial affairs of the ward. This warning bears special significance for the guardian who is also a relative and future heir of the ward. Efforts to maximize the estate in this situation may be interpreted as an attempt to protect a future inheritance. For this reason, once assuring himself or herself of an absence of self-interest in decisions affecting the financial affairs of the ward, the guardian is well advised to seek court approval or license to avoid any appearance of impropriety.

### **Rule 6 - Termination and Limitation of the Guardianship:**

THE GUARDIAN HAS AN AFFIRMATIVE OBLIGATION TO SEEK TERMINATION OR LIMITATION OF THE GUARDIANSHIP WHENEVER INDICATED.

- 6.1 The guardian shall diligently seek out information which will provide a basis for termination or limitation of the guardianship.
- 6.2 Upon indication that termination or limitation of the guardianship order is warranted, the guardian shall promptly request court action, retaining legal counsel if necessary.
- 6.3 The guardian shall assist the ward in terminating or limiting the guardianship and arrange for independent representation for the ward whenever necessary.

**Comment:** The guardian shall seek evidence of any change in the capabilities of the ward and shall immediately seek complete or partial restoration of the legal capacity of the ward whenever the situation so dictates. Standards and evidence for restoration to capacity vary from state to state and the guardian is obligated to understand these matters as well as the procedure required for termination or limitation. Whenever necessary, the guardian shall not hesitate to consult with legal counsel and obtain the opinions of other professionals and care providers in making this determination.

In the event the ward expresses the desire to challenge the necessity of all or part of the guardianship, including the individual or agency acting as the guardian, it is the affirmative obligation of the guardian to assist the ward wherever necessary. This may include filing a petition on behalf of the ward, or, where the guardian does not agree with the ward, arranging for representation of the ward by independent legal counsel. The right to retain counsel for the purpose of challenging the guardianship or the actions of the guardian is fundamental and may not be waived or contracted away. Interference by the guardian with the ward's efforts to obtain full or partial restoration of capacity, or to challenge the guardianship in any way, shall constitute a breach of the guardian's fiduciary obligation to the ward.

## **VII. Conclusion**

Individuals acting as guardian for disabled individuals are vested with enormous responsibility. The need to balance the goal of protection of the ward with the goal of minimizing the deprivation of the ward's rights, presents a complex matrix of decisional factors. The Model Code is an attempt to provide some general principles and commentary designed to improve the process of decision making so that individuals will be willing to serve as guardians, for persons in need, and so that the decisions actually made are based upon a set of agreed upon precepts.

**EXHIBIT 2**

**GUARDIANSHIP-AN OVERVIEW USED BY  
GUARDIANSHIP SERVICES OF NEVADA, INC.  
FOR INSERVICES AND SEMINARS**



# GUARDIANSHIP

## AN OVERVIEW



**Guardianship Services of Nevada, Inc.**

## **GUARDIANSHIP-AN OVERVIEW**

### **WHAT IS A GUARDIANSHIP?**

A guardianship is a *special legal relationship* between two people created by the courts according to Nevada state laws (NRS 159). See [www.leg.state.nv.us](http://www.leg.state.nv.us). One or more person(s), the guardian, is given the legal authority to make decisions for another person, the ward, who is unable to make these decisions for himself/herself.

### **DEFINITIONS**

#### **GUARDIANSHIP**

The court ordered management of an incapable and/or incompetent person's financial and/or personal affairs within legal parameters defined by regional laws.

#### **GUARDIAN**

Person(s) appointed by the court with the legal authority to manage an individual's personal and /or financial affairs.

#### **WARD**

Individual for whom a guardian has been appointed.

#### **COMPETENCY**

"...a person's ability to understand the situation he/she is in and the decision he/she has to make, not simply in terms of the immediate circumstances, but in terms of the risks of continuing in the situation as well as the alternatives that are available." John Regan

#### **INCOMPETENCY**

When a person can no longer handle his/her personal and/or financial affairs due to cognitive disabilities that put his/her person and/or finances in jeopardy.

- **The question of competency is the fundamental concern that underlies all guardianship issues. Although loss of memory and confusion can effect someone's competency, loss of reasoning and judgment skills can also be determining factors in evaluating whether someone is competent or not.**
- **"At what point does loss of competency justify taking away an individuals right to make decisions for themselves?" is a complex question that can be decided with the help of physicians and other professionals in the community who deal with this issue on a daily basis. The decision to approach a guardianship should be a team effort between the family (if appropriate), the medical/psychiatric community, and agencies or other parties who deal with the problematic issues presented by the proposed ward.**

## **ALTERNATIVES TO GUARDIANSHIP**

**Representative Payee**- A person who is chosen by Social Security to receive the Social Security, disability, or SSI payment of the individual who requires assistance in maintaining his/her financial needs.

**Custodian** –A person who is chosen by the Veterans Administration to receive the pension, compensation or/and disability of the veteran who requires assistance in maintaining his/her financial needs.

**Power of Attorney** – A legal document that allows an individual, (the principal) to delegate to another person (the agent or attorney in fact) to take care of finances and/or health care decisions. The document may be “durable” in which case it survives the incapacity of the principal or “general” in which case the authority ceases with the person’s incapacity.

(In Nevada having a Power of Attorney does not give authority to give consent to treat and/or make an admission to a mental health facility.)

**Trust**- Depending on how a trust is set up and the authorities outlined for the Successor Trustees will determine if a Guardianship of Estate is necessary.

A Power of Attorney or Trust document should not be entered into by the proposed ward once the proposed ward’s competency is in question. The proposed ward may need to be evaluated further by medical personnel who have the ability to determine if the person has the capacity to enter into these types of estate planning.

## **WHY A GUARDIAN MAY BE NEEDED**

Sometimes due to mental health issue or physical disability, a person loses the ability to make the reasoned decisions necessary, or becomes physically impaired to the point where that person is unable, to manage his/her personal, medical and/or financial affairs. The *special legal status* afforded by a court ordered guardianship might be required in order to assist this individual in one or more of the following areas:

1. Intervention and protection to end an ongoing neglectful, exploitative or abusive situation.
2. Access to, and control of, income or assets necessary to pay bills, often including the costs of ongoing medical care and/or care giving services.
3. Providing informed consents for surgeries and medical treatments, hospital and nursing home admissions, care plans, and possible subsequent placements as well as completing applications and signing consents for entitlements such as Medicaid.

4. Insuring the safety of an incompetent person who may not understand the risks his/her handicap creates for him/her, both in the community and in the home.
5. Provide approval for sale or acquisition of certain assets.
6. The ability to provide general advocacy and protection not afforded by any other legal relationship.

\*If concerned that someone is at risk for elder abuse and/or exploitation, please call Division of Aging Services Elder Protective Division at (775) 688-2964 or toll free (800) 992-5757 to discuss concerns directly with a staff person.

### **TYPES OF GUARDIANSHIPS**

#### **GUARDIAN OF PERSON**

Guardian is responsible for the management of, and decisions and authorizations regarding, personal care needs, placement, safety, and medical, including psychiatric, issues.

#### **GUARDIAN OF ESTATE**

Guardian is responsible for securing, safeguarding, and managing finances and assets

#### **SUMMARY ADMINISTRATION**

Guardians of estates with a total value less than \$10,000.00- The court may dispense with annual accountings and all other proceedings required. After January 1, 2016, Summary Administrations no longer apply to cases appointed to Private Professional Guardians.

#### **GUARDIAN OF PERSON AND ESTATE**

Guardian responsible for both personal and financial care

##### General (Permanent) Guardian

- requires court hearing with ward's presence unless medically excused
- notification of spouse, immediate blood relative (second consanguinity), any interested parties
- as there is a 20 day notice requirement there is usually 4 – 6 weeks from the filing of the petition to the general guardianship hearing date.

Contested Guardianship is when there is an objection to the general guardianship

- hearing placed on contested calendar to allow more time for testimony
- requires court hearing to prove whether or not the guardianship is needed and to be ordered over the objections

Please note: A guardianship is usually called a general or plenary guardianship. But in order to differentiate between a temporary guardianship, many times a general guardianship will be referred to as a PERMANENT guardianship. Although "permanent"

is a term now interchangeable with "general" or "plenary", guardianships are not "permanent" and can be altered and terminated for various reasons through a court hearing.

### **TEMPORARY GUARDIAN OF PERSON AND/OR ESTATE**

Guardian appointed by the Court with or without a court hearing on an emergency basis. Authority is generally limited to dealing with the emergent issues and only good for 10 days or until an extension hearing is held.

- order signed ex parte or a hearing will be ordered before order signed
- requires good faith effort to notify family

Extension of Temporary Guardianship hearing

- order required to extend guardianship to date of permanent hearing
- requires court hearing and notification of family

A Temporary Guardianship can be extended (2) 60-day periods and up to 5 months unless extraordinary circumstances are present

### **SPECIAL GUARDIAN**

Guardian's responsibility limited to those areas of demonstrated need for those of limited capacity.

### **CO-GUARDIAN**

Two or more people share guardianship responsibilities.

### **PRIMARY COURT DOCUMENTS**

1. **Petition** (request) for Guardianship: Document filed with the Court explaining to the judge who the proposed guardian and ward are and the reasons why a guardianship is being requested. The petition also requires:
  - a) Physician Certificate: Documents from a physician or approved party for the Temporary and/or Permanent guardianship explaining what medical reasons there are that would explain why a guardianship is necessary as outlined by statute usually accompanied with supporting documentation such as medical records.
  - b) Physician Assessment: An assessment by a physician explaining the limitations of the proposed ward as outlined by statute for a permanent guardianship.
  - c) If unable to obtain either of these documents, an affidavit of the petitioner is required to explain why the certificate is not obtainable.
2. **Order Appointing Guardian**: Document authorizing the guardianship and specifying the duties of the guardian and is signed by a judge.
3. **Letters of Guardianship**: This document is the "license" to be guardian and is to be filed by the court clerk after the Order has been signed.

**NOTE:** A **Bond** is required even for a family member for estates that have assets. when ordered by the judge, the bond needs to be obtained before the Letters of Guardianship can be filed. The court clerk can then file the original bond with the Letters of Guardianship.

**The cost of the bond as well as any expenses and fees occurred from establishing and maintaining the guardianship, can be paid from the assets of the ward with court approval.**

## **DUTIES OF A GUARDIAN**

Guardians work in 4 areas:

1. **PERSON**                      Duties include but are not limited to:
  - Monitor and manage the mental, physical and social well-being of the ward on a continuous basis including overseeing care providers, placement agencies, medical personnel and making sure all medical needs are being maintained as needed
  - Be available at all times to authorize procedures, medication changes, admits, discharges or any other issues where authorization/consent is needed
  - Be available at all times to be notified of emergency issues or other issues affecting the ward
  - Be available at all times to make decisions regarding the well-being of the ward
  - Review contracts, releases, and other documents needing guardian's signature
  - Provide the least restrictive environment as possible while maintaining the measures needed to keep the ward safe within the ward's financial capability
  - Maintain a quality of life that the ward's physical health, mental health, and finances will allow
  - Safeguard the ward's dignity and privacy as much as possible
  - Protect the ward from abuse, neglect, or harm
  - Report to Elder Protective Services and/or complete police reports if illegal activities are discovered and following through to the conclusion of the investigation and/or legal proceedings
  - Advocate for the ward's needs whenever needed
  - Review all mail with personal mail going to the ward if appropriate and financial bills going to the guardian of the estate or financial representative
  - Maintain a log of events, interventions, daily activities, and health issues if possible
  - Develop a plan for end of life issues by discussing issues beforehand with ward and family if appropriate and reviewing estate planning documents
  
2. **FINANCES**                      Duties include but are not limited to:
  - Investigate the finances of the ward in order to marshal all assets
  - Secure, freeze, close, move, and retitle accounts as appropriate

- Maintain all accounts in guardianship accounts separate from guardian's personal accounts
- Notify creditors as to why a debt cannot be paid if there are not funds of the ward to pay the debt
- Protect the ward from exploitation or other illegal activities against the ward's estate
- Report to Elder Protective Services and/or complete police reports if illegal activities are discovered and following through to the conclusion of the investigation and/or legal proceedings
- Make financial decisions regarding the care and needs of the ward based on the financial capability of the ward
- Pay bills
- Maintain trust accounts as needed in facilities for the ward's personal needs
- Maintain budget and anticipate ward's financial needs within that budget
- Monitor investments
- Prepare information for taxes and make sure taxes are prepared and filed
- Review all mail with personal mail going to the ward if appropriate
- Review contracts and other financial representative documents before signature
- Complete applications and follow through for entitlements and benefits such as Medicaid, Medicare, other medical insurance, VA Aids and Attendance, Social Security, SSI, and disability
- Maintain a daily accounting of all income and expenditures, keeping all receipts if possible
- Develop a plan for end of life issues such as paying for a preneed by discussing issues beforehand with the ward and family if appropriate and reviewing estate planning documents
- Maintain a log explaining unusual and/or large expenditures

**Note: Guardians are not personally responsible for the debts of the ward and are not to pay the debts of the ward from their personal funds.** After a guardianship of the estate is established and the court order permits, the Guardian is responsible to pay debts of the Ward from the Ward's assets and income.

3. **PROPERTY**            Duties include but are not limited to the following with court approval where necessary:
- Secure and maintain all real and personal property as soon as possible
  - Search residence for valuables, important documents, and money
  - Inventory and document personal property
  - Appraise real and personal property as appropriate
  - Sell or rent real property and personal property such as a mobile home as appropriate
  - Store, sell, donate, and/or dispose of personal property as appropriate
  - Continue to secure and maintain real and personal property throughout guardianship if kept within the possession of the ward

- Install and maintain any safety equipment as necessary for the ward in the ward's residence
- Keep all receipts and maintain a record and explaining where all personal properties are or where the property went if no longer in the possession of the guardianship

**4. LEGAL** Duties include but are not limited to:

- Yearly accountings of person and estate-accountings in the estate requires a court hearing; the accounting of the person has a filing requirement only
- Inventory and Record of Value filed within 60 days of appointment
- Court appearances to sell real property, to approve investments, to move a Ward out of state, to change estate plans, and other issues as enumerated in NRS 159

**For those attempting to become a guardian or are trying to assist in getting a guardianship, the assistance of an experienced attorney is recommended.** For those parties who cannot afford an attorney and live in Washoe County, the Washoe County Family Court has guardianship packets for both children and adult guardianships available at the self-help desk.

### **KEYS TO A SUCCESSFUL GUARDIANSHIP**

- **Once guardianship has been established, preserving the dignity and self-respect of the ward should always be considered in the decisions made by the guardian, and just as important, how those decisions are implemented.**
- **The decision making process however, should try to maintain a balance between Safety, Least Restrictive Environment, and Affordability when considering how to meet the needs of the ward, and if possible, the desires of the ward.**

### **HELPFUL WEBSITES:**

Nevada Guardianship Association – [www.nevadaguardianshipassociation.org](http://www.nevadaguardianshipassociation.org)

National Guardianship Association – [www.guardianship.org](http://www.guardianship.org)

Guardianship Services of Nevada – [www.gsnv.net](http://www.gsnv.net)

Division of Aging Services – [www.nvaging.net](http://www.nvaging.net)

Washoe County District Court – [www.washoecourts.com](http://www.washoecourts.com)

Sanford Center for Aging – [www.unr.edu/sandford.com](http://www.unr.edu/sandford.com)

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**EXHIBIT 3**

**AN EXAMPLE OF VARIOUS WORKING FORMS USED BY  
NEVADA GUARDIAN SERVICES' STAFF FOR CASE  
MANAGEMENT AND TRACKING PURPOSES**

Date of Assessment \_\_\_/\_\_\_/\_\_\_

# INITIAL ASSESSMENT

Name: «ward.name»

Social Security #: «ssn»

Ward's Current location: «ward.address»

Date of Birth: «dob»

Age: «ward.age»

Medicare #: «medicare»

Medicaid #: «medicaid»

Marital Status: «mar.status»

Real Property / Home Address: «home.address» ; «home.zip»

## Referral Information:

## Source of Information:

Client's Gender: \_\_\_\_\_ Race: \_\_\_\_\_ : see reference sheet on page 7

Are there belongings here with you? \_\_\_\_\_ Check with Security  Facility Safe

Driver's License? \_\_\_ Yes \_\_\_ No # \_\_\_\_\_ Feel safe driving? \_\_\_\_\_

Spouse/Mate Information: (name, relationship, age, health) \_\_\_\_\_

Does the individual live Alone? \_\_\_ Y \_\_\_ N In a House \_\_\_ An Apartment \_\_\_ Other \_\_\_\_\_

Cell Phone? \_\_\_\_\_ Home Phone # \_\_\_\_\_

Religious Affiliation: \_\_\_\_\_

Does the individual have children? \_\_\_ Yes \_\_\_ No

(Names, ages, addresses, and telephone: Describe the dynamics of each Interpersonal relationships

Name	Age	Address	Phone

Does the individual have siblings or other relatives? \_\_\_ Yes \_\_\_ No

(Names, ages, addresses, and telephone: Describe the dynamics of each Interpersonal relationships

Name	Age	Address	Phone

ESTATE PLANNING DOCUMENTS

Living Will  Yes  No

Durable Power of Attorney  Yes  No

For Health Care: (identify who and what authority)

\_\_\_\_\_

For Property: (identify who and what authority)

\_\_\_\_\_

Pre-Paid Funeral Arrangements  Yes  No

Location:

Funeral Home \_\_\_\_\_

Burial Plot(s)  Yes  No

Location:

\_\_\_\_\_

State of Birth: \_\_\_\_\_

Education: \_\_\_\_\_

Father's Name: \_\_\_\_\_

Mother's Maiden Name: \_\_\_\_\_

Veteran: \_\_\_\_Y \_\_\_\_N

Branch of Service: \_\_\_\_\_

Dates/War Time: \_\_\_\_\_

Occupation: \_\_\_\_\_

Financial/ Business Management:

Where is your mail received? \_\_\_\_\_

Are bills paid in person or by mail? \_\_\_\_\_

Does anyone help you with your finances or Bills? \_\_\_\_\_ Who \_\_\_\_\_

Is automatic deposit in place for income? \_\_\_\_\_

To what account? \_\_\_\_\_

Have Federal Taxes been filed: \_\_\_\_\_

Bank Accounts

Name of Bank	Location	Type Account	Amount
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Safety Deposit Box  Yes  No

Located at: \_\_\_\_\_ Key Location: \_\_\_\_\_

**Life Insurance:** Name \_\_\_\_\_

Beneficiary \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**Insurance:** Company Premium obtain copy of card

Health: \_\_\_\_\_   
 Home: \_\_\_\_\_   
 Car: \_\_\_\_\_   
 Medicare Part A: \_\_\_\_\_   
 Medicare Part B: \_\_\_\_\_   
 Medicaid: \_\_\_\_\_

Smoke  Yes  No  
 Drink Alcohol  Yes  No (If yes, amount and type)

Allergies:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Ongoing Medical Conditions  Yes  No

Diagnosis/Condition	Date Diagnosed	Effect

What Pharmacy do you use: \_\_\_\_\_

Current Medications  Yes  No  
 Self-Administered  Yes  No If no, Explain: \_\_\_\_\_

Is the individual forgetful in relationship to medication?  Yes  No

Drug Name	Reason	Amount

**Identify all sources of income:**

Social Security Disability Amount \$ \_\_\_\_\_  
 Social Security Retirement Amount \$ \_\_\_\_\_  
 Supplemental Security Income Amount \$ \_\_\_\_\_

Veterans Benefits Amount \$ \_\_\_\_\_  
 CSA/DFAS Amount \$ \_\_\_\_\_  
 Pension Amount \$ \_\_\_\_\_  
 Insurance/Annuity Amount \$ \_\_\_\_\_  
 Trust \_\_\_\_\_  
 Securities Stocks and Bonds \_\_\_\_\_

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

Other Real Estate/Property: (location, value and form of ownership; include current residence)

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Automobile(s)	<input type="checkbox"/> Yes	<input type="checkbox"/> No		
Make	model		year	Value


**Identify all of the person's debts:**

Mortgage(s)	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Amount \$	Monthly Payment \$	
Tax Lien(s)	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Amount \$	Description	
Car Loans	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Amount \$	Monthly Payment \$	
Credit Cards	<input type="checkbox"/> Yes	<input type="checkbox"/> No

Utilities: (approximate monthly cost) Identify all utilities.

Utility	Amount
---------	--------


**Medical Bills: (Identify all medical bills)**

Name	Amount
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**Hospitalizations / Surgeries in previous three (3) years**

Hospital	Admission date	Length of stay	Treatment
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Has the Physician made statements about?

- Ability to manage at home
- Ability to recognize relatives
- Ability to think clearly

Physician(s) Name	Address	Telephone #	Specialty
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What interpersonal issues is the individual dealing with at this time?

Is there a regular care provider?  Yes  No  
If yes, (name, address, telephone #, age, relationship to individual.)

Describe Care Provided:

Other Helpers or Visitors that come often?  Yes  No  
If yes, (name, address, telephone #, age, relationship to individual.)

Participation or assistance received:

Does the client leave home?

Are there pets in the home?

What activities are important to the client?

How does the client identify life accomplishments?

What are current hopes and life goals?

Of what is the client most afraid?

Does the client understand current condition or illness?

Have arrangements / your wishes been made known after death?

OTHER COMMENTS:

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Race definition per:

Division of Welfare and Supportive Services

Race (optional) –Please check one of these boxes Hispanic/Latino or Non-Hispanic or Latino

Ethnicity Code: A-Asian; B-Black or African American; I-American Indian or Alaskan Native and White  
L-Asian and White; M- Black/African American and White; N- Native Indian/Alaskan Native and  
Black/African American; U- Native Hawaiian or other Pacific Islander; W-White; Z- 2 or more combinations  
not listed above.

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*Task list: Page 1*

File Edit Tools Window Help

Open Close Save Inquire New Print Preview Export Custom List CK Write Balance 156 Remind... Timer Exit

Ward Information

**Simple Sample** 01/01/1950 To 12/31/2049  Show tabs on one row

Other case

General | MyData | Ward | Order | Medical | Preneed | More Info | Relatives/Friends | Support | Insurance | Impo

Open Date 07/06/2011 Close Date 07/01/2012 1 of 1

Style Intake New Client

Task	Status	Started	Completed
Visit Ward - INITIAL ASSESSMENT	Completed	07/06/2011	08/12/2011
Obtain All ID and Health Insurance Cards	Completed	07/06/2011	08/12/2011
Picture of Ward	Completed	07/06/2011	08/12/2011
Obtain Medical Records/History	Completed	07/06/2011	08/12/2011
Pre-Need/Funeral Information	Completed	07/06/2011	08/12/2011
Notify Case Mangers, Caregivers, Interested Parties	Completed	07/20/2011	07/22/2011
Notify Primary Care Physician Make Appointment if Necessary	Completed	07/20/2011	07/22/2011
Develop Budget	In Progress	07/30/2011	07/22/2011
Change Locks and Secure Property - If Applicable Property Task List	Completed	07/06/2011	08/12/2011
Inventory and Appraisal of Personal Items	Completed	07/06/2011	08/12/2011
Obtain/Secure Titles on Vehicles/Personal Property	Completed	07/06/2011	08/12/2011
Check Other Assets, Notify of Guardianship	Completed	07/06/2011	08/12/2011
Inventory to Attorney for Submission to Court	Completed	07/06/2011	08/12/2011
<b>ADMIN</b>			
Accounts Receivable		00/00/0000	00/00/0000
<b>SUPPORT STAFF</b>			
EMS Preview Sheets		00/00/0000	00/00/0000
Calendar upcoming Court Hearings Does ward need to be in court?		00/00/0000	00/00/0000
Co-EDM contact information		00/00/0000	00/00/0000

Printing The Screen, Please Wait...

Windows Taskbar: Start, Internet Explorer, File Explorer, Word, PowerPoint, Outlook, etc.

*Task list: Page 2*

File Edit Tools Window Help

Open Close Save Inquire New Print Preview Export Custom List CK Write Balance SS Rembd. Times Exit

**Simple Sample** 01/01/1950 To 12/31/2049  Show tabs on one row

Other case

General | MyData | Ward | Order | Medical | Preeed | More Info | Relatives/Friends | Support | Insurance | Impo

Open Date 07/06/2011 Close Date 07/01/2012 1 of 1

Style Intake New Client

New List Delete This List

Task	Status	Started	Completed
Print Screen			
ERIS Preview Sheets		00/00/0000	00/00/0000
Calendar upcoming Court Hearings Does ward need to be in court?		00/00/0000	00/00/0000
Co-GDN contact information		00/00/0000	00/00/0000
Other contact information		00/00/0000	00/00/0000
People Search		00/00/0000	00/00/0000
Determine/contact residence/address		00/00/0000	00/00/0000
Dissecting the Order		00/00/0000	00/00/0000
Change of Address	In Progress	07/20/2011	07/22/2011
Social Security Payee Application	Completed	07/06/2011	08/12/2011
Notify All Benefi/Income Sources	In Progress	07/20/2011	07/22/2011
Verify Income/Medicare/Secondary		00/00/0000	00/00/0000
Medicaid referrals		00/00/0000	00/00/0000
Notify senders from 'forwarded' mail of Guardianship		00/00/0000	00/00/0000
Fraud Alert on Credit Report	Completed	07/06/2011	08/12/2011
Info to CPA for tax transcript	Completed	07/06/2011	08/12/2011
Determine & Calendar Court Compliance dates	Completed	07/06/2011	08/12/2011
Chart Audit		00/00/0000	00/00/0000
<b>BANKING</b>			
Check/Block Bank Accounts	In Progress	07/20/2011	07/22/2011
Open Guardianship Accounts	Completed	07/06/2011	08/12/2011
Close Credit Cards (if Applicable)	Completed	07/06/2011	08/12/2011

Printing The Screen, Please Wait...

Windows taskbar with icons for Start, Internet Explorer, File Explorer, Word, PowerPoint, Outlook, and other applications.

### RECORD OF VISIT

Case# _____	Date of Visit: ____/____/____
Name of Ward: _____	Purpose: Monthly, Quarterly (1,2,3,4)
Address: (Facility)	Date of last visit ____/____/____ (attached)
_____	Other _____
_____	_____
_____	_____

**MENTAL CONDITION:** (Describe orientation in 3x, communication capacity, major psychiatric Symptoms):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**PHYSICAL CONDITION:** Weight: \_\_\_\_\_ Height: \_\_\_\_\_ (noticeable changes)

1) Describe Overall Appearance:

\_\_\_\_\_

\_\_\_\_\_

2) Describe Chronic, Acute, or Specified Medical Conditions under Treatment:

\_\_\_\_\_

\_\_\_\_\_

3) Describe Level of Medical Services Provided or Needed:

\_\_\_\_\_

\_\_\_\_\_

4) Medical Services:(Provide Dates of Last Service) Primary Care Physician: \_\_\_\_\_

Dental Exam: \_\_\_\_\_ Physician Visits: \_\_\_\_\_

Eye Exam: \_\_\_\_\_ Lab Work: \_\_\_\_\_

Upcoming Appointments: \_\_\_\_\_

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

Other: (Specialist) \_\_\_\_\_

5) Hospitalization: (Record Most Recent)

<u>DATE:</u>	<u>LOCATION:</u>	<u>REASON:</u>
--------------	------------------	----------------

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_ \_\_\_\_\_

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_ \_\_\_\_\_

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_ \_\_\_\_\_

6) Medication:

\*Attach most recent MAR\*

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**CONTINUED PLACEMENT ASSESSMENT:**

Admission Date: \_\_\_\_\_

1) Discuss Appropriateness of Present Placement:

\_\_\_\_\_  
\_\_\_\_\_

(Concerns/pending discharge plans and barriers):

\_\_\_\_\_  
\_\_\_\_\_

**SOCIAL CONDITIONS:**

1) Describe Behaviors: (Improved: \_\_\_\_\_ Stable: \_\_\_\_\_ Regression: \_\_\_\_\_)

\_\_\_\_\_  
\_\_\_\_\_

2) Behavior Management Program: (include medications/interventions check care plan in nursing homes for approach) \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**INDIVIDUAL CARE PLAN:** (Review chart for any recent care plan updates attach copies):

\_\_\_\_\_  
\_\_\_\_\_

**COMMENTS:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Reminder: Check DNR Status of face sheet contact information

Obtain copies if not already in file.

- Latest physician note: \_\_\_\_\_ TB Records \_\_\_\_\_
- Code Status: \_\_\_\_\_ Flu/ Pneumonia Records: \_\_\_\_\_
- Dentures present/properly cared for: \_\_\_\_\_
- Glasses: \_\_\_\_\_
- Hearing Aids present/properly cared for: (staff or ward) \_\_\_\_\_
- All Clothing/Personal need items met: (appropriate for the season)

Follow Up :

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Guardian/Case Manager: \_\_\_\_\_  
Signature/date

*HOSPITAL VISIT FORM*

Client: «ward.name»

Facility: «facility.name»

Seen by: \_\_\_\_\_

Facility Phone #: «facility.number»

Date of Visit: \_\_\_\_/\_\_\_\_/\_\_\_\_

Facility Case Manger: \_\_\_\_\_

Admit date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Current Attending Doctor: \_\_\_\_\_

Transferred from: \_\_\_\_\_

Admit Diagnosis:  
\_\_\_\_\_  
\_\_\_\_\_

Acute Treatment:  
\_\_\_\_\_  
\_\_\_\_\_

Medications:  
\_\_\_\_\_  
\_\_\_\_\_

Report from DR/Nurse:  
\_\_\_\_\_  
\_\_\_\_\_

Discharge Plan:  
\_\_\_\_\_  
\_\_\_\_\_

Chart Review:  
\_\_\_\_\_  
\_\_\_\_\_

Comments:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## **TRAINING AND EDUCATION**

## **GUARDIANSHIP: OUTREACH & EDUCATION**

### **Alabama**

#### *State judiciary and affiliates*

Alabama Access to Justice Commission – provides easy access to various forms for guardianship proceedings

<http://www.alabamaj.org/i-need-help/representing-yourself/>

#### *Other state offices, agencies, and their affiliates*

Alabama Disabilities Advocacy Program – provides informational pamphlet

<http://adap.net/pdf/Guardianship.pdf>

#### *Law schools*

University of Alabama – Legal Counsel for the Elderly Clinical Program provides online information

<http://www.uaelderlaw.org/guardian.html>

CLE Alabama – sponsors CLEs; however, no upcoming guardianship CLE

<http://www.alabamaj.org/about/about-mission-goals/>

### **Alaska**

#### *State judiciary and affiliates*

Alaska Court System – provides background information regarding guardianship, as well as a video about becoming a guardian.

<http://www.courts.alaska.gov/shc/guardian-conservator/index.htm>

#### *Other state offices, agencies, and their affiliates*

Alaska Department of Health and Human Services – provides booklet on adoption and guardianship of children

<http://dhss.alaska.gov/ocs/Documents/Publications/pdf/adopt.pdf>

Alaska Department of Administration, Office of Public Advocacy – runs the Family Guardian Program, which provides general information on guardianships, necessary forms, links to other resources, and links to the relevant state statutes and codes. Also offers various guardianship classes to the public.

<http://doa.alaska.gov/opa/pg/>

#### *State or local bar associations*

Alaska Bar Association – provides PDF from previous guardianship CLE; sponsors CLEs; however, no upcoming guardianship CLE

<https://www.alaskabar.org/servlet/clecatalog?cid=538&id=372>

[https://www.alaskabar.org/servlet/content/member\\_events.html](https://www.alaskabar.org/servlet/content/member_events.html)

#### *Non-profit, non-governmental organizations*

Disability Law Center of Alaska – provides handbook on guardianship for adults with disabilities

<http://www.dlcak.org/files/pdf/Publications/GuardianshipinAK.pdf>

Alaska Center for Resource Families – provides self-study workbook

<http://www.acrf.org/Self-StudyCourses/AdoptSeries/WORKBOOKAdoption2011.pdf>

### **Arizona**

#### *State judiciary and affiliates*

Arizona Court System – provides informational video

<https://www.azcourts.gov/educationservices/COJET-Classroom/Probate-Guardianship>

Maricopa Superior Court – provides training manual and modules

<http://www.superiorcourt.maricopa.gov/sscDocs/packets/pbgctm1.pdf>

*Other state offices, agencies, and their affiliates*

Arizona Department of Health Services – provides small amount of information and links to forms for various counties

<http://www.azdhs.gov/phs/edc/odis/refugee/case-managers/index.php?pg=guardianship>

Arizona Department of Economic Security – provides pamphlet on guardianship subsidies

<https://www.azdes.gov/InternetFiles/Pamphlets/pdf/CSO-1163A.pdf>

*State or local bar associations*

State Bar of Arizona – provides informational pamphlet and sponsors CLEs

<http://www.azbar.org/workingwithlawyers/topics/aguidetoguardianshipandconservatorship>

<https://azbar.inreachce.com/Details?resultsPage=1&sortBy=&category=c4a21cca-1a4e-41c2-bd8d-814c970ba2e4&mediaType=494a95bb-1e05-4c5b-a25f-36ad84bd4c39&groupId=5cd94ae8-09c3-43df-b1d0-53f6ea7cff78> - Guardianship Basics

*Non-profit, non-governmental organizations*

Arizona Center for Disability Law – provides handbook with guardianship section and resource table

<http://www.acdl.com/New%20PDF%20Files/LegalOptionsManualRevised0309.pdf>

*Law schools*

Arizona State University – Elder Law Pro Bono Student Group provides assistance to pro per individuals

<https://www.law.asu.edu/currentstudents/CurrentStudents/StudentLife/PublicInterestProBono/ProBonoStudentGroups.aspx>

University of Arizona James E. Rogers School of Law – provides student run Minor Guardianship Clinic <http://choosearizonalaw.com/experiential-learning-and-clinics>

**Arkansas**

*State offices, agencies, and their affiliates*

Arkansas Governor's Developmental Disabilities Council – provides guardianship booklet

<http://www.ddcouncil.org/uploads/pages/docs/guardianbooklet2.pdf>

Arkansas Department of Human Services – provides table comparing benefits of guardianship versus adoption

<http://humanservices.arkansas.gov/dhfs/dhfsDocs/Benefits%20of%20Adoption%20and%20Guardianship.pdf>

*State or local bar associations*

Arkansas Bar Association – sponsors CLEs; upcoming Estate Planning/Guardianship webinar

<http://www.arkbar.com/cle/clelisting.aspx>

*Non-profit, non-governmental organizations*

Arkansas Legal Services Partnership – provides informational pamphlet

<https://www.arlegalservices.org/files/FSGuardianship.pdf>



Arkansas Voices – small guardianship section in caregivers' handbook  
[http://www.arkansasvoices.org/uploads/1/4/9/2/14920838/handbook\\_for\\_kinship\\_caregivers.pdf](http://www.arkansasvoices.org/uploads/1/4/9/2/14920838/handbook_for_kinship_caregivers.pdf)

## **California**

### *State judiciary and affiliates*

California Court System – provides extensive information and forms relating to guardianship. Also provides guardianship pamphlet and PowerPoint.

<http://www.courts.ca.gov/selfhelp-guardianship.htm>

<http://www.courts.ca.gov/documents/gc205.pdf>

Guardianship Assistance Program Training Manual

[http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0CCUQFjABahUKEwj9yJik9Y3HAhXNKYgKHf1aDrI&url=http%3A%2F%2Fwww.courts.ca.gov%2Fpartners%2Fdocuments%2FGAP-trainingman-SanBern.doc&ei=COW\\_Vf2kI83ToAT9tbmQCw&usg=AFQjCNHX351rvSDL3LJxvW95yIKFaNnXgQ&sig2=KFqVIREu-b75xg5GmCnOAO](http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0CCUQFjABahUKEwj9yJik9Y3HAhXNKYgKHf1aDrI&url=http%3A%2F%2Fwww.courts.ca.gov%2Fpartners%2Fdocuments%2FGAP-trainingman-SanBern.doc&ei=COW_Vf2kI83ToAT9tbmQCw&usg=AFQjCNHX351rvSDL3LJxvW95yIKFaNnXgQ&sig2=KFqVIREu-b75xg5GmCnOAO)

San Bern.doc

Superior Court of California County of Fresno – provides information and workshops

<http://www.fresno.courts.ca.gov/probate/guardianship.php>

Superior Court of California County of San Francisco – provides information, pamphlets, and links to forms and resources

<http://www.sfsuperiorcourt.org/divisions/probate/guardianship-children>

Superior Court of California County of Santa Clara – provides information, pamphlets, and links to forms and resources

[http://www.scscourt.org/self\\_help/probate/guardianship/guardianship\\_home.shtml](http://www.scscourt.org/self_help/probate/guardianship/guardianship_home.shtml)

Superior Court of California County of Orange – provides information, pamphlets, and links to forms and resources, and clinic

<http://www.occourts.org/self-help/probate/guardianship/>

Superior Court of California County of Nevada – provides information, pamphlets, and links to forms and resources

<http://www.lacba.org/showpage.cfm?pageid=191>

Superior Court of California County of Sutter – provides information, pamphlets, and links to forms and resources

<http://www.suttercourts.com/self-help/probate-guardianships>

Superior Court of California County of San Joaquin – provides information, pamphlets, and links to forms and resources, and workshops

<http://www.sjcourts.org/divisions/probate/guardianship>

Contra Costa County Courts – provides information and links to forms and resources, and workshops

<http://guardianship.cc-courthelp.org/index.cfm?fuseaction=Page.ViewPage&pageId=1541>

### *Other state offices, agencies, and their affiliates*

Fresno Law Library – offers guardianship workshop

<http://www.fresnolawlibrary.org/workshops.asp>

Kern County Law Library – offers workshop

[http://kclawlib.org/home/Self\\_Help.html](http://kclawlib.org/home/Self_Help.html)

Sacramento Public Law Library – offers guardianship workshop

<http://saclaw.org/self-help/civil-self-help-center/workshops/>

*State or local bar associations*

California Bar Association – provides pamphlet on wills (includes minimal information regarding guardianship).

<http://www.calbar.ca.gov/Public/Pamphlets/Will.aspx>

Los Angeles County Bar Association – provides information keeping attorneys up to date on California legislation affecting guardianships

<http://www.lacba.org/showpage.cfm?pageid=191>

*Non-profit, non-governmental organizations*

Greater Bakersfield Legal Assistance, Inc. – provides training and legal assistance/resources to pro se individuals

<http://gbla.org/services/guardianship/>

Immigration Center for Women and Children – provides information

<http://icwclaw.org/services-available/probate-guardianships/>

Public Law Center – offers guardianship clinic

<http://www.publiclawcenter.org/services/clinics/#guardianship>

*Law schools*

Continuing Education of the Bar, California (program of the UC System) – provides CLE

<http://www.ceb.com/CEBSite/product.asp?catalog%5Fname=CEB&menu%5Fcategory=Bookstore&main%5Fcategory=Practice+Books&sub%5Fcategory=Practice+Books+Estate+Planning&product%5Fid=ES33531&Page=1&cookie%5Ftest=1>

Whittier Law School – provides Children's Advocacy Clinic and Guardianship Clinic

<https://www.law.whittier.edu/index/build/centers-programs/legal-clinics/childrens-advocacy-clinic/>

Monterrey College of Law – offers guardianship workshop

<http://www.monterreylaw.edu/event/guardianship-workshop-5/2015-07-22>

**Colorado**

*State judiciary and affiliates*

Colorado Judicial Branch – provides access to forms, brochures, and other information

<https://www.courts.state.co.us/Forms/SubCategory.cfm?Category=Guardian>

*Other state offices, agencies, and their affiliates*

Colorado Department of Human Services – provides a basic guide to understanding guardianship

<http://www.colorado.gov/cs/Satellite%3Fblobcol=urldata%26blobheadername1=Content-Disposition%26blobheadername2=Content-Type%26blobheadervalue1=inline%253B%2Bfilename%253D%2522GuardianshipManual.pdf%2522%26blobheadervalue2=application%252Fpdf%26blobkey=id%26blobtable=MungoBlobs%26blobwhere=1251694166485%26ssbinary=true>

*State or local bar associations*

Colorado Bar Association – provides informational brochure and offers CLEs

<http://www.cobar.org/index.cfm/ID/20876>

<http://cle.cobar.org/Seminars/Event-Info/sessionaltcd/EL040705L> -

CLE on Issues in Guardianship and Conservatorship

## **Connecticut**

### *State judiciary and affiliates*

Connecticut Judicial Branch – provides educational brochure and research guides

<http://www.jud.ct.gov/lawlib/notebooks/pathfinders/guardianshipinct/guardianship.pdf>

Connecticut Probate Courts – provides user guide

<http://www.ctprobate.gov/Documents/User%20Guide%20-%20Guardianships%20of%20Minors.pdf>

## **Delaware**

### *State judiciary and affiliates*

Delaware Court System – provides multiple educational brochures; provides informational instruction packet for guardianship

<http://courts.delaware.gov/chancery/guardianship/>  
[http://www.google.com/url?sa=t&ret=j&q=&esrc=s&source=web&cd=24&ved=0CDQQFjADOBRqFQoTCMvM4PDgiccCFRYtiAod3g0I9Q&url=http%3A%2F%2Fcourts.delaware.gov%2Fforms%2Fdownload.aspx%3Fid%3D28638&ei=o8-\\_VYvvPJbaoATem6CoDw&usg=AFQjCNGgwVFrGLlo0a7wd2zxqpWHUGApbQ&sig2=KDX0\\_2MNWYnHv8emzGP\\_kg&bvm=bv.99261572.d.cGU](http://www.google.com/url?sa=t&ret=j&q=&esrc=s&source=web&cd=24&ved=0CDQQFjADOBRqFQoTCMvM4PDgiccCFRYtiAod3g0I9Q&url=http%3A%2F%2Fcourts.delaware.gov%2Fforms%2Fdownload.aspx%3Fid%3D28638&ei=o8-_VYvvPJbaoATem6CoDw&usg=AFQjCNGgwVFrGLlo0a7wd2zxqpWHUGApbQ&sig2=KDX0_2MNWYnHv8emzGP_kg&bvm=bv.99261572.d.cGU)

## **Florida**

### *State judiciary and affiliates*

Florida Court System – provides information and links to additional resources.

<http://www.flcourts.org/resources-and-services/family-courts/guardianship.stml>

### *Other state offices, agencies and their affiliates*

State Department of Elder Affairs – provides handbook

<http://elderaffairs.state.fl.us/doea/pubguard/GuardianshipBasics.pdf>

### *State or local bar associations*

Florida Bar Association – provides CLEs, informational pamphlet, and video regarding guardianship

<http://www.floridabar.org/tfb/TFBConsum.nsf/48e76203493b82ad852567090070c9b9/e8fd739d221b11c085256b2f006c5a4e?OpenDocument>  
[http://www.floridabar.org/FBWEB/CLEReg.nsf/0/bc280ec23a7d6aa685257c4b004a6218/\\$FILE/1673-YLD-14.pdf](http://www.floridabar.org/FBWEB/CLEReg.nsf/0/bc280ec23a7d6aa685257c4b004a6218/$FILE/1673-YLD-14.pdf)

Broward County Guardianship class

<https://www.browardbar.org/calendar/#!event/2015/9/5/guardianship-class-8-hour-adult>

### *Non-profit, non-governmental organizations*

Florida Guardian Ad Litem – sponsors conferences and provides training

<http://guardianadlitem.org/training-advocacy-resources/conferences-training/>

Florida State Guardianship Association – sponsors trainings and CLEs

[https://www.floridaguardians.com/wp-content/uploads/2015/05/Guardianship-Essentials-Flyer\\_2015.pdf](https://www.floridaguardians.com/wp-content/uploads/2015/05/Guardianship-Essentials-Flyer_2015.pdf) -  
Essentials of Guardianship

Florida Pro Bono – offers training

<http://www.floridaprobono.org/education/item.3327-Guardianship>

## **Georgia**

*State judiciary and affiliates*

Georgia Probate Court – provides handbooks and videos about guardianship

<https://gaprobate.org/guardianship.php>

*Other state offices, agencies, and their affiliates*

Georgia Department of Human Services, Division of Aging Services – provides informational pamphlet

[http://aging.dhr.georgia.gov/sites/aging.dhs.georgia.gov/files/imported/DHR-DAS/DHR-DAS\\_Publications/ELAP-%20GUARDIANSHIP%202012.pdf](http://aging.dhr.georgia.gov/sites/aging.dhs.georgia.gov/files/imported/DHR-DAS/DHR-DAS_Publications/ELAP-%20GUARDIANSHIP%202012.pdf)

State Department of Education – provides handbook

[http://archives.gadoe.org/documents/ci\\_exceptional/Transitional%20Manual/XI\\_TranMan\\_Guardianship\\_Estate\\_Planning\\_9-11.pdf](http://archives.gadoe.org/documents/ci_exceptional/Transitional%20Manual/XI_TranMan_Guardianship_Estate_Planning_9-11.pdf)

*State or local bar associations*

Georgia Bar Association – brief mention of guardianship in wills pamphlet

<http://www.gabar.org/newsandpublications/consumerpamphlets/wills.cfm>

## **Hawaii**

*State offices, agencies, and their affiliates*

State of Hawaii – provides pro se informational packets

<http://www.state.hi.us/jud/Oahu/Family/ProSeMinor032007.pdf>

<http://www.courts.state.hi.us/docs/1FP/ProSeIncap.pdf>

## **Idaho**

*State judiciary and affiliates*

State of Idaho Judicial Branch – provides guardianship training module

<https://www.isc.idaho.gov/guardianship/guardianship-conservatorship>

*State or local bar associations*

Idaho Bar Association – provides informational pamphlet

[http://www.isb.idaho.gov/pdf/legal\\_education/bro\\_guardianship.pdf](http://www.isb.idaho.gov/pdf/legal_education/bro_guardianship.pdf)

## **Illinois**

*State offices, agencies, and their affiliates*

State of Illinois Guardianship and Advocacy Commission – provides practitioner's guide and guide to adult guardianship

<https://www.illinois.gov/sites/gac/OSG/Documents/PRAGUIDE2007.pdf>

<http://www.illinois.gov/sites/gac/OSG/Documents/GuideAdultGuardianship2011.pdf>

*State or local bar associations*

Illinois Bar Association – provides informational pamphlet and offers CLEs

<http://www.illinoislawyerfinder.com/sites/default/files/pamphlets/consumer/Being%20a%20Guardian.pdf>

<http://iln.isba.org/blog/2013/02/11/cle-guardianship-boot-camp> - CLE Guardianship Boot Camp

*Non-profit, non-governmental organizations*

Illinois Guardianship Association – provides guardianship manual and offers free guardianship training events

<http://www.illinoisguardianship.org/pdf/GuardianManual042015.pdf>

<http://www.illinoisguardianship.org/outreach.htm>

Illinois Pro Bono – offers training

<http://www.overpayment.illinoisprobono.org/index.cfm?fuseaction=calendar.calendarDetails&eventID=3018> - Guardianship 101

Illinois Legal Advocate – provides CLEs on guardianship (“A Practitioner’s Perspective”)

<http://www.illinoislegaladvocate.org/index.cfm?fuseaction=calendar.calendarDetails&eventID=3723>

**Indiana**

*State or local bar associations*

Indiana Bar Association – offers brochure available for purchase

<http://www.inbar.org/?publications2>

*Non-profit, non-governmental organizations*

The Arc, Indiana – provides information and videos

<http://www.arcind.org/future-planning/guardianship/>

Indiana Legal Services – provides informational brochure

[http://www.indianalegalservices.org/sites/indianalegalservices.org/files/Guardians%20Ad%20Litem%20-%20-%20-%20PDF%20Brochure\\_0.pdf](http://www.indianalegalservices.org/sites/indianalegalservices.org/files/Guardians%20Ad%20Litem%20-%20-%20-%20PDF%20Brochure_0.pdf)

**Iowa**

*State offices, agencies and their affiliates*

Iowa Governor’s Developmental Disabilities Council – provides handbook

<http://www.state.ia.us/ddcouncil/Guardianship%20pdfs/Guardianship-Conservatorship%20Papers.pdf>

*State or local bar associations*

Iowa Bar Association – provides guardianship handbook

<http://c.ymcdn.com/sites/www.iowabar.org/resource/resmgr/docs/guardianshipconservatorship.pdf>

*Non-profit, non-governmental organizations*

Iowa Legal Aid – multiple pamphlets on various guardianship issues

<http://www.iowalegalaid.org/issues/family-and-juvenile/guardianship>

**Kansas**

*State judiciary and affiliates*

Kansas Judicial Council – provides guardian training materials

<http://www.kansasjudicialcouncil.org/GuardianConservatorTraining.sh>  
[tm](http://www.kansasjudicialcouncil.org/GuardianConservatorTraining.sh)

*State or local bar associations*

Kansas Bar Association – provides informational pamphlet

[http://www.ksbar.org/?aging\\_law](http://www.ksbar.org/?aging_law)

**Kentucky**

*State offices, agencies, and their affiliates*

Kentucky Protection & Advocacy State Agency – provides handbook

<http://www.kypa.net/uploads/ThinkingGuardianship.pdf>

Louisville County Attorney – provides information

<https://louisvilleky.gov/government/county-attorney/file-guardianship>

*Non-profit, non-governmental organizations*

Legal Aid Network of Kentucky – provides a family guide to guardianship

<http://kyjustice.org/node/568>

## **Louisiana**

[to follow]

## **Maine**

*State offices, agencies, and their affiliates*

State of Maine Department of Health and Human Services – provides guardianship guide and training tutorial

<http://www.maine.gov/dhhs/oas/guardianship/>

*Non-profit, non-governmental organizations*

Pine Tree Legal Assistance – provides information and links to various organizations that can assist with a guardianship proceeding

<http://ptla.org/guardianship-minor#>

## **Maryland**

*State or local bar associations*

Maryland Bar Association – provides informational pamphlet

<http://www.msba.org/publications/brochures/guardian.aspx>

*Non-profit, non-governmental organizations*

a. Maryland Disability Law Center – provides handbook

<http://www.mdclaw.org/wp-content/uploads/2011/12/Guardianship-Handbook-2011.pdf>

## **Massachusetts**

*State judiciary and affiliates*

Massachusetts Court System – provides general information

<http://www.mass.gov/courts/docs/courts-and-judges/courts/probate-and-family-court/info-sheet-060909.pdf>

*Non-profit, non-governmental organizations*

Massachusetts Guardianship Association – provides handbook and informational videos

<http://www.massguardianshipassociation.org/pdf/FINALHandbookforGuardians.pdf>

<http://www.massguardianshipassociation.org/information/guardianship-of-a-minor/>

Massachusetts Poverty Law Advocates – Mass Legal Services – provides training on guardianships of adults

<http://www.masslegalservices.org/content/vlp-introduction-guardianship-adults-pro-bono-attorney-training>

*Law schools*

Volunteer Lawyers Project – provides training and clinics

Boston University School of Law – Guardianship of Minors Training

<https://www.bu.edu/phpbin/calendar/event.php?id=115634&cid=17&oid=0>

[http://www.vlpnet.org/volunteer/item.6167-Guardianship\\_Clinics](http://www.vlpnet.org/volunteer/item.6167-Guardianship_Clinics)

## **Michigan**

### *State offices, agencies, and their affiliates*

National Legal Resource Center – provides handbook for guardians (Michigan edition)

[http://www.nlrc.aoa.gov/nlrc/legal\\_issues/capacity/docs/Michigan\\_Guardian\\_Handbook.pdf](http://www.nlrc.aoa.gov/nlrc/legal_issues/capacity/docs/Michigan_Guardian_Handbook.pdf)

### *Non-profit, non-governmental organizations*

Michigan Guardianship Association – educational DVD available for sale.

<http://michiganguardianship.org/dvd/>

## **Minnesota**

### *State judiciary and affiliates*

State Court System – provides information, forms, and an informational video

<http://www.mncourts.gov/Help-Topics/Guardianship-and-Conservatorship.aspx>

### *Non-profit, non-governmental organizations*

Minnesota Association for Guardianship and Conservatorship – provides information and handbooks

<http://www.minnesotaguardianship.org>

## **Mississippi**

### *State judiciary and affiliates*

Mississippi Judiciary – provides information on the duties of a guardian

<http://www.2ndchancerycourtdistrictms.org/information/gship-cship/guardianship/>

### *Non-profit, non-governmental organizations*

Mississippi Legal Services – provides general guardianship information compiled from other internet sources

<http://www.mslegalservices.org>

## **Missouri**

### *State offices, agencies, and their affiliates*

State Department of Health and Senior Services – provides guardianship manual

[http://www.moadvocacy.org/Manuals/Guardianship\\_Conservatorship\\_2007.pdf](http://www.moadvocacy.org/Manuals/Guardianship_Conservatorship_2007.pdf)

### *State or local bar associations*

Missouri State Bar – provides pamphlet with small guardianship section; sponsors CLEs

[http://www.mobar.org/uploadedFiles/Home/Publications/Legal\\_Resources/Brochures\\_and\\_Booklets/Probate\\_Law\\_Resource\\_Guide/full.pdf](http://www.mobar.org/uploadedFiles/Home/Publications/Legal_Resources/Brochures_and_Booklets/Probate_Law_Resource_Guide/full.pdf)

<http://www.mobarprobono.net/index.php/for-volunteer-attorneys/training-and-events/event/21-free-cle-the-nuts-and-bolts-of-an-action-for-adoption-guardianship-or-custody-divorce-modification-or-paternity-on-behalf-of-children-in-foster-care> - Nuts and Bolts of an Action for Adoption, Guardianship, or Custody

### *Non-profit, non-governmental organizations*

Missouri Protection & Advocacy Services – provides brochure

<http://www.moadvocacy.org/Manuals/LegalRights/GuardianshipConservatorship.pdf>

*Law schools*

- a. UKMC Institute for Human Development – provides resource guide
  - i. <http://moddcouncil.org/uploaded/MO%20Guardianship%20RESOURCE%20GUIDE%20rev%20Dec%202010.pdf>

Montana

*State judiciary and affiliates*

- a. State Judicial Branch – provides packets of forms and links to external sites with additional resources
  - i. <http://courts.mt.gov/library/topic/guardian>

*Other state offices, agencies, and their affiliates*

- b. State Department of Health & Human Services – provides information
  - i. <http://dphhs.mt.gov/sltc/services/aging/legal/index>

Nebraska

*State judiciary and affiliates*

Nebraska Judicial Branch – provides information and links to resources and education

<https://supremecourt.nebraska.gov/guardians-and-conservatorship>

*Other state offices, agencies, and their affiliates*

Nebraska Department of Health and Human Services – provides legal guardianship guidebook

[http://dhhs.ne.gov/children\\_family\\_services/Guidebooks/Legal%20Guardianship%20Guidebook.pdf](http://dhhs.ne.gov/children_family_services/Guidebooks/Legal%20Guardianship%20Guidebook.pdf)

*Non-profit, non-governmental organizations*

Disability Rights Nebraska – provides information

[http://www.disabilityrightsnebraska.org/resources/law\\_in\\_brief\\_word/guardianship.html](http://www.disabilityrightsnebraska.org/resources/law_in_brief_word/guardianship.html)

*Law schools*

University of Nebraska – Lincoln – provides outline of guardianship practices

<http://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1360&context=extensionhist>

**Nevada**

*State judiciary and affiliates*

Clark County Courts – provides guardianship training manual

<http://www.clarkcountycourts.us/shc/shc%20packets%20and%20documents/Guardianship%20Training%20Manual.pdf>

*Other state offices, agencies, and their affiliates*

Clark County – provides basic overview of guardianship

[http://www.clarkcountynv.gov/depts/public\\_guardian/Pages/TypesofGuardianship.aspx](http://www.clarkcountynv.gov/depts/public_guardian/Pages/TypesofGuardianship.aspx)

*State or local bar associations*

Nevada State Bar – offers CLEs on guardianship

<http://www.nvbarcle.org/courses-by-subject/61/Guardianship>

*Non-profit, non-governmental organizations*

Legal Aid Center of Southern Nevada – provides information on various topics related to guardianship

<http://www.familylawselfhelpcenter.org/self-help/guardianship>

*Law schools*



William S. Boyd School of Law – offers community service programs on guardianship

<http://law.unlv.edu/free-legal-education>

### **New Hampshire**

#### *State judiciary and affiliates*

New Hampshire Judicial Branch – provides pamphlets and checklists for guardianship related topics

<http://www.courts.state.nh.us/probate/guardianship.htm>

#### *Non-profit, non-governmental organizations*

New Hampshire Legal Aid – provides general overview

<http://www.nhlegalaid.org/self-help-guides/family/guardianship/guardianship-what-some-parents-need-know>

### **New Jersey**

#### *State judiciary and affiliates*

State Court System – provides basic overview

<http://www.judiciary.state.nj.us/guardianship/>

#### *Other state offices, agencies, and their affiliates*

State Department of Human Services – provides basic overview

<http://www.state.nj.us/humanservices/ddd/services/guardianship/>

#### *State or local bar associations*

New Jersey Bar Association – provides pamphlet with very brief mention of guardianship

<http://www.njsbf.org/images/content/1/1/11072/consumer%20guide.pdf>

#### *Non-profit, non-governmental organizations*

Guardianship Association of NJ, Inc. – Education Institute provides education and resources

<http://www.ganji.org/index.htm>

### **New Mexico**

#### *State judiciary and affiliates*

State Court System – provides handbook

[https://tribalstate.nmcourts.gov/index.php/component/docman/doc\\_download/NMGA-Guardianship-Handbook-5-07%20from%20J.%20Johnson.pdf](https://tribalstate.nmcourts.gov/index.php/component/docman/doc_download/NMGA-Guardianship-Handbook-5-07%20from%20J.%20Johnson.pdf)

#### *State or local bar associations*

New Mexico Bar Association – provides pamphlets on adult and kinship guardianship.

<http://www.nmbar.org/NmbarDocs/forPublic/LREP/SrSuppAdultGuardianship.pdf>

<http://www.nmbar.org/NmbarDocs/forPublic/LREP/SrSuppKinshipGuardianship.pdf>

#### *Non-profit, non-governmental organizations*

New Mexico Guardianship Association – provides informational videos, handbooks, and documents.

<https://www.nmgaresourcecenter.org/videos/>

<https://www.nmgaresourcecenter.org/handbooks-documents/>

Advocacy, Inc. – New Mexico Guardianship Project provides information and links to resources and forms.

<http://www.nmadvocacy.org/home/node/2>

## **New York**

### *State judiciary and affiliates*

State Court System – provides information, forms, and training

[https://www.nycourts.gov/courts/nyc/family/faqs\\_guardianship.shtml](https://www.nycourts.gov/courts/nyc/family/faqs_guardianship.shtml)

<https://www.nycourts.gov/ip/gfs/trainingprograms.pdf> - training for guardians

### *State or local bar associations*

New York Bar Association – provides informational pamphlets and forms

<http://www.nysba.org/store/detail.aspx?id=A12346>

<http://www.nysba.org/GUARdown/>

Dutchess County Bar Association – provides guardianship training

<http://www.dutchesscountybar.org/cle-article-81-guardianship-0>

### *Non-profit, non-governmental organizations*

New York County Lawyers' Association – provides guardian training

<http://www.nycla.org/PDF/Certified%20Guardian%2012.9.2010.pdf>

### *Law schools*

CUNY School of Law – provides guide to becoming a guardian without a lawyer

<http://www.law.cuny.edu/academics/clinics/elder/Becoming-A-Guardian-Without-A-Lawyer.pdf>

<http://www.law.cuny.edu/academics/clinics/elder/Becoming-A-Guardian-Without-A-Lawyer.pdf>

Albany School of Law – sponsors CLEs

<http://www.albanylaw.edu/glc/programs/Pages/Ethical-Challenges-in-Guardianship-under-Article-81-of-the-Mental-Hygiene-Law.aspx> -

Ethical Challenges in Guardianship Under Article 81 of the Mental Hygiene Law

Ethical Challenges in Guardianship Under Article 81 of the Mental Hygiene Law

## **North Carolina**

### *State judiciary and affiliates*

State Court System – provides information and pamphlet

[www.nccourts.org/Support/FAQs/FAQs.asp?Type=15&language=2](http://www.nccourts.org/Support/FAQs/FAQs.asp?Type=15&language=2)

[www.nccourts.org/forms/documents/1184.pdf](http://www.nccourts.org/forms/documents/1184.pdf)

### *Other state offices, agencies, and their affiliates*

North Carolina Department of Health and Human Services – provides information and links to resources.

<https://www.ncdhhs.gov/assistance/state-guardianship/guardianship-alternatives-to-guardianship>

### *Law schools*

University of North Carolina School of Government – provides summary of North Carolina law relating to guardianship

<http://www.sog.unc.edu/sites/www.sog.unc.edu/files/200411MasonGuardianship.pdf>

Wake Forest University School of Law – provides handbook comparing guardianship versus power of attorney

<http://elder-clinic.law.wfu.edu/files/2013/04/Guardianship-or-Power-of-Attorney-web-version1.pdf>

## **North Dakota**

### *Other state offices, agencies, and their affiliates*

State Government – provides handbook

<http://www.nd.gov/dhs/info/pubs/docs/aging/guardianship-handbook-12-18-08.pdf>

### *Non-profit, non-governmental organizations*

Legal Services of North Dakota – provides informational brochure

[http://www.legalassist.org/?id=86&form\\_data\\_id=68](http://www.legalassist.org/?id=86&form_data_id=68)

## **Ohio**

### *State judiciary and affiliates*

Supreme Court of Ohio and Ohio Judiciary – offers guardian ad litem education program

<https://www.supremecourt.ohio.gov/GAL/preService.asp>

### *State or local bar associations*

Ohio Bar Association – provides pamphlet

<https://www.ohiobar.org/ForPublic/Resources/LawFactsPamphlets/Pages/lawfactspamphlet-10.aspx>

### *Non-profit, non-governmental organizations*

Ohio Legal Services – provides information, forms, education, and links to additional resources.

[http://www.ohiolegalservices.org/public/legal\\_problem/wills-and-probate/guardianships/qandact\\_view](http://www.ohiolegalservices.org/public/legal_problem/wills-and-probate/guardianships/qandact_view)

## **Oklahoma**

### *State offices, agencies, and their affiliates*

State Department of Human Services – FAQ section on guardianship

<http://www.okdhs.org/programsandservices/dd/guard/faq.htm>

### *State or local bar associations*

Oklahoma Bar Association – provides senior citizen handbook with guardianship section; provides archived journal article on guardianship of minors.

<http://www.okbar.org/Portals/14/PDF/Brochures/senior-handbook-2011-1.pdf>

<http://www.okbar.org/members/BarJournal/archive2011/AugArchive11/obj8220Taylor.aspx>

### *Non-profit, non-governmental organizations*

Legal Aid Services of Oklahoma, Inc. – provides information, forms, and links to additional resources.

i. <http://oklaw.org/issues/family/guardianship>

## **Oregon**

### *State judiciary and affiliates*

State Court System – provides information

<http://courts.oregon.gov/Deschutes/services/probate/pages/guardian.aspx>

### *Non-profit, non-governmental organizations*

Legal Aid Services of Oregon – information contained in a community education booklet

<http://oregonlawhelp.org/resource/guardianships-for-children?ref=tRCCY>

Guardian/Conservator Association of Oregon, Inc. – provides information  
<http://www.gcaoregon.org/looking-for-help/know-someone-who-needs-help/what-is-the-process-to-get-a-guardian-appointed/>

Disability Rights Oregon – provides handbook  
<http://droregon.org/wp-content/uploads/Guardianship-Handbook-Third-Edition.pdf>

## **Pennsylvania**

### *State judiciary and affiliates*

State Court System – provides a guardian's manual  
<https://www.courts.phila.gov/pdf/orphans/Guardians-Manual.pdf>

### *Other state offices, agencies, and their affiliates*

Pennsylvania Department of Human Services – provides information  
<http://www.odpconsulting.net/resources/state-center-topic-info-for-families/guardianship/#.Vbfwl0vPKw0>

### *Non-profit, non-governmental organizations*

Disability Rights Network of Pennsylvania – provides guardianship handbook  
<http://drnpa.org/File/publications/guardianship-in-pennsylvania--march-2010-.pdf>

Pennsylvania Legal Aid Network – information on guardianship of children  
<http://www.palawhelp.org/issues/children-and-families/custody-and-guardianship-of-children>

Philadelphia Legal Assistance – provides basic information and links to self-help resources.  
<http://www.philalegal.org/guardianship>

## **Rhode Island**

### *State or local bar associations*

Rhode Island Bar Association – provides CLEs on guardians for children and includes short section on guardianship in guide covering various topics for seniors  
<https://www.ribar.com/For%20the%20Public/elderlylawhandbook.aspx>  
<https://www.ribar.com/NewsDetail.aspx?NewsId=434>

### *Non-profit, non-governmental organizations*

Rhode Island Disability Law Center – provides handbook  
[http://www.ridlc.org/publications/Guardianship\\_and\\_Alternatives\\_To\\_Guardianship\\_Booklet.pdf](http://www.ridlc.org/publications/Guardianship_and_Alternatives_To_Guardianship_Booklet.pdf)

## **South Carolina**

### *State judiciary and affiliates*

State Court System – provides guardianship FAQs  
<http://www.judicial.state.sc.us/selfHelp/FAQsFromACaregiver.pdf>

### *Other state offices, agencies, and their affiliates*

Greenville County, SC – provides handbook  
[http://www.greenvillecounty.org/probate/GC\\_Forms/GCBooklet.pdf](http://www.greenvillecounty.org/probate/GC_Forms/GCBooklet.pdf)

### *State or local bar associations*

South Carolina Bar Association – provides small guardianship section in senior citizen handbook; guardian ad litem handbook

[http://www.scbare.org/Portals/0/Documents/Senior\\_Citizens\\_-\\_rev101712.pdf?ver=2014-11-13-143128-787](http://www.scbare.org/Portals/0/Documents/Senior_Citizens_-_rev101712.pdf?ver=2014-11-13-143128-787)  
<http://www.scbare.org/public/files/docs/GALbrochure.pdf>

### **South Dakota**

*State offices, agencies, and their affiliates*

South Dakota Department of Human Services – provides information and forms

<http://dhs.sd.gov/gdn/guardianshipfaqs.aspx>

### **Tennessee**

*[to follow]*

### **Texas**

*State offices, agencies, and their affiliates*

Texas Department of Aging and Disability Services – provides guide to adult guardianship

[https://www.dads.state.tx.us/news\\_info/publications/brochures/pub395-guardianship.pdf](https://www.dads.state.tx.us/news_info/publications/brochures/pub395-guardianship.pdf)

*State or local bar associations*

Texas Bar Association – provides pamphlet; guide to guardianship

[https://www.texasbar.com/AM/Template.cfm?Section=Free\\_Legal\\_Information2&Template=/CM/ContentDisplay.cfm&ContentID=27877](https://www.texasbar.com/AM/Template.cfm?Section=Free_Legal_Information2&Template=/CM/ContentDisplay.cfm&ContentID=27877)

<http://www.depts.ttu.edu/sls/forms/texas-guardianship.pdf>

<https://www.texasbarcle.com/materials/Programs/2879/Brochure.pdf> -

Advanced Elder Law and Advanced Guardianship Law courses 2014

*Non-profit, non-governmental organizations*

Texas Guardianship Association – provides guardianship process information

<http://texasguardianship.org/guardianship-information/guardianship-basics/guardianship-process-2/>

*Law schools*

University of Texas at Austin – sponsors CLE

<https://utcle.org/conferences/ER15>

### **Utah**

*State judiciary and affiliates*

State Court System – provides information and links to forms

<http://www.utcourts.gov/howto/family/gc/>

*Other state offices, agencies, and their affiliates*

Utah Office of Public Guardian – provides information

<http://opg.utah.gov/guardianship/>

*Non-profit, non-governmental organizations*

Guardianship Associates of Utah – provides various articles on guardianship

<http://guardianshiputah.org/learn/>

Utah Legal Services – provides information

[http://www.utahlegalservices.org/public/legal\\_problem-en-us/family-law/guardianship-conservatorship/begin-questions-answers-guardianship-and-conservatorship-1](http://www.utahlegalservices.org/public/legal_problem-en-us/family-law/guardianship-conservatorship/begin-questions-answers-guardianship-and-conservatorship-1)

*Law schools*

University of Utah S. J. Quinney College of Law – provides CLEs

<http://www.law.utah.edu/event/guardianship-training-cle/>

## **Vermont**

### *State judiciary and affiliates*

State Court System – provides information and forms

<https://www.vermontjudiciary.org/GTC/Probate/minorguardianship.aspx>

### *Other state offices, agencies, and their affiliates*

Vermont Department of Disabilities, Aging & Independent Living – provides handbooks and guidelines

<http://www.ddas.vermont.gov/ddas-programs/programs-guardianship/programs-guardianship-default-page>

### *Non-profit, non-governmental organizations*

Vermont Law Help – provides information

<http://www.vtlawhelp.org/guardianship-adults>

Vermont Family Network – provides brochure

<http://www.vermontfamilynetwork.org/wp-content/uploads/2012/05/VFN-Guardianship-Factsheetv21.pdf>

## **Virginia**

### *State judiciary and affiliates*

State Court System – provides handbook regarding guardianship proceedings for incapacitated adults.

[http://www.courts.state.va.us/courtadmin/aoc/cip/programs/gal/adult/guardian\\_conserv\\_proceedings.pdf](http://www.courts.state.va.us/courtadmin/aoc/cip/programs/gal/adult/guardian_conserv_proceedings.pdf)

### *Other state offices, agencies, and their affiliates*

Virginia Division for the Aging – provides information, a handbook, and guardianship programs in select areas of the state.

<http://www.vda.virginia.gov/guardianship.asp>  
<http://www.vda.virginia.gov/pdfdocs/guardbook.pdf>

### *Non-profit, non-governmental organizations*

Virginia Legal Aid Society – provides brochure

<http://www.valegalaid.org/files/E095B726-FCD8-81C1-17DC-A16C7ED73FFF/attachments/4A0FD0FE-B2F4-41B3-AE84-3952BC09FB26/guardianship-and-conservatorships.pdf>

Virginia CLE – sponsors CLEs

<https://vacle.org/product.aspx?zpid=4971&zskuid=18355> -  
Representation of Incapacitated Persons as a Guardian Ad Litem

## **Washington**

### *State judiciary and affiliates*

State Court System – provides information on various topics related to guardianship in addition to training courses.

[http://www.courts.wa.gov/programs\\_orgs/guardian/](http://www.courts.wa.gov/programs_orgs/guardian/)

### *State or local bar associations*

Washington State Bar – Advanced Guardianship Issues CLE

<http://www.wsba.org/Events-Calendar/2015/April/Advanced-Guardianship-Issues-CLE>

King County Bar Association – provides handbook and CLEs

[http://www.kcba.org/cle/family\\_volunteer\\_guardian\\_handbook.pdf](http://www.kcba.org/cle/family_volunteer_guardian_handbook.pdf)

<http://www.wsba.org/Events-Calendar/2013/April/KCBA-Guardianship-Guardian-ad-Litem-Initial-Training-CLE> - Guardianship, Guardian ad Litem Training

*Non-profit, non-governmental organizations*

Northwest Justice Project – provides various brochures on topics related to guardianship.

<http://www.washingtonlawhelp.org/issues/aging-elder-law/guardianships-powers-of-attorney-2>

The Arc of Washington State – provides general information

<http://arcwa.org/library/guardianship>

**West Virginia**

*State judiciary and affiliates*

State Court System – provides training tutorial

<http://www.courtswv.gov/public-resources/guardians-conservators.html>

*Non-profit, non-governmental organizations*

Legal Aid of West Virginia – provides information

<http://www.lawv.net/Resources/Self-Help-Library/Family/Guardianship-Conservatorship-What-Do-I-Need-to-Know>

Appalachian Legal Services – provides leaflet

<http://www.wvlegalservices.org/guardcon.pdf>

Appalachian Benefits Assistance Corporation – provides handbook

<http://www.appben.org/guardianhandbook.pdf>

**Wisconsin**

*State offices, agencies, and their affiliates*

State Department of Health Services – provides information and handbook

<https://www.dhs.wisconsin.gov/clientrights/guardianship.htm>

[http://www.co.brown.wi.us/i\\_brown/d/aging\\_disability\\_resource\\_center/guardianship\\_booklet\\_from\\_wi\\_website.pdf](http://www.co.brown.wi.us/i_brown/d/aging_disability_resource_center/guardianship_booklet_from_wi_website.pdf)

*State or local bar associations*

Wisconsin Bar Association – provides handbook and brochure

<http://www.wisbar.org/forpublic/inneedinformation/pages/publications.aspx>

*Law schools*

Marquette University Law School – offers CLE

- i. <http://law.marquette.edu/pro-bono/mvlgc-brown-bag-cle-series-milwaukee-county-adult-guardianship-procedure> - Milwaukee County Adult Guardianship Procedure

**Wyoming**

*State judiciary and affiliates*

State Court System – provides PowerPoint presentation

[http://www.courts.state.wy.us/Documents/CJP/TrainingDocs/Guardianships\\_PowerPoint.pdf](http://www.courts.state.wy.us/Documents/CJP/TrainingDocs/Guardianships_PowerPoint.pdf)

*Other state offices, agencies, and their affiliates*

Wyoming Guardians Ad Litem Program – provides information and forms

<http://gal.wyo.gov>

## **CARE FACILITIES**



**MEMORANDUM**

Date: August 3, 2015

To: The Honorable James William Hardesty  
Chief Justice of the Nevada Supreme Court

Members of the Supreme Court Commission  
to Study the Creation and Administration of Guardianships

From: Kim G. Rowe, Esq.  
Representative of Facilities That Regularly Provide Care To  
Persons Under The Supervision of A Court Appointed Guardian

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I. INTRODUCTION.

At the Commission's meeting on July 15, 2015, Justice Hardesty requested I provide information to the Commission with respect to the various types of interactions health care facilities have with the guardianship system. As I indicated at the meeting on July 15<sup>th</sup>, my clients include hospitals, skilled nursing facilities, long term acute care hospitals, assisted living facilities and physician providers. Justice Hardesty also requested information concerning the types of challenges those facilities encounter in working with the guardianship system. Finally, Justice Hardesty expressed specific interest in regarding interactions with temporary guardianships as well as the need to submit mandatory reports to the appropriate agencies in the event that a facility or provider has reasonable cause to believe that abuse or exploitation has or is occurring. The interactions described below typically involve adult patients over the age of sixty, but the discussion is also applicable to minors and patients under the age of sixty as well.

II. DISCUSSION.

Healthcare facilities and providers typically deal with court appointed guardians as substitute decision makers for their patients. Additionally, on occasion, healthcare facilities find themselves in the position of needing to initiate guardianship proceedings when a vulnerable patient lacks the capacity to make informed decisions and has no

family member or other person available or willing to serve as a guardian. The more frequent types of interactions and challenges faced in dealing with guardians are addressed below. Copies of the Statutes referenced are attached.

A. Dealing With Court Appointed Guardians.

In general, healthcare facilities and providers welcome the involvement of guardians as substitute decision makers for their vulnerable patient population. In those dealings, the first thing the facility will do is ask for a copy of the Order to verify the scope of the guardian's authority. Problems with court appointed guardians whether they are family members, friends, public guardians or private professional guardians are infrequent. Unfortunately, on occasion a guardian will not, in the opinion of the facility and other medical providers, appear to be making decisions that are not in the best interests of the patient/ward. The most typical example of such behavior occurs when the guardian insists on a discharge plan that involves the patients discharge to an unsafe living environment. Frequently these decisions involve an insistence on the patient returning to the same living arrangement that has proven unsafe. In such situations the guardians are generally unwilling to consider other alternatives such as a skilled nursing facility, assisted living arrangement or group home or some other arrangement that offers more structure and oversight. While there can be little question discharging a patient home is preferred if at all feasible, there are times that even with the use of additional available services and resources, such a discharge is not a safe alternative. If the medical providers and facility are not able to persuade the guardian to make appropriate placement decisions, the facility or individual providers may have mandatory reporting obligations if there is reasonable cause to believe that the decision making and/or actions of the guardian constitute abuse or neglect. If the patient is over the age of 60 and the facility has a reasonable cause to believe that the guardian's actions or inaction constitute abuse, exploitation, isolation or neglect, a report must be submitted to one of the agencies listed in NRS 200.5093. A similar statute exists with respect to children and can be found in NRS 432B.220 of the Nevada Revised Statutes.

If despite care conferences and occasionally mandatory reporting, disagreements with guardian's decisions cannot be resolved, a facility or provider may initiate a petition for the removal of the guardian pursuant to NRS 159.1853. NRS 159.1853 allows any interested person to submit such a petition. A petition to remove a court appointed guardian is an extraordinary matter that will result in a contested proceeding. If a petition to remove a guardian is submitted, I typically request the appointment of a guardian ad litem as well as the appointment of counsel to represent the interests of the ward. It is also worth noting that NRS 200.50986 specifically

provides authority separate and from the provisions of Chapter 159 of the Nevada Revised Statutes, for a local office of Aging and Disability Services to petition the court for the removal of the guardian. As noted above, the initiation of a petition for removal of guardian is an extremely harsh measure but offers a safeguard for the patient if a healthcare facility or provider determines that the guardian is not acting in the best interest of the ward.

B. Petition To Appoint A Permanent Guardian.

For the past five to ten years there appears to be an increasing segment of our population that has no family members or friends available or willing to serve as guardian for patients lacking decisional capacity. Such patients often need assistance with all aspects of their daily lives including managing financial matters, medical decision making and decisions concerning appropriate living arrangements. Often times such patients are either elderly and can no longer safely live alone or patients who while not living alone, are for one reason or another not receiving the assistance they need. In order to ensure the safety of such patients on discharge, it is not uncommon for a medical facility to initiate guardianship proceedings if there are no other alternatives for those patients seriously at risk. NRS 159.044 controls who may initiate a guardianship petition. It provides in part that a governmental agency, a nonprofit corporation or any interested person has the authority to initiate a guardianship petition. While not unheard of, in my experience if an at risk person is receiving care in a healthcare facility, a governmental agency rarely initiates such a petition even if a finding of abuse or exploitation concerning the patients circumstances prior to admission has been documented by an investigating agency. If it is determined such a patient lacks decisional capacity and would significantly benefit from a guardian, a medical facility can petition a court to appoint the public guardian which serves the county in which the patient resides. NRS 253.200 outlines the qualifications of a person for whom the Public Guardian may serve. This assumes the county has established a public guardians office, which is not always the case. In my practice, initiating a petition for the appointment of a guardian occurs only if no other alternative exists that will allow for a safe discharge. If for some reason the public guardian has no statutory authority to serve or is otherwise unwilling to serve, a facility can contract with a private professional guardian to serve as guardian. The use of private professional guardians in such circumstances occurs fairly infrequently in Washoe County. In the majority of instances when a guardianship petition is initiated by a facility, the patient has no family members or friends willing or able to serve as guardian and little or no resources available. In such cases, the medical facility will typically pay the attorney's fees associated with initiating the guardianship process as well as any fees associated with the guardianship

if the services of a private professional guardian are used. In Washoe County, the Public Guardians Office is represented by District Attorney's Office and that office assumes representation of the Guardian if the Court appoints the Public Guardian to act as the patient's guardian.

C. Temporary Guardianships.

Although extremely rare, there are occasions when medical facilities will out of necessity petition the Court for appointment of a temporary guardian if emergent medical treatments are needed, the patient lacks decisional capacity and is objecting to the procedure, and no other substitute decision makers are available. It should be noted that NRS 41A.120 provides a mechanism whereby consent is implied or excused for any medical, surgical or general procedure that is reasonably necessary and any delay in performing such procedure could reasonably be expected to result in death, disfigurement, impairment of faculties or serious bodily harm and there is no person authorized to consent readily available. In circumstances when the patient lacks decisional capacity, NRS 41A.120 is sometimes relied on to move forward with emergent treatment; however, there are instances when the appointment of a temporary guardian is sought in lieu of relying on 41A.120 to imply consent for the emergent treatment. A petition for an exparte temporary guardian is an extraordinary measure and is recognized as such by the medical facilities. It should not be used for anything short of an extremely urgent circumstance. Absent unique and serious circumstances related to medical procedures or ongoing financial exploitation concerns, filing a petition for temporary guardianship should rarely be pursued. In Washoe County there is a clear recognition by the Court that the appointment of an exparte temporary guardian is an extraordinary measure that should rarely be granted.

The initiation of a temporary guardianship proceeding is also an approach utilized by medical facilities dealing with a certain very small segment of minor patients. More specifically, access to the guardianship system can be necessary when parents of the minor patient refuse medical care deemed necessary by the medical providers to avoid substantial and immediate risk of serious physical harm. NRS 159.052 governs the appointment of a guardian under such circumstances. It goes without saying that such proceedings are typically seriously contested by the parents.

D. End of Life Decision Making.

Unfortunately medical facilities also on occasion are required to deal with of end-of-life decision making in the context of the guardianship system. A complete

discussion of the issues raised in such circumstances is beyond the scope of this Memorandum. It is sufficient to note that in the absence of advanced written directives, appropriate surrogate decision makers, or in the event of conflicts between decision makers, the involvement of the courts in the context of a guardianship proceeding may be necessary to resolve these conflicts. The most frequent circumstance end of life decision making conflicts arise involve the insistence by family members of continued care or medical procedures the medical providers unequivocally and unanimously agree is non-beneficial for the patient. While such decisions are incredibly personal and should in all but extremely rare instances be left to family members, in those instances when resolution is not possible between the medical providers and family, the guardianship process provides a mechanism to address and hopefully resolve these issues in the best interests of the patient.

E. Conclusion.

The above discussion provides a brief overview of some of the types of interactions healthcare facilities have with the guardianship process. While the guardianship system is not a panacea for all of the issues typically raised, it can be an invaluable tool to help lessen the risks encountered by vulnerable patients. When accessed appropriately, the guardianship system assists in reaching more kind and compassionate resolutions to the serious issues confronting the parties involved in the process.

**NRS 200.5093 Report of abuse, neglect, exploitation or isolation of older person; voluntary and mandatory reports; investigation; penalty.**

1. Any person who is described in subsection 4 and who, in a professional or occupational capacity, knows or has reasonable cause to believe that an older person has been abused, neglected, exploited or isolated shall:

(a) Except as otherwise provided in subsection 2, report the abuse, neglect, exploitation or isolation of the older person to:

(1) The local office of the Aging and Disability Services Division of the Department of Health and Human Services;

(2) A police department or sheriff's office;

(3) The county's office for protective services, if one exists in the county where the suspected action occurred; or

(4) A toll-free telephone service designated by the Aging and Disability Services Division of the Department of Health and Human Services; and

(b) Make such a report as soon as reasonably practicable but not later than 24 hours after the person knows or has reasonable cause to believe that the older person has been abused, neglected, exploited or isolated.

2. If a person who is required to make a report pursuant to subsection 1 knows or has reasonable cause to believe that the abuse, neglect, exploitation or isolation of the older person involves an act or omission of the Aging and Disability Services Division, another division of the Department of Health and Human Services or a law enforcement agency, the person shall make the report to an agency other than the one alleged to have committed the act or omission.

3. Each agency, after reducing a report to writing, shall forward a copy of the report to the Aging and Disability Services Division of the Department of Health and Human Services and the Unit for the Investigation and Prosecution of Crimes.

4. A report must be made pursuant to subsection 1 by the following persons:

(a) Every physician, dentist, dental hygienist, chiropractor, optometrist, podiatric physician, medical examiner, resident, intern, professional or practical nurse, physician assistant licensed pursuant to chapter 630 or 633 of NRS, perfusionist, psychiatrist, psychologist, marriage and family therapist, clinical professional counselor, clinical alcohol and drug abuse counselor, alcohol and drug abuse counselor, music therapist, athletic trainer, driver of an ambulance, paramedic, licensed dietitian or other person providing medical services licensed or certified to practice in this State, who examines, attends or treats an older person who appears to have been abused, neglected, exploited or isolated.

(b) Any personnel of a hospital or similar institution engaged in the admission, examination, care or treatment of persons or an administrator, manager or other person in charge of a hospital or similar institution upon notification of the suspected abuse, neglect, exploitation or isolation of an older person by a member of the staff of the hospital.

(c) A coroner.

(d) Every person who maintains or is employed by an agency to provide personal care services in the home.

(e) Every person who maintains or is employed by an agency to provide nursing in the home.

(f) Every person who operates, who is employed by or who contracts to provide services for an intermediary service organization as defined in NRS 449.4304.

(g) Any employee of the Department of Health and Human Services.

(h) Any employee of a law enforcement agency or a county's office for protective services or an adult or juvenile probation officer.

(i) Any person who maintains or is employed by a facility or establishment that provides care for older persons.

(j) Any person who maintains, is employed by or serves as a volunteer for an agency or service which advises persons regarding the abuse, neglect, exploitation or isolation of an older person and refers them to persons and agencies where their requests and needs can be met.

(k) Every social worker.

(l) Any person who owns or is employed by a funeral home or mortuary.

5. A report may be made by any other person.

6. If a person who is required to make a report pursuant to subsection 1 knows or has reasonable cause to believe that an older person has died as a result of abuse, neglect or isolation, the person shall, as soon as reasonably practicable, report this belief to the appropriate medical examiner or coroner, who shall investigate the cause of death of the older person and submit to the appropriate local law enforcement agencies, the appropriate prosecuting attorney, the Aging and Disability Services Division of the Department of Health and Human Services and the Unit for the Investigation and Prosecution of Crimes his or her written findings. The written findings must include the information required pursuant to the provisions of NRS 200.5094, when possible.

7. A division, office or department which receives a report pursuant to this section shall cause the investigation of the report to commence within 3 working days. A copy of the final report of the investigation conducted by a division, office or department, other than the Aging and Disability Services Division of the Department of Health and Human Services, must be forwarded within 30 days after the completion of the report to the:

(a) Aging and Disability Services Division;

(b) Repository for Information Concerning Crimes Against Older Persons created by NRS 179A.450; and

(c) Unit for the Investigation and Prosecution of Crimes.

8. If the investigation of a report results in the belief that an older person is abused, neglected, exploited or isolated, the Aging and Disability Services Division of the Department of Health and Human Services or the county's office for protective services may provide protective services to the older person if the older person is able and willing to accept them.

9. A person who knowingly and willfully violates any of the provisions of this section is guilty of a misdemeanor.

10. As used in this section, "Unit for the Investigation and Prosecution of Crimes" means the Unit for the Investigation and Prosecution of Crimes Against Older Persons in the Office of the Attorney General created pursuant to NRS 228.265.

(Added to NRS by 1981, 1334; A 1983, 1653; 1985, 1491; 1987, 2130, 2218; 1989, 904; 1991, 135; 1993, 2226; 1995, 2250; 1997, 108, 1349, 2608, 2610, 2637, 2639; 1999, 137, 2242, 2245, 2248, 3518; 2001, 158, 161, 776; 2003, 905; 2005, 1109, 2172; 2007, 746, 1224, 1849, 3080; 2009, 2372, 2445, 2992; 2011, 1093, 1514; 2013, 141, 953)

**NRS 432B.220 Persons required to make report; when and to whom reports are required; any person may make report; report and written findings if reasonable cause to believe death of child caused by abuse or neglect; certain persons and entities required to inform reporters of duty to report.**

1. Any person who is described in subsection 4 and who, in his or her professional or occupational capacity, knows or has reasonable cause to believe that a child has been abused or neglected shall:

(a) Except as otherwise provided in subsection 2, report the abuse or neglect of the child to an agency which provides child welfare services or to a law enforcement agency; and

(b) Make such a report as soon as reasonably practicable but not later than 24 hours after the person knows or has reasonable cause to believe that the child has been abused or neglected.

2. If a person who is required to make a report pursuant to subsection 1 knows or has reasonable cause to believe that the abuse or neglect of the child involves an act or omission of:

(a) A person directly responsible or serving as a volunteer for or an employee of a public or private home, institution or facility where the child is receiving child care outside of the home for a portion of the day, the person shall make the report to a law enforcement agency.

(b) An agency which provides child welfare services or a law enforcement agency, the person shall make the report to an agency other than the one alleged to have committed the act or omission, and the investigation of the abuse or neglect of the child must be made by an agency other than the one alleged to have committed the act or omission.

3. Any person who is described in paragraph (a) of subsection 4 who delivers or provides medical services to a newborn infant and who, in his or her professional or occupational capacity, knows or has reasonable cause to believe that the newborn infant has been affected by prenatal illegal substance abuse or has withdrawal symptoms resulting from prenatal drug exposure shall, as soon as reasonably practicable but not later than 24 hours after the person knows or has reasonable cause to believe that the newborn infant is so affected or has such symptoms, notify an agency which provides child welfare services of the condition of the infant and refer each person who is responsible for the welfare of the infant to an agency which provides child welfare services for appropriate counseling, training or other services. A notification and referral to an agency which provides child welfare services pursuant to this subsection shall not be construed to require prosecution for any illegal action.

4. A report must be made pursuant to subsection 1 by the following persons:

(a) A person providing services licensed or certified in this State pursuant to, without limitation, chapter 450B, 630, 630A, 631, 632, 633, 634, 634A, 635, 636, 637, 637A, 637B, 639, 640, 640A, 640B, 640C, 640D, 640E, 641, 641A, 641B or 641C of NRS.

(b) Any personnel of a medical facility licensed pursuant to chapter 449 of NRS who are engaged in the admission, examination, care or treatment of persons or an administrator, manager or other person in charge of such a medical facility upon notification of suspected abuse or neglect of a child by a member of the staff of the medical facility.

(c) A coroner.

(d) A member of the clergy, practitioner of Christian Science or religious healer, unless the person has acquired the knowledge of the abuse or neglect from the offender during a confession.

(e) A person working in a school who is licensed or endorsed pursuant to chapter 391 or 641B of NRS.

(f) Any person who maintains or is employed by a facility or establishment that provides care for children, children's camp or other public or private facility, institution or agency furnishing care to a child.

(g) Any person licensed pursuant to chapter 424 of NRS to conduct a foster home.

(h) Any officer or employee of a law enforcement agency or an adult or juvenile probation officer.

(i) Except as otherwise provided in NRS 432B.225, an attorney.

(j) Any person who maintains, is employed by or serves as a volunteer for an agency or service which advises persons regarding abuse or neglect of a child and refers them to persons and agencies where their requests and needs can be met.

(k) Any person who is employed by or serves as a volunteer for a youth shelter. As used in this paragraph, "youth shelter" has the meaning ascribed to it in NRS 244.427.

(l) Any adult person who is employed by an entity that provides organized activities for children.

5. A report may be made by any other person.

6. If a person who is required to make a report pursuant to subsection 1 knows or has reasonable cause to believe that a child has died as a result of abuse or neglect, the person shall, as soon as reasonably practicable, report this belief to an agency which provides child welfare services or a law enforcement agency. If such a report is made to a law enforcement agency, the law enforcement agency shall notify an agency which provides child welfare services and the appropriate medical examiner or coroner of the report. If such a report is made to an agency which provides child welfare services, the agency which provides child welfare services shall notify the appropriate medical examiner or coroner of the report. The medical examiner or coroner who is notified of a report pursuant to this subsection shall investigate the report and submit his or her written findings to the appropriate agency which provides child welfare services, the appropriate district attorney and a law enforcement agency. The written findings must include, if obtainable, the information required pursuant to the provisions of subsection 2 of NRS 432B.230.

7. The agency, board, bureau, commission, department, division or political subdivision of the State responsible for the licensure, certification or endorsement of a person who is described in subsection 4 and who is required in his or her professional or occupational capacity to be licensed, certified or endorsed in this State shall, at the time of initial licensure, certification or endorsement:

(a) Inform the person, in writing or by electronic communication, of his or her duty as a mandatory reporter pursuant to this section;

(b) Obtain a written acknowledgment or electronic record from the person that he or she has been informed of his or her duty pursuant to this section; and



(c) Maintain a copy of the written acknowledgment or electronic record for as long as the person is licensed, certified or endorsed in this State.

8. The employer of a person who is described in subsection 4 and who is not required in his or her professional or occupational capacity to be licensed, certified or endorsed in this State must, upon initial employment of the person:

(a) Inform the person, in writing or by electronic communication, of his or her duty as a mandatory reporter pursuant to this section;

(b) Obtain a written acknowledgment or electronic record from the person that he or she has been informed of his or her duty pursuant to this section; and

(c) Maintain a copy of the written acknowledgment or electronic record for as long as the person is employed by the employer.

(Added to NRS by 1985, 1371; A 1987, 2132, 2220; 1989, 439; 1993, 2229; 1999, 3526; 2001, 780, 1150; 2001 Special Session, 37; 2003, 910, 1211; 2005, 2031; 2007, 1503, 1853, 3084; 2009, 2996; 2011, 791, 1097; 2013, 957, 1086)

**NRS 159.1853 Petition for removal.**

1. The following persons may petition the court to have a guardian removed:
  - (a) The ward;
  - (b) The spouse of the ward;
  - (c) Any relative who is within the second degree of consanguinity to the ward;
  - (d) A public guardian; or
  - (e) Any other interested person.
2. The petition must:
  - (a) State with particularity the reasons for removing the guardian; and
  - (b) Show cause for the removal.
3. If the court denies the petition for removal, the petitioner shall not file a subsequent petition unless a material change of circumstances warrants a subsequent petition.
4. If the court finds that the petitioner did not file a petition for removal in good faith or in furtherance of the best interests of the ward, the court may:
  - (a) Disallow the petitioner from petitioning the court for attorney's fees from the estate of the ward; and
  - (b) Impose sanctions on the petitioner in an amount sufficient to reimburse the estate of the ward for all or part of the expenses incurred by the estate of the ward in responding to the petition and for any other pecuniary losses which are associated with the petition.

(Added to NRS by 2003, 1766)

**NRS 159.044 Petition for appointment of guardian: Who may submit; content; needs assessment required for proposed adult ward.**

1. Except as otherwise provided in NRS 127.045, a proposed ward, a governmental agency, a nonprofit corporation or any interested person may petition the court for the appointment of a guardian.

2. To the extent the petitioner knows or reasonably may ascertain or obtain, the petition must include, without limitation:

(a) The name and address of the petitioner.

(b) The name, date of birth and current address of the proposed ward.

(c) A copy of one of the following forms of identification of the proposed ward which must be placed in the records relating to the guardianship proceeding and, except as otherwise provided in NRS 239.0115 or as otherwise required to carry out a specific statute, maintained in a confidential manner:

(1) A social security number;

(2) A taxpayer identification number;

(3) A valid driver's license number;

(4) A valid identification card number; or

(5) A valid passport number.

↪ If the information required pursuant to this paragraph is not included with the petition, the information must be provided to the court not later than 120 days after the appointment of a guardian or as otherwise ordered by the court.

(d) If the proposed ward is a minor, the date on which the proposed ward will attain the age of majority and:

(1) Whether there is a current order concerning custody and, if so, the state in which the order was issued; and

(2) Whether the petitioner anticipates that the proposed ward will need guardianship after attaining the age of majority.

(e) Whether the proposed ward is a resident or nonresident of this State.

(f) The names and addresses of the spouse of the proposed ward and the relatives of the proposed ward who are within the second degree of consanguinity.

(g) The name, date of birth and current address of the proposed guardian. If the proposed guardian is a private professional guardian, the petition must include proof that the guardian meets the requirements of NRS 159.0595. If the proposed guardian is not a private professional guardian, the petition must include a statement that the guardian currently is not receiving compensation for services as a guardian to more than one ward who is not related to the person by blood or marriage.

(h) A copy of one of the following forms of identification of the proposed guardian which must be placed in the records relating to the guardianship proceeding and, except as otherwise provided in NRS 239.0115 or as otherwise required to carry out a specific statute, maintained in a confidential manner:

(1) A social security number;

(2) A taxpayer identification number;

(3) A valid driver's license number;

(4) A valid identification card number; or

(5) A valid passport number.

(i) Whether the proposed guardian has ever been convicted of a felony and, if so, information concerning the crime for which the proposed guardian was convicted and whether the proposed guardian was placed on probation or parole.

(j) A summary of the reasons why a guardian is needed and recent documentation demonstrating the need for a guardianship. If the proposed ward is an adult, the documentation must include, without limitation:

(1) 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 certificate signed by any other person whom the court finds qualified to execute a certificate, stating:

(I) The need for a guardian;

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

(III) Whether the proposed ward's attendance at a hearing would be detrimental to the proposed ward;

(IV) Whether the proposed ward would comprehend the reason for a hearing or contribute to the proceeding;

and

(V) Whether the proposed ward is capable of living independently with or without assistance; and

(2) If the proposed ward is determined to have the limited capacity to consent to the appointment of a special guardian, a written consent to the appointment of a special guardian from the ward.

(k) Whether the appointment of a general or a special guardian is sought.

(l) A general description and the probable value of the property of the proposed ward and any income to which the proposed ward is or will be entitled, if the petition is for the appointment of a guardian of the estate or a special guardian. If any money is paid or is payable to the proposed ward by the United States through the Department of Veterans Affairs, the petition must so state.

(m) The name and address of any person or care provider having the care, custody or control of the proposed ward.

(n) If the petitioner is not the spouse or natural child of the proposed ward, a declaration explaining the relationship of the petitioner to the proposed ward or to the proposed ward's family or friends, if any, and the interest, if any, of the petitioner in the appointment.

(o) Requests for any of the specific powers set forth in NRS 159.117 to 159.175, inclusive, necessary to enable the guardian to carry out the duties of the guardianship.

(p) If the guardianship is sought as the result of an investigation of a report of abuse, neglect or exploitation of the proposed ward, whether the referral was from a law enforcement agency or a state or county agency.

(q) Whether the proposed ward or the proposed guardian is a party to any pending criminal or civil litigation.

- (r) Whether the guardianship is sought for the purpose of initiating litigation.
- (s) Whether the proposed ward has executed a durable power of attorney for health care, a durable power of attorney for financial matters or a written nomination of guardian and, if so, who the named agents are for each document.
- (t) Whether the proposed guardian has filed for or received protection under the federal bankruptcy laws within the immediately preceding 7 years.

3. Before the court makes a finding pursuant to NRS 159.054, a petitioner seeking a guardian for a proposed adult ward must provide the court with an assessment of the needs of the proposed adult ward completed by a licensed physician which identifies the limitations of capacity of the proposed adult ward and how such limitations affect the ability of the proposed adult ward to maintain his or her safety and basic needs. The court may prescribe the form in which the assessment of the needs of the proposed adult ward must be filed.

(Added to NRS by 1981, 1931; A 1989, 533; 1995, 1076, 2771; 1997, 1343; 1999, 1396; 2001 Special Session, 15; 2003, 1772; 2005, 815; 2007, 2025, 2075; 2009, 1646, 2519; 2013, 906)

**NRS 253.200 Qualifications of person for whom public guardian may be appointed; petition for appointment; accounting and report to be filed by temporary guardian in certain circumstances.**

1. A resident of Nevada is eligible to have the public guardian of the county in which he or she resides appointed as his or her temporary individual guardian pursuant to NRS 159.0523 or 159.0525.
2. A resident of Nevada is eligible to have the public guardian of a county appointed as his or her permanent or general individual guardian if the proposed ward is a resident of that county and:
  - (a) The proposed ward has no relative or friend suitable and willing to serve as his or her guardian; or
  - (b) The proposed ward has a guardian who the court determines must be removed pursuant to NRS 159.185.
3. A person qualified pursuant to subsection 1 or 2, or anyone on his or her behalf, may petition the district court of the county in which he or she resides to make the appointment.
4. Before a petition for the appointment of the public guardian as a guardian may be filed pursuant to subsection 3, a copy of the petition and copies of all accompanying documents to be filed must be delivered to the public guardian or a deputy public guardian.
5. Any petition for the appointment of the public guardian as a guardian filed pursuant to subsection 3 must include a statement signed by the public guardian or deputy public guardian and in substantially the following form:

The undersigned is the Public Guardian or a Deputy Public Guardian of ..... County. The undersigned certifies that he or she has received a copy of this petition and all accompanying documents to be filed with the court.

6. A petition for the appointment of the public guardian as permanent or general guardian must be filed separately from a petition for the appointment of a temporary guardian.
  7. If a person other than the public guardian served as temporary guardian before the appointment of the public guardian as permanent or general guardian, the temporary guardian must file an accounting and report with the court in which the petition for the appointment of a public guardian was filed within 30 days of the appointment of the public guardian as permanent or general guardian.
  8. In addition to NRS 159.099, a county is not liable on any written or oral contract entered into by the public guardian of the county for or on behalf of a ward.
  9. For the purposes of this section:
    - (a) Except as otherwise provided in paragraph (b), the county of residence of a person is the county to which the person moved with the intent to reside for an indefinite period.
    - (b) The county of residence of a person placed in institutional care is the county that was the county of residence of the person before the person was placed in institutional care by a guardian or agency or under power of attorney.
- (Added to NRS by 1977, 487; A 1999, 920; 2007, 2490; 2009, 2272)

(Added to NRS by 1975, 408; A 1997, 1219; 1999, 5; 2007, 273)

**NRS 41A.120 Consent of patient: When implied.** In addition to the provisions of chapter 129 of NRS and any other instances in which a consent is implied or excused by law, a consent to any medical, surgical or dental procedure will be implied if:

1. In competent medical judgment, the proposed medical, surgical or dental procedure is reasonably necessary and any delay in performing such a procedure could reasonably be expected to result in death, disfigurement, impairment of faculties or serious bodily harm; and

2. A person authorized to consent is not readily available.

(Added to NRS by 1975, 408; A 1997, 1220; 1999, 5)

**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)

## **GOALS AND OBJECTIVES**



## Goals/Objectives

- **Processes/Accountability**
  - Create a more standardized process that focuses on accountability.
    - Create rules that focus on accountability.
    - Develop standards of practice.
    - Create greater accountability on authority with the court, assets, and competency for the guardianships.
  - In addition to adopting the National Guardianship Associations Standards of Practice consider an emphasis on Least Restrictive Settings (Guardians over Person). Meaning that there is clear documentation that an individual cannot live in their own home with or without assistance, and that all resources have been exhausted prior to placement.
  - Consider whether the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) should apply.
  - A person legally responsible (PLR) should be named for medication changes.
  - Clear guidance to third party guardians as well as professional guardians about what activities are and are not permissible, and what need to be run through guardianship court for approval.
  - Provide for better definitions so there is less room to presume things are being done incorrectly.
  - Additional processes to better protect the ward from the inception of the guardianship.
  - Should we set mandatory assisted wills and estate plans?
- **Investigations/Compliance**
  - Good faith investigations.
  - Investigations to ensure reasonable or suitable family members have been considered.
  - Compliance Officers to review and track documents, including accounting documents.
  - Investigation position(s) created with the court system. (California has a court investigator to check every guardian report that comes into the court to make sure it is appropriate.)
  - Create two licensed positions, investigate misrepresentation.
- **Licensure Requirements/Restrictions**
  - Develop licensure requirements (education, experience, etc.) for public guardians and private professional guardians.
  - Require background checks and fingerprinting of guardians.
  - Licensure penalties for misinformation that leads to guardianship of wards, duty to verify information.
  - Restrictions on the private professional guardians being appointed administrators of their deceased ward's estate.
  - Limit the number of wards that a guardian may monitor.
  - Create something similar to a physician's licensing board. (Example: If there is a bad guardian other states could be notified.)
    - Public hearing if someone noticed for being a bad guardian.

- Restrictions on appointed private guardians subcontracting out their duties to employees or third parties and then charging their standard rate for work provided.
- Develop mandatory reporter guidelines/rules for home healthcare, short or long term care facilities to report potential financial elder exploitation to law enforcement.
- **Temporary Guardianships**
  - Review the length of time temporary guardianships can be in effect.
  - Review the authority granted to temporary guardians.
  - When there is a temporary guardianship specific authority should be sought before an individual is removed from their home, unless there are extenuating circumstances.
- **Certificates/Petitions**
  - Review certificates. (Concern does not have to be official.)
  - Examine the contents of the petition and the circumstances and requirements that are expected of the person who files the petition and the maker under oath.
    - Petitions are inadequate in the way they are built and accepted.
    - Petitions are inadequate in the number of people required to complete the petition.
  - Review current physician statement.
    - Too easy – check boxes.
- **Fiduciary Reports/Oversight**
  - Require fiduciary reports more often than every 12 months.
  - Estates that exceed a certain amount (including real/personal property and cash accounts) require more frequent accountings.
  - Monthly budgets detailing a person under guardianships expenses to be filed at the inception of the guardianship or prior to the hearing (usually with a request for monthly release from a blocked account).
  - Personal Tax Returns filed timely. Obtain tax transcripts which detail income reported to the IRS. Can be used as a tool to ensure all assets are reported and marshaled appropriately.
  - Greater oversight over inventories of wards assets to include revising requirements for providing an initial inventory to the court.
  - Annual Report – Set a date for the annual review hearing where the guardianship is granted.
  - With greater investigative capacity, annual audits of expenses being charged by guardians.
- **Guardian Ad Litem**
  - Duty of Guardian Ad Litem (GAL) should be described in NRS Chapter 159.
  - Consider best interest of the ward.
  - Consider their role in adult guardianships.
  - Expanded use of the Court Guardian ad Litem. (Attorney for the Ward and Guardian Ad Litem should be explored together).
  - Reports from Guardian Ad Litem should be more transparent.
- **Counsel**
  - Counsel for ward from the beginning of the process.
    - Compile a list of attorneys for wards

- **Mediator**
  - Create a Family Mediator Program to work with the courts and the families.
- **Omnibus Department**
  - Create an omnibus department for child wards. (Clark County has one.)
  - Not all public guardians are certified and they should be. There is no place to even report proof of certification except to the county's board of commissioners. Maybe certification could be reported to the omnibus department.
- **Fees/Billing**
  - Create standardized fee schedule.
  - Include caps on what can be charged.
  - Examine flat fees versus per item fees.
  - Hourly fees, monthly fixed costs, costs that are typically incurred at the beginning of the Guardianship and the anticipated costs of any court compliance (accountings, reports of guardians, filings of inventory, etc.).
  - What does the term "reasonable" mean in terms of fees? How is "reasonable" fee determined?
  - Estimate/anticipate the task that needs to be completed and provide an estimated billing statement.
  - A good faith effort to provide the cost of the professional/public guardian to the estate to any interested parties.
  - Restrictions on appointed private guardians subcontracting out their duties to employees or third parties and then charging their standard rate for work provided.
  - Attorney fees/costs.
    - Division of the fee/risk (Example: Even if the guardianship is granted the guardian or attorney who filed the petition should bear some of the cost, not the ward. Alternatively, the court could cap the amount of fees awarded for attorney or guardianship work done prior to the granting of the petition.) Under current law, the filing attorney/guardian does bear the cost if the petition is not granted. They should bear some of the cost even if the petition is granted. Another alternative to cut costs to the ward is to cap the award of attorney and guardian fees associated with work done prior to the granting of the petition.
    - Examination of the practice of guardians using ward's money to pay for attorneys for actions that normally would not require an attorney (ex: real estate sales).
- **Statutory language**
  - Develop a separate statutory scheme to handle minor guardianships.
    - Minors are currently included in the same guardianship statutes as adults. Separate issues.
  - Burden of proof/Standard of proof/Reasonable Cause/Best Interest Standard
    - How does the current statutory language impact or compare to the burden of proof and expectations in other areas of law?
    - How does the current statutory language impact or compare to the standard of proof and expectations in other areas of law?
    - Should there be a reasonable cause standard for temporary guardianships similar to those in 432B cases?

- Should there best interest standard for permanent guardianships?
  - Review current statutes to be sure they are more person centered versus institution focused.
  - Civil Gideon Rights – Right to Counsel
  - Update statutory language. (Current statutes include language from 1956).
  - Consistency – Everyone seeing same laws and interpreting them the same way.
  - Laws strengthened to allow prosecution in cases that have contentious issues with exploiters.
  - Brighter line between what is poor judgment and incapacity.
    - What makes someone incapacitated and in need of a guardian.
    - Define legal capacity for physicians.
  - Remove the requirement from NRS 159.052, regarding the appointment of a temporary guardian for a minor, that a report be included from a child protection agency or law enforcement. DCFS will not investigate and provide a report when the children are safely living with someone other than a parent, which is often the case. The judge is the fact finder and should be able to listen to the evidence and make a decision without a need for a report.
  - Statute should provide the court discretion for any other necessary orders, such as child support and visitation.
  - Statutes currently provide for a hearing on the annual accounting. They do not provide for a hearing on the annual statement of the condition of the ward. Such a hearing should be required, with the ward present.
  - Create a legislative “push” to require, by statute, enhanced resourcing to guardianship management as a “system.” (I.e., the state/county shall mandate the formation of a court compliance officer for adult/minor guardianships.)
  - Legislative mandate to the executive branch to provide funding for resources.
- **DATA/IT System**
    - Up to date IT systems to track guardianships.
    - Develop Statewide Case Management System.
  - **Training and Education**
    - Identify what education and training is currently available.
    - Provide education and training to:
      - Wards
      - Guardians
      - Families
      - Attorneys
      - Judges
      - Courts
      - Law Enforcement
      - Adult Protective Services
      - Elder Protective Services
      - Guardian Ad Litem
      - Mediators
    - CLE Credits

- Clear up misinformation that is out there.
- Provide training and education through (the list is not all inclusive):
  - UNLV Boyd School of Law
  - National Guardianship Associations
  - National Council of Juvenile and Family Court Judges
  - National Judicial College
  - State Bar
- **Family Involvement**
  - Making sure families are more comfortable in the process. (Education/Training)
  - Make sure families are heard.
  - If family is not chosen as guardian they should still be consulted.
  - Make sure personal mail is going to the ward.
- **Privacy concerns**
  - Personal/financial information included on forms.
  - Physician's certificates include personal medical information. (May be federally protected under HIPAA)
- **Group Home**
  - Review food and sanitary conditions of group home (Ombudsman)
    - Guardian never visited home
    - Guardian not paying rent
    - Guardian never posted bonds

## **JUDGE DOHERTY'S OUTLINE**

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. Frances

**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.

**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 DISPOSITION:**

- i. Acknowledgement of Receipt of Instructions filed (Washoe County)
- ii. Letters issued
  - Required Bond posted
- iii. Letters filed with Office of Recorder in real estate cases - NRS 159.087(1)
- iv. Initial Inventory filed 60 days from order - NRS159-085



- v. Annual Report of Person filed within 60 days of anniversary of order appointing - NRS 159.081(1)(a)
- vi. Annual Accounting filed on non-summary estates within 60 days of anniversary of order appointing - NRS 159.177, NRS 159.081(5)
- vii. Hearing conducted on non-summary annual accountings - NRS 159.181.

**C. REMOVAL/RESIGNATION OF GUARDIAN/TERMINATION OF GUARDIANSHIP:**

- i. Petition to Remove
  - Citation issued NRS 159.1855
- ii. Petition to Resign
- iii. Citation issued pursuant to NRS 159.1873(2)
- iv. Successor guardian appointed prior to discharge - NRS 159.1875(1)
- v. Accounting and hearing by resigning guardian must be completed - NRS 159.1877(1)
- vi. Petition to Terminate Guardianship
  - If incapacitated person (ward) dies, interested parties must be informed within 30 days - NRS 159.073(1)(c)(V)
  - Order terminating guardianship entered - NRS 159.1855(2) & 159.187(2)
  - Final accounting filed
  - Hearing conducted - NRS 159.1855(2) & 159.187(2)
  - Winding up of affairs within 180 days of termination or, 90 days of appointment of successor trustee - 159.193
  - Order discharging guardian and exonerating bond upon verification and completion of winding up of affairs. NRS 159.199

**III. SUBSTANTIVE LAW PROPOSALS:**

- 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. 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)
- C. Require training for all non-professional guardians and regulate training for professional guardians. (See NPCS 3.3.11, NPCS 3.3.14)
- D. 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)
- E. 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.
- F. Improve substantive requirements of Physicians Certificate. (See NPCS 3.3.9 narrative)
- G. Require background checks for all guardians. (See NPCS 3.3.12)
- H. 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)
- I. Enhance limitations on Emergency Appointment of Temporary Guardian. (See NPCS 3.3.6)
- J. Enhance statutory emphasis on court's responsibility to identify less restrictive alternatives to guardianships. (See NPCS 3.3.10)

- K. 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 NPC 3.3.15)
- L. Develop complaint process for incapacitated person or interested persons to pursue concern through expedited process with the Court. (See NPC 3.3.18)
- M. Develop statutory process by which guardians are notified of all civil and criminal actions in which persons under a guardianship are involved.
- N. Specifically prioritize guardianship court's jurisdiction to hear related matters of abuse, neglect, third party fraud and tort claims involving incapacitated person.
- O. Review and implement NPC 3.3 protocols for proceedings regarding guardianships for minors at NPC 3.5.

#### **IV. 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.

## **ADVISORY OPINION JE15-002**

**FILED**

**JUL 24 2015**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY \_\_\_\_\_  
CHIEF DEPUTY CLERK

**STATE OF NEVADA**

**STANDING COMMITTEE ON JUDICIAL ETHICS**

**DATE ISSUED: July 23, 2015**

**ADVISORY OPINION: JE15-002**

PROPRIETY OF A JUDGE  
CONSIDERING NON-PARTY  
COMMUNICATIONS DURING  
ADMINISTRATION AND OVERSIGHT  
OF ADULT GUARDIANSHIPS  
PROCEEDINGS

recently formed Commission to Study the  
Creation and Administration of  
Guardianships.

**FACTS**

**ISSUE**

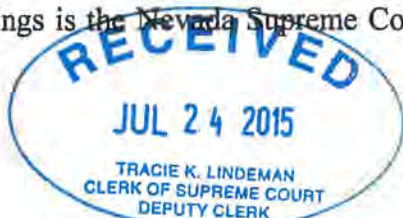
During administration of  
guardianship proceedings and oversight of  
the guardian, may a judge (1) consider non-  
party communications concerning a  
guardian's conduct or the ward's welfare;  
and (2) initiate, permit, and consider an  
investigation based upon a citizen's  
complaint or upon information received in an  
investigation conducted by court officers.

A judge has presented two questions  
arising from the administration of adult  
guardianship proceedings and judicial  
oversight of guardians. The request informs  
the Committee about both the extreme  
vulnerability of elderly wards to abuse and  
neglect by guardians with the power to  
control all aspects of a ward's existence and  
also Nevada's lack of a statutory scheme for  
reporting such conduct to the presiding judge  
responsible for monitoring the ward's  
welfare and the guardian's conduct.

**ANSWER**

No. A judge administering a  
guardianship proceeding must adhere to the  
NCJC's general proscription against ex parte  
communications. Although cognizant that  
there is an urgent and growing need for  
consistent and effective monitoring of  
guardians in order to protect vulnerable  
wards from abuse and exploitation, the  
Committee also recognizes that the questions  
addressed in this advisory opinion arise  
chiefly from omissions in Nevada law. The  
Committee therefore believes that the issues  
require a statewide solution and that the  
better forum for examining and  
implementing changes in guardianship  
proceedings is the Nevada Supreme Court's

Due to the nature of guardianship  
proceedings, it is uncertain that information  
most relevant to protecting vulnerable wards  
will be brought before the court by parties to  
the proceeding. Because wards are rarely  
represented independently by counsel, it is  
often family members, friends, neighbors,  
and community volunteers who come  
forward with information relevant to a  
guardian's abuse and neglect of a ward and  
depletion of a ward's estate. In the absence of  
specific statutory authority, the judge  
requests this Committee to advise whether  
the Nevada Code of Judicial Conduct  
("NCJC") would permit the judge to consider  
communications from a non-party which  
raise concerns about a guardian's compliance  
with statutory duties and responsibilities, or



the welfare of the ward or the ward's estate. The judge also asks whether the NCJC permits a judge to initiate, permit, and consider an investigation, or the result thereof, based upon a citizen complaint or information received in an investigation conducted by court officers.

### DISCUSSION

The Committee is authorized to render advisory opinions evaluating the scope of the NCJC. *Rule 5 Governing the Standing Committee On Judicial Ethics*. Accordingly, this opinion is limited by the authority granted in Rule 5.

Canon 2 states “[a] judge shall perform the duties of judicial office impartially, competently, and diligently.” *See Nev. Code Jud. Conduct, Canon 2*. Rule 2.9 proscribes ex parte communications with a judge concerning a pending matter and delineates limited exceptions to the prohibition. Rule 2.9(A) states, in pertinent part:

(A) A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending or impending matter, except as follows:

(1) When circumstances require it, ex parte communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, is permitted, provided:

(a) the judge reasonably believes that no party will gain a

procedural, substantive, or tactical advantage as a result of the ex parte communication; and

(b) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and gives the parties an opportunity to respond.

\*\*\*

(3) A judge may consult with court staff and court officials whose functions are to aid the judge in carrying out the judge's adjudicative responsibilities, or with other judges, provided the judge makes reasonable efforts to avoid receiving factual information that is not part of the record, and does not abrogate the responsibility personally to decide the matter.

\*\*\*

(5) A judge may initiate, permit, or consider any ex parte communication when authorized by law to do so.

*See Nev. Code Jud. Conduct, Rule 2.9(A)*.

Comment [3] to the Rule clarifies that “[t]he proscription against communications concerning a proceeding includes communications with lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted by this Rule.” *See Nev. Code Jud. Conduct, Comment [3], Rule 2.9*.

In *Matter of Fine*, the Nevada Supreme Court held that a judge violates Canon 3B(7) by engaging in ex parte discussions with non-parties on substantive matters even if the judge later informs the parties of the ex parte

communications. See *Matter of Fine*, 116 Nev. 1001, 1016 (2000) (Canon 3B(7) is now codified in part as Rule 2.9). The court further admonished Judge Fine for acting “as an advocate for a particular position” in discussing substantive matters with a court-appointed expert outside the presence of the parties. 116 Nev. at 1023.

The requesting judge has raised an important and urgent issue respecting the protection of adult wards who are often unable to defend themselves against their guardians’ exploitation or mistreatment. Friends, family, neighbors, and others concerned for a ward’s welfare are to be commended and encouraged for coming forward with information relevant to a guardian’s possible abuse and neglect, and presiding judges should be able to act upon such information forcefully and expeditiously. Nevertheless, where Nevada’s statutory scheme provides no specific procedure for bringing such information before the presiding judge, or for the judge to consider communications from non-parties relevant to a guardian’s compliance with statutory duties and responsibilities, the Committee believes that the NCJC does not except these ex parte communications from the proscription of Rule 2.9 and, therefore, can offer only general guidance on the subject.

As ex parte communications are particularly pernicious, a judge must act with great care when a non-party communicates or attempts to communicate with the judge on substantive matters in a pending proceeding. Receiving or acting on such communications may not only impact a judge’s impartiality in deciding the matter, but may also place the

judge in the untenable position of advocating for one of the parties or allowing one party to gain an advantage over another party. Even if the judge notifies all parties of the substance of the communication and allows them an opportunity to respond, *Matter of Fine* makes clear that a judge who initiates or willingly participates in ex parte discussions of substantive matters has violated the NCJC.

The recently revised NCJC recognizes that there are some instances when a judge may properly assume a more interactive role in a proceeding. Comment [4] to Rule 2.9 states “[a] judge may initiate, permit, or consider ex parte communications authorized by law, such as when serving on therapeutic or problem-solving courts, mental health courts, or drug courts. In this capacity, judges may assume a more interactive role with parties, treatment providers, probation officers, social workers, and others.” See *Nev. Code Jud. Conduct, Comment [4], Rule 2.9*.

It appears to the Committee that a judge administering guardianship proceedings may very well be serving in the same role as a judge in a recognized therapeutic or problem-solving court – such as drug or mental health court – and that both the ward and guardian may be better served if the judge more directly interacted with family members, service providers, and others interested in the ward’s welfare. Rule 2.9(A)(5) and Comment [4], however, make it very clear that before a judge may initiate, permit or consider any ex parte communication that such communications must first be authorized by law. Here, as the requesting judge has pointed out, Nevada’s statutory scheme is silent and offers no

avenue for communications relevant to abuse and neglect which may be considered *ex parte* under the NCJC.

Given this omission in Nevada's statutory scheme, the Committee must advise that the NCJC prohibits non-party communications with a judge in guardianship proceedings. Despite the good intentions of those providing information pertinent to a judge's oversight of the guardian, and the often urgent need to protect wards from mistreatment, the NCJC does not allow a judge to solicit or consider such information *ex parte* under the present state of Nevada law.

The second question regarding whether a judge may initiate, permit, and consider an investigation, or result thereof, raises many of the same issues discussed above. Even though Nevada law authorizes a judge to appoint investigators, the central issue here is whether the judge may make such an appointment based on *ex parte* information obtained either through a citizen complaint or information received in an investigation conducted by court officers.

The Committee believes that Rule 2.9's proscription on *ex parte* communications would bar a judge from acting on information obtained in this manner. A judge cannot receive or discuss substantive information about a guardianship proceeding unless expressly authorized by law. As with the first question, Nevada law is silent on the issue and a judge may not receive or act on such information without running afoul of the NCJC.

In addition, the NCJC obligates a judge to ensure the right to be heard. Rule 2.6(A) states "[a] judge shall accord to every

person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law." As emphasized in Comment [1] to this rule "[t]he right to be heard is an essential component of a fair and impartial system of justice. Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed." *See Nev. Code Jud. Conduct, Comment [1], Rule 2.6.*

Again, as the requesting judge notes, Nevada law is silent on the procedures a judge is to follow in order to determine whether an investigation of a ward's situation or a guardian's actions is warranted. Given most guardians' plenary power over a ward and the ward's estate, it seems to the Committee that such investigations may indeed be a critical component in protecting a ward from exploitation and mistreatment, and that a judge ought to have as many tools as possible to ensure that guardians are held accountable for their actions. It is equally critical, however, that a judge protect the parties' right to be heard and adhere to procedures designed to ensure a fair and impartial process.

The Committee notes that this request for an advisory opinion raises issues of statewide concern that are better addressed in another forum. Although this advisory opinion provides general guidance on the subjects raised, the Committee believes that the formulation of a particular procedure to deal with guardianship abuse and overreaching needs to be vetted by those most familiar with the issues and adopted only after consideration of all competing interests. The Committee therefore respectfully refers these issues to the Nevada

Supreme Court Commission to Study the Creation and Administration of Guardianships for consideration as it deems appropriate. *See In the Matter of the Creation of a Commission to Study the Creation and Administration of Guardianships, ADKT No. 0507, Order dated June 8, 2015.*

### **CONCLUSION**

The Committee concludes that Rule 2.9's prohibition against ex parte communications precludes a judge from considering non-party communications relating to a guardian's compliance with statutory duties and responsibilities or the welfare of the ward or the ward's estate. Although guardianship proceedings are akin to recognized therapeutic or problem-solving courts, Nevada law does not at present authorize a judge to initiate, permit, or consider any ex parte communication in a guardianship proceeding.

Further, Rule 2.6 obligates a judge to ensure the parties' right to be heard. Nevada law is again silent on the procedure a judge is to follow when determining whether to investigate a guardian's actions or ward's situation. The Committee therefore concludes that the NCJC does not allow a judge to consider information transmitted ex parte in determining whether to appoint

investigators in a guardianship action. The requesting judge has raised critical issues that are better resolved by the Nevada Supreme Court's Commission to Study the Creation and Administration of Guardianships. Accordingly, this Committee refers this request for an advisory opinion to the Commission for its consideration.

### **REFERENCES**

Nev. Code Jud. Conduct, Canon 2; Rule 2.6 and 2.9; Commentary [1] to Rule 2.6 and Commentary [3] and [4] to Rule 2.9; Rule 5 Governing the Standing Committee On Judicial Ethics

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*This opinion is issued by the Standing Committee on Judicial Ethics. It is advisory only. It is not binding upon the courts, the State Bar of Nevada, the Nevada Commission on Judicial Discipline, any person or tribunal charged with regulatory responsibilities, any member of the Nevada judiciary, or any person or entity which requested the opinion.*



**Janette Bloom**  
Vice-Chairperson



## **ADMINISTRATIVE ORDER 15-08**

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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

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

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

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Entered this \_\_\_\_\_ day of AUG 06 2015, 2015.

  
By: \_\_\_\_\_  
DAVID BARKER  
Chief Judge  
Eighth Judicial District Court

**VERBATIM PUBLIC COMMENTS  
7/15/15 GUARDIANSHIP COMMISSION  
MEETING**

**Commission to Study the Administration of Guardianships in Nevada Courts July 15, 2015**  
**Meeting. Verbatim Public Comment (Began 1:17:44, Ended 2:29:55 Recording)**

Chief Justice James W. Hardesty: I'm going to invite public comment from those who have identified an interest in addressing the Commission. The public comment is limited to three minutes. I would ask, if you are going to make a comment, if the comment involves a pending case, that you let us know. If there is a judge on the Commission who is involved in the pending case I will request that the judge leave while you complete your statements because I do not want you to impair the judicial conduct of that judge in handling the case. If you are going to comment about a pending case, I ask that you also identify, for the record, the case number and the other parties in the case. I would expect the Commission would give notice to all parties in the case about your comments or your presentation, so that if they wish, they have an opportunity to address the Commission as well, in the interest of fairness.

The Commission is not formed for the purpose of adjudicating anybody's case. We are not the judges of your cases, the judges are. Your stories or your concerns are important to the Commission but, we will not be deciding the dispute you may have, this is not the place where we will litigate these questions. I will invite the persons who wish to make a public comment to limit your comment to three minutes and, if it involves a pending case, inform us of the name of the case, the case number, where it is pending, who the judge might be, and we will excuse the sitting judge. I would ask that you not duplicate someone else's remarks, in the interest of time. If there are persons who would like to make comments to the Commission at this time please come up to the podium, there is a microphone there, we would invite you to do that. Is there anyone that would like to make a public comment? Yes ma'am. Sure. Go right ahead. Please state your name, address, and your comments.

Elizabeth Diana Indig: My name is Elizabeth Diana Indig. I have a guardianship case, case number G-12037414-A; Judge Steel is the judge now. My name is Elizabeth Diana Indig, and as most of you already know, the lives of my mom and myself were destroyed by a predator, private, professional guardian operating within the cesspool of corruption, known as the current guardianship system in Nevada. She constricted my mom into guardianship within five days, with nobody in attendance of the hearing, filing false hearsay accusations about me, her own daughter. Not serving either my mom or myself, her only child, with temporary guardianship papers. She threatened me with prison if I interfered with her, locked me out of the home, took control of the mail, ignored the family trust and lost and or stole all of the assets of the trust, including the home where my mom was to live for the rest of her life. I just received guardianship of my mom last month, after three years of being stuck in the guardianship system, because I could not afford an attorney and could get no help, at all. This guardian decided, a few weeks after my mom's severe head injury, after a fall, when she was clearly recovering quickly, that my mom was permanently incompetent, and sentenced my mom to a life of misery, rotting in a nursing home, but she is still, herself, not in prison for her crimes and is out there acquiring new victims. Any good being done by the majority of the people in the guardianship system is currently being overshadowed by the heinous crimes of a few taking advantage of a broken system full of loopholes. The fact that we are all here today gives me hope that we can turn things around and make the guardianship system in Clark County a model for other states and at the same time, preventing other seniors and disabled persons from suffering the pain and the heartache suffered by us. Unfortunately

now, we have three minutes, I have about six hour's worth of suggestions. As it is now, the guardians are in control and the family court is facilitating their placing of the wards, by blindly rubber stamping anything they file due to lack of personnel, time, research, and oversight. It should be that the court is in control and the guardians are the facilitators of the system. Oversight, enforcement of NRS's, and substantial punishment for failure to follow these NRS's is the key to the system working properly, in my opinion. I believe that before a ward is ever placed in a guardianship, more expense in the form of impartial personnel who thoroughly investigate that the following is needed; whether or not the potential ward really needs a guardian or if there is a suitable family member available, if the family member is declared unfit, there must be actual substantiated written proof, not just hearsay, if it is an EPS referral there must be a letter from EPS stating that, actual signed proof of service of the potential ward and all family members of any hearing regarding guardianship must be filed with the court. The true and complete assets of each ward must be assessed by an impartial party and filed with the court and trust assets should never be touched. Depending on the outcome of that assessment, a determination should then be made as to whether a ward's needs are best suited by a private or public guardian. The ambulance-chasing methods by which corrupt guardians and certain lawyers stalk their prey in hospitals and nursing homes must be stopped. If the ward can afford a private guardian it should be the financial responsibility of the guardian to pay any and all fees, including legal fees since the guardian is running his or her own business and will be profiting. If the judge had the correct information regarding each ward, he or she can make the correct decision in the best interest of the ward. There must be oversight by the court, I cannot stress that enough. To make required filings done on time and correctly, if the guardian fails to act in accordance with the NRS's and causes harm to the ward, the ward's family, or the ward's estate, there must be substantial punishment, it should be prison in my opinion, and the ability of the ward or ward's family to recover damages. In my opinion, by spending more money initially, costly repeat hearings should not happen. There must be a limit to the number of wards a guardian can have. My mother's guardian had over 150 wards, no human being can keep track of that many.

Chief Justice Hardesty: You're about at that point. I do not want to cut you off. I do want to extend to you and anyone else who attends and to the public generally, the opportunity to submit written suggestions that the Commission should consider as part of its deliberation and its recommendations. That will be made part of the record and part of our consideration as well.

Elizabeth Indig: I appreciate that, thank you. Thank you everybody, for listening to me and thank you very much for being here and trying to solve this problem.

Chief Justice Hardesty: Thank you for your articulate remarks. Is there anyone else who would like to make a presentation to the Commission?

Julie Belshe: This is regarding Rudy and Rennie North. Rennie North's Case is G-13-039132-A, Rudy North, my father, is G-13-039133-A. My name is Julie Belshe, I am the daughter. Good afternoon to the new Guardianship Committee, I'm looking forward to working with your committee in creating a new protocol for the protection of the wards and their families. My parents were legally kidnapped from their home on a golf course in Sun City Aliante in the fall of 2013 by a private guardian and a hospice

agent, they were sitting on legal documents a week prior and completely blindsiding our whole family. My parents were given three choices where to go; number one: an assisted living facility, number two: a psych ward, number three: the police or fire department would escort them to wherever they saw fit. At that point my father, who they said was incompetent, chose to go to an assisted living facility. My mother was never deemed incompetent, it was only a physical condition and they took them both for twenty-three months. The legal guardians have a free-pass and no accountability as to their actions of how much money is spent and then they made up fictitious numbers as it allowed them less work, according to the court. They're allowed to make false accusations, without proof and are accepted at face value by, at least, the last hearing master and family judge. Any family member is made out to be a villain. My parents also have grandchildren and have been very hard hit by losing their grandparents to a complete stranger who came into our lives. This private guardian has caused my parents to become greatly depressed, they now have post-traumatic-stress-syndrome, and I believe maybe I do too a little, but that will be dealt with later. The only analogy to this, from my parent's mouth is, and I quote; now I know how the Jewish people felt when being taken away by the Nazi's. It seems to be legal now in a modern-day society, or at least in Clark County, where a family member isn't given top priority or a chance to be informed in a prompt manner as to what is going on with their loved ones and the private for profit guardians call this type of behavior "all in best interest of the ward". Legal guardian statutes and legislative laws are long overdue for modern-day versions to protect all of our families. Family comes first. We need stricter regulations and guidelines, not less. And we need to be able to hold a for-profit-professional-guardians and public guardians that are involved in this process, all accountable with licensing agencies and regulatory bodies to report to. I thank you again in advance for listening to me. The existing rule of thumb in Guardianship 101 is medicate, over-medicate, isolate, and take away the estate. This is happening all over the country because of variable amount of factors; firstly the loopholes, secondly the people who have written the legislation for all the guardians are the very people who are running the system, thirdly this is a very dangerous situation for all involved, especially the wards who have no voice and lose all of their Constitutional rights. Their families suffer great distress to the point of being victimized and intimidated into silence. As Abraham Lincoln said, "to sin by silence when they should protest makes coward out of men." When we are talking about people who have worked their whole lives and all they want is the quality of their last years to be around their families and enjoy, instead many become wards. Well these are my loved ones that you are talking about, so I think firstly, "ward" should be put away. They are not prisoners, they are human beings, and they are not items. They lose their rights to speak and they are isolated from their families. Again, I'd like to thank the Guardianship Committee for taking the time to address the mishaps and deliberate wrongs of legal guardianship gone astray. With that being said, at the beginning to currently, my experience of legal guardianship has turned not only my family's life upside down, I am more happy to report to you though, now, that my parents have had their rights restored and are now acclimating to being home with their family. I have learned to take "no" and another "no" and look at the alternative of making "no's" become "yes's". We are the people and we represent the State. We need to come up with a new protocol that protects our family members, first our wards, as the state calls them. We are looking for change and I'm very excited for what the future holds for the wards that have no voice and can't decide any longer on anything that occurs in their life. I am here for the wards that have no voice and are so scared to say anything because it will only get worse if they do speak up. I always had believed to treat

those the way you want to be treated. Thank you again for your time and God bless the wards and victims of legal guardianship.

Chief Justice Hardesty: Thank you for your comments. Anyone else wish to make a public comment?

Homa Woodrum: Good afternoon, my name is Homa Woodrum; I am an attorney here in Las Vegas, Nevada the majority of my practice covers guardianship. I wanted to mention that the Committee had indicated maybe some interdisciplinary looks at the insurance industry and other representatives; I think the banking industry is so crucial to the discussions because by the time we get exploitation cases people's accounts have been completely depleted and there are no assets to go pursue recovery action. Granted, under NRS 159 you can go get double recovery under recovery action, but at that point you are kind of doing a balance of hardships, if you have money to take care of the ward right now, you're not going to go pursue an exploiter. The majority of my caseloads are exploitation cases and many of them originate with the Guardianship Office but a lot of them are family members who find that other family members decide that a vulnerable person can be use (inaudible 1:36:27) before they even hit guardianship proceedings, so I think it's so crucial to look into interdisciplinary and an interdisciplinary way at banking and also estate planning. I think a lot of the cases I get, people's entire trusts have been taken out from under them in a very (inaudible 1:36:45) way. By the time we are able to go into guardianship and try to get things changed we have wards that are so advanced in their disease of their age, they pass away before we can actually do something to help them, so I think the Committee can and also the remarks I appreciate that offer. I think that a lot of the problems I see are before we can even get to protective measures. I think guardianship can be a very powerful tool to help people. I understand a lot of people have had very horrible experiences but I'm also seeing situations which guardianship, when we can get in fast enough, even in special situations for a temporary guardianship, we can secure estates, we can save people and most often our reports come from officials in the banking industry who need to be in tuned to elder exploitation, who need to be in tuned to people being brought to the bank, and they are confused and they don't know what's going on and they shouldn't be signing over their CDs to someone. My goal is always to get the ward somewhere safe, let's get them out of that situation of being neglected but secondarily I believe this is the bounty of their life's work, it is so tragic to see people dying in facilities or not being able to live at home because their assets have been taken. I appreciate the Committee's time.

Chief Justice Hardesty: Thank you for your comments.

Mary Fazzalero: Hi, my name is Mary Fazzalero and I recently retired from Clark County, about a year and a half ago. Four months into retirement my husband broke both of his hips and he was in critical care in one rehab hospital and another rehab hospital. As his hips were recovering to the point to where he could at least leave the hospital, we started noticing some, let's say collusion amongst some of the physicians and hospital folks about keeping him there. That was our first taste of not allowing somebody to go home. Luckily, my husband is a pretty forceful and passionate person and I have had a lot of experience in different types of businesses and back when I was working for Clark County I helped provide some support to Kathleen Buchanan and her department, I don't think she remembers me. I was in IT. The point being, we moved to Nevada to retire, thinking it's a great place to retire, sunny, a lot



of things to do; but were at the point, once we heard of the news reports about the issues with guardianship, to leave. We don't want to spend our tax dollars here, we don't want to fall victim to the system. The more I research this, I hear the horror stories that people are going through, and we are trying to chart our own course. We don't want to be here if it can't be fixed. So the point being, I went to one of the presentations the Vegas Voice had in Sun City Summerlin and I'd like to help them out or whoever needs some volunteer help, because obviously resources are scarce for everybody, but somebody's got to help, someone that has the ability and wherewithal to help because we don't want it to happen to us. If we can help in some way, we would like to do that.

Chief Justice Hardesty: Thank you for your comments. Don't move yet.

Mary Fazzalano: I do have one additional comment. Being in IT for Clark County, the courts have their own IT and I think the public guardian of Clark County got a new case management system a couple years ago and I don't know if it's up and running. I don't know if these systems are talking but that's what happens. You may get the information in one system and not the other and they aren't talking to one another. Yes, sir?

Chief Justice Hardesty: Don't leave the State yet. Anyone else who would like to make a public comment? Yes, sir.

Richard Black: Thanks Chief Justice Hardesty, my name is Richard Black. My father-in-law is Delford Mancarelli case number G-13-038863-A. I am his son-in-law, my wife and I and our son live in North Carolina. I've spoken to many of you around these tables today. Let me ask just a couple of questions, I think it's rather critical. Judge Doherty, I read a lot about Washoe County, I've reached out to Judge Hardy; I've talked to folks about your system up there, I am quite impressed with what you've done in the last few years. I think the Angela LaDolte (sp?) case taught you a lot, the system a lot about how you can be fooled by the leverage of hearsay. As Judge Voy said the need to focus on the evidence, focus on the law, and most importantly, focus on those three things that you so eloquently stated, the family, the finances, and the civil rights of these vulnerable elderly. Dad's case has been well publicized to summarize, after nearly a year of dwelling with frustration and helplessness of this reality, we continue to be (inaudible 1:42:25) by the naivety and hope that evidence, expensive lawyers, and Nevada law on our side, we would convince Commissioner Norheim who was overseeing adult guardianships, exclusively in this county for a decade...he would protect Dad, his estate, and his family. Instead, last July he awarded full guardianship to an 80-year old woman who Dad had lived with and paid room and board to, the last eleven years, and had never included in any of his estate or financial documents. He ignored her forged checks, her disguising of Dad Alzheimer's, continued isolation of Dad with the assistance of a temporary guardian that Commissioner Norheim assigned, that was to help the family. \$150,000 lost in gambling, as documented with her player's cards. I'm sure she gambled more that was not documented in the previous eight years. And \$220,000 that she moved from Dad's account into her personal account once my wife and I discovered her fraud. The Commissioner granted full guardianship and permanently removed Dad's family and grandchild from ever being able to protect him or potentially see or speak with him in private. In fact, in two and a half years that we were constricted in this nightmare, we were never granted the opportunity to see or speak with Dad once. I am sorry sir; I

am getting ahead of myself. Here's the twist. We gave the same evidence to criminal authorities that family court had ignored for nearly a year. The DA issued an indictment for felony fraud and exploitation against Helen Natko, Dad's guardian. (She/Natko) was indicted in October of 2014 and has to go to trial later this year. The family court continues to defend her rights to be guardian. This experience has cost my family untold emotional trauma and over \$700,000 in just two years. Sadly, Dad died in the home with his guardian and indicted exploiter on June 3<sup>rd</sup>. We took him home to Pennsylvania, and buried him besides his wife Lillian just this past Saturday. The guardian did not assist in that effort, she did not send condolences, she did not attend the funeral, she called, she said, your father has died, come get him. She neglected Dad in recent months as his care increased and unaddressed infection that nearly cost him his leg. We were able to spend time with him over the last month in private, here in Las Vegas and let him know how much we love him and how much we tried to protect him. We believe he fully understood. We never stole from him as the guardian and others claimed and that we did not abandon him, as the guardian and others claimed. We believe he finally understood where we were and how much we loved him. I personally believe Dad died of a broken heart. He died in the home of his guardian, one week after being released from the hospital. My wife and I will always be deeply indebted to the nurses and doctors of the four separate hospitals in this county who saw what was going on, who reported it to the authorities, who stood between us and the guardian and made sure Dad was protected and that his only child got the opportunity to spend time with her father before he passed. Hey look, all guardians aren't bad, all judges aren't bad, all lawyers aren't bad, and thank goodness for all of us, the majority are good people wanting to do the right thing. I fully believe that this panel wants to do the right thing, but guardianship abuse is the symptom of a system that suffered from too much autonomy and too little oversight. Dozens of complaints were made over the last decade to the Nevada Commission on Judicial Discipline and directly to Judge Hoskin and Judge Ritchie who are the overseers on the Commissioner Norheim. I filed six myself in just the last year. Each time the Commission, under the leadership of Paul Deyhle, I can't pronounce his name, and Judge Hoskin, fully defended every decision Commissioner Norheim made and denied the complaints. He in fact called me confused and that my evidence was deplete with factual inaccuracies. I hate to tell you this, I've spent hundreds of hours in family court libraries, I have read over 80 cases in their entirety, thousands of pages of petition, hundreds of minutes of testimony, talked to the victim's family, the evidence that I gave Judge Hoskin came right from his very own court records, right from the families, right from the evidence presented by doctors and nurses and bankers. It was not my confusion; it was his desire to not take action. Sir, I have gone over my time, I think I made my point, my apologies for going so long. I wish this Commission the very greatest success; I hope that me, you, the leadership that you've put together, can leverage best practices, not only in Washoe County, but across this country. The citizens of Nevada deserve it. It's a long, long overdue and I, for one, will do anything I can to help you and make sure that no future retiree in Las Vegas have to go through the sheer hell that my dear father-in-law went through over the last two and a half years. Thank you.

Chief Justice Hardesty: Thank you Mr. Black. Is there anyone else that would like to make a comment?

Chris Phillips: Good afternoon. Thank you, Committee, for being here. I've got a quick, practical fix that I think we can do by local rule.

Chief Justice Hardesty: Could you state your name?

Chris Phillips: I'm sorry, Chris Phillips, I'm a private attorney here in Las Vegas.

Chief Justice Hardesty: Hi Chris, how are you?

Chris Phillips: I'm good. NRS 159.085 requires that an inventory be filed within 60 days of appointment. That's all it requires, so when it's filed the compliance office will get it and cross it off the list that it's been filed. The judge will never review that because it's not statutorily mandated. The judges will look to see what is set for hearing and review the plea. So, a local rule that would require the inventories to be, at least, circulated to the parties that are entitled to notice of that, would because in the compliance office, when they get it they do not review it, even if they did review it they would not know what is not there. If there are several accounts listed, they don't know which accounts are not listed, but the family may be more familiar with the assets of the ward. So, at least from an initial standpoint, one of the first things a guardian has to do is file inventory, there's a requirement that we circulate to the family and the people who are familiar with the wards assets. It may add a level of transparency to stop things before they start.

Chief Justice Hardesty: It's a great point, I think, actually go further than that though, and have a hearing on the accuracy of the inventory.

Chris Phillips: Sure, and they need to be free to file an objection to that inventory if you wanted to set that hearing. But you wouldn't always go through the expense associated with setting up for hearing and having the attorney appear at the hearing, if there is not a problem with it. If there is a problem with it, the parties that do have a problem with it would be able to set their objections for a hearing to address the problems there.

Chief Justice Hardesty: Yes, but I do think that there is an occasion where people will object to the accuracy of the inventory.

Chris Phillips: There is not a mechanism in there, according to statute, that would be a pretty easy and inexpensive procedure to put in if simple mailing notice is required.

Chief Justice Hardesty: You mentioned the local rule; I think this is a statewide issue.

Chris Phillips: Sure, it should be statute but...

Chief Justice Hardesty: Well, no, this is something that I would like the Commissioners to noodle about and one of the reasons the Supreme Court impaneled this Commission. Much can be done by Supreme Court Rule. The Supreme Court of Nevada is the rule making authority for the judiciary of this State and we make rules on all kinds of stuff. There is absolutely no reason we can't impose a set of rules that affect the administration of guardianship. I will say that it's a lot easier for us to make and adjust rules than the legislature who meets every two years. Thank you very much. Anyone else who would like to make public comment? Yes ma'am.

Yvonne Randall: My name is Yvonne Randall. My husband was Don Randall. It has been in district, Supreme, and probate. I don't recall what the case numbers are but we've been blocked from all three courts at this point because of the attorney his granddaughter hired has blocked us, so I am looking for a miracle.

Chief Justice Hardesty: Is your case pending in Clark County?

Yvonne Randall: Yes, your honor.

Chief Justice Hardesty: Is it a guardianship or a probate?

Yvonne Randall: It is a probably a bit of both. Maybe I should read.

Chief Justice Hardesty: You go right ahead. We are just having a visit here so please read your remarks.

Yvonne Randall: In guardianship and probate cases, be it public or private guardians the attorney they hire seem to take pride in dragging the case out indefinitely, motion after motion until the estate is decimated. Only the protectors of the estate when the senior ward saved all their life to enjoy the last few of their golden years are now an innocent victim (inaudible 1:55:55) by others. It should never happen to a ward or a senior be exploited or neglected and then they die and all is forgotten. If the guardian had paid their own legal fees they would not hire the counsel pricy lawyers. My husband was a proud WWII Navy man and he was Howard Hughes' chief of (inaudible 1:56:24) and his granddaughter exploited him all his money, over a million, all his assets. She hired an attorney that blocked us from the district court, Supreme Court, and probate. For four years we have been in court. We went to district court in the pro per thinking that ok these attorneys are exploiting us too and the stipulation of the attorney, it's like take the big retainer and delay the case. So my husband went pro per and when he went pro per we had a letter from his doctor, from the VA, saying don't keep Mr. Randall in court for more than 20 minutes he is WWII and has extreme injuries, he has panic attacks and his granddaughter just made him...it was like he was knocked out all night long. They had him on some medication. I was with him 24/7. When we went to the court because they told my husband that the attorneys are telling the truth they are not giving anyone the truth so we will tell the judge and we will get justice. The 20 minute letter from the VA doctor was thrown in the garbage and they made us sit in the court for three hours and wait until the court was cleared out. My husband was so sick, and he was freezing, and borrowed a coat, and he wanted a cigarette, and he wanted to go home, and he was having a panic attack and Judge Herndon kept us in that courtroom. Then her attorney, Kerry Colepain (sp) (inaudible 1:58:21) stood up and they let me ramble on for 20 minutes to say I cannot talk for my husband and he was so sick and the judge asked him what would you like to say Mr. Randall and he said, nothing. He said no, I do not want to, nothing. And then our prior attorney that was blackmailing us that I had not paid said he would jeopardize our case, he wrote a letter that Kerry (sp) read in the courtroom that my husband voluntarily gave his house to his granddaughter and with that said Judge Herndon gave quiet title to our home. I have videotaped my husband. Have you ever seen an 80 year old man cry? He did not know where he was going to go so they just shut him up and gave (inaudible 1:59:20) estate. I stayed with him 24/7. So the judge gave quiet title and what that did is it killed my husband. She kept a million; she took his truck she took his (inaudible 1:59:38). There was nothing left in the estate when we

got to probate. Now they want me to put up a bond for special administrator, to guard what? I am alone now with no money. The legal system has bled the estate. So maybe I am going to be homeless here soon and the courts of justice are for "all" the people not just "some" of the people. Please listen to the cries of help for justice. Your honor to be real honest, the whole, I am listening to all of this, I have been tracking it and the guardianship thing and all of this and believe me from my heart it is the legal, it is the attorneys, they need to have a greater punishment. They are hiding and abetting felons and allowing people to steal and keep that money they should be punished. If they are punished to the fullest then that is going to be about you know what maybe I better stick with the legal and do the right thing. What I was taught to do in school is protect the people and justice for all. And there are a few judges the same. Kerry (sp) was with Judge Yamashita in the probate. Judge Yamashita was an attorney and he did Kerry's (sp) fathers estate. They should recluse themselves, not be pointing a finger at me that I am a bad person. I had a federal back ground check, I am a good person and I have been here for over 30 years and I have business people that will give you recommendations on me. I was a contract administrator and project manager for three large firms here. My husband all his life he saved and saved and he was a land flipper and he was a stock/day trader and he had a large stock accounts and the attorneys helped her steal. There was so much forgery going on that we had certified and every police report was blocked. Why? Because they said the attorneys were closing them. So my husband, God bless him, he was so panic stricken that he saved all his life and we were going to do things together, go see his sister in Oklahoma. There was so much lying and hearsay to win and block each and every one of these that he could not handle it anymore. The day before he died, he knew he was dying, he laid on his bed and he asked me to sit there and hold his hand and he could not handle his only granddaughter, 44 years old never worked a day in her life, over medicated him and at the hand of an assistant he was so overmedicated and dehydrated and so sick, she had him sign a quick claim deed and that was so easy she took him to the VA and had the power of attorney, and that was so easy she had a co-trustee sign. In every one of those the attorney that we hired looked at that and he said look Mr. Paine (sp) they're void. Mr. Randall was sick and there is a doctor's report that should never have been signed. That was August 2011. They drug this out until it killed my husband and I am sitting in district court right now because I have two counter motions and I cannot go to probate court because he says I am a bad person. Everything that was in the estate was stolen by the granddaughter. I think if these attorneys if there is a punishment of losing their license or something they are not going to take felons and protect them. Mr. Paine (sp) at this point and time was promised our house. That is his attorney fees, our house, and I am going to be kicked out here real soon. I do not even have an attorney to talk to when I do they say this case has been going on for a while and maybe Barbara Buckley, is there an attorney? Please, I am looking for a miracle. Well, we do not do that kind of legal work in the Senior Project. Where do you go? Where do you go? There is nowhere in this town that those seniors and (Inaudible 2:04:56) and several of those seniors could go after they have been stripped of all of their money and assets from legal. Nowhere, believe me. I have been on a mission, my husband, God bless him, he died a month before he turned 87. From 81 until almost 87 he got in the car and drove around with me and we picked up documents here and there. So we are calling and calling and some of the attorneys that we went to exploited us because they were told it is a granddaughter and grandfather take that huge retainer and delay the case, and me, I am on the phone what is going on, what is going on and it is just you are so forceful we are going to withdraw from the case now. You know two of those attorneys that we hired

exploited us for big money ran for judge. There is an attorney in this room, right now, that had three consults we went to her office, and paid \$2500 to write a letter to Mr. Paine (sp). The letter was never written and she said oh, I am charging you \$1800 for the consult. \$2500 they did nothing and they sent us back a check for \$36.42, God knows why. I never cashed it because I am going to hang it on the wall.

Chief Justice Hardesty: Ms. Randall, could you please wind up your statement.

Yvonne Randall: I am so sorry. It is like, ok, you know, this is the first time I have been able to speak. I am very sorry your honor.

Chief Justice Hardesty: You do not need to apologize at all.

Yvonne Randall: I cannot tell you how much I appreciate that all you people are here and if you are going to fix it, believe me, I'm in. If there is anything I can do to help anyone here, I'm in. I am so ready. I should have gone to law school. I have done four years of researching opinions on different court sessions.

Chief Justice Hardesty: Is there anything else you would like to say?

Yvonne Randall: No, your honor. I am done. I do want to say how much I appreciate you. Thank you so much.

Chief Justice Hardesty: Thanks for coming today. Is there anyone else that would like to make public comment?

Janet Quilty: Good afternoon honorable Justice and distinguished members. My name is Janet Quilty. I have lived in Nevada for 25 years, I've lived in Las Vegas and Clark County for 23 of those years, and currently I live in Pahrump. My mother, (Leona ? 2:08:18) became a victim of the family court system in Clark County from March 2007 until her death in February of 2012. Her case number is G-07-30278A. During the time Mom was in the Clark County guardianship system, she and I were both victimized by her co-guardians her sons Thomas J. Quilty and Charles L. Quilty, and other co-guardian (inaudible 2:08:50). The guardian's attorney, Shelley Krohn, court appointed guardian ad litem Jared Shafer, and (Crystal (sp) inaudible 2:08:58). This victimization was allowed and also acted upon by hearing Master John Norheim and apparently approved by his supervising justices, Carol Hoskin and Art Ritchie. Now, when I first started writing this I was going to go through my story, it's over, it was very sad, and I was victimized as well. However, I am hoping that you understand that we were seriously wronged and that's why I'm here. My story has been passed on to others who are investigating the criminal acts of those that were involved in my mother's guardianship. I do want to take this time to tell you my concerns and thoughts. I am concerned that the report previously given by the Eighth Judicial District Court regarding that all legal guardianship cases are not to be heard by John Norheim or Charles Hoskins will be ignored. This court concern is reinforced by Judge Steel recusing herself from an adult guardianship case that was then reassigned to Judge Hoskins to be presided over this past July 7<sup>th</sup>. Fortunately, the case has been continued and hopefully the order by the Eighth Judicial District Court will hold. There is also concern that the financial concerns of the children of the current adult wards are

not being heard and that the current guardians aren't being allowed to remain guardians of the estate, even though the guardians of the persons are not being given to the proper person, the children, who really care about them.

Chief Justice Hardesty: I'm sorry; I didn't follow that point.

Janet Quilty: I'm sorry. I was reading something but I wanted to leave a little bit out.

Chief Justice Hardesty: It's okay.

Janet Quilty: The guardianships of the estate of current wards are still being assigned to questionable guardians, guardians who such as April Parks, Jared Shafer, (inaudible 2:11:07) and others. The guardians of the persons, fortunately, are being returned to the children of the wards. I apologize.

Chief Justice Hardesty: No, it's quite all right; I wanted to be sure I understood what you were saying.

Janet Quilty: Now the current guardians of the estates are not being held accountable for their many past crimes against wards and are still not made to account for their financial exploitation of the wards they are currently appointed to protect. This is very concerning and sickening. I was excited by the Supreme Court's Order to create this Commission which I stand before. I (inaudible 2:11:48) the changes of the Nevada Legislature in trying to ring in the illegal acts of private guardians and guardians in general. I am hoping this Commission will address several serious issues which includes unscrupulous use of wards funds for the guardian's pleasure, of which I am witness to by one guardian Denise Comastro. I have proof converting real estate and valuable property into cash without the consent of the court and by removing wards from hospitalization against doctors' orders. All of this is reckless behavior and should be illegal and punished. In addition, the fees of a private guardian should be regulated in some way. The private guardians in Clark County charge as much as an attorney but do not provide the same quality of service nor have the extensive training (inaudible 2:12:39) over evaluation of their services. One of my brothers was a family physician, he became employed by the government working in medical clinics throughout Nye County, he earned 112,000 in 2007, I know that for a fact. I saw his paycheck, that's why I said 2007. That translates to \$53.85 an hour over a year, and yet the private guardians in Clark County charge \$300 per hour. I don't get it. I pray for all that are in this Commission, I pray that God will be with you in your meetings, discussions, and decisions. Thank you for your time.

Chief Justice Hardesty: Okay Ms. Quilty, thank you very much.

Jared Shafer: Good afternoon ladies and gentlemen, my name is Jared Shafer, I am a private guardian, some of you know me, and some of you don't. I got an email today. I want to read to you, what started all of this. Henderson Tuesday evening, July 14 The Vegas Voice newspaper sponsored a seminar on guardianship fraud at the Anthem Community Center. Featured speakers included publisher Dan Roberts, Rana Goodman, who sits on your committee, and two other people. This is how it was reported. Over 150 Anthem residents attended to hear speakers explain the new laws recently enacted

to prevent guardian abuse...Oh, wait a minute. I want the chief I mean guardianship judge in here your honor. This has nothing to do with cases. I want the guardianship judge here.

Chief Justice Hardesty: She will be back in.

Jared Shafer: She needs to hear some of this. I am not going to go on until she comes in. I want her here.

Judge Steel returned to the room.

Jared Shafer: I am reading an article I received. Anyway, over 150 Anthem residents attended to hear speakers explain the new laws enacted to prevent guardian abuse, and cautioned that abusive guardians and their enabling Clark County Family Court judges and guardianship commissioner are still in office and may resurface again to bilk wealthy elderly residents of Anthem and other local retirement communities and it goes on. Anyway...

Someone from the audience asked if Mr. Shafer could slow down because they cannot understand what he is saying.

Chief Justice Hardesty: Excuse me, when you are in a courtroom you address the court and he is making his public statement.

Jared Shafer: Anyway, what started all of this was me, unfortunately, from what I understand. What you saw if you watched the county commission hearing three or four weeks ago, you saw three or four people get up and rant and rave about one case. Prior to that you had Channel 13 run a report and Review Journal write an article. I talked to the Channel 13 producer, and I was going to talk to them and I said you have read about the case they are talking about, he said sure. I said good. Remember the order then stopped me and he said, well, I didn't really read it, I thumbed through it. He lied to me, and so I said, look, when you read it, have an understanding of it, give me a call, we'll talk about it, have a nice day, and hung up. His report from what I was told, I do not watch 13, was I hung up on him. There are only two ways to get off the telephone rip off the cord or hang up, and I hung up. Then the Journal wrote an article and I read that one and it did not really tell me they actually studied the case either. There reporting you heard today from these people. One incident. The guardianship system in Clark County isn't that bad, you want to change it, that's fine, you want to write laws, no guardian is going to complain they are going to comply with the laws, so will the attorneys. The system works, we have a new judge. I prefer to have a judge sitting on Wednesdays, I always have. The judges change the system, not the commissioner or not the guardians, and not the attorneys, but the judges did years ago; prior to that it was that way. Commissioner sat on the right gave them the information told them what the case was about, make sure the law was in effect and the laws were followed and all that stuff. So with Judge Steel sitting, it's going to be better, I think for everybody. I really don't have much to say other than, if you want to talk to me, call me, I'll talk to you about it. I've been doing this for 35 years I used to be a Clark County public guardian and until a couple cases came up there have never been problems in the system. Now you're listening to these people, which is probably okay, but I want to tell you now, you said it yourself your honor, get the dates, read the file, I will guarantee that all you heard everyone will have to do with money. The only reason I've ever gotten involved in a case was over families fighting



over money. It's not the guardians you have to be aware of, it's more family members. I'll bet you ninety percent of all cases, people are not here, they won't come in. Those are your 10 percenters that have a problem; they didn't get what they wanted. I presume I am going to take a lot of heat for this and I don't really care anymore. I've been doing this too long to care, the only person you folks should be thinking about when you change things is the ward. It's their money, it's their life, it's their time. The family members don't count. If you don't like the guardian, get another one, find one that's competent if you do not think (inaudible 2:19:26) it doesn't bother anybody, we go on. Somebody needs to do it. It is what it is. The ward counts. Remember this... (2:19:37 speaker was interrupted.)

Chief Justice Hardesty: I understand these are emotional issues, let the gentleman complete his comments.

Jared Shafer: As Judge Voy said, if you make changes to the system, you're going to cost money to the ward. It's very expensive. Judge Steel, you want lawyers, ask Legal Services. I asked them twenty some years ago to represent the poor and indigent and they turned me down. I was a public guardian, you are a judge, maybe you can get help. You need help, that's where you go, Legal Services they take federal money, probably State money, and definitely county money, so they take taxpayer's money. So that's where you should be looking for free legal services. The system isn't like it was twenty or twenty-five years ago, lawyers are not volunteering, it's too tough. Any questions, you guys can find me anywhere you want, if you can't find me, ask Judge Voy, ask Elise Tyrell, ask someone who knows me. I will be glad to talk to you individually or as a group. Thanks for your time. Good luck with it. It will be fun to see how it comes out.

Chief Justice Hardesty: Thank you Mr. Shafer. Is there anyone else? Yes, sir.

Jeffrey Grinell: Good afternoon everybody, my name is Jeffrey Grinell. I am a friend of one of the people that has a case in court, but I do not personally have a court case going right now. I am listening to this and I can see that there's clearly two issues that are involved here. One, is the healthcare of the people and two, is the financial end, and they are treated like they are the same and they're two different issues, and it's creating all kinds of problems for families because of that. In most financial issues there's a fiduciary duty that is needed by a professional towards that person. In this case there seems to be no fiduciary duty whatsoever. As a matter of fact, it seems like they can even take money from their wards to defend themselves in court. They are allowed to have an attorney defend them and charge the ward. That seems very odd to me and it goes against any kind of duty that that guardian might have to that person. There is no licensure needed, as far as I know, to become a professional guardian and yet they have the duties of an attorney and charge the rates of an attorney with no oversight whatsoever that an attorney would have to have and no fiduciary duty towards their client whatsoever. Does that make any sense to anybody? Clearly, I can see person after person, after person that has a problem with this. And then once the funds are gone their only choice is to go pro per and try to defend themselves and I've seen the frustrations with some of the judges that are trying to deal with people who don't understand what's going on because they don't have the sophistication to understand. It doesn't make sense. This system is so far broken. There should be an attorney that represents the ward that is charged...they can charge the ward, but why should a guardian who has abused themselves and put themselves in power in

that situation, be able to have an attorney defend them or their LLC, which is a whole other matter, because then, they can't even be sued by the people because their assets are protected. You create a whole system here that is designed to fail and that's what's going on time and time again. Families are having serious financial issues and these are families that had placed their finances in order, these are families that have trusts and the trusts aren't even being looked after. Family members are not being told court dates are happening; they're not at the accounting. There's no penalty for this. None of this makes sense. And then the penalties that are in place through NRS are ridiculously low, to the point that they are a slap on the wrist. That is ridiculous. That is no oversight at all. \$500 for major fine of not filing an accounting and not even let them know that their house is involved. \$500? That's ridiculous.

Chief Justice Hardesty: Anything further Mr. Grinell?

Jeffrey Grinell: No.

Chief Justice Hardesty: Okay, thank you very much. Does anyone else have any public comment?

Rajka Camphiorni: My name is Rajka Camphiorni; I've been fighting this legal system since 2007, when my mother was in a nursing home. When I brought my family here from Croatia I knew that my mother was getting old and I need to protect her. To get a durable power of attorney so I could speak on her behalf because my mother was not educated. She was a 70 years old. She was a maid. She had no chance to go to school. Little did I know, when I report abuse to the nursing home, the nursing home retaliated against me and then they contacted public guardian, Kathleen Buchanan. Overnight she took my rights, due process of law. My mother was abused after that, more, because she could not speak for herself, she did not understand English. They took my mother away from me, she died and when my mother past away a part of me died with her because I was there to protect her. She was looking for my face, to see my face, every day I was there for my mother, every day but Kathleen Buchanan (inaudible 2:26:24) I have proof of showing all of that what she has done to me. All that the agency is there to protect. They are not doing their job. How long are we going to continue to pay for those agencies that they are not doing nothing but abusing seniors? The most vulnerable citizens. I think Kathleen Buchanan should not be sitting on this panel. Maybe you Justice you have a reason for this, I don't know but she should not be sitting. I will show you all of the papers. I was not able to speak before the judge, to be a voice for my mother. How can you do everything that behind a closed door? They did not (inaudible 2:27:04) public guardian. I read Nevada Revised Statute 159 and said this could not be happening. I guess it is happening because Kathleen Buchanan thinks she's the god and she does exactly what she wants to do. Not to protect the guardian not the ward but what is the best interest for her and I plea this to her before and all she would say to me is that she is sorry. Another person here is Julie Arnold. I do not think she should be sitting. If you want any documentation, I have a ton of information to show you. I am not just saying this to be judicious or to lie. To lie is the worst thing anyone can say. I cannot stand people that lie. To be truthful because the truth will always come out. You cannot lie. I do not think, this is my opinion, that Kathleen Buchanan...how can we change anything if she is sitting on this Commission, Justice. I will provide to you all the documentation that I have with Kathleen Buchanan. Everything was done behind closed doors. Lie and manipulation and I can prove that because I have a diary. I always write down the things that happened because sometimes you forget. I have

documentation. Thank you for letting me speak. I know every one of them is telling the truth because I have been through this and have contacted...this is not only happening in Nevada it is happening nationwide. I am still keeping in touch with all of them and it is heartbreaking these stories. These are true stories. I hope this new Commission I think the public guardians should be completely abolished they are not doing any justice to the citizens and the ward. Thank you Justice and thank you ladies and gentlemen. I am going to fight to my last breath. My mother is deceased now but I hope that this does not happen to anyone else because this is not America. I am not alone. I know what is right and what is wrong but I swear I will fight to my last breath so no one else will have to go through what I did, no one else. Because the hole in my heart will never heal (inaudible 2:29:49) my mother is dead. Thank you.

Chief Justice Hardesty: Thank you for your comments. Does anyone else wish to make any public comments today? That concludes the public comments.

## **WRITTEN COMMENTS**

## Heying, Stephanie

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**From:** M Fazzalano <mfazzalano@yahoo.com>  
**Sent:** Sunday, July 19, 2015 9:58 PM  
**To:** Heying, Stephanie  
**Subject:** Guardianship Commission 7/15/15 Meeting - Suggestions from Public

Hello, Stephanie:

I was present as a representative of the public at the Nevada Guardianship Commission's meeting on 7/15/15 and have the following suggestions:

1. I suggest that minutes be published from the 7/15/2015 meeting of the Guardianship Commission documenting any significant discussion items as well as any follow-up action items assigned by Judge Hardesty to select members of the Commission, including the due date of the items.
2. With regard to the discussion on 7/15/2015 relating to the lacking or inadequate Information Technology capability in certain Nevada courts and counties, I would like to mention that the Clark County Public Guardian's office (Kathleen Buchanan, Director) got a new case management system (namely, Panoramic) approximately two years ago.

I worked in Clark County Information Technology at the time and one of my roles was to provide some support to the Clark County Public Guardian's office for their old system to be retired.

The Panoramic system (<http://www.panosoft.com>) was configured so that both the Clark County Public Guardian's office and the Clark County Public Administrator's office could use it.

I suggest that, with the appropriate Clark County's approvals, some analysis be done to see if this system has the capability to support the efforts of the participating courts and counties throughout Nevada. If it can be so configured and is to eventually be used, I also suggest that some sort of reimbursement policy and process be developed to reimburse Clark County for the additional cost of computing.

The department responsible for the Panoramic deployment at the time was the Clark County Enterprise Resource Planning Department under the direction of Susan Laveway, Director (phone 702-868-6400, Email [slaveway@clarkcountynv.gov](mailto:slaveway@clarkcountynv.gov)).

This might give the various county and state departments and courts involved in guardianship cases a means to track the activities relating to a case and trigger certain audit and follow-up actions.

Thank you for the opportunity to provide suggestions.

My best wishes for the success of the Guardianship Commission on a very important topic.

Mary Fazzalano, MA, PMP

## Heying, Stephanie

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**From:** Rick Black <richard.black1159@gmail.com>  
**Sent:** Monday, July 20, 2015 5:13 AM  
**To:** Heying, Stephanie  
**Subject:** Comments from the July 15th Nevada State Guardianship Commission Meeting

Ms. Heying,

I want to thank Chief Justice Hardesty for allowing the public to participate in the Commission meetings. He has a career opportunity to reform Nevada adult guardianship adjudication and protect vulnerable elderly Nevadan's yet to be brought before the court. I fully embrace the objectives of the commission but Justice Hardesty's comments that his efforts do not include prosecution of wrongdoing were concerning. Whether Commissioner Norheim and Judge Hoskin of the 8<sup>th</sup> District are guilty of nepotistic incompetence or outright fraud, it is the judicial leadership's obligation to reprimand, remove, or prosecute them.

Sadly the problems ongoing today have been fostered and institutionalized since before 1993 when Family Court was established in Clark County. Jared Shafer's arrogant and entitled public comments on Wednesday, a 35 year pillar of 8<sup>th</sup> District Family Court, that the guardians are more entitled to the wards money than the wards or their designated heirs should have crystallized for the commission members the issues in Clark County. Shafer highlighting Judge Voy and attorney Elyse Tyrell as supporters of his views was alarming. Having commission members Voy, Tyrell, and Kingman defend the current system in their closing statements is an insult to the victims and public leadership demanding change. Norheim sponsored an abusive free for all in his courtroom. Naïve families came in seeking justice and Norheim and the people he supported further exploited them and their loved ones.

I have investigated over 60 cases ruled on in the 8<sup>th</sup> District in the last few years. Those wards and their families have lost over \$20,000,000 and no additional services were provided the wards while legitimate family was officially removed from helping them. The consistent approach of Hoskin, Ritchie, and Norheim to rule to insure conflicts and insert a guardian when wealth was involved is too obvious to ignore. The endorsement of all rulings by the presiding family court judges and the Nevada Commission on Judicial Discipline over those years is equally damning. Why did it take this long for judicial leadership to act? There should be no doubt the issue here is dereliction of duty by the Judges. New laws and new court processes won't compensate for corrupted adjudication. If Hoskin had done his job the criminal guardians and lawyers would have gone to jail or found easier pickings.

Below are my highlighted needs and concerns for the commission to consider following Wednesday's meeting.

### Adult Guardianship Adjudication needs.

- **Declare and actively defend the priorities of the court in adult guardianships.** Declare the priorities as 1)protection of the wards rights, 2)protection of their estates, and 3)protection of their families. This is a restatement of what currently exists in NRS159 and should have never been in question or required SB262, Senator Harris' new law in 2015, reinforcing "family first".
- **Insure due diligence prior to guardianship.** Norheim awarded April Parks temporary papers in 2014, 49 in total, on average a week from her request and almost all without a hearing. Norheim was running a guardianship factory. I would suggest the court form an alliance with Elder Protective Services to require all cases be investigated, with rotating social workers, and family notification confirmed before a temporary guardianship can be initiated by private guardians or non-family petitioners.
- **Require wards be present for initial hearings.** The only excuse should be a signed and notarized affidavit from the wards primary care physician, who has served the ward more than one year, saying he cannot attend.

- **Create rules to confirm incompetency or inability to attend initial hearings.** Have the incognizance report be an official Mini Mental State Exam (MMSE) confirmed by both the treating primary care physician and a certified neurologist.
- **Insure private professional guardians provide proof they have notified family.** Force private guardians to conduct background checks, at their expense, on any person they nominate for guardianship who they claim has no next of kin or defined caregiver.
- **Insure initial inventories and annual accountings are timely, reconcile and include receipts.** The private professional guardians who have lead the perversion of this system either don't submit accountings or submit them incomplete and with no receipts. Guardians Jared Shafer, April Parks, Angelica Sanchez, and Denise Comastro in the 8<sup>th</sup> District have submitted very few annual accountings, none which reconcile, and many wards having no accountings in over 5 years.
- **Adopt a statewide system to track guardian expense filings, timing, and receipts.** I was struck that each county is struggling with an antiquated or manual approach. Guardian expense filing can inexpensively managed with self-service, preferable cloud based systems. It should be a statewide system and one endorsed by the Department of Business and Industry. Compare best practices with other states like Minnesota for what they have done in this area.
- **Define penalties to all persons committing perjury or fraud in Family Court.** Speaking from personal experience, false claims are routine by many guardians and their attorneys to the court. Hoskin, Ritchie, and Norheim have perverted this court by their negligence in demanding accountability to truth and the law. Norheim convicted and fined many families in his rulings over the last 10 years but I have yet to find where he prosecuted or convicted a single private guardian. Good families don't have a chance as they tell the truth, expect to be treated with respect, and have the court honor Nevada law. The seasoned lawyers who ply their trade in family court each week leverage hearsay and unsubstantiated claims to successfully discredit the families and influence the court.

#### Ongoing Issues in the 8<sup>th</sup> District

- **Judge Hoskin** is again hearing adult guardianship cases and in apparent violation of Judge Barker's order on May 21, 2015 indicating he, Norheim, and Ritchie would no longer rule on adult guardianships. He will be hearing the case of **Ruth Braslow, G13-038228A** on August 11<sup>th</sup>. This case mirrors Elizabeth's case in that April Parks...and Lee Drizin, Esq....conscripted Ruth into an unnecessary guardianship with fraudulent cause and without notifying family. She has already sold the home and its contents while Ruth sits isolated in a group home.
- **Define the Judge assignment process for Judge Steel's recusals.** Having Judge Hoskin hear all Judge Steel's recusals and no different than what happened over the last 6 years. All decisions and appeals stay under Hoskin. The families and the County Commissioners were told Hoskin would no longer hear cases.
- **Judge Steel** issued a "special guardianship" to Allan Karp for **Diane Karp, G14-040720A** on June 30, 2015...with the help of Jeffrey Whitehead and Lee Drizin, Esqs. Diane's daughter, Maureen Lenner, has cared for her for years, her husband has the DPOA, and Diane left the state in March due to her fears of what is going on with adult guardianships in Clark County. Lee Drizin fraudulently signed himself up ex parte as the attorney for Diane Karp. Allan has filed for bankruptcy and was awarded the guardianship in violation of NRS159.044(t). Whitehead and Drizin did not inform the court and were dishonest in their dealings. Their next hearing is July 23<sup>rd</sup>.
- **Jurisdiction clarification by Judge Steel.** Elyse Tyrell is representing Jared Shafer in the case of **Ramiro Hernandez, G12-36855A**. Mr. Hernandez was injured in a construction accident in 2009 while working temporarily in Las Vegas and filed a personal injury suit against his employer. He has been in a nursing home in California near his wife and family since the time of the accident. Tyrell and Shafer fraudulently gained guardianship in 2012 and in early 2015 a large undisclosed settlement was reached between Mr. Hernandez and Aria/Cirque for his injuries. Judge Hoskin has consistently ruled the money go to Jared Shafer as his guardian. Clark County never had jurisdiction in this case as Mr. Hernandez was never a Nevada resident. The payout is expected later this summer and Judge Steel will now hear the case.
- **Judge Steel** assigned Julie Arnold(who sits on the Commission) and Carol Kingman of the Southern Nevada Senior Law Program as counsel for ward **Cazee Lewis, G15-41791A**. This appears to be a convenient way to mask using them as investigators. Judge Steel has stated publicly Arnold and

Kingman will no longer be used to investigate. They were assigned and removed once they rendered a supportive decision. They have assisted April Parks, the guardian, in the isolation of Cazee from family and friends, including my attempts to visit with him. They also falsely testified I caused Cazee to be sent to the hospital due to a fall. They claimed I surprised him in a visit where I was never allowed past the front door of the care facility that he was supposedly staying. Parks, Arnold, and Kingman's isolation is a violation of NRS200.5093. Although I appreciate Judge Steel's recent efforts to insure access by Cazee's family and friends and insure he was signed up for veterans benefits, why weren't Parks, Kingman, and Arnold fined for their actions? The next hearing is September 3<sup>rd</sup>.

- **Define the process for sanctions.** Judge Hoskin recently sanctioned April Parks \$2,250 for late filings in the **Elizabeth Indig, G12-37414A** case. Norheim and Hoskin have feigned defending the law by sanctioning guardians a few hundred dollars for late accountings with \$10,000's of potential fraudulent actions. The courts practice of having sanctions paid to the Southern Nevada Senior Law Program (SNSLP), a 501(c) 3 non-profit, is inappropriate given their weekly involvement with the court and consistent recommendation for private guardianships, namely April Parks. I have a bigger issue with the larger fraud not being addressed, but why are sanctions being paid to SNSLP versus being paid back to the county or court accounts to invest in greater compliance oversight?

Regards,  
Richard W. Black  
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