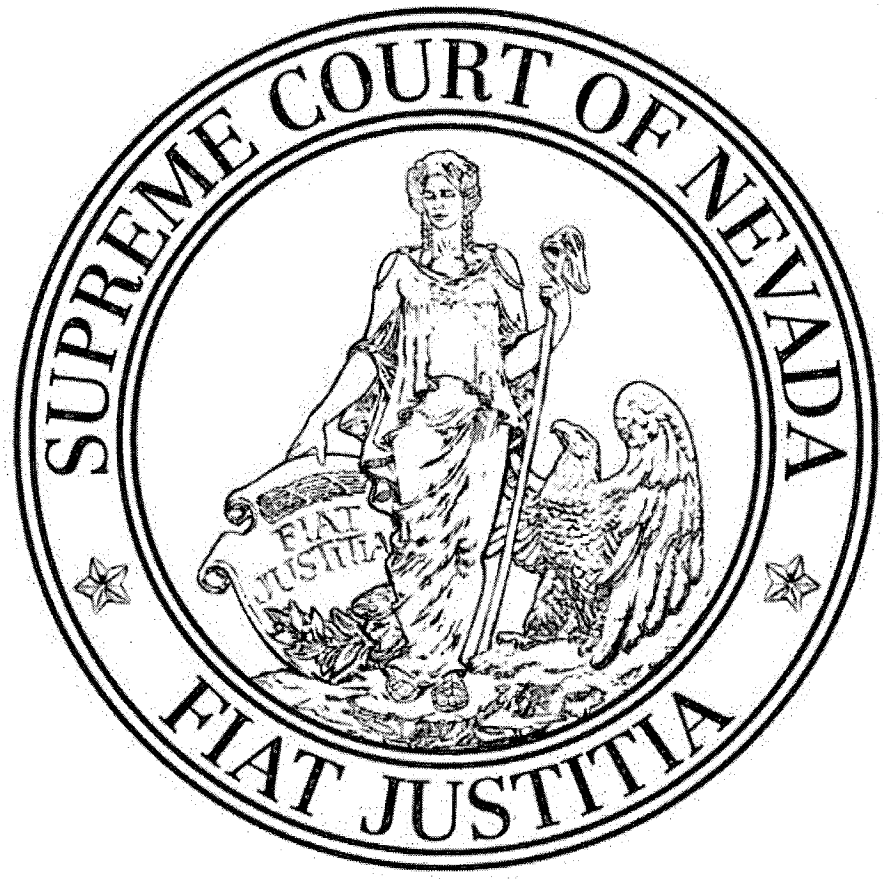

Final Report
Nevada Supreme Court's Commission to Study the Administration of Guardianships in Nevada's Courts
[Administrative Docket Number 507]
September 2016

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NEVADA SUPREME COURT
COMMISSION TO STUDY THE ADMINISTRATION OF GUARDIANSHIPS IN NEVADA'S COURTS
FINAL REPORT[1]

The "Final Report" of the Nevada Supreme Court's Commission to Study the Administration of Guardianships in Nevada's Courts (Guardianship Commission or Commission) was prepared by staff of the Administrative Office of the Courts.[2]

A petition was filed under Administrative Docket Number 507 (ADKT 507)[3] by the Honorable James W. Hardesty, Chief Justice of the Nevada Supreme Court, the Honorable David Barker, Chief Judge of the Eighth Judicial District Court, and the Honorable David A. Hardy, Chief Judge of the Second Judicial District Court to consider the formation of a Commission to Study the Creation and Administration of Guardianships in Nevada's Courts. The Nevada Supreme Court issued an order on June 8, 2015, concluding that such a commission should be appointed and the commission should file a report with the Supreme Court of its findings and recommendations by December 31, 2015.[4]

This report is intended to provide the Nevada Supreme Court an overview of the work of the Guardianship Commission and its recommendations to improve the Administration of Guardianships in Nevada's Courts. The report provides a summary of its recommendations, a summary report of each meeting held since July 15, 2015, and details of each action taken by the Commission.

The final recommendations of the Guardianship Commission have been organized by category. Each recommendation falls within a request to: (1) draft court rules, (2) draft legislation to amend or add to Nevada Revised Statutes (NRS), (3) policy statements of support, and (4) interim actions.

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[1] By a unanimous vote of the Commissioners present at the September 26, 2016, meeting, the Commission approved the final report to be a fair and accurate representation of its deliberations and recommendations.

[2] The Nevada Supreme Court and the Guardianship Commission would like to commend and thank Stephanie Heying for her extraordinary contribution as staff consultant to the Commission.

[3] A link to the Nevada Supreme Court's administrative dockets filed under ADKT 507 can be found on the Reference and Resource Page.

[4] The deadline for the final report was extended to June 30, 2016, and again to September 30, 2016, to allow the Commission time to vet all the issues.

NEVADA SUPREME COURT
COMMISSION TO STUDY THE ADMINISTRATION OF GUARDIANSHIPS IN NEVADA'S COURTS
SUMMARY OF RECOMMENDATIONS

The Guardianship Commission held fifteen meetings between July 15, 2015, and September 30, 2016. During the meetings, the Guardianship Commission received presentations from both local and national experts on the subject of guardianships. The Commission also heard extensive testimony from members of the public.[5] Based on the information received during the first five meetings, Chair Justice James W. Hardesty posed a list of 30 General Policy Questions (Policy Questions) for the Commission to vet and vote on in subsequent meetings. Additional Policy Questions[6] were added to the list as the Commission discussed each issue.

Court Rule Recommendations

1. The Commission recommends establishing a permanent Commission to address issues of concern to those persons who would be subject to the guardianship statutes, rules, and processes in Nevada.
2. The Commission urges the Supreme Court to adopt court rules outlining the duties of an attorney for a Proposed Protected Person or Protected Person. **(Exhibit A)**
3. The Commission urges the Supreme Court to adopt court rules outlining the duties of an attorney guardian ad litem for a proposed protected person or protected person. **(Exhibit A)**
4. The Commission urges the Supreme Court to develop procedures or court rules to require mediations in all contested guardianship proceedings.
5. The Commission urges the Supreme Court to adopt court rules to evaluate Court supervision of guardianships including training, staffing, scheduling, and caseload limits.
6. The Commission urges the Supreme Court to adopt court rules appropriate to designate training and caseloads for professional guardians, both private and public.
7. The Commission urges the Supreme Court to adopt uniform statewide court rules and forms for the processing of guardianship proceedings in all Nevada District Courts.
8. The Commission urges the Supreme Court to adopt a court rule to require a Court to make specific findings if the Court does not order a bond or blocked account.
9. The Commission urges the Supreme Court to adopt a court rule regarding NRS 159.057.[7] The rule would require the Court to create and maintain a separate case for each individual protected person regardless of whether one petition was filed for two or more Protected Persons. **(Exhibit B)**
10. The Commission urges the State Court Administrator to adopt a uniform Guardianship Information Sheet to be used by all Nevada District Courts pursuant to NRS 3.275. **(Exhibit C)**

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[5] The Commission heard over 9 hours of public comment.

[6] A list of the General Policy Questions the Commission vetted can be found in **Appendix A.**

[7] NRS 159.057 allows a single petition to be filed for two or more wards under certain circumstances.

11. The Commission urges the use of court performance measures in all District Courts. Measures would include age of pending case, time to disposition, and clearance rates for guardianship cases.
12. The Commission urges the Supreme Court to adopt court rules for the qualifications of Non-Attorney Guardian ad Litem or Advocate. **(Exhibit D)**
13. The Commission urges the Supreme Court to adopt court rules outlining the initial plan for guardianship. **(Exhibit E)**
    a. The Commission approved offering recommendations concerning the fee structure to compensate guardians and others they hire.
    b. The Commission approved making recommendations concerning the process, notice, and findings required for the approval of fees to guardians and others they hire.
    c. The Commission approved making recommendations concerning the process, timing, notice, and findings the Court must make concerning accountings of the Protected Person's estate.
14. The Commission urges the Supreme Court to adopt a modification to the Judicial Code, as necessary, to accommodate the judge's ability to address ex parte communications that deal with the welfare of the Protected Person. **(Exhibit F)**[8]

Legislative Recommendations

1. The Commission recommends NRS 159.0485 make clear that legal counsel be appointed for every Proposed Protected Person, regardless of means.[9]
2. The Commission urges the Legislature to approve an increase in recording fees of $1.50, pursuant to NRS 247.305, for funds to be distributed in each county to legal aid organizations to provide legal counsel for all Proposed Protected Persons and Protected Minors in guardianship proceedings. In the absence of a legal aid organization in a given judicial district, the Court may appoint counsel to provide legal services with those funds. The funds for the legal aid organization, in a given judicial district, will be set aside by the Access to Justice Commission of the Nevada Supreme Court.
3. The Commission recommends replacing the term "Ward"[10] as defined in NRS 159.027 with the term "Proposed Protected Person" or "Proposed Protected Minor" preadjudication and "Protected Person" or "Protected Minor" post-adjudication. This will require amendments to multiple statutes where the term "Ward" is used. In addition, the Commission recommends changing the statutory title to "In the Matter of the Guardianship of _____, Protected Person."
4. The Commission recommends revising NRS Chapter 159 to incorporate the concept of "Incapacitated Person." **(Exhibit G)**

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[8] **Exhibit F** includes a copy of the State of Nevada, Standing Committee on Judicial Ethics Advisory Opinion: JE15-002, and the position statement from the Florida Clerk of the Court, Sharon R. Bock, on Clerk's Guardianship Duties and Ex Parte Communication.

[9] See also Legislative Recommendation number 2 and Policy Statement number 1 and 2.

[10] The terms Proposed Protected Person/Minor, and Protected Person/Minor have replaced the term Ward throughout this document. Exceptions: Language in the original ADKT 507 orders, where statutory language is referenced, and in presentations by other states that still use the term Ward when referring to a Proposed Protected Person/Minor or Protected Person/Minor.

5. The Commission recommends legislation to add a Bill of Rights with the understanding the Bill of Rights would be included in the Guardianship Oath and be subject to enforceability through a private right of action. **(Exhibit H)**
6. The Commission recommends the following rights of a Proposed Protected Person and/or Protected Person that should be included in statutes under NRS Chapter 159.
    a. Visits/Communication. The Commission recommends adding statutory language to NRS Chapter 159 that a guardian cannot restrict access to the Protected Person from family and friends without a court order. **(Exhibit I)**
    b. Change of Residence. The Commission recommends amending NRS 159.079 (4) by removing the change of residence provisions and creating a new statute. The recommended statutory language is included as **Exhibit I.**
    c. Remedies. The Commission recommends adding statutory language to NRS Chapter 159 to address remedies. **(Exhibit I)**
    d. Accountings. The Commission recommends amending statutory language in NRS 159.179 to address accountings. **(Exhibit I)**
    e. Appointment of Volunteer Guardian ad Litem, Advocate, or Attorney Guardian ad Litem. The Commission recommends statutory language in NRS Chapter 159 for the appointment of Volunteer Guardian ad Litem, Advocate, or Attorney Guardian ad Litem. **(Exhibit I)**
    f. Advising a Proposed Protected Person or Protected Person of their legal rights: NRS 159.0535. **(Exhibit I)**
7. The Commission recommends adding a new Chapter 159A to the Nevada Revised Statutes to address guardianships specific to Proposed Protected Minors and Protected Minors. **(Exhibit J)**
8. The Commission recommends adding statutory language for the compensation of attorneys in guardianship cases. **(Exhibit K)**
9. The Commission recommends amending statutory language for notice in guardianship proceedings. **(Exhibit L)**
10. The Commission recommends that proof of personal service by affidavit be required to show proof that a Protected Person was serviced notice of the petition.
11. The Commission calls upon the Legislature to establish statewide standards for the guardianship investigation, administration, and accounting. The statewide model is a national best practice and the Commission urges the Legislature to look into creating a Statewide Office of Public Guardian. This would include the Commission's prior recommendation to approve the use of investigators, as necessary, and auditors or accountants, to evaluate financial records and fee requests and other petitions/motions raising financial issues concerning a Protected Person.
12. The Commission supports the recommendations relating to the Appointment of Registered Agent by Nonresident Guardian of Adult. The resolution provided by the Nevada Secretary of State's Office is included as **Exhibit M.**
13. The Commission supports legislation to have the Secretary of State's Lockbox Program expanded to include designations of guardians.
14. The Commission recommends the Legislature eliminate the collection of payment for filing fees[11] in all guardianship cases.

[11] See **Appendix E** for chart of filing fees collected by judicial district.

15. The Commission recommends a statutory provision stating, "Upon the filing of a guardianship action, the proposed guardian may also be required to file a proposed preliminary care plan and budget. The format of said plan, and the timing of the filing, shall be specified by court rule approved by the Nevada Supreme Court."[12] Included as **Exhibit N.**
16. The Commission recommends amendments to NRS Chapter 159 concerning the management and administration of the Protected Person's estate and personal property. Included as **Exhibit O.**

Policy Statement of Support

1. The Commission adopts a policy statement that every Protected Person, regardless of means, is entitled to legal counsel.
2. The Commission authorizes the chair to send a letter to county commissioners to provide financial support to legal aid organizations to make counsel available for all Protected Persons until the next legislative session.
3. The Commission adopts a policy statement that the Commission is in favor of acknowledging the purposes and tenets behind "person-centered planning" and determinations by a Court that guardianships are approved only for "least-restrictive alternatives." Additionally, a Court should be required to make specific findings in any order appointing a guardian that includes a conclusion that no other "least-restrictive means" are available to address the needs of the Proposed Protected Person.
4. The Commission adopts a policy statement encouraging the use of volunteers or programs[13] in each judicial district as appropriate and available.
5. The Commission adopts a policy statement that the Commission determined there are policies, court rules, and statutes in place to address confidentiality.
6. The Commission adopts a policy statement that every hearing[14] involving a Protected Person requires the Protected Person's presence, which could be exempt only upon a medical showing or some other good cause approved by the Court. Good cause findings would be incorporated into the reference of good cause approved by the Court. This applies to adult Protected Persons only.
7. The Commission adopts a policy statement that the Commission favors the use of special guardianships pursuant to NRS 159.0487, NRS 159.0795, and NRS 159.0801, in circumstances in which the capacity of the individual may not place the person in a position where a full guardianship is warranted. The Commission voted that this is consistent with the approach the Commission has taken in its recommendation to use special guardianships as a starting point, not as the exception, when making these findings and determinations.
8. The Commission supports the concept, which would require greater evidence for the judge to make the determination of exactly what incapacity is and how it is documented and supported.

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[12] See Court Rule recommendation number 13 – Initial Plan.

[13] The Special Advocates for the Elderly (SAFE) program in Douglas County is an example of the type of volunteer program districts are encouraged to develop.

[14] Nevada Revised Statute 159.0535 Attendance of proposed Ward at hearing.

9. The Commission supports the application for a grant through the National Resource Center for Supported Decision Making in an effort to expand knowledge of the Supported Decision-Making Process and its agreements as an alternative to a guardianship. Information on the grant and supporting documents is included as **Exhibit P.**

Interim Actions by the Commission

The Commission took the following interim actions:

1. Court Caseloads and Backlogs

During the September 16, 2015, meeting, Chief Justice Hardesty notified Commissioners that judicial districts throughout the State had been asked to study their districts guardianship caseloads and backlogs. This was a result of the discussions the Commissioners had during prior Commission meetings.

The Commission was provided an update of caseloads during the final Commission meeting on September 16, 2016. Judge Steel reported[15] the Eighth Judicial District Court had 2,805 adult guardianship cases, and the court averaged 65 new adult guardianship cases a month and 82 new minor guardianship cases a month. Judge Doherty reported[16] the Second Judicial District Court had 710 adult guardianship cases, and the court averages 12 to 19 new adult guardianship cases a month and 30-35 new minor guardianship cases a month. Judge Porter reported[17] the Fourth Judicial District Court had 365 adult guardianship cases, and 25 new guardianship cases had been filed as of August 2016 and 58 were filed in 2015.

2. Law Enforcement/Prosecutors Response to Guardianship Complaints

The Commission received a presentation[18] from Mr. Jay P. Raman, at the October 19, 2015, Commission meeting on the response of law enforcement and prosecution to guardianships. At the December 15, 2015, Commission meeting, the Commission directed the chair to contact the Nevada Attorney General's Office and District Attorney Office's in Nevada urging prosecution under existing statutes in response to allegations of misconduct of handling of guardianship proceedings. At its January 22, 2016, Commission meeting, the Commission received a report from Mr. Raman. He had been working with the Las Vegas Metropolitan Police Department's Abuse and Neglect Division, and as a result an email[19] was sent from Lieutenant James Wieskopf, Special Victims Section to law enforcement, patrol service representatives and patrol officers. At the February 26, 2016, Commission meeting, the Commission received a presentation from Mr. Roland D. Swanson, II, Chief of Investigations for the Nevada Attorney

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[15] The statistics provided by Judge Cynthia Diane Steel for the Eighth Judicial District Court were current as of September 16, 2016.

[16] The statistics provided by Judge Frances Doherty for the Second Judicial District Court were current as of September 14, 2016.

[17] This information was reported in an email on August 23, 2016.

[18] A copy of the presentation is included as **Appendix B.**

[19] A copy of the email is included as **Appendix B.**

General's Office on the efforts of the Attorney General's Office in the training of police officers and prosecutors in the areas of guardianships, elder abuse, and neglect. At the April 1, 2016, Commission meeting, Justice Hardesty reported he had been working with Attorney General Adam Laxalt and the Commission received a press release[20] from Attorney General Laxalt, Clark County Sheriff Joe Lombardo, and Clark County District Attorney Steve Wolfson announcing the joint investigative and prosecution team for guardianship cases.

3. Clarification of the Application of Nevada Civil Procedure Rules and Rules of Evidence

The Commission requested clarification of the application of Nevada Civil Procedure Rule 60 (b) and the Rules of Evidence to proceedings under Chapter 159 (Guardianships) at the Commission meeting on April 22, 2016. The Nevada Supreme Court entered an Order[21] on July 22, 2016, in response to the Commission's request concluding that both the Nevada Rules of Civil Procedure and the Rules of Evidence apply to guardianship cases.

4. Grant Opportunity[22]

In June 2016, Justice Hardesty received an email from Ms. Penelope Hommel, from The Center for Social Gerontology (The Center), indicating The Center was about to engage in a national effort to study the administration of guardianships based on the work of the Commission. A letter[23] was received indicating the Federal Administration on Aging Administration for Community Living seeks to provide national support for the development and delivery of legal services to vulnerable elders and others who might be subject to guardianships. The grant, if awarded, would provide $100,000-$125,000 per year for the next two years to the State of Nevada to assist the Administrative Office of the Courts (AOC) and the Supreme Court in implementing the recommendations made by the Commission. Nevada was one of four states invited to submit an application for the grant.

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[20] A copy of the press release is included as **Appendix B.**

[21] A copy of the Order issued by the Nevada Supreme Court can be found at http://caseinfo.nvsupremecourt.us/public/caseView.do;jsessionid=748179B7A7003B04D13B98330B4F9409?csIID=35785

[22] To date, no announcements have been made regarding who the successful applicants are.

[23] A copy of the letter is included as **Exhibit Q.**

REPORT TO THE NEVADA SUPREME COURT BY THE COMMISSION TO STUDY THE ADMINISTRATION OF GUARDIANSHIPS IN NEVADA'S COURTS

I. INTRODUCTION

On May 21, 2015, a petition was filed under Administrative Docket Number 507 (ADKT 507) by the Honorable James W. Hardesty, Chief Justice of the Nevada Supreme Court, the Honorable David Barker, Chief Judge of the Eighth Judicial District Court, and the Honorable David A. Hardy, Chief Judge of the Second Judicial District Court to consider the formation of a Commission to Study the Creation and Administration of Guardianships in Nevada's Courts (Commission). In support of the petition, Chief Justice Hardesty and Chief Judges Judge Barker and Hardy alleged:

1. The Guardianship process is a "legal proceeding in which a person is divested of legal autonomy and subjugated to the control of another person or entity."[24] Guardianships occur when a judge has determined that elderly and other vulnerable citizens in our society can no longer act for themselves.
2. Guardianship proceedings necessarily require strict adherence to procedural safeguards and a thorough assessment of the evidence before being ordered. Thereafter, courts must be diligent in their oversight and monitoring of the ward's health, welfare and property, and the guardian's adherence to fiduciary duties in the protection of the ward.
3. Nevada's statutory scheme for the creation and supervision of guardianships in Nevada is contained in NRS Chapter 159. These statutes generally provide the procedure to commence a guardianship, the process to appoint and supervise a guardian, the requirements for administration, management, and accounting for the estate of the ward, and the conditions and timing for removal or termination of the guardian or guardianship.
4. Currently, the Eight Judicial District Court has 8,737 open Adult Guardianship cases with an average of 66 new filings per month and 6,741 Minor Guardianship cases with an average of 66 new filings per month.[25] The Second Judicial District Court has 892 open Adult Guardianship cases with an average of 15 new filings per month and 1,095 Minor Guardianship cases with an average of 14 new filings per month.[26]
5. The number of elderly and vulnerable persons in Nevada is expected to increase, which is likely to cause more guardianship cases in need of supervision and administration.
6. A Joint Task Force of the Conference of Chief Justices and Conference of State Court Administrators on Elders and the Courts identified several critical problems facing courts

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[24] David A. Hardy, *Who is Guarding the Guardians? A Localized Call for Improved Guardianship Systems and Monitoring*, 4 Nat'l Acad. of Elder L. Attorneys J., 1, 7 (2008).

[25] Judge Cynthia Dianne Steel reported the Eighth Judicial District Court had 2,805 adult guardianship cases as of September 16, 2016. The Court averages 65 new adult guardianship cases monthly and 82 new minor guardianship cases monthly.

[26] Judge Frances Doherty reported the Second Judicial District Court had 710 adult guardianship cases as of September 14, 2016. The Court averages 12 to 19 new adult guardianship cases monthly and 30-35 new minor guardianship cases monthly.

as a result of the increase in the number of elderly and vulnerable persons in need of guardianships or conservatorships, including, among others, the lack of adequate systems to account for and manage the number of cases filed, pending, and concluded each year; the adequacy of programs, training and materials to support family members who might serve as a guardian; the sufficiency in numbers and qualifications for public and/or professional guardians in many states; and the adequacy and training of judges and court staff to supervise and oversee guardians and guardianships.

7. The Joint Task Force made eight recommendations to address the most critical problems based on promising practices being placed in use to improve the monitoring and supervision of guardianships.
8. The Conference of Chief Justices unanimously adopted Resolution 14 endorsing the Report of the Joint Task Force and urging each state to implement the Task Force's recommendations.
9. Petitioners believe that a statewide Commission, composed of stakeholders in the public and private guardianship system, can study and make appropriate recommendations for statewide policies and procedures concerning the creation and administration of guardianships, including, but not limited to, the procedures used to provide notice and the evidence required to create guardianships; the training and appointment of guardians; the protections needed for wards and their family members; the accountability and performance required of guardians and expected of courts; the use of technology to assist in documenting, tracking, and monitoring guardianships; and the identification of resources necessary to assist the court system to meet required objectives. Petitioners believe that the Commission should be required to provide its report and recommendations no later than December 31, 2015.

Accordingly, petitioners request that the Nevada Supreme Court places this issue on its administrative docket and proceed, as it deems appropriate to create the Nevada Supreme Court's Commission to Study the Administration of Guardianships in Nevada's Courts.

Having considered the petition, the Nevada Supreme Court concluded such a commission should be appointed and should file a report with the Court on its findings and recommendations by December 31, 2015.[27] The Court further authorized the chief justice to appoint a commission of no more than 20 members. Upon further review, the Court determined the expansion of the Commission was warranted. Accordingly, the chief justice was authorized to appoint and chair a commission of no more than 30 members.

[27] The deadline for the final report was extended to June 30, 2016, and again to September 30, 2016, to allow the Commission time to vet all the issues.

II. GUARDIANSHIP COMMISSION MEMBERS

The following members were appointed to and served on the Commission:

Chief Justice James W. Hardesty, Chair, Nevada Supreme Court
Chief Judge Michael Gibbons, Nevada Court of Appeals
Judge Frances Doherty, Second Judicial District Court
Judge Egan Walker, Second Judicial District Court
Judge Nancy Porter, Fourth Judicial District Court
Judge Cynthia Dianne Steel, Eighth Judicial District Court
Judge William Voy, Eighth Judicial District Court
Senator Becky Harris, Nevada Legislature
Assemblyman Michael C. Sprinkle, Nevada Legislature
Assemblyman Glenn E. Trowbridge, Nevada Legislature
Trudy Andrews, Pacifica Senior Living
Julie Arnold, Southern Nevada Senior Law Program
Debra Bookout, Legal Aid of Southern Nevada
Kathleen Buchanan, Clark County Public Guardian's Office
Rana Goodman, The Vegas Voice
Susan Hoy, Nevada Guardian Services, LLC
Jay P. Raman, Clark County District Attorney's Office
Sally Ramm, State of Nevada Aging and Disability Services Division
Kim Rowe, Maupin, Cox & LeGoy
Terri Russell, KOLO Channel 8 News
Christine Smith, University of Nevada, Las Vegas, William S. Boyd School of Law
David Spitzer, Washoe Legal Services
Kim Spoon, Guardianship Services of Nevada, Inc.
Timothy Sutton, Nye County District Attorney's Office
Susan Sweikert, Victim's Advocate
Elyse Tyrell, Private Attorney
Jeff Wells, Assistant County Manager, Clark County

III. GUARDIANSHIP COMMISSION MEETINGS
(Summary of presentations/discussions)

A. FIRST MEETING

The first Guardianship Commission meeting was held on July 15, 2015. The meeting began at 1:30 p.m. and was an in-person meeting held in the Nevada Supreme Court courtroom at the Regional Justice Center in Las Vegas. The public was invited to provide comment.[28]

Scope of the Commission

Chief Justice Hardesty acknowledged many guardianship issues need to be reviewed and it is critical that the Commission approach this effort from a scholastic standpoint. It is important to recognize there may be differences in the way Nevada's courts approach the same subject matter. There are statutes that govern what should be done in guardianship cases but the local approach might be different, and the Commission should identify whether that is a result of inadequacy of resources or a result of custom and practice. The Commissioners identified goals and objectives[29] they would like the Commission to consider.

The goals and objectives included:

- **Processes/Accountability**
  - Create standardized rules and practice processes that focus on greater accountability.
  - Provide for better definitions.
  - Limit the number of Protected Persons a guardian may monitor.
- **Investigations/Compliance**
  - Investigations to ensure reasonable or suitable family members have been considered for the appointment as guardian.
  - Compliance Officers to review and track documents, including accounting documents.
  - Investigation position(s) created with the court system.[30]
  - Create two licensed positions to investigate misrepresentation.
- **Temporary Guardianships**
  - Review the length of time temporary guardianships can be in effect.
- **Certificates/Petitions**
  - Review physician's certificates.
  - 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 Nevada Rules of Civil Procedure Rule 11 apply to the petitions?

[28] July 15, 2015, meeting total time of public comment was 1 hour 10 minutes.

[29] Justice Hardesty developed a list of General Policy Questions based on the goals and objectives Commissioners identified in the first few meetings. The Policy Questions were presented to the Commission at the December 15, 2015, meeting, and are included as **Appendix A.**

[30] California has a court investigator to check every guardian report that comes to the court making sure it is appropriate.

        - Petitions are inadequate in the number of people required to complete the petition.
- **Fiduciary Reports/Oversight**
    - Require fiduciary reports more often than every 12 months.
    - Create something similar to a physician's licensing board.
- **Guardian ad Litem**
    - Consider the role of the Guardian ad Litem[31] in adult guardianships.
- **Counsel**
    - Provide counsel to the Protected Person 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 as it related to fees? How is "reasonable" fee determined?
    - Attorney fees/costs.
- **Statutory language**
    - Develop a separate statutory scheme to handle minor guardianships.
    - Burden of proof/standard of proof
        - How does the current statutory language affect or compare to the burden 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.[32]
    - Consistency – Everyone seeing same laws and interpreting them the same way.
    - Laws strengthened to allow prosecution in cases that have contentious issues with exploiters.
    - Bright 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:
        - Protected Persons
        - Guardians
        - Families
        - Attorneys
        - Judges
        - Courts

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[31] Nevada Revised Statute 159.0455 outlines the appointment, duties, and compensation of Guardians ad Litem.

[32] Current statutes include language from 1956.

        - 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 that may be federally protected under HIPAA.
- **Family Involvement**
    - Make sure families are comfortable in the process and are heard.
    - If family is not chosen as guardian, they should still be consulted.
    - Create a Family Mediation Program to work with the courts and the families.
    - Make sure personal mail is delivered to the Protected Person.

Overview of NRS Chapter 159 presented by Judge Frances Doherty, District Judge, Second Judicial District Court, and Judge Cynthia Dianne Steel, District Judge, Eighth Judicial District Court[33]

Judge Frances Doherty and Judge Cynthia Dianne Steel provided an overview of NRS Chapter 159, as it applies to guardianships and the court processes.

Judge Doherty stated that NRS Chapter 159 is steeped in the history of English and American law focusing on two institutions: family and property. Nevada Revised Statutes includes antiquated terms[34] because we are working in an old-fashioned area. Guardianship is a substitution of decision making for person and property. That substitution means the system is directly interfering with the constitutional rights of privacy, freedom of movement, and decision-making, and includes areas that are not found in other statutes. The statutes include a mandatory right to counsel for persons who are proposed to be under guardianship,[35] appointment of investigators, and appointment of Guardians ad Litem.

Judge Doherty reviewed the guardianship flow chart developed by the Second Judicial District Court. The flow chart can be accessed online[36] and is an interactive document that links to instructions, applicable statutes, and forms.

Judge Doherty, Judge Steel,[37] and Judge Porter,[38] respectively, provided an overview of the guardianship process in the Second, Eighth, and Fourth Judicial Districts. The processes are similar and each Court follows the statutory guidelines outlined in NRS Chapter 159.

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[33] Judge Doherty and Judge Steel provided flow charts of the guardianship process. The flow charts are attached as **Appendix C.**

[34] The term "Ward" has been identified as an antiquated term.

[35] The Second Judicial District Court refers to a "Ward" as a "person proposed to be under the guardianship."

[36] The outline and information on adult guardianships, including forms, can be found on the court's website at https://www.washoecourts.com/index.cfm?page=guardianship.

Procedures in Guardianship Proceedings – NRS 159.034 to NRS 159.0486:

- A party seeking a guardianship ("Petitioner / Proposed Guardian") files an action (petition) with the court to request the power to handle the affairs of another party ("Proposed Ward").
- Pursuant to NRS 159.0487, any court of competent jurisdiction may appoint:
    - Guardians of the person, of the estate, or of the person and estate for incompetents or minors[39] whose home state is Nevada.
    - Guardians of the person or of the person and estate for incompetents or minors who, although not residents of the State, are physically present in this State and whose welfare requires such an appointment.
    - Guardians of the estate for nonresident incompetents or nonresident minors who have property within this State.
    - Special guardians.
    - Guardians ad Litem.
- The judicial department overseeing guardianships cases receives the petition and schedules a hearing date.
- A citation is issued to notify the Proposed Protected Person and the Proposed Protected Person's relatives, within the second degree of consanguinity of the upcoming hearing;
- The citation is mailed 20 days prior to the hearing.
- The petition must notify the Proposed Protected Person who the guardian is and who the proposed overseer of their estate would be.
- The petition must include the Proposed Protected Person's address, addresses of family members, the reason for the guardianship, and a letter from a doctor or any qualified person.
- The petition is supposed to trigger a Guardian ad Litem appointment and investigative appointment, if appropriate.[40]
- Once the petition is filed, counsel[41] is appointed for the Proposed Protected Person.
- The Proposed Protected Person may accept or decline the appointment of counsel during the interview between the Proposed Protected Person and counsel.
- The parties would come back to Court for the first return date (return on the petition).
- Counsel, if appointed, would let the Court know if counsel met with the Proposed Protected Person and the outcome of the meeting(s).[42]

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[37] The Eighth Judicial District Court has a Family Law Self-Help Center but the court needs more attorneys to provide counsel to Proposed Protected Persons, as well as Guardians ad Litem and Investigators.

[38] Judge Porter added there are fewer resources in the smaller counties. The Fourth Judicial District Court primarily sees pro se individuals and the Court receives a lot of ex parte request, particularly for children.

[39] If the Proposed Protected Person is a minor the substitution of authority would be the minor and the minor's estate by a third person other than the minor's parent.

[40] Washoe County lacks the money for these resources but a federal grant through Washoe Legal Services provides the resources.

[41] Counsel is not automatically appointed in all districts due to a lack of resources. The Second Judicial District Court appoints counsel for the Proposed Protected Person and the Fourth Judicial District Court has been working with Washoe Legal Services for appointment of counsel.

- Contested cases are immediately sent to the mandatory mediation program.[43]
- If a resolution cannot be found, an adjudicatory hearing might be requested.

Types of guardianship hearings:

- Citation hearing – Court decides petition requests to appoint guardian NRS 159.034 to 159.0486
- Inventory/budget hearings NRS 159.085
- Accounting hearings – Court sets annual review of assets/debts – NRS 159.181
- Hearing to confirm sale of real property NRS 159.146
- Petition for Special Interest – Move/sell or divide assets, conduct business, oversee investments NRS 159.177 to 159.125
- Removal of Guardian NRS 159.185 to 159.187
- Resignation of Guardian NRS 159.1873 to 159.1877
- Termination of Guardianship NRS 159.1905 to 159.199
- Bench trial/evidentiary hearings

Nevada Revised Statute 159.0535 states:

1. A proposed ward who is found in this State must attend the hearing for the appointment of a guardian unless:

(a) A certificate signed by a physician or psychiatrist who is licensed to practice in this State or who is employed by the Department of Veterans Affairs specifically states the condition of the proposed ward, the reasons why the proposed ward is unable to appear in court and whether the proposed ward's attendance at the hearing would be detrimental to the physical or mental health of the proposed ward; or

(b) A certificate signed by any other person the court finds qualified to execute a certificate states the condition of the proposed ward, the reasons why the proposed ward is unable to appear in court and whether the proposed ward's attendance at the hearing would be detrimental to the physical or mental health of the proposed ward.

2. A proposed ward found in this State who cannot attend the hearing for the appointment of a general or special guardian as set forth in a certificate pursuant to subsection 1 may appear by videoconference. If the proposed ward is an adult and cannot attend by videoconference, the person who signs the certificate described in subsection 1 or any other person the court finds qualified shall:

(a) Inform the proposed adult ward that the petitioner is requesting that the court appoint a guardian for the proposed adult ward;

(b) Ask the proposed adult ward for a response to the guardianship petition;

(c) Inform the proposed adult ward of his or her right to counsel and ask whether the proposed adult ward wishes to be represented by counsel in the guardianship proceeding; and

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[42] This allows the process to move quickly, provides the Proposed Protected Person representation, and allows for earlier case planning.

[43] The Proposed Protected Person, family and proposed guardian all attend the mandatory mediation in the Second Judicial District Court. The mediation program is not funded by the Second Judicial District Court. Mediations are either funded through a neighborhood mediation service, for low-income participants, or charged to the estate.

(d) Ask the preferences of the proposed adult ward for the appointment of a particular person as the guardian of the proposed adult ward.

3. If the proposed ward is an adult, the person who informs the proposed adult ward of the rights of the proposed adult ward pursuant to subsection 2 shall state in a certificate signed by that person:

(a) That the proposed adult ward has been advised of his or her right to counsel and asked whether he or she wishes to be represented by counsel in the guardianship proceeding;

(b) The responses of the proposed adult ward to the questions asked pursuant to subsection 2; and

(c) Any conditions that the person believes may have limited the responses by the proposed adult ward.

4. The court may prescribe the form in which a certificate required by this section must be filed. If the certificate consists of separate parts, each part must be signed by the person who is required to sign the certificate.

5. If the proposed ward is not in this State, the proposed ward must attend the hearing only if the court determines that the attendance of the proposed ward is necessary in the interests of justice.

At the end of the hearing, the Court will issue an order[44] with the following:

- Dismiss the petition – no guardianship;
- Enter a limited guardianship order; or
- Grant a general guardianship over the person, estate, or both.

Once a guardianship order is issued, the bond is addressed and letters of guardianship are issued.

- Guardians are required to file an inventory pursuant to NRS 159.085 within 60 days of the original order.
- A report of person, estate, or person and estate is due to the court annually pursuant to NRS 159.176 to 159.184.
- 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 Egan Walker is responsible for conducting minor guardianship cases in the Second Judicial District Court. The current process of guardianships for minors is similar to that of adults but minors have different needs and different requirements. Judge Walker suggested a separate statute to address guardianships for minors.[45]

The Commission discussed data collection and case management systems (CMS). The Second Judicial District Court has spent the last two years creating a CMS to capture data in

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[44] The order is expected to come from the court within five days and should contain the name of the guardian, if guardianship is granted. The order is served to the person who is now under the guardianship and family within two degrees of consanguinity.

[45] A workgroup was appointed to address minor guardianships and recommendations are included as **Exhibit J**.

guardianship cases. Judge Porter has been working with her staff to put a system in place in the Fourth Judicial District Court, which includes court staff maintaining a calendar of the items that are due in each case. The Eighth Judicial District Court has an IT Department that has begun sending referrals to the compliance officer who sets up ticklers for all required statutory dates. The Courts are working on the development of systems to track minor guardianships.

2015 Legislation[46] presented by Senator Becky Harris and Assemblyman Michael Sprinkle

Senate Bill 262 creates preferences for appointing guardians for adults, allowing nonresidents to be appointed guardians. Previous language required the guardian to reside in the State of Nevada in order to be appointed as guardian. The bill considers whether the nominated person:

- Has engaged in habitual use of alcohol or any controlled substance during the previous six months;
- 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; and
- Is incompetent or has a disability that would prevent the nominee from serving as a guardian.

If two or more nominated persons are qualified, the Court may appoint a coguardian or appoint in order of preference, which is included in Senate Bill 262. 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.

The intent of Assembly Bill 325 was to require the licensure of private professional guardians, which would be overseen by the Department of Business and Industry, Division of Financial Institutions. The bill primarily addresses the fiduciary responsibilities of private professional guardians and provides an avenue where complaints may be registered and reviewed.

General Discussion – National Best Practices and Related Resources

The Commission was provided links to national best practices in the area of guardianships. Chief Justice Hardesty highlighted the *National Guardianship Association's (NGA) Standards of Practice Checklist* and the *National Probate Court Standards (section 3.3 to 3.5).* The *NGA Checklist* identifies 25 areas in which the guardianship is either in compliance or not with relationship to the court, the person, and the decision-making person. *The National Probate Court Standards (NPCS)* provide guidance to courts in how guardianship cases should be managed to ensure the assets and well-being of the Protected Person are safeguarded. A full list of national best practices the Commission reviewed and considered are included, with links, in the Reference and Resource page.

[46] Senate Bill 262 and Assembly Bill 325 were both passed during the 2015 Nevada Legislative Session. A link to the bills is included on the Reference and Resource page.

Chief Justice Hardesty stated the expectation going forward is for the Commission to draw on statutes and best practices from other jurisdictions that have addressed the guardianship subject.

B. SECOND MEETING

The Commission held its second meeting on August 17, 2015. The meeting began at 1:30 p.m. and was videoconferenced between Reno, Las Vegas, Carson City, and Elko. The public was invited to provide comment.[47]

Presentations[48]

Overview of the Fee Process in Guardianship Proceedings presented by Debra Bookout, Legal Aid Center of Southern Nevada

Ms. Bookout provided a memo[49] outlining states' fees, which are structured in three main ways:

1. The Court determines what is reasonable and just,
2. Caps are set on what can be charged, and
3. Rates are assessed.

Factors[50] courts analyze to determine reasonable fees:

1. The type and complexity of the services performed;
2. The usual and customary fees charged in the relevant community;
3. The locality of similar services; and
4. The actual time expended and work performed.

States that set rates range from $40 to $85 an hour. In comparison, rates charged by guardians in Clark County range from $120 to $180 per hour.

Nevada's current statutes call for reasonable compensation[51] for guardianship services. Chief Justice Hardesty noted rates differ throughout the State, and he would like the Commission to determine why rates differ and to discuss the possibility of standardized rates for guardians. The Commission would discuss reasonable fee compensation, fixed rate compensation, and the reconciling of the probate rates in future meetings. Chief Justice Hardesty expressed concern with NRS 159.183, which states a guardian must be allowed reasonable compensation; in most statutes, the fees awarded are discretionary not compulsory.

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[47] August 17, 2015, meeting total time of public comment was 1 hour and 44 minutes.

[48] The agenda included presentations on fees, an overview of public, private, and temporary guardianships, training and education, and perspective from care facilities. Due to the length of public comment, the Commission was only able to receive presentations on fees and temporary guardianships during the August 17, 2015, meeting. The remaining presentations were deferred to the September 16, 2015, meeting.

[49] The memo outlining guardianship fees in other states attached as **Appendix D.** This memo was also referenced during the discussion regarding attorney and guardian fees at the August 26, 2016, meeting.

[50] Factors used are similar to those are included in the *National Probate Court Standards.*

[51] Nevada Revised Statute 159.0455, 159.046, 159.0485, 159.0865, 159.183.

Chief Justice Hardesty questioned NRS 159.183 (1)(c), which provides that reasonable expenses incurred in retaining accountants, attorneys, appraisers or other professional services...are allowed but does not necessarily compel the Court to apply specific factors in establishing fees. The issue of fees could require statutory changes and a recommendation to the Supreme Court to enter a rule for district court judges to evaluate fee requests.

Chief Judge Gibbons explained that Douglas County had adopted the Special Advocates for the Elderly (SAFE) program, where volunteer advocates were asked to take on the role of examining fee requests. The SAFE program has two paid personnel, a coordinator and an auditor, who review the fee requests to corroborate whether there is anything unusual about the fee requests.

The Commission deliberated on the differences in procedures for probate and guardianship cases.

Chief Justice Hardesty stated a court should expect a guardian to be able to explain why a certain professional was hired and what services those professionals provided in order to be able to assess the reasonableness of the fee charged for services. Judge Doherty suggested the Commission think about including the percentage aspect as an option. Ms. Elyse Tyrell, private attorney, asked the Commission to be considerate of the fact that each case is different.

Chief Justice Hardesty stated finding answers as to why there are differences between the guardianship and probate approach would be a priority for the Commission. Judge Egan Walker asked the Commission to review the guardianship process and consider an improved alignment of the interest of parties to better serve the Protected Person. Chief Justice Hardesty agreed and stated courts could be more proactive if the information regarding fees for hired professionals was disclosed in advance through enforcement of prior approvals. Periods for the submission of fee requests would be another subject to consider. Ms. Kim Spoon, Guardianship Services of Nevada, Inc., suggested defining the different fees that are addressed in a fee request so information was clear for guardians regarding the award of fees and the expectations of the courts regarding certain fees. The Commission should discuss the timing that would be expected for fee request. This item was deferred for further discussion at a future meeting.

Temporary Guardianships presented by Sally Ramm,[52] Elder Rights Attorney, State of Nevada, Aging and Disability Services Division

Ms. Sally Ramm reviewed other states statutes on temporary guardianships and stated almost every area of Nevada's current statute on temporary guardianships is in-line with other states. One exception was the duration of the temporary guardianships. In Nevada, the duration is 120 days pursuant to NRS 159.052 to 159.0525. Most states require a report from a physician and are required to make a determination of incapacity before the temporary guardianship is issued. California's Probate Court does not permit the temporary conservatorship to sell or relinquish any lease/estate or real or personal property during the temporary guardianship, unless it is necessary. California utilizes court investigators in both the temporary and permanent guardianships. The investigators interview multiple people and collect information that is then

[52] Sally Ramm's memo on temporary guardianship statutes attached as **Appendix E.**

provided to the court. Ms. Ramm stated that if the Commission considers the use of investigators in its recommendations, the Commission would need to consider the perceived or actual conflict of interest of having investigators who work for the court.

The Commission discussed the standard of proof for temporary guardainships. Current Nevada statute requires reasonable cause for a temporary guardian appointed to serve for ten days and clear and convincing evidence if there is a request to extend a temporary guardianship. Chief Justice Hardesty said the Commission should evaluate and consider elevating the standard of proof. The areas of concern regarding temporary guardianships include notice and the method by which the process begins and should only commence with the most notice conceivable for the judicial process. Counsel should be provided to each Protected Person. Washington provides counsel to all Proposed Protected Person at the public's expense. Chief Justice Hardesty suggested the Commission review Washington's statute RCW 11.88.045.

California and Arizona put a semi-freeze on the use of assets during temporary guardianships. Commissioners were asked if there was a reason why assets would need to be sold/liquidated during a temporary guardianship. The Supplemental Security Income (SSI) Spousal Impoverishment Provision[53] is often a motivator for the filing of a temporary guradianship and the need to segregate income and assets so the person for whom guardianship is sought would qualify for Medicaid sooner. The assets are not liquidated. The Court segregates the assets and income to the community spouse, if seeking Medicaid coverage. If there is no court order recognizing the division of the assets and the segregation of those assets the person seeking Medicaid coverage may not be approved. Additionally, there is a "spend down"[54] to qualify for Medicaid, where the Protected Person has to "spend down" to under $2,000 threshold to qualify for Medicaid. The specifics of the "spend down" would be included in the court order. Nevada's temporary guardianship statutes are specifically limited to a very specific purpose often dealing with placement.

Emergency Recommendations

Commissioners were asked if they had any emergency recommendations for the Nevada Supreme Court. There were no emergency recommendations offered during this meeting.

C. THIRD MEETING

The Commission held its third meeting on September 16, 2015. The meeting began at 10:00 a.m. and was an in-person meeting held in the River Room at the Reno/Tahoe International Airport. The public was invited to provide comment.[55]

Chief Justice Hardesty had appointed a workgroup[56] to review data and information technology systems in relation to guardianship proceedings. The Administrative Office of the Courts' Lead

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[53] Federal law allows a spouse to protect up to $125,000 in assets, and a stay-at-home spouse may keep a monthly income of $2,300.

[54] Making funeral arrangements could be used as a way to "spend down" to qualify a person for Medicaid.

[55] September 16, 2015, meeting total time of public comment was 27 minutes.

Research Analyst, Hans Jessup, was appointed chair. Members include Craig Franden, Alan Bates, and Mike Doan. The workgroup would provide the Commission a report and recommendations on areas where data collection could be improved on.

Presentations

Overview of Public Guardian's Office pursuant to NRS Chapter 253 and the Clark County Public Guardian's Office[57] presented by Kathleen Buchanan, Clark County Public Guardian

The Public Guardian's Office (Office) provides a valuable public service and it is unique in its ability to care and provide for individuals who could potentially be left without assistance. The Office has the ability to provide continuity of services and is not dependent on one individual or partnership. The Office has an established system to transfer duties from one public guardian to another with minimal or no impact to the continuity of care for individuals under guardianship. As a governmental agency, the Office has strict accountability to county management, county leaders, and the community.

The Office provides guardianship services for individuals who are legally determined to be incapable of managing their own affairs. This population typically has unique needs, requiring extensive coordination of services due to cognitive impairments. A voluntary 60+ Representative Payeeship Program is offered through the Clark County Public Guardians Office (CCPGO). The Program offers money management assistance for those over the age of 60 and is a free public service to assist individuals in maintaining their lives in a least restrictive setting.

A public guardian is court-appointed when there are no family members or friends who are able, willing, or appropriate to serve as a guardian for individuals who have been legally determined to be incapable of caring for themselves. This is an important public service and allows the Office to advocate in the best interest of the Protected Person for healthcare and financial needs, which are critical for restoring the Protected Person's quality of life.

Ms. Buchanan explained the fee schedule for the CCPGO is approved annually by the Board of County Commissioners. The billable rate for the CCPGO is calculated annually based upon the annual operating budget, without consideration of a profit. The rate is solely based on covering the Department's annual budgeted cost of the operation. Professional staff is given an hourly rate while support staff performs the work at no charge. The CCPGO charges by the actual work performed, so if it takes one minute to work on a case, or seven minutes that is what is logged in. The hourly rate would be prorated.

Not all Public Guardian Offices in Nevada have a county budget – some counties have to support the Offices through fees. The Commission discussed how counties determined their fee schedules.

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[56] The Guardianship Data and Technology Workgroup's recommendations are included as **Exhibits B and C.** The Workgroups reports are included as **Appendix F.**

[57] Public Guardian PowerPoint presentation is included as **Appendix G.**

- Washoe County has an approved-fee schedule.[58]
- Elko County[59] approves the fees, but there is no fee schedule.
- Douglas County[60] charges $85 an hour; that amount was determined by the judges after researching what other guardians were charging.
- Nye County[61] has an informal-fee schedule, as most of the clients are not able to pay the fees. In the rare case a person does have assets available, Health and Human Services has requested a rate of $47 per hour.

Chief Justice Hardesty would like the Commission to vet the issue of fees.

At the time of the presentation, the CCPGO had about 400 Protected Persons under its supervision and the Washoe County Public Guardian's Office (WCPGO) had about 190 Protected Person.[62] There was a discussion about the number of Protected Persons supervised by the CCPGO versus the WCPGO and the population difference. It was noted the CCPGO addresses all referrals but does not have the resources to accommodate all the Protected Persons; there are not enough case managers to address all the referrals. The Commission discussed caseloads. The CCPGO's caseload is 52 – 55. Public Guardian's Offices do not handle minor guardianships but Judge Walker suggested the Commission review this area. There is supervision under NRS Chapter 432B for guardianship as a permanency plan for children.

Nevada Revised Statute 253.215 states, "when necessary for the proper administration of the guardianship, a public guardian might retain qualified, experienced attorneys and rotate their employment." The CCPGO utilizes the services of 14 private practicing attorneys. Attorney fees must be paid from the assets of the individual being served. In many of the cases, funds are limited and much of the work completed by private attorneys is pro bono. Upon approval of the Board of County Commissioners, the CCPGO might obtain assistance from the office of the district attorney of the county. The Washoe County District Attorney's Office has 1.5 district attorneys assigned to guardianship cases. The Attorney General's Office might also represent the CCPGO when they have a case within Desert Regional, which is a state agency.

The public guardian is appointed pursuant to NRS 253.230. Costs incurred in the appointment proceedings and the administrative costs of guardian services are not chargeable against the income of the estate of the individual under guardianship, unless the court determines at any time the individual under guardianship is financially able to pay all or part of the costs. Money received in payment of a claim against the estate of an individual shall be deposited by the public guardian, to the credit of the County General Fund or any other County Fund, as determined by the Board of County Commissioners. A public guardian may file with the Board of County Commissioners a request for an advance of money to pay necessary expenses incurred or to be incurred by the public guardian during a guardianship. The Board may approve or deny the request. If the Board approves the request, the Board shall determine the amount to be advanced

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[58] The public guardian fees are set by the county commissioners pursuant to NRS 253.150.

[59] Judge Porter stated most Protected Persons in Elko County are considered indigent.

[60] Very few of the Protected Persons can afford to pay the fees so the fees are subsidized by the County.

[61] Pamela Webster is the Nye County Manager and has been appointed the Public Guardian for the County. Most of the work is handled through the Director of Health and Human Services.

[62] These figures include the Medicaid population.

and the amount advanced to the public guardian. For example, Clark County has an imprest account, which the Board of County Commissioners has approved. The Board of County Commissioners of any county may establish a revolving fund to be used to provide advances to public guardians. A public guardian must reimburse the County for any advance provided from the assets of the estate of the individual as soon as and to the extent that the assets become available.

The Board of County Commissioners may establish regulations for the form of any reports of budgets made by a public guardian, review reports of budgets submitted to the Board by the public guardian, and at any time investigate any guardianship for which the public guardian has been appointed. At any time, the Court may terminate the appointment of a public guardian as an individual guardian of a person or of an estate upon petition by the individual, the public guardian, or any interested person or upon the Court's own motion. Pursuant to statute, if after exercising due diligence the public guardian is unable to identify a paying source for the care of the individual and as a consequence, continuation of the guardianship would offer no benefit upon the individual, the guardianship may be terminated.

Appointment of Counsel

The Commission discussed the availability of legal representation for Protected Persons. Washoe County has a program through Washoe Legal Services (WLS) where attorneys are available for all Proposed Protected Persons 60 years of age or older. A minor is typically represented by an attorney or Court Appointed Special Advocate (CASA) in NRS Chapter 432B cases. In Clark County, the appointment of counsel for a Protected Person is primarily a pro bono appointment or a volunteer. In Douglas County, every Protected Minor has a CASA and the Protected Persons are provided advocates from the SAFE program, if the Protected Person chooses. Nevada Revised Statute Chapter 159 allows the court to appoint an attorney but does not provide a payment mechanism for the attorney, therefore some attorneys may be pro bono or the court might order the county to pay for counsel.

Assemblyman Michael Sprinkle suggested the Commission have an in-depth discussion regarding the appointment of counsel for all Protected Persons. This should be a mandate and is a serious issue that should be reviewed for possible legislation during the next legislative session in 2017. Chief Justice Hardesty added this is a critical point that needs to be addressed by the Commission and the Nevada Legislature. Ms. Spoon added the Commission should consider having the Protected Person represented by a Guardian ad Litem (GAL).

Elko Public Guardian's Office presented by Judge Nancy Porter, District Judge, Fourth Judicial District Court

Judge Porter provided an overview of the Elko County Public Guardian Office (ECPGO). The public guardian must have a background check every four years and is required to take continuing education classes to maintain certification. The public guardian in Elko County suggested creating a statewide repository where all public guardians could report their certification. Many attorneys in Elko County are not familiar with the process of guardianship cases. Attorneys who are familiar with the guardianship process work pro bono because there are

not enough funds to pay for the service. The public guardian has had difficulty getting the client to a doctor for the medical certification because there are currently no doctors in Elko accepting Medicare. The public guardian handles all documentation including the petition, the citation, the order-appointing guardian, the accountings, contacting family, etc. The public guardian has made burial arrangements for some clients in order to have them qualify for Medicare. The public guardian makes sure the client is safe and if they are not, arranges to have them situated in an assisted living facility or nursing home. The public guardian's goal is to place a client in the least restrictive place appropriate to the client's needs. The public guardian acquires information from bank statements to locate the client's assets so that they can protect and allocate those assets appropriately. The public guardian sets quarterly care plans, which include meeting with the client's nurse, certified nurse assistant, social worker, dietician, and activities person to review a client's condition, medications, hospital visits, etc. The public guardian is limited by the county to 25 Protected Persons, and has one half-time staff person for assistance.

Overview of Private Professional Guardians[63] presented by Kim Spoon and Susan Hoy

Private professional guardians (PPG) are included under NRS Chapter 159 and often receive a referral for guardianship from attorneys, families, friends, hospitals, banks, service agencies, social workers, etc. The majority of guardianships are for the aging or those suffering from dementia, mental illness, individuals with traumatic brain injuries, intellectually or physically disabled individuals, or minors with financial circumstances. Once a referral is received, the investigation[64] process begins. Investigations include interviews, which are conducted to acquire as much information as possible about the Protected Person, their family, friends, neighbors, medical personnel, and any other information that could be helpful in understanding why the guardianship would be needed. Guardianships should always be a last resort in dealing with a person's crisis. Investigations can help identify other alternatives to guardianships including the creation of estate plans. Referrals may not go forward in some cases because the investigation conducted by the PPG found other interventions would be more appropriate for the person. The investigation might identify other persons who might be an appropriate guardian for the person, might find that family members are not able or willing to serve as guardian, or they are not the appropriate person to serve as the guardian.

A PPG does not make the decision as to whether a Proposed Protected Person needs to be under a guardianship. The PPG gathers and presents documentation to the Court and the judge makes an informed decision based on the facts presented. If the judge decides the Proposed Protected Person should be under a guardianship, an attorney is contacted to assist with documentation, and the guardianship is appointed. The PPG continues to search for a Protected Person's family and seek documentation even after a guardianship has been formally established.

The PPG's duties pursuant to NRS Chapter 159 may seem intrusive at times. The PPG consistently visit the Protected Person to access their living situation and overall health to determine if the guardianship remains an appropriate setting. The guardian coordinates and attends all physician appointment and follow-up care. The PPG is tasked with making decisions for someone whom they might not have known for very long and must ask very personal

[63] Private Professional Guardian PowerPoint presentation included as **Appendix H.**

[64] Each PPG company conducts their own investigations; there are not court investigations.

questions in order to gain insight into whom a person was or is, which may seem intrusive, but it is important for the client, the Court, the family, and the guardian. The guardian must document every task and duty for accountability to the Protected Person, the Court, and the family.

Nevada Revised Statute 159.109 states that "the guardian of the estate shall examine each claim presented to the guardian for payment; the claim is either examined and allowed or rejected." The PPG has a duty to examine all bills to protect the Protected Person's funds and must ensure the Protected Person receives personal mail. The PPG arranges to deliver unopened personal mail to the Protected Person, and notifies friends and family of any change in address for the Protected Person. The PPG also provides clear direction to the facility to provide the Protected Person with personal mail.

The PPG must follow the statutes relating to guardianships and must adhere to the standards of ethics for professional guardianship work. The PPG has the responsibility and liability of making decisions for others, and the PPG is held to a higher standard than non-professional guardians. The PPG ultimately answers to the Courts and the communities that they serve. The three principles of decision making for guardians are informed consent, substitute judgment, and best interest.

The Commission discussed whether there were any standards in place regulating the caseloads for the PPG. Ms. Spoon said although there is not an exact reason for the number of cases assigned, the recommended caseload for a PPG is usually no more than 25 cases per guardian. The caseload is determined by the type of case; some cases are more complex than others. Ms. Spoon's office has about 15-25 cases per guardian and Ms. Hoy's office handles about 30-35 cases per guardian.

The Commission discussed the investigation process. It can be challenging to justify to an individual that an unknown person is coming into the individual's life to engage in an investigation. The guardianship investigation occurs without being under the code of law of search and seizure or warrants. A potential PPG is put in the position of going through a person's residence, purse, securing a person's money, medical information, gaining information from a person's family and friends, all without the constitutional contemplation of protection and is inconsistent of statute protocol. Once the investigation occurs, a judicial officer is asked to pay for the services even though the work was done prior to the person becoming the subject of the guardianship, if awarded. The current investigation process does not have any official oversight, and there is no system in place for this oversight. Judge Frances Doherty suggested the Commission focus significant attention to these protocols. Attention would also have to be focused on instances in which a family member might not provide assistance or accurate information because the family member would benefit from the Proposed Protected Person not being placed under a guardianship. Chief Judge Gibbons suggested the Commission review each process for guardianship in order to find effective remedies to eliminate insufficient oversight.

Commissioners were asked to review NRS 159.052 and NRS 159.053, which outline requirements for temporary guardianships. The statutes impose a duty to support the petition with documentation that must consist of (1) a copy of the birth certificate of the Proposed Protected Person or documentation verifying their age, and (2) a certificate signed by a physician. Chief Justice Hardesty asked how a guardian secures a certificate from a non-primary

physician over a Proposed Protected Person. Mr. Kim Rowe, Maupin, Cox & LeGoy, noted the guardian does not often gain access to that documentation but there are times when the documents are provided by a Proposed Protected Person's family member who might have a health care power of attorney. Concern was expressed regarding language in NRS 159.052 (1) (a) (2) that allows a letter signed by "any governmental agency" in this State that conducts investigations. Chief Justice Hardesty also asked what the probable cause is for allowing guardians to search a Proposed Protected Person's home and should that be a standard the Commission examines? Chief Justice Hardesty expressed concern about how the guardianship process begins statutorily. Judge Egan Walker suggested the Commission consider reaching out to the Legislature for assistance in balancing inherent conflicts of interests.

Education and Training[65] in Area of Guardianship presented by Christine Smith, Associate Dean for Public Service Compliance and the Administration, William S. Boyd School of Law (Law School)

Much of the education and training available for guardianships are web resources and links to other web resources, pamphlets, brochures, manuals, and videos. Some states offer continuing legal education credits and a number of law schools have clinical programs and/or specialty clinics that are helping with guardianship issues. In addition, some distance learning courses are being offered and conferences are being held across the country.

The Boyd Law School's Thomas and Mack Family Justice Clinic receives referrals from the Eighth Judicial District Juvenile Court and handles guardianship abuse and neglect cases. The Clinic also represents clients in special immigration juvenile status cases that involve petitions for guardianship. The Law School also has a Community Service Program where students are required to teach free legal education classes under the supervision of an attorney. A guardianship class has been offered for a number of years under this Program with over 4,000 people attending the class since its inception. In 2014, 292 people attended the class, and 194 have attended the class in the current calendar year. The guardianship class provides information on the guardianship process and forms for people who may be interested in becoming a guardian. Additionally, the CCPGO offers classes on guardianships that are centered on the practical approach. Potential guardians should participate in the classes offered by the Law School and the CCPGO. The WCPGO has worked with Judge Doherty to present a class on guardians as well. The Second Judicial District Court requires all pro se guardians, whether represented by counsel or not, to attend the guardianship class offered by the WCPGO. Judge Porter also requires appointed guardians to attend a class provided by the ECPGO.

The Legal Aid Center of Southern Nevada (LACSN) is one of the Law School's primary partners. Individuals can become eligible for a pro bono attorney if the person attends the class and fills out an intake form. The Second and Eighth Judicial District Courts also have pro per packets available to those who cannot afford an attorney. Judge Porter is working on a pro se packet for the Fourth Judicial District Court.

Current statutes allow third year law students to appear in court when supervised. The Commission discussed that this could be a possible solution to provide legal representation for

[65] Links to education and training resources provided by Dean Smith included as **Appendix I.**

the Protected Persons. Once a law school student completes his or her first program of teaching free legal education cases, interested students are paired with attorneys on the Pro Bono Project. The Project has had some guardianship cases and it is possible a law student could be certified under the student practice rule to attend court with the attorney mentor.

Care Facilities Perspective[66] presented by Kim Rowe, Esq.

Mr. Kim Rowe represents hospitals, long-term acute care hospitals, skilled nursing facilities, and assisted living facilities (facilities). Mr. Rowe provided an overview of the care facilities perspective on guardianships. The facilities pay Mr. Rowe's fees; they do not come from a Protected Person's estate. The same is true of a private guardian. The facilities interact with court appointed guardians in a variety of ways, and it is helpful for the facilities to have a copy of the guardianship order so they are aware of the scope of the guardian's authority. There have been occasions when the healthcare providers or facilities had to question whether a court appointed guardian was acting in the best interest of a Protected Person, typically in regards to a placement decision. The facilities do everything they can to work through any problems. Facilities are mandatory reporters,[67] so if a facility suspects a situation could be neglectful or is potentially abusive they are required, by statute, to report to Child Protective Services (CPS) or Elder Protective Services (EPS). The agencies conduct their own investigation and issue a report of their findings to the appropriate agencies. There are times when the facility might come to an impass with respect to a court-appointed guardian and a petition for removal is filed. If this occurs, Mr. Rowe would request a Guardian ad Litem, to ensure that someone is there to advocate for the Protected Person. Overall, the interactions with the court-appointed guardians, from a facilities standpoint, have been very productive and work well.

Facilities have found there are fewer families and friends willing to be involved, so their might not be anyone to advocate for the patient. The facilities work with the patients to get a safe discharge but sometimes they are not able to because it is no longer safe for the patient to be on their own. In these cases, Mr. Rowe would petition for the appointment for a public guardian because there is no one else to serve as guardian. After completing the investigative report the facility provides Mr. Rowe with the referral application. The referral application includes a physcian's certificate as well as backup information to provide detailed information about what has been going on. Mr. Rowe tries to locate and notify family, if family cannot be located, the petition is filed requesting appointment of a guardian. Mr. Rowe's office has been able to move more quickly and is often able to get a guardian appointed and place the Protected Person in the least restrictive environment to provide the services the Protected Person needs. Mr. Rowe's office is able to do this in 45–60 days or less depending on the information they have; the process in the Public Guardian's Office could take 4 – 8 months.

Once Mr. Rowe files the petition the WCPGO is notified. The Washoe County District Attorney's Office represents the WCPGO and an attorney from Washoe Legal Services (WLS) is appointed to represent the Protected Person. The public guardian, Protected Person, and the

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[66] Memo Representatives of Facilities that Regularly Provide Care to Persons Under the Supervision of a Court Appointed Guardian included as **Appendix J.**

[67] Nevada Revised Statute 200.5093 Mandatory reporters.

facility all have representation during the first hearing before the Court. All parties involved want was is best for the Protected Person.

Mr. Rowe has, on occasion, petitioned for a private guardian. It is an unusual circumstance but there are occasions when the person in the facility is not a resident of Washoe County or there might be potential end-of-life decisions that would be presented before the Court. Mr. Rowe stated from the perspective of the facilities temporary guardianships are a very extraordinary remedy and are not something that is considered lightly. Temporary guardianships have evolved over the last 20 years, and used to be a fairly routine practice for facilities in order to try and facilitate rapid placements or do other things. Over time, the Courts have raised the standards. Temporary guardianships need to be an emergency situtation that requires very immediate attention. In addition to the requirement of extraordinary circumstances, statutes should be narrowly drafted to give authority regarding consent issues. The facilities rarely ask for control over the estate. The facilities do run into end-of-life decisions in which the guardian might not be acting consistently with the patients wishes (e.g., power of attorney).

Process in which the WLS is notified of their client:

- If the Protected Person is over the age of 60, the Second Judicial District Court enters an order upon receiving the petition and Mr. Rowe receives notice that the WLS has been appointed to represent the Proposed Protected Person. Once appointed, the WLS retrieves documents from the E-Flex Filing System. If there is information the WLS does not have, Mr. Rowe would be contacted so they could exchange information and begin working towards what the hearing[68] would look like.
- Appointing the WLS gives them the ability to access otherwise protected, confidential information.
- It is routine to have counsel appointed for Protected Persons in Washoe County as soon as a petition is filed.
- Washoe Legal Services is providing legal assistance to Judge Porter in the Fourth Judicial District as well.

Chief Justice Hardesty would like to develop a similar program in Southern Nevada in partnership with the Legal Aid Center of Southern Nevada, to provide Protected Persons counsel at the outset of the guardianship proceeding. In a system that is so dependent on pro bono legal services, the better alternative would be to get the legal aid organizations involved as the mainstay for a good part of this work, which would require some changes. The Commission has previously discussed providing counsel to the Proposed Protected Person at the outset of the guardianship proceeding and would research alternatives to legal aid organizations for representation.

[68] This communication allows them to know what the case will look like and what the patient wants prior to the hearing.

Scope of Commission - Goals/Objectives

A mission statement, largely taken from the Supreme Court Order Administrative Docket 507, was included in the meeting materials. The statement reads:

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

During the first Commission meeting, Commissioners were asked to provide their thoughts on what they would like the Commission to accomplish. Judge Steel and Judge Doherty provided detailed outlines of the objectives. The information was combined into a working document to provide the Commission some direction as to how the Commission might approach each identified issue. The working document is included as **Appendix K.** The Commission discussed the goals/objectives of the Commission.

- Nevada Revised Statute 159.052 (1) (a) requires documentation to show that the Proposed Protected Person faces a substantial and immediate risk of physical harm or needs immediate medical attention and lacks capacity to respond to the risk of harm or obtain the necessary medical attention. Judge Egan Walker stated children are legally incompetent and this statute is an adult statute that has been gerrymandered to fit minors. Judge Walker suggested developing a separate guardianship statute to address the unique needs of minors, separate from the adult guardianship statute i.e., NRS Chapter 159A for minors[69] and NRS Chapter 159B for adults. Chief Justice Hardesty asked Judge Walker, Judge William Voy, Eighth Judicial District Court, and Judge Nancy Porter to review NRS Chapter 159 as it applies to minors and provide a proposal on a separate guardianship section for minors and how the temporary guardian statute dealing with minors might be approached differently.
- Ms. Rana Goodman, The Vegas Voice, said persons who come out of guardianships often do not have any money; their estate has been depleted. Ms. Goodman suggested adding language to the outline in section II (C)(vi) to develop a fund for the Protected Person until social security or other benefits begin again. Chief Justice Hardesty suggested adding a bullet point under the subsection that discusses winding up affairs to include a place for post-termination aftercare. Ms. Goodman agreed.

[69]The recommended language for a new Chapter NRS 159A for protected minors is included as **Exhibit J.**

Judge Egan Walker moved to approve the outline.[70] Dean Christine Smith seconded the motion. Motion passed.

- **Temporary Guardian for Adult Ward[71] - NRS 159.0523** Commissioners were asked to provide conceptual changes that could be recommended to the statute and possible Supreme Court Rules. The National Standards state, a temporary guardianship is intended for an emergency process and is not intended as an additional investigative tool. The Nevada statute appears to be much broader than the emergency process. The Commission might want to consider recommendations to narrow the purpose of the statute. Additional items that stood out were the absence of any representation for the Protected Person in this process and ex parte relief. The statute does not specify whether hearings should be on the record, if there should be a record, if the record should be reviewable, and if the Protected Person should be present. These issues should be included as a requirement in the statute, if medically possible. The notice provisions are a concern including subsection 2(b), which allows the Court to say that notice is not necessary if the Court is satisfied that the person has tried in good faith to notify the person...or giving notice to those persons is not feasible. The Commission should review the statute and make recommendations to modify the notice provisions. Mr. Rowe cautioned making the temporary guardianship statute too restrictive.
    - Ms. Terri Russell, KOLO Channel 8 News, suggested labeling temporary guardianships, as emergency guardianships. Ms. Russell would also like the hearing to be on record and be reviewable as part of the public record, noting the Commission had discussed sealing of records. Judge Steel has appointed a committee to review confidentiality and the media; what records should be accessible and what records should be restricted or sealed pursuant to statute or court rule.
    - Ms. Sally Ramm suggested the Commission review the timing of temporary guardianships. Is ten days long enough for a temporary guardianship and is a five-month duration too long?
    - Ms. Susan Sweikert, Victim's Advocate, suggested the Commission include the specificity of what needs to be done for the emergency temporary guardianship. Chief Justice Hardesty said that is the scope of the order. The order should be narrowly tailored for the emergency that is being presented.
- **Investigations**[72] – How should investigations take place? If there is reasonable cause to believe someone should be subject to a guardianship the investigation could begin upon an appropriate showing. The investigation could take place through court-appointed investigators who are hired by the Court or State to conduct these investigations. This would remove the guardian from the investigation process. The Protected Person could

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[70] Items I and II – Development of Definitions for Data Collection would be under the purview of the Guardianship Data and Technology Workgroup.

[71] The Commissioners determined the current temporary statutes for adult Protected Persons were sufficient. The Minor Guardianship Workgroup is addressing temporary guardianships for Protected Minors as a part of its recommendations. The recommended language for a new NRS Chapter 159A for protected minors is included as **Exhibit J.**

[72] Investigations were discussed as a part of the General Policy Questions and are included as a legislative recommendation.

be assured representation under this plan. Commissioners were asked to vet the ideas presented.

- The medical field is often equally troubled with what they have to do and how they are required to provide information during this process. The medical field would be open to having some type of authority as to who they provide this information to, outside of the proposed guardian.
- Assemblyman Michael C. Sprinkle, Nevada Legislature, said based on the discussions, the most consternation is over the investigation and the lack of oversight. Assemblyman Sprinkle agreed with the recommendations Chief Justice Hardesty proposed; taking the investigative phase away from the proposed guardian would provide additional oversight. Assemblyman Sprinkle also agreed the Protected Person should have some type of representation from the outset.

- **Terms**[73] – Ms. Julie Arnold, Southern Nevada Senior Law Program, suggested the Commission provide recommendations to give the physicians guidelines as to what the terms "competent" and "incompetent" mean. The Commission should define "capacity" for the purposes of whether a person is in need of a guardian or not.
  - Chief Justice Hardesty suggested conducting additional research on this topic. Mr. Rowe added, Nevada statutes use the term incompetent. Physicians are trained to deal with the terms capacity/incapacity and competent/incompetent differently than attorneys.
    - Chief Justice Hardesty asked Mr. Kim Rowe and Ms. Elyse Tyrell to research how other states are addressing this issue, and how this could be reconciled.
- **Fiscal Impacts**[74] – Funding for legal representation for each Proposed Protected Person at the outset. Funding for investigator for the courts, this would require additional judicial resources. Funding for Guardians ad Litem.
  - Chief Justice Hardesty stated, if the State is going to enact statutes that empower the judiciary to take away a person's freedom and property then it would seem the State has to confront the question of how to provide legal services and conduct proper investigations prior to this happening.
- **Guardian ad Litem (GAL) Qualifications**[75] – Nevada Revised Statute Chapter 432B outlines the requirements for a GAL in dependency cases. Judge Walker suggested the Commission could develop a mechanism and an exception that there would be representation and the Commission could fine-tune those cases where both an attorney and a GAL might be appropriate for the Protected Person.
  - **Serving as both the attorney and the GAL**[76] – The Commission discussed concerns if a person is serving as both the attorney and the GAL for the Protected Person. Washoe County draws a bright line in that regard and part of that is due to funding. The Office of Aging and Disability Services funds attorneys for the Protected Person but does not fund GALs.

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[73] Terms were discussed and voted on as part of the General Policy Questions.

[74] Legal representation was discussed and voted on as part of the General Policy Questions.

[75] The concept of GAL Qualifications was discussed and voted on as a part of the General Policy Questions.

[76] Washington's statute RCW 11.88.045 (c) raised the issue of what do you do when the condition of the Protected Person affects the ability of the attorney to form an attorney/client relationship. The American Bar Association has material that discusses this issue.

- Distinction between attorney for the Protected Person and a GAL
  - An attorney for the Protected Person is required to develop an attorney/client relationship, which is not always possible depending on the person's degree of capacity.
  - The GAL is mandated by the Court to investigate and express the best interest of the client.

- An attorney reports what the client's wishes are to the court and a GAL reports what is in the best interest for the Protected Person to the Court.
- **Special Advocates for the Elderly (SAFE) Programs**[77]
  - Washoe County started a SAFE program many years ago. The program was the model for the SAFE program that was developed in Douglas County. Washoe County's SAFE program lost its funding and is no longer operating. During its operation, the program had two full-time staff members and an annual budget of $100,000. The program had 50 volunteer advocates, serving 150 Protected Persons. The volunteers were required to attend a 40-hour training program. Judges appreciated having this resource when the program was in operation.
  - Douglas County SAFE program and training is a similar model to the Court Appointed Special Advocates (CASA) for children. Both programs are volunteer dependent.
  - The Commission would review the SAFE program and reach out to those who have knowledge of the program to provide a presentation to the Commission.
- **Complaint Process**[78]
  - Ms. Susan Sweikert stated a complaint process should be part of the administration of the guardianship and could occur at any time while the Protected Person is under a guardianship.
- **Notice**[79]
  - Chief Justice Hardesty is not satisfied with the notice process and is concerned with its enforcement. The Commission agreed notice should always be provided and there are only exceptional circumstances where notice to a particular person would not be given upon an appropriate showing.

Assemblyman Glenn E. Trowbridge, Nevada Legislature, suggested that a comprehensive list of goals would make it easier to identify the most appropriate areas where things need to be addressed by court order, court rule, or statute. Chief Justice Hardesty responded that that is a part of the process, e.g., the manner in which hearings are conducted could be the subject of interim rules adopted by the Supreme Court. The Commission would pull items together for further discussion at its next meeting on October 19, 2015, and begin to outline its recommendations.

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[77] Special Advocates for Elders and alternative programs were discussed and voted on as part of the General Policy Questions.

[78] The complaint process has been discussed in various areas including presentations on law enforcements approach to complaints filed, and complaints as a part of the investigative process.

[79] Notice was discussed as a part of the General Policy Questions.

D. FOURTH MEETING

The Commission held its fourth meeting on October 19, 2015. The meeting began at 1:30 p.m. and was videoconferenced between Las Vegas, Carson City, and Elko. The public was invited to provide comment[80] at the beginning of the meeting.

Presentations

Texas Guardianship Laws 2015 – Presented by David Slayton, Administrative Director, Texas Office of Court Administration (OCA)[81]

The Texas Judicial Council is the policy-making body for the Judicial Branch in Texas. An Elders Committee was formed under the leadership of previous Chief Justice Wallace Jefferson. In addition to the Elders Committee, the Texas Supreme Court and the OCA formed a Working Interdisciplinary Network of Guardianship Stakeholders (WINGS) group. The WINGS group is a collaborative effort pulling together stakeholders to review guardianships from different perspectives. The WINGS group works collaboratively with the Judicial Council's Elder Committee.

Texas state law requires private professional guardians and state provided guardians to be certified and licensed by the state. The OCA handles the licensing and certification process as well as complaints. Texas currently has just over 400 state-certified guardians that handled 5,000 of the more than 50,000 active guardianships cases. There are 254 counties in Texas and only 10 of those counties have statutory probate courts so it is important to have a system that is clear and easy to use.

WINGS Goals:

- Review the state's strengths and weaknesses related to the guardianship system;
- Make sure the state is encouraging the least restrictive alternative, which was already included in Texas statutes;
- Address key policy and practice issues;
- Engage in outreach, education and training; and
- Serve as an ongoing problem-solving mechanism to enhance the quality of care and life of adults in, or potentially in, guardianships by providing alternative systems and ongoing collaboration amongst all the different stakeholders.

In September 2013, a Texas Guardianship Assessment Survey was sent to judges, medical professional, mental-health professionals, self-advocates, advocacy groups, attorneys, certified guardians, court visitors, state legislators, and other interested stakeholders. The results of the survey were gathered and a list of 26 issues was narrowed to 8, and the WINGS group narrowed the list further to 3 areas of focus: (1) Alternatives to Guardianships, (2) Support Services, and

[80]October 19, 2015, meeting total time of public comment was 10 minutes.

[81] Link to *Texas Guardianship Cases: Improving Court Processes and Monitoring Practices in Texas Courts* Additional presentation materials are included as **Appendix L.**

(3) Person-Centered Assessments.

Priorities discussed with the WINGS and Elders Committee:

1. Services to coordinate alternatives to guardianship. This was a huge issue and the group found that many times people did not feel like the alternatives were being explored first. This was the key part that was ultimately recommended.
2. Support services to assist family/friends who want to become guardians.
3. Support services to assist family/friend (non-professional) guardians to complete their legally mandated duties. This provides support and services to families and friends on how to become a guardian and how to assist family and friends in complying with their duties.
4. Provide requirements for a court visitor and the standards and procedures once becoming a court visitor.
5. Standardized forms for courts to obtain accurate and detailed assessment of a Proposed Protected Person's functional limitations. Texas does not have standardized forms for the assessment of the functional limitations so the WINGS group did some work on this.
6. Create a template to assist guardians in developing person-centered plans.

The recommendations became a part of Texas House Bill 39 (HB 39),[82] which was unanimously passed by the House and the Senate. The bill was signed into law becoming effective September 1, 2015. The House Speaker designated HB 39 as one of his priority bills, which helped the bill pass.

Recommendation 1: Strengthen Guardianship Alternatives and Improve Guardianships

The first issue identified was the location of alternatives to guardianships. Alternatives to guardianships were spread throughout the Estate Codes, Health and Safety Codes, and Civil Practices and Remedies making it difficult for anyone to figure out what the alternatives to guardianships were. HB 39 simplified the process by providing a condensed list of alternatives to guardianships at the beginning of the Estate Codes and provided cross-references to the codes. The bill required judges, attorneys, and applicants to explore alternatives to guardianships prior to the filing and granting of a guardianship and to consider whether supports and services could be put into place that would prevent the need for a guardianship. The applicant filing the Application for Guardianship has to state that the applicant has explored all alternatives and there is none. Once an Attorney ad Litem becomes involved in the case, the attorney is required to do his or her due diligence to see if there is a more appropriate alternative. A judge, at the point of the hearing, has to make a similar finding. Multiple reviews of alternatives to guardianships are required to occur from the beginning to end of the process. A continuum of care listing the less restrictive alternatives to the more restrictive alternatives was included in the meeting materials as a part of **Appendix L.**

[82] HB 39 was the first bill in several legislative sessions that focused on the needs of the Ward and not so much on the needs of the guardians or attorneys involved.

Recommendation 2: Certificate of Medical Examination Modification

A physician is required to evaluate the Ward (the Texas term) to determine their capacity and the report is sent to the Court. There was no common form, so doctors often reported this information differently. One commonality of the physician reports was the lack of information as to whether there was potential for improvement of the Ward's capacity or condition. Courts were often not made aware of improvement therefore a Ward could remain under guardianship even though the person's capacity had improved to a point where the Ward did not need to be under a full guardianship. HB 39 requires the physician examination letter/certificate to state whether improvement in the proposed Ward's condition is possible and to state a time after which the individual should be reevaluated to determine if a guardianship is necessary. If a physician indicates a Ward's condition might improve, then the case is set for review and the Court would order a reevaluation of the Ward. Depending on the results of the re-evaluation, the court would determine whether the Ward would continue to be under the guardianship in the same manner based on the results of the re-evaluation.[83]

Recommendation 3: Guardianship Decisions About Residence

The third issue identified was significant, especially to individuals in the guardianship system. Texas law did not include a consideration about a Ward's residential preference. Wards were being placed in facilities that the Ward did not want to be placed in, which may or may not be in the Ward's best interest. The law now requires the Court to consider a Ward's right to make personal decisions about residence and whether the Ward has the capacity to make that decision. Now, before a guardian can move a Ward to a more restrictive living facility, the guardian has to provide motive to all the interested stakeholders in the case, as well as the judge. The guardian must give seven days' notice before moving a Ward, unless it is an emergency. Any of the parties can object to the move, including the Ward, and request a hearing, and the judge can approve the motion, object, or request a hearing.

Recommendation 4: Applicant Attorney Training Requirement[84]

Judges identified lack of attorney training and attorneys identified lack of judicial training as an area of concern in the survey that had been distributed. Prior to HB 39 an attorney, who wanted to be an ad litem in a guardianship case, was required to have previous judicial law experience and three hours of training on guardianship law and how to be an ad litem in guardianship cases. HB 39 increased the training hours from three to four. The bill also requires the applicant's attorney be certified by the State Bar as completing a course study in guardianship law and procedure. The intent of the law is to have individuals filing guardianship cases to have some understanding on how the guardianship system works. Texas has a Board Certification and certification requires substantial amounts of training for court-appointed counsel.

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[83] This is a new concept included in statute.

[84] There is no enforcement mechanism in the law for the training. This was intentional because legislators did not want an emergency guardianship to be held up because somebody did not receive the required four hours of training.

Recommendation 5: Supported Decision-Making Framework

The last item, and perhaps the most groundbreaking of the proposals, is the emerging alternative to guardianship - Supported Decision-Making Framework. In their research, the groups found several other countries around the world that have implemented Supported Decision-Making. Mr. Slayton did not think there was any other legal framework, outside of Texas at this time, for supported decision making. In a supported decision-making arrangement, an adult with a disability enters into an arrangement with another individual for assistance in making life decisions, e.g., where to will live, what support and services are available, where they want to work, etc. The individual retains his or her decision-making ability. Supported decision making is a least restrictive type of assistance and the law provides a legal framework for the supported decision making, laying out a template of how the agreement should be worded. The Supported Decision-Making Agreements are used in the disability community, where a child has transitioned from a minor to an adult, as a viable option to a guardianship.

All legislative proposals on guardianships were passed during the 2015-2016 legislative session. This is a complicated issue and Texas has made significant progress in this area but more work needs to be done.
Future Items:

- Changing the term "Ward." There was legislation to change language in the 2014 session to a Person under Guardianship but there was a concern that the abbreviation (PUG) would not be appropriate. They continue to explore other terms.
- Identify how the state can best interact with individuals who are not certified guardians. Roughly 45,000 cases are handled by family members, friends, or attorneys but Texas does not have insight or oversight on these types of guardianships. The OAC receives complaints daily from family members, friends, and interested individuals about abuse or exploitation but they cannot do anything about that. The OAC responds via a letter and notifies the complainant that they are sorry but they cannot help. The working groups are looking into a process to change this. Additionally, family members and friends are not required to receive any training, and there is no oversight regarding their responsibilities. Texas is looking into a registration process where all guardians would register with the state and agree to listen to/watch a 45 – 60-minute webinar. They are working on making it the least imposing as possible while still being able to have some oversight.

Additional bills unrelated to HB 39 that were passed during the 2014 legislative session:

- A law was passed, mirroring a state supreme court rule, requiring the clerk of the court to report all fees paid to guardians and other attorneys to the state. The law addressed concerns regarding transparency in guardianship cases. There had been concern that judges were appointing the same guardian and paying them exorbitant fees. Information is now included in an OAC database providing transparency.
- Bill of Rights for Wards was passed.

The Supported Decision-Making Agreement is a wraparound service, in a sense, and the bill speaks to that. For instance, a bank, other financial entity, medical care facilities, or others need

to be on-guard regarding potential exploitation or abuse. Texas has been conducting training and has already had some outreach to the different groups to discuss what a Supported Decision-Making Agreement is. At this point, awareness is how this is being dealt with. The courts would be ordering the supports and services be put in place, but there would probably not be any court involvement in the oversight of the supports and services. Social services agencies, i.e., Adult Protective Services would address elder abuse or exploitation.

The Elder Committee did not address minors under the age of 18 in any of the proposals. The committee did ask how the proposals affected minors and elders throughout the process. In the study conducted in Texas, about 51 percent of the cases involved minors, so they kept that in mind as they developed the proposals. Additionally, throughout the process, the committee had individuals at the table including Disability Rights of Texas.

Texas is trying to divert developmentally delayed or challenged young adults out of the system through Supported Decision-Making Agreements. Schools often tell parents they need to get a guardianship before the child turns 18. Texas is trying to educate parents and schools about the fact that there are alternatives to full guardianships including the Supported Decision-Making Agreements.

The Commission asked if the Supported Decision-Making Agreements would have the force of a contract between the Proposed Protected Person and the supplier of the services. Mr. Slayton thought it would have the force of a contract and the statute allows the termination of the agreement at any point by either party.

The Commission asked if a petition is filed but the court determines wraparound services would serve the needs of the Proposed Protected Person, would those services be subject to a court order stating they have to be supplied. If the petition is not granted for guardianship, then it would seem the court would not have jurisdiction to do anything. Chief Justice Hardesty noted there is no reason why the approval of alternative supports could not be the subject of a court order.

The Commission discussed attorney representation, and the process if a dispute amongst the parties occurs, and the use of investigators. In Texas, an attorney for a proposed Ward is appointed upon filing of the application and every proposed Ward is entitled to counsel. Counsel is paid by state or county funds. The proposed Ward is also entitled to an Attorney ad Litem and a Guardian ad Litem. Each has a distinct role under Texas law. If there is a dispute amongst the different parties as to the need for wraparound services or a full guardianship, there could be a jury trial. Investigators are provided for under Texas law. In the ten counties with the Statutory Probate Court, both the court auditor and court investigators are employees of the court and report administratively to the court. There are 18 investigators for the 10 counties. Each judge employs his or her own investigator and auditor or team of investigators and auditors. In the more rural areas of Texas, the investigators are appointed privately by the judge. The investigators are paid similar to the payment of the attorney. If there are funds in the estate, the court could pay the investigator out of the estate. If not, the county would pay the investigator.

Texas law requires the attorney to explore what supports and services might be available to

decrease the need for a guardianship. The fourth hour of training includes alternatives to guardianship and support and services, in an effort to educate attorneys involved in guardianship cases as to the supports and services that are available. The judge would ask similar questions about whether programs could help the proposed Ward based on information the judge is provided. The physician should also be looking into whether there are alternatives while completing their evaluation and report, and that information should be provided to the attorneys and judges.

WINGS had discussed capacity, which is part of what led to the discussion about residency. Part of the discussion included standardized forms because it is difficult to have different physicians filling out different forms. The judges and attorneys found differences in the evaluations and the forms being provided by the physicians. Mr. Slayton would encourage the Commission to review this as well. What are the different things that physicians seem to be finding and what are the different factors regarding capacity? Texas found a person might be under a full guardianship because the person was not able to meet their needs in one area, i.e., his or her needs for food, clothing or shelter, but could meet his or her needs in other areas, i.e., care for his or her physical or mental health, manage his or her financial affairs, make personal decisions regarding residence, voting, operating a vehicle and marriage.[85]

Senator Becky Harris, Nevada Legislature, asked if Texas had thought about putting a master list of resources together or some kind of accountability that courts could ask counsel for, as opposed to being reliant on counsel for the representation. Mr. Slayton responded they have court investigators in the urban counties and the investigators are doing some of this work from the court side. The court investigators are working with partners in the community regarding support and services that are available. A master checklist that would identify whether certain services are available in the area or if they would be appropriate would be a good idea.

Texas has seen a 60-percent increase in the number of guardianship cases in the past four years. The two primary measures used to determine whether the modifications have been successful (1) whether there is a growth or reduction in the number of full guardianships, and (2) the number of accountings that are being filed annually.

The Commission would have some follow-up requests for information. Chief Justice Hardesty noted he liked the term person-centered evaluation, which seems to be the focal point of what Texas has been initiating.

> Law Enforcement/Prosecution Response to Guardianships[86] presented by Jay P. Raman, Clark County Deputy District Attorney

Elder abuse statutes are included in NRS 200.5091 to 200.5099. The statutes include definitions, duty to mandatory report,[87] crimes, penalties, and the policy of the State.

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[85] Tex. Est. Codes § 1002.031.

[86] The Law Enforcement/Prosecution Response to Guardianships PowerPoint presentation is included as **Appendix B.**

[87] Nevada Revised Statute 200.5093 Mandatory reporter.

Perspective on elder/vulnerable exploitation cases:

- Many older victims will fall into both categories of victim: (1) older (60 years or older) and (2) vulnerable.
- A vulnerable person means a person 18 years of age or older who: (a) suffers from a condition of physical or mental incapacitation because of a developmental disability, organic brain damage or mental illness; or (b) has one or more physical or mental limitations that restrict the ability of the person to perform the normal activities of daily living. The law does not make a distinction in what is happening to people, whether they are older or vulnerable.

In Mr. Raman's opinion, there is a recognized gray area where vulnerable begins. Many older people end up as victims and may have undiagnosed medical conditions such as early onset Alzheimer's or dementia. There is a significant broadness within the statute to address those conditions and there are other conditions an older person may be suffering from e.g., loss of a spouse, chronic loneliness, or other things that might make a person vulnerable to victimization. The penalties and elements for elder or vulnerable exploitation are the same; it does not have to be both. The district attorney's office does not need to prove both.

Law Enforcement's Perspectives include:

- Elder/Vulnerable Person cases are difficult cases to investigate
- Unique issues present in these cases.
- Exploitation of vulnerable or older person cases would likely be circumstantially proved.
- If the victim is suffering from a mental condition to classify them as vulnerable, they may not be competent to be a witness.
- Cases have to be put together from many different sources, and the admissibility of the evidence has to be weighed to see if that will hold up in court. Cases come from multiple departments within the same police department, i.e., cases from patrol, from financial crimes unit, from abuse and neglect unit, and from Metro Intel.
    - Varying levels of expertise on how to investigate, what to look for, and who to talk to.
- Suggestions from law enforcement on how to prevent crime or improve the ability to investigate:
    - Ask the Court to examine fees charged by the guardian.
        - Scrutiny of the invoices could and would prevent theft.
        - Require a detailed explanation of actual activity being billed for, including if the service was provided by a person other than the guardian.
    - Enforcement of time frames for filing documents: inventory and annual accountings. Holding that standard would reduce the window of theft from Protected Persons presenting more evidence if those filings were falsified.
    - Court enforcement of required blocked accounts or having bonds in place is important.
    - Within the proposed budget for Protected Person's expenses, more attention should be paid to things classified as "miscellaneous" expenses and fees. Expenses and fees that fall into miscellaneous might lack the normal oversight

and paper trail you would expect on other kinds of line item expenditures and obviously wrapping everything up into a miscellaneous column could be a place for fraud to occur.

- Notification of interested party family members be investigated and verified. What has been seen are generic examples have been entered into guardianship court stating they could not identify any family members to notify, but it does not reveal the length to which whoever is seeking guardianship has actually pursued searching for family members.
- Set up standards to show what length a guardian or somebody seeking guardianship should search for family members.
- Set up standards on what occurs with a Protected Person's estate once the person passes away, if there are no heirs.

Mr. Raman provided actual case studies involving private professional guardianship exploitation as well as exploitations involving family members. Exploitation cases involving family member can be more difficult to prove under Nevada's exploitation statute due to having to prove "undue influence," but this is not required to be proven in guardianship cases, even if the family member is the guardian. In a guardianship case, you do not have to prove a person obtained control through deception, intimidation, or undue influence. None of that applies when a person goes to court and legally obtains the ability to manage another person's affairs. If a person simply takes the Protected Person's money with the point of permanently depriving the Protected Person, then there is a crime. Mr. Raman's division in the Clark County District Attorney's Office only deals with cases that are submitted by law enforcement. The DA's Office does not internally develop a case, which takes a lot of time to develop; many factors have to be corroborated and the DA's office has to subpoena records.

Efforts to get law enforcement more engaged in these types of cases might include:

- Commissioners reaching out to law enforcement to discuss the importance of these types of cases.
- Getting investigators in the Court who could assist in identifying cases where exploitation or elder abuse might be occurring.
  - Submitting these cases to law enforcement to conduct further investigations and prosecute, if warranted.
- Attorneys are not mandated reporters but they could report to Elder Protective Services (EPS).
- Training and staffing departments to identify issues.
  - Additional Police Officer Standard Training (POST) training in the areas of elder exploitation and abuse.
  - Elder Protective Services Elder Rights Unit provides four-hours training for POST certificates in some counties when they are invited.

The Commission discussed the possible implementation of a Guardianship Review Team. The Child Death Review Team has been successful in enhancing dialogue between law enforcement, social services, and the Courts and has built interest and accountability into the system. The trigger for a Guardianship Review Team could include a number of circumstances and could benefit the system by reviewing these cases, identifying what could be done differently, and how

the process could be improved.

There are enhanced penalties pursuant NRS 200.5099 for persons who commit elder/older abuse or exploitation. The age enhancement is 60 years of age or older pursuant to NRS 200.5092. Financial and physical abuse, and isolation and abandonment are contained within the enhanceable offenses. Areas within the property arena that can be age enhanced include obtaining money under false pretenses and embezzlement. Theft is not included as an age enhancement. Penalties range from a category B felony to a category C felony. The penalties are not mandatory offenses and allow for probation.

Medical Versus Legal Terminology presented by Kim Rowe and Elyse Tyrell[88]

There are different definitions and statutes that deal with capacity and competency in Nevada. The underlying issues are raised in the context of the medical versus the legal community. Capacity is a medical decision. There are three types of capacity: (1) path specific, (2) situational, and (3) contextual. A person may be capable in one area but lack capacity in another area. Physicians are trained to understand that but the distinction is sometimes missed by the legal community because attorneys deal in the context of competency. Once the physician gets to the capacity issue, the legal arena turns the question to whether the person is incompetent, using different layers of capacity to make that determination. This ties into the Texas concept and the notion that capacity from a physician's perspective is path specific. This concept is represented in the materials, including the Texas' handbook on *Judicial Determination of Capacity for Older Adults in Guardianship Proceedings, A Handbook for Judges* (Handbook).[89] The Handbook recognizes the different layers of capacity and context for capacity. The emerging concept is to identify what a person's capacities are and instead of having a general guardian over the person and/or estate, you might have a limited or special guardianship that addresses the areas where capacity may be missing. The Handbook also makes the distinction between the different types of capacity that are often identified by physicians.

The Washoe County Bench Bar has been reviewing the physician's certificate and the utilization of the verbiage in the certificate.[90] The language is too standardized and does not sufficiently break out the various capacities or incapacities of the person being examined by the physician. The Bench Bar Committee is reviewing the current certificate to determine if specific language could be added allowing physicians to provide specific information.

Nevada's current statutes treat capacity as a one-size fits all and do not recognize that a person could have limited capacity for certain things but be fully capable of handling other things. The current physician certificate is an all or nothing proposition at this time. A person may have some limitations in the ability to handle financial affairs or may be struggling to keep track of the medications prescribed and this is somehow translated to incapacity, although the person may be

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[88] Capacity and Competence documentation provided by Kim Rowe is included as **Appendix M.** GN 00502.300 Digest of State Guardianship Laws can be found on the Reference and Resource page. Kim Rowe presented additional information on this topic at the April 22 meeting. A memo of recommendations was presented at the May 20, 2016, meeting. The recommendation is included as **Exhibit G.**

[89] The link to the Handbook is also listed in the References and Resources page.

[90] This is an ongoing project.

fully capable of handling other areas in life.

Chief Justice Hardesty's requested information so the Commission could begin laying the groundwork for what is an emerging trend across the county. The incapacitation that brings a person to court should be identified and the focus should be alternatives or steps that could be taken to address the incapacity. Chief Justice Hardesty suggested the Commission review the contrast between capacity and incompetency and some of the other terms used in Nevada statutes.

Nevada Revised Statute 159.019 defines "Incompetent" as an adult person who, by reason of mental illness, mental deficiency, disease, weakness of the mind or any other cause, is unable without assistance, to properly manage or take care of him or herself or his or her property, or both. The term includes a person who is mentally incapacitated. There may be people who are physically disabled but are mentally capable of handling their affairs.
Courts often encounter two dilemmas:

1. Within NRS 159.019 what does it really mean to "properly manage"? Properly manage is a subjective word describing the management of the estate.
2. There is always a challenge within Nevada statutes and the justice system between NRS 178.400, which talks about a person not being tried while they are incompetent and the guardianship statute.

Judge Frances Doherty brought up another issue. She polled judges in the Second Judicial District Court and they did not know whether a person in front of them on a criminal offense was a Proposed Protected Person or a Protected Person. This is another area where the justice system is using language and applying standards, but is rarely crossing over to have congruent understanding of persons who are incapacitated or limited in their abilities. Competency in the criminal sense has a completely different definition and a more limited definition than statutory definitions of incompetency when used in the context of guardianship. Medical evidence relied on in criminal cases is often similar to the medical evidence courts see in the guardianship cases. Judge Doherty suggested having a conversation, at least between the judges, to understand how judges are applying and interacting with persons in the court system whom have these different labels attached to them. Ms. Julie Arnold added that in discussions in guardianship court, a distinction is made between contractual capacity and testamentary capacity. This can become an issue when decisions need to be made about the management of the property and in dealing with an existing plan or set of documents, e.g., wills, as circumstances might have changed since those documents were made. There are frequent discussions about whether the Protected Person has contractual capacity and/or testamentary capacity.

Chief Justice Hardesty said there is a compilation of definitions using the same terms. The guardianship system should look at the individual first, determine if a person needs to be under a guardianship, and if they do, determine the nature of the incapacity.

Overview Revisions to the Uniform Guardianship and Protective Proceeding Act (UGPPA) - presented by Lora Myles, Esq., Carson and Rural Elder Law Program

Ms. Lora Myles provided an overview of the revisions to the Uniform Guardianship and Protective Proceeding Act (UGPPA). Nevada was one of the first states to adopt the Uniform Adult Guardianship and Protective Proceedings Jurisdictional Act. The UGPPA is a separate act that was first approved by the Uniform Acts Commission in 1997. Revisions to the UGPPA began in 2014 and are moving towards adults with developmental disabilities. The UGPPA is trying to change the focus of the Act because adults with developmental disabilities are coming in front of the guardianship courts more often than past decades. Parents had intrinsic legal control of a child with a disability but with changes in the laws, including the Health Insurance Portability and Accountability Act (HIPAA), that is no longer a fact. In order to handle some of their child's finances or assist in getting them medical care, the parents have had to petition for guardianship. This has been changing across the country, and the UGPPA is changing to reflect this.

Revisions to the UGPPA include:

- Changing the term Ward to Person Needing Protection (PNP) or Person under Guardianship (PUG). Many states do not like the abbreviation PUG.
- Changing the term disability to incapacity and defining incapacity. For example, a person is incapacitated if the person lacks the ability to meet essential requirements for physical health, safety or self-care, even with appropriate technological assistance and appropriate decision-making support. This falls in line with earlier discussions about what is incapacity.
- Implementing more language for person-centered decision making.
- Promoting the use of limited guardianships or least restrictive guardianships as often as possible.
- There is an emphasis being placed on court visitors for monitoring guardianships.
- The WINGS provisions are being reviewed. Part or all of the WINGS provisions may be incorporated into the UGPPA.
- Guidelines allowing for certain rights of the Protected Person including the right to marry, divorce, vote, own a firearm, etc.

The UGPPA revisions would not be finalized or approved by the American Bar Association until sometime in 2016. Ms. Myles noted the biggest difference between the Nevada Revised Statute and the Uniform Act is that the Act does not have a separate section for minors, but that has been discussed. In 2003, there was a major revision of NRS Chapter 159 and several positions from the UGPPA were incorporated into the Chapter. Nevada had elected not to adopt the entire Act because at the time portions of NRS Chapter 159 were stronger than similar portions in the Act.

Eighth Judicial District Court's Guardianship Working Groups update provided by Judge Cynthia Dianne Steel

The Eighth Judicial District Court has six committees working on guardianship issues in Clark County.

Forms Committee chaired by Shelly Krohn

The Forms Committee has been working on forms for temporary guardianships, sale of real property, petitions that are reviewed for general petitions and several bench orders that are issued from the bench to assist people who do not know how to do a guardianship.

Rules Committee chaired by Dara Goldsmith

The Rules Committee is currently working on temporary guardianship. Ms. Goldsmith has some suggestions for rules regarding fees for Guardians ad Litem, attorneys, and guardians including what aspects to look at when determining whether the fees are realistic or reasonable.

Confidentiality Committee chaired by Homa Woodrum

The Confidentiality Committee is reviewing statutes across the country to see what might be a good fit for the State. The committee is also reviewing media and the balance between privacy rights of a person who is not able to say whether the media should be present.

Practicing Attorney's Perspective/Input Committee

A group of practicing attorneys were asked to identify their most eminent and important obstacles. The group has identified the differing opinions as to capacity of Protected Persons and is discussing how this could be resolved by developing better definitions and encouraging doctors to participate in the process. The committee has discussed exploitation over income of the Protected Person. Summary guardianships do not require annual accountings and many of those are the largest exploitation cases. The committee is reviewing different levels of guardianship for different levels of incapacity and assisting the decision making of a Protected Person or allowing a Protected Person to participate. A guardianship should be least intrusive but attorneys have not had the definitions or the guidance in Nevada statutes. The Committee is reviewing how personal property is sold or liquidated, and how personal property is maintained when it is an expense of the Protected Person but the person is not quite ready to sell, and there might be family that is interested in preserving the property.

Private Professional Guardians Input Committee chaired by Susan Hoy

The Private Professional Guardians (PPG) Input Committee has discussed the referral process and had a very open discussion regarding referrals not coming directly to the PPG offices but initially going through a third party, e.g., the EPS. The PPG would not be the investigators into whether someone needed a guardian. The Committee is open to suggestions as to what this might

look like. The Committee has discussed fees and reviewed Arizona's[91] statutes in this area. The committee is also reviewing Assembly Bill 325 and the licensing process, which becomes effective January 1, 2016.

Judge Steel is working on a committee with former Speaker Barbara Buckley to review attorney representation and training.

In addition, Chief Judge Barker has several members of the Court working together on different administrative aspects for the Courts, including compliance officers, investigators, how the Court can ensure it receives reports in a timely manner, and IT management. At one time, the Eighth Judicial District Court said there were about 8,700 cases. That number has been reduced to 2,500 open and active cases with approximately 3,300 adjudicated cases.[92] The Court is working very hard to review all the guardianship cases.

Second Judicial District Working Groups update provided by Judge Frances Doherty

The Second Judicial District Court appointed a Data Committee[93] in April 2013. The Court has invested a tremendous amount of work and time in tracking guardianships, determining the Court's time to disposition, identifying weak areas of service delivery, and reducing the Court's backlog. The Court has closed hundreds of cases through this and the data collection process. Demographic information of the persons the Court serves is collected and provides information of where the Protected Person has been placed, by whom, whether the guardian is public, private, or family guardians, etc. The information is used to tailor the Court's services a little bit better and target the hearings.

The Court began to hold quarterly Bench Bar meetings beginning in January 2013. The Bench Bar is combined with a group of other stakeholders including public and private guardians who meet internally once a month. The Task Force is similar to the WINGS group Mr. Slayton described. The group selects projects and works on them over the course of time. In the past, the group has implemented a mandatory mediation program in guardianship cases, established the protocol for appointment of counsel immediately upon filing the petition, and defined bond protocol. The Task Force is holding their draft rules pending the Commission's outcome, so they can complement and tailor the rules they have already drafted for implementation.

The Task Force is working on a plan of care for when an action is filed and the parties appear at the full guardianship hearing or the special guardianship hearing. Under the plan, the guardian and counsel for the guardian will address residential placement, medication management, medical oversight, and independent criteria to ensure the Protected Person's independence is maintained. The Task Force has had several meeting on this and has gathered national data to develop a plan of care.

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[91] Arizona Revised Code § 14-5303. Code of Judicial Administration – Chapter 3. Probate Court – Section 3-303 Professional Services: Statewide Fee Guidelines and Competitive Bids. The links are included in the References and Resource Page.

[92] An adjudicated case occurs when a decision has been made but reports are required by the Court, and thus, the Court continues to monitor the case.

[93] The Data Committee meets every other Wednesday.

The Task Force is working on least restrictive placements in the Court. The Court has almost eliminated ex parte applications for temporary emergency guardianships. This is a virtue of the conversations the Bar has had with the Court on an ongoing basis and the development of criteria and protocols to avoid the temporary guardianship ex parte requests and get the cases to the temporary hearing where appropriate notice and evidentiary standards apply.

The Task Force has developed a polished version of a standardized full guardianship order. The Task Force has taken into consideration the views of district attorneys, private attorneys, Washoe Legal Service (WLS), guardians, and other stakeholders as to what that order needs to contain. The order is fillable and the group hopes to circulate the form within the district to see how functional it is and then share it with the Commission.

Additionally, Judge Doherty and Judge Steel meet on alternating Fridays, when available, to coordinate the work of their subcommittees and committees in an effort to avoid duplication and to be sure their work is complementary.

Judge Nancy Porter reported the Fourth Judicial District Court secured an attorney to represent adults. The Court is working on a spreadsheet[94] that would be a living document to keep track of all guardianships cases, including what needs to be done in each case. Once the spreadsheets are complete, the Court will be issuing orders to show cause, which Judge Porter was doing before her appointment to the Commission. The Court is also providing dates as to when the inventory and first accounting is due. The Court is setting the first hearing on the annual accounting at the time of the appointment of guardianship, and the Court is working on a form containing all that information that can be provided to people prior to them leaving the courtroom.

Virginia's Guardian ad Litem Requirements[95] presented by Kathleen Buchanan, Clark County Public Guardian

Virginia's Guardian ad Litem (GAL) requirements:

- A GAL is defined as an attorney appointed by a judge to assist the court in determining the circumstances of a matter before the court. It is the fundamental responsibility of the GAL to provide independent recommendations to the court about the client's best interest[96] and to bring balance to the decision-making process.
- The GAL may conduct interviews and investigations, make reports to the court and participate in court hearings or mediation sessions.
- The GAL administration is housed with the Executive Secretary of the Supreme Court of Virginia.

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[94] At the time of the meeting, the court had spreadsheets for all 2014/2015 guardianship cases.

[95] The Virginia Guardian ad Litem requirements can be found at Virginia's Judicial System's webpage at http://www.courts.state.va.us/courtadmin/aoc/cip/programs/gal/home.html.
The website also includes a frequently asked questions page at http://www.courts.state.va.us/courtadmin/aoc/cip/programs/gal/adult/faq_adults.pdf

[96] This can be different from advocating for what the client wants.

- A list of attorneys who are qualified GALs is entered into a database and maintained, administered, and distributed. There are two programs - one for incapacitated adults and one for minors.
- Attorneys have to complete six hours of coursework to qualify.
- The judge has the ability to eliminate or reduce the payment sought by the GAL for the services rendered, they can remove the attorney from the case and the list of eligible appointments, if in any given case an attorney is unsatisfactory in his or her level of performance.
- Standards have been developed for the GALs and are included on the website.
- They conduct background checks.
- Forms are held by the Virginia Supreme Court

A GAL Program needs to have sustainability and accountability. There should be someone independent from the other parties, who can be objective about financial and emotional ties, can conduct interviews, research and review materials objectively, has interpersonal skills and can articulate recommendations to the Court based on actual findings, not personal opinion of an outcome.

Other Business

The agenda would continue to include the temporary and emergency guardianships, attorney representation, and power of attorneys, and the Commission would discuss each of those items and develop recommendations. The Commission would also be discussing the way Texas formulated the framework for potential statutory changes.

The Commission would also need to begin framing what the recommendations might look like in order to begin transitioning the review into action. Members were asked to go through their notes and provide any additional recommendations to Ms. Heying by Monday, October 26. The Commission would begin compiling and cataloging the recommendations.

E. FIFTH MEETING

The Commission held its fifth meeting on November 23, 2015. The meeting began at 1:30 p.m. and was videoconferenced between Las Vegas, Carson City, and Elko. The public was invited to provide comment[97] at the beginning of the meeting.

[97] November 23, 2015, meeting total time of public comment was 54 minutes.

Presentations

Attorney Representation[98] presented by Barbara Buckley, Executive Director of the Legal Aid Center of Southern Nevada (LACSN)

Ms. Barbara Buckley and her staff have reviewed material and met with individuals on the local and national levels to discuss attorney representation for individuals facing guardianship proceedings. Ms. Buckley provided the following suggestions:

1. Do all that is possible to remake the system to avoid issues arising in the first place, thereby reducing litigation and costs associated with it. For an attorney representation project to work, the entire Elder Protective Services (EPS) and court system has to work together to provide the best outcomes for seniors and other vulnerable people facing guardianship. In remaking the system, an attorney should be provided to an individual at the outset to determine if a guardianship is needed. Ms. Buckley was pleased to see some of the Commission's recommendations set forth appointment of counsel and the recommendation of having EPS as a neutral agency. Elder Protective Services has experience working with the vulnerable population and evaluating whether there are less-restrictive alternatives to guardianship. Improving the system on the front-end is critical.
2. Create a strong legal representation model for anyone facing guardianship. The LACSN[99] has a great deal of experience in creating new programs to help vulnerable populations. Ms. Buckley provided an overview of the programs[100] created by LACSN:
   - Children's Attorneys Project – Represents children in foster care
   - Family Justice Project – Helps victims of domestic violence and vulnerable families with divorce and custody matters.
   - Consumer Rights Project – Works with people facing foreclosure, bankruptcy, payday loans, and common fraud.
   - Pro Bono Program
   - Civil and Family Self-Help Centers in partnership with the Clark County Courts

Ms. Buckley suggested two possible models for attorney representation:

1. A Guardian ad Litem (GAL) Model
2. Attorney Representation (AR) Model

The AR model is client directed. The attorney represents the client and what the client wants. Not what the attorney thinks the client might want, or what the attorney thinks might be best for the individual facing the guardianship. There is an attorney/client relationship with the person. In the GAL model, the attorney is more of a friend of the Court and reports what the, GAL thinks is

[98] Memo on Attorneys for Individuals Involved in Guardianship Proceedings and corresponding materials are attached as **Appendix N.**

[99] LACSN has 38 attorneys and a staff of 90.

[100] All programs began with a vision and a need.

in the best interest of the Protected Person. The LACSN would strongly recommend the AR client directed model. The attorney's role should include:

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

The model contained in the Vermont statute § 3065[101] is another option. The statute states the lawyers should:

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

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

Suggestion as to how the model program should work:

- Look at cases without financial resources and cases with financial resources.
- For cases without financial resources, funding should be provided to a non-profit organization that would hire attorneys to represent the Protected Persons.
- A pro bono component of that would also be created to complement the program.
- Provide training and support to the pro bono attorneys.[102]

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

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[101] Vermont statute § 3065. Counsel link is included in the Reference and Resource page.

[102] The LACSN offers CLE credits and has created a manual that can be found at www.lacsn.org and includes a list of frequently asked questions.

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

It is also important to ensure there are rights that a lawyer can argue before the court. Nevada has statutory procedures but one of the best ways to ensure an attorney representation is successful is to make clear what rights are being enforced. The Foster Care Project went to the Legislature and created Nevada's Foster Youth Bill of Rights. Creating a Bill of Rights is one way to ensure the rights for individuals facing guardianship. A copy of the Bill of Rights[103] Ms. Buckley drafted would be distributed to members. Some of the rights include:

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

The Commission discussed the scenario when assets of an individual are not known until after the guardianship has been granted. In those cases, an attorney from a nonprofit or legal aid organization could be appointed until the asset information is obtained and provided to the Court. When an individual comes to the LACSN and applies for services, the individual is asked to bring income information, and an interview is conducted. A mediation program could be instituted for the higher-end cases (bifurcated model).

Pro bono representation has not been a workable system in the rural counties. Judge Nancy Porter is working with the Nevada and Washoe Legal Services (WLS) to obtain representation for adults and minors in Elko County, but there are not enough attorneys in the rural counties to provide pro bono representation. Legal aid organizations are a critical component allowing rural areas to provide this type of representation.

The LACSN met with Judge Doherty, Sally Ramm, and the WLS to observe the process in Washoe County. From day one, a Proposed Protected Person is seen by an attorney to find out if the person wants to contest the guardianship. If a Proposed Protected Person does not have capacity, the attorney will let the judge know that it was not possible to form an attorney/client relationship. The Proposed Protected Person is not easily excused from attending the hearing. Before any property is liquidated, there must be a hearing and notice. One of the significant benefits of the Washoe County model is the appointment of counsel occurs upon the filing of the

[103] The Bill of Rights was discussed and voted on as part of General Policy Question. The approved Bill of Rights is included as **Exhibit H**.

petition; there is no delay. Counsel is able to meet with the Proposed Protected Person and determine whether an attorney/client relationship could be formed and is able to review the Proposed Protected Person's environment prior to the first hearing. The Court does not have to continue the hearing for the appointment of counsel.

The State has a federal grant that allows legal service attorneys to represent persons 60 years of age or older. Income and size of the estate is not a barrier to representation under the grant. It has been beneficial to the process to have attorneys representing respondents and presenting in every case. The attorneys participate in mediations and are leaders in settlement conferences. The role of the GAL is separate from the attorney's role. Judge Doherty would like the Court to retain the ability to have discretion to appoint a GAL. The hearings are more in-depth, substantive, and more areas of law are discussed when the person responding to the guardianship has an attorney. Judge Doherty is concerned this could be lost if the Commission has to choose between a GAL or attorney model for the respondent.

The Commission discussed Vermont's statute,[104] which provides a set of objective areas attorneys must advocate; even in instances where the individual might be suffering from Alzheimer's, for example, and is not able to develop an attorney/client relationship. Commissioners thought the Vermont statute was a useful guide for an attorney when a client is not able to articulate his or her wishes. The Vermont statute is similar to what is currently practiced in Washoe County. Judge Doherty is a strong advocate of Vermont's statutory provision in this area.

Chief Justice Hardesty stated the Nevada Supreme Court's Indigent Defense Commission recommended a set of standards and practices that are required in the representation of every defendant in an indigent defense case. Commissioners were asked if the Nevada Supreme Court should develop standards and practices for representation of Protected Persons in guardianship proceedings. The standards would be a set of rules, similar to the rules governing the defense of indigent defendants. Commissioners discussed and agreed a set of standards and practices for representation would benefit the guardianship system.

Comments regarding a proposed set of standards:

- A set of standards would communicate expectation to the State Bar.
- A set of standards would be appropriate. Concern: In the criminal sphere, there is a funding stream for attorneys who are going to be held to that standard in terms of training and experience. That does not exist, yet, in guardianships. If the system relies on pro bono services it could be an additional monetary burden to have an attorney take a pro bono case and have to meet a certain set of standards.
- A set of standards would be supported. This is a highly specialized area of law involving the need for technical information in medical, psychology, and psychiatry.
- A set of standards should not be unrealistic or too burdensome. The set of standards could begin with standards for representation and then standards for training could be added, one-step at a time.

[104] Vermont statute § 3065. Counsel link is included in the Reference and Resource page.

- A set of standards are appropriate but should not discourage people who would otherwise participate in the process.
- A set of standards would not be so high that an attorney would not be capable of meeting them and to accommodate a lesser standard would continue the nebulous manner in which guardianships have evolved over the decades. The clarity of these very simple, very few standards are needed now and would be included in every order appointing representation.
- A set of standards are needed. Courts are putting someone in charge of another person's life, and these cases are legally and factually complicated. A set of standards would be important to make sure there are qualified attorneys representing people in these situations.
- A set of standards would be a benefit. Some of the things that need to be addressed are an income stream to get an attorney appointed. The foster care system created a set of standards and once they were in place, the system worked better.
- A set of standards would help when forming a training program and would provide agencies with the information needed to train those individuals. The standards would provide a level of expectation of what judges in all of their districts would be seeing from the attorneys. The standards would fill a void.
- A set of standards is a great way to cover accountability and transparency.

Chief Justice Hardesty noted the attorney/client role is different from the GAL role, and the Commission should examine a separate role for guardians in cases where the GALs would be appointed. There are resources in the community that could be accessed to provide the GALs with appropriate training and backgrounds. Ms. Rana Goodman, The Vegas Voice, noted her group has been collecting names of volunteers willing to work as GALs, auditors, etc. Ms. Goodman suggested the volunteers could be trained by the Las Vegas Public Guardian's Office (Office). Ms. Buchanan stated Ms. Goodman has discussed having the Public Guardian's Office provide training, but the Office is not in a position to train the volunteers; the Office does not have the resources. Commissioners discussed the importance of financial support and resources and the need to convey this to county governments.

Ms. Arnold has served as a GAL and attorney representing the Protected Person and stated they are very different roles. It is important that a GAL is knowledgeable, trained, and is a professional who is licensed and under the purview of a Board of Examiners. Sanctions should be in place if a GAL does not abide by a code of ethics, and a GAL should be accountable to the Court and a board. Ms. Arnold stated if a GAL is not an attorney, the GAL should be a licensed social worker, marriage and family therapist, or someone with professional training. The Commission discussed the SAFE program as a possible middle ground. The Commission would continue to vet this process.

The Commission discussed referrals being sent to the EPS[105] to examine less restrictive means when a respondent is the subject of a guardianship. Under current statute, reports are sent to the EPS and if the EPS substantiates there is abuse, neglect, exploitation, isolation, or abandonment

[105] Elder Protective Services does not investigate cases where there is no allegation of any kind of abuse or neglect. If there were a court order directing the EPS to investigate a case, additional resources would be required and would have to be approved by the Legislature.

a case would be opened and the EPS would begin working on it. Pursuant to NRS Chapter 427A, the EPS can only investigate cases where there is an allegation of abuse, neglect, exploitation, isolation, or abandonment. There would be some limitation on the EPS's ability to examine least restrictive means. The Commission would discuss this further in an upcoming meeting and review potential statutory changes in the definition of the EPS's role in this process.

The Commission discussed sponsoring legislation that could include a Bill of Rights to address the issues the Commission has identified. Commissioners raised the issue about revenue resources and the possibility that some legislation could create an unfunded mandate.
This discussion has two parts:

1. Does the Guardianship Court need an investigative entity to supplement its work in order to assure appropriate outcomes?
2. Who is the most appropriate entity, based on resources, training, and skill level to conduct the investigations?
    a. Entities that have been identified include:
        i. A GAL as an attorney
        ii. A GAL as a layperson
        iii. A SAFE Program
        iv. Public Guardians
        v. Elder Protective Services

The Commission would need to decide who should conduct the investigations and the nature and extent of the service that the court requires. The Commission should identify which is the most appropriate entity based on resources to perform that skill. The National Center for State Courts (NCSC) recommends case compliance officers as the investigative entity. The Commission would need to look at this further to define the service and provider. There was a concern with conflating representation of the respondent with the Court's need for input and what action is appropriate and should be taken. The investigative services should be separate from the expectations of the respondent in these proceedings, and the respondent should have an attorney as an advocate. It was noted NRS 159.0485 addresses the right to and appointment of counsel, therefore, the State of Nevada may already have that fiscal responsibility.

Involuntary Guardianship Referral Process[106] presented by Mr. Richard Black, private citizen

Mr. Richard Black provided the Commission a presentation on the Involuntary Guardianship Referral Process for Clark County and a Nevada Reform Proposal. A flow chart with a proposed guardianship referral process for involuntary guardianships was included in the meeting materials.[107] The genesis of the document came when Mr. Black followed his father-in-law to six different care facilities in Las Vegas. Since the family was not the guardian, they were not allowed to obtain medical information and could not be a part of the discussion concerning his father-in-law's care. They were able to compromise and were given the opportunity to be informed. Doctors are disciplined in honoring HIPAA.

[106] Presentation material provided by Mr. Rick Black included as **Appendix O.**
[107] Flow chart is included as **Appendix O.**

Mr. Black has reviewed nearly 100 adult guardianship petitions to appoint guardians (PAG). Mr. Black reviewed the current guardianship referral process[108] highlighting:

- Ad hoc...no formal process for healthcare professionals to depend on.
- Likely violations of HIPAA between physicians, lawyers, and guardians.
- No independent or trained investigator to confirm need or directives.
- Excess private control of the process...no independent investigator, too many lawyers.
- Lack of transparency...X referrals with rewards suspected.
- Does not address hospital bed-day priorities and lower cost care options.

Mr. Black presented recommendations[109] highlighting three critical areas that would maximize the protection of the individual and the efficiency of the process.

- Conduct the capacity assessment. In the cases Mr. Black reviewed there is consistently a two-page check-the-box form guardians receive from the hospital or physician but it does not provide any insight as to the cause of the incapacitation.
- The full capacity assessment of the Proposed Protected Person should be conducted by an independent assessor and the primary care physician to ensure representations in the petition for guardianship are valid.
- Independent investigators should make the assessment to ensure there is no conflict of interest.
- Mr. Black discussed how guardians should be chosen and noted 98 percent of guardianships in Clark County are held by four guardians. There are 25 guardians in Clark County and Mr. Black asked why the other 21 guardians had not been solicited to support the effort.
- Mr. Black suggested transparency could be improved by appointing an independent investigator from the EPS. Elder Protective Services would have a list of private and public guardians that would be assigned on a rotating basis.

Benefits of Mr. Black's proposed guardianship referral process:

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

[108] Areas highlighted in red are where the system has broken down. Rectangles are steps in the process; diamonds represent decisions that have to be made.

[109] Green blocks at the top right of page 4 highlight three critical areas.

Commissioners discussed the proposed guardianship referral process. Mr. Black was asked if he had spoken to the EPS about staffing that would be required to conduct this level of investigation. Mr. Black responded that he had spoken to the EPS and stated that you can use the excuse that we do not have funding but he has run businesses and funding is a choice; you choose what is important and what is not. His understanding from his discussions with the EPS is there are some legislative restrictions that would require change. Mr. Black stated we are here to promote change and protect vulnerable persons; budgeting would come along with this. Mr. Black said thousands of dollars have disappeared in the cases he reviewed. If the system was controlled appropriately – his family would have been happy to pay for the EPS support to investigate what they knew was going on.

The Commission discussed whether the process contemplates circumstance where a guardianship is needed but family cannot be there and cannot be the guardian, but they want to be a part of the process in choosing a guardian, e.g., the family does not want the EPS to choose the next person in line. Mr. Black noted that is a wrinkle that needs to be resolved. Mr. Black stated that the EPS is brought in early in jurisdictions outside of Nevada to conduct an investigation before the guardianship is established.

Ms. Kim Spoon clarified a couple of items.

1. Elderly Protective Services' current policy would not refer to a private professional guardian. All the EPS referrals go to the Public Guardian's Office.
2. Mr. Black noted there are 25 certified guardians in Las Vegas. Not all certified guardians are practicing private guardians. Currently, there are only six private guardianship businesses in Clark County, so there might be certified guardians but they might be certified in attorney offices or other public entities.
3. There is also the question about HIPAA policies. The HIPAA policy allows a physician to provide documents to a party, typically a guardian, who might be of assistance when there is a perceived immediate or imminent threat to a Proposed Protected Person who is in the physician's charge.

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

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

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

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

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

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

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

Other Business

A handout was provided to the Commissioners with a list of recommendations collated by subjects.[110] Commissioners were asked to review the list and let Ms. Heying know if a recommendation was missed. Chief Justice Hardesty is also generating a list of General Policy Questions.[111] The list of questions would be provided to Commissioners prior to the next meeting.

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

Judge Cynthia Dianne Steel moved to extend the Commission by six months. Kathleen Buchanan seconded the motion. Motion passed.

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

F. SIXTH MEETING

The Commission held its sixth meeting on December 15, 2015. The meeting began at 11 a.m. and was an in-person meeting held in the Nevada Supreme Court courtroom at the Regional Justice Center. The public was invited to provide comment[112] at the beginning of the meeting.

Complaints/Investigation filed with Law Enforcement report provided by Jay P. Raman

The Commission had received public comment at the last Commission meeting regarding complaints lodged with the Clark County Metropolitan Police Department (Metro). Following the meeting, Chief Justice Hardesty asked Mr. Jay P. Raman to confer with Metro's Abuse and Neglect detail and provide the Commission a report about Metro's policies with respect to the prosecution of or potential criminal prosecution in matters arising out of guardianship disputes. There were two specific issues identified at the last Commission's meeting:

1. Family members of people under guardianship regularly encounter the scenario from both patrol officers and bureau desk officers, where they are told what they are describing sounds civil and the office will not take the report. If a report is not taken, nothing is investigated.
2. Where to go to report?

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[110] A copy of the list of recommendations collated by subject is included as **Appendix P.**

[111] A list of the General Policy Questions the Commission vetted can be found in **Appendix A.**

[112] December 15, 2015, meeting total time of public comment was 27 minutes.

Mr. Raman has forwarded those concerns to Metro and they will be meeting to discuss them further. Mr. Raman said they are working with law enforcement to revamp the process so when someone does have a complaint about guardianship abuse, or a vulnerable/older/elder person in general, someone is taking a report and the report is assigned and investigated. Mr. Raman would provide an update at the January meeting.

Chief Justice Hardesty noted he does not know what the status is concerning law enforcement investigations of issues surrounding guardianship, but some of the issues that have been raised during public comment, on the surface, suggest a violation of fiduciary duties or acts that could potentially be considered criminal. Under those circumstances, it would be appropriate for the Commission to make a request of the Nevada Attorney General's Office and all of the District Attorneys in Nevada to urge law enforcement to investigate allegations arising out of guardianship proceedings, and to take such action as appropriate following these investigations.

Chief Justice Hardesty entertained a motion to have the chair of the Commission write a letter to the Nevada Attorney General's Office and District Attorneys in Nevada urging prosecution under existing statutes in response to allegations of misconduct in the handling of guardianship proceedings.

> **Ms. Elyse Tyrell moved to have the chair of the Guardianship Commission write a letter to the Nevada Attorney General's Office and the District Attorney Offices in Nevada urging prosecution under existing statutes in response to allegations of misconduct in the handling of guardianship proceedings. Motion passed.**

Discussion

Mr. David Spitzer, Washoe Legal Services, suggested the letter include encouragement to seek funds to support, at least, the investigation at the police level because those can be difficult and expensive cases. Mr. Raman suggested the recipient of the letter include the sheriff of major law enforcement agencies. Ms. Elyse Tyrell and Ms. Trudy Andrews, Pacifica Senior Living, agreed with the amendments to the motion.[113]

General Policy Questions and Recommendations[114]

Chief Justice Hardesty reviewed the list of recommendations Commissioners had provided and compiled a list of 29 General Policy Questions[115] (Policy Questions). Commissioners would discuss, debate, and evaluate the Policy Questions and decide whether Commissioners agree to address these questions as a part of their recommendations to the Nevada Supreme Court. The Commission would get into the specifics of the Policy Questions recommendations over the course of the next eight months.

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[113] Please see Interim Action number 2 for a summary of the action taken by the chair and the Commission.

[114] Detailed information and the recommendation for each item can be found in Section IV Recommendations.

[115] A list of the General Policy Questions the Commission vetted can be found in **Appendix A.**

The Commission discussed, made recommendations, and voted on the following General Policy Questions during the December 15, 2015 meeting:

- Permanent Commission
- Bill of Rights
- Legal Counsel
- GAL Program
- Special Advocates for the Elderly or similar volunteer program
- Confidentiality of Proceedings

Update on Guardianship Cases

Eighth Judicial District Court[116]

- The Court began reviewing all 8700 active cases
- 266 open cases and 362 reopened cases for a total of 628 active cases. (Some of those will probably go away because they are not done with the case review yet).
- There are 4,000 cases[117] required to provide a report to the Court at least once a year.
- There are 2,000 inventories due.

Second Judicial District Court[118]

- Hired a Compliance Officer.[119]
- The Court closed over 600[120] cases in the last 24 months.
- The Court is down to 681 cases and expects the number to harden around 550 once its review is complete.
- Pending review cases are almost all in compliance with the annual reports and annual accountings.
- Influx of cases matches the Court's dispositional cases. Expect to be around 150 filings by the end of the year. Project will have disposed of 150 – 160 cases by year-end.
- Time to first hearing in the majority of cases is before 30 days, many first hearings are within 10 days based on the temporary provision.
- Dispositions of cases are around 90 days.
- The Bench Bar Committee provides a quarterly report and the Task Force Committee provides a monthly report.
- The Court closed 400 old cases where children aged out of the jurisdiction of the Court.
- Minor open guardianship cases are roughly 1,300 and should settle around 600-700 cases as the Court continues its review.

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[116] The Court began reviewing all of its cases beginning July 2015.

[117] Cases have already been adjudicated and guardianships are in place. Cases require annual report of person, accounting, or both. The Court continues to review its adult cases and will begin reviewing minor guardianship cases once all adult guardianship cases have been reviewed.

[118] The Second Judicial District Court is closely tracking data to evaluate efficiency.

[119] The Compliance Officer was hired in 2015.

[120] The court had roughly 1,300 cases when they began the review and are down to 681 cases.

Fourth Judicial District Court[121]

- The Court[122] has 330 open guardianship cases and has closed a handful of guardianship cases.
- There were 38 new cases in 2014, and the Court is on track for 54 new cases in 2015.[123]
- Judge Porter's law clerk and court clerk have created a spreadsheet where they are manually entering guardianship case information.[124]
- Show cause orders have been entered through 2010. Judge Porter has only once had to remind a guardian a second time.
- The Court created a form that is provided to guardians with the date their inventory is due, the date the accounting is due, the date the first statement of condition of the Protected Person is due, and the Court sets the hearing for the first accounting.

In prior meetings, the Commission had discussed temporary guardianships and whether they should be more restrictive and if the notices surrounding the temporary guardianships should be changed. Chief Justice Hardesty asked members if they agreed with or thought question eight should be rephrased, and if members thought there should be recommended changes to the process of the appointment of temporary guardianships.

Chief Justice Hardesty said the fundamental questions are:

- Under what circumstances should a temporary guardianship be granted?
- To what extent should the timing and information that is supplied to support the temporary guardianship be modified?
- Is the current Nevada statute okay, too restrictive, or not restrictive enough?

Discussion

- The presentation on temporary guardianships[125] demonstrated that Nevada's statute is similar to other states. It does not appear that Nevada is doing anything independent of other states in this area.
- Under the current statute, a petitioner may request the Court to appoint a temporary guardian for a Protected Person who is an adult and who is unable to respond to a substantial and immediate risk of physical harm or to a need for immediate medical attention and it is supported by documentation.
- The Eighth Judicial District Court has made it clear to the attorneys that they need to define what they are asking for.
- The notice requirement could be a little longer to make sure everyone has sufficient time to come to the next hearing.

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[121] The Fourth Judicial District Court's oldest case dates back to 1971.

[122] The Fourth Judicial District Court does not have a compliance officer and does not have the funds to hire a compliance officer.

[123] The number of new cases being filed is increasing.

[124] They began with the current date working backwards. Information had been entered through 2009.

[125] Ms. Sally Ramm provided a presentation on temporary guardianships at the August 17, 2016, meeting. A copy of the materials is included as **Appendix E.**

Temporary Guardianships

Chief Justice Hardesty noted the concerns expressed in previous Commission meetings that the temporary guardianship would provide a basis for someone to gain access to further information that would support a permanent guardianship, and the individual might not be in a position to oppose the guardianship.

The Commission discussed the language under the minor temporary guardianship statute in NRS 159.052(2), which reads:

> (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....

The statute is an unfunded mandate and does not provide funding for a position or services as outlined in section 2. This requirement has created a significant obstacle to the Courts. Many of these cases are pro se and usually involve grandparents seeking a temporary guardianship for their grandchild to enroll them in school or for immediate medical care. It seems unnecessary to require a letter signed by any governmental agency in this State, which conducts investigations or a police report indicating whether the Proposed Protected Person presents a danger to himself or herself or others, or whether the Proposed Protected Person is or has been subjected to abuse, neglect or exploitation. The Commission should review whether this should be required.

Judge Nancy Porter added that the "substantial and immediate risk of physical harm" language included in the statute for temporary guardianship of a minor does not work. She has many cases where there is no immediate risk of physical harm. The grandparents just need temporary guardianship to get the minor enrolled in school or medical care. The statute also says the child has the lack of capacity to respond. By nature of their minority, the minor lacks the capacity to respond. Judge Porter did not think the Court needed a letter from a governmental agency or police report to make these decisions. Judge Porter noted the standard for the temporary guardianship of a minor should be relaxed while that for an adult should be tightened. Judge Porter noted the statute had included language about a physician's certificate (PC) but that was changed a few legislation sessions back due to the grandparents not being able to get a PC because they were not the guardian. The best interest or reasonable standard or both are what Courts should look at when considering a temporary guardianship. Judge Porter thought the Commission was on track with adult temporary guardianships, the review of the PC, and the immediate appointment of counsel.

Judge Frances Doherty said following the Commission's discussions on temporary guardianships, the Court reviewed the statute, particularly the ex parte component. Judge Doherty said NRS 159.0523 is very specific, with very narrow provisions under which an ex parte might be granted substantial and immediate risk of harm or need for immediate medical attention. The statute is written fairly well; unless there is something immediate that needs to be addressed, the Court would set the case for a full temporary hearing with all the provisions

identified in the statute or deny it outright. If the temporary hearing is denied or set for a hearing without granting the ex parte then the Court applies clear and convincing standard of evidence. The Courts need to be diligent in monitoring the compliance of the factors that allow those orders to issue before a hearing. Judge Steel echoed the comments and added the current temporary statute is good and has some good requirements. Judge Steel cautioned the Commission to be sure to consider the affect any statutory recommendations or rules could have in other areas of the statute.

The Commission agreed that making changes to the temporary appointment of minors would be appropriate. Judge Voy, Judge Walker, and Judge Porter are modifying the guardianship statutes for minors[126] and would draft language to address the concerns expressed today in relation to minors.

G. SEVENTH MEETING

The Commission held its seventh meeting on January 22, 2016. The meeting began at 1:00 p.m. and was videoconferenced between Reno, Las Vegas, Carson City, and Elko. The public was invited to provide comment[127] at the beginning of the meeting.

Complaints/Investigation filed with Law Enforcement report provided by Jay P. Raman

Mr. Jay P. Raman has been working closely with Las Vegas Metropolitan Police Department's (Metro) Abuse and Neglect Division. Lieutenant James Weiskopf, Special Victims Section, Metro, sent an email[128] to law enforcement support technicians, patrol service representatives, and patrol officers. The email restates that people who take reports at the station need to take the report. If they have questions about the nature of the complaint, they should contact the Abuse and Neglect Detail for further guidance. People have a duty to be mandatory reporters[129] and if someone is not willing to take that report then they are not able to fulfill their legal obligations. Additionally, if someone sees or notices that someone is being exploited or abused, whether the person is under guardianship or not, the exploitation and/or abuse needs to be reported. Mr. Raman would continue to work with law enforcement. This is an ongoing process and this was a positive step in the right direction.

Conservatorship Account Auditing Project (CAAP) Award[130] report provided by Riley Wilson, Case Compliance Officer, Eighth Judicial District Court

The Eighth Judicial District Court, with the approval of the Nevada Supreme Court, applied for and was awarded a technical assistance grant through the National Center for State Courts (NCSC). The grant allows the Court to become a pilot court for the Conservatorship Account

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[126] The minor guardianship statute is included as **Exhibit J.**

[127] January 23, 2016, meeting total time of public comment was 54 minutes.

[128] A copy of the email is included as **Appendix B.**

[129] Nevada Revised Statute 200.5093 Report of abuse, neglect, exploitation, isolation or abandonment of older person; voluntary and mandatory reports; investigation; penalty.

[130] A copy of the CAAP award letter is included as **Appendix Q.**

Auditing Project (CAAP). Minnesota, along with the NCSC, developed CAAP, which includes an application via a website allowing guardians to enter inventories and accountings. Online training, including YouTube videos, is available to educate those filling out the applications. The software is open source so any changes the Court might make would be shared with other states and vice versa. The Eighth Judicial District Court's IT Department is working on the licensing agreement and the implementation of the software. The purpose of the software is to modernize the collection of information and allows inventories and accountings to be filed into the case electronically. The software allows the Court to put all inventories and accountings into the same format, making auditing easier and standardizing the process.

Assembly Bill 325 – Licensure Private Professional Guardians report provided by Kim Spoon and Susan Hoy

The Financial Institutions Division (FID) held a workshop in December 2015, allowing Private Professional Guardians (PPG) a forum to list their issues/concerns regarding draft regulations for the licensing requirements of the PPG pursuant to the passing of Assembly Bill 325 (AB 325). The FID listened to the concerns and made changes to the second draft, including reducing the licensing fee to $500. The PPG are uncertain how much other fees, such as auditing, will cost. There are still some issues that might need to be addressed through legislation, and the PPG would be reaching out to their legislators.

Ms. Susan Hoy has been working with several insurance and bond companies to meet the bond requirements pursuant to the licensure. She has had a difficult time finding a company in Nevada that would issue a bond to meet the requirements. Senator Becky Harris asked Ms. Hoy to provide additional information on the bond issue. Senator Harris noted the bonding component of A.B. 325 was critical, and it is important that that PPG are bonded, and she is concerned there is only one company that will issue this type of bond. Ms. Hoy explained that under section 33 of A.B. 325 there were two bonding components: (1) bonding as it applies to NRS Chapter 159, and (2) bonding as it applies to the business and the employees of the business. There were no issues with the bond as it applied to NRS Chapter 159. The issue was with the bond for the business and employees due to the liability. Many of the bond companies requested that a form be provided from the State. Ms. Hoy contacted the FID about the form and the FID told her they did not have a form; Ms. Hoy needed to let the insurance company know she needed a fidelity bond. The insurance companies said they needed the form to determine risk. Ms. Hoy's office was able to locate an insurance company in Missouri that would write the bond, covering up to ten employees. Ms. Hoy noted the main issue is how the statute reads, is it one bond covering all employees or is a bond required for each employee? There are questions as to where the $25,000 figure came from, and where the state form is.

Senate Bill 262 – Resident and Nonresident Agent presented by Jeff Landerfelt, Deputy Secretary of State for Commercial Recordings, Nevada Secretary of State's Office (SOS)[131]

Justice Hardesty[132] has had several meetings with the Secretary of States' Office (SOS) to discuss the provisions of Senate Bill 262 (SB 262), how it is being implemented, and the challenges associated with the bill. Justice Hardesty asked Mr. Jeff Landerfelt to discuss S.B. 262 and the challenges that have been raised.

Mr. Landerfelt stated, pursuant to S.B. 262(1)(6)(b), a Court-Appointed Nonresident Guardian of an adult must appoint a Resident Agent (RA) "in the same manner as a represented entity pursuant to NRS Chapter 77" through a filing with the SOS Office. While this is generally straightforward, it does present some issues in application simply because NRS Chapter 77 addresses the appointment of the RAs only in a business context, which does not fit squarely with the appointment of the RAs in a Protected Person/Guardian context.

The basic requirements of the RAs, as specified in NRS Chapter 77 and Nevada Administrative Code (NAC) Chapter 77, are minimal. In order to serve as an RA in Nevada, one must be at least 18 years of age, willing and able to accept service of process, and must physically reside in or have a physical location in Nevada where process may be served. An individual or business entity becomes an RA by signing and filing an RA Acceptance form with the SOS, which includes an acknowledgement stating that they are accepting appointment as an RA for the named entity, in this case the Nonresident Guardian.

In filling out the RA Acceptance form, the RA must provide his or her name and street address. The named location must:

1. Be an actual physical address[133] in this State,
2. Be open during normal working hours,
3. Be staffed by at least one natural person who is of suitable age and discretion to receive service of legal process and any demand or notice authorized by law, and
4. Have operations sufficient to allow for proper service of all legal process and any demand or notice authorized by law to be served upon the entity represented by the agent.

The basic statutory duties of RAs are as follows:

1. To forward to the represented entity at the address most recently supplied to the agent by the entity any process, notice or demand that is served on the agent;
2. To provide the notices sent by the SOS to the entity.

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[131] The Commission voted in to adopt the Resolution provided by the Nevada Secretary of State's Office addressing the Appointment of Registered Agent by Nonresident Guardian of Adult. The Resolution is included as **Exhibit M.**

[132] Pursuant to NRS 2.030 (1), Justice Hardesty's term as the Chief Justice concluded on January 4, 2016. The Report will reference Justice Hardesty from this point forward.

[133] Post Office Boxes, mail drops, mail forwarding, and other mail service companies are prohibited.

The obligations of the RAs when resigning could present a problem in the Protected Person/Guardian context. An RA for a business entity has a duty to notify the entity upon resignation with the SOS, and the resigning the RA's duties cease 30 days after filing for resignation, or earlier if a reappointment has occurred. The same resignation process in the Protected Person/Guardian context could leave the Nonresident Guardian without an RA if the resigning the RA failed in this duty to notify the Nonresident Guardian, and the Court would not be aware of a resignation and reassignment. Currently, an appointment of an RA for a non-registered entity, which is how appointments related to Protected Person/Guardians are currently treated, expires in five years.

Currently, on a form developed for this purpose, the following information is collected:

- Name of the Protected Person
- Name, address, and signature of the Nonresident Guardian
- Name, address, and signature of acceptance of appointment of the RA

A fee of $60 is collected with the filing. After entry into the database, the information above is searchable on the Business Entity Search under the Protected Person's name. The SOS requires a copy of the court order with the filing, although SOS has only recently begun doing so. Those who did not provide a copy of the court order are being contacted to do so.

Nevada Revised Statute Chapter 77 gives the SOS broad regulatory authority related to the appointment of the RAs. While the Office is not familiar with the nonresident guardian process, the SOS welcomes any guidance from the Commission as the Office develops processes related to the appointment of the RAs for Court-Appointed Nonresident Guardians of Adults. It may be that additional specific requirements are needed to address the unique circumstances surrounding the appointment of the RAs of Court-Appointed Nonresident Guardians. In particular, the Court may wish to address the following:

- Does the Commission wish to have additional qualifications for the RAs representing Court-Appointed Nonresident Guardians?
- Are the staffing and hours requirements necessary in the Protected Person/Guardian context?
- Does the Commission foresee a "Commercial RA" equivalent in the Protected Person/Guardian context?
- Does the Commission envision different or additional duties to apply to the RAs of Court-Appointed Nonresident Guardians?
- Would the Commission require certain record retention duties of the RAs of Court-Appointed Nonresident Guardians?
- Would the Commission prefer a provision related to resignation of the RA whereby the Court is notified at the time of resignation and subsequent reassignment?
- Would it be best that the five-year expiration to appointments related to Protected Person/Guardians does not expire?

The Commission may also wish to address the penalties, as outlined in NRS 77.447, associated with violations of RAs, and perhaps the notification associated with alleged violations, to include notification to the court, which ordered the appointment and the represented nonresident guardian. Currently, only the RA must be notified.

Justice Hardesty noted the SOS has regulatory authority to handle some of the questions posed but some might need to be addressed legislatively. There needs to be coordination between the Courts and the SOS Office to make sure this important compliance piece is being addressed. The questions would be distributed to members for their review and added as an agenda item for an upcoming Commission meeting. Justice Hardesty asked Judge Doherty, Judge Steel and the attorneys on the Commission to discuss this issue with the Bench Bar.

General Policy Questions[134]

The Commission discussed, made recommendations, and voted on the following General Policy Questions during the January 22, 2016 meeting:

- Protected Person present during hearings
- Person-Centered Planning
- Specific Findings Least Restrictive Means

H. EIGHTH MEETING

The Commission held its eighth meeting on February 26, 2016. The meeting began at 1:00 p.m. and was video conferenced between Reno, Las Vegas, Carson City, and Elko. The public was invited to provide comment[135] at the beginning of the meeting.

Presentations

Second Judicial District Court's Data Collection Process[136] presented by Judge Frances Doherty, Judge Egan Walker, Craig Franden, Chief Information Officer, and Holly Lujan, Family Court Clerk

The Second Judicial District Court reviewed its guardianship cases in an effort to understand the workload in a quantifiable manner. The collection of data provides the Court insight into the nature and extent of services provided and allows the Court to target intervention services to the types of respondents and Protected Persons, as well as the types of persons who are guardians.

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[134]Detailed information and the recommendation for each item can be found in Section IV Recommendations.

[135] February 26, 2016, meeting total time of public comment was 56 minutes.

[136] The Second Judicial District's PowerPoint presentation and corresponding report are attached as **Appendix R.**

The Court's mission statement:

> *The Second Judicial District Court is committed to providing high quality judicial services to persons appearing in adult guardianship matters through holistic application of best practices and implementation of least restrictive avenues of intervention using transparent, data driven case management to serve the best interests of person's subject to guardianships.*

Judge Frances Doherty shared the timeframe and work efforts involved in creating a docket and running the guardianship department. The dollar figures[137] represent the amount of time and investment required to get to where the Court is today. The work began three years ago with a caseload of 1,300. The Court has a devoted part-time judge[138] for adult guardianship cases, Mr. Craig Franden devotes one fifth of each week to work on this project, Ms. Holly Lujan devotes at least 50 percent of her time to this project, court administration,[139] and other family court clerks provide their time and support to this project as well. The Court and the Washoe County Guardianship Bar have a great relationship, sharing ideas and asking questions so they can be more responsive to what they are doing and how things can be improved.

The National Center for State Courts (NCSC) conducted a site visit to review the Court's probate and guardianship caseload in 2013. Following the visit, the Court began to review all guardianship and probate cases, refining the data codes they were using in the database, and the type of data they were gathering. The Court wanted to automatically generate orders based on the data entered into the CMS. This requires everyone entering data to be consistent with the data entry.

In 2014, the Court began to compile the summary draft report. The Court wanted to capture demographics of the Protected Person and the types of guardianships. In late 2014, the Court analyzed its data code usage and reset the status in all of the cases. The Court began a review all of the cases to identify which cases were still pending, set for review, and needed an annual report or inventory. In 2015, the Court added a full-time case compliance specialist to review all case reports and began holding bi-weekly meetings to review the information.

The Court uses the data to identify areas of improvement; measuring time to disposition, timely filings of mandatory reports, i.e., inventory and accounting, and demographic data. Data has guided the work prioritization including pro se forms, training, bond protocols, least restrictive methods, and the creation of mediation protocols. The automated CMS includes improved automated order generation. The Court is currently testing a way to build milestone queries via a public website so once an order is due, e.g., 60-day inventory, the attorney or public member could go to the website, enter a case number, and see the milestones of when items need to be filed. The compliance specialist will also use this information to identify those cases and milestones allowing for more interaction via the website.

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[137] Judge Doherty stated if there were a dollar figure for the work effort, it would be well in excess of $300,000.

[138] Judge Doherty currently serves as the Guardianship Judge in the Second Judicial District Court.

[139] This includes the Second Judicial District Court's Court Administrator.

Mr. Franden provided an overview of the reports. Methods of data measurement include the Uniform System of Judicial Records (USJR).[140] The Court reports monthly criminal, civil, family, juvenile, and guardianship new filings and dispositions and this data is included in the Nevada Supreme Court's Annual Report of the Judiciary. The USJR is in phase II and is moving into phase III so they will begin to capture some of the average time to disposition of these cases. The Court also uses some definitions from the *National Probate Court Standards (NPCS)*, including timeliness of hearing of first petition and timeliness of hearing on extended or temporary petitions.

Mr. Franden said the caseload report includes pending active adult guardianship cases and disposed/set for review. Pending active is a case that is awaiting the first disposition. The bulk of the pending active are awaiting an appointment of guardian. The cases disposed of and set for review are cases where the Court is expecting an annual report. The chart included in the materials shows 18 currently active cases and 7 additional cases with temporary orders. Based on the information collected, the Court is able to determine its currently active workload, the number of court hearings, and the number of parties awaiting a response to a dispositional order. The report allows the court to identify when numbers increase disproportionately, which could be an indication that something might be happening in the community, or the Court is not scheduling hearings quickly enough. Monitoring occurs after the judge has made a determination of guardianship of the person and/or estate. That is the end of the active case. The case then goes for review and can remain for the 10 – 30 years or more depending on the nature and extent of the Protected Person's needs.

Judge Doherty noted the Court's new case filings for the last 12 months are the lowest they have been in 15 years. It is the Court's view that the drop from around 180 the previous year and 140 this last year has a lot to do with conscientious, cognizant decision making, ensuring cases are not being filed where there is an alternative to the remedy being sought in guardianship court. Judge Doherty is proud of the Bar Association for working so closely with the Court in understanding least restrictive intervention, reaching out for durable powers of attorney for health care, and seeing if there are other ways to address a person's needs.

The 15-year filing trends for the Court show adult guardianship cases are down 39 from last year and minor cases were up by 27.[141] Mr. Timothy Sutton, Nye County District Attorney's Office, asked if alternatives available in the adult guardianship realm were also available for minors. Judge Walker could not think of any other than guardianship if you have a minor. The challenge in minor guardianship cases is they are overwhelmingly child welfare cases without social services, and there are no attorneys available for the minor guardianship cases. Minor guardianship cases are the neediest, most vulnerable children for whom the Court has zero resources. There is a need for judicial resources, such as settlement conferences to divert from guardianship. Since minors are legally incompetent by definition, it creates very strong front-end challenges to meet their needs. The Courts need to understand the needs of the children and marshal resources to them. It is another area where civil Gideon is mentioned and will have to be grappled with to have representation for the minors.

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[140] The Court reports new case filings to USJR monthly for both adult and minor guardianship cases.

[141] Minor guardianship cases outnumber adult guardianship cases.

Many guardianships start with guardianship of the person but morph over the time of disposition to something else, e.g., person and the estate. Judge Doherty explained the Court wanted to break down the types of guardianships it was issuing and what types of orders. Many people go to Court thinking they need a guardianship of person and estate but there is often no estate, except perhaps social security, and the government has a system[142] for payments. Judge Doherty noted Nevada's current statute is complicated because there is nothing in the statute called a limited guardianship; it is called a special guardianship with limited authority. The Court is slowly turning guardianship cases into special guardianship of limited authority for specific purposes and the Court is tracking those numbers. Judge Doherty recognizes that the volume is terrifically more in the Eighth Judicial District Court, so resources are critical to service the public in the most appropriate manner; this takes tremendous work and investment.

The Court has worked very hard to reduce the number of ex parte orders to get people to their first hearing where the standard of evidence is higher, where notice is more likely, and where the Court can see, touch, and hear information about why a temporary order is necessary at the beginning of the case. The Court had ten ex parte orders[143] in the last year.

The Court's average time to disposition[144] in the last 12-months was 74 days. The Court has automated orders in the CMS and the Court reviews cases to see if the annual report has been filed. If the annual report has not been filed an order to show cause is generated. Justice Hardesty asked if the Court could compile and show cases that are pending and in the review process where a person has not filed on time. Mr. Franden responded the Court could probably track the data but has not addressed this subject to date. Justice Hardesty asked the question because one of the items of concern is the judiciaries' ability to not only capture the failure of the guardian to perform statutory requirements but to measure whether the Courts address that once it is identified. What percentage of the overall docket is that a problem? Mr. Franden referred to Minnesota's Conservator Account Auditing Program (CAAP)[145] where everything post-adjudication is included in the system. Guardians have to report their annual reports and any other requirements to the system or cases are flagged and audited by accountants. This is a part of the Clark County CAAP pilot program, so going forward judicial districts becoming a part of the CAAP pilot would be crucial to address Justice Hardesty's question. Justice Hardesty said it is a critical point and he wants to be in a position that if someone does not file their accounting after being ordered to do so the Court is able to initiate a program of action as well as to determine the percentage of cases where reports are not filed in a timely manner. Mr. Franden said the Court has the milestone program that would be web-based and the Court would be able to look at exceptions for what cases did not meet a milestone and then the Court would address those cases. Judge Steel noted the Eighth Judicial District Court tracks this information daily and she receives a 120-page report[146] that shows every active case or an annual report is due and the

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[142] The Representative Payee Program is monitored by the Social Security Administration. Information on the Program is available at https://www.ssa.gov/payee/faqrep.htm.

[143] This is a new data point so the Court does not have prior data to compare this information to.

[144] Time of filing the petition to the disposition of the case. Types of dispositions are tracked and reported to the Uniform System of Judicial Records.

[145] See page 60 for discussion regarding the grant award for technical assistance the Eighth Judicial District Court received. CAAP award letter included as **Appendix Q.**

[146] The report includes many older cases that the Court is reviewing case-by-case.

report provides the number of days they are out of compliance, and how many cases she has. Justice Hardesty asked if the Court has identified how many of the minor guardianship cases are likely to continue into adulthood. The Court hopes to cull those numbers by the end of the year.

Judge Nancy Porter recently had their IT Department do a count of the pending minor and adult guardianship cases; the current count is 330 open cases. Judge Porter does not have the breakdown between minor and adult guardianships but based on her experience she would estimate they have twice as many minor guardianship cases as adults.

The Court measures data based on the *National Probate Court Standards (NPCS)*.

- Days to initial hearing[147] – 61 cases fell within 21 – 40 days to initial hearing in the last 12 months. Days to initial hearing for temporary and extended guardianships – 16 cases fell within 11 – 20 days in the last 12 months.
- In the last 12 months, 785[148] inventories and annual accountings have been filed.
- Almost 70 percent of cases are either guardianship of person or guardianship of the person and estate where the estate is below $10,000.[149]

The NPCS also addresses alternatives, i.e., what is the least-restrictive method to conclude the case. The Court began a mediation program for adult guardianship cases in 2013. The Court offered training for the mediators and people who were working with elder issues. The training was free and conducted by a local expert. The Court created a list of entities that would be willing to be mediators in guardianship actions, and the neighborhood mediation center began to accept cases where there were no resources for the estate. The Court also has a settlement conference process conducted by Judge Doherty.

The collection of data on the type of cases allows the Court to target its work. Justice Hardesty said the breakdown of this data would be critical in making assessments about the number of attorneys necessary to assist those who lack means and those who may have means to afford an attorney. The Court looks to the NPCS for best practices and how to track court appointed attorneys, Guardians ad Litem, and investigators. Best practices include court appointed representation for everyone. The Court has worked with the Washoe Legal Services (WLS) and Judge Steel has been working with the Legal Aid Center of Southern Nevada (LACSN). Washoe County also has a grant in which the WLS provides representation to persons 60 years of age or older. The Court's data[150] shows 40 percent of their caseload had representation, which means 60 percent of Protected Persons did not have access to counsel with the exception of a few large estates where they were able to pay for their own attorney.

The Court also collects data[151] on placement, age and types of guardians. The Court considers 433 commitments to be the highest most significant level of placement and placement in their

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147 "Date to initial hearing" refers to the time between the filing of the petition and the first hearing on the case.

148 Those numbers have increased with the hiring of the compliance officer to review cases.

149 This data was obtained by a hand count. An estate below $10,000 is a summary estate and is not required to file an annual accounting.

150 The data is only from September 2015 and only for persons 60 years of age or older.

151 This data is outside the demographics provided to USJR.

own home the least level. The Court also wants to know what percentages of people are in nursing homes, where the Fair Housing Act applies. Placement breakdown is critical and the Court can print out each case in those categories to drill into those specific cases. The Court breaks the data into age and by year increments. Judge Doherty said this data is helpful as the Courts assumed the largest group under guardianship was the elderly, but they are not. Sixty percent of Protected Persons are below the age of 60, roughly 25 percent are between the ages of 18 and 30. The school districts often tell guardians of minors to get a guardianship once they turn 18 but there might be other alternative plans that should be considered.

The Court collects data on the types of guardianships so that it knows what percentage of guardians are private professional guardians, public guardian's office, and how many are friends/relatives. Well over 60 percent of guardians in the Court are relatives, siblings, spouses, children, etc. The Court wants to be sure the relatives, siblings, spouses, children, etc., are receiving the training to be guardians and that the training is sufficient in terms of availability and timeliness. The Court wants to ensure this group is using orders that they understand because many of them are unrepresented. The Court also wants to understand the workload of the public guardian's office and private professional guardians.

This is a team effort. The size and volume of the work in the south is not comparable, and the Commission needs to support all of our work and decide what should be tracked and how to effectuate the system, and then support the resources necessary to get the data. Judge Doherty ended with a quote from Justice Hardesty's State of the Nevada Judiciary speech, during the 2015 Nevada Legislative Session, where he captured what the mission has been in this work:

> "I...believe that Nevada's courts will continue to earn the public's trust and confidence if we adhere to the rule of law, are proactive in the management of our cases, creative in our efforts to provide access to the courts, sensitive to the needs of people who come before us, innovative in our resolution of disputes, accountable for our behavior and decisions, and fiscally responsible and transparent in all that we do."

Judge Doherty said this is what they are trying to do in the Second Judicial District Court and as a Commission.

Assemblyman Trowbridge appreciated the presentation and suggested focusing on the types of guardians who receive complaints, e.g., are they spousal guardians, private guardians, etc.? Once the source of the complaints/problems has been identified, as well as why that particular type of guardian is causing these problems, it might take the elephant of a problem down to a size that could be addressed at the next legislative session.

Judge Doherty said part of the reason the Court wanted this information was to target the response of the Court to those various areas. This data allows the Court to pull out a private guardian's percentage, for example, and to look at those cases to see if there was cause to determine there was a pattern of behavior the Court was concerned with. NPCS strongly encourages courts to have a standardized protocol for complaints. Incorporating a standardized protocol would be another way Nevada Courts could track what the complaints are, what the source is, what the nature of the complaint is and the outcome.

Justice Hardesty said the chart[152] provided by the Court illustrates 67 percent of the guardians in Washoe County are spouse, parent, other relative, or nonrelative. His concern is not that those people are not well meaning and care for the Protected Person, but that they lack training to assume those responsibilities and might not know or appreciate the responsibilities that they now have. There is a huge need for public education and for educating people who assume these responsibilities. Some of this is occurring because the guardian does not understand what their duties are and this is not an easy area to understand, even if an individual has received training.

Members of the public asked if they could ask questions. Justice Hardesty said the questions would be confined to the Commissioners but members of the public could submit their questions to Ms. Stephanie Heying.[153]

Training Police Officers and Prosecutors in Elder Abuse presented by Roland D. Swanson, II, Chief of Investigations for the Nevada Attorney's General's Office

Mr. Roland D. Swanson, II[154] has worked for the Attorney General's Office (AG's Office) since September 21, 2015. In his current capacity, Mr. Swanson has become increasingly aware of the significant impact guardianship, elder abuse, and neglect issues are having on the State. This awareness was highlighted during the previous two Law Enforcement Summits hosted by Nevada Attorney General Adam Laxalt. In September 2015, during side bar conversations, a district attorney brought to Mr. Swanson's attention that this problem was of great concern in the rural communities of Nevada. When the audience was polled as to the extent of this problem, all Summit participants confirmed this was a significant issue in their jurisdictions. As a result, Mr. Swanson was asked to lead a panel discussion on this subject during the February 17, 2016, Law Enforcement Summit in Elko, Nevada. The panel consisted of District Judge Nancy Porter, a representative from the Henderson Police Department, a Public Guardian from Elko County, and a representative from the Carson and Rural Elder Law Program. The audience consisted of metropolitan and rural area law enforcement officers, as well as representatives from several district attorney offices.

Unlike some law enforcement trends, guardianship, elder abuse, and neglect issues are here to stay in Nevada as the elderly population grows. This problem affects senior citizens in managed care facilities, in the court-appointed and private guardianship process, and seniors who continue to be scammed out of their assets through various fraud schemes. Mr. Swanson added that state and local law enforcement entities might not have adequate resources and training to address these statewide issues in the most effective manner.

Mr. Swanson shared some of what he has learned over the past five months by covering the following points from a general law enforcement perspective:

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[152] The chart was included as a part of the presentation handout and is included as **Appendix R.**

[153] Ms. Heying did not receive any questions from members of the public.

[154] Mr. Swanson has worked for the Attorney General's Office since September 21, 2015. Mr. Swanson retired from the Federal Bureau of Investigation (FBI) after more than 20 years of honorable service as a Special Agent. Prior to joining the FBI, Mr. Swanson was an active duty U.S. Army Infantry Office for more than eleven years.

The Scope of Guardianship, Elder Abuse, and Neglect:

Guardianship, Elder Abuse, and Neglect have many forms including criminal acts involving fraud, forgery, and embezzlement. These crimes are often committed for the personal gain of family guardians, private guardians, and individuals forging new relationships with an elder person. These are common themes. Some private guardians are suspected of double billing Protected Persons for services rendered and inflating expenses for their personal benefit. There are instances where fraudulent documents may be filed in the Courts that are detrimental to the Protected Person's interest, that include physician certifications, powers of attorney, and quitclaim deeds, etc. These instances can provide law enforcement and prosecutors the clearest avenues to mitigate on-going criminal activity.

Physical abuse, unexplained injury, and isolation of an elder person in his or her home or in care facilities do occur. These instances may include criminal acts of physical battery, sexual abuse, and forms of healthcare fraud. This criminal activity can also provide law enforcement and prosecutors with criminal options to protect the elder person.

Self-neglect and environmental neglect issues are more difficult to address, and they are occurring in Nevada. An elder person living alone in squalor, who has deteriorated slowly over time, may not realize the, need help for his or her own well-being. These instances are often identified by first responders; however, absent a criminal nexus, these situations are mitigated by organizations like the Nevada Aging and Disability Services Division, family members, and other non-law enforcement entities.

Guardianship issues do not apply just to the elderly. Criminal acts, similar to the ones mentioned previously, are committed against younger Protected Persons, or against other Vulnerable Persons, who have financial resources and who are under the supervision of a guardian. For example, there may be a middle-aged person suffering from mental illness who cannot care for himself or herself, or manage affairs, and whose care is funded through a trust that is being fraudulently managed.

Reporting and Investigating Guardianship, Elder Abuse, and Neglect:

The mechanisms available for citizens to report instances of Guardianship, Elder Abuse, and Neglect vary according to jurisdiction and available resources. Complaints are received through 911 calls for service, via email, by telephone, through the U.S. mail, and submitted in person at law enforcement or state offices. While these are reasonable reporting mechanisms for elder abuse and neglect, it appears many citizens do not know how or where to report these occurrences.

There is evidence that rural area citizens report Guardianship, Elder Abuse, and Neglect complaints to the Nevada Division of Aging in Las Vegas versus reporting these issues to their local jurisdictions. When this occurs, it slows response time to investigate the allegations, as the complaints have to be referred back to the appropriate jurisdiction for action.

Nevada Revised Statute 200.5093 identifies mandated reporters of Elder Abuse and Neglect. The statute applies to physicians and other medical personnel, counselors, hospitals, personal care service providers, law enforcement officers, social workers, first responders, and employees of agencies advising people on abuse and neglect issues. Recent Law Enforcement Summit discussions identified banks and attorneys as possible future additions to the list of mandated reporters as these groups often become aware of criminal activity that is negatively impacting the Protected Person.

Guardianship, Elder Abuse, and Neglect crimes are investigated in several different ways. For the better part of the last year, the Attorney General's Office has been participating in an ad hoc Task Force focusing on private guardianship issues in Las Vegas. In the rural communities, these crimes appear to be investigated by law enforcement officers and assistant district attorneys in their specific jurisdictions based on the resources available to them. There is also evidence that some public guardians in Nevada believe Guardianship, Elder Abuse, and Neglect crimes are left to them to investigate, which is not the role of a public guardian. The public guardians are postured to assist law enforcement and the district attorney offices in these investigations, as are Health and Human Services, Elder Protective Services, Aging and Disability Services Division, and the Division of Aging. But it seems this process could be more effectively managed. The perception of at least one Summit Panel member was that state entities do not always follow through with public guardians and law enforcement to ensure complaints are addressed in a timely manner. Particularly in the rural areas, delays can occur in complaint response because of the remote area involved and harsh weather conditions. This scenario could have contributed to the death of one or more victims in the past.

It is interesting to note that Tribal Law Enforcement leaders participating in the Summit stated they do not have any laws or established guidelines to address the Guardianship, Elder Abuse, and Neglect complaints that may be occurring on the federal reservations in Nevada.

Training for Law Enforcement Officers and Prosecutors:

A common theme, during the recent Law Enforcement Panel discussion, was mandated training is needed for law enforcement, prosecutors, and public and private guardians. There currently is no coordinated effort to provide this specific training and this is a shortcoming across Nevada. Recognizing the different forms of victimization is critical to making appropriate safety and investigative decisions. Complaints may have a criminal and a civil aspect to them, and it is critical that law enforcement and prosecutors recognize the distinctions.

The training deficiency can be corrected; however, this will require a state entity to own that responsibility. Health and Human Services, Elderly Protective Services, Aging and Disability Services Division, and the Division of Aging may be able to assist in this endeavor, and it is possible that training could be incorporated into future Peace Officer Standards and Training requirements specifically designed for law enforcement officers.

In conclusion, Guardianship, Elder Abuse, and Neglect are a significant problem throughout Nevada. The scope of the criminal and civil issues involved are complicated, the reporting

mechanisms across the State are jurisdiction dependent, and the people charged with protecting our elderly population are not adequately trained to be as effective as possible.

The Attorney General's Office is aggressively looking at ways to engage more effectively in this issue. Additional investigative resources are being sought, outreach to the rural communities in being conducted to let them know the Attorney General's Office is available to assist in these investigations and prosecutions when requested, and a broader statewide Task Force idea is being considered. The Attorney General's Office welcomes feedback and recommendations from this Commission as to ways the Office can effectively assist in protecting the elderly and vulnerable citizens.

Justice Hardesty asked if consideration had been given to adding the guardian as a reporting person so that, by itself, could be the basis for prosecution, if the guardian does not report. Mr. Swanson responded that is always an option and in some of the cases the Protected Persons are not necessarily capable of reporting or being able to testify against whoever is creating the criminal activity upon them, so that becomes a challenge for law enforcement. The Protected Person may also want to prosecute one day and not the next. This can present problems for law enforcement as they try to put their case together but it does not deter them from going forward with charges if criminal activity is occurring. Law enforcement will present the case whether or not the victim(s) is able to participate in the prosecution.

Justice Hardesty said law enforcement is looking for some suggestions from this Commission in how to coordinate these efforts and to be more successful in what is taking place. Justice Hardesty sincerely appreciates the leadership of Attorney General Adam Laxalt and his office in initiating and coordinating these activities.

The Commission discussed developing a protocol for the Courts where they could refer cases for evaluation and review, a coordinated effort between the Courts and law enforcement. It is not always clear where complaints should be filed in each jurisdiction. Some of the larger jurisdictions are able to manage their complaints and investigate the reports but it can become murky when you get to the rural counties, and oftentimes it comes down to whether law enforcement knows the complaint exists, if they have the resources to address this, and whether the complaint is criminal or civil. The distinction between criminal and civil can be murky and a lot of law enforcement focuses on the criminal aspect of the complaint. That reporting piece is huge but that comes back needing to find the right place, someone has to own it, and Mr. Swanson thinks someone has to own it from the State level. He does not have a solution as to how to do this right now but that is why he was mentioning the different entities within the State that have knowledge and roles in helping the elderly and some of these vulnerable people. Mr. Swanson thought a statewide reporting system could be developed that would ensure the persons and complaints get to the right jurisdiction.

Ms. Rana Goodman, The Vegas Voice, said comments have been made that families were prevented from visiting because the group home or the assisted living facility says the guardian left instructions that this person cannot visit. When the person calls the police they are told those are the instructions and they cannot help. Ms. Goodman asked if law enforcement would help in this situation because the statute states family cannot be limited from visiting and the Protected

Person cannot be isolated. Mr. Swanson said training is a portion of that and could potentially help. He added he has not personally seen an example like Ms. Goodman described but the order limiting family members would be in place by the Court. Ms. Goodman stated in her experience it is not an order by the Court but an order by a specific guardian taking care of the Protected Person.

The list of mandated reporters[155] does not limit anyone, e.g., family, friend, acquaintance from reporting those instances of guardianship abuse and/or neglect to law enforcement within the jurisdictions where that person lives. The concerns have been, until recently, people who made reports to law enforcement were often told this was a civil matter and law enforcement would not undertake an investigation. Part of the effort is to have law enforcement recognize this report and the potential criminal abuse or behavior that requires something other than a civil case. Nevada citizens need to be educated as well because many elderly persons do not have family members nearby, are not computer savvy, and do not research things so they do not know how to report. This would be another community outreach type of activity that could be useful in addressing some of these issues by educating the public.

Justice Hardesty would like the Commission to reflect on this over the next few meetings, and continue the coordinated effort with Mr. Swanson, the Attorney General's Office, and other district attorneys throughout the State. This is a specialized area and law enforcement needs special investigators, trained accountants, and people who are familiar with this area. Many of law enforcements resources are stretched throughout the State and many law enforcement agencies do not have the resources to conduct the investigations effectively. Consolidating these efforts into some tactical way would make a lot of sense, and Mr. Raman and his team have made a lot of progress from the DA's Office standpoint, but law enforcement is the area where those investigations start. That is where coordination needs to occur. Mr. Swanson agreed. Mr. Swanson would be visiting various jurisdictions throughout Nevada and discussing this subject and hope to come up with some ideas.

Updates

A.B. 325 Private Professional Guardians report provided by Susan Hoy and Kim Spoon

Mr. Leonard Easterly with the Division of Finance is working with the Legislative Counsel Bureau on the two drafts, finalizing the language. The Division plans to schedule a workshop in March and have an adoption hearing with the Legislative Committee shortly thereafter. Licensures would begin as soon as the regulations were approved by the Legislative Committee, unless there was some language for a phase in period.

[155] Nevada Revised Statute 200.5093 Report of abuse, neglect, exploitation, isolation or abandonment of older person; voluntary and mandatory reports; investigation; penalty.

Lockboxes Nominated Guardian presented by Rana Goodman[156]

Ms. Rana Goodman explained the Nevada Secretary of State (SOS) has a Living Will Lockbox (Lockbox).[157] The Lockbox is a virtual box, available since the mid-1990s, allowing people to file their living wills. Ms. Goodman has discussed the possibility of adding guardianship nomination forms as a form that could be added to the Lockbox with Senator Harris. The Commission discussed whether this would need to be passed by the Legislature. Ms. Julie Arnold noted the Durable Power of Attorney (POA) for Health Care form[158] includes language where a person can nominate a guardian for both person and estate, and the POA can be filed in the Lockbox. Many people may not be aware this is available. The Commission discussed whether a person would need to file a new POA since the law changed in January, allowing out-of-state nominated guardians to serve. Ms. Arnold noted clients have always been able to nominate out-of-state family members for guardians. It would be helpful to educate attorneys and the public about the forms and the nomination of guardian through the POA Health Care form.

The Commission discussed whether support agreements and nomination only forms could be filed in the Lockbox. Justice Hardesty asked Ms. Arnold to write an article about the Lockbox in the Senior Law Project and include copies of the forms. Justice Hardesty added it would be beneficial to have a story about this in The Vegas Voice.[159] Ms. Goodman agreed and stated they could use a copy of the suggested guardian nomination form.

This subject was deferred for further discussion at an upcoming meeting. Justice Hardesty noted the Commission should include, as part of its recommendations on an interim basis people could look at the POA as an alternative. The Commission discussed including health care providers, hospitals, including emergency room staff in the education effort because members are not sure they are aware that this exist or that they are accessing the Lockboxes.

The Commission has a lot to accomplish in the next two meetings. Public comment will need to be restricted so the Commission can vote on its recommendations.

General Policy Questions

The Commission did not discuss or vote on any of the remaining General Policy Questions during the February 26, 2016, meeting.

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156 The Commission voted in favor of supporting legislation to expand the Secretary of State's Lockbox Program to include designation of guardian forms.

157 Ms. Gail Anderson, Deputy Secretary for Southern Nevada, Secretary of State Office provided a presentation and materials on the SOS Lockbox Program at the May 20, 2016, meeting. Please see page 100 for the presentation.

158 The Durable Power of Attorney Health Care Form under NRS 162A.860 includes language where a guardian may be nominated. This form can be filed in the SOS Lockbox.

159 Ms. Rana Goodman wrote an article: *A Guardian Preference Lockbox* that was included in the April 2016 issue of The Vegas Voice and can be found at http://www.thevegasvoice.net/uploads/2/8/1/0/28107857/vv_4-16_web.pdf.

I. NINTH MEETING

The Commission held its ninth meeting on April 1, 2016.[160] The meeting began at 1:00 p.m. and was videoconferenced between Reno, Las Vegas, Carson City, and Elko. The public was invited to provide comment[161] at the beginning of the meeting.

Press Release[162] Joint Investigative and Prosecution Team for Guardianship Cases

The press release from Attorney General Adam Laxalt, Clark County Sheriff Joe Lombardo, and Clark County District Attorney Steve Wolfson, announcing the joint investigative and prosecution team for guardianship cases, was distributed to Commissioners via email. Justice Hardesty has been working with Attorney General Laxalt since the Commission voted in favor of sending a letter to law enforcement to encourage increasing their approach in dealing with investigations concerning the subject matter of guardianship and elder exploitation. The Attorney General's Office coordination of this effort is being extended statewide to the district attorney's offices around the state.

Presentations

Eighth Judicial District Court's Data Collection Process[163] presented by Judge Cynthia Dianne Steel, Mike Doan, Riley Wilson

Guardianship cases were transferred from the Blackstone Case Management System (CMS) to the Odyssey[164] CMS in 2007. The Court's current active caseload spans from 1980 to current. The Court began to review its guardianship data and programs in 2014. Historically, the calendars in adult guardianship cases had been heard on Wednesdays between 9:00 a.m. and noon. The cases were handled through a two-tier system with a master hearing the case and then the judge approving the case following the findings made by the master. Judge Steel became the Guardianship Judge in June 2015,[165] and the Court immediately put a team together to review the guardianship caseload. The Court has a Compliance Officer for guardianship cases. The Clerk's Office ensures cases are identified property and items are being filed correctly. The IT Department has reviewed how the CMS is set up to ensure the Court is collecting the information needed to be able to see what is going on in each case.

The Court began creating a guardianship compliance report[166] in 2014, which allows the Court the ability to review their guardianship caseload.[167] In July 2015, the Court began case

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[160] Commissioners were encouraged to send their suggestions/recommendations that fit into areas Commissioners have voted on or will be voting on and/or specific changes to statutes or court rules Commissioners would like include in the final report by April 30. The goal is for the final report to cover all actions on the major policy questions and some specific recommendations within those policy questions.

[161] April 1, 2016, meeting total time of public comment was 10 minutes.

[162] The press release is included as **Appendix B.**

[163] The Eighth Judicial District Court's presentation is attached as **Appendix S.**

[164] Guardianships were originally entered as one case type but Odyssey allows the Court to enter the different case types to make a distinction between minor and adult guardianship cases.

[165] There were 8700 open and active cases when Judge Steel became the judge for Guardianship proceedings.

[166] The Court has now created an in-house Dashboard reporting system.

management and review, creating spreadsheets that show what is in compliance, what is out of compliance, what the case type is, and the status of the case.[168] Everyone involved in guardianship cases receives a custom report[169] each morning, identifying which cases are in and out of compliance. The report breaks down every case that is open, active, or adjudicated. There are 15 different case types so each evaluator has to be sure to capture the essence of each order that has been filed in the case, meaning each person had to read all the orders in the case to determine if anything was missing.

Mr. Mike Doan was asked to interpret the percentages shown under the headings entitled Guardian Compliance Report. Mr. Doan stated this was the Court's first attempt, in 2014, based on the events in the case and the documents that were filed to determine the percentage for annual accounting. The percentage shown for annual accountings was 3.62 percent. The Court knew 3.62 percent was low, so it looked at the CMS configuration and identified that the events were not being properly recorded. Justice Hardesty wanted to clarify that the slide is not suggesting that the facts are in 8,500 cases there were only accountings in 3.62 percent of the cases. Judge Steel responded no, that is not what the Court is saying. The computer had not been using the appropriate logic and people entering the reports were not properly titling the reports to get the right event entered. Justice Hardesty does not want there to be a misinterpretation of the status of the files, even though the computer might have offered some odd statistics, those statistics do not represent the facts. Judge Steel and Mr. Doan said that is correct.

Once cases were reviewed, the Court began to set hearings and noticing people to update the status of the case. The Court was able to automate the notices from the CMS and notices were mailed. The initial backlog included roughly 1,800[170] cases. The Court began organizing cases that were identified as being out of compliance and sent orders to show cause. Many of the people who came to court did not know they were required to provide an annual report, so this was an educational process.[171] The Court's subsequent letters were invitations to see how the Court could help them get back in compliance. The Court continues to review its caseload and identify whether cases should be closed.[172]

The Compliance Officer reviews all the petitions filed to see if there is an issue and if the case needs to be escalated.[173] The Court began tracking escalations in adult guardianship case in May

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[167] The Courts caseload was roughly 8,500 cases in 2014 and climbed to roughly 8,700 in 2015. With the assistance of the Senior Judges Program, the Court reviewed the 8,700 cases to determine if each case should remain open or closed, and if there was anything outstanding.

[168] Documents are hyperlinked to the spreadsheet.

[169] The report is between 107 – 120 pages long.

[170] Minor guardianship cases were separated from adult guardianship cases. Some minors had already emancipated and the case was closed.

[171] Guardians should be trained and educated on what is required of them as guardians.

[172] The numbers reflected in the PowerPoint presentation do not reflect the Eighth's ongoing effort to review its cases and identify those that need to be closed and those that need to be brought into compliance. As the Court works through its review of guardianship cases, it will continue to see improvements in the percentage of cases in compliance.

[173] Escalation could include someone calling in and saying the person wants to make a complaint about something, or it might be a something that is needed for the Protected Person. The escalation does not only include complaints.

2015. Referrals are also made to the Legal Aid Center of Southern Nevada (LACSN) if it looks like the Protected Person might need an attorney immediately.

Court statistics:

- Automated over 5,000 cases
- Automated over 3,800 notices that were sent out
- Has held over 4,500 hearings
- Averages 65 new guardianship case filings a month
- 2014 caseload showed 8,333 open and 195 reopened cases for a total of 8,575 cases
- Current caseload is
    - 2,378 adjudicated
    - 1,084 adjudicated with an annual hearing required
    - 282 reopened
    - 132 open cases
- Case types
    - 3,031 guardianships of the person and estate
    - 658 guardianship of person only
    - 160 guardianship of estate only
    - 27 sub-types to be determined
- Attorney Representation
    - 2,279 cases with attorney representation
    - 1,596 were pro se
    - 3,282 Protected Persons were not represented by attorneys
    - 594 had attorney representation

The Court is working to improve attorney representation for the Protected Person. Justice Hardesty asked if the Court has determined the percentage of the 3,800 cases wherein the Protected Person is indigent and those who are not. The Court has not been tracking this statistic, as it is not a part of the CMS at this time. The Court would not be able to determine indigence until the first inventory is provided to the Court.

Future efforts the Court is working on include the implementation of the "My Minnesota Conservator," aka CAAP software, the implementation of automated real-time notifications and mailings, and the National Standards for Guardianship Reporting. The Court has listened to community members and continues to improve its processes. The Administration has put in additional time to improve the system and is working hard to clean-up the case files and make this a positive experience for all involved.

General Policy Questions[174]

The Commission discussed, made recommendations, and voted on the following General Policy Questions during the January 22, 2016 meeting:

[174] Detailed information and the recommendation for each item can be found in Section IV Recommendations.

- Limited Guardianships
- Support the Concept Requiring Greater Evidence for Judge to Make the Determination of what Incapacity is and How that is Documented and Supported
- Use, Scope, Process, and Participation in Mediations
- Rules to Evaluate Court Supervision of Guardianships Including Training, Staffing, Scheduling, and Caseload Limits
- Use of Elder Protective Services or Some Entity Independent of the Court to Conduct Investigations
- Use of Auditors Independent of the Court System to Evaluate Financial Records, Fee Requests and other Petitions and Motions dealing with Financial Issues
- Use, Timing, and Caseload of Public Guardians
- Use and Appointment of Private Professional Guardians
- Limit Guardian's Authority to Isolate or Restrict Access to a Protected Person from Family and Friends.

J. TENTH MEETING

The Commission held its tenth meeting on April 22, 2016. The meeting began at 1:00 p.m. and was videoconferenced between Reno, Las Vegas, Carson City, and Elko. The public was invited to provide comment[175] at the beginning of the meeting.

Updates

A.B. 325 Private Professional Guardians report provided by Susan Hoy and Kim Spoon

A workshop was held by the Nevada's Division of Finance on April 8, 2016. A hearing was held the following week and the Legislative Counsel Bureau adopted the language that was presented and discussed at the workshop. Another hearing will be scheduled in June before the Legislative Committee. Once approved the licensures for private professional guardians should begin.

The Commission discussed the concern that fewer private professional guardians are expressing interest to continue in the business. Nevada is not losing prospective Protected Persons, but it is losing people who would be serving those prospective Protected Persons. Ms. Kim Spoon and Ms. Susan Hoy were asked to prepare a memo for the Commission for the May 20 meeting. The memo will address two subjects:

1. Are there any areas within Assembly Bill 325 that should be reevaluated or reconsidered by the Legislature that the Commission should discuss? and
2. What steps could be taken to attract ethical, responsible, private professional guardians in support of this system as a profession?

[175] April 22, 2016, meeting total time of public comment was 43 minutes.

Legal Aid Center of Southern Nevada (LACSN) Guardianship Advocacy Program report provided by Christine Miller

The Guardianship Advocacy Program (Program) has 30 cases and continues to receive referrals from a variety of sources including the courts, Elder Protective Services (EPS), Las Vegas Metropolitan Police Department (LVMPD), and direct requests for assistance from people who are currently under a guardianship. Ms. Christine Miller stated there is no doubt that their clients are benefiting from having their voice represented in Court as well as their legal interests protected and served by counsel. Ms. Miller raised the issue related to nontestamentary trusts involving beneficiaries who are also Protected Persons. Clients do not know how much they have in assets or how trust money is being spent down, if it is at all. In a worst-case scenario, Ms. Miller discovered that when trust assets had been depleted, the client often has no idea how or what the funds were used for. It is important for this Commission, in terms of legislative changes, to require that trust accountings are filed in a guardianship case. If we are looking for transparency, if we want to account for a person's complete assets, we need to know not only what a person's monthly budget is, but also what the regular annual accounting is.

Presentations

Attorney Fees presentation[176] provided by John C. Smith, private attorney, and Homa Woodrum, private attorney

Mr. John C. Smith began his presentation by stating that in order to consider the factors of reasonableness, in terms of guardianship fees, guardianships should be viewed as a unique process, particularly in the law. Guardianship is an interdisciplinary practice involving social, medical, and legal professionals. It almost exclusively involves people he termed "other centered."[177]

Mr. Smith provided a mission statement for guardianship:

> *The guardianship should be a compassionate process that requires predictable accountability and focuses on the most appropriate financial and personal care solutions at the beginning of the process with built-in safeguards to ensure the best interest of the Protected Person are primary while using the least restrictive means to achieve this.*

Most guardianship cases Mr. Smith is involved in and the actions of other professionals are consistent with the mission statement. What is also derived from this viewpoint is the conclusion that a guardianship is a front-loaded process. Mr. Smith's primary efforts at the initiation of the guardianship are to determine if a guardianship is necessary, and if there are other possible solutions. The bulk of the work of the entire guardianship petition should be concluded before a petition is filed. Interested parties, judges, and other professionals need as much information at

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[176] The presentations are included as **Appendix T**, including the letter submitted by Hank Cavallera with recommended statutory amendments addressing attorney fees. The Commission approved legislative recommendations are included as **Exhibit K.**

[177] This includes people whose values, work ethics, and vocational endeavors are geared towards the needs of others.

the filing of the petition as they can possibly receive. Information in the form of a preliminary cost of care budget is needed and any relevant information in addition to the statutory minimum. It will take effort, communication, planning, and strategy to work things out on the front-end. This is appropriate because a guardianship is like forming a new business and that business needs to demonstrate that it can be successful and attain its objectives with the resources it has been given and the challenges that are identified.

Considering the Texas Model and paradigm of guardianships, the next question is how guardian and attorney fees should be considered for review and approval. There are already ample guidelines and structures in place in NRS Chapter 159, the Nevada Rules of Professional Conduct, the *Brunzell*[178] factors, and local district court rules that allow the proper review and adjudication of the reasonableness of fees by the judge. Mr. Smith noted the judge is best suited to make the decision in these matters. That is not to say there should not be input by parties, the guardian, and other stakeholders, but the final decision should rest with the judge.

Mr. Smith posed the following recommendations:

- Written fee agreements – It is imperative that there be a requirement for written fee agreements at the beginning of any guardianship action by an attorney. This promotes transparency, allowing a person to know what he or she is committing to at the front-end.
- Require the breakdown of fees/duties in the detailed proposal; what the attorney did and what staff did.

The video connection between Carson City and Las Vegas was lost for three minutes.

While staff worked on getting the video reconnected Justice Hardesty said the recommendations Mr. Smith was making would dramatically change how attorney fees are addressed in the future – mandating written fee agreements approved by the Court. Agreements that divide duties and establish an approval process consistent with the Nevada's Rules of Professional Conduct and the *Brunzell* factors would be a change from what has been done before based on prior testimony. Justice Hardesty noted Mr. Smith's attachments include a sample fee agreement as well as a breakdown of fees that should be charged for functions performed in guardianship cases. This is specific, rather than fees being generated by some difficult process of describing and identifying the work, we now have fees based on a function. The function is spelled out and in guardianships can be specifically identified. Mr. Smith is not just recommending this, he is doing this and it makes a difference in the fees that are received in a guardianship proceeding. It makes it easier for a judge to assess those fees when reviewing fee requests. The fees are now being compared to a written agreement and the functions that have been performed.

The video connection was reestablished.

Mr. Smith was asked if he would have any objections to having the written fee agreement approved by the Court. Mr. Smith did not have an objection. The fee agreement is part of the tools an attorney should be using to explain the engagement of the entire process. Mr. Smith

[178]*Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 350, 455 P.2d 31, 33 (1969).

often has a relative contact him first and then he ends up working with a private professional guardian, and this raises the issue of who the client is and who is controlling this. Mr. Smith includes language in his agreement that tries to address this so that the person who initially comes to him stays involved and understands his or her role in this process.

Justice Hardesty asked Mr. Smith to comment on the review of the approval process. Mr. Smith said he does not lack guidance, rules, or structure in how to charge fees in these matters. Mr. Smith should be able to take any request, place them against the guide, rules, structure, and see if they match up. If they do not match up, the fees should be disallowed. Mr. Smith said the *Brunzell* factors determine what charges should be and how he might explain those charges to a client. Mr. Smith looks at those factors with a view of if he should ever have to defend the fees how do they square with these guidelines. He finds the *Brunzell* factors to be helpful in explaining the considerations that go into reasonableness of fees to his clients.

Discussion

Ms. Barbara Buckley suggested the focus should start with the recognition that this is the person facing the guardianship's money. They built their nest egg. There have been arguments falsely created to enhance the billing. Ms. Buckley said while you do not want fees so low that no one will perform the work, you do not want to exceed the rate that is available for that work in the community. Ms. Buckley said the standard has to be different from the *Brunzell* standard, and is has to start with that fundamental premise. The billing should be commensurate with the task that needs to be done and disallowed in any case where the guardian has failed to do his or her duties, ignored the needs of the Protected Person, exploited the Protected Person, or overbilled the Protected Person.

Mr. Jay P. Raman echoed Ms. Buckley's comments and was concerned with the recommendation that the judge, as an elected official, should be the one determining the attorney fees. Mr. Raman suggested a universal fee schedule. Mr. Raman said if the Commission could conclude what is reasonable, then the discretion would be taken out of the hands of the judge and then we are looking at the work that has been done. Mr. Raman asked Mr. Smith if he is referring to attorneys who represent guardians or attorneys who are assisting in some other facet of the guardianship. Mr. Smith responded it would be attorneys assisting guardians but it could also potentially apply to attorneys who have been assigned to the Protected Persons. Mr. Smith stated guardianship proceedings are nowhere close to the same process as probate, which has predictable defined steps and actions. In a guardianship, you are dealing with a living person. In 500 cases over the last 10 years, Mr. Smith has never seen two cases the same.
The Commission discussed what is meant by front-loading and when the Court would weigh-in on the fee arrangement if the work were done prior to coming to Court. Mr. Smith explained in this area, the fee application is not made until well after the petition is filed and not heard until the permanency hearing. His point regarding front-loading is he cannot wait to see if something is going to be approved and he does not want to be limited by these being the most fees he can get. In his view, the front-loading of the guardianship process is when you expend 80 percent or more of your efforts to try to get this right the first time.

The biggest challenge for a judge is to try to decide if the fees are reasonable and necessary. Many times the judge is deciding this after hundreds of hours of work have already been applied and the fee request comes in at an amount that exceeds or consumes the value of the Protected Person's estate. If this had been requested on the front-end, the judge might not have authorized the fees. There needs to be some front-end direction on which estates are appropriate to access any fees, and a limit on what those fees might be, similar to probate where there is a percentage of the estate charged for fees and that is the limit.

Justice Hardesty stated one area in which the Commission could offer meaningful input and recommendations is to require the front-end include the plan for the payment of professionals who are going to be reasonably necessary to implement the plan. This would include attorneys. In criminal cases, the indigent criminal defense attorney must secure approval from the court in order to hire firearm experts, DNA experts, etc. Those fees are capped and are consistent with what is known to be specific charges. The parties should know enough at the beginning to identify what is reasonably necessary for attorney fees in each case. When a judge is confronted with a case, the case plan for the Protected Person should be agreed upon in the beginning. The case plan should address the scope, nature, and amount that are going to be allocated for professional fees.

Judge Frances Doherty said it makes sense in cases where there is an agreement, as those fees are generally the same across the board. Fees rapidly increase in contested cases and when the Court has pushed back, the reactions have been significant and the response hostile. The National Center for State Court (NCSC) recommended the Second Judicial District Court have a fee schedule for attorneys and guardians. Not to mandate those fees, but to provide guidance to everyone who enters the system. When contested cases occur and alternative dispute resolutions cannot resolve the case the Protected Person's estate is being spent on very litigious matters. Sometimes the cases settle quicker when relatives become aware that they may be assessed the fees. The *National Probate Court Standards (NPCS)* recommend that either the Administrative Office of the Courts or jurisdictions set guidelines of schedules. The Commission had reviewed other state's fee schedules at a prior meeting.[179] If the public were provided that notice, attorneys would come into this area with notice and could gauge their costs and work.

The other area the Court struggles with is pre-filing activity of the petitioning guardian and the attorney. Who should pay for that? Should the person facing the guardianship pay for all the investigation? Judge Doherty said she continues to cite national standards and those entities have suggested the Courts recommend schedules for attorneys and guardians. *Brunzell* is great but it does not fit every component of this work.

Commissioners were asked for their thoughts on a fee schedule being adopted by the Supreme Court that judges must follow and any deviation requires special findings.

[179] Other state fee schedules are included as **Appendix D.**

Suggestions:

- Fee schedules should be determined by local rule in each jurisdiction. What is reasonable in one county may not be reasonable in another. The Commission should also make sure the fees are not too low, discouraging experienced attorneys and guardians from taking these cases.
- In addition to a fee schedule, there could be a statutory cap limiting the attorney fees to a percentage of the estate, similar to what is done in probate cases. A mechanism for extraordinary fees or circumstances could be added requiring the Court to approve those fees.
- Review the Arizona Model.[180]
- Utilize the business practice concept and anticipated budget. The medical profession has usual and customary fees. The recommendations could adopt a usual and customary fee schedule that would incorporate the proposed budget, which is a guideline for expenditures. There could be exceptions, if the action required in a specific case is complicated and requires more work than what is usual and customary, a provision could be included that would authorize those exceptions.
- Loser pay rule. When family members are fighting over who should be guardian, they should be doing this at their own expense, not at the expense of the Protected Person and the Protected Person's estate. Justice Hardesty added this is an area where there could be significant reforms, changing the way these issues are perceived.
- Have the plan of care presented early on with a budget. This would provide an opportunity to do a case assessment. If there is X amount of dollars in the estate, do we want to be spending the money on home health care or other needs of the Protected Person, not on attorneys?
- Create a legal presumption. That it is presumed that fees would not be allowed from the estate if...and then list some factors where the fees would not be allowed.

The Commission discussed early case conferences in family law. During early case conferences, many issues are addressed and if one side wants the other to pay fees they have to file a motion documenting what they expect will happen in this litigation. The parties provide information on the type of research, investigation, etc. that might occur, develops a plan, and says how much money they need. Judge Doherty stated she is not concerned about the quickness in which the Court responds to the issues; her concern is the highly contested cases that involve higher sums of money. The cases are case managed quickly and the court advises who may be liable for the fees early on when there are interfamilial disputes. Judge Doherty does not think the family court cases are transferable because the Court does see the cases soon and has those discussions earlier already.

The Commission discussed a fee-shifting provision in contested cases. Judge Doherty noted that is exercised at the Court's discretion and spoilers in the case do pay for their intrusion, if it can be detected. The shift of the winner takes all or the loser pays all is a little too defined. On the

[180] Arizona Model – Code of Judicial Administration – Chapter 3. Probate Court – Section 3-303 Professional Services: Statewide Fee Guidelines and Competitive Bids. The link is included in the References and Resource Page.

other hand, a recommended schedule of fees is what the Court needs to manage, control, and exhibit that level of knowledge to the participants early on. The Court does not allow for bulk billing in guardianship cases and standardized bulk billing in trustee or guardian billings needs to be eliminated. Every person needs to be accountable for every minute spent on a guardianship case. Other gray areas include to whom the guardian bills the trustee fees. Are the fees billed to the trust and does the Court have to approve it? The stakeholders in the Second Judicial District Court are grappling with this now.

The Commission should review approaches on how fee requests are going to be reviewed and at what stage of the proceeding. The Commission discussed the need for a cap based on the size of the estate, similar to the Arizona Model.[181] Once that is exhausted, there are no more fees; there is no more money available. This should include accountant, realtors, stockbrokers, etc., and their fees. The whole area requires a cap on professional fees before they are incurred.

Ms. Susan Hoy and Ms. Kim Spoon provided an overview of how they address these issues with the attorneys they hire. Ms. Hoy explained private professional guardians (PPG) are required to have legal counsel for their errors and omission liability insurance. Private professional guardians cannot do anything that would be viewed as acting in a legal capacity, which requires putting the Protected Person in a position where the person's estate becomes subject to attorney fees. The Protected Person's needs have to be met first; the guardian's role is to look out for the Protected Person, not to become part of the litigation. If the guardian becomes a part of the litigation and the guardian's fees start escalating, those fees need to be reviewed. It is the guardian's role to look out for the Protected Person while the other parties fight it out. Ms. Hoy said when the Commission looks at fee structures, guidance, and legal presumptions it needs to think about the contested matters as well. The guardianship fees should not be driven up by contested matters.

Ms. Spoon said the PPG do everything they can so that a contested hearing does not escalate to a contested hearing. Ms. Spoon has not been to a contested hearing in 8 to 10 years because they have been successful in working through the issues prior to the hearing. It is important that the attorneys involved understand the nuances of guardianship cases and are educated in how guardianship works. Ms. Spoon has seen issues in the past when attorneys who were not familiar with guardianship cases were hired by families. Ms. Spoon said when a Protected Person's funds go below $10,000, the PPG normally stops taking fees as do the attorneys who work for the PPG.[182] Justice Hardesty added if private or public guardians engage in legal work they are engaging in unlawful practice and could be subjected to prosecution. Therefore, the public, private, or family guardian has to have an attorney to perform certain tasks.

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[181] Arizona Model – Code of Judicial Administration – Chapter 3. Probate Court – Section 3-303 Professional Services: Statewide Fee Guidelines and Competitive Bids. The link is included in the References and Resource Page.

[182] The PPG and attorneys keep the case even though the Protected Person does not have the funds to pay for their services. The PPG and attorneys are often not recognized for taking cases for years without payment.

Ms. Homa Woodrum provided a presentation on attorney fees.[183] Ms. Woodrum said she does not receive payment in 50 percent of her cases, which is also a consideration in the private sphere. When a client pays, Ms. Woodrum requires proof that the funds to pay the retainer fee are not coming from anything that belongs to the Protected Person's estate. The law looks at reasonableness and the ability of the estate to bear those fees.

Ms. Woodrum provided two case examples. In the first case, the attorney billed 6.9 hours for one year of work, and in the second case, an exploitation case, almost 90 hours were billed in a year. Ms. Woodrum suggested the Commission consider the concept of fee shifting. Ms. Woodrum stated there is a reasonableness standard included in current law and there are the circumstances where you have to balance what has been spent against the estate but it is not a direct correlation to the value of the estate because a guardianship is person centric. It is about the individual, and the person's care and future. There are overheads. There are insurance requirements. The statute provides for bonding and insurance.

Ms. Woodrum suggested the *Brunzell* factors could be used to the extent that they are going to validate the attorney fees. The guardian should be receiving a bill from the attorney every month and if something is not appropriate, the guardian needs to communicate that with the attorney. Ms. Woodrum said her office creates separate numbers that are associated with the establishment and maintenance of a guardianship case. Separating the two allows an attorney to show the Court that these are the two sets of fees. The most powerful thing that can be done is to get representation for Protected Persons and guidelines for representation to be paid so you get the best possible counsel for these individuals and continue the efforts of self-help assistance. Justice Hardesty said Ms. Woodrum made a good point. There is a difference between fees for the administration of the guardianship and fees incurred in context of disputes. How the Commission looks at and approaches those fees might be a good dividing line.

Mr. Jay P. Raman raised a scenario in which $7,500 was due for attorney fees but the Protected Persons estate did not have the money to pay those fees. The attorney requested a lien on the Protected Person's home and the lien was granted. Mr. Raman asked Ms. Woodrum if she has seen this happen. Ms. Woodrum responded she had not seen an attorney request a lien to be added to a Protected Person's home for attorney fees. Ms. Woodrum said she and others have been advocating for an extension of Nevada Rules of Civil Procedure, Rule 60, which would reconsider those types of orders. There is older Nevada case law, related to a minor guardianship, where the Court ruled that the claim about the order was stayed until the individual had capacity or representation. In that case, Ms. Woodrum's argument would be to find a remedy in that situation and carve out a dynamic, where you could reopen some of those decisions. Not just for failure of notice, but for lack of reasonableness, and make the grounds that they have representation and that someone is watching. Ms. Woodrum would recommend this.

[183] Homa Woodrum's PowerPoint presentation is included as **Appendix T.**

Nevada Rules of Civil Procedure (NRCP)[184]

Justice Hardesty suggested deviating from the attorney fee discussion to address the question of NRCP 60, as a means of reopening certain prior decisions that have been made by a Court. Justice Hardesty did not know what position judges around the state had taken regarding whether Rule 60(b) applies to those circumstances. It is something that could be clarified immediately, especially if there are cases pending where people are trying to reopen prior orders because the order was entered at least according to the allegation that it was fraudulent. It would be worthwhile if the Commission made a recommendation to the Court on the questions, surrounding this area of civil relief. This does not involve the Legislature; this simply has to do with existing court orders that might be subject to some defalcation.

Judge Nancy Porter responded she has never had this issue come up but moved to have the Nevada Supreme Court consider the application of NRCP 60(b) to Guardianship cases.

Discussion

Judge Frances Doherty has not had a NRCP 60(b) motion in guardianship court. She would immediately consider it applicable and perhaps it needs to be clarified that those rules are applicable. Judge Doherty said while the Commission is on the topic, it should also consider clarifying whether the Rules of Evidence apply, especially in contested guardianship hearings. In their research, the challenge of conducting contested hearings is the argument of whether the Rules of Evidence apply or whether a physician needs to be available for cross-examination. This is a constant point of discussion. The Court reviewed national appellate court cases and almost all appellate court cases where this issue has arisen found that the Rules of Evidence do apply. Judge Doherty added there are four or five states that have put the provisions in their statutes that the Rules of Evidence apply in guardianship hearings, such that the right to cross-examination exists in a contested case.

Judge Nancy Porter accepted the amendment to her motion to extend this to the Rules of Evidence. Judge Egan Walker seconded the motion.

Ms. Kim Spoon stated she could not vote on the motion because she was not familiar with the rules that were being discussed. Justice Hardesty explained the NRCP was enacted by the Nevada Supreme Court, and is a set of rules by which all civil actions are governed. The rules spell out procedures for dealing with depositions, procedures by which most motions are processed and opposed. NRCP 60 deals with post orders, post motions made after an order has been entered in which a party wants to contend that the order was either a product of mistake or inadvertence or on a broader spectrum, a fraud upon the court or just general fraud. The previous order can be revisited if that is the case. Justice Hardesty offered a hypothetical scenario – someone submits, in the context of a fee application, an application seeking compensation for 27 hours for one day. If there were no objections, the fee request could be approved. The motion

[184] The Nevada Supreme Court entered an order on July 22, 2016, in response to the Commission's request to clarify the application of the Rules of Civil Procedure and the evidence code to guardianship matters. Click on the hyperlink Administrative Docket 507 document 16-22815 to access the order.

practice in NRCP 60(b) would allow the person who is aggrieved to ask the court to revisit that order because it was based upon a mistake, inadvertence, or upon a fraud upon the court. There could be a reasonable argument that this was a typographical error or there was some fraud upon the court. Justice Hardesty's question is should the Supreme Court clarify the application of that rule so people who want to go before the District Court on an NRCP 60(b) motion would be able to if the Supreme Court agreed it applied.

Justice Hardesty said as to the Rules of Evidence, the Nevada Legislature has enacted a series of statutes that spell out evidentiary hearing rules. The rules govern best evidence, hearsay, etc. Evidence that is presented to a Court that is not in conformance with the rules of that evidence should be rejected by the Court and not considered in its fact-finding determinations. There had been a question about whether evidentiary rules apply in family law and guardianship cases. Hearsay is also particularly important especially in guardianship and other areas where someone is telling the judge someone out of court is saying something and it goes to the truth of the matter as asserted. The point of the motion is to clarify that these rules, that govern every other civil action in district court, would apply equally to guardianships.

Mr. David Spitzer, Washoe Legal Services, added a note of caution stating they have encountered the hearsay objection to the physician's certificate for a petition for guardianship filed by the public guardian and their attorney, the district attorney's office. The public guardian and district attorney's office will not pay the doctor to come to court and many times doctors do not want to or will not come to court. There needs to be a balance in terms of a chilling effect that the rigid application of the guardianship situation of the rules might take place. The public guardian in Washoe County, at least in part based on this consideration, has quit filing petitions. Justice Hardesty acknowledged the potential problem but thinks the issue should be addressed in the context of the rule itself. The overall question is whether the rules apply.

Ms. Spoon said Justice Hardesty's explanation helped her understanding but tailing on what Mr. Spitzer said they were always under the understanding that evidentiary hearings, contested hearings, were a mini trial and you had to have doctors there; that this is where everything takes place. Justice Hardesty clarified the Rules of Evidence can be waived. If you are having a hearing and have the physician's certificate and there is no objection, then the hearsay objection has been waived and it is admissible. It is only when there is an objection made under an applicable rule then the judge rules on whether it should be admitted or excluded. In uncontested, undisputed cases where there is no objection, the hearsay objection is waived and the certificate or some other document is submitted.

Judge Doherty stated this is a great example of past practice and current practice. The recognition is because the statute specifically contemplates the physician's certificate being attached to the petition. There is grayness in the understanding as to what the point of that physician's certificate is. Is it to continue through our path of the entire case as the evidence and support, or in a contested hearing does the respondent have both the ability to raise the Rules of Evidence and the ability to raise the constitutional process objections? Without clarification that the Rules of Evidence apply in a contested hearing, it is a gray area for the guardianship courts, and is subject to quite a bit of argument. It seems clear to Judge Doherty that the statute requires the physician's certificate as a prerequisite to the filing, to put individuals who might be

interested on notice, including the respondent. In addition to the petition notice with the allegations the actual medical evidence is attached at the onset to allow the individual to contemplate whether to object, concur, or partially object. Once an objection is raised the Rules of Evidence are applied from her point of view, but that is not a consensus and it would be very beneficial and consistent with most appellate court rulings that clarify that the Rules of Evidence apply.

Judge Walker agreed it would be helpful to have guidance in this area. Another example is in minor guardianship cases. Judge Walker appoints Guardians ad Litem (GAL). Nevada Revised Statutes Chapter 159 contemplates the GAL offering the report, a written report often, and the question always becomes what you do with it. A GAL report often has many levels of hearsay. Judge Walker would prefer operating by the Rules of Evidence.

> **Judge Nancy Porter moved that the Supreme Court consider the application of NRCP 60(b) and Rules of Evidence to Guardianship cases. Judge Egan Walker seconded the motion. Motion passed.**

K. ELEVENTH MEETING

The Commission held its eleventh meeting on May 20, 2016. The meeting began at 11:00 a.m. and was held at the University of Nevada, Las Vegas, William S. Boyd School of Law, Thomas and Mack Moot Court. The public was invited to provide comment[185] at the beginning of the meeting.

Presentations

> Florida Auditing Program presented by Sharon Bock, Clerk and Comptroller, Palm Beach County and Anthony Palmieri, Senior Internal Auditor, Division of Inspector General, Palm Beach County[186]

Ms. Sharon Bock, Clerk and Comptroller, and Mr. Anthony Palmieri, Senior Internal Auditor, Division of the Inspector General, from Palm Beach County Florida presented Florida's Auditing Program for guardianship cases.

Ms. Bock acknowledged Justice Hardesty's efforts in bringing the Commission together to do this very important work; the Commission should be commended for this. The financial monitoring and auditing of guardianship cases is one of the emerging issues in the United States. Two issues, which are highlighted at the federal level, are the monitoring of the Protected Person's financial assets and the overuse of psychotropic drugs.[187]

Florida and Nevada are on the leading edge of what has been referred to as the "Elder Boom" because of the ever-expanding elder population. The U.S. Census chart illustrated that during the

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[185] May 20, 2016, meeting total time of public comment was 29 minutes.

[186] Florida's presentation materials are attached as **Appendix U,** and where available, links to documents are included in the Reference and Resource page.

[187] Ms. Bock recommended the Commission hear a presentation on the overuse of psychotropic drugs.

20th Century the "over 65" population grew from 3 million to over 37 million people, accounting in the 20th Century for about 12 percent of our total population. A further breakdown illustrated the population of those ages 85 and older grew from 100,000 in 1900 to 5.3 million by the turn of the century. The Baby Boomers are those born between 1946 and 1964 and turned 65 starting in the year 2011. By examining the graph, it is clear that the number of older Americans have and will continue to increase dramatically between 2010 and 2030. By 2030, the older population is estimated to grow between 35 million to over 71 million people. Florida is ground zero in leading this projected growth trend. Florida is currently where other states will be by the year 2030, that is, nearly 20 percent of Florida's population already consists of residents 65 or older, making Florida the leading state per capita for persons age 65 and older, but also the leading state for persons age 85 and older. Nevada's population of residents 65 years of age and older is over 14 percent of the states total population.

Experts report that one of the first faculties to be impaired by Alzheimer's type dementia is financial cognition. With an estimated half of the population age 85 and older, having Alzheimer's related diagnosis, the link between diminished capacity and an increase in guardianship case filings is clear. Florida alone has nearly as many Alzheimer's diagnoses as California despite only having about half of the population of California. This means that Florida, long before the rest of the states, has been forced to develop policies and strategies to meet and most effectively address the needs of the aging population.

It has been clearly documented that as aging takes place, there is a corresponding transfer of wealth. Constitutionally, individuals are presumed to have the capacity to handle their own financial affairs through mechanisms such as wills, trusts, and other legal proceedings. However, for a myriad of reasons many individuals end up with the courts assuming this role. Today there are approximately 1.5 million people under the courts' guardianship jurisdiction in the United States. It is estimated that third parties control well-over $270 billion in assets across the United States. In Palm Beach County alone, the court-appointed guardians control about half a billion dollars, in just over 2,800 cases. For this reason, objective and professional monitoring and reporting of court-appointed guardian's assets to the court has received the increased scrutiny of the media, victimized families, and advocacy groups. Because of the increased interest sparked by advocacy groups, Ms. Bock had been invited to participate in a national conversation about court-appointed guardians led by the assistant secretary for the federal Department of Health and Human Services. The good news about the conversation is that when the federal government finally looks into guardianship, there will be money to fight for across the country, for states like Nevada.

Like Nevada, there are several proactive states looking into individual audits and investigations to determine how court-appointed guardians are managing their protected persons' financial assets; many of those states are also considering Florida as a model. Currently, twelve states have mandated annual reviews on their guardianship statutes, including Florida and Nevada. Nevada Revised Statute 159.176 and NRS 159.177 (1) require the filing of an annual court guardianship review and annual accounting respectively. It has been reported that in Clark County less than half of the 3,800 active guardianship cases are actually audited or reviewed on an annual basis, and this is common among most states. In contrast, under Florida Statute 744.368, the clerks and courts are mandated to audit guardianship reports, including the initial

inventory and annual accounting, and advise the courts of their confidential findings. Florida is a unique national model because it has 100-percent compliance with the statutory mandate.

As the clerk of the Circuit Court, the court has a very unique role within the court system. Because the Clerk and Comptroller are an independent third party whose duties run directly to the citizens and because they do not have a relationship to the outcome of a case, they are able to provide ongoing support and audit reporting which are neutral and unbiased statements of fact. The reports arm the judges with in-depth knowledge in which to make their decisions. An important outcome of their audited cases is that the judges' decisions are accepted by all stakeholders including families, advocacy groups, and guardians. The concept of independent auditing is the hallmark of a good audit program. Ms. Bock's office has complete and unfettered access to all court records, including confidential records, and has direct access to the records and the judges themselves. Clerks will sit in court hearings and are able to tell the judge some of the audit findings. The audit findings are confidential, no one has access to them, and this was done statutorily. Clerks who perform audits and investigations are highly trained to detect malfeasance and fraud in accordance to nationally recognized audit and investigatory best practices, specifically, because we are accredited by Florida's Commission for Law Enforcement Accreditation, our audit reports and investigations are readily relied on by law enforcement in the event of prosecution. Other professional certifications held by Ms. Bock's staff are; certified inspector general, certified inspector general auditor, certified inspector general investigator, certified public accountants, certified fraud examiners, certified internal auditors, and certification and control self-assessments.

Mr. Anthony Palmieri stated all guardianship initial verified inventories and the annual accountings are audited by specially trained deputy clerks. Enhanced audits are performed by professional auditors within the clerks Division of Inspector General when significant red flags are identified in a guardianship case. Since passage of a 2014 statute, Florida clerks have been performing the enhanced audits. The components of enhanced audits and investigations include third-party verifications. The clerks' statutory duties include the ability, with court permission, to subpoena and obtain any records they may need from a guardian or third parties to conduct an audit or investigation; the documents can be bank and brokerage account statements, medical records, attorney files, and a host of other documents. The investigative techniques may include an inspection of bank vaults, safe deposit boxes, and physically verifying reported personal property, including the contents of art and jewelry collections. In addition, clerks may scrutinize all publicly and commercially available information about the guardian, including social media accounts, court records, law enforcement records, and real and personal property records. If need be, clerks may interview any party including but not limited to the person under guardianship, the attorney, guardian, and any other party that may have relevant information regarding the audit or investigation. If serious or potentially criminal activity is uncovered, clerks have the authority to conduct covert surveillance.

Enhanced audits can be very time consuming and expensive. There are three ways a case is triggered to receive an enhanced audit. First, the specially trained clerks may find a red flag; the Commission was provided a list of the most common red flags in the meeting materials.[188] Second, a judge may request an enhanced audit for a case. Third, a case may trigger an enhanced

[188] The materials are included as **Appendix U.**

audit through a notification through the clerk's Guardianship Fraud Hotline (Hotline).[189] Hotline cards and posters were distributed throughout the county and especially in areas of high concentration of the elderly such as 55 years and older communities and assisted living facilities. Through this program, the clerk's office takes part in a training of guardians, family members, caregivers, bank personnel, law enforcement, medical staff, adult protective services, and others, to help identify financial exploitation in guardianships.

Mr. Palmieri walked the Commission through an ongoing case to illustrate the process. Protected Person X is a recently widowed 85-year-old who was adjudicated incapacitated due to her diagnosis of progressive Alzheimer's dementia. The court appointed an attorney who served Protected Person X in a dual role, as her attorney and as her guardian, which is allowable under Florida law. Two red flags were noted by the clerk deputy: first, there were almost 30 notices of unavailability pleadings filed in the guardianship case files; and second, excessive attorney fees for administrative work were being reallocated by the court to the attorney's guardianship bill, which was a clear indication that the court was not pleased with the guardian's billing practice. After reviewing the red flags, an enhanced audit was initiated where all disbursements, including capital transactions and attorney and guardianship fees in a Protected Person X's case were reviewed. Beyond Protected Person X's case, Florida has scrutinized every case the attorney had open in the circuit. By looking at the attorney's work broadly, the clerks noted all the attorney's notices of unavailability pleadings and compared them to her own records. In the end, it was concluded that although she was on vacation, she was simultaneously billing for and collecting thousands of dollars of unearned, yet court approved attorney and guardianship fees from the Protected Person X as well as other Protected Persons. The suspicions were confirmed by looking at the attorney's Facebook page where she had posted her vacation photos. In reviewing Protected Person X's case files, it was also discovered that the guardian petitioned the court and was authorized by court order to sell Protected Person X's residence. After researching home values in the area, the clerks became aware that the proposed sales price was less than half the appraised value, this triggered a more extensive investigation of supporting documentations. What was found was an email docketed in the case from the listing real estate agent to the guardian. The first thing the clerks noticed was the guardian redacted in black marker some information on the email. Using some technology, the clerk was able to uncover the redacted part that stated, "Hello Mom." The guardian was the listing real estate agent's mother, which is a significant violation of Florida guardianship law in the conflict of interest statute, Fla. Stat. § 744.446. A few other noteworthy findings of the investigation revealed the house was purchased by a company with connections to the listing agent; it was renovated for $25,000 and was sold or flipped three months later for about $190,000. What was even more egregious was that the attorney, in this case, was a former general magistrate, or commissioner, in Florida's court system.

Ms. Bock stated during Protected Person X's case investigation, the courts were apprised of the findings throughout and upon conclusion, because of the information, the judge's action was swift and undisputed. Another important outcome of the audits and investigations is that because the clerks use professional standards, law enforcement can use the audit information provided by the clerks to find probable cause to pursue guardians criminally. Unethical and fraudulent

[189] The Guardianship Fraud Hotline began in 2011 and was the first in the nation that allowed confidential reporting by the public.

behavior by guardians in Florida has now moved from civil courts to the criminal courts, creating a deterrent effect that has rippled throughout the guardianship community, weeding out those who prey on the weak and vulnerable. Since September 2011, the Clerk and Comptroller's Office has received over 600 calls to the Hotline, initiated over 900 audits and investigations, identified over $5 million returned to the Protected Persons, referred over 20 cases to law enforcement with two arrests, and passed 5 guardian attorneys to the Florida Bar for investigation and disbarment proceedings.

Locally, the Florida State Attorney has collaborated with Ms. Bock's office to further educate the public and train law enforcement in recognizing the signs of elder abuse, particularly with first responders. A bill was passed for the first time in 2016, giving the Florida Department of Elder Affairs (Department) the opportunity and the obligation to allow the certification, registration, monitoring, and disciplining of professional guardians on a statewide basis. The Department is working with the clerks who are conducting the audits and investigations at the local level, and then sending the findings to the state level. This is one of the reasons Florida's model is going to continue to get better. Most of the problems clerks encounter is with family guardians; the clerks have been embraced by the Professional Guardianship Association and have received numerous awards. Ms. Bock's office trains the professional guardians and they go to every state guardianship annual conferences. Ms. Bock stated her office has found that for the most part guardians and professional guardians want to do the right thing. Ms. Bock thanked the Commission for the work being done in Nevada and offered to answer any questions.

Justice Hardesty asked Ms. Bock if the position of Senior Internal Auditor with the Division of Inspector General was a position created by the legislature. Ms. Bock stated under the Comptroller function of her job description, she holds the position of County Auditor as well and she created and certified, under the Inspector General's Office and the Association of Inspector Generals, Mr. Palmieri's position. Ms. Bock hired Mr. Palmieri to run the guardianship program. The program consists of six trained deputy clerks. Ms. Bock is working with the Department of Elder Affairs to receive grants; the county commissions have helped fund Mr. Palmieri's position. Ms. Bock stated a guardianship is so individualistic and not a single case fits into a specific mold, each case is very different from the next. Ideally, having auditors at the local level who know the advocates, the guardians, and who work closely with judges would be best.

Justice Hardesty asked, since some counties in Florida are rural, if the rural Clerk Comptroller Offices offer the services provided by Mr. Palmieri or if the auditor services are provided by the state or other counties. Ms. Bock responded Florida has 10 urban counties out of 67 counties; Palm Beach County is a largely agricultural county and Florida has more rural counties than urban counties. Florida is divided among seven regions. Some counties may only have ten guardianship cases and everyone in the state does the level one audit, which consists of reviewing the inventory and annual accounting. What cannot be done at the level one audit is bringing in the professional auditing. Florida has strategically placed accredited Inspector General Offices and divided the state into regions in order to break out services to all regions.

Justice Hardesty asked if Ms. Bock is providing auditors for services for counties outside of Palm Beach. Ms. Bock responded yes, and the services were for enhanced audits in which the cases would need to have the conditions for this type of audit.

Justice Hardesty asked Mr. Palmieri if the audits he conducts include not only a review of the annual reports but also fee applications, guardianship applications, sales of property, and other things. Mr. Palmieri stated the audits do include those types of reviews.

Justice Hardesty stated in his conversations with law enforcement, district attorneys, and the attorney general around the state, they identified a challenge regarding having the expertise necessary in order to dig in to complicated transactions and uncovering "Hello Mom" is an example of this challenge. Justice Hardesty asked if the information found in the audits and investigations was shared with law enforcement. Mr. Palmieri stated the information is shared with law enforcement, and if a case is presented to law enforcement, they can contact the Clerk and Comptroller's Office and efforts will be coordinated. Justice Hardesty clarified that the clerks provide service at the request of law enforcement. Mr. Palmieri stated they do provide service to law enforcement at their request. Ms. Bock stated one of the reasons she certified her office through the Law Enforcement Certification Process as an accreditation is because she wanted the investigations to look like and have the same elements of a criminal case. When her office refers cases to law enforcement, the clerks present law enforcement with probable cause for criminal elements. Ms. Bock stated she also works closely with the State Attorney and the State Attorney created a task force with law enforcement specifically for elder crimes.

Justice Hardesty noted the audit findings are confidential and asked how the press gains access to defalcations, informing the public that these exist. Mr. Palmieri clarified that there are two layers of confidentiality in Florida. The first layer is through Florida Statute Chapter 119, which applies to accredited Inspector General Offices. The open investigations are held confidential until the investigation is closed; at that point, it is covered through statute and an administrative order. The audit report is held confidential absence court order so if the media or an interested party wants to see the audit report, they can see in the public docket that it has been filed but they will need to go to the court to have it released. Nine times out of ten, the court will consent to release the report to whomever unless there are criminal allegations.

Justice Hardesty stated a compelling issue in Nevada concerns Protected Persons who may not have means but have serious medical concerns and overmedication was mentioned as a significant issue in guardianship cases. Justice Hardesty asked if Florida had a mechanism to address annual reports to the court that are not necessarily financially related, but deal with a Protected Person's well-being. Mr. Palmieri stated that according to Florida statute, the clerk has the duty to audit the guardianship reports, which include the financial reports and the reports of person. Ms. Bock added that Florida is a bifurcated system and anything having to do with the person is charged to the Department of Children and Families. For example, if there is a suspicion or red flag detected and a problem such as overmedication or abuse is suspected, it is reported directly to the Department of Children and Families. The clerks do not deal with the person, except for the fact that the Hotline receives many calls regarding these matters, which are immediately reported to the proper parties.

Justice Hardesty stated one of the problems that exists in Nevada is an opinion from the Standing Committee on Judicial Ethics[190] that limits ex parte communications with judges. Justice

[190] State of Nevada Standing Committee on Judicial Ethics 2015 Advisory Opinion: JE15-002 link is included in the References and Resource page.

Hardesty asked Ms. Bock and Mr. Palmieri to comment on how they handle the complaints when they reach the judges.[191] First, the clerk is never a party and the case law is very specific about the clerk not being a party to guardianship proceedings. Second, even though there may be a statutory exception making the clerk a party, a clerk's duty is to advise the court. Ms. Bock stated it has been interesting what her office has been through over the past years; legislation would not have passed if it were not for combined efforts with the Bar. In Fort Meyers, Florida, they were hit with an attorney complaint alleging that what the Clerk and Comptroller's Office does is ex parte and the judge in that jurisdiction threw it out based on legal research.[192] It has been projected that the guardianship area of law will stabilize around the year 2040.

Justice Hardesty asked about the technological support that would be needed to support this model. Ms. Bock stated her office had been working with the National Center for State Courts to receive grants. Mr. Palmieri stated obtaining statistics was a manual process. About 15 months ago the clerks developed data points for college interns, who review each case file and pull out data. Mr. Palmieri stated he hoped to be one of the first in the nation to be able to extract that data.

Justice Hardesty asked if the services provided by the Clerk and Comptroller's Office had been used or sought to address minor guardianships. Mr. Palmieri stated guardianships of minors, elderly persons, and developmentally disabled individuals were all encompassed in the 2800 cases they handle.

Ms. Sally Ramm asked if additional accountability and regulation of guardianships have decreased the availability of guardians. Ms. Bock stated Florida had not seen a decrease in availability of guardians but had seen a decrease of bad guardians.

Ms. Kim Spoon asked if the rural counties pay the Clerk and Comptroller's Office per case being worked on. Ms. Bock stated currently the counties, like Palm Beach County, are doing that at no cost. They would be seeking grant money in order to show it works and then seek appropriations. This model has been incredibly difficult to fund but the counties in Florida had been supportive.

Ms. Julie Arnold asked what the ratio is between audits to cases when dealing with the audits conducted in Palm Beach County. Mr. Palmieri stated since 2011, he has reviewed about 900 cases. There are 2,800 open cases and about 500 to 600 new cases per year, but he could not provide a ratio. Ms. Bock stated her office currently has six deputy clerks who do level one audits. There are five auditors in the Inspector General's Office, Mr. Palmieri handles about 90 percent of the audits as the Head Auditor, and there are 3 volunteers and 3 interns.

Ms. Arnold asked if Florida had a mandated reporter statute, and if so, who receives the reports from the mandated reporters. Mr. Palmieri stated Florida Statute 415.1034, requires all persons to contact the Florida Abuse Hotline for reasonable suspicion of exploitation, abuse, and neglect on vulnerable persons and to contact the Department of Children and Families. There are also categories of mandatory reporters in the sense that they must identify themselves to the Hotline.

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[191] A Position Statement on Clerk's Guardianship Duties and Ex Parte Communications Florida Statute § 744.368 and § 744.3685 is included as **Exhibit F.**

[192] This information is included as **Appendix U.**

Ms. Arnold asked who the guardians are that have established a good relationship with the Clerk and Comptroller's Office. Mr. Palmieri stated there are categories of guardians in Florida. One type of guardian is the bar licensure attorneys. Another type of guardians are professional guardians, there are different types of professional guardians in Florida such as private guardians and public guardians.

Ms. Elyse Tyrell asked Ms. Bock who had been in charge of her training and who had handled the training for the initial clerks and auditors. Ms. Bock stated they looked all over the United States for best practices and found very little, they began reading all Florida Statutes and immediately became members of the National, Local, and State Guardianship Associations. They began interviewing the Department of Children and Families to understand their role and law enforcement's role. Ms. Bock was already the elected auditor and understood the auditing standards but the Clerk and Comptroller's Office would need to understand guardianships and what made guardianships different.

Ms. Tyrell asked if Ms. Bock and Mr. Palmieri had educated themselves on the guardianship investigation processes. Mr. Palmieri stated the majority of research and training was done on their own. Mr. Palmieri holds a Jurist Doctorate, has a decade experience in forensic investigations, and has a background in forensic fraud investigations as well. The Clerk and Comptroller's Office hold a conference twice a year for all the clerks in the state and continue training.

Judge Cynthia Dianne Steel expressed concern regarding the mistrust of the public. Many individuals have expressed their fears concerning corrupt judicial and government entities. The idea that a clerk could call a judge to discuss a case could be perceived as ex parte communication. The Commission is trying to mitigate the trust issues the public has. Judge Steel expressed concern and asked if it would be permissible for a judge to make a ruling based on information received from the Clerk and Comptroller's Office, which may be confidential information that no one else has. Mr. Palmieri responded if the information is a finding of fact, which has been included in the guardianship report; the judge may make a ruling based on the information. In guardianships, most court proceedings are adversarial and there are many cases that are not adversarial. In Florida, it is statutory that guardians have an attorney but there may not be checks and balances.

Judge Steel asked what the population base was for Palm Beach County's jurisdiction and asked how many probate judges they had. Ms. Bock stated the population was 1.5 million year-round and there were six probate judges.

Senator Becky Harris asked for further explanation regarding Florida's annual plan. Mr. Palmieri stated the annual plan and the financial inventory of accounting are the ways the court maintains oversight of the case and what is happening financially. The clerk has the statutory duty to audit those reports. The guardianship plan will contain information about the upcoming year for Protected Persons, such as; where they will reside, which doctors they will be seeing, what social needs they may have, and how they will meet the social needs. There is a statutory requirement of what a guardianship plan must contain and in addition, there must be an annual doctor's report

attached to the guardianship plan. The most important thing on the doctor's report is whether the person would still require a guardian or should an evaluation be done to verify that the person has regained his or her capacity.

Ms. Bock and Mr. Palmieri were asked for more information regarding family members who serve as guardians for an incapacitated family member. They were asked what percentage of guardianship cases have family members acting as guardians. They were asked if the family members who serve as guardians need to be registered and certified and who performs the family member's training. What is that cost? They were also asked if the family members have an ombudsman or a member of the court, which they could reference and use as a resource for additional questions. They were asked if bonding was required.

Mr. Palmieri stated that under Florida law[193] there is a preference for appointing family members. Unfortunately, there are no exact numbers to determine the percentage, but a rough estimate would be about 25-30 percent are professional guardians and the rest are family members. The family members first file an application to become the guardian, there is an order from the court appointing the family member as guardian along with letters of guardianship. Within three months, the family member must undergo an eight-hour training course.[194] If the Protected Person is a minor and the family member serving as guardian is a natural parent, the parent must attend a four-hour training course. Mr. Palmieri stated by Florida Statute, for their circuit, the contents of the training class are assembled by the Bar Association, approved by the Chief Judge in the circuit, and the actual administration of the classes is conducted by Catholic Charities and the cost is $55. Catholic Charities also serve as a professional guardian as a corporation. When a family member is appointed guardian, Ms. Bock's office receives notification her office offers services and provides the family member guardian with other resources. Mr. Palmieri noted statutorily there is a provision for bonding[195] but it is not mandated. Ms. Bock added about two-thirds of guardians are family members and about 90 percent of the audits in which problems are found are in family member guardianship cases.

Mr. Palmieri stated another thing to consider would be the 2016 legislation, included in the meeting materials, they are going through the rule process and standards for professional guardians would be deliberated. A self-audit checklist would also be developed for the professional guardians to go through and assess compliance with the standards.

Assemblyman Glenn Trowbridge asked if the family guardians appointed by the courts were subject to a lesser background check, licensing, bonding, and training process and if they are required to complete the same reports as professional guardians. Mr. Palmieri stated Florida's Clerks Guardianship Auditing Bill of 2014-switched language from *"may"* to *"shall"* on credit reports and level 2 background checks. Prior to the language change in 2014, the court was waiving the background checks and consumer credit report reviews. Family member guardians are held to the same reporting standards as the professional guardians when it comes to the guardianship plans, the inventories, and accountings. Ms. Bock stated if the family member guardians do not submit documentation on the due dates the clerks work with them and try to

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[193] Florida Statute 744.309 Who May be Appoint Guardian of a Resident Ward.

[194] Florida Statute 744.3145 Guardian Education Requirements.

[195] Florida Statute 744.351 Bond of Guardian.

train them and even help them fill out forms because guardians need the help. If they do not comply within reasonable time, the clerks send letters for show cause.

Ms. Terri Russell asked if cases are revisited more than once per year. Mr. Palmieri stated there have been cases, which have needed to be revisited or required the guardian to submit something every month, but for the majority of cases, annual reports are used. Ms. Bock stated they do have a "watch list." There have been people that have been so close to the unethical borderline that everything that they submit must be monitored. The goal is to make sure the Protected Person is not harmed; it is more proactive than reactive.

Ms. Barbara Buckley noted, mechanically when the audit is done it remains confidential, she asked if the parties are given the reports as well as to the courts. Mr. Palmieri stated the report is not provided to the parties. The audit report is held confidential and docketed into the case file and becomes part of the record but held confidential in the physical file and sealed. The report can be released per a court order. Ms. Bock added when a report is made to the Hotline about possible financial abuse or other suspicions, once the report is complete, the clerks will often call the person who reported the allegation and let the person know the findings. This practice helps to close the loop and keeps a positive perception that justice is being served and someone is watching out for the well-being of the Protected Person.

Mr. David Spitzer asked who bares the cost of defending against an audit. Would those costs be covered by the guardian or the state? Mr. Palmieri stated the clerks are very conscientious not to incur unreasonable fees due to the work they are processing, ultimately, defending or answering those questions, if it were an attorney, they would petition the court to cover the costs.

Judge Steel asked if in the event an item is stolen from the Protected Person, and it is discovered in the audit report, would the court file charges? Mr. Palmieri stated in that event, the clerks would issue an audit report to the court making recommendations on the civil side; the clerks would report that with law enforcement and file a report with law enforcement for prosecution.

Chief Judge Michael Gibbons stated Nevada has only one county, Douglas County, which has a similar program called Special Advocates for the Elderly (SAFE). The SAFE program consists of mostly volunteers; Chief Judge Gibbons asked what the role of the volunteers is in Palm Beach County and their training and if their role would be expanded in order to keep the costs down. Mr. Palmieri stated the three interns in Palm Beach County handle the manual review of all the guardianship case files. There are 2,800 open cases and when the closed cases are added, it is a significant amount of cases. The interns are obtaining the data points for all the cases. The two volunteers aid in administration of the program and handle things such as logs, scanning, cross-referencing paperwork; investigations are strictly handled by professionals.

Justice Hardesty stated the Commission has been exploring recommendations that would involve legislation and has been exploring rules the Supreme Court controls. As an example, the Nevada Supreme Court imposes mandatory accounting standards on all of the districts by rule; there is a separate auditor that enforces those rules. Justice Hardesty asked if the Florida Supreme Court has issued a set of rules that address the subject of guardianship, the accounting, and accountability. Mr. Palmieri stated the Florida Supreme Court approves rules of probate that are

drafted by the Florida Bar. Ms. Bock stated in Florida, the process is the Bar is the rule making body for the Supreme Court but every rule of court goes to the Supreme Court for approval. Florida has Supreme Court Administrative Orders, much like Nevada. Justice Hardesty clarified, some of the reports Florida has initiated were initiated through court rule rather than legislative action. Ms. Bock stated that was correct. In fact, if Florida had not started at the administrative or judicial level, the statute would have never been accomplished.

Justice Hardesty noted Clark County has a population of 2.4 million and has 3,129 pending cases since May 20, 2016, with one judge and no support. Washoe County's population is 550,000, a little less than 1,000 cases, not including minors, and one judge for those cases, once per week. When the Commission speaks about the importance of resources, it would be fair to conclude that Nevada has no resources performing these essential functions. Justice Hardesty asked the Commission if there were further questions for Ms. Bock or Mr. Palmieri, the Commission had no additional questions. Justice Hardesty thanked Ms. Bock and Mr. Palmieri for their availability and for providing the presentation and stated the information provided was very helpful.

Nevada Secretary of State Living Will Lockbox[196] presented by Gail Anderson, Deputy Secretary for Southern Nevada

Justice Hardesty stated he had met with the Secretary of State Ms. Barbara Cegavske and Ms. Gail Anderson to clear up some of the questions regarding how the Lockbox function currently operates and explored issues relating to how the Lockbox might be available to the guardianship community going forward in dealing with things such as, will designations, agreements, etc.

Ms. Anderson provided a presentation on the context of the Secretary of State's (SOS) existing Living Will Lockbox (Lockbox) as a vehicle repository for particular documents. The considerations that are assessed would need to be given to a similar electronic filing system for another purpose.

In 2009, the Nevada Legislature established the framework for a secure online registry, which allows a person to post an electronic copy of a will or document and retrieve that document when needed. At the time, there was already existing law concerning the SOS Office maintaining a registry of advanced directives for healthcare and this was added, enhanced, and encoded in NRS Chapter 225. What exists is an internet website registry, which contains an electronic reproduction of each document filed by a registrant, this electronic reproduction must be capable of being viewed in the registry, downloaded, and printed. Several aspects would need to be assessed and considered to create or utilize a virtual Lockbox including the registrant and the process to submit a registration and information.

Ms. Anderson provided a list of documents that are used currently for the Lockboxes. The registration agreement requires certain information and an agreement, which involves a

[196] Forms for the Living Will Lockbox can be found on the Secretary of State's website at http://www.nvsos.gov/index.aspx?page=219. The link is also included on the Reference and Resources page. The Commission voted in favor of supporting legislation to expand the Secretary of State's Lockbox Program to include designation of guardian forms.

certification and authorization of who may access the filed documents, liability waiver, the terms of the agreement, and a signature. This registration is not notarized and there is a provision, if a person has prepared such documentation and been submitted by someone other than the registrant, there is a signature required for who prepared it.

Registrants are issued a wallet card, and they are advised to carry it on their person. They are also advised to provide their registration information to close family members or friends. The primary or secondary contacts are written on the registration. If they make a change and wish to remove someone as a contact, they can request it through a different process, but this does not happen often.

Considerations:

- How registrants are identified and documents are named and stored in any given system. There needs to be a registrant identifier, which is a very important consideration. For the Lockbox that identifier is a combination of the first three letters of their last name and their date of birth.[197] The system that issues the registrant's card issues a unique number for that registrant.
- Making changes to registration information, some changes include adding additional healthcare documents, replacing currently stored documents with different documents, revoking documents that have been filed, or changing registration information such as address, phone number, email, primary emergency contact, or alternate emergency contact information.
- Who has access to retrieve the information that is filed in the repository? Since the Lockboxes focus on the advanced directives for healthcare, the targeted providers for this program since its inception have been hospitals, hospices, physicians, and nursing facilities that have medical personnel. There needs to be a limited process for who has access to this information filed and that must be given by the person granting it or, in the case of the providers, hospitals, emergency rooms, and hospices also have a mechanism in which they also register with the SOS Office as a provider. Each registered provider has an administrative contact[198] that is a designated contact with the SOS Office for the program. Most of the filers for the Lockboxes give that registrant information to their immediate family or close friends and their contact persons. Occasionally, there is a falling out between family and registrants, which might require changes.
- Internal administrative processing, including how filings are received, how filings are entered, and how filings are stored.[199] Currently, information from the registration agreement is manually entered into the data system, regardless of how it is received. The documents filed by mail or hand delivery are scanned into the internal registry; the entire

[197] Those are the identifiers for this program.

[198] The administrative contact manages that organizations access to the Lockbox, sets up and disables usernames and passwords for staff, is responsible for keeping records current and in good standing with the SOS Office, and is required to complete and return an annual update letter to the SOS Office assuring all the contact information for the organization is current.

[199] Filings are received by fax to a special fax number, by hard copy mail, or hand delivery. The fax copies sent to the special number are stored in a queue and are pulled by the process in the SOS Office.

packet is then named and attached as a record to that registrant's data record in the SOS's data system.

- Another consideration on the administrative side would be to consider the workload, since it is all entered manually, there is significant staff time needed in order to process the work, not only new filings, but also changes made to the registration agreements, adding additional documents, and revoking documents as well.
- Secure data storage, appropriate offsite backup, and security from breaches and attacks.

Those are a few considerations Ms. Anderson thought of that relate to the contexts of what the Commission may be considering, which currently exist in the SOS's Office Lockbox program.

Justice Hardesty asked if there was a possibility of the SOS Office receiving an effect directive from the selection of a guardian as an item that could be included in the Lockbox. Ms. Anderson stated there had been discussion regarding that request but anything that is proposed would need to be approved by the Secretary of State. Healthcare directives accessed by medical providers and guardianships with the interest of the court and the public have different audiences that want to see and need to see the documents. With the healthcare directives there is a whole set of the medical limitations of the law of medical information that may or may not be included in some of the filings received. To merge the two may not be feasible at this time due to the different audiences that would need to access the documents.

Justice Hardesty stated the SOS's Office would need research support in order to accommodate this kind program. Ms. Anderson added the SOS's Office currently has one person that handles the Lockbox program as well as other programs. Additional staff would be needed in order to help with the data entry processing to keep up with a new program.

Ms. Kim Spoon asked if a list exists of who can be providers and asked if this list was compiled according to statute or according to the Secretary of State. Ms. Anderson stated the SOS's Office has a list of approved providers. There is no statute regarding who can apply as a provider.

Ms. Julie Arnold stated she had received reports that stated the hospital emergency room staff was unaware of the SOS's Lockbox program. Ms. Anderson stated there is a need for ongoing education and outreach, a hospital has many different departments, the emergency room being one of the many departments, and in the emergency room, for a person in a critical situation, a person may be asked if he or she has an advanced directive. There is communication that is needed within many departments within a hospital.

The Commission did not have further questions.

Senate Bill 262

Justice Hardesty has been working with the Secretary of State's Office on the issue of registration for out-of-state guardians. A plan has been formulated that will be the subject of a motion to be presented to the Commission in June. In essence, the plan would simplify the process and take the SOS's Office out of trying to determine who is and who is not a guardian, which is a process for which the Office has zero resources and it does not make much sense to do

it that way. If it were handled the same way as LLCs and corporations, then it would be straightforward and would be a simple filing. If there is a failure, that issue can be addressed by the Court rather than the SOS's Office. It is an easier process to follow and would be easier for those who serve as agents for nonresident guardians.

General Policy Questions[200]

The Commission discussed, made recommendations, and voted on the following General Policy Questions during the May 20, 2016 meeting:

- Terminology – Definition for Incapacitated
- Fee Structure to Compensate Guardians and Others They Hire
- Process, Notice, and Findings Required for the Approval of Fees to Guardians and Others They Hire
- Process and Timing for Filing and Evaluating an Inventory and Care Plan for the Protected Person
- Process, Timing, Notice, and Findings the Court must make Concerning Accountings of the Protected Person's Estate
- Bonds – Court Must Make Findings if the Court Does Not Order a Bond or Blocked Account
- Data Used to Manage Guardianship Cases
- Statewide Forms and Rules in Guardianship Proceedings

L. TWELFTH MEETING

The Commission held its twelfth meeting on June 13, 2016. The meeting began at 1:00 p.m. and was videoconferenced between Las Vegas, Carson City, and Elko. The public was invited to provide comment[201] at the beginning of the meeting.

Final Report Timeline

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

1. The Commission could try to conclude all votes and deliberations that are pending by June 21, and produce a report on all matters and recommendations, as soon as he and staff could reasonably complete and edit the report, and provide a copy to the Commission for its review and approval. It would be unrealistic to think that process could be completed before July 31, and could take until August 31. The Commission still

[200] Detailed information and the recommendation for each item can be found in Section IV Recommendations.

[201] June 13, 2016, meeting total time of public comment was 28 minutes.

has some serious matters that need to be vetted, including the Bill of Rights and the Minor Guardianship Statute.

2. Another alternative would be to submit an interim report by June 30, identifying the votes the Commission has taken to date, and then provide a supplemental report with information from the additional meetings that could take place in July on the pending matters.

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

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

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

Assemblyman Glenn Trowbridge agreed with Senator Harris and Assemblyman Sprinkle. The Commission has spent many hours listening to testimony and reviewing best practices to identify issues that are going to help resolve some of the problems the Commission has heard. He agrees with Senator Harris; the Commission should identify those issues that could be handled judicially versus those that require legislative action. The issue of guardianship is complicated and it is going to take a few legislative sessions to get it totally worked out. Each Commission meeting has resulted in new ideas and suggestions, all of which have merit.

Ms. Sally Ramm thought the Commission had agreed to continue the Guardianship Commission under the aid of the Supreme Court and that the Commission would continue to update and address the issues in the guardianship area. Ms. Ramm suggested some of the complicated issues could take longer and be addressed by the permanent Commission.[202]

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

[202] This assumes the Nevada Supreme Court adopts the recommendation to create a permanent Commission.

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

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

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

General Policy Questions[203]

The Commission discussed, made recommendations, and voted on the following General Policy Questions during the June 13, 2016 meeting:

- Send Letter to County Commissioners to Provide Financial Support to Legal Aid Organization to make Counsel Available to All Protected Persons.
- Urge the Legislature to approve an increase in recording fees of $1.50 to provide funds for legal counsel for All Protected Persons
- Approved Draft Court Rule regarding NRS 159.057 – Tracking Guardianship Cases
- Supreme Court Adopt Uniform Statewide Rules and Forms

M. THIRTEENTH MEETING

The Commission held its thirteenth meeting on June 21, 2016. The meeting began at 1:00 p.m. and was videoconferenced between Las Vegas, Carson City, and Elko. The public was invited to provide comment[204] at the beginning of the meeting.

Final Report Extension

An order was entered by Nevada Supreme Court Chief Justice Parraguirre granting the extension of the final report submittal to September 30, 2016.

[203] Detailed information and the recommendation for each item can be found in Section IV Recommendations.

[204] June 21, 2016, meeting total time of public comment was 20 minutes.

Grant Opportunity[205]

Justice Hardesty provided an update on the Elder Justice Innovation Grant application. This grant would provide $100,000-$125,000 per year for the next two years to the State of Nevada to assist the Administrative Office of the Courts (AOC) and the Supreme Court in implementing the recommendations made by the Commission. Nevada was one of four states invited to submit an application for the grant.

General Policy Questions[206]

The Commission discussed, made recommendations, and voted on the following General Policy Questions during the June 21, 2016 meeting:

- Bill of Rights
- Terminology Alternative to Ward

N. FOURTEENTH MEETING

The Commission held its fourteenth meeting on August 26, 2016. The meeting began at 10:00 a.m. and was videoconferenced between Las Vegas, Carson City, and Elko. This was a work session so there was no public comment.

Revised Uniform Guardianship and Protective Proceedings Act[207]

One of the sources for many guardianship laws in the country is the Uniform Law Commission (ULC). The ULC is a commission that develops uniform laws for a variety of subject matter. The memo on the revised Uniform Guardianship and Protective Proceedings Act (UGPPA) was distributed, in July, to the members of the Conference of Chief Justices, indicating the ULC has undertaken a complete review of guardianship statutes and in the process has made a number of proposed revisions to the uniform laws regarding guardianships. Many of the areas the ULC are proposing to amend are consistent with the approaches this Commission has undertaken; whether in the context of minor guardianships, language used to name or characterize a person who is subject to guardianship,[208] revisions to attorney fees provisions, and visitation and communication of third parties, etc.

Private Professional Guardians Licensure

The application for the private professional guardians became available July 1, 2016. Three companies have submitted their applications.

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[205] To date, no announcements have been made regarding who the successful applicants are.

[206] Detailed information and the recommendation for each item can be found in Section IV Recommendations.

[207] A copy of the memo is included as **Appendix V.**

[208] The ULC addressed the terms for ward, incapacitated person, and disabled person. The ULC adopted the term Person Subject to Guardianship, which is consistent with the recommendation of this Commission.

General Policy Questions[209]

The Commission vetted and voted on the following General Policy Questions during the August 26, 2016 meeting:

- Bill of Rights
- Recommendation Relating to Appointment of Registered Agent
- Secretary of State Expansion of Lockbox Program
- Minor Guardianship Statute
- Attorney Fees
- Proposed Court Rules Duties of Attorney and Duties of Attorney Guardian ad Litem
- Rights of a Person Facing or Under a Guardianship
    - Visits/Communication
    - Residency
    - Remedies
    - Initial Plan Accountings
    - Hearing of Account
    - Appointment of Volunteer Guardian ad Litem, Advocate, or Guardian ad Litem
    - Qualifications for Non-Attorney Guardian ad Litem or Advocate
    - Legal Rights
- Supported Decision Making
- Notice Requirements
- Proof of Service Affidavit
- Office of Public Guardian

O. FIFTEENTH MEETING

The Commission held its fifteenth meeting on September 16, 2016. The meeting began at 1:30 p.m. and was videoconferenced between Las Vegas, Carson City, and Elko. The public was invited to provide comment[210] at the beginning of the meeting.

Management of Estate and Personal Property

The Commission discussed statutory amendments to the management of estate and personal property. The Commission did not vote on the amendments during the September 16, meeting. Additional amendments to NRS 159.1455 and NRS 159.1515[211] were discussed and would be provided to Commissioners for review and feedback following the meeting.

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[209] Detailed information and the recommendation for each item can be found in Section IV Recommendations.

[210] September 16, 2016, meeting total time of public comment was 25 minutes

[211] Amendments were provided to Commissioners following the September 16, 2016, meeting. Commissioners reviewed and voted in favor of the amendments. Included as **Exhibit O.**

Jurisdiction

The Commission discussed that there had been suggestions to amend the jurisdiction of family court and civil court in relation to guardianship cases. The modification would allow the presiding judge the ability to place guardianship cases in general jurisdiction, if they determine that is appropriate. The legislative proposal would be to modify NRS 3.223(1)(a), dealing with the jurisdiction of the family courts, striking NRS Chapter 159 from that paragraph, enabling the chief judge to assign the guardianship docket to the best judge in the district, based upon their determination.

Commissioners discussed the proposed amendment and expressed concern regarding the recommendation. Judge Frances Doherty said guardianship cases are best placed under the jurisdiction of the family courts. Judge Doherty offered to research best practices in this area but would be concerned with voting on this recommendation at this time.

The Commission discussed this would provide the chief judge flexibility in assigning the cases. The Commission did not make a motion on this topic.

General Policy Questions[212]

The Commission vetted and voted on the following General Policy Questions during the September 16 meeting:

- Ex Parte Communication and the Judicial Code
- Elimination of Filing Fees
- Statutory Language for Initial Plan

[212] Detailed information and the recommendation for each item can be found in Section IV Recommendations.

IV. DISCUSSION AND RECOMMENDATIONS

Justice Hardesty reviewed the list of recommendations the Commissioners provided during the first few Commission meetings and compiled a list of General Policy Questions. Commissioners discussed, debated, and evaluated each Policy Questions and made recommendations. The following provides the corresponding list of recommendations summarized in Section I of this report. The discussions and recommendations are broken out by Court Rule, Legislative Recommendations, and Statements of Support.

A. COURT RULES

1. Establish a permanent Commission[213] to address issues of concern and those persons who would be subject to the guardianship statutes, rules, and procedures in Nevada.

The Commission to Study the Administration of Guardianships in Nevada's Courts was established by Supreme Court order for a limited duration. Other states, including Texas have created permanent commissions to review ongoing guardianship issues, policy changes, etc. Justice Hardesty suggested recommending a permanent commission to review the modification, success and/or failure of rules and statutory changes that might be adopted from recommendations this Commission offers. The commission could operate under the Supreme Court or it could be a legislative committee.

Discussion

The recommendation states the Commission would be established to address concerns of the "elderly." There is a large population of individuals under guardianships, including minors, who would not fall under the definition of "elderly." Commissioners discussed whether "elderly" should be replaced with "vulnerable" person, which would cover persons 18 years of age and older. There was a concern that the term "vulnerable" person would only address part of the guardianship issue and the permanent commission should address all guardianship issues for all persons, unless the adult and minor[214] guardianships are separated. The permanent commission would be an accountability type of commission for the recommended changes made by this Commission.

Judge Egan Walker strongly encouraged a permanent commission and noted a Supreme Court Commission is more fleet-footed and has better continuity across legislative sessions. Commissioners agreed the permanent commission should be under the Nevada Supreme Court since it has already established a precedent with the current Guardianship Commission. It would

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[213] A letter from the President of the Nevada Silver Haired Legislative Forum notifying the Commission that the Forum unanimously agreed to support the request of Commission to establish a permanent Guardianship Commission is included as **Appendix W.**

[214] Forty percent of guardianship cases in Washoe County are persons between the ages of 18 - 59. Almost half of all guardianship cases are for people with disabilities. The Second Judicial District Court has more active and filed minor guardianship cases than adult guardianship cases.

be beneficial to have a commission to monitor the policies, rules, statutes, etc., and the commission could make appropriate modifications in the future as circumstances change.

Justice Hardesty suggested changing the recommendation to read, the Commission recommends the Supreme Court establish a permanent commission to address issues of concern to those who would be subject to guardianships or alternatives to guardianship processes in Nevada.

> **Judge Egan Walker moved to approve the Nevada Supreme Court establish a permanent Commission to address issues of concern to those persons who would be subject to the guardianship statutes, rules, and processes in Nevada. Ms. Elyse Tyrell seconded the motion. Motion passed.**

Additional Discussion

Ms. Elyse Tyrell confirmed the motion presumed that any alternatives the Commission creates would be under the guardianship rules. Justice Hardesty responded yes. Ms. Kim Spoon wanted to clarify that the recommendation was not just dealing with persons, but procedures as well. Justice Hardesty responded that the recommendation identifies who would be subject to and identifies statutes, rules, and processes.

2. **The Commission urges the Supreme Court to adopt court rules outlining the duties of an attorney for a Proposed Protected Person or Protected Person. (Exhibit A)**
3. **The Commission urges the Supreme Court to adopt court rules outlining the duties of an attorney guardian ad litem for a Proposed Protected Person or Protected Person. (Exhibit A)**

June 21, 2016, Discussion

Justice Hardesty asked the Commission if item 6 (Appointment of Attorney, Duties) and item 8 (Advising a Protected Person of their Legal Rights[215]) could be the subject of Supreme Court Rule (SCR) rather than a statute. The Court governs the practice of law, the requirements for counsel, and the requirements for Courts. Ms. Buckley stated items 6 and 8 could be the subject of court rule; however, the statute would need to be changed. There currently exist statutes that talk about the appointments of attorneys and Guardians ad Litem. Those statutes may need to be stripped to allow them to include more duties in the rule. Justice Hardesty stated he would move items 6 and 8 to a separate section and urge the Supreme Court to adopt rules that encompass the concepts, amend the statutes as necessary, and accommodate the enforcement of these duties by Supreme Court Rule (SCR). Ms. Kim Spoon appreciates the language in item 8. She noted there are many physicians who do not like it and will not do it.

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[215] Advising a Proposed Protected Person or Protected Person of their legal rights will also be included as part of the recommendations under rights of the Proposed Protected Person and Protected Person that should be included in the statute. See **Exhibit I, item f.**

August 26, 2016, Discussion

The Commission discussed language proposing statutory and Court Rule changes concerning lawyers who practice in the guardianship area. Justice Hardesty noted the Indigent Defense Commission spent many years developing standards of performance that govern the way attorneys practice criminal defense, outlining the expectations and guidelines that apply to an attorney representing an indigent person charged with a crime. It specifies the types of investigations they must undertake, the type of CLE they must undertake, what they must do to bring a motion to suppress, etc. Using that pattern and following up on some of Ms. Buckley's references, Justice Hardesty asked the Commission to consider using Court Rule, a set of rules that would govern the duties of an attorney when representing a Proposed Protected Person. Additional work would be needed in this area but the Commission would need to endorse the idea as a matter of policy and that would be the recommendation. Justice Hardesty suggested the Commission support asking the Court to consider adopting the rules governing the practice of attorneys in this area. Ms. Buckley stated some states had certain rules in statute that were very limited and had a broad overview and then the Court Rules or policy handbooks became more explicit. Justice Hardesty encouraged the Commission to leave the regulation of the practice of law to the constitutionally designated court system rather than dispute the separation of powers. Justice Hardesty stated it is an evolving process and the Court would need to formulate a set of Court Rules; it would be important for the Court to know whether the Commission recommends the Court should engage in the rule-making process that governs standards of practice by attorneys in this area.

Judge Cynthia Dianne Steel moved to urge the Supreme Court to adopt standards of practice governing the practice of law in this area. Judge Egan Walker seconded the motion. Motion passed.

Ms. Susan Sweikert suggested an edit to number 2 in section 7 on page 84 of the materials, which states, "best interest of the child," the word child should be changed. Ms. Barbara Buckley stated that would be edited.

4. **The Commission urges the Supreme Court to develop procedures or Court Rules to require mediations in all contested guardianship proceedings.**

Discussion

Justice Hardesty stated there had been discussion regarding the use, timing, and scope of mediation in guardianship proceedings. Judge Frances Doherty had provided a presentation regarding the successful use of mandatory mediations in guardianship cases. The question posed to the Commission would be to recommend the use of mediation in guardianship proceedings and how the program would be implemented. Judge Cynthia Dianne Steel stated there was no resource available to send individuals to mediation in Clark County; however, she does encourage the use of mediation. Judge Nancy Porter stated mediation had not been utilized in Elko County due to the lack of resources. Justice Hardesty asked if the Commission would favor a mediation program to be established by the districts. Justice Hardesty clarified mediation

would not be mandated but the Commission would favor the existence of the availability of mediation services to be implemented in the districts.

Judge Egan Walker moved that the Commission vote in favor of promoting mediation where it would be available in districts in Nevada. Ms. Rana Goodman seconded the motion. Assemblyman Glenn Trowbridge responded yea with the understanding that the referral to the mediator be at the discretion of the judge. Motion passed.

5. **The Commission urges the Supreme Court to adopt Court Rules to evaluate Court supervision of guardianships including training, staffing, scheduling, and caseload limits.**

Discussion

Justice Hardesty stated this question was intended to provide direction to the Supreme Court that rules would be necessary in respect to each area and to create uniformity as to how to evaluate Court supervision in each area.

Judge Egan Walker moved that the Court recommend rules adopted by the Supreme Court to evaluate Court supervision of guardianships including training, staffing, scheduling and caseload limits. Judge Cynthia Diane Steel seconded the motion. Motion passed.

6. **The Commission urges the Supreme Court to adopt Court Rules appropriate to designate training and caseloads for private and professional guardians.**

Discussion

Justice Hardesty stated the issue on the subject of the use, timing, training, or caseloads of the public guardians arose from concerns that there did not appear to be regulations in place that set training or caseload requirements for public guardians. Mr. David Spitzer concurred that there should be regulations or definitions as to what public guardians need to do. Washoe County had encountered some resistance to tasks such as filing petitions and agreeing to take guardianships for individuals still capable of living in their own homes with the excuse that there are liability issues behind that. Mr. Spitzer agreed there would need to be discussions regarding the kind of cases the public guardian should be encouraged to take. Ms. Sally Ramm added public guardian's offices in each county have different requirements, rules, and methods of operation; some of them are based on caseload and some have another basis. Ms. Ramm stated the barrier to this would be the counties would be the entity that would be in charge of the public guardians, and the benefit would be to get standardized rules and processes in place throughout the State. Ms. Julie Arnold expressed concern regarding the placement of mandates. For example, if a mandate stated a caseworker could have no more than 25 Protected Persons, there may be more need than there are caseworkers, making it impossible for the public guardians to operate based on the current funding. Justice Hardesty stated National Standards for Best Practices has a caseload limit in place, and therefore, the limit should be mandated. The Supreme Court

established the Indigent Defense Commission under Administrative Docket Number 411. The Indigent Defense Commission developed performance standards by which public defenders are expected to practice criminal law and at the same time established caseload standards. The caseload standards have been presented as a mandate because counties are required to provide public defenders. Judge Steel agreed the Commission should make recommendations regarding best practices and caseloads in order to serve the best interests of the Protected Persons. Justice Hardesty stated a specific number for caseloads had not been discussed; however, as a Policy Question the Commission would need to vet questions 20 and 21. There would be an amendment added to question 20, which would state use and timing and training, or caseloads and selection. Ms. Ramm suggested adding the review of statutes for more consistency. Justice Hardesty asked for a motion combining questions 20 and 21 with the understanding that question 20 would include public guardian statutes. The Commission discussed adding a separate Policy Question stating the Commission would make recommendations concerning the training and appointment of guardians who are not public or private professionals. There would need to be similar requirements put in place that those individuals would need to satisfy before they are appointed. The Commission discussed adding the training and support would be available to individuals who are not public or private professionals. Ms. Susan Hoy suggested the Commission address training for families. Justice Hardesty suggested treating that as a separate question. Assemblyman Glenn Trowbridge expressed concern with fixed caseload requirements, noting a recommendation is ok but a mandate might not be. Ms. Spoon commented that once licensure goes through for private professional guardians in Nevada, there would be only four agencies that are licensed as private professional guardians for the entire State.

Judge Egan Walker moved that the Commission offer recommendations to the Supreme Court concerning the statutory framework for use, timing, training, and caseloads of public guardians and private professional guardians. Ms. Debra Bookout seconded the motion. Motion passed.

7. **The Commission urges the Supreme Court to adopt uniform statewide Court Rules and forms for the processing of guardianship proceedings in all Nevada District Courts.**

The Commission discussed and voted on this subject at the May 20 meeting and again at the June 13 meeting.

Judge Cynthia Diane Steel moved for the Commission to make a recommendation to the Nevada Supreme Court for the creation of statewide forms and rules in guardianship proceedings. Ms. Sally Ramm seconded the motion. Motion passed.

Additional Comment

Judge Steel stated the courts have rules that sometimes only fit into their local rules. Judge Steel would ask to amend the motion to include the creation of local rules. Justice Hardesty agreed, with the Nevada Supreme Court's approval. Justice Hardesty added the Commission had just discussed requiring courts to make findings concerning bonds. This subject would not require legislation but would be subject to part of the statewide rules that would be adopted by the

Nevada Supreme Court. Many of the recommendations could be adopted as a part of the Nevada Supreme Court Rules.

Mr. Jeff Wells moved to call upon the Supreme Court to adopt uniform statewide court rules and forms for the processing of guardianship proceedings in all Nevada District Courts. Assemblyman Glenn Trowbridge seconded the motion. Motion passed.

8. **The Commission urges the Supreme Court adopt a Court Rule to require the Court to make specific findings if the Court does not order a bond or blocked account.**

Discussion

Justice Hardesty reviewed the current statutory model for bonds and suggested withdrawing question 26, unless there was a preference or reason to make recommendations in this area.

Mr. David Spitzer said there are ways to mitigate the amount of the bond necessary for blocked accounts, i.e., denying the guardian access to certain accounts by court order. Justice Hardesty stated those options are available under current statute, so the Commission would not necessarily need to make recommendations in this area.

Judge Frances Doherty stated the summary bond is the issue when there is a guardianship over the estate, and if the Commission leaves the statutory language as is it will leave the practice, and the practice is a nominal requirement. The Second Judicial District Court wrote a local rule restricting because they are trying to refocus the expectation that there is a bond. Justice Hardesty said it might be helpful to have a motion that is more specific stating the Court must make findings if it does not order a bond. Judge Doherty agreed and added "or the blocked account."

Judge Frances Doherty moved to have the Commission recommend that the Court must make findings if the Court does not order a bond or blocked account. Ms. Kim Spoon seconded the motion. Motion passed.

Additional Discussion

Mr. Jay P. Raman said Ms. Kim Spoon and Ms. Susan Hoy had indicated there were difficulties in acquiring bonding during their presentation in a previous meeting. Ms. Hoy said this was a fidelity/surety bond for the business of a private professional guardian. Ms. Elyse Tyrell added as an attorney for family member's bonds are difficult to obtain so they typically insist their clients do blocked accounts. Mr. Raman asked if there could be guidance from the Commission, judicial rule, or legislative action that would provide the bond issuers more comfort in writing the bonds. Ms. Tyrell said there were insurance companies that would work with the attorneys and families and write bonds but they have disappeared. Ms. Spoon stated she has not had too much trouble getting the surety bonds but they have to be smaller. That is why they do blocked accounts for the larger estates. The more money you have the harder it is to find a company to underwrite the

bond. Judge Frances Doherty said the Florida legislation provided this morning expects a bond to be posted.

Justice Hardesty said all of this requires the judge to make findings as to why they are not imposing the bond or blocked account, and this allows some leeway in given cases but that implies a presumption in favor. Judge Doherty said there is a need to move away from family members not being bonded because we continue to hear, and the Courts know much of the fraudulent behavior is associated with family members.

Mr. Raman did not have additional questions based on Florida's presumption for the bond. It is his personal view that if the bond is in place and if things go badly, at least something can be recovered. Mr. Raman would vote in favor of the Commission making recommendations trying to do something to ease the difficulty family members have in obtaining a bond. That is different than what is being proposed but it could be addressed through the Commission.

> **Justice Hardesty asked the Commission to take up the motion on the table, which requires the Court must make findings if the Court does not order a bond or blocked account, then the Commission would come back to Mr. Jay P. Raman's suggestion. Motion passed.**

Additional Discussion

Mr. Raman asked if the Commission wishes to make recommendations concerning statutory or judicial enhancements to improve family members being able to obtain a bond for the purposes of guardianship. Mr. Raman suggested having a bonding agency explain why it is not able to grant such bonds and try to find common ground. The Commission discussed this issue. Bonds and blocked accounts were being used interchangeably but they are not the same thing. A bond may be posted by a guardian if the guardian is able to obtain a bond from a bonding company. Accounts would be blocked if a bond cannot be obtained. If an account is blocked the guardian would not have access to the account. A fixed amount that supplements income might be provided monthly from the blocked account, pursuant to a court order.

Judge Steel said another issue is a Protected Person might receive a large sum of money, e.g., an award in a personal injury case, and the Court is not made aware so there is no bond or blocked account.

Judge Doherty suggested it might be an affirmative obligation the Commission would want to put in the statute. Justice Hardesty thought that would be a part of the annual report. The point Mr. Raman was trying to make was what about the availability of bonds and the Commission should examine this by looking at bonding companies/agencies to find out why it is not an insurable risk. Mr. Raman agreed and said that is why he thought the Commission might make headway to find out why the bonds are not available. Justice Hardesty passed on this point until the Commission can find out or get someone to address the Commission on the issues surrounding bond availability.

The Commission had discussed bond requirements at the May 20 meeting. Mr. Raman had expressed concern that bonds might not always be available. Commissioners were asked if they

had encountered issues with guardians being able to acquire a bond. Judge Steel and Judge Doherty were not aware of any issues of persons obtaining bonds. Ms. Spoon noted there are times when the amount of the estate is very large, therefore, the bonding company does not want to underwrite the bond. This is where a blocked account would come in.

9. **The Commission urges the Supreme Court to adopt a Court Rule regarding NRS 159.057.[216] The rule would require the court to create and maintain a separate case for each individual protected person regardless of whether one petition was filed two or more protected persons. (Exhibit B)**
10. **The Commission urges the State Court Administrator to adopt a uniform Guardianship Information Sheet to be used by all District Courts pursuant to NRS 3.275. (Exhibit C)**
11. **The Commission urges the use of court-performance measures in all District Courts. Measures would include age of pending case, time to disposition, and clearance rates for guardianship cases.**

Discussion

Justice Hardesty appointed a workgroup to review data and information technology systems in relation to guardianship proceedings. The Administrative Office of the Courts' Lead Research Analyst, Hans Jessup, was appointed chair. Members of the workgroup include Craig Franden, Alan Bates, and Mike Doan. The workgroup would provide the Commission a report and recommendations on areas where data collection could be improved upon in upcoming meetings.

In addition, the Commission received presentations from the Second Judicial District Court and the Eight Judicial District Court on their data collection efforts. The Second Judicial District Court's presentation is included as **Appendix S** and the Eighth Judicial District Court's presentation is included as **Appendix T.**

Guardianship Data and Technology Workgroup Report and Recommendations[217]

The Guardianship Data and Technology (GDT) Workgroup held six meeting between October 2015 and May 2016. The GDT Workgroup initially reviewed and identified the types of cases and issues that need to be addressed by the Courts in guardianship matters. The GDT reviewed the National Center for State Courts (NCSC) national standards for collecting guardianship data and standards[218] for the time of disposition, age of active pending case, and clearance rates. Based on its review, the GDT recommends Courts create the following reports:[219]

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[216] NRS 159.057 allows a single petition to be filed for two or more Protected Persons under certain circumstances.

[217] The GDT memo from dated October 15, 2015, meeting with a list of recommendations is included as **Appendix F.**

[218] These are primary measures for determining how Courts are performing. The recommendations fall within the American Bar Associations (ABA) and Conference of State Court Administrators (COSCA) standards for measuring caseloads.

[219] The reports should be reviewed by each District's Administrator or Chief Judge at least quarterly.

- Time to Disposition – This report shows the average amount of time (days) in which a guardianship matter is being disposed. National standards suggest guardianship matters should be disposed, by appointment of a guardian, within 90 days of filing. By having this disposition report, Courts would be able to identify whether the disposition is occurring within a timely fashion.
- Age of Active Pending Case – This report is used to determine the age of active cases pending disposition before the Court. Time frames should be used to determine the age of current cases pending adjudication (e.g., 0-60 days, 30-60 days, 60-90 days, and 90-120 days).
- Clearance Rates – This is the number of cases filed, divided by the number of cases disposed. Technically, Courts should be disposing of as many cases as are being filed. If a Court is not disposing as many cases as filed, this would be an opportunity for a Court to review whether it has enough resources or whether there are other issues going on that need to be addressed.

A concern had been raised regarding the potential costs to run and create these reports in the rural courts. The GDT reviewed most case management systems (CMS) in the State and found the Second, Eighth, and some rural District Courts have a newer CMS that would allow this information to be gathered but would require some effort and direction.

Additional recommendations:

- Courts should begin tracking more guardianship data and begin using a Guardianship Information Sheet, which is similar to a civil cover sheet. The Information Sheet provides better tracking of the cases and assists in identifying issues that might arise.
- Provide some educational classes or training for judges, and if appropriate court staff, on what to look for or how to review inventories and accounting.

The GDT was asked if they had discussed sending data collected on guardianships to a state registry or annually to the State Court Administrator. The Nevada Supreme Court's Research and Statistics Unit researches, plans, implements, and maintains a statewide system of trial court statistics, Uniform Standards of Judicial Records (USJR).[220] The data collected is published in the Nevada Supreme Court's Annual Report (Report).[221] Mr. Jessup noted most Courts have the ability to track the data but might not have a CMS to extrapolate the information for the report. The new systems implemented around the State have this capability but it might take changes to define exactly what and how the Commission wants to measure this data.

In its review of the guardianship data, the GDT identified an area in how petitions are filed in the Courts that could skew numbers and representation of what is occurring in each case. The Uniform System of Judicial Records directs that each case be counted as a single petition.[222] Many courts file multiple Protected Persons under a single petition, which is allowed under NRS

[220] The Workgroup is currently working on phase III of USJR. The Workgroup has included guardianship measurements in its discussions.

[221] The link to the Nevada Supreme Court's Annual Report is included in the Reference and Resource page.

[222] A single petition would represent one Protected Person.

159.057.[223] This presents a problem when looking at how cases are being disposed of and what cases are pending. For example, you might have a case with two minors and one minor has aged out but the other minor's case is still pending. This would skew the numbers and representation of what is going on. The Workgroup recognizes this could be problematic for people where there are filing fees and is asking the Commission for guidance on this issue.

Discussion on Petitions/Filing Fees

- Concerns that additional filing fees could be incurred if an attorney is involved and is required to a file multiple petitions and documents for each minor versus filing one petition for all minors in one family when asking for the same relief.
- Waiving filing fees
    - Need to determine the basis for waiving the filing fees.
    - Concerns that the filing fees might be applied differently across the state.
    - When people know to apply for a waiver they do, otherwise fees are collected in minor guardianship cases.
    - Ninety percent of the minor guardianship petitions in Washoe County are pro se.
    - Washoe Legal Services provides a weekly free legal clinic and helps people prepare documents, including the waiver of fees document.
    - There is a fee waiver in Clark County. A fee waiver might be a part of the self-help packet. A filing fee might be waived if the estate is under $10,000 - $12,000 but there would be a filing fee if the estate were above that threshold. This is a part of the self-help packet and is reviewed by the Court.
    - The Commission might want to look at having some people who can afford to pay fees pay them, and this could go towards the services the Commission has been discussing.
- Public Guardian's Offices Filing Fees
    - Clark County pays the fee if there is money in the estate, but the vast majority of the Potential Protected Persons do not have money so the fees are waived.
    - Nye County has not paid filing fees.
    - Washoe County did not think they paid filing fees, but would confirm.
- Management concerns from the Court's perspective, i.e., there are three siblings in a case but they are required to have separate petitions the Court would need to be sure they are scheduling all three files at the same time.
- If there is more than one person included on a petition, could the Court identify each individual separately? For example, Case A, B, C.
- No problems combining minor cases and the preference would be to keep minors under one petition.
- Minor guardianships are different from adult guardianships. The guardianships live for different lengths of time and in different ways.

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[223] Nevada Revised Statute 159.057 states, where the appointment of a guardian is sought for two or more Proposed Protected Persons who are children of a common parent, parent and child, or husband and wife, it is not necessary that separate petitions, bonds, and other papers to be filed with respect to each Proposed Protected Person or Protected Person.

Justice Hardesty asked the Commissioners if they accepted the recommendations provided by the GDT in the memo dated October 15, 2015, excluding the filing question.

> **Dean Christine Smith moved to approve the recommendations set forth in the memo dated October 15, 2015, from the Guardianship Data and Technology Workgroup. Ms. Debra Bookout seconded the motion. Motion passed.**

Justice Hardesty requested that the GDT provide a report to the Commission on how the recommendations would be implemented. The Workgroup was asked to review the filing of petitions and the waiver of filing fee requirements, and reach out to Courts for input on the management question.

Guardianship Data and Technology Workgroup[224]

The GDT Workgroup discussed how to best count and measure guardianship cases, specifically performance measures. One of the areas identified was NRS 159.057. The statute states, "if the appointment of guardian is sought for two or more wards who are children of a common parent, parent and child or husband and wife, it is not necessary that separate petitions bonds and other papers be filed with respect to each ward or wards." As discussed in the prior meeting, this could create an issue in determining court performance measures. For example, if there are multiple Protected Persons, one of the Protected Persons might age out or pass away and the other Protected Person does not, so the case might be arbitrarily extended. In this case, there would not be one-to-one measurements for performance measures. The Workgroup reviewed whether cases could be filed under A, B, C designation, as well as how this might affect court administration. The Workgroup recommends creating a Court Rule that cases are filed under separate petitions for individual Protected Persons/Minors. If necessary, the Nevada Revised Statute could be amended at the next legislative session.

During a previous meeting, the Commission discussed the reason for filing one petition with multiple Protected Persons, which was to avoid additional filing fees. It is common for multiple Protected Persons in minor guardianship cases to be filed under one petition. Most minor guardianship cases would not have filing fees because there is no estate value and pursuant to NRS Chapter 19 no filing fees would be associated with the case. There could be an impact, depending on the estate value, if multiple petitions were required.

The Workgroup had provided a chart[225] showing the guardianship filing fees charged in each county. Mr. Jessup stated the Workgroup wanted to bring the filing fees to the Commission's attention and suggested the Commission review filing fees. The Commission discussed the inconsistency among the districts and the interpretation of the statutes providing filing fees creates some uncertainty about what fees should be charged and under what circumstances. Filing fees are tied to the estate value, and in most of the guardianship cases, the estate value would not be known at the time of the filing of the petition for guardianship. In addition, the

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[224] The GDT provided this report at the January 22, 2016, meeting. The GDT memo and corresponding documents are included as **Appendix F.**

[225] The chart of filing fees is included as **Appendix F.**

Court may never take jurisdiction of over the estate in a guardianship case, yet the filing fee is based on the estate value.

> Nevada Revised Statute 19.020 subparagraph 2 states, "at the commencement of any proceeding in any district court for the purpose of procuring an appointment of administration upon the estate of any deceased person, or procuring an appointment as guardian, the party instituting the proceeding shall pay the clerk of the court the sum of $1.50." Subparagraph 4 states, "the several fees provided for in this section are designated as court fees, and no such action may be deemed commenced, proceedings instituted, nor appeal perfected until the court fees are paid."

The chart indicates counties are not charging any fee for guardianship estates valued at $0 to $2,500, and some do not charge a filing fee for estates valued at $2,500 - $20,000. The Commission should consider a flat fee or no filing fee at all.

Guardianship Data and Technology Workgroup First Report[226]

The Commission continued its discussion on the recommendation that a single petition be filed for a single protected person and the possible fiscal impact. The concern is the costs would increase for persons who hire an attorney if multiple petitions, accountings, inventories, etc., would have to be prepared for one family. It was suggested there could be some type of sibling or spouse waiver if multiple petitions are filed at the same time. The Legislature could review the statute, and if one petition were filed for each sibling, there would be one cost for all siblings. The Commission discussed many of these cases would qualify for in forma pauperis and the fees should be waived. Judge Nancy Porter is not concerned about the filing fee but the costs when a petitioner(s) hires an attorney. If an attorney has to prepare five individual petitions for each sibling, versus one for all, there may be additional costs charged by the attorney so there would be an impact for the people who hire an attorney. This discussion would be deferred to the GDT and discussed at an upcoming meeting.

Ms. Heying researched guardianship filing fees in other states and found many states have a flat filing fee.[227] Justice Hardesty would like the Commission to make some recommendations in this area. The Commission discussed why there was inconsistency in the filing fees charged in each district. Many of the fees being charged were enacted by the Legislature. Ms. Heying noted there are six statutes under NRS Chapter 19 that allow the Board of County Commissioners to charge additional filing fees for civil actions. Some districts are charging all of those fees and others are only charging some.

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[226] The GDT memo, dated February 18, 2016, is included as **Appendix F.** This report was presented at the February 26, 2016, meeting.

[227] Filing fee information is included in **Appendix F.**

Guardianship Data and Technology Workgroup Second Report[228]

The GDT Workgroup provided a memo summarizing its work and recommendations. Mr. Hans Jessup, chair, stated the Workgroup feels it has accomplished the tasks assigned to it by the Commission. The Workgroup had previously recommended the Courts create reports on time to disposition, age of active pending case, and clearance rates to be reviewed by each District's Administrator or Chief Judge at least quarterly for guardianship cases. Mr. Jessup reported that the USJR statistics are being updated to include these measures.

Additionally, the Workgroup recommends a uniform Guardianship Information Sheet[229] (Information Sheet). The Workgroup incorporated elements of forms currently used by other jurisdictions, relevant statutes, and collected information from Courts on what type of information they would like included in the Information Sheet. The Information Sheet does include estate values, which are used to determine filing fees.[230]

Finally, the workgroup recommends a court rule[231] directing courts when a petition is filed for two or more wards pursuant to NRS 159.057, to maintain separate case files. There were 2,488 guardianship cases reported to USJR last year. If one petition were filed for two or more wards, USJR would have no way of measuring how many individuals are under guardianship or how to measure the individual outcomes. The recommended rule tries to address this without putting additional burdens on attorneys or the guardians filing with the Court, potentially increasing costs. The rule puts the onerous on the court to create a separate case file.

Judge Doherty said the Information Sheet was well done. She asked if the expectation is for each District Court to use the Information Sheet. If so, is there a vision of an entity that would collect this information at the county or state level? Would training be provided? Mr. Jessup responded it is the recommendation of the Workgroup that the Information Sheet become a statewide form. Nevada Revised Statute 3.275 provides the State Court Administrator the authority to ask Courts to do that. How the information collected is used, would be up to the Courts. The information collected because of the Information Sheet would help ensure the type of information filed with the Court is accurate. Judge Doherty suggested the Workgroup take the leadership in training the counties in how to apply the Information Sheet. Justice Hardesty stated he thinks it is the intent of the Administrative Office of the Courts to collect this data and if there were a permanent elder committee or continuation of this committee, it would use this data to help guide decision making. Judge Doherty noted the statute does not currently reference limited guardianships it references special guardianships. Ms. Jessup will correct the language on the Information Sheet.

Judge Doherty suggested the elimination of NRS 159.057, which allows the filing of dual cases. Judge Doherty explained not only is the data not accurate but every case in which there are two individuals the individuals are typically married. The Court will inevitably discuss the lead

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[228] The GDT memo, dated May 13, 2016, and corresponding materials are included as **Appendix F**. This report was presented at the May 20, 2016, meeting.

[229] A copy of the Information Sheet is included as **Exhibit C.**

[230] The Information Sheet would need to be modified if the Commission made recommendations to change the estate values and/or filing fee structure.

[231] The Court Rule is included as **Exhibit B.**

person in the relationship, typically the male husband. More often than not, orders are not entered with respect to the other spouse, data or specific substantive narrative is not included with respect to the other spouse, many times those long-term relationships are antagonistic, and yet the Court is treating them as a single case. It is more dignified and easier for the Court to have the cases filed separately. Judge Walker agreed with Judge Doherty and said for minor guardianships, if it is acute there are usually multiple sibling families and kids have different needs and age out of the minor guardianship at different times. It is critically important that each minor have an individualized case.

Judge Porter stated the draft Court Rule[232] is a good compromise. The rule would not require multiple petitions to be filed, which could increase the costs if an attorney is hired and a single petition has to be filed on each child. Judge Porter suggested another way this could be dealt with is to require separate petitions for adults but still allow one petition for multiple children and then the Court would break out the individual case files.

Justice Hardesty said he was going to suggest the Commission recommend, to the Legislature, the elimination of filing fees in minor guardianship cases. The monetary impact is minimal but the staff and judicial time to determine indigence and waive the fees is not. Judge Porter is concerned when a potential guardian hires an attorney and the attorney charges extra for having to file successive petitions. Judge Voy suggested asking Courts for the filing fees that have been collected in minor guardianship cases. Justice Hardesty said the concern expressed by Judge Doherty might be accommodated in the rule suggested by the Workgroup. The Commission needs a little more information on this before taking a vote.

Guardianship Data and Technology Workgroup Draft Court Rule[233]

The Commission reviewed the Workgroups recommendation for a draft Court Rule regarding NRS 159.057, tracking guardianship cases. Commissioners were asked if they had further comment on the rule. There was no further comment.

Judge Frances Doherty moved to approve the draft Court Rule regarding NRS 159.057. Ms. Elyse Tyrell seconded the motion. Motion passed.

Ms. Debra Bookout moved to approve the Information Sheet. Mr. Jeff Wells seconded the motion. Motion passed.

12. The Commission urges the Supreme Court to adopt Court Rules for the qualifications of Non-Attorney Guardian ad Litem or Advocate. (Exhibit D)

August 26, 2016, Discussion

The Commission had discussed changing item 9(b) to state that compensation would be determined by the Court when it was discussing the Bill of Rights that should be added to statute

[232] The draft rule is included as **Exhibit B.**

[233] The Commission approved the recommendation at the June 13, 2016, meeting. A copy of the draft rule on NRS 159.057 is included as **Exhibit A.**

or Court Rule. Mr. Jay P. Raman suggested adding "not have any gross misdemeanors or felony convictions" to item (c). Mr. Spitzer stated domestic violence is a misdemeanor for the first two times and perhaps classifications of crimes such as violence or theft might be more effective. The Commission would prefer more expansive language to encompass gross misdemeanors and domestic violence. Ms. Tyrell suggested the language in section 9(c) should state "not have *any* convictions of abuse...." Judge William Voy asked if individuals convicted with a felony DUI would be excluded from being a GAL. Justice Hardesty stated if an individual had not sealed the records the individual would not be eligible to act as a volunteer GAL. The Commission agreed to include an edit to 9(d) to state "have specialized training or skill according to court rule in the following." This would provide the opportunity to reach out to those who are developing volunteer programs and collaborate with them on what kind of training the Court would view as appropriate.

Ms. Julie Arnold moved to approve item 9 in regards to the qualifications of Non-Attorney Guardians Ad Litem or Advocates including the edits. Ms. Rana Goodman seconded the motion. Motion passed.

13. The Commission urges the Supreme Court to adopt Court Rules outlining the initial plan for guardianship. (Exhibit E)

June 21, 2016, Discussion Initial Care Plan

Ms. Kim Spoon said the initial plan section currently states, "Upon the filing of the initial plan the proposed guardian should file...." Ms. Spoon stated the language does not match what the Commission is looking at with regard to the 60-day requirements, e.g., a care plan or a budget. Ms. Spoon said the point seemed unclear and asked for clarification. When should the guardian complete the initial plan: at the time of the petition, or within the 60-day period? Justice Hardesty stated that was a good point. The understanding was this would kick in within 60 days of the granting of the guardianship action. Mr. David Spitzer agreed with Ms. Spoon and stated the level of detail being asked in describing the initial plan is going to infringe or encourage prospective guardians to be very invasive in the Proposed Protected Person's private life. Mr. Spitzer suggested the standard for granting the guardianship remain the same, but the initial plan should line up with the filing of the inventory. Where all financial matters have been explored and are known, pursuant to court order, the living situation of the Protected Person is more firmly known and the initial plan modified to reflect that something must be filed with the inventory 60 days after the granting of the guardianship. Justice Hardesty stated there might need to be a temporary plan filed with the petition concerning the residential setting and possibly include interim medical or personal care services. Mr. Spitzer noted all language in the current proposal was mandatory and would need to be modified. Justice Hardesty stated it might be a challenge to meet some of the requirements without knowing more about the financial condition of the estate.

Mr. Rowe stated the Second Judicial District Court and the Task Force had been working with Judge Doherty to create a standardized guardianship petition. An element of the petition is what one would hope to accomplish with the guardianship. In many ways, the information being provided to the judge on the front end would be a limited version of this information. This would

guide the Court to understand where the guardianship currently stands and what the hopes are in achieving the guardianship. Justice Hardesty stated it would make sense that there would be a proposed case plan filed with the petition itself, followed with a more specific and detailed case plan if the guardianship is going to be approved. Ms. Buckley stated the idea behind the proposed initial plan is to get a snapshot. If there were two competing guardianship petitions, (1) a family member would plan to put the Protected Person in a nursing home, and (2) the other family member would plan to do residential care and has a much more realistic handle on the budget, that would be good information to know in the beginning and in 60 days. It would provide information that is more detailed. Justice Hardesty asked Mr. Rowe and Mr. Spitzer to work together to send alternative language to Ms. Buckley for this section, recognizing there would be a separation between a proposed plan and a plan that would have to be adopted within 60 days after the approval of the guardianship. Judge Doherty stated she understood the Commission was going in the direction of a preliminary care plan, which would be the first 60 days and then a care plan at 60 days and even a preliminary budget recognizing no more is known than is known. Judge Doherty had asked a petitioning guardian what the guardian's care plan was and the petitioning guardian stated that the guardian would take the Protected Person to an assisted living facility. Judge Doherty stated it would be preferable to know this kind of information at the beginning and have a preliminary discussion about it rather than wait 60 days, because everything happens in 60 days and unwinding that would be very difficult if there were an objection. A preliminary care plan, up front, would be helpful as the petitions are filed. Ms. Julie Arnold stated it is often good to have a Guardian ad Litem in a competing petition situation. They can look at whether the competing individuals are considering realistic budgets and plans of care. Ms. Arnold stated she would like to see section 7(c) broadened to give the judge the ability to appoint an Attorney Guardian ad Litem on a case-by-case basis, regardless of whether volunteer individuals are available. There are situations where the expertise that an attorney can bring to the situation is needed. It would not be good if you they could not be appointed due to the current language in this section. Ms. Sally Ramm added it was a wonderful description of duties of an Attorney Guardian ad Litem volunteer.

August 26, 2016, Discussion

Ms. Elyse Tyrell asked to edit the language in section 4(a) regarding the initial plan. Justice Hardesty suggested the language to state "Upon the filing of a guardianship action and within a time specified by the Supreme Court...." Judge Doherty stated the latest point in which that proposed preliminary plan should be submitted should be at the full guardianship hearing 20 days later at the full hearing. Justice Hardesty stated the Court should evaluate the initial plan by rule.

Judge Egan Walker moved to acknowledge and approve section 4 in regards to the initial plan. Mr. Jay P. Raman seconded the motion. Motion passed.

a. The Commission approved offering recommendations concerning the fee structure to compensate guardians[234] and others they hire.

[234] Chart of State statutes related to guardian fees attached as **Appendix X.**

Justice Hardesty stated rather than get into the weeds about what that fee structure would look like, the threshold question is - Is question 22 an issue the Commission would like to make recommendations about?

> **Judge Egan Walker moved that the Commission offer recommendations concerning the fee structure to compensate guardians and others they hire. Ms. Debra Bookout seconded the motion. Motion passed.**

During the roll call vote, Ms. Rana Goodman said yes but had a question. She did not recall if a guardian had provided the Commission information on what they thought a fair fee schedule should be. Justice Hardesty said he was not sure that had been thoroughly vetted yet but the question is should the Commission revisit how this is structured and in the current statute there is a general provision about the right to be compensated but there is not much guidance concerning the subject. Information from other states' schedules had been provided during the first few meetings. Ms. Goodman said she would like there to be a fee structure.

> **Assemblyman Glenn Trowbridge moved that the Commission make recommendations concerning the process, notice, and findings required for the approval of fees to guardians and others they hire. Senator Becky Harris seconded the motion. Motion passed.**

b. The Commission approved making recommendations concerning the process, notice, and findings required for the approval of fees to guardians and others they hire.

August 26, 2016, Discussion Guardian Fees

Justice Hardesty asked if the Commission wanted to make any statutory changes to NRS 159.183, as it currently reads relating to guardians and their compensation. The primary issue the Commission discussed is whatever fees are going to be paid to the guardian, they will be part of the initial preliminary plan and subsequent permanent plan, and the fees would be reasonable and the Court would have to prove who they are paying. This has been addressed in the context of the statutes that Ms. Barbara Buckley had drafted. Justice Hardesty welcomed other motions or suggestions. Ms. Debra Bookout said the Commission agrees that the standard is "just and reasonable" and that before any guardian fees are paid, the Court must approve the fees. The Commission has discussed whether the fees should be set at the outset and/or whatever the agreement is, and it was determined that was a good idea. Ms. Bookout said some states require the fees to be set at the beginning so all parties have some idea going forward what the guardian fees are going to look like. The fees could be modified by the Court later, but the initial plan provides some idea of what the fees would look like. Ms. Bookout suggested the Commission might want to think about how fees are set when the Protected Person is indigent. Their research found some states allow for guardian fees to be paid by the county. In Minnesota, the Board of County Commissioners sets the fee schedule for the public guardians and that is the same fee schedule that would be applied for an indigent Protected Person's case. One of the items the Commission has heard during testimony is the estate was depleted due to guardian fees. When there is a tiny estate, those monies can be quickly depleted. In an effort to avoid that problem,

some states have the county pay the fees, and some states set a cap on the fees that can be charged, i.e., a percentage of the estate. Florida, sets a fee rate depending on the years of experience as a guardian.

Justice Hardesty asked Judge Doherty and Judge Steel if they wanted to see a different approach to how they review and approve fees other than the preliminary plan then connect that to a just and reasonable assessment.

Judge Doherty said she can operate under both a more general or specific plan. She added the Commission has articulated with more specificity, the kind of expectations and reaffirmations that guardians should not be charging guardian fees for certain things. Judge Doherty said this is edging its way into the culture of the fee charges. It is good to have specific language, on the other hand, she thinks we have progressed to the point that we can use the "just and reasonable standard" sufficiently in the Courts. Judge Steel agreed she could operate either way. Judge Steel would prefer to have an amount of the fees the Protected Person's guardian and attorney plan to bill in the initial budget so the Court could review and approve those fees.

Justice Hardesty said the Commission will let the preliminary plan and the budget process take its course and then see if it needs to be reviewed later. The Commissioners agreed.

c. The Commission approved making recommendations concerning the process, timing, notice and findings the Court must make concerning accountings of the Protected Person's estate.

Justice Hardesty added "care plan" for the Protected Person to the recommendation. There was a suggestion to add budget and Justice Hardesty said the budget should be included in the care plan.

Ms. Debra Bookout moved to make recommendations concerning the process and timing for filing and evaluating an inventory and care plan for the Protected Person. Ms. Terri Russell seconded the motion. Motion passed.

14. The Commission urges the Supreme Court to adopt a modification to the Judicial Code, as necessary, to accommodate the judge's ability to address ex parte communications that deal with the welfare of the Protected Person. (Exhibit F)[235]

Justice Hardesty referred to the opinion by the Judicial Ethics Advisory Committee (Committee), which limits the communications that can be made to a judge and a judge's staff, concerning problems surrounding a guardianship. The opinion suggested this Commission might develop a recommendation to the Court in this area. The opinion referred to a potential solution that is used in the context of communication made where the judge is involved in therapeutic or problem-solving courts, i.e., drug courts, mental health courts. In the context of those types of courts, the

[235] **Exhibit F** includes a copy of the State of Nevada, Standing Committee on Judicial Ethics Advisory Opinion: JE15-002, and the position statement from the Florida Clerk of the Court, Sharon R. Bock, on Clerk's Guardianship Duties and Ex Parte Communication.

Court adopted a comment to Rule 2.9 that said ex parte communications with the judge or the court staff was not an improper ex parte communication.

Justice Hardesty referred Commissioners to the position statement from Florida on Clerk's Guardianship Duties and Ex Parte Communications, Fla. Stat. § 744.368 and § 744.385. The position statement was prepared by Clerk and Comptroller of Palm Beach County, Sharon R. Bock.[236] The position paper addresses the ethical issues surrounding communications with the Clerk of the Court when dealing with complaints about how guardianships are being handled, or other issues that would be a concern to the judge supervising the guardianship. Florida statutorily permits these types of communications to be made to the Clerk of the Court. The Florida Supreme Court permits these types of communications to be set out in an affidavit by the clerk, presented to the judge, and the judge enters a show cause order to the parties to address this problem.

In Nevada, the Clerk of the Court is an employee of the court. There is a Nevada Supreme Court case *Harvey v. Second Judicial District Court*,[237] which holds that the Clerk of the Court works for the court, not the county. Due to that difference, Justice Hardesty is suggesting a recommendation from the Commission that the Court adopt, by Court Rule, the ability of the Clerk of the Court to receive complaints about a guardianship proceeding or to advise the Court if there are defalcations existing in failing to file a timely report. That information would be submitted to the district court judge, the judge would enter a show cause order for parties to come in and explain why there is this problem and what is going to be done to solve it. Justice Hardesty said this would be a solution that would fit within the rubric of the Nevada system. This would require rules by the Court, comment in the Rules that the ex parte communication could be excluded in the same way the Court has recognized and excluded therapeutic and problem-solving courts.

Ms. Sally Ramm asked how the information would be provided to the Clerk of the Court. Justice Hardesty said what is envisioned is the Clerk of the Court, compliance officer, auditor, investigator, etc. who has knowledge of these defalcations can present the information to the judge, the judge can issue a show cause order, and then everyone in the case comes in and discuss the concerns.

Ms. Barbara Buckley asked if the Commission was envisioning a similar rule in Nevada limited or defined to financial records and financial accounting as is done in Florida. Justice Hardesty said it would be broader to include any problem in the case. The Commission has already included, as part of its recommendations, the acquisition of investigators and auditors. Ms. Buckley said this mechanism is the best she has reviewed, and it addresses the Committee's concern.

Judge Frances Doherty said National Probate Standards recommend a protocol by which a third party or person within the second degree of consanguinity has the ability to file a complaint, concern or notification to the court.

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[236] Clerk Bock provided the Commission a presentation on Florida's model at its meeting on May 20, 2016.
[237] 117 Nev. 754, 32 P.3d 1263 (2001).

Assemblyman Michael Sprinkle agrees with this recommendation, and asked if once the complaint was provided to the judge, would it be mandated that the judge act upon the complaint, or would it be up to the discretion of the judge to pursue the complaint further. Justice Hardesty said the judge is required under Florida statute to issue a show cause order to the parties. The judge does not decide it, and cannot decide it, but the judge is required to enter an order requiring the parties to come in and address the condition. The recommendation is Nevada would do the same.

Ms. Elyse Tyrell suggested adding language that addressed any complaint made has to have merit because there are occasions where people interject themselves and there is no merit. Judge Doherty notice to all parties should be included.

Chief Judge Gibbons said the Special Advocates for Elderly (SAFE) Program provides the perfect vehicle for these situations. The information would be given to the volunteer, working for the Court, the volunteer would investigate, write a report and make a recommendation to the Court.

Ms. Buckley noted there are potentially three different ways a concern could be brought to the Court:

1. Establishing SAFE Programs
2. Attorneys being provided for all Protected Persons
3. Expansion of Notice

Reporting concerns to the Clerk of the Court would provide an additional avenue for families and others to report their concerns to the Court.

Mr. Jay P. Raman agrees with the recommendation, and suggested the Clerk of the Court be added to NRS Chapter 200 as a mandatory reporter.

Judge Nancy Porter expressed concern that the Court would be required to issue an order to show cause in every instance. Judge Porter suggested allowing the Court to set a hearing if it is concerned, if not, everyone is noticed and served and any person served could request a hearing.

Justice Hardesty suggested the Commission make a recommendation that the Court adopt modifications to the Judicial Code, as necessary, to accommodate the judge's ability to address communications that deal with the welfare of the protected person. Many of the permutations surrounding this including those Mr. Raman, Ms. Buckley, and Judge Porter have pointed out could be addressed by the Court on that recommendation.

Judge Frances Doherty moved to recommend to the Court adoption of a modification to the Judicial Code, as necessary, to accommodate the judge's ability to address ex parte communications that deal with the welfare of the protected person. Chief Judge Michael Gibbons seconded the motion. Motion passed.

B. LEGISLATIVE RECOMMENDATIONS

1. **The Commission recommends NRS 159.0485 make clear that legal counsel be appointed for every Proposed Protected Person, regardless of means.**[238]

2. **The Commission urges the Legislature to approve an increase in recording fees of $1.50, pursuant to NRS 247.305, for funds to be distributed in each county to legal aid organizations to provide legal counsel for all Proposed Protected Persons and Protected Minors in guardianship proceedings. In the absence of a legal aid organization in a given judicial district, the Court may appoint counsel to provide legal services with those funds. The funds for the legal aid organization, in a given judicial district, will be set aside by the Access to Justice Commission of the Nevada Supreme Court.**

In a previous meeting, the Commission had discussed the public defender's office being charged with representation for Protected Persons. Mr. David Spitzer asked if that was still being considered. Justice Hardesty responded the Nevada Supreme Court's Indigent Defense Commission (IDC) conducted research in this area and the public defender offices throughout the state already have caseloads exceeding American Bar Association standards. Charging the public defenders offices with this task would be a resource issue. Additionally, there is a need for expertise in the area of guardianship, and the skill set for a public defender is different from the skill set for someone representing a Proposed Protected Person.

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

> **Assemblyman Michael Sprinkle moved to have the Commission (1) authorize the chair to send a letter to county commissioners to provide financial support through their legal aid organizations to make counsel available for all Protected Persons until the next legislative session, and (2) the Commission urges the Legislature to approve an increase of recording fees of $1.50, pursuant to NRS 247.305, to be distributed in each county to legal aid organizations to provide legal counsel for all Protected Persons in guardianship proceedings. Judge Cynthia Dianne Steel seconded the motion. Motion passed.**

Additional Discussion

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

Judge Nancy Porter said the Fourth Judicial District Court has reached a crisis point in terms of representation for Protected Minors. There is not enough money and the county does not have

[238] See also Legislative Recommendation number 2 and Policy Statement number 1 and 2.

enough attorneys. Washoe and Nevada Legal Services have worked with and provided services to the Court. Washoe Legal Services is currently trying to find additional funds for the next fiscal year. Additionally, Elko County is experiencing a fiscal crisis and there is no money to pay for additional attorneys. If the Court had the resources generated by the proposal, it would first turn to legal aid for assistance.

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

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

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

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

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

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

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

Mr. Timothy Sutton asked to clarify if the revenue would be generated from recorders' fees, as is listed in the materials, or if those fees would come from the clerk's filing fees under NRS Chapter 19. Justice Hardesty said they would come from the recorders' fees under NRS 247.305. Justice Hardesty said the determination of those fees would go to the legal aid organizations that are working in each county as approved by the AJC. Assemblyman Sprinkle and Judge Steel agreed with the amendment.

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

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

3. **Replace the term "Ward"[239] as defined in NRS 159.027 with the term "Proposed Protected Person" or "Proposed Protected Minor" pre-adjudication and "Protected Person" or "Protected Minor" post-adjudication. This will require amendments to multiple statutes where the term "Ward" is used.**

The Commission discussed changing definitions and terminology used in NRS Chapter 159, as suggested by national best practices and some of the presentations the Commissioners received, over several meetings. The Commission also considered changes to the Physician's Certificate[240] as outlined in NRS 159.044.

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[239] The terms Proposed Protected Person/Minor, and Protected Person/Minor have replaced the term Ward throughout this document. Exceptions: Language in the original ADKT 507 orders, where statutory language is referenced, and in presentations by other states that still use the term Ward when referring to a Proposed Protected Person/Minor or Protected Person/Minor.

[240] Revisions to the Physician's Certificate incorporating the terminology recommended by the Commission is included as **Exhibit G.**

December 15, 2015, Discussion

The Commission discussed whether the term Ward should be changed. Ward is defined in NRS 159.027 and means any person for whom a guardian has been appointed. The term was added to statute in 1969 and has not been changed since. National best practices have suggested using alternatives to the term Ward, and many states have begun to adopt alternative terms for both pre- and post-adjudication to refer to the person who is subject to the guardianship.

- The term Ward sounds like it is a possession of someone.
- Ward is a noun. The term is a status as opposed to an adjective describing a human who would be a person under a guardianship. The status is archaic and the Commission should consider a different term.
- *National Probate Court Standards (NPCS)* are very specific about eliminating the term Ward.
    - *NPCS* has substituted the term Respondent for predisposition and have suggested either Person Under Guardianship[241] or another phrase for post-disposition.
    - The term Respondent could be used throughout the case.
        - Concern regarding confusion among the public and entities such as the banks, institutions, third parties, etc., would not understand the distinction between the term Respondent and Ward.
        - The term Respondent seems to be someone receiving bad news. They might not always be the responding party because they have not done anything they need to respond to so the term is awkward.
- There is value in addressing the subject of a guardianship proceeding differently pre- and post-adjudication.
- It is difficult to define a nonprerogative term for someone who is the subject of a guardianship, post-adjudication.
- Mr. David Slayton, Court Administrator, Texas Administrative Office of the Courts, mentioned regretting not changing the term Ward during the last legislative session.
- Regardless of the term used, there will be some negative connotation. The Commission might want to leave the term Ward and focus on the disconnect between the legal and medical terminology.
- Suggest using person-first terms, which are used in statutory language. The person it put first, e.g., person with a disability, person hard of hearing, etc.

The Commission continued its discussion of alternatives to the term Ward at the April 22, 2016, meeting.

Judge Frances Doherty stated the term Ward is not found in current literature and is not found in the vernacular of the Second Judicial District Court by the primary participants. The Court uses the term Person Subject to Guardianship, if a guardianship has been entered; prior to entering a guardianship the term Respondent is used. Judge Doherty suggested the Commission stop using historically antique, aged, and irrelevant words to what is really being discussed. Judge Doherty said if the Commission fails to take the opportunity to eliminate the term Ward from state

[241] Commissioners were concerned with term Person Under Guardianship, as the acronym would be PUG.

statutes we may seem less progressive than we are because we are changing the use of that term as the Commission speaks today.

Proposed Terms:

- Proposed Person Subject to Guardianship
- Person Subject to Guardianship
- Probate Standards
    - Respondent (prior to adjudication)
    - Person Subject to Guardianship (after adjudication)
- Protected Person (National Guardian Association)
- Protected Minor Person (National Guardian Association)
- Respondent – Appropriate when person is going through the initial court proceedings
- Person Facing Guardianship
- Candidate or Nominee

Ms. Sally Ramm stated the term Respondent appears to be a legal term and many people coming into the guardianship court do not have a legal background. Ms. Ramm suggested using the terms Person Facing Guardianship or Person Subject to Guardianship. Those terms place the person first and the term Protected may come across as demeaning as in referencing a child.

Judge Cynthia Dianne Steel stated the term Ward may seem out dated but it does have a collective meaning throughout the ages. Departing from the term Ward altogether might not be a good idea if the Commission chooses to do so for change sake. In regards to the terms Proposed Ward and Proposed Person Facing Guardianship, Judge Steel suggested using a more upbeat word such as Candidate or Nominated.

Justice Hardesty asked the Commission to reference the chart included in the materials.[242] Many states have shifted to using the term Protected Person or Protection Proceeding, consistent with the National Guardianship Guidelines. Ms. Spoon observed the chart represented 15 states. Many had taken on the term Protected Person but 11 of the 15 represented states were still using the term Ward. She stated, it does not seem as though the majority of the represented states are moving away from the term Ward, even though they used Protected Person or other language in other aspects of a conservatorship, it would seem that the term Ward is still being used. Judge Doherty added the Sanford Center for Aging was in support of eliminating the word Incompetent and the term Ward was highly disfavored. Courts are often times one of the last entities to paradigm shift and society takes the lead. Recent literature will not be found with application of the use of the term Ward and the term will not be found in the *National Probate Courts Standards (NPCS)*.

Chief Judge Michael Gibbons stated there was an analogy, to children who are in the system under NRS Chapter 432B, that is called dependency court; the children are referred to dependent children. A "dependent child" could be referred to as a Ward of the state or an abused and

[242] The chart of terms used by other states is included as **Appendix Y,** and where available, links to documents are included in the Reference and Resource page.

neglected child, yet the term dependent is neutral. Chief Judge Gibbons stated the Commission should replace the term Ward and with a more neutral term.

Commissioners were asked to deliberate the terminology further and provide literature, resources, and suggestions to alternative terms for consideration by the Commission for further discussion at an upcoming meeting.

The Commission discussed alternatives to the term Ward at the meeting on May 20, 2016. During public comment, Ms. Dara Goldsmith indicated there is some objection to the approach of changing the term Ward. Mr. Timothy Sutton had made a similar point. Justice Hardesty suggested the Commission might want to pass on making a recommendation to the term at this time and continue to monitor how other jurisdictions develop this terminology. Justice Hardesty did not want to discourage suggestions, recommendations, or a motion on this subject.

May 20, 2016, Discussion

Senator Becky Harris is not sure what the correct terminology should be, or how the Commission might come to an answer, but there has been enough public testimony indicating the term Ward is offensive. Therefore, the Commission should find a solution. Senator Harris suggested the Commission defer this discussion until the next meeting so additional research could be conducted. Senator Harris said it is important that the dignity of individuals be protected in this process. One of the ways this can be done is by listening to the public comment. Justice Hardesty stated the term Person in Need of Protection continues to come up, and he shares Senator Harris's view that the term Ward has a negative connotation. The term a Person in Need of Protection or an alternative term would diminish that consequence.

Ms. Elyse Tyrell did not see anything negative with the term Ward. It alerts everyone that that is the person who needs protection. The phrase a Person in Need of Protection does not tell anyone there is a court order in place and that there are things that need to be done. She was in favor of keeping the term Ward. Judge Steel had discussed changing the term with the Bench Bar in the community, and they are against changing the term from Ward. Judge Porter liked Florida's presentation and is fine staying with the term Ward. Ms. Julie Arnold also prefers the term Ward. Ms. Arnold noted any term that is used in this context will be offensive to a few but she does not think it is inherently offensive and it is much better than terms like incompetent or incapacitated.

Judge Doherty said this is an effort to pull guardianship out of the shadows of oversight, and to make these cases more relevant in both understanding and simplicity. This is not the time and place to argue for sustaining a term that is isolating and is more derogatory than not by virtue of its existence. The term has a level of less than equal with respect to reference. Changing the term is a simple validation of the humanity of the persons we are trying to protect. The Bench Bar in Washoe County fully supports modification to the language and many members have already incorporated changes into their dialect, while others are drafting or adopting pleadings that change that reference. Judge Doherty said if the Commission is really moving forward in this area of work, then we need to give a little more equalization of and validation to all the participants in the action and the term Ward does not do that.

A number of the terms that had been provided at the April 22, 2016, meeting had a national connection, e.g., the National Guardian Association refers to Protected Person and Protected Minor Person.

Ms. Sally Ramm stated person-first and person-centered care is the trend in both Nevada and nationally. Making this change would be a beacon in the way Nevada is looking at guardianships. It would say Nevada is going to look at person-centered guardianships and putting the person first by virtue of a person-centered guardianship. Ms. Ramm prefers the terms Person Subject to Guardianship and the Person Under Guardianship.

Commissioners continued the discussion on alternative terms to Ward at the June 21, 2016, meeting.

June 21, 2016, Discussion

Justice Hardesty noted he was in favor of the recommendation to characterize a person who is the subject of a petition to be called a Respondent in pre-adjudication, and a Protected Person or Protected Minor Person, post-adjudication. Concerns had been expressed in prior meetings with changing the term Ward, however, the National Guardian Association's recommendations are worth considering and they reflect best practices. It would be crucial for the Commission to decide on a term in order to complete its final report.

Ms. Susan Sweikert stated she was in favor of using the terms Respondent and/or Protected Person and Protected Minor Person in order to remain consistent with national standards. Ms. Sally Ramm stated the term Respondent would be confusing for the public. Ms. Terri Russell was in favor of the term Protected Person because it reminds everyone what is happening and why it is happening. Ms. Russell agreed that the term Respondent could be confusing to the public. Judge Steel had conducted informal surveys of some seniors and all responded that they would not like to be referred to as Wards. Attorneys and other individuals who work with Judge Steel had stated they would not like the term Ward changed, it is a term that they are accustomed to. Judge Steel stated the seniors she surveyed preferred the term Protected Person post-adjudication. Judge Steel stated she was not in favor of the term Respondent. Justice Hardesty asked if Judge Steel would prefer the term Proposed Protected Person, Judge Steel stated she would prefer that term. Ms. Arnold stated if the Commission recommended changing the term Ward, it would become pejorative over a number of years regardless of what the term's connotations or denotations are. Ms. Arnold did not perceive a valid reason for changing the term Ward.

> **Judge Frances Doherty moved to alter the identification of the term now used as Ward to Proposed Protected Person or Proposed Protected Minor, prior to adjudication and Protected Person or Protected Minor post adjudication. Ms. Terri Russell seconded the motion. Motion passed.**

Mr. Timothy Sutton asked if the National Guardian Association had preference to pre-adjudication terminology. Justice Hardesty stated the *National Probate Courts Standards (NPCS)* preference is Respondent. Mr. Sutton stated bigger organizations such as the National

Guardian Association and the *National Probate Courts Standards (NPCS)* may push for terminology to be changed, therefore the Commission should change the term in order to remain consistent with national standards. Judge Doherty stated her motion was based on the sense of the consensus of the Commission.

4. **Revise NRS Chapter 159 to incorporate the concept of "Incapacitated Person." (Exhibit G)**

Terminology Incapacitated, Incompetent, Insane

The Commission discussed the use of terms incapacitated, incompetent, and insane as used in the guardianship statute and the Physician's Certificate over several meetings.

December 15, 2015, Discussion

- Ms. Julie Arnold noted the terms Incompetent and Insane could easily be changed. Missouri statute has changed the term Incompetent to Incapacitated Person. Ms. Arnold noted that overtime whatever term is use collects a stigma.
- The term Incapacitated has another distinct set of meanings when talking about the determination of life support and different things like that under different statutory provisions.
- There are issues with definitional terms used by physicians versus definitional terms used by attorneys.

Commissioners were asked to offer their perception of the Physician Certificate (PC) and discuss:

- Whether the certificate should be changed, if so how?
- If there are terms used in the certificate that should be changed.
- If there are other areas of the certificate that should be reconsidered.
- Who should provide the certificate.

Additional Discussion

- Based on the suggestions of other jurisdictions and research, the guardianship system could get more out of the PCs if there were fewer questions.
- Questions similar to what Texas used could be added to the PC.
    - Is there an alternative method from the perspective of the physician that could address the needs of the individual?
    - Are there alternative arrangements that have not been contemplated?
    - These questions would open up the discussion as opposed to the check box that currently exists. The check boxes might need to be retained but the Commission should review the PC.
- Judge Doherty offered to work with others to overhaul the PCs based on best practices.
- Would least restrictive means apply to the ward in all circumstances?
- Would a person be referred to as Protected Person, even though a full guardianship might not be needed?

- Making the PC an affidavit attaches liability to the affiant that this is true and accurate.
- Do not want to deter the medical community[243] from being able to do what they need to do. Communication would remove some of the reluctance that is seen.
- Need to remove Health Insurance Portability and Accountability Act (HIPAA) concerns.
- Include the medical community in these discussions and the possible redesign of the PC.

Justice Hardesty asked if the Commission favors modifying the PC. Assuming the Commission does, Justice Hardesty would appoint a subcommittee to review the PCs and propose some modifications. A corollary to that would be to modify the terms that are used to create the guardianship appointments, i.e., incompetency versus the term used by the medical community, which would be closer to incapacity. The PC does include statutory language so changes to the PC could require statutory change. Modification of the form should be deferred to the judiciary, courts, or some other source as it would not be practicable to have to wait until the statute is changed to modify the form. The statute would reflect any changes to terminology that might be included in the PC, e.g., if the term "incompetent" was changed to "individual incapacity." The determination of incapacity should be stated on an affidavit beyond checking boxes.

- Need to balance the needs of the Respondent (privacy rights) and the interest of the physician.
- Privacy laws require the minimum as necessary and part of the check-the-box is the minimum as necessary.
- In order to make good decisions, the Courts need good information. The challenge is finding a way to get from what we have to where the person's rights are protected but the participants have adequate information to make good informed decisions.
- This could be an opportunity for a Supreme Court order, similar to the order that was issued a year ago that says when medical information if filed afterwards it is confidential. It would be appropriate for the Court to define the parameters. This might allow the medical community to feel more comfortable in providing information if the Court is ordering it and the information is confidential.
- Comparing this to a criminal case – if the defense lawyer suspects their client might be incompetent, the attorney will request an evaluation of the defendant to determine competency. The reports that come back to the Court are often 6 - 7 pages and cover many aspects of a person's life. In contrast, the Court does not receive as thorough of a report in a guardianship proceeding.
- It was noted that some physicians might be signing the form without realizing that this is for a guardianship case.

Justice Hardesty asked as a policy matter, does the Commission think it is best practices to require an expanded discussion of an individual's capacity as a condition to the Court ordering a guardianship.

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[243] Washoe County has 5-6 doctors who complete 90 percent of the evaluations.

The Commission discussed NRS 159.044 subsection 2 (j)(1) and (2):

(j) A summary of the reasons why a guardian is needed and recent documentation demonstrating the need for a guardianship. If the Proposed Protected Person 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.

The Commission discussed that the PC might need clarification in who is allowed to sign to certificate. There was concern that a physician's assistant or people working in a group home could sign the certificates.

Guardianships are established by clear and convincing evidence, and the majority of cases in family court are a preponderance of evidence. The judge is to recognize the due process rights of a contesting litigant and cross-examine medical evidence by the person who has prepared the report in a family court proceeding. This is not the case in guardianship proceedings. An argument could be made that the PC's only purpose is to meet the threshold requirement of filing the petition. That there is some objective determination made by a medical provider that filing the petition is in good faith and in reliance of the objective entity. There is no ability for cross-examination of the medical report and no thorough report on which the respondent can develop a responding piece of medical evidence. Judge Doherty asked what the real purpose of the PC is because in a trial by clear and convincing evidence it is useless from her point of view constitutionally. Does the statute actually expect that is all the Court is going to rely on for the petitioner to make a determination of competency or incompetency, unless supplemented by the respondent? Judge Doherty thinks this minimizes and diminishes the standard of proof that is otherwise expected. It is merely a threshold determination to allow the filing of a petition to allow the Court to proceed on this interim matters and hold an adjudicatory hearing. Judge Doherty is not sure how to square this statutorily, constitutionally, or otherwise.

Judge William Voy said there are competing interests, and he views the PC as the document that gets you to Court. If we try to make the PC more than that by requiring more information, physicians might be unwilling to sign the PCs. This could prevent good people from getting a Proposed Protected Person under the protection of the Court because the physicians are reluctant to sign the PCs. The Commission should be careful as it reviews the PC and must be aware of

competing interest. The Commission needs to be sure it is not creating another layer or statutory scheme that prevents the petitions from being filed. There should be guidelines for what the Court should require and be looking for from the litigants to substantiate the PC. The Commission might want to review that versus making the front-end onerous and changing the original certificates that get the court process started to begin with.

Justice Hardesty stated General Policy Question 13 asks if the Commission favors person-centered planning and determination by the Court that guardianships are approved pursuant to least-restrictive means. If the Commission does not want to expand the PC, then how would the Courts make these determinations? How would the Courts be able to determine the least-restrictive means or reasonable alternatives without additional input? This would mean the judge would have to accept the affidavit that is expanded beyond the PC today and, unless it is traversed by the Protected Person, there would not be any expert testimony beyond what is contained in the affidavit. It would require some explanation or discussion in the affidavit. Judge Voy is concerned that if you start requiring all this information on the front-end, then you are going to have physicians who do not want to be involved with the PC at all.

Justice Hardesty said examining the PC is a wise idea and the Commission should get input from experts who complete this form. The Commission should consider how changes to the PC might affect physicians. Justice Hardesty deferred question 6 for further discussion. Justice Hardesty said the Commission should discuss the terminology with the physicians as well as the topic of least-restrictive means and how that might be addressed in the PC.

The Commission discussed public access to the records and the concern that the Courts might be including information[244] in their orders that could be a violation of HIPAA, if that information is available to the public. The Courts try to use the weakest words they can to provide a definition of what is going on in a person's life without violating HIPAA. The Commission should review this area. Ms. Russell was concerned that if the records were sealed, the media would not be able to review the records and identify areas of abuse. This discussion led into question 7.

Terms Incompetent/Incapacity – report provided by Kim Rowe[245]

The legal and medical communities use different language when referring to a person who may be subject to a guardianship. The legal community tends to refer to a person as incompetent. Incompetent is a judicial determination that is made by a judge, it is not a medical term. The medical term used in a guardianship proceeding is capacity. Nevada's statute defines incompetent but it does not define capacity. The term capacity does appear in NRS 159.044(3), which reads, "[b]efore 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."

[244] For example, the order might include information that the person has dementia or some other diagnosis.
[245] This information was presented at the April 22, 2016, meeting.

The American Bar Association (ABA) Commission on Law and Aging put together a summary of how the different states have dealt with this issue as well as some of the national standards. Nevada adopted the Uniform Guardianship Act (Act) in 2009, which deals with multijurisdictional guardianships and how they are transferred from state to state. The concept of that act deals with incapacitated persons. Mr. Rowe and Ms. Elyse Tyrell would be proposing some simple legislative changes; removing incompetency from the statutes and incorporating the concept of incapacitation. This would allow the Commission to take the concept of incapacity and have it move through the statutes in a manner in which physicians who are dealing with it can understand it. There is a definition of incapacitated persons built into the statute, telling the Court what is being talked about and is consistent with what other states are doing across the country. Whether the Commission would decide to use the term Ward or Respondent, the term incapacitated person would be a better term to use because it recognizes the different levels of capacity. Nevada already deals with limited capacities and having special guardianships where areas can be identified in which individuals may still have some of their rights honored in a less-restrictive manner. If the Commission would move to a different definition, rather than incompetent, the State would be in line with what is happening nationally and solve the terminology issue, where often times, physicians and courts are confused about what is going on. Written recommendations would be provided to the Commission at the May 20 meeting.

Judge Porter, Judge Doherty, and Judge Steel were asked to provide their views in assessing the least-restrictive means test that has been discussed with the Commission's model and shaping guardianships around the specific capacity limitation.

Judge Doherty stated the term incompetency has not been used in literature for the last 6 – 10 years. Current literature from the *National Center for State Courts (NCSC)* and from the *National Court of Probate Standards* use capacity or incapacitated, and for Ward, the substitution is Respondent or Person Subject to Guardianship. The Court is already using these terms and it would not be a significant paradigm shift for stakeholders. It gives the Court the ability to gauge capacity when addressing alternatives and least-restrictive environment. The term incompetency is a very black or white term; you are either competent or incompetent. Capacity is more of a spectrum. Judge Steel concurred in that assessment. If you are incompetent, you are on a real far spectrum of incapacitated. Judge Porter prefers the term incapacity. The definition of incompetent in NRS 159.019 is bothersome. Incompetent under that statute is defined as an adult person who by reason of mental illness, mental deficiency, disease, weakness of mind, or any other cause is unable without assistance to properly manage and take care of himself or herself or his or her property. That phrase "without assistance" makes the statute so broad that it captures many people who may not need a guardian. Narrowing that definition would be helpful.

Mr. Rowe stated the definition for incapacity under the act is longer and does have problematic language. In summary, the definition from the original act in 1997 states, "...lacks ability to meet essential requirements for physical health, safety, or self-care, even with appropriate technological assistance." There are better definitions in the ABA study, which talks about functionality and cognitive approaches, consistent with capacity. There are other statutes that could be drawn from for better definitions than the act. The concept would be to focus on cognitive abilities rather than disability, which is the direction the Commission would need to

move towards in order to get to a least-restrictive approach. Justice Hardesty asked Mr. Rowe to continue narrowing the definition to the cognitive and functionality issues, which may also be of assistance to the medical community. It would be easier for physicians to address those types of issues, an affidavit or certification of the court, rather than other concepts.

Mr. Rowe spoke to Dr. Steven Phillips from the Sanford Center for Aging. Dr. Phillips is a board certified geriatric physician and was involved in the creation of the physician's certificate from the beginning. Dr. Phillips is interested in going a step further and providing education to the State Board of Medicine with physicians who practice in this area to make sure everyone is on the same page, once the Commission has formulated its work. The individuals completing the certificates would be educated to understand what the Courts are looking for so that the Courts get a more meaningful product from the physicians. Dr. Phillips currently holds trainings within his office on how to complete the certificates; however, if there were a way to approach the medical community, it would be beneficial to the judges who are struggling. Justice Hardesty stated it might be a good time for members of the Bar and medical community to hold a joint, continuing legal education session. Justice Hardesty agreed that narrowing the definition would be essential in recommendations made by the Commission.

May 20, 2016, Discussion and Recommendation[246]

Mr. Kim Rowe and Ms. Elyse Tyrell provided a memo regarding the revision of NRS Chapter 159 to incorporate the concept of Incapacitated Person. Justice Hardesty stated unless there is a discussion, he would like to receive a motion to adopt the definition that has been recommended. The memo and recommendation have been included as **Exhibit G.**

Ms. Kim Spoon is concerned that the definition does not include a statement about financials. The definition states "...the ability to meet essential requirements for physical health, safety, or self-care without appropriate assistance." Ms. Spoon asked if the definition should include something about financial stability. Ms. Tyrell agreed that was a good point, and she accepted the amendment. Justice Hardesty asked if there was any discussion about the adoption of this definition as amended. There was no further discussion.

> **Ms. Elyse Tyrell moved to approve the definition for incapacitated, amending the definition to include financial stability. Judge Egan Walker seconded the motion. Motion passed.**

5. **The Commission recommends legislation to add a Bill of Rights with the understanding the Bill of Rights would be included in the Guardianship Oath and be subject to enforceability through a private right of action. (Exhibit H)**

Bill of Rights from Texas, Ohio, Colorado, and Minnesota[247] were sent to Commissioners prior to the November 23, 2015, meeting. Ms. Barbara Buckley had also drafted a Bill of Rights for Nevada, which was sent to Commissioners in a separate email following the November 23 meeting.

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[246] The Commission continued its discussion of the term incapacitated at the May 20, 2016, meeting.

[247] Links to other states Bill of Rights are included in the Reference and Resource page.

December 15, 2015, Discussion

The Commission discussed the Patient's Rights as outlined in NRS 449.700 to NRS 449.750. Mr. Kim Rowe has found the Patient's Rights to be a useful tool, in not only dealing with families and patients, but also when working with healthcare facilities to educate them and make sure they understand what those rights are. People tend to pay more attention to those rights because they are in statute.

Adopting a Bill of Rights would not end the discussion. The question would be what role the Bill of Rights plays in the overall adjudication and monitoring of guardianship cases. For example, could the Bill of Rights create a private cause of action? This would be an enforcement mechanism. Commissioners agreed it would be helpful to have objective parameters. A Bill of Rights would also be beneficial to the entire system and should be written so a nonattorney could read and understand the Bill of Rights. Additionally, the Bill of Rights should be inclusive of family members and people who would associate or speak on behalf of the Protected Person.

> **Judge Egan Walker moved the Commission acknowledge that it favors drafting an adoption of the Bill of Rights for person's subject to guardianship jurisdiction. Ms. Susan Sweikert seconded the motion. Motion passed.**

Ms. Rana Goodman suggested an amendment to the motion, adding regardless of age. Judge Walker and Ms. Sweikert approved of the amendment. The recommendation would read:

> **The Commission favors drafting an adoption of the Bill of Rights for person's subject to guardianship jurisdiction, regardless of age.**

April 22, 2016, Discussion

This item was deferred to the May 20 meeting. Chief Judge Gibbons suggested Commissioners provide Ms. Buckley comments/edits. Justice Hardesty hopes the Commission would approve a Bill of Rights so the Legislature could include the Bill of Rights in statute as a basis for interpreting guidelines. Judge Steel suggested adding consequences if the Bill of Rights are violated. Courts have the right to remove a guardian and the Court has contempt powers, but there is a need for clear guidelines on what the Court's punitive capacity is if the Bill of Rights is violated. Justice Hardesty stated that is an enforcement issue.

May 20, 2016, Discussion

Ms. Barbara Buckley revised the Bill of Rights, following the May 20 meeting, incorporating feedback received by Commissioners.

Right #7 – The right to exercise full control of all aspects of life not specifically granted by the court to the guardian.

Ms. Spoon is concerned that there is no way to specify everything in a court order that has to be done for a Protected Person, especially, when the guardian has just begun to petition for the Protected Person. Ms. Spoon would like the language to be reviewed.

Right #8 – The right to control the respondent's personal environment based on the respondent's preferences to never be moved except if it is in the respondent's best interest.

Ms. Spoon is concerned with "never" and asked if that could be reviewed.

Right #16 – The right to unimpeded, private, and uncensored communication and visitation with persons of the respondent's choice, except if the court determines that certain communication or visitation has cause or is likely to cause harm to the respondent the guardian may limit, supervise, or restrict communication or visitation, but only to the extent necessary to protect the respondent from harm.

Ms. Buckley received contradictory input to #16. Suggestions:

- To have a presumption that the Protected Person can talk to whomever he or she wants. If the guardian chooses to restrict that because the person is causing harm or is antagonizing the Protected Person, you could have the guardian stop the visits temporarily but seek Court approval not later than X amount of days.
- Only the Court should be able to restrict visits.
- The guardian could restrict visitation without Court involvement.

Ms. Buckley suggested the right could be spelled out in a statute that might include the ability of a guardian, in an emergency, to restrict visits pending a Court review. Ms. Spoon thought the guardian should be able to restrict visitation in an emergency, then notify the Court within 7 – 10 days, and the Court could take further action, if necessary.

Remedy (c) - Judge Steel had a concern with remedy (c), an order compensating a Protected Person for any injury or death or loss of money or property cause by the action or caused by failing to take the appropriate action. Judge Steel asked if it was anticipated that this would be heard by the guardianship judge. Ms. Buckley responded the Court may want the ability to hear it in a guardianship action, but not every case would involve injury or death. Most of the cases would involve a loss of money or property, and a person would have the option to go to civil court in the same way a person can now.

Right #18 – The right to vote in a public election, marry, and operate a motor vehicle unless restricted by the court.

- Some Commissioners had a concern with the right to marry. Ms. Tyrell suggested the Protected Person could seek the authority to get married.
- This language was pulled from the Texas Bill of Rights. Ms. Buckley double-checked the Nevada statute because in the beginning it should be what powers the guardian has. The statute is silent on that right. Ms. Buckley assumes that should be the statute and the policy

direction should be satisfied and then the bill would mirror the statute. That is unaddressed and it probably should be.

- Justice Hardesty's intent was for the Bill of Rights to be adopted as a part of the statutory changes in the general section.
- Judge Doherty stated it is not just a contractual right, it is a constitutional right to association issue as well. Judge Doherty is leaning against taking it out unless there is a specific statutory provision that the Court can say "yes you can marry" or "no you cannot" similar to the language for voting and the firearms.
- Ms. Arnold is concerned with the right to operate a motor vehicle, adding the Department of Motor Vehicles has its own set of regulations as to who can operate a motor vehicle. Operating a motor vehicle is a privilege not a right.

NRS 159.0593 states that if the Court orders a general guardian for a proposed Protected Person, the Court shall determine by clear and convincing evidence whether the person shall be prohibited from possessing a firearm. NRS 159.0594 contains similar language for the determination of whether the Proposed Protected Person lacks mental capacity to vote. Ms. Buckley suggested some of these important rights could be spelled out so there can be a case-by-case determination. Statutory language allows the Protected Person to retain his or her right to vote unless the Court finds that the Protected Person lacks mental capacity to vote because the Protected Person cannot communicate his or her desire to participate in the voting process. NRS 159.0594(1). If the Court makes such a finding; it must do so in the written order. NRS 159.0594(2).

Ms. Arnold noted the condition of many adult Protected Persons is going to deteriorate over time. The Protected Person may be capable of exercising these rights at the time of the guardianship, but that might change in the future, so a review of the Protected Persons condition should occur.

Justice Hardesty is interested in the case plan Mr. Anthony Palmieri referred to in his presentation.[248] Part of the Commission's recommendation should compel the annual report to include information about the Protected Person's mental and physical health and any progress or deterioration. This should be a part of the annual review. If the judge wants to schedule additional reviews during the year, they can.

Ms. Spoon said when the guardian files a petition, the guardian do not know the Protected Person very well or their circumstances, e.g., how well the Protected Person might drive. The guardian might have to come back to the Court within a short period because the guardian now has the functional assessment and it says the Protected Person should not be driving. Ms. Spoon was not sure that this was practical in terms of guardianships of seniors, since many are not able to drive by the time they come into a guardianship.

Judge Doherty said the best practice is under the area of probate. The initial petition filing has both a plan of care and a plan of finance. A rough draft was incorporated into both of the Second

[248] Mr. Anthony Palmieri provided a presentation at the May 20, 2016, meeting on Florida's system. Materials from the presentation are attached as **Appendix U.**

Judicial District Court's samples of self-help petitions,[249] as well as the attorney petition as an attachment to articulate a general plan of care. This document forces the guardians to articulate a general plan of care, which is invaluable for those family members to have that conversation so we are moving towards that.

Ms. Buckley suggested surveying what other states do, particularly Texas. Articulating what it means and what it does not mean if you are under a general guardianship and every right is removed. That should be spelled out.

Justice Hardesty said if we are going to approach guardianship cases by the least-restrictive means, and the Court concludes this person should be under a general guardianship, then a lot of the rights would be forfeited, given the definition placed on incapacitation and the fact every other alternative has been considered and the person is not capable of forming decisions.

The purpose of the Bill of Rights is to inform a Protected Person of his or her rights and the rights that have been affected by the guardianship order. Judge Doherty said the Bill of Rights is intended for all of us and is meant to reinforce to the Protected Person and to recognize that the person remains a thriving existing human being. The Protected Person may have lost a large segment of legal and constitutional rights, and the ability to control finances, but the person has not lost the right to associate or enjoy life in generalized manners. Guardianship is so encompassing. It is not inappropriate to validate what exists in human beings and what we control legally and that is what the Bill of Rights is intended to do. Judge Doherty suggests removing "marry" and "operating a motor vehicle" but leave that within the realm of discussion. It is important that there is a presumption that communication is open. Right #16 could say the guardian may limit for articulable reasons because it is a constant issue of disassociation of family members based on those segregations.

Ms. Arnold suggested simplifying the language in the Bill of Rights to make it easier for the layperson to understand. The Bill of Rights statutory language could be separated. Ms. Ramm agreed the Bill of Rights should be more understandable. If the Bill of Rights were included in statute, then it would need to be written in statutory language, then a separate Bill of Rights could be designed with language that is more precise. Posters and educational items could be designed for guardians and Protected Persons.

Ms. Ramm said one of the topics the Commission has not yet addressed, but that she would like to put on the table, and that is guardianships of people with developmental disabilities. The Commission has addressed minors and adults but has not addressed developmental disabilities and the right to vote, marry, and operate a vehicle fits into this group of people. At some point, the Commission is going to need to review the guardianship laws and come up with a scheme that fits people with developmental disabilities.

Justice Hardesty suggested instead of relying on a Bill of Rights that would be adopted by the Legislature, a Bill of Rights could be enumerated and judges have to address those rights in an

[249] The Second Judicial District Court's website on Adult Guardianships provides information on guardianships and forms that may be downloaded from the website. The website link is included on the Reference and Resource page.

order. The Court could enunciate a rule that directs judges to specify what rights are retained and what rights are not in every order.

Judge Walker is concerned about how the Bill of Rights would apply to minors, since they do not have all rights. Senator Harris agreed and said the Commission has not discussed how the Bill of Rights would affect minor's rights. Minors have important rights that are transitory as they age, and presumably, a minor would no longer be under a guardianship when he or she reaches the age of majority. The Commission needs to look at what happens in those cases, and it needs to be sure it does not inadvertently limit or expand those rights for minors.

Ms. Buckley said the Texas Bill of Rights was limited to adults, but there is a Bill of Rights in NRS Chapter 432B foster care proceedings. Ms. Buckley said one way to resolve this might be to remove a couple provisions that are more appropriate for the statute. Ms. Buckley could take away some of the more detailed provisions and suggest potential statutes for those areas and then shorten the language in the Bill of Rights to contain the more enabling rights. For example, having the right to be treated with dignity is hard to put in a statute but easy to put in a Bill of Rights.

Judge Steel suggested a Bill of Rights be served on everyone who has the right to notice from the service of the petition.

Right #26 – The Right to receive a report on all assets held by any trust. Ms. Arnold is concerned with "any." The Protected Person has the ability to find out about things that come directly to him or her but not to the full accounting of "any" trust in "any" circumstances. If there is a special needs trust that has been set up, an accounting would be appropriate but "any" seems too broad.

Chief Judge Gibbons said a Bill of Rights is critical. There is a state constitutional provision for a Victim's Bill of Rights, which is general, and then there are a number of legislative enactments in different areas setting forth the specifics. Chief Judge Gibbons suggested the Commissioners pare back some of the Bill of Rights and look for legislative changes. Justice Hardesty agreed the Commission could pare this back, generalize the terms, and reserve for legislation or court rule implementation of the operations.

Mr. Wells expressed the need for a Bill of Rights. The biggest complaints from family members were that they felt they had been excluded from relationships with the Protected Person and that there were unnecessary restrictions against the Protected Person. The Commission should not take all the Protected Person's rights away and then make the person go back to Court to regain those rights.

Ms. Spoon said under a general guardianship, many of the persons have dementia by the time they are under a guardianship, and they might not be able to do certain things. For example, if a person has the right to operate a motor vehicle at the time of guardianship but by the next month the person cannot, then the guardian would have to go back to Court to have that right removed. The guardian might have to go back to Court multiple times to have certain rights taken away. Under a general guardianship, the person does not have the capacity to do most things, which is

why the guardianship is being sought and to have to go back to Court to take things away would be burdensome and costly for the guardian and the Protected Person. It would be different under a special guardianship with limited capacity.

Judge Walker is always struck that guardianships can more negatively affect a person's rights then if he sends someone to prison. The ability to invade a person's rights should be slow. It should be difficult to remove a Protected Person's rights.

Ms. Buckley said if you look at most of the rights, aside from marry and obtaining a driver's license, most of the rights are general and it would be hard to find one to disagree with even in a general guardianship. Ms. Buckley suggested pulling out the Bill of Rights that should be in statute and the rest of the rights are rights a person never gives up.

There was a discussion about remedies being included in a Bill of Rights and the concern that there would be objections in the Legislature because the remedies are creating an area of civil law. A Bill of Rights is intended to inform a person of his or her rights, e.g., you have the right to keep your dignity. Judge Steel had suggested including remedies because she was concerned there would be a Bill of Rights but no remedies if a person's rights were violated. Justice Hardesty said the Supreme Court has two cases that have said in the absence of specification in a private right of action to enforce a provision of the statute. General language could be stating the Protected Person has the right to enforce these rights through a private action. The Court could enter such relief as appropriate in a given case. The Legislature has then allowed the private right of action on behalf of the Protected Person to enforce the rights and the Court has the right to hear it and enter such remedies, as it deems appropriate in a given case. Mr. Spitzer said that is included in Right #17 – The right to petition the Court. The idea was to generalize the rights retained for a person under a guardianship. Justice Hardesty urged the Commission to address this and compile two separate documents to address a general guardianship and a limited guardianship. Justice Hardesty's concern is the Courts make the findings, which will ultimately guide much of this.

Senator Harris and Assemblyman Trowbridge were asked for their view on the Legislature adopting a Bill of Rights. Senator Harris said based on how well Senate Bill 262 was embraced last session, she has no reason to anticipate a Bill or Rights would not be well received. The Bill of Rights reaffirms basic rights and correct treatment of those who are most vulnerable in our society. Assemblyman Trowbridge noted it would be best to use plain English.

Justice Hardesty said several items presented as recommendations are susceptible to Court Rule as opposed to legislative action. Assemblyman Trowbridge thought approaching this in a different direction would be a better. The burden should be on the Courts when designating someone to be a Protected Person to delineate what human rights are being taken away, allowing the Court to determine if this should be a general or limited guardianship. Justice Hardesty suggested the statute say the Court shall delineate what rights are retained and what rights are removed. That would be in the statute and then the court system could establish, by Court Rule, what those orders would look like. Senator Harris said to the extent that it is appropriate the Court is allowed to be nimbler in addressing these concerns, she does not have a problem with the Court acting and addressing this through Court Rules. To the extent that the Court fails to act

or does not choose to act, then the Legislature would be forced to step in and provide direction as to how the situation should be dealt with. As the Commission continues through the agenda and votes on recommendations, Senator Harris would be happy to have the conversation about what would be appropriate for Court Rule and what would be appropriate for legislation. The Legislature has the ability to include forms or Bills of Rights or other documents into the statutes and there is flexibility with the language. It does not have to be difficult, tenuous, or complex wording that people have a difficult time understanding. Lay forms could be included in the statutes.

June 13, 2016, Discussion

A revised Bill of Rights draft had been provided to Commissioners prior to the meeting. Commissioners had discussed the Bill of Rights draft at the last Commission meeting and had expressed concern that the language was too complex and long. Additionally, there was discussion that some of the rights could be more appropriately placed in the statutes. Following the meeting, Ms. Barbara Buckley reviewed the Commissioners comments and all jurisdictions with a Bill of Rights,[250] including Texas, Minnesota, Florida, and California. Ms. Buckley revised the draft, incorporating language from California and Minnesota's Bill of Rights, to a shorter version that provides 17 Rights. The document also lists rights that should be added to the statutes. Commissioners were asked to review the revised Bill of Rights and provide comments to Ms. Buckley before the June 21 meeting for discussion. Judge Doherty asked if the Bill of Rights would apply to both minors and adult proceedings. Ms. Buckley stated the Bill of Rights was drafted for adults.

June 21, 2016, Discussion and Recommendation

Ms. Buckley edited the Bill of Rights based on comments received from Commissioners during the May 20 meeting, and edits Chief Judge Gibbons and others provided following the meeting. The comments Ms. Buckley received were excellent and clarified the intent of the Bill of Rights. The Bill of Rights should be short and clear. Expanded language to rights[251] that should be added to the statutes is included separate from the 17 Bill of Rights.

Chief Judge Gibbons thanked Ms. Buckley for providing outstanding work while putting the Bill of Rights together. Ms. Buckley surveyed all the other states, took the best parts and considered the comments from the Commissioners to compile the Bill of Rights. Chief Judge Gibbons stated the Bill of Rights would set the tone for the entire work of the Guardianship Commission. Many concerns expressed through the Commission's work and through public comment will be minimalized if the Bill of Rights is enacted.

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[250] Links to other states Bill of Rights is included in the Reference and Resource Page.

[251] Expanded language would correlate with the rights, but be added to the statutes, was discussed at the June 21, 2016, meeting. This includes examples of the rights that should be added to the statutes and it includes visits/communication. The recommendation is that the Protected Person has the right to receive communications and visits, the person may refuse them, but the guardian may only limit, supervise, or restrict them to the extent necessary to protect the Protected Person from harm. If that must be done, the guardian must notify the Court. A longer statute that spells out the specifics of this right in the Nevada is necessary and the Bill of Rights would be more general.

Justice Hardesty stated there are 17 points in the Bill of Rights, together with a statement, which states, "nothing in the document abrogates other remedies existing in law, all of these rights are enforceable through a private right of action." Justice Hardesty suggested the rights be included in the Guardianship Oath together with the "all of these rights are enforceable through a private right of action" statement. Ms. Buckley stated it was a good suggestion and it would remain consistent with the Bill of Rights. Justice Hardesty suggested the Commission conduct a separate vote on statutory modifications associated with the Bill of Rights.

Judge Egan Walker moved to adopt the Bill of Rights with an understanding they would be included in the Guardianship Oath and be subject to enforceability through a private right of action. Chief Judge Michael Gibbons seconded the motion. Motion passed.

Additional Comment

Ms. Kim Spoon asked for clarification regarding what is meant by a private right of action. Justice Hardesty explained a number of statutes contain rights or obligations. For example, certain individuals who file complaints with the Labor Commissioner will have an argument about wages that they are paid, unless the statute contains the right of action, meaning they can sue on that right; they are limited as their remedy to go through the Labor Commissioner to seek relief. In this instance, if all one did was list a set of Bill of Rights without making it clear that an abridgement of any of these was subject to suit, essentially, there would be no remedy to the rights listed. Ms. Spoon clarified this would be a civil action.

Judge Frances Doherty asked if that would suggest the rights would be statutory. Justice Hardesty stated the group would be included in a statute along with the aforementioned provisions. If the Legislature declares that, it is enforceable. The Protected Person's counsel could bring an action based on an abridgement of those rights, and the action could be one for damages or for injunctive or equitable relief. Ms. Buckley stated the point was not to encourage litigation but to know what the rights of the individuals are and to get situations resolved.

August 26, 2016, Discussion

Ms. Barbara Buckley and others have been working on Bill of Rights statutes. Ms. Buckley said the documents are separate. There is a Bill of Rights that was examined, adopted, and approved at the last meeting, and there are proposed statutory changes that are separate from the Bill of Rights because they began to get into too much detail, so the Commission had noted they should be statutory changes. Ms. Buckley said the Bill of Rights could state clearly what the right is in one sentence and that would be separate and apart from a statutory change. In drafting these, she looked at some of the national guardianship commission materials from some other states, including Florida and Texas. There is a good deal of language for duties for an attorney, guardian ad litems, court visitors, advocates, whatever word the Commission chooses, and we can begin to put some definition on those terms. There is the ability to define through ADKT, Court Rules, or Court Policies even more details on the roles of an attorney, advocate, or court visitor, if that is the direction the Commission would like to go. There may need to be a subcommittee to review

that. Ms. Buckley did a fair amount of review on proposed Court Rules; she has a couple great samples of law review articles that talk about different duties. From New Jersey she has standards for accountings, representing Protected Persons, in a handbook that they give. There are a couple other reference materials from Alaska, Utah, and West Virginia. That might be more appropriate for an ongoing subcommittee that may potentially look at an ADKT or establishing a guide book or policy book.

Justice Hardesty asked the Commission to approve the Bill of Rights including the recent edits. Mr. Jay P. Raman stated the Bill of Rights seemed to be directed toward the Protected Person, the language at the beginning states his or her or he and she. Mr. Raman suggested stating you to remain consistent with the rest of the document. Justice Hardesty stated the edit would be to clarify *person* and instead state the title the Commission had agreed on, Proposed Protected Person. Mr. David Spitzer asked what roll the Bill of Rights would play, would it be statutory, a mandated attachment to petitions that must be personally served on the Proposed Protected Person, or would it be part of the guardianship oath. Justice Hardesty stated the use of the Bill of Rights was to be determined, if passed.

Judge Egan Walker moved to approve the Bill of Rights including the suggested edit. Ms. Debra Bookout seconded the motion. Motion passed.

Ms. Stephanie Heying reminded the Commission that on June 21, 2016, Judge Walker had moved to adopt the Bill of Rights with the understanding that they would be included in the guardianship oath and be subject to enforceability through a private right of action. Justice Hardesty thanked Ms. Heying for the reminder and noted this point covered Mr. Spitzer's concern of how the Bill of Rights would be used. In addition, a copy of the Bill of Rights must be provided to the person who is the subject of guardianship. Mr. Spitzer stated the easiest way to do that would possibly be by Court Rule to require a copy of the Bill of Rights to be part of the petition and have it be personally served to the Proposed Protected Person. Ms. Tyrell stated sending the Bill of Rights with the petition may be premature and suggested it be provided with the entry of the order. Mr. Timothy Sutton stated the Bill of Rights provides the Proposed Protected Person the opportunity to review it; it could have a potential benefit to the person. Justice Hardesty stated the Bill of Rights would provide a benefit to the Proposed Protected Person before and/or after the guardianship would be considered by the Court, serving the document in advance would provide a benefit to understand the person's rights. Ms. Terri Russell suggested editing the Bill of Rights to state "*If* you are the subject..." to make it appropriate to serve the paperwork to the Proposed Protected Person. Mr. Spitzer stated that would work along with the Court Rules that would require the document to be personally served. Ms. Russell suggested re-numbering the order of the rights. Judge Steel asked for clarification regarding how the Bill of Rights would coincide with the oath. Judge Walker stated the Bill of Rights would be meaningfully provided to the Proposed Protected Person before any substantive hearing. Ms. Tyrell suggested including the Bill of Rights with the citations. Judge Steel stated it would be acceptable to have the Bill of Rights as a document for the guardian to sign off on and file separately; it may be equally overwhelming for a person to be read the Bill of Rights as it would be to have the document served to them. Mr. Spitzer stated it would be important for both the Proposed Protected Person and the guardian to know what the person's rights are.

Mr. David Spitzer moved that a person subject to a petition for guardianship would have the rights discussed, the Bill of Rights would be served with the petition, and it would be acknowledged upon the administration of the guardianship oath. Mr. Timothy Sutton seconded the motion.

Ms. Bookout stated there would need to be a mechanism beyond serving documents in the event a person could not read it, for example; if the person is blind or cannot read, or cannot read English. Justice Hardesty encouraged the Commission to consider that the Court adopts rules that assures the Bill of Rights is communicated to the guardian and the Proposed Protected Person by Court Rule. Senator Harris suggested a reorganization of the Bill of Rights to address what the rights of the person are before, during, and after a guardianship is imposed to avoid confusion for a Proposed Protected Person in regards to where the person is in the process. Ms. Buckley stated reorganization would not be needed because many rights apply at all stages of the proceeding, it would be up to the Proposed Protected Person's counsel to explain the rights at every stage. Senator Harris expressed concern for Proposed Protected Persons who do not wish to have counsel that can clearly articulate the rights of the person, it would be beneficial to those individuals for the rights to be reorganized and she would appreciate consideration of her concerns. Justice Hardesty asked Mr. Spitzer to amend the motion to request the Supreme Court undertake by rule making the dissemination and communication of the Bill of Rights to a proposed guardian and to a Proposed Protected Person.

Mr. David Spitzer moved to approve the amended motion. Mr. Timothy Sutton seconded the amended motion. Motion passed.

6. **The Commission recommends the following rights of a Proposed Protected Person or Protected Person that should be included in the statutes under NRS Chapter 159.**

August 26, 2016, Discussion

Justice Hardesty asked the Commission to discuss statutory changes the Commission may want to consider. The question is if the Commission would vote to have the concepts included in the amendments of the particular statutes that are referenced.

   a. **Visits/Communication. The Commission recommends adding statutory language to NRS Chapter 159 that a guardian cannot restrict access to the Protected Person from family and friends without a Court order. (Exhibit I)**

May 20, 2016, Discussion

Justice Hardesty noted an attachment in the materials provided examples of state legislation regarding personal rights in which the limitation on access by a guardian is regulated according to statutes. The Commission would discuss supporting the notion that the guardian could not isolate or restrict access to the Protected Person from family and friends. Restriction could require a court order, hearing, and vetting; a guardian would not be able to restrict a Protected Person without those requirements or court support. If the Commission made the decision to recommend question 30, Assemblyman Sprinkle, Assemblyman Trowbridge, and Senator Harris

would be able to begin bill drafts. Assemblyman Sprinkle stated the legislation would not prevent the guardians from requesting restrictions; there are situations in which it may be appropriate to restrict certain family members from the Protected Persons. The current issue in regards to restrictions arose from guardians restricting family without consent from the Court. Assemblyman Sprinkle stated he would support the bill and was interested in discussion and feedback from the Commission. Ms. Goodman expressed concern regarding restriction and stated there should be good reasons for the guardian or the Court to restrict family and friends from access to the Protected Person. There may be a situation where a Protected Person may not want to see family or friends but change their mind quickly. Judge Steel stated if the guardian or Court made the decision to restrict the family from having contact with the Protected Person, they would need to file with the Court, within 48 hours, for ratification of conduct. There was discussion regarding facilities such as nursing homes that reach out to guardians asking them to restrict an individual due to a certain family member or friend not complying with rules or becoming violent. Justice Hardesty stated the bill would apply strictly to the relationship between the guardian and the family members; it would limit the guardian's ability to restrict access to family members or friends. In the event that family or friends became violent or trespassed, and law enforcement would need to intervene, it would not be the guardian's responsibility to act as mediators for the facilities. Ms. Spoon noted the bill did not cover the subject of supervised visits, which would not completely restrict access to the Protected Person, but would help in situations in which a guardian may be faced with harm against a Protected Person or against the guardian. Justice Hardesty added that in emergent situations it would be appropriate for the guardian to contact law enforcement and may not require a temporary protection order. Assemblyman Sprinkle added that some proof of cause would need to be presented to the judge within 48 hours. Judge Walker stated presenting proof of cause in front of a judge would give a family an outlet to be heard and possibly act as recourse to regain access to the Protected Person. Assemblyman Sprinkle added the Commission could discuss specific language, which could be added into the bill. Assemblyman Sprinkle would be interested in hearing from the Commission in regards to concerns or additions to legislation in this area. Ms. Spoon stated if the Commission decided to add the 48-hour notice after the restrictions, a similar notice could be made for supervised visits. Justice Hardesty summarized the general concept. A guardian cannot restrict access to the Protected Person from family and friends without a court order. There would be an emergency opportunity in which restrictions could be made upon obtaining a court order within 48-hours to confirm the restriction and the ability to secure supervised visitation as part of the court order review of the process.

Assemblyman Glenn Trowbridge moved the Commission favor a recommendation that a guardian could not restrict access to the Protected Person from family and friends without a court order. There would be an emergency opportunity in which restrictions could be made upon obtaining a court order within 48-hours to confirm the restriction and the ability to secure supervised visitation as part of the court order review of the process. Judge Cynthia Dianne Steel seconded the motion. Motion passed.

June 21, 2016, Discussion

Judge Nancy Porter asked for clarification of subsection 2, under visits/communications. Chief Judge Gibbons stated the second paragraph was missing two words "unable to." This section would read, "If the Protected Person was unable to express consent to interact then consent may be presumed based on a person's prior relationship with such other person unless the Protected Person has previously documented his/her wishes not to interact with the person." Ms. Barbara Buckley stated this was taken from the other statutes and one other bill of rights on what the presumption should be if that person no longer had the capacity, yet had a long-time family friend visit them for many years. Judge Porter stated that cleared up her question.

Ms. Kim Spoon asked for clarification regarding the statement that read "then consent may be resumed based on the person's prior relationship with such other person." If it was a good relationship, they could continue seeing them. If it were a bad relationship, would the guardian have the right to say that the person should not see them? Ms. Buckley referred to the first subsection, if a guardian believes that substantial harm can come as a result of the visits, the guardian always has that ability to restrict it and go to court. For example, this neighbor wants to visit, but x, y, and z is present and this is why we do not think it is prudent or could be harmful. Ms. Spoon stated the answer clarified her question.

The Commission voted on the statutory language Ms. Buckley provided at the August 26, 2016, meeting.

Ms. Elyse Tyrell moved to endorse this policy change to the statutes. Ms. Julie Arnold seconded. Motion passed.

b. Change of residence. The Commission recommends amending NRS 159.079(4) by removing the change of residence provisions and creating a new statute. The recommended statutory language is included as Exhibit I.

June 21, 2016, Discussion

Mr. Kim Rowe said the concept to have court permission required if there is an objection is good, but there would need to be the same limiting language about protecting the Protected Person. There are times where you may have someone who does not want to move but the level of care may no longer be appropriate, therefore, the need to move the Protected Person would need to happen first and a court order would come second. Mr. Rowe suggested adding language that would allow the guardian, in the guardian's discretion, to move a Protected Person if the guardian thinks the Protected Person is at risk of harm. Ms. Spoon stated if there were persons living in their home and the Protected Person is then taken to a hospital and cannot go back to the home for any reasons, it would be difficult and burdensome for a guardian to have to go to Court in order to get the individual discharged and placed in an appropriate facility. Ms. Spoon suggested notifying the Court within ten days of a move if there are issues. Ms. Buckley stated there would be a way to reconcile the suggestions to deal with an emergency situation, or a hospital transfer, but still ensure there is Court involvement if there is a request for a change that is either to a more restrictive environment, over the wishes of the Protected Person, pursuant to the wishes of the family, and other types of situations that have caused concern. Justice Hardesty

suggested the section could be divided into two sections to address the first concept separately from the moves that would be necessitated by emergencies or a change in mental or physical condition of the Protected Person. Judge Doherty agreed that exigent circumstances could be worked into the section. Judge Doherty noted the Commission had worked on notice provisions at the previous meeting and asked if the same notice provision could be used, instead of stating "notify the closest family members" the language could state "notify, pursuant to NRS 159.044," which are the second degree family members. The Commission is trying to conform all of the notice protocols.

Justice Hardesty stated the intent would be to vote on the notice provisions. Judge Doherty had summarized notice requirements under a single statute so that any time one references a notice requirement, one will be referencing the statute, and by doing so, all the individuals who are required to receive notice are encompassed. If the Commission approved the subjects, the language would be added to the report.

Mr. James Conway from Washoe Legal Services offered a suggestion. Mr. Conway stated he believed the concept of being moved from a Protected Person's home into a nursing home or similar facility is something Protected Persons fear and may be the biggest thing a Protected Person would object to above anything else in a guardianship. Any statute that addresses this issue should include factors on what the Court should consider in making a determination on a Protected Person's best interest. Mr. Conway suggested the phrase "best interest" is too vague but statutory language helping the Court to resolve a dispute over the appropriate placement would be helpful to the Court and to practitioners. Mr. Conway would work with Ms. Buckley to propose appropriate language for this issue.

August 26, 2016, Discussion

Ms. Kim Spoon expressed concern regarding moves. Sometimes moves are made for the health and safety of the Proposed Protected Person but at times moves are made due to financial reasons; if a Proposed Protected Person cannot afford the care the person need. Finances would need to be acknowledged in the language. Ms. Spoon suggested editing the language that states, "wishes to" to "needs to" in section 2(c). The Commission discussed concerns regarding moving a Protected Person from one place to another and the issue regarding notice for moving a person. Judge Walker stated the Rules of Civil Procedure explicitly apply to NRS Chapter 159 cases and provide outlets for emergency relief. In certain circumstances, it may be appropriate to seek ex parte relief from the Court. Justice Hardesty stated when the Court is deciding the question about moves, it would have to make a decision based on the best interest of the Protected Person, not based on the guardian's or family's choice. Judge Doherty stated the decision to move a Protected Person is for the best interest of the person. Subsection 2(e) addresses some of Ms. Spoon's concern with respect to exigent circumstances. Some of the issues may be addressed by this Commission or another commission in the future in the meantime, between subsection (e), the ability to file an ex parte motion without too much difficulty, and with the expectation that the decision will be in the best interest of the Protected Person; the paragraphs addressing moves are adequate. Ms. Buckley noted section 2(c) regarding moves states "when a guardian or proposed guardian wishes to admit a Protected Person to a nursing home or change the residential placement of the person from a private home to..." a more restricted placement, a motion needs to be followed. This is similar to language in NRS 159.079(6), which discusses

moving to a secure residential facility and is consistent with keeping the Protected Person in a least restrictive environment. People have been and continue to be moved from familiar surroundings for the convenience of the guardian when they have the money to stay where they are and this causes harm, which is why the new rules are being discussed. Ms. Spoon suggested adding a medical provision in section 2 regarding moves to address prior notification to the Protected Person in the event of a move for the person's best interest. Mr. James Conway expressed concern having a healthcare physician authorizing a move without any notice to the Protected Person. Currently under the physician's certificate there is a place for a medical professional to check off whether the Proposed Protected Person should attend a hearing, many times a doctor has checked the box explaining that if the person attended a hearing it would be detrimental to the person's health, or may cause confusion or anxiety, but it is not always checked off for medical expediency rather than a true evaluation. Judge Doherty stated judges turn ex parte motions around within 24 hours, schedule ex parte hearings on a very prompt basis, and if the practice turned to seeking emergency court intervention for the crises, the best interest standard could be met, the prior court advanced authority could be addressed and the ten-day hearing after the initial order could gather all the parties to address the ongoing placement of the individual. The existing remedies for those crises have been built in but have not been practiced and it would be a good idea to move towards that. Justice Hardesty asked the Commission if there were further questions regarding the proposed statutory modifications, the Commission had no further questions or comments.

The Commission discussed edits to paragraph 2. Justice Hardesty suggested changing "wishes" to "intends" in sub (c). Ms. Tyrell asked if we could add in sub (e) something in regard to finances. Judge Doherty thinks that is too broad of a set of circumstances. Finances covers a broad spectrum of judgment, and absent an eviction, she is not sure finances is a basis to do that without contact and notice. Ms. Tyrell would like to see some ability to act if it is not necessarily a health issue. Justice Hardesty said the judge would make the call.

Judge Frances Doherty moved to pass the section addressing change of residence with the edit to subsection (c). Ms. Debra Bookout seconded the motion. Motion passed.

c. Remedies. The Commission recommends adding statutory language to NRS Chapter 159 to address remedies. (Exhibit I)

June 21, 2016, Discussion

Ms. Kim Spoon addressed remedies and stated there is already language in the statute concerning the guardian and not being able to pay the guardian fees if an action is brought against the guardian and it is proven so. Ms. Spoon asked if it had been coordinated with the statutes. Ms. Buckley researched when there are deliberately malicious and fraudulent acts, which are rare but have been seen, what the remedies would be available. Ms. Buckley went to the existing statute and used the same exact language in order to remain consistent. It is limited to the fraudulent sale of real property under NRS 159.1495, but the same language is utilized and would be the same across the board.

August 26, 2016, Discussion

Ms. Elyse Tyrell moved to approve the section addressing remedies. Mr. David Spitzer seconded the motion. Motion passed.

d. Accountings. The Commission recommends amending statutory language in NRS 159.179 to address accountings. (Exhibit I).

June 21, 2016, Discussion

Mr. Kim Rowe had a question on subsection 5 item 3, which states, "all expenses must be itemized; receipts for amounts over $100 must be filed."[252] Receipts are infrequently attached to most of the accountings Mr. Rowe has seen. Mr. Rowe asked if this would create a burden or a problem depending upon how much interaction a public or private professional guardian is having with a particular person and the estate. Does this change the dynamic or costs of what they are trying to do? Mr. Rowe would like to know what the consequences would be.

Chief Judge Gibbons recommended adding language, "Unless waived by the court." His experience has been the same as Mr. Rowe's experience. The receipts are usually not needed but we start with the presumption that we should have them to document exactly what the expenses are, but the Court could do away with them if it is burdensome or expensive.

Ms. Kim Spoon said it would be a good idea to include asking for a waiver in their initial petitions, if they feel that is something then...just ask for it and see what the Court says in terms of that. Where else would we do it because we do not want to have to go into Court again, before our accounting to waive it?

Ms. Barbara Buckley said another suggestion someone had provided was if in the plan or the first document you have the receipt of how much it costs, the facility or residential facility that is sufficient. You would not have to do it every month if it is on file, you could refer to it. Ms. Spoon said there could be hundreds of receipts that would go into an annual accounting for a person and on some may only have two per month. For those who have hundreds of receipts, she would see this as a burden. Ms. Spoon understands why you would want it to be presumed that they would have the receipts but that is already in the statutes, that they should have receipts for everything. Ms. Spoon is wondering if instead of asking to be waived by the Court we can assume, as we are doing now, that we do not need those receipts unless asked for by the Court.

Judge Egan Walker stated he did not disagree that it creates a burden but he agreed with Chief Judge Gibbons' perspective that the default should be that receipts are produced. Judge Walker does not handle adult guardianships but if a person were going to account to him, he would want to see receipts at the outset that substantiate what the expenses are. The default should be production of receipts and the dialogue could be with a private or public guardian at the initial petition or at some other point in the case. The trial courts have the two dimensions of paper and the accounting, this should not be minimized, however that does not tell the judges anything about where the money is actually being spent without receipts. Ms. Spoon stated the private and

[252] Receipts under $100 are optional at this time.

professional guardians do have the receipts but the Court would need to understand that in cases, which involve many receipts, it might be a huge burden to the Courts.

Judge Frances Doherty said the recommendation is best practices. The reality is our Courts do not have the resources to be as thorough as we are talking about, but that is a different issue. Judge Doherty supports the concept. The Court does not have the resources. Justice Hardesty said you do not have the resources yet.

Mr. Jeff Wells asked how many years the $100 was the figure for the accounting and if the Commission would want to review that and possibly change it to $200. Justice Hardesty stated he was not sure of how long the figure had been in use but the Commission could look into it.

Senator Becky Harris moved for the Commission to make recommendations concerning the process, timing, notice and findings the Court must make concerning accountings of the Protected Person's estate. Dean Christine Smith seconded the motion. Motion passed.

Additional Comment

Ms. Tyrell noted there were statutes addressing this and asked what is envisioned. Justice Hardesty said it would include much of what they heard this morning from Florida. Adopting that business plan and calling for auditors and investigators, which was a part of a previous recommendation. Justice Hardesty envisioned a formalized plan that would bring about investigators, auditors, zones, dealing with rural counties. Senator Harris would like to add there are virtually no provisions in the statute telling a Court what to do if there are objections. That would be encompassed in that as well.

August 26, 2016, Discussion

Judge Frances Doherty moved to endorse the section addressing accountings. Ms. Terri Russell seconded the motion. Motion passed.

e. Appointment of Volunteer Guardian ad Litem, Advocate, or Attorney Guardian ad Litem. The Commission recommends statutory language in NRS Chapter 159 for the appointment of volunteer Guardian ad Litem, Advocate, or Attorney Guardian ad Litem. (Exhibit I)

December 15, 2015, Discussion

Guardians ad Litem (GAL) play a different role in the guardianship process than attorneys. Commissioners were asked, from a policy standpoint, when and under what circumstances should a GAL be appointed.

- The Second Judicial District Court appoints the GALs on a discretionary basis, usually in cases where one of two things occur:

a. When there is very little information on the case, e.g., there is a pro se litigant, providing minimal information and the Court is not able to ferret what the circumstances are even after appointment of counsel; and
b. In highly litigated cases in which the attention is very high and efficacy exists for the person facing the guardianship. These cases might have numerous attorneys and the Court would be looking at a best-interest recommendation, based on the myriad of views and positions.

- In lower income cases, the GALs are from larger firms and might volunteer to be a GAL on a pro bono basis.
- In the highly contentious cases, typically moneyed estates, the GAL is paid from the estate.
- Judge Doherty has not found the statute lacking because it is a discretionary appointment, allowing the court to appoint a person to represent a Proposed Protected Person as a GAL.
- The Second Judicial District Court is working with the Sanford Center for Aging at the University of Nevada, Reno (UNR) to develop some level of volunteer program. The volunteer would not necessarily serve as a GAL in an attorney-type capacity, but serve as an advocate or information provider. This volunteer would be trained by the Court or an extended entity at UNR to gather information and supplement the information provided to the Court, i.e., meeting in the home of the person who faces guardianship, meeting with the treatment providers, going to the nursing homes. Those efforts would provide a great deal of substance and perspective to the Court when the Court is trying to decide if a guardianship should occur and placement issues.
- Judge Porter has not appointed a GAL in adult guardianship cases, but has appointed a GAL in minor guardianship cases. The Fourth Judicial District Court is conducting a preliminary investigation into how a Special Advocates for the Elderly (SAFE) program might work for the district.
- Small legal communities would require additional resources.
- Judge Steel would like to have someone who speaks for the Protected Person, providing an extra layer to help the Court make a better decision. Judge Steel added the statute, as currently written, would serve the needs of the Court.
- Protocols should be attached to the statute by the Supreme Court and would state the circumstances as to how the GAL or other volunteer programs would work. That is part of the missing piece.
- The current statute is flexible and provides the judge discretion in whether to appoint a GAL.
- NRS Chapter 432B provides for the appointment of a GAL in a child welfare case.
- There is a limitation under NRS 159.0455 (3), which states a GAL is entitled to reasonable compensation from the estate of the Protected Person. No more than one percent of minor guardianship cases involve a guardianship over the estate or an estate of sizeable means to compensate the GAL. The challenge for the Court is asking a member of the Bar to take a case with little or no real possibility of compensation.
- The statute provides discretionary authority but it would be helpful if NRS 159.033 provided a definition and/or description of what the role of a GAL is in guardianship cases.
    - The statute does not include a cohesive definition for a GAL.

- If the Commission is going to outline the roles of the GAL, the description should be open enough to allow the Court flexibility to receive necessary information.
    - Provide a good description of each person's role, i.e., attorney, GAL, volunteer and training.
- The current statutory scheme allows for an attorney, a GAL, and an investigator.
    - What would the role of the investigators be? How would this be different from a GAL? Would their roles overlap?
    - Investigators and auditors are different from a GAL.
- A GAL looks at everything from the perspective of the Protected Person and the best interest of the Protected Person.

Chief Judge Gibbons noted NRS Chapter 159 does not include a definition for or set forth the qualifications of a GAL nor does the statute state the duties or payment method for a GAL. NRS 432B.500(1) specifically sets forth the duties of a GAL, and NRS 432B.500(2)(a)-(k) set forth the qualifications and duties of a GAL. The Commission could use NRS Chapter 432B as guidance in amending NRS Chapter 159. Judge Doherty said she would support articulating, with greater specificity in either rules or statutes, the roles of the GAL.

Chief Justice Hardesty rephrased the question. Does the Commission favor recommendations to address the qualifications, duties, and training of GALs?

> **Ms. Julie Arnold moved to have the Commission make recommendations concerning the qualifications, duties, and training of Guardians ad Litem. Ms. Kathleen Buchanan seconded the motion. Judge Nancy Porter suggested adding compensation to the list. Ms. Arnold and Ms. Buchanan agreed to the amendment. Motion passed.**

August 26, 2016, Discussion

Ms. Julie Arnold addressed the points of Guardians Ad Litem (GAL); the portion that states "and is not an attorney" should be stricken from page 82 of the materials, it should be left for the judge to decide according to the situation. In many cases, having a GAL who is also an attorney is helpful. The text in section 8 (b), which states "not receive compensation," should be stricken, that should be at the option of the Court. Including the language, could eliminate good people and necessary situations if payment is restricted. Justice Hardesty agreed that compensation should be reviewed by the Court. Judge Frances Doherty stated there are GALs who receive compensation as attorneys, compensation should not be barred. The language is meant to segregate the GALs who are attorneys from GALs who are not attorneys and contemplate the possibility of payment for legal counsel. Justice Hardesty stated the two edits to the section would be to remove the restriction against an attorney being appointed and alter 8(b) to allow GAL compensation to be determined by the Court. Ms. Barbara Buckley stated in drafting the document she was hopeful that one of the Commission reforms would be to encourage the creation of a program for volunteers, in most of those cases a Proposed Protected Person may be indigent or have very limited funds and cannot afford to pay anyone, the volunteer program would be a nonprofit organization and the volunteers would not be paid from the Proposed Protected Person's estate. The paragraph regarding compensation was drafted for those reasons.

Ms. Buckley noted paragraph (c) was drafted for the exception in which a high-level attorney, for example, would be needed and that person could still be appointed and paid. Justice Hardesty reminded the Commission that the Commission had previously voted on encouraging the use of volunteer programs in all districts. Ms. Goodman stated the volunteer program she had suggested would be modeled after CASA and payment would come from grants, not a Proposed Protected Person's estate. Justice Hardesty stated having the Court review payment would be a way to monitor when it is appropriate for an attorney or the GAL to be compensated. Judge Steel suggested adding a portion stating volunteers should keep a log of reimbursable expenses.

The Commission had discussed item 8 in regards to the appointment of volunteer Guardians Ad Litem. Ms. Arnold had requested excluding language in section (b), which states "not an attorney;" Justice Hardesty asked if the Commission would accept that edit.

Ms. Julie Arnold moved to approve the section addressing the appointment of Guardians ad Litem including the previous edit. Ms. Elyse Tyrell seconded the motion. Motion passed.

f. Advising a Proposed Protected Person or Protected Person of the Legal Rights: NRS 159.0535 (Exhibit I)[253]

June 21, 2016, Discussion

Justice Hardesty asked the Commission if items 6 (Appointment of Attorney, Duties) and item 8 (Advising a Protected Person of Legal Rights) could be the subject of Supreme Court Rule (SCR), rather than a statute. The Court governs the practice of law, the requirements for counsel, and the requirements for Courts. Ms. Buckley stated items 6 and 8 could be the subject of Court Rule; however, the statutes would need to be changed. There currently exist statutes that address the appointments of attorneys and Guardians ad Litem. Those statutes may need to be stripped to allow them to include more duties in the rule. Justice Hardesty stated he would move items 6 and 8 to a separate section and urge the Supreme Court to adopt rules that encompass the concepts, amend the statutes as necessary, and accommodate the enforcement of these duties by Supreme Court Rule (SCR). Ms. Kim Spoon appreciates the language in item 8. She noted there are many physicians who do not like it and will not do it.

7. The Commission recommends adding a new Chapter 159A to Nevada Revised Statute to address guardianships specific to Proposed Protected Minors and Protected Minors. (Exhibit J)

Justice Hardesty appointed Judge Egan Walker, Judge William Voy, and Judge Nancy Porter to a workgroup to develop a separate statute to address minor guardianships.

A draft of NRS Chapter 159A has been circulated to the workgroup for input. Information was pulled from other states that have separate minor guardianship statutes including West Virginia,

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[253] Advising a Proposed Protected Person or Protected person of his or her legal rights will also be included as part of the recommendations under Court Rules and the Appointment of Attorney, Duties.

Arizona, and New York.[254] The draft is intended to be proactive, interactive, and generate conversation about best practices for Nevada.

There are currently four avenues to guardianships for minors:

1. File NRS Chapter 159 motion for a temporary/emergency guardianship,
2. File a general guardianship under NRS Chapter 159,
3. Nevada Revised Statute Chapter 432B - Minor guardianship as a permanency plan for a foster child, and
4. Assembly Bill 8[255] - The bill allows parents to designate a family member within the third degree of consanguinity to be a guardian for children. They can do it indefinitely by petition to the Court through this fourth mechanism.

Minor Guardianship Draft Statute[256] presented by Judge Egan Walker

Commissioners were provided a draft minor guardianship statute. Judge Walker explained the draft pulls in areas of NRS Chapter 159 that refer to minors, with some tweaks to the language so there is a consistent statutory scheme. The draft also includes some new language specific to minors. The basic theme was to remove a few areas of inconsistency or challenge. The draft represents the judges' collective thoughts on how best to serve the needs of the minors in a section apart from NRS Chapter 159.

Feedback had been received from Commissioners regarding amendments to the language related to Guardians ad Litem and attorneys and their roles, duties, and responsibilities. Judge Walker asked Commissioners to provide their feedback so the judges could consider the suggestions and bring a final product back for a vote at an upcoming meeting.

Judge Porter pointed out the two different statutes for temporary guardianships for minors. The workgroup discovered the temporary guardianship of minors is used in different ways in different communities. Many of the temporary guardianships for minors in Clark County are filed due to a need of medical care of the minor when the parents, for religious reasons, cannot agree to medical care. Judge Porter sees situations where the parents are not taking care of their children. A grandparent or someone else steps in and needs immediate guardianship of that child to get the child out of a dangerous situation, so there are two statutes to address the different situations. Judge Porter would like to see the statutes give the judge the power to order child support through the guardianship proceeding as well as visitation. Judge Porter would draft language in this area.

Judge Voy stated the draft includes a provision that mandates guardians get the existing child support obligation or other benefits because that did not exist before.

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[254] The links to the minor statutes from West Virginia, Mississippi are included on the Reference and Resource page.

[255] Assembly Bill 8 expanded a guardianship by letter; the bill was effective October 1, 2015.

[256] A minor guardianship statute was presented to the Commission at the May 20, 2016, meeting.

Mr. Jeff Wells said he is concerned that the new definition in NRS 159A.002 – Suitability of Parents, fits in with NRS Chapter 432B. In the examples about the family, the family would end up being involved with the Department of Child and Family Services. Mr. Wells would like to have the definitions mirror each other as opposed to adding a problem where under one statute it is not neglect but it is in the other statute. This could become confusing if the statutes do not work together. Judge Voy said you rarely see a petition under NRS Chapter 432B for educational neglect or medical needs neglect. Judge Voy said the statutes mirror what the Commission is trying to take care of when talking about a minor. Judge Walker will review the definitions and see if they need to drag them in or modify these in any way.

Judge Doherty said there are different standards of proof under NRS Chapter 432B, and stated she would not want to mislead or give the impression the same standards or proof are being used because the same definitions are being used. Judge Doherty said the Commission should pay attention to that and clarify the standard of proof.

Ms. Barbara Buckley thanked the judges for their work and let them know she would email her suggested changes. It would be good to clarify the role of the attorney. One of the provisions made it sound as if the attorney had to act as a Guardian ad Litem as opposed to a traditional attorney/client model and she did not think that was the intent.

Commissioners were encouraged to provide the workgroup feedback on the draft so they could make amendments and bring a revised draft back to the Commission for discussion and a vote at an upcoming meeting.

Discussion August 26, 2016, meeting

Judge Egan Walker noted when the Guardianship Commission was first constituted it was clear that Justice Hardesty contemplated there would be robust discussion regarding minor guardianships, in addition to all guardianships. Early in the process, Judge Walker was provided a spreadsheet, created by the American Bar Association with information on how minor guardianship statutes are handled across the United States. There are few jurisdictions that completely break out minor guardianships from the adult guardianships, some have hybrid statutes, and most states are similar to Nevada, and minors are a second thought in the statutory scheme for guardianships. Judge Walker reviewed Mississippi, New York, and West Virginia's statutes and drafted an entirely separate Chapter 159A as though NRS Chapter 159 did not exist. The subcommittee reviewed this first draft and determined it would make more sense to hybridize a Chapter 159A, i.e., pull into a new statutory section those statutes that already exists in NRS Chapter 159 and not repeat the sections in NRS Chapter 159 that are for minors.

Judge Nancy Porter, Judge Dianne Steel, Judge William Voy, and Ms. Barbara Buckley provided feedback during the drafting process. Judge Walker wanted the record to reflect that the subcommittee has had robust conversations about minor guardianships and have taken particular care to make sure that the proposal is sensitive to NRS Chapter 432B, permanency plans for children, and that the statutory language would not negatively affect NRS Chapter 432B. The subcommittee pulled in national best practices related to minor's need and made changes to language regarding physician certification for a temporary guardianship. The subcommittee

recommends the Commission adopt the proposal and the Legislative Counsel Bureau can harmonize the language with other statutory sections.

Discussion 159A.005(4) Contents of Citation and NRS 159.006 Attorney and Guardian ad Litem

Ms. Barbara Buckley said Judge Nancy Porter had expressed concern with 159A.005(4). This subsection seems to indicate that the Guardian ad Litem (GAL) and the attorney can be the same person. While the GAL can be an attorney, the GAL and attorney should be different people. Subsection (4) currently reads, "Proposed protected minor has the right to be represented by an attorney, who may be appointed for the proposed protected minor by the court as a Guardian ad Litem." Judge Walker said there are children who are so young that their attorneys cannot form an attorney/client relationship. If you have a three or four-year-old, the only remaining role for that attorney would be as GAL, assuming the attorney cannot form an attorney/client relationship. Ms. Buckley said the Children's Attorney Project follows the recommendation of the American Bar Association (ABA) and the Association for Counsel of Children, which says that you form the best relationship you can, and where the client is under a disability, and a two or three-year-old would be in that category, you use a certain model that you represent the child's legal interest. Similar to what you would do if someone has dementia, you represent the person's legal interest being the least-restrictive environment. The attorney makes sure he or she has expressed the individual's interest and that is taken care of. It is more of a legal rights substituted judgment. There are objective measures. Ms. Buckley did not think the roles of the GAL and attorney should be blended in 159A.005(4) or in 159A.006. It is either a GAL or an attorney. That follows the rules of professional responsibility as being a client directed or expressed wishes. Judge Voy said that is why the subcommittee added that pursuant to NRS 159.048. Ms. Buckley suggested breaking NRS 159A.006 into two paragraphs where one addresses attorneys and one addresses the GALs, so the roles do not get mixed up. There is similar language in NRS Chapter 432B and the Commission would not want to say children in foster care do not get an attorney, they can just have a GAL.

Ms. Buckley suggested deleting "as a Guardian ad Litem" in 159A.005(4). Judge Walker and Judge Voy agreed. 159A.005 (4) would read:

> Proposed protected minor has the right to be represented by an attorney, who may be appointed for the proposed protected minor by the court.

Ms. Buckley wanted to be clear that 159A.006 would be separated for the GAL and the attorney. Justice Hardesty responded yes. Ms. Buckley said when it is pertaining to the GAL, the language would need to be cleaned up because the GAL would not have the same authority and rights as an attorney representing a party. Judge Voy said NRS 159.048 could be referenced to make it clear. It is included in 159A.005 and could be included in 159A.006. Ms. Buckley agreed.

Discussion 159A.003(1) Petition for Appointment of Guardian

Ms. Julie Arnold asked if a minor could petition the Court for a guardian as the language suggest in 159A.003 (1). Judge Egan Walker explained that has come up with the unaccompanied

minors. The unaccompanied minors have filed petitions for themselves for a guardian because they need someone to make legal decisions for them.

Discussion 159A.002 – Suitability of Parent

Senator Becky Harris asked the subcommittee to provide background on how 159A.002, Suitability of Parent, came to be and what the definition is going to be applied to. Judge Voy explained the definition is when a parent is deemed unsuitable, i.e., you have petitioners seeking guardianship and you need a starting point as to why the parents are not suitable, to give a basis for the guardianship petition. This would be the first reference point, and would also apply on the backside, i.e., grandparents had petitioned for guardianship because the parent has a drug problem, the parent is now sober and wants to petition to terminate the guardianship because the parent is now suitable. This provides the Court a reference point.

Senator Harris is concerned that the statute could be misapplied. For example, under 159A.002(5), Basic Education, parents could decide to home school their child and someone else could deem home schooling as denying the child an education. Senator Harris did not disagree with providing factors to consider whether a guardianship of a minor is appropriate but she wanted to see if there was a way to be more specific with the language.

Judge Cynthia Dianne Steel said 159A.002, as it is entitled Suitability of the Parent, describes what is not suitable. Judge Walker said the challenge is in the context of the minor guardianship. There is a parental preference doctrine that is well established in our law so that is why a guardianship would only be considered if a parent is unsuitable. There is a presumption of suitability. Judge Walker suggested adding language regarding the presumption. Senator Harris and Judge Steel agreed having the presumption in the language would be better. Senator Harris said when she looks at this on its face it is describing what unsuitability is, not suitability, some of it could be interpreted rather broadly, and she does not think that was the intent of the subcommittee. It was not. Judge Voy said this is referenced later on in the draft when it talks about parental petition for the termination of guardianship.

Justice Hardesty suggested 159A.002 begin with subparagraph 1 that says, "There is a presumption that a parent is suitable to care for his or her child." Subparagraph 2 would then become the current subparagraph 1 that says, "The presumption that a parent is suitable may be overcome or rebutted..." Judge Steel agreed that would tie in with the right of how to raise your own child and the things that go along with parenting. If you were to say that they are presumed suitable, however, if there are these other things that show they are unsuitable then a nonparent should have guardianship. Judge Voy added the *Hudson v. Jones* case established the presumption and you have to show by clear and convincing evidence to rebut the presumption that the parent is otherwise suitable.

Judge Walker added the doctrine was established by the Nevada Supreme Court and the burden of proof to establish a guardianship is in NRS Chapter 159 and it would carry over to Chapter 159A. It is clear and convincing evidence and that would come from the presumption. Judge Walker suggested adding a new paragraph 1 to say, "Affirmatively there is a presumption that a parent is suitable to care for his or her minor child." Subparagraph 2, would read, "A parent

who is unsuitable to care for his or her child if and then..." as follows can have a subparagraph 3 and 4, and say "demonstration of clear and convincing evidence is necessary to impose a guardians and is necessary to overcome the presumption..." or something to that effect. Justice Hardesty said the concept is clear so the Commission can work on some edits based on this discussion.

The language in 159A.002 would be amended to include a presumption of suitability and that there is a demonstration of clear and convincing evidence. Justice Hardesty suggested the deletion of "basic" in 159A.002(1)(i)-(v) prior to education as basic is already included in the language above. The Commission agreed.

Discussion 159A.020 (4) Termination of Guardianship of Person, Estate, or Person and Estate; Procedure Upon Death of Protected Minor

The Commission discussed 159A.020 (4), which addresses the termination of guardianship in the context of minors terminating when they reach the age of majority. This occurs automatically. The draft language contemplates that if a Protected Minor is incompetent, a petition may be filed to transition the case from a minor guardianship to an adult guardianship. The Commission discussed the possibility of changing the language unless a petition to terminate the guardianship is filed then the minor guardianship would automatically transfer to the adult guardianship administration. Commissioners were concerned with automatic transfer and how it would work. Commissioners would not want to have the 18-year-old automatically under an adult guardianship because the guardian did not file a petition to terminate.

Judge Cynthia Dianne Steel suggested all minor guardianships have a mandatory three-month review prior to the minor's emancipation. The case management systems include dates of birth so this could automatically be added to the Court's calendar and the Court could notify parties to come to Court and say whether or not the guardianship is needed beyond the age of 18, if the guardianship needs to be enlarged, or whatever might need to happen. There would be an automatic three-month review prior to emancipation. Commissioners agreed that there should be a three-month review prior to emancipation. The Courts could administratively say in the case management system that the case will stay alive, if necessary, and then court administration would transfer the case from the adult guardianship system and then the judge handling the adult guardianships could set a hearing. This would be a positive hand-off as opposed to a passive hand-off.

Judge William Voy suggested keeping the language in 159A.020, as it is currently written, adding language that an automatic review has to occur three months prior to the protected minor's 18th birthday. This would require a separate petition and would have to comply with NRS 159.044. Parties would be on notice. The way it is written now does not contemplate anything happening automatically.

Judge Egan Walker said the evaluation of a child, when the child ten-years-old may not be the same as when the child is 18. Judge Walker said notwithstanding our concern that we do not want to make the process too onerous for the minor who is now an adult, and the parents, but an

actual evidentiary re-evaluation of whether or not the Protected Person meets the criteria for guardianship is an important step.

Judge Steel said the Commission would need to ascertain what the Court wants at the three-month review. Judge Walker suggested the Court could determine whether the guardianship should continue passed the 18th birthday at the three-month hearing. The judge can explain at that hearing that clear and convincing evidence would have to be provided to the judge in the adult guardianship court that establishes the incompetence of the person going forward. This could be done in a way that does not require additional filing fees. This would be a more seamless hand-off the judges could coordinate so the parties would know when they needed to come back for a setting or something like that. Judge Steel suggested it could become a temporary order once the minor turns 18 pending further proof. Ms. Barbara Buckley added they would also have the right to an attorney.

Judge Voy asked what language the Commission would like added. Judge Steel said the Commission would want to have the facts on the record as the minor turns 18 not just a preliminary idea of what we might want to do but grant an adult guardianship. Justice Hardesty said the Commission conceptually understands what we are trying to do. Justice Hardesty asked Judge Walker, Judge Voy, Judge Porter, and Judge Steel to insert language where appropriate that requires an automatic review of a Protected Minor who is incompetent 90-days prior to their emancipation. Judge Walker said they would finesse the language.

Justice Hardesty asked if the Commission was prepared to endorse 159A Minor Guardianship statute with the edits and conceptual changes discussed.

> **Judge Egan Walker moved to approve Chapter 159A Minor Guardianship statute as a conceptual frame, with the edits discussed. Judge William Voy seconded the motion. Motion passed.**

The Minor Guardianship statute will be included as an exhibit in the final report.

8. **The Commission recommends adding statutory language for the compensation of attorneys in guardianship cases.[257] (Exhibit K)**

May 20, 2016, Discussion Attorney Fees[258]

The chief remaining topic the Commission needs to address is attorney fees. There was a preference, on the part of the Commission, to adopt some form of regulation over attorney fees. Justice Hardesty would like Commissioners to provide information on what it is about attorney fees that they would like regulated. From his perspective, the biggest omission or problem from the information presented to the Commission is the failure on the part of the judges to insist on the compliance with and independent review of attorney fees applications before getting into the amount of fees.

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[257] Information on national attorney fees, statutes, and caselaw is attached as **Appendix T.**

[258] John Smith, Esq. and Homa Woodrum, Esq., provided presentations on attorney fees at the April 22, 2016, meeting.

The *Brunzell*[259] case requires a judge, in every civil case where fees are going to be awarded, to access four factors. The factors were enumerated in Mr. Hank Cavallera's letter[260] to the Commission with a factor added. The factors require the judge to (1) examine the reasonableness of service, (2) the specific time spent, (3) the reasonableness of the fee, and (4) if there is any reason to deviate because of the results obtained. Justice Hardesty said at a minimum the recommendation of the Commission should be that judges make findings consistent with the *Brunzell* factors.

Justice Hardesty would like the Commission to provide informal direction on this, as he would like to put a motion together at the next meeting. Commissioners were asked if they agree that the judge should approve, at the commencement of the case, the hiring of the attorney by the guardian (the fee contract). The Commissioners responded yes. Justice Hardesty asked the Commissioners to provide suggestions beyond the *Brunzell* that have to be found by the Court on the record. The case plan Assemblyman Glenn Trowbridge suggested must include a budget for attorney fees; an anticipated budget, not a cap. Judge Egan Walker added the budget for attorney fees should contemplate the budget for other professional fees as well.

June 13, 2016, Discussion Attorney and Guardianship Fees[261]

Commissioners had provided a variety of suggestions as to how to approach the attorney fees structure and compensate guardians and those they hire during the April 22 and May 20, 2016, Commission meetings. One reoccurring theme has been whatever fees are going to be charged, and whatever budget is going to be used, it should be approved at the beginning of the guardianship process. Commissioners generally agreed that a budget should be reviewed and approved at the commencement of each case. Commissioners were asked if the recommendation should go further than requiring approval of a fee structure and budget at the beginning of each case by the Court, e.g., there would be a fee structure and caps, etc.

Mr. Jay P. Raman had provided recommendations on guardian fees including Florida's fee schedule,[262] noting the schedule has saved Protected Person's estates up to 50 percent or more in some cases. The Florida fee schedule says the guardian who has X amount of experience is paid X amount of dollars and it sets hourly rates. There is a lot of work that has gone into setting the fee schedule and it has been in practice for approximately ten years. Mr. Raman does not understand how a fee schedule would have a negative effect on the guardianship industry when Florida has a thriving industry of guardians working under these standards. Justice Hardesty asked Mr. Raman if he was suggesting the Florida schedule be admitted for adoption in Nevada. Additionally, should there be a difference in the way the fee schedule is approached in the urban and rural counties? Mr. Raman thought it could be adopted in Nevada, noting the hourly fees

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[259] *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 350, 455 P.2d 31, 33 (1969).

[260] Mr. Hank Cavallera's letter is included as **Appendix T.**

[261] The Commission has received presentations on attorney and guardianship fees over several meetings. Commissioners Debra Bookout provided the Commission a presentation on guardianship fees at the August 17, 2015, meeting. Materials are included as **Appendix D.**

[262] Florida's fee schedule and corresponding resources are included as links on the Reference and Resource page.

charged in Clark County are higher than those are charged in Florida, yet the cost of living is not higher in Nevada.

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

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

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

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

create an objective criteria contributing to the industry being regulated so there can be objective conversations.

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

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

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

Justice Hardesty asked if the Commissioners would want fee schedules for guardianships to apply to the licensed professional guardians versus the family guardians. Judge Doherty said she would welcome a fee schedule for family members. Getting the issues out and stating the recommendations would be very helpful to everyone. Mr. Raman agreed that a fee schedule should also apply to family members. Judge Porter stated a fee schedule would be useful and helpful for family members, however, it would become more complicated for attorneys and private professional guardians if the fee schedule was statutory as it would make it harder to change down the road. Judge Porter suggested it might be better addressed in Court Rule to make it easier to change when necessary. Judge Porter said there might also be geographic differences to consider, for example, the hourly fee in Clark County might be higher than the hourly fee for an attorney in Ely.

Judge Cynthia Dianne Steel stated it would be helpful to have some kind of guideline or average costs the bench could use as a resource. Judge Steel asked how the fees would be determined and if the Commission would be conducting some research into the fees. Judge Steel suggested the Commission receive input as to what it realistically costs to do business as a private professional guardian. What does it cost the community? What does it cost the private professional guardians? What needs would the family need to be looking at? Judge Steel does have request from family members to receive a guardianship fee of a certain amount monthly. Sometimes they

put $1,000 to $1,500 per month to be guardian. She said she thinks they are using the terminology wrong because they are looking at being a caretaker, not a guardian. Judge Steel said they might be misinformed as to what they are asking for and she walks them through the process when they ask for a guardianship fee. There is a lot of misunderstanding and lack of knowledge. Judge Steel would like to see the business plan the private professional guardians are working under the national guardian hourly fee.

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

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

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

Justice Hardesty suggested at a minimum, the judge should be required to make findings of fact as is required in other civil cases about the approval of fees, whether they are attorney or guardianship fees. The *Brunzell* factors[263] require a judge to make specific determinations in every case in which a fee is going to be awarded. As to the attorney's professional qualifications, the specific nature of the case and the litigation or the work that was performed, the quality, the nature, and the difficulty of the work and the result obtained and the reasonableness of the hourly rate are within number two. Here, there are a couple of refinements, you would have a recommended fee schedule to measure some of this against, but he is suggesting the Commission would still recommend that any application for compensation have to have the same judicial findings in every case. There have been a couple of other things added, for example, fees should be specified within 1/10 of an hour increment, no block billing would be permitted including administrative charges, and at least with respect to fee applications, the amount of time spent formulating the fee application would not be compensable it would be a cost of doing business. These are some specifics that would be part of a fee proposal.

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

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

Justice Hardesty said there are uniform rates charged in the communities, and as Judge Porter noted earlier, the hourly rate in White Pine County would be different from the hourly rate for an attorney in Clark County. The question is how you establish a recommended fee rate. If you look at the industry at large, you can probably establish a series of rates depending on how long the attorney has been in practice. Justice Hardesty is also concerned about the top end as well. If you have a partner who is billing $1,000 per hour, he cannot imagine justifying that hourly rate in a guardianship proceeding. There may be a unique tax problem where you may need to bring in a specialist to deal with that, but if you have someone charging the highest partner-billing rate per hour delivering mail, it is egregious. Ms. Russell asked if the judge overseeing the case would look and say, "At this rate we are not going to have any money in six months." Justice Hardesty said that is why you establish the budget requirement. If you are going to run out of money in the first eight months, you should not be doing it. The benefit of the budget is they will be looking at how long it is the money going to last and for what period is this going to go on. Prioritizing those expenses is part of this process.

Assemblyman Glenn Trowbridge said the Commission has been discussing the idea of having a budget that should be adhered to. He said we could all agree that the length of a person's time in

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[263] *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 350, 455 P.2d 31, 33 (1969).

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

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

August 26, 2016, Discussion

Judge Frances Doherty and her staff drafted a statute that would guide judges in determining, approving, and/or disallowing attorney fees. Included in the preliminary research is an evaluation of the guardian fees. Judge Doherty deferred to Ms. Debra Bookout's memo from last fall on the guardian fees. Judge Doherty introduced Mr. Tyler Hart. Mr. Hart interned for Judge Doherty over the summer and compiled, at her direction and request, best practices with respect to considering attorney fees. Mr. Hart used this information to draft a statute that would allow judges to consider the various components for evaluating attorney fees.

Judge Doherty noted there is some redundancy in the statute, and she has made some edits. The court should consider the just, reasonable, and necessary standard to determine payment of attorney fees. The standard provision in almost every area reviewed was that attorney fees could not be paid out of the assets of the Protected Person without the Court first approving such payments. That was the premise, just and reasonable, and approval by the Court.

Judge Doherty said the research outline was meant to provide the Commissioners background of the various jurisdictions statements with respect to payment of attorney and guardian fees. The only notable distinction in the research is some states use percentages as opposed to time and hourly rate with respect to payment for attorney, guardian, and trustee fees. Judge Doherty does not think the percentage payment is a national trend or the majority rule. The inclusion of a written agreement between the attorney and the guardian, or the attorney and the retaining party, was important. Additionally, the written agreement must provide a general explanation as to how the compensation will be accessed. The written agreement must include the hourly billing rate of the timekeepers and to the extent there are gradation in the timekeepers, they must identify the same and the fee rate must be served on all persons prior to the Court's consideration. Judge Doherty reviewed the draft statute.

The draft statute indicates an hourly statement of generalized work performed. They wanted to include a requirement that fees be reduced to the tasks performed within 1/10 of an hour and that no minimum billing, i.e., no block or standardized billing, would be allowed. Each task is

itemized at a detailed level to allow the Court to analyze the nature and reasonableness of the task. One jurisdiction had suggested that any time spent traveling or waiting for services or accessing information that did not include a direct benefit to the Protected Person be outlined and articulated so the Court could determine whether or not that should be included in payment.

A common practice of section 3(d) is the augmentation of fees during a court hearing. A fee petition will be filed, notice will be given, the Court will have considered the request and considered its reasonableness and then in the court proceeding, because time has lapsed, there is an augmentation request that is typically of an oral nature and the counsel is seeking approval of that. This language provides that unless there is a stipulation between all parties, a new petition is required for such fee requests and that is not an uncommon practice.

Judge Doherty deleted section 4 of the draft as it repeats what is stated in section 1.

Section 5 provides more detail for the consideration of the nature of the extent of attorney fees and services that are appropriately paid by the Court and out of the estate of the Protected Person. Judge Doherty has deleted section 5(a) as it was addressed earlier in the statutory provisions.

Section 5(b) reads, "whether the services advanced, or attempted to advance, the best interests of the protected person." Judge Doherty said they found other statutes that use that language and those statutes typically have a more specific and articulable requirement for the attorney fees petition than most, so the prioritization of best interest in terms of attorney work was a good addition.

The *Brunzell* factors are included in the draft including the qualities of the attorney; his/her ability, training, education, skill, and professional standing. Judge Doherty said the research outline shows a wide array of fees even amongst jurisdictions for initial filings and petition to guardianship order. It might cost $950 dollars in one state and $4,500 in another, and there is still a gray area in terms of practice and expectations, but there is the ability to refer to the standards of practice within our jurisdictions to draw those conclusions.

The Court is directed to consider the nature and extent of the difficulty. Section 5(e) refers to the actual work performed. Judge Doherty said when the Court does not have a breakdown of the actual work performed, the judges are at a loss to figure out what time scale and attention was necessary. Many states included whether or not the attorney was successful in the outcome of the advocacy he/she was involved in.

Section 5(h) refers to attorney apportionment between multiple clients. Judge Doherty said this appeared with enough frequency in their research to include this in the statutory provision to the extent there are multiple clients with multiple billings that those be apportioned between each client and perhaps that would be an attorney who serves a guardian who has several cases and he/she is billing across the board at a standardized rate.
Section 5(i) refers to the efficiency of the attorney's work.

Section 5(j) is included in some state statutes. It is the ability of the Protected Person to pay including the value of the estate, nature and extent of the Protected Person's assets, disposal net income, and the anticipated future needs of the Protected Person, and any other unforeseeable expenses that would potential be hampered by the requested amount of attorney fees. Judge Doherty noted "ward" would be replaced with "protected person."

Section 5(k) is a critical issue and is significant for litigious matters in guardianship court. Attorneys can lose sight of the priorities within the case and the litigation takes over from best interests, so the question is whether attorneys use their time efficiently or whether they unnecessarily expanded the issues to the detriment of the estate.

The final section is meant to specifically eliminate block billing in every attorney fees request to ensure the clerical support was not included in the billing statement, and to ensure that attorneys did not use or bill for the time that they take to prepare the attorney fees request.

Section 7, which has occurred frequently in the Second Judicial District Court, is whether or not attorney fees are being paid by a third party. The Court comes across attorney fees payments quite frequently by trusts, and the issue of whether or not that payment has been reviewed and approved by the Court or may or may not get to the Court's review. Section 7 specifies to the extent an attorney is paid for conducting guardianship attorney representation, regardless of the payer, those fees need to be approved by the Court.

Section 8 addresses costs.

The draft statute is an effort to provide the Commission a guideline and the Commission could decide what components should be included in statute. Judge Doherty stated they shied away from developing an attorney fee schedule but it is not her position that an attorney fee schedule should not be developed. Judge Doherty suggested the development of an attorney fee schedule would require a subcommittee to conduct intensive research to develop fee schedules.

Ms. Elyse Tyrell said she thought the draft was very well done, and she appreciates the work that went into the draft.

The statute would apply to attorneys who charge fees in guardianship cases, whether they are representing the guardian or related parties in the guardianship. It would not apply to an attorney who is not asking for fees to be awarded out of the estate.

Mr. James Conway was concerned whether someone could petition for guardianship over a Proposed Protected Person, the Proposed Protected Person has four or five children, all of the children hire their own attorney, and the statute would allow all those attorney fees to be paid by the Protected Person's estate. He suggested it be limited to the guardian's attorney fees, not every other person who chooses to participate in the action. Justice Hardesty suggested allowing the judge to determine this. There had been testimony with claims made that the attorney for the guardian ran up the bill when the argument was the family member and their attorney ran up the bill. The judge has to decide who is right or wrong in these disputes, and it may be that the judge would decide the family member is right and the attorney for the guardian is wrong, so there may

be a basis for compensating counsel who is coming into the process to try and correct the record or the process. Mr. Conway agreed that was a good point and asked if the statute could be made clearer. He is concerned where there are three or four attorneys billing on the same case and the Court approves the fees. Mr. Conway is hopeful that is not how the statute would operate but was concerned about the potential that it be interpreted that way. Justice Hardesty said there could be instances where multiple attorneys could be representing a guardian, e.g., a complex estate or contested proceeding. The statute allows the judge the ability to regulate who is going to get paid and who is driving the costs up. Mr. Conway said subsection 2 does give the judge control of who is seeking fees right at the outset.

Judge Doherty said Mr. Conway's point has merit because it is very common for siblings to come in with their own attorneys and each and every one of them have an expectation that the estate is going to pay for their attorneys because each and every one of them thinks that their position is the right position, in the best interest of the Protected Person. Perhaps a statement in this provision that advises parties that the assumption that the estate will pay for any attorney fees, or clarify that the estate will only pay such attorney fees as the Court deems appropriate and in the best interest of the Protected Person; language that would put those entities on notice that just because they are hiring an attorney and they think they have the right position does not mean they will automatically get paid out of the estate. That is the overwhelming impression of siblings or children of Protected Persons, that they will all get paid out of the estate. Judge Doherty thinks some of the components in the statute, with respect to whether they prolong the litigation, whether their pursuit of the claim is in the best interest, whether they allowed the efficient disposition take care of that, and allows the Court to reject those fees without further statement. Judge Doherty would develop a sentence that is clearer, if the Commission thinks that is appropriate.

Judge Walker asked Judge Doherty if there would be any benefit to requiring an attorney, who intends to seek compensation, to give written notice of the basis of his or her compensation by filing with the Court. Judge Walker said the cases that seem to have issues are where there is a substantial estate; the parties are three or four months into litigation and have accumulated enormous fees in that short period of time. Judge Walker said if there was a requirement that they submitted to the Court, the Court could case manage the case. Judge Walker was not sure if that would address Mr. Conway's concern.

Justice Hardesty said the second sentence in section 1 reads, "The attorney's compensation cannot be paid from the assets of the protected person unless and until the court allows the payment to occur as set forth therein." No one has the right to anything unless the Court approves it. Judge Doherty agreed and said subsection 2 goes even further with respect to approving the written agreement, and it builds on itself as it goes through.

Discussion Section 7 – Any fees paid by a third party must be disclosed and approved by the Court.

The Commission discussed attorneys who are paid through a trust that is the beneficiary but the trust does not fall under the estate of the guardianship. The attorney takes funds from the trust, and it does not require approval from the judge because it is a trust, a third-party payer. Ms. Kim

Spoon asked if assets could be better defined, including any other assets they are a beneficiary of, not just what they have their name on. Judge Doherty said section 7 was meant to address trust payments. It does not specifically say trust but that is the most common third-party payment source.

Mr. David Spitzer said that is discretionary now. It is extremely difficult as an attorney for a Protected Person to understand where money is if the attorney does not have access to the trust, and if the Protected Person is the named beneficiary, and that is all the attorney knows about the trust, then the attorney does not know where the rest of the money is going, even after a guardianship is granted, unless the Court has jurisdiction.

Judge William Voy said a distinction could be made that if it is the Protected Person's trust, but if it is someone else's trust, that is a different issue. Justice Hardesty said it depends on the extent in which the Protected Person is a beneficiary. The Commission discussed trusts where there could be more than one beneficiary and if fees are being paid out of that trust for attorney fees for a guardianship, there could be some dispute about the conduct of the trust.

Justice Hardesty said the way it is addressed in section 7 is adequate. You are expecting to know that an attorney who is providing services to the estate, and seeking compensation from the estate, is not getting double paid. This allows you to get that information. Judge Doherty said she could change the language to say including, but not limited to, a trust. Justice Hardesty did not think that change was necessary. The guardian has a fiduciary duty to assure the attorney does not bill twice. If that is happening, then the guardian has the duty to go back and find out why you are getting paid this amount of money from the trust and now you are seeking compensation from the guardianship for the same thing.

The Commission discussed if the trust is not in the guardianship estate then the attorney who is representing the Protected Person would not know the trust is paying, how much, or for what even though the Protected Person is the beneficiary. If the Protected Person is the beneficiary of the trust, the attorney has the right to know under the trust statutes. The trust can be brought into the jurisdiction of the probate court. Justice Hardesty said there is an affirmative obligation in this draft statute, that fees paid by a third party must be disclosed and approved by the Court, so unless someone commits fraud, this disclosure has to be made.

Judge Doherty said under NRS Chapter 159, the Court has discretionary jurisdiction to take jurisdiction over the trust. In some cases, there is a strong disinclination to allow that because there is that independence, the ability and freedom not to provide an accounting to the Court, not to keep the Court updated on both sides of the person's existence. The trend is to take jurisdiction.

Mr. Conway suggested instead of having section 7 apply by having fees to any third party, it could be changed to any fees that are paid out of the Protected Person's non-guardianship estate. For instance, a hospital may retain an attorney who files the guardianship petition to appoint a public guardian; certainly that is a third party. The third party pays the attorney's fees directly; they are not coming out of the Protected Person's estate so there is no reason to disclose the fee agreement with the Court.

Ms. Susan Hoy suggested adding the third party needs to be disclosed but not approved by the Court if it is not the Protected Person's assets or the Protected Person does not have a beneficiary interest in the asset. In the case example, the hospital is paying, the attorney can disclose that information but it does not have to be approved by the Court. Mr. Spitzer said any participating attorney must disclose the source of their payments. The way section 7 is written it says disclosed and approved. Ms. Barbara Buckley said stating nonguardian assets make sense. Judge Steel said you are simply disclosing the fees, and if someone feels they are outrageous, they can ask the court to intervene in those nonassets of a trust. Ms. Tyrell said section 7 would say any fees paid by a third party must be disclosed to the Court and then you could add a section 8 to say any fees paid by the Protective Person's nonguardianship assets must be disclosed and approved by the Court.

Justice Hardesty said they have a beneficiary interest in that trust, he recognizes the trust is a separate entity but beneficiaries of that trust have substantial rights under the trust statutes. Ms. Tyrell did not disagree but the distinction is the guardian may not be in charge of those assets. The guardian may not be the successor trustee of the trust and that is why it would not necessarily be a guardianship asset.

Judge Doherty said the possibility would be an attorney representing a guardian. The attorney prefers to solicit fees from the trust, those fees will be less scrutinized than if they solicited fees from the Court where they would have these various provisions reviewed. That is what we are trying to get to. If there is a bucket of money and the attorney can get $10,000 for the same service the Court would only approve $2,500 for that trust, if it is not revealed, it distorts the whole protocol, not only in that case but in many other cases, and that is why we want disclosure and approval when it goes directly to the guardian for the purposes of the Protected Person. Justice Hardesty said it is not clear why the language that is drafted would not be adequate. Ms. Tyrell said because it includes all third parties so all third party payments would have to be approved. Justice Hardesty said to the person who is the applicant for the fees. Ms. Spoon said then they would not apply for fees if it is a trust and they know they can get money from the trust; then the fees can be as much as they want without any type of disclosure or approval and that is the problem.

Justice Hardesty suggested section 7 could read, "Any fees paid to an attorney who provides services to a protected person or guardian by a third party must be disclosed and approved by the court." Ms. Tyrell said what if the family members do not want the Protected Person's estate to pay; they want to pay the attorney from their own money. That should be disclosed but should the Court have to approve or disapprove the fees paid, and would they have the authority to do that? Justice Hardesty said it sounds like what Judge Doherty is saying is, if you are providing services for the guardian, you are representing the guardian, that is your client and the family members are paying you, or a trust is paying you or someone else, the Court wants to know about that and how much you are paid. Ms. Tyrell asked but does the Court have to approve the fees. Justice Hardesty said yes, because the Court is concerned the attorney will evade or attempt to evade the requirements of the statute and wants to know what the attorney is being paid outside the guardianship for services rendered to the guardianship. Judge Doherty said that was correct.

Ms. Spoon said what we are concerned about is not so much anyone's money it is the money that belongs to the Protected Person. Any fees paid from the Protected Person's non-guardian assets need to be disclosed and approved. That is what needs to be looked at. Not anyone's third party that has nothing to do with the Protected Person's assets. It is the Protected Person's assets that are not being looked at now, i.e., trusts and other things.

Justice Hardesty said he had a problem with the term nonguardian assets, if he is the beneficiary in a trust, the trusts own the assets, but he has an interest in that trust, and if you are paying fees from that trust then he would be paying a quarter of them.

Mr. Conway said what happens is someone will have a trust with provisions in the trust where the trustee takes over if someone becomes incapacitated, they will take over their assets but they do not have sufficient authority to act as the guardian of the person so they will petition for authority to make medical decisions for the person but the finances of the person are never really under the jurisdiction of the Court because they are not the guardian of the estate only the person. The trustee of the trust has the authority to act, to pay the attorney fees of the individual who petitioned for the guardianship over the person. Those estate assets are never really reviewed by the Court because it is just a petition over the person not the estate.

Mr. Spitzer explained there are situations where the Protected Person who formed the trust, was the initial trustee, then the successor trustee petitions for guardianship of the person to have power to move the person from the person's house and sell the house for the benefit of the trust. In a situation where a trust that was initiated by the wealth of the Proposed Protected Person, the trust should be under the jurisdiction of the Court for guardianship purposes for both the guardianship of the person and the estate. That is going to prevent trustee malfeasance and it is going to provide adequate assurance that there is enough money in the trust to sustain that person in the least-restrictive environment. The money from the trust is being spent to sustain that person. It is important for a judge who is going to monitor the personal existence, the lifestyle of the Protected Person, to know how much money is out there to be able to do that.

Ms. Lora Myles, Carson and Rural Elder Law Program, said in the public guardian arena they often see where the public will get custody of the Protected Person and are the guardian of the person. The person who is handling the trust is, oftentimes children of the Protected Person and refuses to pay for the Protected Person's care. Since the trust is a part of the guardianship, the only way to get control of those funds and to pay for the Protected Person's care is for the Court to take jurisdiction over the trust, but that becomes a battle if the children says no, we are the heirs under the trust, we are going to spend the money the way we want to, and we do not care what happens to mom or dad; that is very common.

Justice Hardesty said the Court could then convert the case to a guardian of the estate and proceed to require the trust to account. The fact that they are in a guardianship does not change the rules regarding the relationships between beneficiaries and trusts. Ms. Buckley said except the Protected Person does not have the ability to file a lawsuit. Justice Hardesty added the guardian has the fiduciary duty to do that. Ms. Buckley agreed and said the only remedy for an attorney for a Protected Person would be to file a motion that the guardian is failing to do its

duties and that it is required to bring the trust in. Ms. Buckley said she would volunteer to draft some language, but NRS 159.113 subsection (l) states that before taking any of the following actions, the guardian of the estate must petition the Court for an order. Ms. Buckley said you could do a stand-alone statute that limits it to that, so your concern about other trusts that are outside the jurisdiction of the trust are excluded and to say upon those cases an attorney for the Protected Person or other person upon motion can also bring the request that the court assume jurisdiction of those types of trusts where they feel that the income is not being used for the benefit of that Protected Person.

Judge Cynthia Dianne Steel said if you do not have jurisdiction over the estate, the Court could not do anything with the trust. Justice Hardesty said that is his point. The hypothetical Mr. Spitzer provided was the guardian of the person, the statute only governs guardian of the estate but his point is well taken. If you are going to pay the medical bills, then the judge is going to appoint a guardian to both. Once you have a guardian of both, you have jurisdiction to do what you need to do including bringing those trusts in. The judge wants to understand if someone is being paid legal fees outside and away from the assets of the guardianship, and this requires a disclosure of that and approval if necessary. Justice Hardesty asked why the language in section 7 would not cover that. Judge Doherty stated she is happy with the language in section 7. She said NRS 159.183, which is the authority of the Court to approve reasonable fees for a guardian who is retaining services to pursue a guardianship regardless of whether it is a guardianship of the person or guardianship of the estate. Even if it is just guardianship of the person the Court still approves the fees so this falls in line with fee approval triggered by the guardian accessing professional services and how it would be evaluated, and she thinks it would be consistent with our statute, it just elaborates more specifically for our Court. Justice Hardesty said if there is the least bit doubt in section 7 you could say, "Any fees paid by a third party including a trust, which the estate is a beneficiary," and then proceed. Judge Doherty agreed that is better.

Justice Hardesty asked if anyone would like to make a motion.

> **Ms. Kim Spoon moved to approve the draft statute for attorney fees with the edits provided by Judge Doherty and the edit he made. Ms. Elyse Tyrell seconded the motion. Motion passed.**

Justice Hardesty thanked Judge Doherty and her intern, Mr. Tyler Hart, for all their work on this.

9. **The Commission recommends amending statutory language for notice in guardianship proceedings. (Exhibit L)**

January 22, 2016, Discussion

Justice Hardesty stated the threshold questions are:

- What are the present requirements under NRS Chapter 159 for notice of guardianship initially?
- Who must receive notice?
- How is notice proven?

- How is notice documented?
- What rulings does the judge make about notice before starting into the merits of the proceedings?

Judge Frances Doherty explained the Second Judicial District Court looks for notice at the initial filing and reviews to see if notice is provided to persons identified within the second degree of consanguinity. The Court recognizes that not everyone is known at the time of the petition. Judge Doherty suggested refining the method of identifying interested persons. There might be interested persons who are not within the second degree of consanguinity. Judge Doherty suggested formally acknowledging or contemplating a protocol by which someone identifies himself or herself as a person of interest requesting ongoing notice and somehow reviewing that request. Judge Doherty stated the weakness in the statute is not necessarily the upfront filing and notice components, although they could be bolstered some, but there is no language of notice with respect to inventories. The statute includes heavy upfront notice requirements for the petition, and there is a notice requirement for accounting but nothing for the inventory. Judge Doherty explained the Court verifies notice of the Protected Person in the same manner as notice on every other entity. The Court requires notice be personally delivered to the Protected Person. The older practice was that notice was sent to the administrator of the skilled facility or group home. This is still required but that is not notice on the Protected Person and the district has made that clear. The Court requires independent direct notice to the person who is going to face the guardianship. Judge Doherty does not know if that is efficiently defined in the statute. Mr. Kim Rowe and Justice Hardesty stated they did not think it was.

Judge Nancy Porter requires personal notice to the Protected Person, and has many pro se who do not know how to provide the required notice to the persons. If the pro se does provide notice, they do not know how to file proof that they have given notice, which has been a real struggle in her district. Judge Porter does not proceed if she does not feel a sufficient number of people have been notified.

Judge Cynthia Dianne Steel commented the Eighth Judicial District handles notice the same as the Second and Fourth Judicial Districts. The Court requires the Protected Person to be noticed by return receipt requested on initial filing and by certificate of mailing on the other filings. Judge Steel suggested evaluating the tools that are available now to provide notice and see if we could create a registry somewhere that would allow someone to check to see if their loved one is on the registry.

The Commission discussed having to rely on the clients to provide names, address, and relationships. Mr. David Spitzer noted Washoe Legal Services (WLS) interviews the Proposed Protected Person to identify persons within the second degree of consanguinity. If they receive anything that differs from the notice given in the petition, they will bring it to the attention of the Court and other parties. Access to accurate information is limited to the Proposed Protected Person's ability to provide the information.

Mr. Rowe agrees with Judge Doherty about the inventory and other ancillary matters. He has always thought it was odd that NRS 159.034 lists the second degree of consanguinity but the statute does not call for notice to the Protected Person. The statute talks about providing notice to

any person or care provider who is taking care of the Protected Person but does not specifically identify the Protected Person. Mr. Rowe noted this is more of a local rule issue where the Proposed Protected Person would be a party and you need to provide notice to the party. Mr. Rowe thought the statute should be clarified and it could clean up the language post guardianship.

Judge Steel noted court hearings are not required with some of the documents, e.g., the inventory or report of person. Judge Steel said the Commission would need to review whether the Court would be required to monitor whether someone has received notice when there could be years between granting the guardianship and filing the inventory in a summary administration.[264] The Commission would need to review if the Court would be required to file every single year the notice of person and do a certificate of mailing. Judge Steel has cases that are estate only so there is no report of person. The IT Department might be able to assist the Court to make sure that the follow up document is filed.

Mr. Rowe said NRS 159.047 does talk about the issuance of the citation that has to be served on a Proposed Protected Person who is 14 years or older. The reference to NRS 159.034 comes back from the estate side, which you have to provide notice. The Protected Person is referenced in the context of who gets a copy of a citation, indicating there is going to be a hearing. The question the Bench Bar Committee in Washoe County has been debating is do you actually have to serve a copy of the petition along with the citation. Judge Doherty noted the Bench Bar Committee also noticed the orders do not necessarily contain the list of individuals who are entitled to notice. There is a guardianship order where the statute contemplates all those individuals being in the original guardianship order are listed so the Protected Person is aware of that as well. They have just started to do this in Washoe County. The Task Force recognized there are quite a few deficits and inconsistencies that should be addressed.

Mr. Jay P. Raman was concerned that the investigation would stop once the Protected Person was asked to provide family information. Mr. Raman suggested a private investigator or Elder Protective Services (EPS) identify if there are additional family members. Ms. Kim Spoon agreed with Mr. Raman and noted her office tries to reach out to as many people as possible in their investigation to identify family members. There are times when the Proposed Protected Person does not want a particular family member identified.[265] Ms. Spoon is not sure that anything could be done in these situations but she wanted to make the Commissioners aware of this issue because it can be very difficult on the Proposed Protected Person.

Justice Hardesty asked the Bench Bar Committees in the north and south to review Question 11 and provide recommendations to the Commission regarding notice. The Commission would

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[264] Nevada Revised Statute 159.076 The Court may grant a summary administration if, at any time, it appears to the Court that after payment of all claims and expenses of the guardianship the value of the Protected Person's property does not exceed $10,000. No accounting would be filed and there would be no notice of accounting.

[265] The person subject to guardianship might have a sibling who the person has not spoken to in many years and does not want them to know of the guardianship proceedings, which could be upsetting to the person subject to guardianship.

review the possibility of a more expansive recommendation as to how specifically the notice requirement in NRS Chapter 159 could be implemented, and what it should be extended to.

June 13, 2016, Discussion

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

1. Actual service of the notice on the person who is facing the guardianship. Sometimes it is served on the person who is the administrator for the nursing home but may or may not be served on the individual person, perhaps based on the assumption that the individual cannot understand. That assumption might be correct, but there is an independent level of decision making that creates an inconsistency with respect to service; either a citation or notice of hearing or copy of the petition. What is the level of expectation of service, and should service be expected absent court waiver of service on a person facing guardianship or service on a person who is the subject of a guardianship? Various discussions the Commission has had regarding service have differed.
2. The petition is not included under statute as a required service on the Proposed Protected Person. The Proposed Protected Person receives the citation but there is no requirement that they receive the petition, no requirement that they receive the annual accounting, and no requirement that they receive the underlying pleadings. There is a requirement that the Proposed Protected Person receives notice but even that notice is not absolute with respect to the determination of competency. The essence of this change would require service, not only of the notice of hearing and citation in the appropriate proceeding, but the underlying documents; the accounting, the inventory, on the Protected Person without exception, it is fundamental, regardless of whether the individual is capable of understanding it or not, at least serve it on the person.

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

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

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

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

June 21, 2016, Discussion

The Commission discussed Judge Frances Doherty's suggestions[266] regarding notice. Mr. Kim Rowe stated Mr. David Spitzer's comments on NRS 159.081 from the previous meeting might move into other categories regarding how much information should be provided. Depending on the specific relationships or a person's desire for privacy, regarding their medical and financial information, it may not be appropriate to give people all the way through the second degree of consanguinity this information, as is currently contemplated in the statute. This issue would need to be addressed. Judge Doherty stated it is a public policy question of trying to serve the Protected Person, recognizing the person may have never shared personal information with many family members, and mandating the information be shared. This is an issue Judge Doherty has struggled with. The statute was written in a way that was rather neutral with a citation going out but not the petition. The Commission had heard public comment stating, "if I had only known," and this would require balancing what would require notice. Judge Doherty stated all notice, on all matters with copies of the substantive underlying pleadings should go to the attorney for the Proposed Protected Person and to the Proposed Protected Person. Judge Doherty would be inclined to send notice to everyone else as well. The public policy discussion is the shift in which the paradigm has shifted in the sense that the person who has protected his or her privacy all his or her life is now in a vulnerable circumstance, the records are largely public and the family is the extended village that should know the circumstances of that person.

Justice Hardesty asked the Commission to reference NRS 159.081, which is the statute that requires annual reports of the person to be filed with the Court and served on the attorney for the Protected Person. No other notice requirements are specified. Justice Hardesty clarified Judge Doherty's comments stating notice of that report should be served on the Protected Person in all circumstances. The Protected Person would receive notice of every annual accounting and all other proceedings that affect their life. The question is who else should get the notice? The identified concern is if the notice of the annual reports, accountings, and other proceedings, go to other relatives of the Protected Person. The balancing would be recognizing the privacy of the Protected Person who may not want his or her financial, mental health, and other information, shared with brothers and sisters because the dynamic may change once the Protected Person and the siblings get notice. The Commission would need to address the policy question for purposes of this recommendation.

Judge Egan Walker reflected the risk of invading a person's privacy is not minor. At the point in which a person becomes subject to guardianship, unless the village is watching and a person's privacy is invaded because they are watching, there may be risks that occur, however fewer may have happened had the village been watching. Very sensitive and private information is

[266] Judge Doherty's suggestions were included in the June 21, 2016, meeting materials.

discussed with a Protected Person, for example; sexually transmitted diseases, who the person engaged in meretricious relations with, and other private information, which may not need to be added to an annual report. If the notice given to do anything in a guardianship were consistently to the persons within the second degree of consanguinity, it would make the practice and policy much easier.

Mr. Rowe stated there should be an avenue for court waiver. If a person is dealing with a situation that has particularly private information or information that should not be shared for good reason or is not beneficial to the Protected Person, a person should be able to request to the Court that the information not be shared and notice not be given to certain individuals.

Ms. Kim Spoon noted in order to find the individuals; most often, they had previously been notified before the first petition in order to verify they were appropriate guardians. Most family members may already know what is happening before the guardianship goes forward. It is invaluable to get the family involved, if appropriate, and the notices are helpful for many reasons because of the information they provide. Ms. Spoon stated she was concerned about the privacy of the individuals served but once the families are involved, it helps the client to extend the family or to protect the person from family that may be harmful.

Justice Hardesty stated the qualification would be that except upon the showing of good cause and order of the Court, all the notices would go to the village. Mr. Spitzer asked if the notice would be a notice that the document was filed or a notice that a document was filed and a copy of said document. Justice Hardesty clarified it would be a notice of all documents and the full report. Ms. Sally Ramm asked if this could be narrowed to the first degree of consanguinity. Judge Walker stated the second degree of consanguinity would be the extension of parents, grandparents, children, and siblings. Justice Hardesty stated the first degree of consanguinity extends to only parents and children of an individual and when dealing with the elderly there may only be siblings or children and in some cases there are no children, parents are deceased, and all there is left are siblings.

Mr. Spitzer argued that sending out the notice to those in the second degree should be deemed adequate; it would then be up to those individuals to access the public records and obtain the documents. Justice Hardesty stated Supreme Court Rule VII governs confidentiality of provisions within all pleadings. Anyone who is about to file a pleading with the Court can file it provisionally on the request certain parts of the report to be excised and the Court must rule on that request first, before the report or document can be filed. If there is sensitive information in a report, one would hope the Protected Person's counsel would first file a motion to have the information redacted or sealed. Mr. Spitzer stated the Sealing Rule could be utilized, but if a guardian would file an annual report of the person, it would be up to the guardian to ask for those things to be sealed.

Chief Judge Gibbons suggested the Commission discuss special notice. Under special notice, a person would not receive notice unless a person makes a request to receive notice. At the outset, everyone would receive notice and there could be a tier 1 and tier 2, and if a person were in tier 1 they would not receive further notice, unless they specifically request it. Ms. Barbara Buckley stated it would be important for the Protected Person to state to whom they would not wish to

receive notice from the outset. Mr. Timothy Sutton stated a provision exists in which a person entitled to notice could sign a waiver to not receive notice. Ms. Arnold stated there have been cases in which individuals within the second degree of consanguinity cannot be located and notice by publication would make a Protected Person's information very public.

Mr. Michael Keane, private attorney, stated, as an attorney, his practice is to provide notice to all parties. Mr. Keane stated District Court Rule 14 requires service of all documents filed with the Court on all parties, it may be challenging to determine who "parties" are. This rule requires service on all interested persons.

Assemblyman Michael Sprinkle stated he was struggling with absolute unveiling of the reports from a privacy standpoint. Judge Doherty stated she had pointed out the public policy dilemma; she would clearly come down on the side of notice to the second degree of consanguinity. The conversations with the public will be enhanced with the additional notice and the Court has some discretion in waiving notice, as is appropriate. We have so few people in our Courts talking about our persons who are vulnerable, to the extent that we can keep those persons engaged, we should, and the Court can monitor the oversight of the appropriate release of information. We also have another area, which is training persons who are serving as guardians; 60 percent of these individuals are relatives. It would be important to improve training protocols to assist guardians in appropriately completing some of the forms to limit the sensitive information included in the documents.

Justice Hardesty stated some of the exceptions are included in the current Sealing Rule and the Commission may bring them in so that a guardian could not file an annual report that includes information, which is statutorily confidential. It would not involve a sealing request; it would be redacted from the outset except what is filed with the Court. Justice Hardesty stated completing work on the exceptions might solve some questions. Justice Hardesty asked the Commission if general notices should be given to those within the second degree of consanguinity, so long as there are exceptions or qualifications to the notice built in dealing with privacy or confidentiality. Mr. Sutton expressed concern regarding notifying grandchildren, who are within the second degree of consanguinity, because of the number of grandchildren a person may have due to them being so far removed and the age limit. Fourteen years of age may be too young of an age for youth to begin receiving notices and documents for their grandparents. Judge Cynthia Dianne Steel stated a concern has been not having notice of what is going on from the individuals in the second degree of consanguinity. Another concern is if they are given the actual petition with redactions, a citation may not be needed. The purpose of a citation is to send notice that something is going to happen in Court, and if the individual is interested in what will happen, the person is welcome to go to the Court and view the documents. This would take the problem away from the minors receiving information they should not. Sending all information to everyone would put too much of an onus on what the Commission is trying to accomplish because guardianship is a private thing. Mr. Rowe expressed concern regarding the contents of the petition. The contents of the petition have an extraordinary amount of information included. In terms of the individuals in the second degree of consanguinity, it may not be necessary to serve the petition on everyone, the citation should be enough to forge them an appropriate notice that something is happening and they can access information if they choose to take the time to do so. Justice Hardesty stated that was a good point, in the event a judge chooses not to appoint a

guardian, a person may have been disclosed very sensitive and private information that the person was not entitled to. If a judge were to conclude under the least-restrictive means that a guardianship was only needed as to only one area, for example medications, and not to the financial affairs, there would be no reason for unnecessary information to go to siblings or others within the second degree of consanguinity.

Judge Walker stated a guardianship negatively affects the rights of a Protected Person more than a person convicted of a crime. The Legislature had already spoken on this area, the citation is a public document and the action is a public action because the constitutional rights of the Protected Person are invaded by the action and by the continued action. There are things that a person may wish to not be shared in the public sphere but there is a concern regarding openness from the Court.

Justice Hardesty stated his suggestion was that portions of the petition, annual reports, and other proceedings be sealed based upon known statutory declarations of confidentiality. It is already required for lawyers to file pleadings that certify that the social security numbers of the subjects in those proceedings are redacted, notwithstanding that requirement; there are lawyers that file pleadings with the subject's social security numbers in them. It is a statutory restraint, there are other statutory limitations on what can be in pleadings, and other public documents filed with the courthouse. The question is if the pleadings the individuals receive should be redacted. Justice Hardesty suggested the pleadings should be redacted and stated there were statutes that require that. Judge Steel stated often times attorneys are not redacting the documents, they have pro se individuals preparing the pleadings and often times the pro se does not redact private information and that needs to be taken into consideration.

Ms. Barbara Buckley stated if at the time a person is processing the citation a special notice was given to anyone within the second degree of consanguinity, that if there was a presumption that anyone requesting notice within the second degree of consanguinity could receive it, except if the Protected Person did not want them to or other reasons. Those persons interested would receive the special notice, disclose their desire or disinterest to receive notice and mail back the form. Justice Hardesty stated the issue would be if the person would receive the notice, the pleading, or both. Ms. Buckley stated the individuals would get both and summarize the case. Justice Hardesty asked how much of the pleading the person should get, especially when existing statutes state some information is confidential and should not be included in a pleading. At the beginning of a case there may be a different consideration than if a judge were not to grant a guardianship. If the judge were to reject the guardianship, there would not be a village to address. It would be important for the judge to decide if a guardianship would be granted first and then notices would be given consistent with the conversations and the exceptions previously discussed that would have limitations or protections within the documents as to what would be sealed and what would not be sealed.

Mr. Jay P. Raman stated he would be in favor of all materials being sent to family members within the second degree of consanguinity. There needs to be more transparency amongst family members regarding what is going on with their family member. Many public speakers have stated, "if they had known certain things they would have been more involved or done things differently." The Commission did not receive comments from the public that too much notice

had been provided. Mr. Raman provided an example: If a Protected Person is under guardianship due to a mental disability, which makes them believe their family is evil, would the Court accept the person's wishes in this case and not provide notice to family, although they might have the best interest of the Protected Person in mind. Mr. Raman suggested a hearing should be held before restricting notice to certain individuals.

Judge Steel stated the definition of a "party" in a guardianship would need to be clarified. Judge Steel suggested adding more information to the citation in order to provide enough information to the individuals receiving notice.

Judge Doherty stated there is a provision currently in the statute that allows interested persons to seek the ability to be notified of hearings. Judge Doherty stated if the Commission were to summarize the public comment received throughout the year in a few words, the words would be "I did not know." The Commission would need to be careful to ensure the balance of the rights of the persons facing guardianship. The proceedings should not be closed any more than they already are and the Commission should look toward a thorough system of notice. The Commission had no further questions or comments regarding notice.

Justice Hardesty would reach out to Commissioners to work on taking into account a notice provision with some of the concepts that were highlighted during the discussion. There is a difference between the kind and type of notice that commences the case and who would receive it and the kind and type of notice sent out afterwards. Expanding the nature of the disclosure in the citation would help with respect to the commencement of the case. The Commission would need to review the provisions in the existing statute regarding third-party notice and participation to decide if it is too broad or too narrow. The refined concepts would be discussed with the Commission during the meeting in August.

August 26, 2016, Discussion

Commissioners were asked if they had any further comment on the recommendations. Justice Hardesty said there is some level of language clean up but the Commission should focus on the concepts for revisions to notices and the reason for those. Specific statutory language could be addressed, if the ideas are found to be appropriate to the Commission.

Judge Frances Doherty said the point is to have every kind of hearing be noticed to all the parties and to have all relevant documents, including reports and accountings be noticed to all the parties. Notice to all the parties contemplates notice within the second degree of consanguinity or consistent with those generalized requirements for all substantive matters. Everyone gets notice for the sale of real estate, everyone gets notice of the accounting, everyone gets notice of the personal annual report, unless that is narrowed, i.e., HIPAA, everyone gets notice of a change in placement, etc. The large segment of the statute contemplates notice to everyone and then there are various smaller sections that did not reference back to notice so the recommendations are meant to include notice to all parties for all hearings.

Justice Hardesty asked if Commissioners had questions to the objectives of this recommendation. Justice Hardesty said the motion would be to endorse the recommendations that are made on pages 103-104.

> **Mr. Jay P. Raman moved to endorse the recommendations for notice that were included in pages 103-104 of the August 26, 2016, meeting materials. Ms. Susan Sweikert seconded the motion. Motion passed.**

10. The Commission recommends proof of personal service by affidavit be required to show proof a Protected Person was served notice of the petition.[267]

Judge Cynthia Dianne Steel would like something to prove the Protected Person got service. People mail stuff to their own address and then they do not pick it up and say see I served the Protected Person but many times the Protected Person does not have any way of knowing a letter came in the mail or did not and Judge Steel is concerned about that. How does she know if a Protected Person got service? They will tell me they gave them service, the nurse handed it to them, but there is no real way of documenting this until we are able to get attorneys for everyone. Judge Steel likes all the other recommendations.

How does one demonstrate proof of service to the court now? Judge Steel said they send their letter out the return receipt request and say no one picked it up. The Protected Person might not have been able to pick it up if they have a traumatic brain injury and are in the hospital, for example. Judge Steel does not know if they ever received the notice. Ms. Elyse Tyrell said they do a certificate of mailing. Justice Hardesty asked to take that issue up separate because it is a separate issue from the motion on the table.

Justice Hardesty asked Commissioners if the subject of proof of service has been an issue. Ms. Debra Bookout said it can be a problem. In the few cases she has been appointed on, oftentimes the family members or Protected Person will say I had no idea. She was not sure why that was but it is one of the complaints. Mr. David Spitzer said when they get issues with proof of service it is not usually with the Protected Person because as attorneys they have already been served, as attorney for the Protected Person. It does become an issue with family members when addresses are out of date or no effort has been made to identify them and that sort of thing. The only issue he has confronted is often the Proposed Protected Person will be served by the administrator of the facility of the Proposed Protected Person, as in will be served with the petition, with a kind of care of status and then my client never sees it. That is the main service issue with the Proposed Protected Person.

Justice Hardesty said he does not see a reason to change the way we currently demonstrate service on counsel or other parties but where there is service expected on the Protected Person that should be demonstrated by affidavit. Mr. Spitzer agreed. Justice Hardesty said personal service and proof of that personal service by affidavit. That is a critical piece to this. Mr. Timothy Sutton asked if that was for every document or just the initial petition. Justice Hardesty said it would be for the petition. Mr. Sutton said there is a requirement of personal service or certified mail within 20 days. Justice Hardesty said the weakness may be in the certified mail.

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[267] This discussion followed the discussion on notice at the August 26, 2016, meeting.

Judge Steel said she gets petitions where the person is 18-23 years old and she does not know if they got that service, so their parents are coming in and becoming guardians with a certificate from a doctor. But Judge Steel does not know if the Proposed Protected Person received notice of the petition. Justice Hardesty said we would at a minimum require personal service of the petition on the Proposed Protected Person and that is demonstrated by affidavit. Mr. Spitzer said yes just like a subpoena.

> **Justice Hardesty asked if proof of personal service by affidavit would address the concerns expressed by Commissioners. The Commissioners agreed it would and endorsed the requirement that proof of personal service by affidavit be required to show proof that a Protected Person was served notice of the petition. Commissioners endorsed the requirement. Motion passed.**

Justice Hardesty said the process and timing for filing and evaluating an inventory and care plan for the Protected Person was addressed in the recommendations provided by Ms. Barbara Buckley that the Commission voted on earlier.

11. **The Commission calls upon the Legislature to establish statewide standards for the guardianship investigation, administration, and accounting. The statewide model is a national best practice and the Commission urges the Legislature to look into creating a Statewide Office of Public Guardian.[268] This would include the Commission's prior recommendation to approve the use of investigators, as necessary, and auditors or accountants, to evaluate financial records and fee requests, and other petitions/motions raising financial issues concerning the Protected Person.**

Two General Policy Questions were originally posed to the Commission: (1) Does the Commission favor the use of Elder Protective Services (EPS) or some other entity independent of the court system to conduct investigations as necessary? and (2) Does the Commission favor the use of auditors independent of the court system to evaluate financial records, fee requests, and other petitions/motions raising financial issues concerning the Protected Person?

April 1, 2016, Discussion

Justice Hardesty stated the questions propose the use of auditors, independent of the court system to evaluate financial records, fee requests, and other petitions/motions. Resources could make it difficult to select auditors and could make it difficult for them to be independent of the court system, but they could operate as employees of the court system independent of the guardian judge. The Commission would discuss securing investigative and auditing services that could provide reports to the guardian judge who evaluates the need for guardianship as well as the petitions received by judges. The question presented to the Commission today is if the Commission would rely on the EPS or some other entity, independent of the court system, to conduct investigations as needed in connection with the petitions. Ms. Sally Ramm stated the EPS is a social services model and the office conducts investigations, and those investigations are often presented to the guardianship courts. There are limitations, which include the primary

[268] Rural public guardian survey results are included as **Appendix Z.**

goal to relieve the situation at the time using social services. The investigations are not as forensic as they would be if regular investigators were looking at the facts of the case that may or may not be criminal or prosecutable. Elder Protective Service's investigations are strictly social service investigations conducted by social workers. Elder Protective Services is financed through the Aging and Disabilities Services Division. By law, the EPS is restricted to service people over 60 years of age and that would need to be changed. Ms. Ramm noted another change that would need to happen in order for the EPS to take over investigations for the guardianship court would be an increase in personnel. Elder Protective Services currently had 33 licensed social workers conducting investigations on elder abuse throughout the State, and it has become difficult to retain staff in those positions. There may be other requirements needed for an investigator, which licensed social workers do not have. Because the EPS is often used as a referring agency for guardianships, there may be a conflict of interest in the EPS conducting investigations. Ms. Ramm stated the EPS might not be the most appropriate entity for investigations of guardianships.

Justice Hardesty asked if the Commission would favor the use of investigators who might be employees of the court system but not of the guardianship judge. Independent auditors or accountants employed by the court system to evaluate financial records, fee requests, fee awards, etc. According to the presentation made by Clark County on their data collection, annual reports are being read within a day from the time they are provided; however, there were questions regarding whether the person reading the annual reports were capable of offering a meaningful evaluation of the reports. Justice Hardesty stated the Court would need to gather expertise to help support its efforts in order to obtain investigators who could conduct investigations as necessary in connection with a proposed guardianship proceeding. Auditors or accountants may be able to provide experience in assessing the accuracy, viability, and protocol of an accounting that had been presented. It would be crucial to have expertise attached to the reports. Judge Nancy Porter added it would be beneficial to have the Court appoint the professionals at its discretion because the services would not be necessary for all cases and funding would be an issue to consider as well. Justice Hardesty stated having one-accountant review petitions, where needed, would create a shared service, which would be useful to all judges in the area, as well as investigators and other professionals. Mr. David Spitzer added the public guardian in Washoe County had undertaken investigations at the suggestion of the Court. Before a public guardian is appointed a petition is filed, the Court asks for information, the public guardian agrees to conduct an investigation over the course of about four weeks, and reports are given to the Court. Mr. Spitzer added if the Commission moves towards a model, in which a Protected Person or Respondent is represented by an attorney, it should be the responsibility of the attorney for the Respondent to vet the fee requests. If the Respondent's attorney did not have the expertise in order to provide recommendations to the Court, having an accounting professional would be a useful resource to have in those cases. Justice Hardesty stated the use of auditors, investigators, or accountants would be a resource the court needs. Justice Hardesty stated it would be critical for the State of Nevada to recognize that if the Courts were to assume the tasks, resources would be necessary in order to proceed the right way. Assemblyman Michael Sprinkle stated that making the investigations, including the audits, independent is necessary and would need to be a priority. Ms. Kim Spoon clarified that when investigations are discussed, the Commission is discussing investigating once the petition has been filed, not the initial investigations when a guardianship is referred to someone and the referral is investigated. Justice Hardesty clarified the investigations

discussed under question 17 and 18 are investigations conducted after a permanent or temporary petition is filed. Justice Hardesty suggested the Commission call upon the State of Nevada and County Commissions to supply to the court system investigators as necessary and auditors and accountants as necessary, to evaluate financial records, fee requests, and other petitions/motions and financial issues.

> **Judge Cynthia Dianne Steel moved to approve the use of investigators, as necessary, and auditors or accountant, as necessary, to evaluate financial records and fee requests. Ms. Trudy Andrews, Pacific Senior Living, seconded the motion. Motion passed.**

Additional Comment

Mr. Spitzer confirmed the model would be similar to the court services model used in justice and district courts to monitor criminal defendants who are out on their own release, an individual separate from a specific judge but who would still work under the court system. Justice Hardesty added the individual would also provide a report to the judge and to the parties involved in a case.

June 13, 2016, Discussion

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

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

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

Justice Hardesty asked Mr. Sutton to canvass the rural counties and get an assessment of precisely how they are serviced, how much they contribute, and whether they have contract arrangements with their public guardians. One advantage that was perceived by this proposal is accountants, auditors, and investigators could be hired by the State and made available to a county when needed. It would be difficult for Nye County to secure the services of investigators that the Commission has recommended for guardianships, generally. Nevertheless, having investigators and auditors who are part of a statewide office is a resource that could be very beneficial to a public guardian and the Court handling the cases. Many Commissioners were impressed by the Florida model and their presentation about the investigative services they are able to provide in the guardianship areas. In Florida, they not only provided public guardian

services, but investigative and auditing services to rural counties that would be available in urban counties. Mr. Sutton agreed those resources would be beneficial but it would come down to the ability of each county to be able to pay for those services. Mr. Sutton would contact the rural public guardian offices to find out how they are funded, whether they have investigative and auditing resources available, and whether they could benefit from a consolidated source of resources that this state might provide.

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

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

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

Commissioners discussed having investigators available could also assist law enforcement in prosecuting cases of abuse, similar to what Florida has done. Ms. Barbara Buckley noted Clark County has a big issue with not having enough public guardian services, and the county is not accepting cases where there is no pay source. Ms. Buckley asked if there should be a needs assessment to determine how many cases there are and what the county might have to do to have the resources to fulfill the need. Ms. Buckley noted it would be important to look at how to deal with those issues.

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

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

Ms. Sally Ramm stated the income is not the first qualifier. The first qualifier is that there are no other appropriate and willing parties to be guardian. In cases with assets, there are usually

individuals willing to be a guardian but there are fewer people willing to be guardians when a person has fewer assets.

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

Ms. Ramm quoted NRS 253.200(1) and (2): "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...or as his or her permanent guardian if the [Proposed Protected Person] is a resident of that county and . . . has no nominated person, relative or friend suitable and willing to serve as his or her guardian . . . or has a guardian who the court determines must be removed pursuant to NRS 159.185." Judge Frances Doherty stated what the NRS means, most significantly, is the absence of money does not bar assistance by the public guardian. Justice Hardesty stated his concern about this issue is the public guardian's operation statewide is inconsistent.

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

Ms. Ramm quoted NRS 253.250(1) and (2): "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 [Proposed Protected Person], the public guardian, any interested person or upon the court's own motion if . . . [i]t appears that the services of the public guardian are no longer necessary; or . . . [a]fter exercising due diligence, the public guardian is unable to identify a source to pay for the care of the [Proposed Protected Person] and, as a consequence, continuation of the guardianship would confer no benefit upon the [Proposed Protected Person]." That is a judicial decision not a public guardian decision. Ms. Myles stated it is a judicial decision but what the public guardians have seen is that the Court will authorize guardianship of the person and say we will not make you guardianship of the estate.

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

would need to be clarified if it is whether the public guardian accepting an appointment from the Court or the public guardian having the affirmative duty to file its own first party petition.

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

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

Ms. Tyrell stated in her office, her retired partner had a long history, and actually has a son with Down's syndrome who is very active in Opportunity Village. They have tried over the years to give opportunities for education. There is a lot of family involvement and some young adults with disabilities on their own at Opportunity Village, and their parents have always made their decisions, they use the same doctors and the same support system so when they turn 18 years old no one thinks twice that the parents do not consider making the decisions and doing the care. Opportunity Village may not be a source for the public guardians because they have family involved. Justice Hardesty stated the concern is that a number of the adults may need guardians and do not have them, and they have people making decisions for them that may be outside of the bounds of what they have the authority to decide.

Judge Cynthia Dianne Steel stated until such time in which the person is denied service, they may not realize they need a guardian. Perhaps things have gone well and the doctors have been cooperating. Judge Steel stated she had a few cases in which young adults were under those circumstances and the parents petitioned for guardianship, but she had found those are usually not conflicted families. There may be families that do not get the guardianship because they have been told that they cannot get it.

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

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

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

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

August 26, 2016, Discussion

Mr. Timothy Sutton conducted a survey among the rural public guardians. The offices were asked three questions in relation to a statewide Public Guardian's Office. All of the counties, with the exception of one, responded to Mr. Sutton's survey.

Question 1. Do the public guardians employ or contract with any accountants, auditors, or investigators?

Most of the public guardians do not employ accountants, auditors, or investigators. Four public guardians did contract with accountants, one used an auditor, and one used an investigator.

Question 2. Would you be in favor of or opposed to the formation of an Office of State Public Guardian?

Eight respondents were conditionally in favor of, five were in favor of, and two were opposed to the formation of an Office of State Public Guardian. Some of the concerns or questions that were raised included the duplication of efforts between the Public Guardian's Office and the State's Public Guardian's Office, how it would be funded, loss of personal connection, there was not enough information provided for them to know if they were in favor of or opposed, and logistics.

Question 3. What eligibility requirements or restrictions do you have in place that limits your ability to file for guardianship of Proposed Protected Persons?

Most of the eligibility requirements were related to age. Most were of a minimum age of 60 and above, and there were a couple where the Proposed Protected Person had to be at least 18 years old. One had a residency requirement, one had a requirement that the person not be incarcerated, a couple had caseload limits ranging from 40-60, and one public guardian had a pay source requirement that there had to be some kind of pay source, e.g., social security or something.

Mr. Sutton was also asked to provide a resource as to funding and resources. Mr. Sutton included a chart that had been provided at one of the first meetings by Ms. Kathleen Buchanan, Clark County Public Guardian's Office.

The Commission discussed concerns as to why the public guardians felt there were restrictions that limited their ability to file for guardianship for Proposed Protected Persons. Mr. Sutton explained some of the responses indicated the limitations were county imposed and some were self-imposed by the virtue that the public guardian does not have enough time and/or resources to take on all the cases. The graph provided in the materials indicates some citizens in the rural counties may not have the benefit of guardianship services for a variety of reasons. The reason often cited in the responses was the lack of resources to meet the needs of the Proposed Protected Person.

Justice Hardesty said based on the responses it would seem to support the notion that there needs to be an enhancement, at least, whether it is an enhancement at the county level of public guardianship services.

Ms. Lora Myles noted many of the restrictions are not imposed by the public guardian themselves but by the county commissioners. Ms. Myles said the restriction on age is by county resolution in most of those counties, restriction on residency is by statute, and the restrictions on the number of cases are limited by their county commissioners and funding.

Mr. Sutton said the graph shows one county/city imposed but that does not mean when the public guardian responded that they knew or indicated this so there could be more restrictions listed that were county/city imposed.

There was a discussion about whether the statute that governs public guardians includes language that if there is no pay source, the Public Guardian's Office is limited to or does not

have to take a case. Ms. Barbara Buckley said they had recently read the statute in NRS Chapter 253 and it does not say that the counties can deny services if there is no pay source. There is no legal justification for a Public Guardian's Office to turn away a case because a person is indigent.

NRS 253.250 reads:

> 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.

Justice Hardesty said one of the reasons he asked Mr. Sutton to conduct the survey was the concern with the availability of public guardianship services throughout the State. This concern is the reason Justice Hardesty included the recommendation that a statewide Public Guardian's Office be created so there is a uniform approach to guardianships.

The Commission discussed the use of investigators and auditors, similar to the Florida model. The Commission discussed the efficiency of consolidating services and having trained investigators and auditors available to the rural counties versus requiring all counties to hire their own investigators and auditors. Investigators and auditors would provide the judges the expertise to evaluate inventories, fee applications, etc. Justice Hardesty would like the Commission to make recommendations about best practice, which involve the use of independent investigators and auditors. Judge Egan Walker mentioned the Minnesota Conservator Account Auditing Program. Judge Walker noted the language in NRS 253.250 was added in 2009, and was a bipartisan bill.

> **Judge Egan Walker moved that the Supreme Court Guardianship Commission support promulgation of rules through the Nevada Supreme Court to establish statewide standards for guardianship investigation, administration, and accounting and otherwise. The statewide model seems to be the national best practice and we can look at whether we would need legislation, for example, to create a statewide Office of Public Guardian. It seems to him there is no way you are going to get consistency across counties. Judge Walker had no idea there were people in the rural counties who could not get a guardianship if they needed one and that is an atrocious state of affairs. Ms. Sally Ramm seconded the motion.**

The Commission discussed whether Court Rules were the best way to address some of the issues that had been raised. Justice Hardesty said it might be more appropriate to have statutes enacted to address this issue. Justice Hardesty suggested considering an amendment to call on the Legislature to address this issue and to provide a review of the State Public Guardian System, in

addition to providing adequate investigative and accounting services to public guardianships. Judge Walker and Ms. Ramm accepted the amendment to the motion. Ms. Ramm said she accepts the amendment reluctantly, as she is concerned that there may be resistance, but she would like to see this process get started.

Judge Frances Doherty said there is a significant separation of powers issues if we do not do it through the Legislature.

Senator Becky Harris suggested making a recommendation that the Legislature conduct an interim study. This is a complex issue, and she thinks it is very important that it is done correctly. She understands that time frame is not soon enough but those would be the options.

Judge Frances Doherty moved for statutory changes. Justice James Hardesty called for a vote. One member abstained. Motion passed.

12. **The Commission supports the recommendations relating to the Appointment of Registered Agent by Nonresident Guardian of Adult. The Resolution provided by the Nevada Secretary of State's Office is included as Exhibit M.**

The Commission had discussed the Resolution that had been prepared by the Secretary of State clarifying the role of a Resident Agent (RA) with regard to the appointment of a nonresident guardian. The Resolution still imposes a duty on the nonresident guardian to designate an RA but it clears up some confusion about what the Secretary of State's role is in the context of tracking RAs for nonresident guardians. Commissioners were asked to adopt the Resolution. Justice Hardesty added the only function was to make certain there is an ability to serve the nonresident guardian and it goes beyond their role as a party. Service plays a large role for corporations, and this allows for service to be obtained on someone acting as a nonresident guardian.

Ms. Kim Spoon asked if it would be left to the judges to verify if the RA is appropriate for guardianship purposes, and if there would be a standard form or certificate the RAs should prepare. Justice Hardesty noted that would be up to the judges to assure compliance, not the Secretary of State. The Secretary of State would continue to use its current form for RAs but the duty would be on the nonresident guardian to designate and file an RA form with the Secretary of State's Office, and the duty will be on the Court to assure that the task has been completed.

Ms. Julie Arnold asked if the task would be assured as stated, by "the Commission and the Court." Justice Hardesty said the word "Commission" would be stricken from the text.

Judge Cynthia Dianne Steel expressed concern regarding the RA as to address changes and asked how the Courts were to keep track of the RAs in the event that they move and do not leave a forwarding address. Justice Hardesty stated the RA designations are to be renewed every year. Ms. Susan Hoy suggested that could be included in the report of guardian that a nonresident guardian has to report every year. Ms. Elyse Tyrell added they would need to file proof of recertification every year with the annual report. Justice Hardesty agreed it should be included in the annual report. Judges involved in making the designations would need to advise the responsibilities an RA takes on; part of the resolution is to make clear that the RA acts in a

similar capacity as an RA for a corporation. By statute that RA has various responsibilities including maintaining a current address, being available during business hours to accept service of process, and there are responsibilities that RAs have by statute that apply equally to RAs here. It is important that the Court makes sure the RA who might be designated understands that the RA takes on responsibilities and those are summarized in a publication that the Secretary of State provides.

Judge Steel noted an RA may not come to Court. The judge does not interface with the RA; it only has the certificate from the Secretary of State stating there is an RA. Justice Hardesty noted Courts should put informational packets together that would instruct guardians and RAs of their responsibilities.

Judge Egan Walker moved to approve the recommendation including Ms. Julie Arnold's edit. Ms. Elyse Tyrell seconded the motion. Motion passed.

13. The Commission supports legislation to have the Secretary of State's Lockbox Program expanded to include designations of guardians.

Justice Hardesty asked the Commission to consider adopting a policy that would allow the designation of guardian forms to be placed in the Secretary of State's Lockbox Program, similar to the current program for wills and powers of attorney.

Ms. Rana Goodman thanked Senator Becky Harris for assisting with the topic and added when a person files the nominated guardian form, the form would go to the Secretary of State. When an individual, Elder Protective Services (EPS), or other state agency declares a person needs a guardian and a public or professional guardian files the guardianship, there would be a check and balance system.

The Commission discussed accessibility and timing of accessibility to the Lockbox. Ms. Goodman stated those who have already filed have been advised to send the nominated guardian form to a trusted neighbor, friend, or family member and to keep a copy for themselves. The question posed was how would someone gain access to be able to go to Court and say there is no directive under the Lockbox. Ms. Goodman stated an attorney would have authority to verify names. Access to the Lockbox would be available to family, and the Secretary of State's Office would maintain a log of those who have lodged their designated documents and parties could access the log to see if a person has filed a guardian nomination form in the Lockbox. It was noted individuals should only have access to the nomination form but not necessarily have access to the will or power of attorney. The Commission discussed a person in an emergency room may need to gain access quickly to documents, there would need to be a faster way to gain access to those documents. Senator Harris stated she would be a proponent to a simple yes or no answer to an inquiry in the context of the guardianship nomination, rather than providing the entire document. Ms. Susan Hoy stated at times the person may not have any documents on them and the hospital may not know who to contact so how would they move forward if a guardianship petition were verified if only that person can file the petition. Senator Harris suggested that in an emergent situation a healthcare provider could be provided with that information. Senator Harris stated she would be open to suggestions from the Commission as to how to protect the person in

need of protection and provide the kinds of safeguards at a healthcare level that the person will need so that decisions can be made on his or her behalf. There would need to be a balance.

Mr. Jay P. Raman asked if the designation of a future guardian is a notarized document. Ms. Goodman stated it is a notarized document. Senator Harris stated she would advocate witness signatures for integrity in terms of confidence.

The Commission discussed whether a person who wants to file for guardianship could get permission from the Court to open the Lockbox, to see if there is a potential nomination on filed in the Lockbox. A person could verify with the Secretary of State's Office whether someone had a nomination on filed in the Lockbox. There was concern that just anyone could contact the Secretary of State's Office and ask for this information. There may need to be an extra step in which a person would need to get Court approval to access the Lockbox. The current Lockbox Program does not allow anyone to access the information. A code is provided to the person filing their documents in the Lockbox and they can provide the code to others, if they want them to have access to their Lockbox.

Justice Hardesty stated the starting point would be to verify with the Secretary of State's Office, to see if that Proposed Person's name is on the list, then secure the nomination that has been proposed.

Justice Hardesty asked if the Commission would include a guardianship designation in the Lockbox. Ms. Ramm agreed it would be an efficient way to find documents. Justice Hardesty stated the Commission had identified questions and access issues, and those things would need to be sorted out. As a policy, it would be important to determine whether the Commission supports the use of the Lockbox for the purpose of filing the guardian nomination form. Judge Egan Walker stated there has been an evolution in understanding; use, recording, and accessibility of advanced directives, to ensure the Guardianship Commission becomes a permanent entity, the access to the documents can incrementally improve over time. Having the avenue for a central repository for the documents to begin with would be important, and then the Commission could discuss the concerns of accessibility at a later time and solve those problems as an ongoing task.

> **Judge Egan Walker moved to approve support of the Secretary of State's Lockbox Program to include designations of guardians. Ms. Rana Goodman seconded the motion. Motion passed.**

14. The Commission recommends the Legislature eliminate the collection of payment for filing fees[269] in all guardianship cases.

The Commission had received information on the collection of guardianship filing fees in the Courts and had discussed this in prior meetings.

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[269] The Commission discussed the collection of guardianship filing fees during the reports provided by the Data and Technology Workgroups reports. See Appendix E for a chart of filing fees collected in guardianship cases.

Judge Frances Doherty moved to recommend the Legislature eliminate the collection payment of filing fees for guardianships in all cases. Judge Egan Walker seconded the motion. Motion passed.

15. **The Commission recommends a statutory provision stating, "Upon the filing of a guardianship action, the proposed guardian may also be required to file a proposed preliminary care plan and budget. The format of said plan, and the timing of the filing, shall be specified by court rule approved by the Nevada Supreme Court." Included as Exhibit N.**

The Commission approved a recommendation urging the Supreme Court to adopt Court Rules outlining the initial plan for guardianship[270] during the August 26, 2016, meeting. Ms. Barbara Buckley suggested adding the language included in the recommendation to alert persons as to the procedures that need to be followed in terms of the preliminary care plan and budget as a person may not intuitively check the Nevada Supreme Court Rules.

Ms. Debra Bookout moved to recommend a statutory provision stating, "Upon the filing of a guardianship action, the proposed guardian may also file be required to file a proposed preliminary care plan and budget. The format of said plan, and the timing of the filing, shall be specified by court rule approved by the Nevada Supreme Court." Ms. Elyse Tyrell seconded the motion. Motion passed.

16. **The Commission recommends amendments to NRS Chapter 159 concerning the management and administration of the Protected Person's estate and personal property. Included as Exhibit O.**

May 20, 2016, Discussion

Question 27 addresses issues surrounding notices concerning the sale of estate assets. Justice Hardesty stated the statutes are relatively clear but there does seem to be some uncertainty. Mr. Alan Pearson had provided public comment and suggested some changes to the statute in this area. Justice Hardesty suggested deferring this question until the Commission could review the suggestions.

The Commission discussed the current practice of how the sale of a Protected Person's personal property is handled and noticed. A Protected Person may have been placed in a facility and instead of paying to have the personal property stored; the personal property may be sold or offered to the family for purchase. The Courts might receive notice in the annual accounting that says everything the Protected Person owned was sold for X amount. There is no accounting to the Court or request for permission ahead of time and there is no inventory, visual or otherwise in many cases. The guardian may sell the car because the Protected Person is no longer driving. Ms. Elyse Tyrell said she would advise them to do their best to get fair market value for the car but beyond that, there is no requirement.

[270] Court Rule recommendation number 13.

The Commission discussed safe deposit boxes. There is a concern that a guardian could access a Protected Person's safe deposit box and sell the contents, e.g., jewelry without getting a real appraisal or without considering the Protected Person has a trust or will that states who should receive the jewelry.[271]

Justice Hardesty suggested there is a requirement that the process associated with the disposition of personal property be the same as it is with real property. Any disposition of personal property has to be Court approved. That might not include an appraisal, there needs to be some disposition of this.

The Commission discussed notice requirements for the pending sale of personal property and personal assets. Notice should be provided to ensure the Protected Person and/or their counsel are informed of what is anticipated to be sold, and if there is a dollar value in excess of a certain amount, there should be a formal proceeding similar to the proceeding for the sale of real property. A Protected Person may have assets that have little or no value. Not all personal property needs to be sold unless there is an economic reason to do so.

The Commission discussed whether courts require an inventory of the safe deposit box. Ms. Susan Hoy stated it is her practice to do an inventory of the safe deposit box but not close the box if there are valuables in the safe deposit box. The annual safe deposit fee would continue to be paid until they would absolutely have to do some type of disposition. The contents of a safe deposit box might not be included in the inventory because the guardian is not aware that a safe deposit box exists. If a safe deposit box is discovered, an addendum to the inventory should be filed with the Court. Judge Frances Doherty and Judge Cynthia Dianne Steel noted the safe deposit box is rarely noted in the inventory. Judge Doherty said there are often references to the safe deposit box at the end of the case. There should be a requirement that the contents of safe deposit boxes are inventoried.

The personal property needs to be inventoried, including the contents of a safe deposit box, as a starting point and if the personal property is going to be disposed of then notice must be given to the fact that the personal property is being disposed of and why. The process for objection could be on many grounds, e.g., how do you anticipate the sale of the personal property is too low, is there sentimental value, monetary gain from the assets.

The Commission discussed that at the time of the final accounting, relatives often come in asking what happened to this or that because there is no real record anywhere of the purchase of the item, e.g., jewelry, art work, etc., or what was really in the safe deposit box. Justice Hardesty asked where the original inventory is, why isn't the original inventory accurate, why isn't the original inventory distributed, and why notice of the inventory was not provided. If this occurs then when an individual is complaining that some personal property is missing, e.g., the Monet, and there was no Monet listed in the original inventory and the person did not address it then, then they cannot come back years later asking where this is.

Ms. Barbara Buckley said the practice and the course is that the personal property is never inventoried, so notice is not provided. Ms. Buckley suggested if the statute is re-written it should

[271] Additionally, jewelry may be sold for pennies on the dollar.

include that the Protected Person should be asked what they want to retain. That is not currently happening and there are many distraught people because items from their mother, father, children are being destroyed and they are never asked.

Ms. Kim Spoon suggested reaching out to the Public Guardians Office since they deal with this most often with indigent Protected Persons. Justice Hardesty suggested the Commission pass the subject of personal property, safe deposit boxes, and inventory verification to the next meeting for discussion. Justice Hardesty would review the probate statute because there are specific areas that deal with personal property. He would also like to find out what other states are doing on this subject under best practices and to have Ms. Kathleen Buchanan or her colleagues provide some input in this area.

September 16, 2016, Discussion

The Commissioners were provided amendments to statutes concerning the process the disposition of estates and personal property.

The intent of the amendments was to bring the attention to the Legislature that some of the language in these statutes is confusing and could be simplified for persons who are not attorneys. The statutes were also reorganized to flow from what must be done from the beginning to the last for the sale of property.

Judge Cynthia Dianne Steel moved to approve the amendments to the statutes. Judge Egan Walker seconded the motion.

Discussion

Ms. Sally Ramm asked if the amendments would require the Court to approve the sale anytime it is made and sign off. Judge Steel said the amendments would clarify that persons have to have the Court's approval before the final transaction is completed.

It was noted the term "ward" is still included in the statutes. The amendment to the term "ward" to "proposed protected person" and "protected person" will be conveyed to the Legislative Counsel Bureau (LCB) as a part of the recommendations, and the LCB would incorporate the change throughout the guardianship statutes.

Ms. Barbara Buckley had two suggestions:

1. NRS 159.1455 Confirmation by court of sale of real property of guardianship estate at private sale.

The amendments suggest that an appraisal should be eliminated. Ms. Buckley said that is not prudent, an appraisal is what is commonly used in real estate sales.

2. NRS 159.1515 Sale of personal property of ward by guardian without notice.

The amendments presented to Commissioners to NRS 159.1515 included a new subsection 3 (a) and (b).[272] The proposed language read:

> 3. The court may waive the requirement for appraisal pursuant to this section if:
> (a) The guardian is the sole devisee or heir of the estate; or
> (b) All devisees or heirs of the estate consent to the waiver in writing.

Ms. Buckley suggested either deleting NRS 159.1455 or requiring notice be given and/or allowing a sale without notice only when there is significant depreciation or substantial loss. Ms. Buckley said the current statute is being used as a way to destroy or sell a Protected Person's property without notice. This statute should be revisited so that people are always offered the right to retain personal property, where feasible. NRS 159.1455 subsection 3 suggests eliminating the requirement of the appraisal. Justice Hardesty said the language does not go as broad as Ms. Buckley is suggesting. The language says, "The court may waive the requirement for appraisal pursuant to this section if: (a) The guardian is the sole devisee or heir of the estate; or (b) All devisees or heirs of the estate consent to the waiver in writing."

Judge Steel said the language says, the court "may" waive it does not say "shall" waive.

The Commission reviewed subsection 2, which reads, "The court may waive the requirement of an appraisal and allow the guardian to rely on the assessed value of the real property for purposes of taxation in obtaining confirmation by the court of the sale." Subsection 2 is current statutory language. Judge Frances Doherty said it is applied.

Justice Hardesty asked if Ms. Buckley is suggesting subsection 2 be deleted from the statute. Ms. Buckley said she wants it to be really clear and that there is a good understanding of what was being waived and why. Subsection 1(b) says, "Except for a sale of real property pursuant to NRS 159.123, the real property has been appraised within 1 year before the date of the sale. Ms. Buckley wants to be sure the statutory scheme in this regard is streamlined and the reexamination protects the best interest of the Protected Person.

Ms. Ramm is concerned with the language in subsection 3(a) and (b) regarding heirs. If the sole heir sales the home for a lessor amount than the heir would be able to get somewhere else, it would affect the amount of money that would be available for the care of the Protected Person.

Ms. Debra Bookout suggested tightening up the time frame of the appraisal in subsection 1(b), which currently allows for an appraisal of the "real property . . . within 1 year before the date of the sale."

Judge Steel was asked to explain the intent of subsection 3(a) and (b). Judge Steel said the thought was it would be a hardship on the estate to have to pull an appraisal, it might be the lateness of the hour, in order to get funds into the protected person's estate. The language says

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[272] The proposed new subsection 3 (a) and (b) were not included in the approved amendments. See **Exhibit O**.

the court "may" it does not say the court "shall." Each court could evaluate and decide whether to accept the waiver. Additionally, the goal is to have every protected person represented so the protected person's attorney would also have the opportunity to notify the court it is not an appropriate time to request an appraisal.

Judge Doherty said this statute does work and has worked for the Court.

Justice Hardesty noted appraisals within a year are relatively common, even for lending purposes. What is missing from the statute is a requirement on the part of the court to provide specific findings as to why the waiver is being made and that such a waiver would not otherwise impair the estate of the protected person. Justice Hardesty said instead of subsections 2 and 3, speaking conceptually and inviting comments, the Court may waive the requirement of an appraisal provided specific findings are made on the record as to the reasons of the waiver and that the sale and the urgency of the sale proceeds and fact that the sale will not otherwise impair the estate. Then there is a basis for the waiver to occur.

Judge Steel suggested adding that language under subsection 3(c) as she would still like the heirs to consent. Judge Doherty said this does not require heir consent and she would not want to get into that. Justice Hardesty said what he is suggesting would not involve heir consent. Judge Steel was okay with this proposal.

Ms. Buckley stated Justice Hardesty's suggestion is good and the discussion illuminates what her concern was in with the statute. This is the Protected Person's home and should be for the person's benefit, which should be spelled out in statute, is this in the best interest of the Protected Person.

Judge Steel and Judge Walker agreed to amend the language as suggested.

NRS 159.1515 Discussion

NRS 159.1515(1) currently reads, "A guardian may sell perishable property and other person property of the ward, without notice." The amendments would say prior to the inventory pursuant to NRS 159.085, but subsection (2) was amended to say "the guardian is responsible for the actual value of the personal property, in subsection 1, unless the guardian makes a report to the court, which includes a showing that good cause existed for the sale to be made and that it was not sold for a price disproportionate to the value of the property within 90 days of the conclusion of the sale."

Ms. Buckley suggested adding a new first paragraph that states a guardian must ascertain whether a Protected Person desires to retain personal property and endeavor to do so whenever possible. Stating affirmatively a person under guardianship is still entitled to the person's treasured personal property. It would appear this statute is used to wholesale dispose of a person's life belongings and sold without notice. Judge Steel agreed and said there have been cases where the perishable or personal property were sold and the Court was apprised of it after the fact. This was constructed for the Protected Person and his or her family and Ms. Buckley

was not sure how to word something in the statute that perhaps the Protected Person and/or family could identify treasures prior to any type of proceeding going forward.

Justice Hardesty said the statute itself presupposes that a guardian has been appointed, so there is a Court proceeding in place. If there is a demand or urgency to sell personal property, then why can't that be done with the approval of the Court, upon a showing of the urgency and subject to a representation that the Protected Person or Protected Person's counsel has consented. The term perishable and personal are redundant, as this pertains to the personal property of the Protected Person. The statute could be reworked to say, "A guardian may not sell personal property of a protected person prior to the filing of the inventory pursuant to NRS 159.085 without court approval and affidavit explaining or stating why the sale must occur prior to that time." It would still impose the requirement that once the sale has been completed that it be supported by a good cause statement as to why and what proceeds were generated and how it compared to fair market value.

Chief Judge Gibbons said he often encountered the guardian disposing of personal property, not selling the personal property. What the guardian thought was junk was important personal items to the Protected Person and/or the family. Chief Judge Gibbons asked if there was another statute that dealt with disposal. The current discussion is only addressing the sale of personal property. Judge Steel said NRS 159.154 subsections (4) – (6) address this concern. Subsection (6) states, "The family members and interested persons shall be offered the first right of refusal to acquire the person property of the protected person from the estate stale at fair market value." Justice Hardesty said Chief Judge Gibbons is referring to not just sale but disposition of any kind. Mr. David Spitzer said subsection (4) states, "sale or disposition."

Ms. Rana Goodman would like to see language added that said before a home is cleaned out a family member has a chance to go through the home and take what is special to the family.

Justice Hardesty asked why can't the disposition of personal property, with the exception of rotting food, be a part of the initial plan. It would be subject to the initial plan the Commission has recommended.

Ms. Kim Spoon said in practicality when professional guardians go in, what is tossed out is the rotting food, piles of newspapers, etc. Those are the kinds of items the professional guardian tosses out. When the inventory is done, as far as the professional guardian is concerned, everything in that house belongs to the Protected Person, and only the Protected Person. The professional guardian does not have the authority to give things to one family member over another family member. As a practice, once the inventory is completed, if family members wish to have items from the inventory list, then they put in writing what they would like to take, that is given to all the family members, and is taken to the court and the court the Court is asked to give authority to allow the professional guardian to give these pieces of personal property to family, as long as there is no objection from other family members. Personal property is not given to family members until the guardian receives court approval to do so from the inventory.

Judge Doherty reminded the Commission that one of the provisions of notice that did not exist was notice to inventory, and the Commission approved the recommendation to provide notice to inventory at the last Commission meeting.

Mr. Jeff Wells said the statute that Ms. Buckley has brought up deals with the sale or disposal of property prior to the inventory and does not protect some of these situations. In NRS 159.146, on the real property side there is a hearing to confirm the sale and a process where the Court considers whether the sale is necessary or in the best interest of the Protected Person. There have also been situations where personal property is quite valuable but there are sufficient liquid funds paying for the care of the Protected Person. Mr. Wells would not like to have sections where prior to the inventory people can begin to dispose of the personal property.

Mr. Jay P. Raman agreed with Mr. Wells. There should be a rational behind the sale of personal property. Mr. Raman would move that NRS 159.1515 only be applicable to perishable property to not have a notice requirement that would obviate the need for subsection 2, which he thinks is unworkable in the real world having a good cause showing by a person. This would be an endeavor no one would be able to disprove if paperwork were provided to back up whatever sale of personal property they deemed appropriate. This makes sense under the guise of perishable but nothing else.

Ms. Terri Russell asked for the definition of perishable. Justice Hardesty said perishable property has a legal definition and is defined in common law and would be something that is losing its value at a rapid rate. Justice Hardesty said Mr. Raman made a good point and this is dealing with sale. To Chief Judge Gibbons point about disposing of property, the guardian does not have the authority to dispose of anything until there has been authority. The guardian has to inventory the personal property.

Ms. Spoon said there are times where the guardian has an issue regarding storage of the personal property, e.g., the Protected Person is in a nursing home and the person's personal property has to be moved out of his or her apartment within 30 days. If all of the person's money is being used for the nursing home, and there are no funds to store the personal property what should be done? That is when an ex parte notice, emergency notice would be required.

Justice Hardesty said the Commission is talking about different things. One is a permission to sale perishable property before the filing of inventory. The other is the sale of personal property on an emergency basis. Justice Hardesty suggested handling that the same as we discussed in regards to real property. There would be a request for emergency relief and this is occurring before the inventory or the plan is presented to the Court, but the Court has to approve it. There is a gatekeeper for that transaction. Otherwise, the sale of personal property has to occur with notice and an explanation as to why it is being done thereafter. Justice Hardesty asked if those three approaches addressed the concerns expressed. Ms. Buckley responded yes. She wanted to confirm on the situation where it is an emergency, and the estate does not have funding, that notice would still be required to be given. Justice Hardesty responded yes, and said not only notice but consent by the Protected Person to the extent they are able to do so or their counsel.

Justice Hardesty said subject to Judge Steel and Judge Walker's concurrence, NRS 159.1515 would be reworked to accommodate the personal property. Judge Doherty does not understand the consent part and said it would take discretion away from the Court. Justice Hardesty said consent would be required to be shown but it would be contest and the Court would have to decide that if there was no objection.

Dean Christine Smith asked for an explanation of the plan.

Justice Hardesty said without getting into the language, he is speaking conceptually, so language could be drafted between now and the final report. (1) A guardian would be permitted to sale perishable property prior to the filing of an inventory, and to the extent that we can find an appropriate definition for perishable, property we will put it in there so that is explainable. (2) Other personal property can only be sold prior to the filing of the inventory, with the approval of the Court, on a showing that there is a specific need for those proceeds that are emergent in nature, and that the Protected Person has been advised and has an opportunity to object. (3) Any other sale of personal property would require a fully noticed hearing not only to the Protected Person, but to everyone as to that disposition, that sale, and why it is necessary. Judge Doherty asked if it could be sale or disposal. Justice Hardesty agreed it could be sale or disposal.

Mr. Raman said to the first part, when it comes to the example of the milk in the fridge, it would be prudent to also have a disposal clause within the perishable property. He was not sure how to work that because someone could argue something perishable is worth something where a great deal of perishable property would be valueless. Justice Hardesty thought that was fair. The Commissioners agreed. Judge Doherty said she would be worried about stacks of newspapers being put in storage containers.

Ms. Susan Hoy noted they have had cases where personal property has been infested with bugs and a storage facility would not allow that personal property to be stored, e.g., lice, bed bugs. There was also a discussion about biohazards. Ms. Hoy would like some language to address these situations.

Judge Doherty said the unintended consequences may be that more property would be lost in certain circumstances. She could see where a guardian who is restricted so much that a landlord who is getting rid of the resident will dispose of the property because the guardian does not have flexibility to salvage the property. Judge Doherty would like to come up with language to deal with exigent circumstances to hold the guardian accountable but address some level of exigency. That could be through ex parte.

Mr. Timothy Sutton stated NRS 253.0407(2), public administrators, provides a mechanism for the disposal of personal property less than $100 if notice provided and has a provision for property contaminated by vermin or biological or chemical agents.

2. A public administrator may authorize the immediate destruction of the property of a decedent, without giving notice to the next of kin, if:

(a) The administrator determines that the property has been contaminated by vermin or biological or chemical agents;

(b) The expenses related to the decontamination of the property cause salvage to be impractical;

(c) The property constitutes an immediate threat to public health or safety;

(d) The handling, transfer or storage of the property may endanger public health or safety or exacerbate contamination; and

(e) The value of the property is less than $100 or, if the value of the property is $100 or more, a state or local health officer has endorsed the destruction of the property.

Ms. Spoon would like to see this language added and noted guardians often encounter biohazards in these homes.

Mr. Kim Rowe said the language in NRS 253.0407 is built into a variety of their orders when they do the public guardianships in Washoe County. Mr. Rowe thought the inclusion of this language was an excellent suggestion and would give the guardians the flexibility they need.

Based on the discussion, Justice Hardesty asked Judge Steel and Judge Walker to withdraw their motion, so that the language in the two statutes could be revised and recirculated to Commissioners for their review and feedback. Judge Steel and Judge Walker agreed to withdraw the motion.

September 21, 2016

Following the September 16, 2016, meeting and discussion on the management and administration of a Protected Person's estate and personal property, additional amendments were made to NRS 159.1455 and NRS 159.1515. Amendments were made based on the discussion and concerns raised during the September 16 meeting. The amendments to NRS 159.1455 and NRS 159.1515 were circulated to Commissioners via email for review and a vote. In addition, Commissioners were asked to review the amendments to the remaining statutes that were included in the September 16 meeting materials and vote.

> **Commissioners voted in favor of adopting the amendments to NRS 159.1455 and NRS 159.1515, as well as the additional statutory amendments[273] presented to Commissioners at the September 16 meeting.**

[273] The amendments are included as **Exhibit O.**

C. POLICY STATEMENT OF SUPPORT

1. The Commission adopts a policy statement that every Protected Person, regardless of means, is entitled to legal counsel.

Threshold question: Does the Protected Person have a legal right to counsel when the Court is going to undertake the evaluation of whether the person should have a guardianship appointed? The question is not about who counsel should be, how counsel is appointed, or where counsel comes from at this time.

December 15, 2015, Discussion

Chief Justice Hardesty said if one interprets the current statute in NRS 159.0485 as already giving the right to award legal counsel, then what remains are potential rules, issued by the Nevada Supreme Court, compelling judges who hear guardianship cases to enforce the statutory provision.

Chief Judge Gibbons provided an overview of NRS 159.0485.

> Subsection 1 reads, "At the first hearing for appointment of guardian for a proposed adult ward, the court shall advise the proposed adult ward that the ward has the right to an attorney and the court is to determine whether the ward wishes to be represented by counsel in the guardianship proceeding." Subsection 2 indicates, "the court shall appoint an attorney for a ward that would like to be represented by counsel and the appointment shall be from a legal aid service, if available, and if not then a private attorney." The statute does not state any funding for this. Subsection 3 states, "the attorney is entitled to reasonable compensation and expenses." Subsection 3 also states, unless the court determines that "the adult ward or proposed adult ward does not have the ability to pay such compensation and expenses or the court shifts the responsibility of payment to a third party, the compensation and expenses must be paid from the estate of the adult ward or proposed adult ward, unless the compensation and expenses are provided for or paid by another person or entity."

Chief Justice Hardesty said one could argue the decision has already been made by the Legislature, and they have created the right to counsel. The Legislature has already made the policy question posed in question three.

Mr. David Spitzer noted the problem with the current statutory language is the "client wishes," the "court may," the "client must express" a desire for an attorney.

When a judge signs an order granting a guardianship, particularly over a Protected Person, the judge is affecting the Protected Person's constitutional rights. A Protected Person potentially cannot marry, vote, possess a firearm, and engage in contracts. A Protected Person under guardianship is subject to more invasions of their constitutional rights than a criminal defendant. The Sixth and Fourteenth amendments of the United States Constitution and *Gideon v. Wainwright* provide counsel in a criminal context. Judge Egan Walker stated he does not know

how we could not provide counsel in this civil context and still meet the due process rights of the subjects of guardianship actions.

Ms. Sally Ramm was involved in the drafting of NRS 159.0485. The statute was written in this manner primarily to get around the fact that there was not any identified pay source. The drafters wanted to get the right to counsel in the statute even though they had to play with the words so there was no fiscal responsibility because no one would take the fiscal responsibility. The most important thing the Commission could do is make sure people who are losing their civil rights have representation. Ms. Ramm said she did not agree with adding an exception/mechanism that if an attorney were not needed there would not be an appointment of counsel. There is a small percentage of people under guardianship who would not, under any circumstances, benefit from having an attorney. Ms. Ramm would strongly suggest that the Commission adopt a general policy that EVERYONE facing guardianship is represented by an attorney.

Concerns:

- Attorneys representing Protected Persons who zealously represent what the Protected Person wants, even when it is obvious that is not in the best interest of the Protected Person, and a tremendous amount of the Protected Persons assets are spent. There should be sanctions to be sure attorneys do not take advantage of an incompetent Protected Person, run their fees up, and deplete the Protected Persons estate.
- There are many reasons why a Proposed Protected Person might say no to attorney representation. Protected Persons will often say they do not want an attorney because they do not want to hurt the potential guardian's feelings, or they do not know what they are saying or do not understand the process. Protected Persons should have representation provided to them at the beginning of the process. If the Protected Person cannot develop an attorney/client relationship there could be an alternative, e.g., Guardian ad Litem (GAL).
- Having the necessary resources available to appoint attorneys for the Protected Person.
- Some adult Protected Persons might say they do not want an attorney because they think they have done nothing wrong. Some proposed adult Protected Persons cannot articulate why they say no to representation. This is something the Commission should keep in mind as it moves through this process.

The GAL is the subject of Question 4 and is a separate issue. The circumstances in which a GAL would be appointed are different from the appointment of counsel. The Commission discussed if the person being presented for guardianship cannot hold an attorney/client relationship then Question 4 might bleed into Question 3. The GAL is a different role and cannot be substituted for an attorney.

Additional comments:

- Counsel helps the Court make better decisions and the Protected Persons have someone to protect their rights.
- The Commission would fall short if it failed to affirm the right an individual facing a guardianship in the adult arena has to their own attorney.

- An individual facing a guardianship already statutorily is entitled to an attorney. This merits the unanimous vote in support of such representation.
- The Second Judicial District Court has benefited from having attorneys representing Proposed Protected Persons for the last two years and it would be a step back if the Commission failed to validate this important point.
- People accused of murder receive a full court press and the only thing a Protected Person did, at most, is get sick. The Commission has to vote yes. It would be a major step backwards if the Commission did not vote yes.

Assemblyman Michael Sprinkle had the opportunity to meet with Ms. Barbara Buckley following the last Commission meeting to discuss some concerns he raised at the that meeting. Assemblyman Sprinkle stated this is a necessity and coming up with the resources and a way to fund this is vital for the whole process. Assemblyman Sprinkle offered his support and volunteered to be a part of a subcommittee to review legislative language, make changes as necessary, and start identifying resources and funding necessary from a legislative prospective.

Washoe Legal Services (WLS) has been working with the Fourth Judicial District Court and Judge Porter has been able to appoint an attorney for every minor guardianship case. Nevada Legal Services (NLS) has been providing attorneys for adults. Judge Nancy Porter stated the input and participation from the attorneys has been invaluable to the Court. Prior to the appointment of the attorneys, many of the people involved were pro se litigants and the Court was not receiving the information it needed to make decisions in the guardianship. Judge Porter agrees with Judge Frances Doherty that this might be the most important issue that the Commission addresses and it is vital that minors and adults have representation.

Judge Nancy Porter moved to recommend the idea that every Protected Person is entitled to legal counsel. Ms. Debra Bookout seconded the motion.

Additional Discussion

Ms. Kim Spoon asked to clarify the motion. The policy question states, regardless of means, one is entitled to legal counsel. Ms. Spoon's understanding is this is already in the statute and asked if the Commission is saying every person should be appointed an attorney or legal counsel. Justice Hardesty said they are entitled to counsel and should be appointed counsel. Justice Hardesty asked if Judge Porter and Ms. Bookout agreed to the edit "regardless of means," the Protected Person is entitled to and shall be appointed legal counsel. Judge Porter and Ms. Bookout agreed to the edit.

Justice Hardesty stated the problem with the statute is that it declares one thing, you have a right to counsel, but the statute makes no provisions for what you do if appointed counsel comes from a source other than legal aid. Judges are then faced with the decision of appointing private counsel. How would private counsel be compensated? There is nothing in the statute that obligates they are paid. This is a classic separation of powers problem where the judge is enforcing the plain meaning of the statute that says a Proposed Protected Person is entitled to counsel and if legal aid is not available, the alternative is to appoint private counsel. The judge enters orders and says pay this attorney X amount, but what is that based on? Is it based on the

statutory rate in criminal defense? A judge is appointing counsel but they are not being compensated or he/she is conscripting someone to serve on a case when there is no basis for compensation. It is important for the Commission to work with counties on a solution that includes increasing the amount of resources available so legal aid lawyers can be appointed. This could also be a part of the Bill of Rights.

Assemblyman Glenn Trowbridge said he could object regarding funding. He said adding the word legal counsel might complicate that and maybe the language should say persons entitled to counsel. There might be a more affordable way to do that. Perhaps a Court Appointed Special Advocates (CASA) program could provide volunteers to assist.

The Commission discussed the means test in criminal cases. It was noted the current statute already provides for compensation if someone can afford counsel and that would still exist under this concept. Regardless of means,[274] a person is entitled to counsel.

Motion with edits from Ms. Spoon:

> **Judge Nancy Porter moved to recommend the idea that every Protected Person, regardless of means, is entitled to and shall be appointed legal counsel. Ms. Debra Bookout seconded the motion. Motion passed.**

2. **The Commission authorizes the chair to send a letter to county commissioners to provide financial support to legal aid organizations to make counsel available for all Protected Persons until the next legislative session.[275]**

> **Assemblyman Michael Sprinkle moved to have the Commission (1) authorize the chair to send a letter to county commissioners to provide financial support through their legal aid organizations to make counsel available for all Protected Persons until the next legislative session, and (2) the Commission urges the Legislature to approve an increase of recording fees of $1.50, pursuant to NRS 247.305, to be distributed in each county to legal aid organizations to provide legal counsel for all Protected Persons in guardianship proceedings. Judge Cynthia Dianne Steel seconded the motion.**

3. **The Commission adopts a policy statement that the Commission is in favor of acknowledging the purposes and tenets behind "person-centered planning" and determinations by the Court that guardianships are approved only for "least-restrictive alternatives." Additionally, the Court should be required to make specific findings in any order appointing a guardian that includes a conclusion that no other "least-restrictive means" are available to address the needs of the Proposed Protected Person.**
4.

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[274] Clark County has approximately 60-75 new cases a month and a large percentage of the persons are indigent. Washoe County has 10-20 new adult guardianship cases and 15-20 minor guardianship cases a month.

[275] See Legislative Recommendations 1 and 2.

Two questions had been posed to the Commission: (1) Does the Commission favor so called "person-centered planning" and determinations by the Court that guardianships are approved only for "least-restrictive alternatives?", and (2) Should the Court be required to make specific findings in any order appointing a guardian that includes a conclusion that no other least-restrictive means are available to address the needs of the Proposed Protected Persons?

January 22, 2016, Discussion

Ms. Rana Goodman noted seniors might have a problem in a specific area of their lives, e.g., paying bills, but are able to function in all other areas on their own. Ms. Goodman thought a limited guardianship would be ideal and could allow a person to stay in their home.

Ms. Kathleen Buchanan noted the Clark County Public Guardian's Office already does this. Ms. Buchanan provided an example of when a limited guardianship would work well. Example, a mental health client who is on their medication and they suddenly go off their medication. The order states that while the person is in a good cognitive state, where they can handle their affairs, the Office does not have a guardianship. The minute the person goes off their medications the Office would step in for that limited purpose of getting the person back on their medication or whatever medical resources they need and then the guardianship would go away.

Ms. Susan Hoy said the "person-centered planning" approach begins at the initial hearing with the Protected Person participating in the process. This should not end there. It should go on to where that person wants to live, what is the least-restrictive setting, what is their ability to have access to their own monies, etc. The National Organizations want guardians to take the "person-centered planning" approach. How much of the day-to-day tasks and decision making can that client or Protected Person participate in? If they are making decisions that are not causing harm to themselves or others, then their role is to be supportive of those decisions so they are providing the least restrict settings and providing them with a sense of dignity. The Commission should consider this important area.

Mr. Timothy Sutton suggested this be included in the certificate that would support a petition and should include an analysis of the least-restrictive means. The Commission discussed modification to that form at its last meeting and Mr. Sutton thinks the form should be required to address this. The statute might already require this to be addressed.

Ms. Kim Spoon stated Nevada has a statute called a special guardianship of limited capacity. A guardianship of limited capacity could be established when someone might need help in some areas but not in others. Ms. Spoon is concerned if a person is suffering from some type of dementia/progressive disease, e.g., Alzheimer's, where the person might be fine in one area one day and not the next and there is a limited guardianship, the guardian might have to keep going back to court to address areas of the limited guardianship as the person's disease progresses. Ms. Spoon said the private professional guardians have learned in a general guardianship, even though there are some areas where this person might be able to make good decisions, a good guardian should allow that to happen. All guardianships should be limited and guardians should allow their clients to make decisions if they are able to make them. If they cannot make a

decision, then the guardian would step in to protect them. This is a very individual thing and she thinks the Commission needs to consider those situations.

Justice Hardesty said whatever approach is taken in the guardianship, it is intended to address that person's particular needs. Justice Hardesty was looking at this from the standpoint of least-restrictive alternatives. Judges were asked if they currently make findings as a part of their orders when they approve guardianships that there are no other least-restrictive alternatives to guardianship.

Judge Frances Doherty responded the Second Judicial District Court addresses this issue more significantly than they have done in the past. Judge Doherty has not encountered the same experiences as Mr. Hank Cavallera and Ms. Spoon. Since Judge Doherty began handling guardianship cases three years ago, the majority of the guardianships were guardianship of the person and the estate. As the Court began collecting data, particularly in the last year, the Court's data is reflecting what is going on in the courtrooms. The Court is reducing the necessity of guardianship of the estate when the person is impoverished and their only source of income is from Supplemental Security Income (SSI). There is already a system in place through the Social Security Administration to handle and monitor that person's funds. A similar program exists for veterans through the Veteran's Administration. As a standard protocol, the Court is not issuing guardianships of the estate and person where there is an insignificant estate. The Court is using the special guardianship for limited purpose for those individuals who have limited areas where they truly have challenges addressing their needs. An attorney advocate is a part of this process. The Court's data shows that those types of guardianships are increasing. Additionally, the Court is talking about "what" the alternatives are. The proposed pro se guardianship petition has affirmative statements being made as to what the alternatives are and why those alternatives did not work. The Court is trying to poise itself for the anticipated requirement that Courts would be expected to address those findings by statute. If that does not happen, it is still good public policy to address those issues and the statute contemplates this should be done now. Woven into our statute is the expectation of least-restrictive alternatives and woven into our statute is the "person-centered planning" concept. The Commission should crystalize this with more specificity if it is going to have all Protected Persons, litigants, and attorneys talking on the same page.

Judge Doherty said least-restrictive means is a state of art and the Court should be making those findings. Judge Doherty would argue that Nevada statute has some level of expectation of specific findings and the Commission should make this clearer. The nature of the conversations in the Court hearings and the nature of the pleading often fail to mention alternative documents, e.g., the existence of a power of attorney that could provide alternatives or provide additional insight. The Commission should identify best practices. It would be appropriate to include the best practices in the statute or in some form of policy protocol. The hearings are so short that making these findings are insignificant if you add the responsibility on the Court of making additional findings. The Courts should be doing that now so it is not terrifically adding to the burden of any player to address those issues.

Judge Egan Walker moved that the Commission acknowledge the purposes and tenets behind questions 1 and 2 because they are interrelated. Justice James

Hardesty confirmed Judge Walker moved to approve questions 1 and 2. Judge Walker responded yes. Ms. Terri Russell seconded the motion. Motion passed.

Additional Comment

Judge Cynthia Dianne Steel wants to be sure the Commission understands what the parameters are, what is meant by "least restrictive" and what it is not. Some of the people utilizing the Court's services will be pro se as guardians and might not be able to communicate the difference between something that is "least restrictive" or not. If they do not provide the Court with this information, then the Court has not made a good decision. Are they now going to be reliable for not giving the Court all the information because they had no idea? Justice Hardesty said the approach in Texas was to force the judge to ask the question, to press even the pro se litigants and the litigants with lawyers. Have you explored other alternatives? What investigation did you make to the availability of other alternatives? Press this issue before the Court makes those findings. Judge Egan Walker added the Court has to make these very findings in foster care cases and the Court should make these findings in guardianship cases.

5. **The Commission adopts a policy statement encouraging the use of volunteers or programs[276] in each district as appropriate and available.**

Special Advocates for the Elderly (SAFE) programs are volunteer programs similar to the Court Appointed Special Advocates (CASA)[277] programs for children. Volunteers provide outside input to the Courts based on their observations of the Protected Person's needs and circumstances.

Ms. Elyse Tyrell suggested the Commission table this question until the role of the Guardian ad Litem (GAL) and training is identified.

Chief Judge Gibbons provided an overview of the SAFE program in Douglas County, which was started in 2009, and modeled after the CASA programs.

The SAFE program used the investigators and the GAL statute and took it one-step further.

- Local court rules were amended and a specific court rule for Special Advocates that include SAFE and CASA was created.
- The court order appointing the SAFE sets forth, in detail, the exact duties of the SAFE.
- The statute on the GALs is empty on this topic and the order appointing SAFEs has the details.
- Extensive training is required to become a SAFE.
- A SAFE is not appointed in every guardianship case, as not every Protected Person needs a SAFE. It can be difficult for the Court to decide who does and does not need a SAFE when there is limited information available.

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[276] The Special Advocates for the Elderly (SAFE) program in Douglas County is an example of the type of volunteer program districts are encouraged to develop.

[277] See NRS 432B.505 for qualification of special advocate for appointment as Guardian ad Litem.

- The SAFE program has a coordinator[278] who reviews cases and provides input. Everyone else is a volunteer.
- Information provided by a SAFE has allowed for less-restrictive alternatives. SAFE has also allowed people who were out of state to be brought back home to Nevada and has made a difference in the quality of the decisions of the Court.

Chief Judge Gibbons stated having a SAFE program in Douglas County has made a world of difference, and he would strongly recommend the Commission make this recommendation. The Commission should not study this, it has worked. Douglas County has been had this program for six years and it worked in Washoe County.

Justice Hardesty said the language in the question does not limit anyone to a SAFE program. The question is whether the Commission recommends the use or encourages the use of available volunteers or programs, similar to a SAFE program, to assist Proposed Protected Persons and the Court in guardianship proceedings. Every district could have a different volunteer program.

The Commission discussed the distinction between an attorney, a GAL and a SAFE. Ms. Julie Arnold expressed concern that there was no bright line between the three. Commissioners noted it was important to distinguish the roles of the GAL and the SAFE. The Commission discussed whether a SAFE program would be organized and appointed by the Court. The prior SAFE program[279] in Washoe County was set up as a 501(c)(3) corporation and was separate from the Court. The SAFE program in Douglas County is Court supervised by the judges. There was a concern that the SAFE program in Washoe County had the ear of the judges and set up an imbalance as to what the guardians could do and how they could approach the judge and deal with issues brought up by the SAFEs. This caused friction in terms of how the guardians dealt with issues brought up by the SAFEs.

Justice Hardesty proposed a broader question:

> Do members of the Commission feel that volunteers can play a role in this process, and if so, what should that role be?

The Commission discussed the well-being of the Protected Person. Ms. Rana Goodman[280] would like to see volunteers utilized and suggested working with local beauty schools to visit care facilities and provide haircuts, styles, manicures, etc. The Protected Person needs to feel like they are important to someone and volunteers could provide that. The Commission discussed how the Court or the guardianship statute would be involved in volunteer services. Ms. Goodman's point is a volunteer would provide support services to the Protected Person. This does not have anything to do with the Court process, and the volunteer would not become a witness or a decider. This volunteer process is different from what has been described in the SAFE program.

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[278] John Giomi is the current SAFE Coordinator.

[279] The SAFE program in Washoe County was started under Judge Scott Jordan and was continued by Judge David Hardy. The program terminated when the grant to support the program terminated.

[280] Ms. Goodman indicated she has a roster of people willing to provide volunteer services.

Chief Judge Gibbons explained that in the SAFE program, the volunteer develops a relationship with the Protected Person that the attorney does not have and a guardian may or may not have. The SAFE volunteer might be the only person who has visited the Protected Person in the facility and seen the Protected Person in many different environments. The SAFE volunteer knows how the Protected Person really feels versus someone who might only interact with the Protected Person occasionally. The SAFE volunteer provides a report to the Court. That is where the program has made a difference and goes beyond a normal volunteer. When there is a guardianship of the person, it is important to develop that relationship to show what this person needs, what they want, and how they feel.

Justice Hardesty asked whether there is general approval that under appropriate circumstances volunteers might benefit the guardianship proceeding in a manner that furthers the interest of the person facing guardianship. The recommendation does not require the Commission to choose, be specific, dictate, or mandate a statewide program but there might be a place for volunteers in each jurisdiction and the Commission should support creative activity in that area. The intent of the question is to extend, to the districts, the flexibility to establish a volunteer program that would work best for that district. Commissioners agreed volunteer programs could work as long as the volunteers are well trained and there is administrative staff for oversight. There was concern raised as to the supervision of the volunteers and that there needed to be safeguards in place to make sure the volunteers do not exploit the Protected Persons.

Justice Hardesty suggested rephrasing the question:

> Does the Commission encourage the use of volunteers or programs by judicial districts, where available, to assist Proposed Protected Persons and the Court in guardianship proceedings?

It would be important for the judge and the judicial district to define the program and controls of the program that would be best used in their district should they choose to do so. The role of volunteers might differ from district to district depending on the needs of the judge and the availability of volunteers.

> **Judge Cynthia Dianne Steel moved for the Commission to encourage the use of volunteers or program in our districts as appropriate and available. Judge Egan Walker seconded the motion. Motion passed.**

Ms. Elyse Tyrell voted yea, with the understanding that each district would be able to define the role. Justice Hardesty responded yes, that was the motion.

6. **The Commission adopts a policy statement that the Commission determined there are policies, court rules, and statutes in place to address confidentiality.**

The Commission discussed Nevada Supreme Court Rule VII Governing the Sealing and Redacting of Records and the Policy for Handling Filed, Lodged, and Presumptively

Confidential Documents. Both documents were filed under Administrative Docket Number (ADKT) 410 and approved by the Nevada Supreme Court.

- Supreme Court Rule VII governs the sealing and partial sealing of records in civil cases. The Rule provides:
  - A Court may seal a portion of or all of a record under certain conditions.
  - Requires notice to the parties and notice to the media some portion of a record would be sealed.
  - The Court must record its findings, i.e., what is being sealed and the basis for the sealing.
  - Allows a party or the media to petition a court to unseal the record.
- Policy for Handling Filed, Lodged, and Presumptively Confidential Documents addresses what records are presumptively confidential according to Nevada or Federal statutes.
  - Medical records are included in the list of presumptively confidential records, which does not mean they are permanently sealed.

The Second Judicial District Court and the Nevada Bar have discussed this issue, and records of medical nature are presumptively sealed upon filing. The records are subject to reopening or if permanently sealed subject to court findings. When Mr. Kim Rowe files a petition, the physician's certificate is attached as an exhibit and e-filed marked presumptively sealed pursuant to ADKT 410.

The Commission discussed identity theft and that documents filed in guardianship cases might include social security numbers, account numbers, etc. Ms. Heying noted the Policy refers to NRS 603A.040, which requires the redaction of certain personal information before being released to the public. There was a concern there is no prohibition if someone who was allowed access to the sealed or confidential records from sharing those records with others. It was noted the Sealing of Court Records Rule provides sanctions for some litigants who abridge that or make those records public.

The Commission discussed the inclusion of medical and other sensitive information in a case file, open to the public. The media would be concerned if records were sealed, as they would want to review cases to investigate whether there is an abuse of the Protected Person or other abuses or concerns within the guardianship system. Certain information included in the records is considered confidential pursuant to state and federal statutes. The files and hearings are open to the public. The discussion addresses HIPAA and medical evidence that is only presumptively closed until the issue is addressed further. Guardianship hearings are more open than many court proceedings and guardianship cases are open to the public. The Commission has only discussed, narrowly, presumptive confidential medical documents and that they can be reviewed upon request.

In light of the discussion and the current rules already established by other commissions, it was determined policy question 7 would not be necessary. The Commission's final report would include a reference to Supreme Court Rule VII and the Policy for Filed, Lodged, and Presumptively Confidential Documents.

7. **The Commission adopts a policy statement that every hearing[281] involving a Protected Person should require a Protected Person's presence, which could only be exempt upon a medical showing or some other good cause approved by the Court. Good cause findings would be incorporated into the reference of good cause approved by the Court. This applies to adult Protected Persons only.**

The question posed to the Commissioners was should every hearing involving a Protected Person require the Protected Person's presence, which can only be exempted upon a medical showing or some other good cause approved by the Court.

The Commission discussed the requirement of having a Protected Person present at all hearings.[282] There are various reasons a Protected Person might choose not to attend a hearing, including:

- The Protected Person has stated he or she does not want to attend.
- The Protected Person is not able to attend due to physical, medical or emotional reasons.
- The Protected Person might not want to attend because the person is angry or upset.
- The Protected Person might be fearful that if he or she goes to Court that means the person will be arrested.
- It can be difficult for Protected Persons to attend hearings in rural areas, particularly if a Protected Person is in a facility[283] that is a long distance from the Court.

Commissioners discussed allowing a Protected Person to participate in a hearing via video[284] or teleconference.

Mr. Kim Rowe said the statute contemplates the Protected Person attending every hearing, not just the initial hearing. Nevada Revised Statute 159.0535 already requires the Protected Person to attend the initial hearing, so the question is should we go beyond that and require the Protected Person to attend every hearing. In Washoe County, emphasis has been placed on the Protected Person attending the hearings in person, unless they are excused. As a practitioner, Mr. Rowe tries to address the attendance of future hearings at the initial hearing and evaluate whether a Protected Person should be required to attend each hearing on an individual basis. Mr. Rowe does not have any problem saying the Protected Person should be present at every hearing, since every hearing affects the Protected Person's life. The Court's oversight and ability to gauge and judge for themselves whether the guardianship is appropriate or if the scope of the guardianship is appropriate is beneficial. If there is an appropriate reason to excuse the Protected Person, then the person should be excused.

Judge Frances Doherty said the Second Judicial District Court has a high percentage of Protected Persons attending the hearings and the Court encourages their attendance. If the Protected Person

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[281] Nevada Revised Statute 159.0535 Attendance of Proposed Protected Person at hearing. See General Policy Question 10 and the comments provided by members on pages 153-156.

[282] A lack of transportation is not a valid reason for the Protected Person not to attend the hearing.

[283] Example, a Protected Person is in an acute care facility in Reno and the hearing is in Elko.

[284] Nevada Revised Statute 159.0535 (2) allows a Proposed Protected Person to appear by videoconference if the person cannot attend the hearing for the appointment of a general or special guardian.

is not in attendance, the first question the Court asks is why. If counsel waives their attendance because they conferred with the person that is sufficient for the Court, but that rarely happens. The Court will also try to talk to the Protected Person through teleconference or other alternative methods.

Mr. Rowe stated the vast majority of people subject to the guardianship want to be at the Court hearings if they can physically be there, or participate by phone or through other methods. Only 5 – 10 percent of people subject to the guardianship are not able to attend due to physical limitations or medical reasons. Washoe County is fortunate because the Proposed Protected Persons have legal representation who can speak for them. If there is no one to speak for the Proposed Protected Person, then it is imperative for the judges to make a face-to-face evaluation.

Commissioners conveyed the importance of Protected Persons attending the hearings in person. It is imperative that a Proposed Protected Person be in attendance at the initial hearing whether the person is represented by counsel or not, unless the person is medically unable to attend. The discretion should be left with the Court as to whether the Proposed Protected Person's appearance is required. It is important that the judge is able to see the Proposed Protected Person and the Proposed Protected Person has a right to hear what is being said about them and the right to respond. Ms. Susan Hoy and Ms. Kim Spoon work very hard to make sure the Protected Persons are in Court. It is very important for the Proposed Protected Person to attend the initial hearing as well as the hearings thereafter, even if the Protected Person has an appointed attorney. Mr. Jay P. Raman suggested, as a workaround, since it is very important that the judge sees the Protected Person, maybe the judge, attorney, and any other appropriate parties could go to the Protected Person. This may be for rare situations.

Judge Cynthia Dianne Steel asked if a Protected Person refuses to come to Court and the judge cannot identify a reason why the Protected Person should be excused; would the Court not make a decision that is before it on that day? If the judge does make a decision, is that decision going to be viable because the Protected Person did not attend the hearing? Judge Steel expressed concern if the first time she meets with a Proposed Protected Person is over the phone. How would the judge know that was the Proposed Protected Person on the phone? Judge Steel prefers meeting the Proposed Protected Person face-to-face at the initial hearing. She did like the idea of visiting the Proposed Protected Person. Someone could visit the Proposed Protected Person and provide an affidavit that the Proposed Protected Person states the person will not attend the hearing. The Commission has been about the proceedings not forcing Protected Persons to do things they do not want and to be less intrusive in their life, but now, if Protected Persons do not want to attend the hearings, the Courts are going to force them to attend. Judge Steel would like the Commission to think about these concerns before making a hard and fast rule that Protected Persons have to attend every single hearing. Judge Steel thinks it is very valuable for the Protected Person to attend and she learns a lot by meeting with the Protected Person, but she is concerned that making a hard and fast rule on some of these things might be detrimental.

Senator Becky Harris said we want to be sensitive to each person's proclivities to come to Court or not, but if there is no requirement to have some kind of video or court presence then the Commission is losing sight of the accountability. The Commission needs to make certain it is doing its due diligence in the investigation and making sure those Protected Persons truly require

a guardianship and that circumstances have not changed and our accountability measure in that process. Judge Steel responded it might be helpful to have an investigator the Court could send to visit with the Protected Person and report to the Court that they visited the Protected Person to make sure they were okay.

Ms. Julie Arnold stated if the Commission achieves one of its earlier goals of each Proposed Protected Person having legal representation then the attorney could visit with the Proposed Protected Person, in person, and represent the Proposed Protected Person in Court. The Protected Person's legal representation could let the judge know they have seen the Protected Person and they do not want to attend the hearing. There might also be Protected Persons who would be physically dangerous because they are combative or mentally impaired and could attack someone. Ms. Arnold thinks this concept is aspirational. It would be beneficial to see the Protected Person at every hearing, but there should be an escape clause for situations where there is a medical or emotional reason, or where an attorney or investigator could report, to the Court, that they have seen the Protected Person, explain what is going on, and that the Protected Person does not wish to attend the hearing. Ms. Arnold thinks the Commission could achieve those ends without making it a statutory requirement to show up in Court. Justice Hardesty asked if the exemption for some other good cause covers that. Mr. Arnold responded she would hope so; these types of situations could fall under good cause.

> **Judge Frances Doherty moved that question 10, as written or slightly modified, encompass every single person's comments today and that good cause findings be incorporated into the reference of good cause approved by the Court. Judge Doherty added she thinks all of the Commission's concerns are addressed in question 10 as it is written.**

Judge Egan Walker agreed with the comments about attendance of the Proposed Protected Person, but in Washoe County, there are more minor guardianships than adult guardianships. This discussion assumes the Commission is only talking about adult guardianships. Judge Walker oversees foster care cases and would not want a young child to see dad, who has been removed from the home for battering mom, for example, at the courthouse at the first hearing or any hearings. Judge Walker used that example, not to oppose the assumptions behind question 10 or the comments, but to argue that we need to consider a subchapter or a different way of handling this for minors because their needs are fundamentally different from adults.

> **Judge Frances Doherty agreed with Judge Egan Walker and suggested question 10 only applies to adult Protected Persons. Judge Cynthia Dianne Steel seconded the motion. Motion passed.**

Additional comment

Mr. Timothy Sutton would be opposed to the exclusion of minors. Justice Hardesty stated question 10 would apply to adults and the issue of minors would be addressed separately. Judge Egan Walker agrees that minors should not be excluded. One of the challenges Judge Walker has with the law as it is written is a Proposed Protected Person in this State MUST attend the hearing for the appointment of guardian. That includes ALL Proposed Protected Persons right now.

Judge Walker would have infants and young children in Court who are seeing their parents for whom they have been removed. Judge Walker is suggesting this should be nuanced. Mr. Sutton agreed with the concerns Judge Walker raised and would be okay with the motion as long as minors would be addressed separately.

8. **The Commission adopts a policy statement that the Commission favors the use of special guardianships pursuant to NRS 159.0487, NRS 159.0795, and NRS 159.0801, in circumstances in which the capacity of the individual may not place the person in a position where a full guardianship is warranted. The Commission voted that this is consistent with the approach the Commission has taken in its recommendation to use special guardianships as a starting point, not as the exception when making these findings and determinations.**

The question posed to Commissioners was, does the Commission favor the idea of limited guardianships in circumstances in which the capacity of the individual may not place them in a position where a full guardianship is warranted?

This question is conceptual. The question asks if the Commission favors the concept of a "limited guardianship." The term "limited guardianship" is being used generally as a guardianship that is narrower in focus as opposed to ALL of the decision making for a Protected Person. Does the Commission favor the utilization of "limited guardianships" in circumstances where the individual's needs could be handled through least-restrictive means, similar to what Texas is currently doing?

April 1, 2016, Discussion

Ms. Elyse Tyrell provided examples where a "limited guardianship" is used:

- Long-term care planning – Helping family's complete court ordered asset divisions so the institutionalized spouse could ultimately qualify for Medicaid assistance. Under federal and state statutes, there must be a court order division, which is done through the family court system. Once the court order division is completed, an affidavit asking the court to terminate the guardianship would be filed.
- Special Needs Trust – A person is already a recipient of benefits or could be a recipient of benefits and has turned 18 and owns some assets or a family member has passed away leaving them some assets. The assets might not be significant enough to take care of the person in the long-term but a Special Needs Trust could be set up and used to supplement the person's care. Federal law requires a Special Needs Trust be created by a court order or guardian. A petition might be filed asking for a Special Limited Guardianship for the purpose of creating the Special Needs Trust and getting it funded and then a petition would be filed to terminate the case when that is completed.

Judge Egan Walker carries Judge Frances Doherty's proxy today, and Judge Doherty strongly supports the concept of least-restrictive alternatives for guardians, and the Second Judicial District Court utilizes limited guardianships. The current statute does not contemplate the term

"limited guardianship." The Court has imposed "limited guardianships" by judicial creation in Washoe County with some frequency.

The Commission discussed concerns with the use of a "limited guardianship" in cases where the Protected Person have a progressive disease, e.g., Alzheimer's disease. The progressive disease can change quickly causing the guardian and Protected Person to have to come back to Court to expand the limited guardianship, which could impose additional costs to guardians, the Protected Person, and stretch court resources further.

Justice Hardesty said based on the Commission's approval of questions 13 and 15, and its discussion on the Texas model, there is a dynamic shift in the way guardianships are approached. When a petition for guardianship is filed, we do not begin by saying, is this person in need of a guardian and then we appoint a guardian. The judge is required to identify or isolate specific needs for which the guardianship is being sought, make findings that there are no other alternatives, and then only appoint a guardian for the specific needs subject to the petition. The guardianship might require a full guardianship due to the capacity or incapacity of the person who is the subject of the petition. The process should begin with the judges asking the questions – How broad does this guardianship need to be? What is the real purpose we are trying to address?

Mr. Kim Rowe agrees with the concept. There has been general recognition that the use of a "limited guardianship" is appropriate in some cases. Mr. Hank Cavallera's concern and the concern Ms. Kim Spoon pointed out is that this needs to be vetted very carefully on the front-end. There are cases where a person's capacity changes quickly or sequentially over time and the person continues to come back to Court every few months to change the limited guardianship. There is a cost to that and limited resources are being used to extend the limited guardianship.

Justice Hardesty said to the extent that the Commission is considering narrowing the scope of the guardianships there needs to be language in statute recognizing this. The current statute does not include this language, which is a critical component of this recommendation.

Assemblyman Glenn Trowbridge supports the "limited guardianship" concept. He suggested there might be a need for language in the statute that delineates the judge's discretion in the determination of "limited guardianships." Careful vetting is too vague. Assemblyman Trowbridge stated judges should have access to the appropriate level of persons in this area, i.e., general practitioner, physician, psychologist, who could provide the Court with the information required to determine whether a "limited guardianship" is appropriate.

Judge Nancy Porter favors this concept. Most of the people she sees are severely incapacitated and do need a general guardian. Judge Porter would like to see some laws that provide judges information to narrow the guardianships.

This is a detail-oriented area and the Commission needs to be sure this is applied consistently throughout the State and that judges have the same materials and tools to work with. Justice Hardesty pointed out the purpose of this policy discussion is to present this information to the Nevada Supreme Court, which would be subject to uniform rules that govern every judicial

district in Nevada. If the Commission adopts person-centered planning as a policy approach, where access to guardianships is only for the areas in which the subject of the guardianship has specific needs, then the statute would need to provide the judge the discretion to use the "limited guardianship" as a way of accomplishing this.

Nevada Revised Statute 159.0801 does address special guardian of person with limited capacity, which provides this discretion. The Commission might need to redefine "special guardian." It is critical for the judge to make specific findings as to the nature of the incapacity, governing the extent and scope of the subject of the matter of guardianship. Nevada Revised Statute 159.0801 was designed for those very special need areas so its use is limited. In making the dynamic shift, you change the scope, and the first inquiry is not a general guardianship but the question – What is the nature of the incapacity? Once that has been identified, the scope of the guardianship is defined around the capacity.

The Commission discussed the concept of person-centered and least-restrictive means and the concern that the Courts do not have enough resources to allow them to make this determination. In Clark County, only 15 percent of the cases have an attorney for the Protected Person. The remaining petitions are prepared by the proposed guardian, many of whom have been told by a doctor that they need a guardianship. The Court has information on a physician's certificate that may say dementia or Parkinson's but the doctor does not come to Court to testify. Courts would need additional resources to implement this concept.

The Commission should be recommending that the judge ask more questions before a guardian is appointed. It must be compelled and in addition to requiring the appointment of lawyers in every case, this process begins with the judge's assessment rather than a conclusory petition.

The current statutory standard requires clear and convincing evidence. In addition to practical implications the courts might face, there is an additional practical implication some of the medical providers might have concerns about, e.g., how much information is too much information from a privacy standpoint. Providers are often walking a fine line when filling out the physician certificates. Mr. Rowe suggested a specific court order to augment the physician's certificate process that says the Court is telling you it is permissible to attach the notes of your consult. There is a need for something that protects the physicians so they are willing to provide additional medical information. Washoe County is working on using a uniform petition that ask very clear questions about whether least-restrictive alternatives have been explored. If so, what were they, if not, why would the alternatives not work. It is important to have uniform forms that everyone is familiar with and the judges are comfortable with and know where to look to find information to decide if a narrower or more appropriate guardianship should occur.

The Commission discussed the confidentiality of these files.[285] There might be HIPAA or other statutes that govern the protection against the disclosure of the information included in the physician's certificate, as well as the disclosure of a person's social security number and other personal identifying information. Ms. Julie Arnold suggested filing the physician's certificate and any other personal identifying information in the confidential section of the case file so that this information was not a public record. Anyone who is properly entitled to notice would have

[285] Confidentiality of records has been discussed in General Policy Questions 7 and 11 Notice.

access to this information, including the basis for which the petition is being sought. Mr. Rowe noted his office references Administrative Docket Number 410 - Presumptively Confidential Documents when attaching medical records. Medical records are filed separately so the public does not have access to those confidential records.

The Commission has discussed 3 – 4 different subjects within this topic. Justice Hardesty said without getting into the specifics of how the statute would be modified, is it consistent with the approach the Commission has taken that "limited guardianship" would be used as a starting point, not as the exception when making these findings and determinations.

> **Judge Cynthia Dianne Steel moved, without getting into the specifics of how the statute would be modified, question 12 is consistent with the approach the Commission has taken in its recommendation to use limited guardianships as a starting point, not as the exception when making these findings and determinations. Ms. Elyse Tyrell seconded the motion. Motion passed.**

9. **The Commission supports the concept, which would require greater evidence for the judge to make the determination of exactly what incapacity is and how it is documented and supported.**

The Commission discussed the nature of the affidavit, i.e., the nature of the supporting information that is being supplied. Commissioners agreed that the clear and convincing standard is the appropriate standard. More data or specific information needs to be included within that context, whether it is supplied as part of the petition or as a confidential attachment, there needs to be a greater level of evidence for the judge to be able to make the decision.

Additional Discussion

The Commission discussed how to protect physicians so they are comfortable providing information, given the privacy issues. The most concrete way would be to have a specific court order that any disclosure made is part of the court order. Justice Hardesty asked Mr. Kim Rowe and Ms. Elyse Tyrell to discuss this issue as a part of their assignment to find out how this could be augmented to address physician's concerns.

Justice Hardesty stated the threshold question is does the Commission agree, as a matter of best practice, that the appropriate level of evidence should be a requirement and supplied to the judge to meet the clear and convincing standard to appoint a guardian.

Judge Cynthia Dianne Steel asked if this applies to the final decision of the judge or for a temporary decision. The Commission discussed temporary guardianships. A ten-day temporary guardianship is reasonable cause. It is a lower and different standard. Judge Egan Walker suggested the Commission consider that the documentation in support of the petition, i.e., the physician's certificate be given a higher level of protection by statutory process or court rule and to require that it is more robust. Justice Hardesty stated his point is in the judge's exercise of discretion, a heightened level of evidence should be required, even in a temporary guardianship.

The temporary guardianship statute starts out with reasonable cause but the standard to extend the temporary guardianship beyond the seven days is clear and convincing.

Mr. David Spitzer noted that a petitioner and the Court have subpoena power, and if doctors are not doing what they are supposed to do in presenting evidence then the last resort could be a subpoena. Even if there is, what is considered an adequate capacity evaluation, statement, or affidavit from the doctor in some cases it is still hearsay. If there is a contested hearing, this might not be admitted on its face and there should be a right of cross-examination. Ultimately, in terms of requiring a judge to make a finding that the evidence is clear and convincing there simply has to be information that is more detailed and it has to be in some form that ultimately would be subjected to cross-examination to contest the hearing.

Assemblyman Michael Sprinkle agreed strongly with Judge Egan Walker and if the Commission is looking at any kind of statutory changes for discretion with judges this higher level has to exist as far as he is concerned as a legislator. The fact that there is a concern about private information being out there then the Commission needs to get that protection put in this as well.

Justice Hardesty stated the motion only pertains to adult guardianships. A workgroup is drafting a separate set of minor guardianship statutes so the Commission would defer the application of this to minor guardianships until it has the draft.

> **Dean Christine Smith moved to support the concept, which would require greater evidence for the judge to make the determination of exactly what the incapacity is and how that is documented and supported as it pertains to adult guardianships. Ms. Susan Hoy seconded the motion. Motion passed.**

The details would include the process of how you get the evidence to the judge and assure the confidentiality protections of the Proposed Protected Person and identify how to get the resources to those who are in need of those services but cannot supply them.

10. **The Commission supports the application for a grant through the National Resource Center for Supported Decision Making in an effort to expand knowledge of the Supported Decision-Making Process and its agreements as alternative to a guardianship. Information on the grant and supporting documents included as Exhibit P.**

The original question posed to the Commission is whether it would support a recommendation to adopt Supportive Living Agreements similar to the approach taken in Texas.

The Commission has had several discussions about Supported Living Agreements (SLA) since Mr. David Slayton gave a presentation on the practice Texas[286] adopted where an individual could enter into an SLA. Justice Hardesty noted, as a matter of policy, while an SLA seems like a good idea there are no real protections for the Protected Person. If this were a less-restrictive or

[286] The Commission received a presentation on Texas' efforts to reform Guardianship at the meeting on October 19, 2015. Materials provided are included as **Appendix L.**

less-intrusive invasion of a Protected Person's rights, it seems there would need to be some accountability to reduce the risk of abuse and elder or Protected Person exploitation.

January 22, 2016, Discussion

Commissioners expressed concern that there might not be oversight or monitoring of an SLA.

Judge Frances Doherty stated the Second Judicial District Court's Task Force (Task Force) has discussed this concept. The Task Force believes the SLAs would address the avoidance of life-long guardianship oversight for some young adult persons whom might otherwise be subject to a guardianship but have wraparound supports in place. The SLA might not be any riskier than the many power of attorneys that are signed and authorized by individuals who are seeking avoidance of guardianship courts. The Commission does not have the advanced thought or substance on this type of agreement at this time; there is only an idea. The SLA has been included in the Second Judicial District Court's draft pro se guardianship petition as a listed entity to avoid or reduce the need for guardianship. The Task Force recognizes the need for statewide consensus. Judge Doherty encouraged the Commission leave this on the table and allow the Task Force time to develop this concept. The Task Force would provide the Commission more information, including the potential for Court oversight or recommending against court oversight at an upcoming meeting.

The Commission discussed Court oversight and/or approval of the SLA and if there would be a reason inventories and accountings would not be required under a SLA. Judge Doherty thought this could go either way depending on the Commission's preference. Many young adults and seniors have the challenge of accessing and coordinating services. An SLA is about coordinating a plan and authorizing people, who are otherwise there to support the person, to pull a plan together and have some designated agency to interact with the service providers. Judge Egan Walker is supportive of Judge Doherty's comments and suggested tying an SLA with the Bill of Rights. This would provide protections for the Protected Person and the SLA could be bolstered by the Bill of Rights, demonstrating the substantive rights that Protected Persons or persons subject to the SLA could have.

The Commission discussed freedom of contract. If the person has the freedom of contract, at least under normal legal standards that would be expected of enforceable agreements, then the person might not be subject to a guardianship in any event. That is what Texas was attempting to address. Judge Doherty stated the Court receives a high volume of cases that are referred by the school district once a child turns 18 (Individualized Education Programs). This does not necessarily encompass the need for a guardianship from the Court's point of view but might encompass the need from the school district's point of view, and other adult service providers for some coordinated planning. Judge Doherty agreed with Judge Walker, the SLA could be tied to the Bill of Rights. The Bill of Rights could be included in the statute, and incorporated into any agreement that might ultimately be approved as an alternative plan.

Ms. Julie Arnold is concerned that if someone were exploited under an SLA the person would not have the means to bring the civil suit and enforce their rights. The SLA could be introducing a person to potential exploiters.

Justice Hardesty noted his concern of the SLA concept is people could enter into the agreement through any contract of their own free will, so if there is no Court or similar type of oversight, it would be difficult to know how many SLAs are out there. Justice Hardesty is not sure how Texas plans to capture this information but it would help to understand if this concept is working. Justice Hardesty suggested the Task Force consider this issue as well. How does one determine how SLAs are working?

Judge Doherty is having a hard time distinguishing why there is a greater level of concern for SLAs then there exists for power of attorneys or durable powers of attorneys. Individuals who have the capacity can enter into those agreements now and whether a person has the capacity to enter into those agreements is not reviewed by the Courts. Judge Doherty asked why the Commission is distinguishing between alternative methods of creating a plan for an adult who is presumed to have capacity and whom we may facilitate more support services for to maintain their independence but we do not have that same worry about more potential authority that is given under a durable power of attorney.

Judge Doherty would bring information back to the Task Force and ask the representatives from Texas to provide additional information on their processes. Judge Cynthia Dianne Steel suggested asking the Task Force to consider if there is an SLA, does the Court have to authorize the SLA. If so, does that give the supporting persons or the wraparound person's rights with vendors in the community, and do the vendors have to provide the same respect they would under a guardianship. How would this differ? Judge Doherty would bring this to the Task Force and report back to the Commission.

June 13, 2016, Discussion

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

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

Justice Hardesty's point is should the Commission be more specific about what it means by an SLA in this context. The Commission could review the form and others to formulate a form the Commission might recommend. The Commission discussed how the Court would retain jurisdiction of an SLA if a guardianship is not approved. In Texas, there is a petition to approve an SLA but once approved the Court does not retain jurisdiction. Commissioners had reservations about that process, particularly if there would be no ongoing review, including accountings. Justice Hardesty suggested the Commission discuss what kind of jurisdiction the Courts should retain if an SLA were approved. There is concern that extended oversight of this would discourage some from using the SLA document because documents would still need to be filed, including inventories and accounting, which would make this a guardianship.

Commissioners were asked to review the materials so the Commission could possibly make recommendations as to the scope of SLAs at an upcoming meeting.

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

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

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

Justice Hardesty said his concern with the Texas SLAs is they were not approved by the Court and asked if that should be a part of the SLA. The Commission discussed the SLA being required

to be enforceable and approved pro-actively by the Court. Judge Doherty thought it would be a great Nevada plan to effectuate an alternative to guardianship. As long as we do not effectuate the provisions of NRS Chapter 159 that address their civil rights, she would argue against ongoing oversight, such that it would really be a guardianship. A number of examples have been cited where an SLA could be used and a guardianship would not have to be involved.

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

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

Ms. Barbara Buckley mentioned a recent grant opportunity through the Federal Aging Division that addressed alternatives to guardianships and best practices. Justice Hardesty let the Commission know he had recently received an email from Ms. Penelope Hommel, from The Center for Social Gerontology, indicating the Center is about to engage in a national effort to study the administration of guardianships based on the work of the Commission. A letter[287] was received indicating the Federal Administration on Aging Administration for Community Living seeks to provide national support for the development and delivery of legal services to vulnerable elders and others who might be subject to guardianships. The letter invites Justice Hardesty, as chair of the Commission, on behalf of the Supreme Court to submit and be a participant in this grant. The grant,[288] if awarded to the Center, would provide $100,000 to $125,000 per year for two years to effectuate changes the Commission recommends. This grant would afford an opportunity for the Commission to find ways to implement alternatives to guardianships.

The Commission deferred further discussion to the June 21, 2016, meeting.

June 21, 2016, meeting Discussion

The Commission continued its discussion regarding Supported Living Agreements (SLA) following the June 13 meeting. Justice Hardesty asked the Commission if the statutes that govern powers of attorney (POA) and durable powers of attorney (DPOA) adequately cover the scope of the Texas SLA. Justice Hardesty stated his view regarding this topic was that Nevada's POA approach was much like the Texas SLA approach. Justice Hardesty had asked a law clerk to look into what powers are enumerated in Texas' statutes, which are not included in Nevada's statutes.

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[287] A copy of the letter is included as **Exhibit Q.**

[288] To date, no announcements have been made regarding who the successful applicants are.

If Nevada has more powers than Texas, additional work may not need to be done in this area as Nevada could rely on the existing statutes. Justice Hardesty stated different lawyers approach different POAs in different ways; it may need to be clarified that provisions in one may be combined in provisions in others.

Ms. Julie Arnold stated the current statute provides for different POA healthcare and financial decisions. Ms. Arnold stated it was a flexible document and a POA can say anything an individual would want it to say and it does not invalidate it. There is flexibility in the concept of the POA already. Mr. Kim Rowe agreed with Ms. Arnold stating what Nevada currently has in place is adequate. Mr. Rowe stated he chooses not to combine them but there is flexibility to do so. Mr. Timothy Sutton also agreed stating there was not much that Texas has that Nevada does not already have and Nevada has flexibility in the existing statutes. Ms. Debra Bookout stated she did not see too much difference in the Texas SLA and stated Nevada's statutes would be sufficient.

Judge Frances Doherty stated the concept of the Supported Decision-Making Agreement was to recognize at the outset that the person entering the agreement was not delegating decision-making authority to the assigned supporters. It is not creating an agency relationship as a POA does; it is creating a delegation of authority to execute the decisions that the person with the disability does. The other concept was to create a team approach selected by the person with the disability with trusted individuals, typically more than one, who would execute and assist the person's planning with respect to all aspects of the person's life. Nevada has a good POA statute, which has gotten better but does not necessarily cover all contemplated independent options that a person with a disability has to avoid guardianship. Judge Doherty would compare them further and provide in-depth clarification. Judge Doherty would like information regarding how Texas created the Supported Agreement in relation to its financial POA.

Mr. James Conway stated the nature of the POA document is that a person's authority is divested and placed with one other individual, whereas the SLA is not divesting the authority, it allows the person to designate individuals to assist them. Ms. Arnold stated paragraph five on the Durable Power of Attorney for Healthcare Decisions states "notwithstanding this document, you have the right to make medical and other healthcare decisions for yourself, so long as you can give informed consent with respect to the particular decision. In addition, no treatment may be given to you over your objection and healthcare necessary to keep you alive may not be stopped if you object." If an individual had appointed someone, the person had not given away his or her own power, which is important to remember.

Justice Hardesty stated the SLA issue would be tabled until the Commission could review the POA under NRS Chapter 162A and identify recommendations and changes that may be necessary. Nevada is not statutorily deficient in this area.

August 26, 2016, Discussion

In a prior meeting, the Commission had discussed whether the financial power of attorney (POA) statutory provisions should suffice and not require the addition of the Supported Decision-Making Agreement in the bucket of tools for alternatives to guardianships. Judge Frances

Doherty kept coming across more information on the topic and asked to bring the topic to the Commission for a final look. Supported Decision Making is an evolving trend internationally and now nationally. It is a specific protocol by which a person who is incapacitated, but not unable to communicate his or her desires and decisions to another person, receives the ability to continue to control decisions by extending the body of people who may assist the person in making those decisions. The incapacitated person would designate people the person trusts and would sign a Supported Decision-Making Agreement. It is not a POA. A POA allows someone else to make a decision for you. They are two different documents. Judge Doherty talked to Mr. Hank Cavallera following the last Commission meeting. Mr. Cavallera redrafted the POA to include a Supported Decision-Making Section. Judge Doherty said a Supported Decision-Making Agreement and a POA could co-exist or stand alone; education is the issue and getting people to understand the alternatives to guardianship.

Judge Doherty explained there is a grant opportunity through the National Resource Center for Supported Decision Making. Six states would be awarded $4,000 to work statewide, to educate and publish information about the Supported Decision-Making Protocol. Judge Doherty said with a Supported Decision-Making Agreement the person retains all authority and delegates assistance to others to effectuate his or her desires. In a POA, that person makes the decisions for the agent, for the grantor of the authority. The Supported Decision-Making Agreements would target our younger individuals who are not so disabled that they are not able to make decisions about their future but who want to remain independent, surrounded by a group of trusted individuals who will effectuate their will. Judge Doherty asked the Commission to consider whether it would be interested in applying for a grant. Judge Doherty volunteered to make the application and distribute information in whatever way the Commission thought was sufficient. She asked the Commission to consider allowing Supported Decision-Making Agreements to exist with or outside POAs and allowing those tools to be an option for those persons who would otherwise be subjects to guardianship.

Ms. Sally Ramm noted a technical point, it seems this would not go into NRS Chapter 159. Judge Doherty said many states take the position it is an agreement and does not need statutory authority but she thought statutory authority would be a good idea. Judge Doherty said it would be dispersed and relied on the same as POAs but it could be wherever the Commission chooses. Judge Doherty said the National Guardianship Association presented an article that was circulated to Commissioners, *Rethinking Supported Decision-Making*. She is asking the Commission to rethink Supported Decision Making to allow it as a possible tool in their jurisdiction.

Ms. Kim Spoon noted there is a need clarification of what the Supported Decision Making is and what it means. The grant could assist in setting some type of criteria to clarify who the agreements work best for. Judge Doherty said the agreements are typically used with intellectually challenged and developmentally disabled adults who are trying to maintain and sustain their level of independence. They are able to convey their will and decision making but need assistance in effectuating those decisions rather than giving away their decision-making authority.

Justice Hardesty asked if Commissioners supported an application for a grant to further investigate Supported Decision Making. Judge Doherty said she could apply for the grant on behalf of the Second Judicial District Court or as a state project within the Administrative Office of the Courts (AOC). The grant does specifically say the purpose is to increase knowledge of and access to Supported Decision Making by older adults and people with intellectual and developmental disabilities. That is one component of the two-prong priority for the grant, so the Commission would have to say they are moving towards Supported Decision Making to be able to represent possible eligibility for the grant. Justice Hardesty asked if the Commission supports further study of the subject matter, and assuming that the Commission does, then that supports the grant and the Commission could further pursue the information and review it.

> **Judge Egan Walker moved that the Commission supports of further study of the Supported Decision Making and a subset of that would be that the Commission supports application using Judge Frances Doherty's services for this grant to study Supported Decision Making. Judge Walker's rational is drawing a broad analogy of NRS Chapter 432B in child dependency for the State has to take reasonable efforts to return a child home and place a child in least-restrictive alternatives this is really about least-restrictive alternatives for our Protected Persons and for that reason he strongly supports this. Ms. Terri Russell seconded the motion.**

Judge Cynthia Dianne Steel expressed concern and had some questions regarding the level of proof the Court would need to have, who would sign off on behalf of the child that they have contractual capacity to be involved in Supported Decision Making, etc. Judge Steel would need more information before she could support this. Justice Hardesty said the motion is to further study the Supported Decision-Making Agreements. Judge Steel said the State has to be moving in that direction, that has to be stated in the application. Judge Doherty is not sure "study" is going to be a sufficient word. The grant language is "increase knowledge of and access" to Supported Decision Making.

> **Judge Egan Walker amended his motion to include study and increase the knowledge of and access to Supported Decision-Making Agreements. Judge Walker said we have to explore least-restrictive alternatives and we have to have an array of tools for least-restrictive alternatives for Protected Persons and this is one of those tools. Judge Walker would amend the motion to say that the Guardianship Commission would support movement toward a system for Supported Decision Making in Nevada. Ms. Terri Russell seconded the motion.**

Ms. Arnold said given that this Commission has two meetings left, the motion supposes a continuation or an establishment of an ongoing Commission in order to do the study. Justice Hardesty said further study could depend on whether the Supreme Court adopts the recommendation of a permanent Commission, but the Court and/or the AOC could pursue the grant and study Supported Decision-Making Agreements. Judge Doherty can apply on behalf of her own Court indicating that at least at this stage this Commission has expressed support for expanding its knowledge base in this area, or this Commission could sit silent and do nothing and she could still apply for the grant. Ms. Debra Bookout said the Commission should not miss

the opportunity to apply for this grant. The Commission is confirming some of the changes and we need to explore all that is available for our guardianships.

Justice Hardesty asked those in favor of the motion to raise their hands. One member abstained, one member voted nay. Motion passed.

EXHIBITS

EXHIBIT A

EXHIBIT A
COURT RULES

Proposed New Court Rules

1. Add new court rule outlining the duties of an attorney for a proposed protected person or protected person:
    a. When representing proposed protected persons or protected persons as an attorney, attorneys shall follow a client directed model of representation to the greatest extent possible.
    b. When the client does not have the capacity to direct the attorney, the attorney shall follow the client's wishes to the greatest extent possible. If the client is completely unable to direct an attorney, the attorney shall act as a client advocate for the proposed protected person or protected person. The attorney shall not substitute counsel's own judgment for that of the proposed protected person or protected person on the subject of what may be in the best interest of the proposed protected person or protected person. Counsel's role shall be distinct from that of a volunteer guardian ad litem. At a minimum, counsel shall endeavor to ensure that:
        i. the wishes of the Proposed protected person or protected person, including those contained in estate planning documents, are presented to the court;
        ii. there is no less restrictive alternative to guardianship or to the matter before the court;
        iii. proper due process procedure is followed;
        iv. no substantial rights of the proposed protected person or protected person are waived, except with the proposed protected person or protected person's consent and the court's approval;
        v. the petitioner proves allegations in the petition by clear and convincing evidence in an initial proceeding, and applicable legal standards are met in subsequent proceedings;
        vi. the proposed guardian is a qualified person to serve or to continue to serve, consistent with the statute;
        vii. if a guardian is appointed, the initial order or any subsequent order is least restrictive of the personal freedom of the person under guardianship consistent with the need for supervision;
        viii. ensure any bill of rights or statutory rights given to the clients are followed and enforced; and
        ix. Review inventories, billings, and financial records to ensure that the estate of the proposed protected person or protected person is not unnecessarily charged.

2. Add new court rule outlining the duties of an attorney guardian ad litem for a proposed protected person or protected person:
    a. When representing proposed protected persons or protected persons as an attorney guardian ad litem, the role of the attorney guardian ad litem is to help determine the best interests of the individual, not to advocate for a position chosen by a client, as would a lawyer.

b. The attorney appointed to be the guardian ad litem shall:
   i. Meet with the proposed protected person or protected person as often as is necessary to determine that the person is safe and to ascertain the best interests of the person;
   ii. Ascertain the wishes of the proposed protected person or protected person;
   iii. Thoroughly research and ascertain the relevant facts of each case for which the guardian ad litem is appointed, and ensure that the court receives an independent, objective account of those facts;
   iv. Explain to the person the role of the guardian ad litem and, when appropriate, the nature and purpose of each proceeding in the case;
   v. Participate in the development and negotiation of any plans for and orders regarding the person, and monitor the implementation of those plans and orders to determine whether services are being provided in an appropriate and timely manner;
   vi. Appear at all proceedings regarding the attorney;
   vii. Inform the court of the desires of the person, but exercise independent judgment regarding the best interests;
   viii. Present recommendations to the court and provide reasons in support of those recommendations;
   ix. Request the court to enter orders that are clear, specific and, when appropriate, include periods for compliance;
   x. Review the progress of each case for which the guardian ad litem is appointed, and advocate for the expedient completion of the case; and
   xi. Perform such other duties as the court orders.

EXHIBIT B

EXHIBIT B

Draft Court Rule Regarding NRS 159.057

NRS 159.057 allows a single petition to be filed for two or more wards under certain circumstances. This is due in part to facilitate reduced costs for filing fees and recognizing the similar circumstances often necessitating a guardianship. NRS 159.057 also requires guardians to maintain separate records for each ward. The maintaining of separate records is necessitated by the separate needs, decisions, and subsequent circumstances for each ward. Accordingly, while NRS 159.057 allows a single petition to be filed, a separate case shall be created and maintained for each individual ward, so that subsequent pleadings for each ward are filed and maintained in their respective case.

EXHIBIT C

GUARDIANSHIP INFORMATION SHEET

I. Party Information *(provide both home and mailing addresses if different)*

In the Matter of Guardianship of the Person, Estate, or the Person and Estate of: (name/address/phone):	Attorney for Guardian (name/address/phone):
☐ A Minor ☐ An Adult	
Attorney for Subject of Guardianship (name/address/phone):	Attorney for Second Guardian (name/address/phone):

II. You must attach a copy of ONE of the following forms of identification for each of the guardianship proceedings. Check the box for the type of identification filed. (See NRS 159.044)

Guardian	Second Guardian	Subject of Guardianship
☐ Social Security Number	☐ Social Security Number	☐ Social Security Number
☐ Taxpayer Identification Number	☐ Taxpayer Identification Number	☐ Taxpayer Identification Number
☐ Valid Passport Number	☐ Valid Passport Number	☐ Valid Passport Number
☐ Valid Driver's License Number	☐ Valid Driver's License Number	☐ Valid Driver's License Number
☐ Valid Indentifcation Card Number	☐ Valid Indentifcation Card Number	☐ Valid Indentifcation Card Number

III. Please fill out the information requested for Guardianship

A. Placement of Adult Subject to Guardianship Proceedings

☐ Group Home ☐ Skilled Nursing Home
☐ Secured Facility ☐ Out of State
☐ Guardian ☐ Family/Friends
☐ Host Family ☐ Independently
☐ Support Adult Residence ☐ Other:_____

B. Specify the Type of Guardianship:

☐ Person ☐ Person and Estate
☐ Estate ☐ Special
☐ Temporary

C. Specify the Current County/State in which the Guardian(s) reside:

☐ _____ County, Nevada
☐ Other State: _____

D. Specify the Type of Guardian(s):

☐ **Spouse** ☐ **Private:** *License Number* : _____
☐ **Other Relative** ☐ **Other:** _____
☐ **Public Guardian**

E. Gender and Age

☐ **Male** **Date of Birth:**_____
☐ **Female** **Date of Majority:**_____

F. Estimated Estate Value: ☐ $0 to $2,500 ☐ $2,501 to $20,000 ☐ $20,001-$200,000 ☐ $200,001 or More

IV. Affirmation: This document ☐ **DOES -OR-** ☐ **DOES NOT contain the social security number of persons pursuant to NRS 159.044.**

_____ Date

_____ Signature of initiating party or representative

EXHIBIT D

EXHIBIT D
Court Rule

1. Qualifications of Non Attorney Guardian ad Litem or Advocate
   To qualify for appointment as a guardian ad litem, a guardian ad litem must:
   a. Not be related to the proposed protected person or protected person;
   b. Compensation would be determined by the court;
   c. Not have any gross misdemeanor or felony conviction;
   d. Have specialized training or skill, according to court rule, in the following:
      i. The dynamics of the elderly, aging, and exploitation;
      ii. Factors to consider in determining the best interests of a person
      iii. Skills in mediation and negotiation;
      iv. Federal, state and local laws affecting people in guardianship actions;
      v. Cultural, ethnic and gender-specific issues;
      vi. Standards for guardians ad litem;
      vii. Confidentiality issues; and
      viii. Such other topics as the court deems appropriate.

EXHIBIT E

EXHIBIT E
COURT RULE

1. Initial Plan
    a. Upon the filing of a guardianship action and within a time specified by the Supreme Court, the proposed guardian shall also file a proposed preliminary care plan and budget. The plan shall include:
        i. The place and kind of residential setting or facility best suited for the needs of the proposed protected person and the proposed place of residence;
        ii. The plan for medical, mental, or personal care services for the welfare of the proposed protected person to the extent known;
        iii. The provision of social and personal services for the welfare of the proposed protected person to the extent known;
        iv. The generalized financial plan of care for the proposed protected person with proposed income and expenses, including what assets can be used to pay for the costs of care.
    b. Unless the proposed protected person has been found to be totally incapacitated, the initial guardianship plan must contain an attestation that the guardian has consulted with the proposed protected person and, to the extent reasonable, has honored the proposed protected person's wishes consistent with the rights retained by the proposed protected person under the plan. To the maximum extent reasonable, the plan must be in accordance with the wishes of the proposed protected person.
    c. The guardianship plan may not restrict the physical liberty of the proposed protected person more than reasonably necessary to protect the proposed protected person or others from serious physical injury, illness, or disease and to provide the proposed protected person with medical care and mental health treatment for the proposed protected person's physical and mental health.
    d. An initial guardianship plan continues in effect until it is amended or replaced by the approval of a guardianship plan, until the restoration of capacity or death of the proposed protected person or protected person.

EXHIBIT F

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

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.

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 recently formed Commission to Study the Creation and Administration of Guardianships.

FACTS

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.

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

SHARON R. BOCK
Clerk & Comptroller
Palm Beach County

POSITION STATEMENT ON CLERK'S GUARDIANSHIP DUTIES AND EX PARTE COMMUNICATION

FLA. STAT. §744.368 and §744.3685

I. INTRODUCTION

The Florida Constitution establishes the Clerk of the Circuit Court as part of the judiciary.[1] One of the Clerk's key duties is to serve as custodian of court records, including guardianship files.[2] Specifically, Florida Statutes charge the Clerk with reviewing each initial and annual guardianship report, and auditing the verified inventory and accountings within specified timeframes.[3] In 2014, the Florida Legislature voted near-unanimously to amend Florida's guardianship laws.[4] These changes increased the authority and responsibility of the Clerk, in the Clerk's role as an auditor of guardianship reports. Specifically, as a result of the amendments, the following sections of statute were added:

Fla. Stat. §744.368(5) states that "[i]f the clerk has reason to believe further review is appropriate, the clerk may request and review records and documents that reasonably impact guardianship assets, including but not limited to, the beginning inventory balance and any fees charged to the guardianship."

Fla. Stat. §744.368(6) states that "[i]f a guardian fails to produce records and documents to the clerk upon request, the clerk may request the court to enter an order pursuant to s. 744.3685(2) by filing an affidavit that identifies the records and documents requested and shows good cause as to why the documents and records requested are needed to complete the audit."

Fla. Stat. §744.3685(2) states that "[i]f a guardian fails to comply with the submission of records and documents requested by the clerk during the audit, upon a showing of good cause by affidavit of the clerk which shows the reasons the records must be produce, the court may order the guardian to produce the records and documents within a period specified by the court unless the guardian shows good cause

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[1] Fla. Const., Art. V, §16.
[2] Fla. Stat. 744.368.
[3] Fla. Stat. 744.368(1)-(3).
[4] CS/HB 635 (2014) – Guardianship. Available at: http://myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=51743.

as to why the guardian may not be compelled to do so before the deadline specified by the court. The affidavit of the clerk shall be served with the order."

The purpose of this position statement is to exercise due diligence by outlining how Fla. Stat. §744.368 (5) – (6) and Fla. Stat. §744.3685(2) authorize the Clerk to file an affidavit, without simultaneously notifying or serving parties to the case, requesting that the Court issue an order to show cause when records and documents related to a guardianship audit have not been provided by the guardian as previously requested by the Clerk. This memorandum does not address §744.368(7), relating to the Clerk's ability to issue subpoenas upon application to the Court, as supported by an affidavit.

II. ANALYSIS

A. A Florida Statute specifies that the Clerk's affidavit shall be served with the Court's order.

Florida Rules of Civil Procedure require every document filed in an action to be served in accordance with the requirements of the relevant Florida Rule of Judicial Administration.[5] The relevant Florida Rule of Judicial Administration provides in pertinent part that "[u]nless...a statute...specifies a different means of service, every pleading subsequent to the initial pleading and every other document filed in any court proceeding....must be served in accordance with this rule on each party.[6] In this instance, a statute does specify a different means of service. Fla. Stat. §744.3685(2) specifies that "[t]he affidavit of the clerk shall be served with the order." (emphasis added). Accordingly, the Clerk is not required to serve the parties with the affidavit until it is accompanied by the Court's order.

B. Filing of the affidavit may be accomplished with either the Clerk or the Court, either by paper or electronically.

Florida Rules of Civil Procedure require every document filed in an action to be filed in accordance with the requirements of the relevant Florida Rule of Judicial Administration.[7] The relevant Florida Rule of Judicial Administration provides in pertinent part that "[p]aper documents and other submissions may be manually submitted to the clerk or court...for filing by...any self-represented non-party...[h]owever, any self-represented nonparty that is a governmental or public

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[5] Fla. R. Civ. P. 1.080(a)
[6] Fla. R. Jud. Admin. 2.516
[7] Fla. R. Civ P. 1.080(2).

agency...may file documents by electronic submission is such entity has the capability of filing documents electronically.[8] Further, Fla. R. Jud. Admin. 2.516(e) defines filing in pertinent part as "filing them with the clerk in accordance with Rule 2.525, except that the judge may permit documents to be filed with the judge." Based on the above, the Clerk may file an affidavit pursuant to the requirements of Fla. Stat. §744.368(6), with either the Clerk or the Court, either by paper or electronically.

C. No ex parte communication occurs when a Clerk files an affidavit with the Court because the Clerk is part of the judiciary and not a party to the case.

Black's Law Dictionary defines 'ex parte communication' as "as communication between counsel and the court when opposing counsel is not present." The same dictionary defines 'ex parte order' as "an order made by the court upon application of one party to an action without notice to the other." With regard to guardianship cases, the Clerk is a part of the judiciary and acts as an arm of the court to provide an independent check and balance when it comes to guardianship audits.[9] Further, the Clerk neither meets the definition of 'party,' which is defined as "one by or against whom a lawsuit is brought," nor a 'litigant,' defined as a "party to the lawsuit."[10] As the Clerk is a part of the judiciary, acts as an arm of the court, does not appear in the style of guardianship cases, and is a nonparty in guardianship actions, the Clerk can cause neither an ex parte communication, nor ex parte order to occur when reporting information or filing an affidavit with the Court. Arguing in the alternative, if the Clerk were a party to the case and the type of aforementioned communication were considered ex parte, it would still be allowed under judicial canons as it is expressly authorized by Florida Statutes.[11]

D. Due process occurs when the party receiving the order from the Court also receives a copy of the Clerk's affidavit and is afforded an opportunity to request a timely hearing to show why they should not be compelled to produce records requested by the Clerk.

Due process is defined as "the conduct of legal proceedings according to established rules and principles for the protection and enforcement of private rights, including notice and the right to a fair hearing before a tribunal with the power to

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[8] Fla. R. Jud. Admin. 2.525 (d)(2.
[9] Fla. Const., Art. V, §16; Fla. Stat. 744.368.
[10] Black's Law Dictionary, Third Pocket Edition.
[11] Fla. Code of Judicial Conduct Canon 3(B)(7)(e); Fla. Stat. §744.368(6); Fla. Stat. §744.3685(2).

decide the case." [12] Fla. Stat. §744.3685(2) specifies that "[i]f a guardian fails to comply with the submission of records and documents requested by the clerk during the audit, upon a showing of good cause by affidavit of the clerk which shows the reasons the records must be produced, the court may order the guardian to produce the records and documents within a period specified by the court unless the guardian shows good cause as to why the guardian may not be compelled to do so before the deadline specified by the court. The affidavit of the clerk shall be served with the order" (emphasis added). Based on the above, due process occurs when the guardian receives a copy of the Clerk's affidavit along with the Court's order, and has an opportunity to request an evidentiary hearing where they can show good cause for not producing the documents the Clerk requested. There are no substantive due process issues at stake in a hearing about whether documents should be provided so the Clerk can complete an audit. The Court at an evidentiary hearing is not issuing a final judgment, or entertaining a full trial, but merely making a determination regarding the production of documents.

III. Conclusion

Fla. Stat. §744.368 (5) – (6) and Fla. Stat. §744.3685(2) authorize the Clerk to file an affidavit, without simultaneously notifying or serving parties to the case, requesting that the Court issue an order to show cause when records and documents related to a guardianship audit have not been provided by the guardian as previously requested by the Clerk. The filing of an affidavit in this manner complies with Florida Rules of Judicial Administration governing service and filing. Further, because the Clerk is a part of the judiciary, acts as an arm of the court, and is not a party to any guardianship case, the filing of an affidavit requesting a show cause order does not cause any ex parte communication or ex parte order to occur. Even if the Clerk were a party to the case, Florida Judicial Cannons would allow this type of ex-parte communication since it is expressly authorized by Florida Statute. Finally, guardians' due process rights are preserved when the Clerk files an affidavit and the Court issues an order because the guardian receives a copy of the Clerk's affidavit at the time they are served the Court order and they have an opportunity to request an evidentiary hearing to show good cause as to why they should not have to produce the documents requested by the Clerk, before the Court-established deadline to produce the documents.

[12] Black's Law Dictionary, Third Pocket Edition.

EXHIBIT G

EXHIBIT G
MEMORANDUM

Date: May 10, 2016

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

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

From: Kim G. Rowe and Elyse Tyrell

Re: Revision of Chapter 159 to incorporate concept of "Incapacitated Person"

As previously discussed in several Commission meetings, Chapter 159 of the Nevada Revised Statutes dealing with guardianships currently utilizes the concept of an "incompetent person" rather than the concept of an "incapacitated person" in determining if a person should be subject to guardianship. A review of the guardianship laws from other states indicates at the present time a significant majority of states utilize the concept of incapacitation rather than incompetence for describing a person in need of guardianship. Use of the term incapacitated person is also consistent with the terminology used by medical professionals who are opining with respect to individuals potentially subject to guardianship. Additionally, NRS 159.022 currently contains a definition of the term "limited capacity" to described individuals who are capable of making some but not all decisions concerning the care and management of their property. Shifting the focus of Chapter 159 from the use of term incompetent to incapacitated person more closely aligns with the current utilization of the concept of limited capacity to describe persons who are appropriate for a special limited guardianship.

The revisions necessary to Chapter 159 to incorporate the concept of incapacitated person as opposed to incompetent person are straight forward. First, the definition of "incompetent" contained in NRS 159.019 should be eliminated and the term "incapacitated person" inserted in its place. The term "incapacitated person" is defined in various ways in other states statutes. Most definitions appear to be derivative of the definition found in the original version of the Uniform Guardianship And Protective Proceedings Act ("UGPPA") which focuses on the persons cognitive functioning rather than a disabling condition. The UGPPA definition, with minor modification, can be utilized. The proposed definition would read as follows:

"Incapacitated person means an individual who, for reasons other than being a minor, is unable to receive and evaluate information or make or communicate decisions to such an extent that the individuals lacks the ability to meet essential requirements for physical health, safety, or self care without appropriate assistance."

Currently Chapter 159 of the Nevada Revised Statutes contains eighteen references to the term incompetent including the definition found in NRS 159.019. Those references can easily be revised to reference incapacity or incapacitation without requiring wholesale modifications to the remainder of the Chapter.

PHYSICIAN'S CERTIFICATE WITH NEEDS ASSESSMENT
(Please print clearly or type)

I, _____, am a physician licensed to practice in the State of Nevada.
Physician's Full Name

I examined _____, an adult, on _____.
Proposed protected person's (the patient's) Full Name Date of Exam

This proposed protected person suffers from (Diagnosis) _____
_____
_____
_____

which is a _____ Permanent Condition _____ Temporary Condition.

I certify that this proposed protected person is unable to respond (check all that apply; at least one must be provided:

_____ To a substantial and immediate risk of physical harm.

_____ To an immediate need for medical attention.

_____ To a substantial and immediate risk of financial loss.

Describe immediate risk or need: _____
_____
_____

Attached hereto is (check all that apply; at least one must be provided):

_____ A copy of my report of the above exam which includes my findings, opinion and diagnosis regarding the proposed protected person and his/her mental condition and/or capacity.

_____ A copy of the proposed protected person's chart notes which support and/or detail my findings, opinion and diagnosis regarding the proposed protected person and his/her mental condition and/or capacity.

_____ A letter, signed by me, detailing my findings, opinion and diagnosis regarding the proposed protected person and his/her mental condition and/or capacity.

My opinion of the proposed protected person's mental capacity and/or ability to function independently without assistance of others is _____
_____
_____

My opinion as to the proposed protected person's risk of harm and need for supervision is as follows:

The proposed protected person's risk of harm to self is:
_____ Mild _____ Moderate _____ Severe

The proposed protected person's risk of harm to others is:
_____ Mild _____ Moderate _____ Severe

The proposed protected person's level of needed supervision is as follows:
___ Locked Facility ___ 24 Hour Supervision _____ No Supervision
_____ Independent Living/Some Supervision ___ No Supervision When Taking Meds

My opinion as to the proposed protected person's everyday functions is as follows:

CARE OF SELF (ACTIVITIES OF DAILY LIVING (ADL's) AND RELATED ACTIVITIES

Maintain adequate hygiene, including bathing, dressing, toileting, dental
_____ Independent ___ Needs Assistance ___ Total Care
Prepare meals and eat for adequate nutrition
_____ Independent ___ Needs Assistance ___ Total Care
Identify abuse or neglect and protect self from harm
_____ Independent ___ Needs Assistance ___ Total Care

FINANCIAL (IF APPROPRIATE NOTE DOLLAR LIMITS)

Manage and use checks, deposit, withdraw, dispose, invest monetary assets
_____ Independent ___ Needs Assistance ___ Total Care
Enter into a contract, financial commitment, or lease arrangement
_____ Independent ___ Needs Assistance ___ Total Care
Employ persons to advise or assist him/her
_____ Independent ___ Needs Assistance ___ Total Care
Resist exploitation, coercion, undue influence
_____ Independent ___ Needs Assistance ___ Total Care

MEDICAL

Give/Withhold medical consent
_____ Independent ___ Needs Assistance ___ Total Care
Admit self to health facility
_____ Independent ___ Needs Assistance ___ Total Care
Make or change an advance directive
_____ Independent ___ Needs Assistance ___ Total Care
Manage medications
_____ Independent ___ Needs Assistance ___ Total Care
Contact help if ill or in medical emergency
_____ Independent ___ Needs Assistance ___ Total Care

HOME & COMMUNITY LIFE

Choose/Establish abode
_____ Independent ___ Needs Assistance ___ Total Care
Maintain reasonably safe and clean shelter
_____ Independent ___ Needs Assistance ___ Total Care
Drive or use public transportation
_____ Independent ___ Needs Assistance ___ Total Care
Make and communicate choices regarding roommates
_____ Independent ___ Needs Assistance ___ Total Care
Avoid environmental dangers such as stove and poisons, obtain medical help
_____ Independent ___ Needs Assistance ___ Total Care

The proposed protected person should _____ or should not _____ be required to attend a hearing on the petition for guardianship. If the proposed protected person should not attend, please explain:

_____

_____

_____

Because I do not believe the proposed protected person should attend a guardianship hearing, I informed the proposed protected person of his/her right to an attorney in the guardianship proceedings.

_____ Yes _____ No

_____ The proposed protected person has requested appointment of an attorney.

_____ The proposed protected person would not comprehend the need for attorney representation.

_____ Discussing the need for attorney representation with the proposed protected person would be detrimental to his/her mental health.

Response of proposed protected person: _____

_____

_____

My opinion as to the proposed protected person's need for a guardian is as follows:
_____ The proposed protected person does not need a guardian.
_____ The proposed protected person needs only a guardian of the person.
_____ The proposed protected person needs only a guardian of the estate.
_____ The proposed protected person needs a guardian of the person and estate to make medical and financial decisions.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: _____

_____
Physician's Signature

_____
Print Physician's Name

Address: _____

_____

_____

PCRT
ATTORNEY NAME
BAR NUMBER
ATTORNEY ADDRESS

PHONE NUMBER
FAX NUMBER
EMAIL ADDRESS
Attorney for the Petitioner(s),

DISTRICT COURT
_____COUNTY, NEVADA

In the Matter of the Guardianship of the person and estate of _____, a Protected Person.	Case No.:G-__-_____ Family Court Dept. No.:

PHYSICIAN'S CERTIFICATE

Date of Hearing:
Time of Hearing:

STATE OF NEVADA)
: ss:
COUNTY OF CLARK)

_____, being first duly sworn according to law, deposes and says:

I am a physician for_____, the above-named proposed protected person, and am licensed to practice in the State of Nevada.

I have been informed that _____, the _____(relationship) of the above proposed protected person, are filing with the court a verified Petition for Appointment of General Guardian(s) in order to secure his/her/their appointment as the General Guardian(s) of the person and estate of _____.

_____ suffers from _____

_____

_____.

As a result, it is my opinion that _____ needs a guardian of:

_____ Person only;

_____ Estate only;

_____ Both Person and Estate.

It is my opinion that _____:

_____ Is able to attend the Guardianship hearing;

_____ Would not comprehend the reason for the Court hearing or be able to contribute to the proceeding;

_____ Should not attend the Court hearing as it would be detrimental to him/her, and therefore his/her presence from court should be excused.

It is my opinion that _____ is unable to respond (check all that apply):

_____ To a substantial and immediate risk of physical harm;

_____ To a substantial and immediate risk of financial harm;

_____ To an immediate need for medical attention;

_____ None of the above.

Further, due to the condition of _____, he/she should not be allowed to own a gun.

Under the penalty of perjury, the undersigned declares the foregoing Affidavit to be true and correct.

DATED this _____ day of _____, _____.

Sign Name: _____

Print Name:

EXHIBIT H

EXHIBIT H
BILL OF RIGHTS

Bill of Rights: When a person is appointed a guardian, you do not lose all their rights or the right to take part in important decisions affecting your property and way of life. Here are some of your rights:

1. You have the right to an attorney before the guardianship is imposed and at any time during the guardianship to ask the court for relief.

2. You have the right to have due consideration be given of your current and previously stated personal desires, medical treatment preferences, religious beliefs and other preferences and opinion, and to have your wishes considered.

3. You have the right to participate in the development of a plan for your care, including management of your assets, your personal property, where you will live, and how you will live.

4. You should be granted the greatest degree of freedom possible consistent with the reasons for the guardianship.

5. You have the right to remain as independent as possible, including having your preference as to place and standard of living honored, either as you expressed or demonstrated prior to the determination of incapacity or as you currently express, as long as the request is reasonable under the circumstances.

6. You have the right to be treated with respect and dignity.

7. You have the right to be treated fairly by your guardian.

8. You have the right to receive timely, effective, and appropriate health care and medical treatment that does not violate your rights.

9. You have the right to receive calls and personal mail and to have visitors, unless the guardian and the court determine that the visitors or messages will cause you harm.

10. You have the right to personal privacy and confidentiality in personal matters, subject to state and federal law.

11. You have the right to ask questions and to express concerns and complaints about your guardian and/or his or her actions, either in writing or orally.

12. You have the right in a court hearing to have family, interested parties, or medical providers speak or raise concerns, either orally or in writing, to the court about issues of concern to you, including conflicts with the guardian.

13. You have the right to ask the court to review the guardian's management if disputes cannot be resolved.

14. You have the right to ask the court to end the guardianship.

15. You have the right to receive a copy of all documents filed in the guardianship action.

16. You have the right to have all services provided by a guardian at a reasonable rate of compensation and to have a court review requests for payment to avoid excessive or unnecessary fees or redundant or double billing.

17. You have the right to receive regular detailed financial accounting reports, including reports on any investments or trusts that are held for your benefit, as well as any expenditures and fees charged to the estate.

Nothing in this document abrogates other remedies existing in law. All of these rights can be addressed in the guardianship action or are enforceable through a private right of action.

EXHIBIT I

EXHIBIT I

RIGHTS OF A PERSON FACING OR UNDER GUARDIANSHIP THAT SHOULD BE ADDED TO STATUTE:

1. Visits/Communications
    a. Except as otherwise provided in paragraph (c), a proposed protected person or protected person has the right to receive communications and visits from any visitor of his or her choosing. The proposed protected person or protected person may also refuse communications and visits.
    b. Except as otherwise provided in paragraph (c), if the proposed protected person or protected person is unable to express consent to interact with other persons due to a mental, emotional, or physical condition, then consent may be presumed based on the person's prior relationship with such other persons unless the proposed protected person or protected person has previously documented his or her wishes not to interact with the person seeking access to him or her.
    c. A guardian may limit, supervise, or restrict communication or visits, but only to the extent necessary to protect the proposed protected person or protected person from harm. If restrictions are made, the guardian must advise the proposed protected person or protected person, his or her attorney or representative, and visitor of the restriction and the reason for it. If the proposed protected person or protected person or their attorney, or any interested party objects, the court shall schedule a hearing on the restriction.

2. Moves – Remove move provisions NRS 159.079(4) and create a new statute as follows:
    a. Every protected person has the right to have his or her preferences followed, if possible, and the right to age in their own surroundings, if possible, and if not, in the least restrictive environment suitable to their unique needs and abilities
    b. Except as otherwise provided in paragraph (e), a proposed protected person shall not be moved until a Guardian is appointed.
    c. Except as otherwise provided in paragraph (e), when a guardian or proposed guardian intends to admit a protected person to a nursing home or change the residential placement of the person from a private home to a boarding home, residential care home, assisted living residence, group home, or other similar facility, the guardian must first file a motion for permission to do so and must show that the proposed move is in the best interest of the protected person and that a compelling reason is necessary for the relocation.
    d. Except as otherwise provided in paragraph (e), for any other change of residence sought be a guardian, the guardian must propose to move the protected person only if it is in the best interest of the protected person and with notice to all parties with an opportunity for the party or interested person to object to the proposed move. If no objection is received within ten days of the notice, the protected person may be moved without court permission.
    e. If the health or safety of the proposed protected person or protected person is at risk of imminent harm, or if the proposed protected person or protected person has been hospitalized and is unable to return to his or her home, the guardian may take any temporary action needed without court permission. Whenever possible, the guardian

shall make only a temporary move until court permission is sought. In all instances, notice should be given to the proposed protected person or protected person, his or her attorney, and all interested parties. As soon as it practicable, the guardian shall file a motion with the court for permission to continue the placement.

3. Remedies:
    a. If a guardian violates the rights contained in this chapter, a court may take appropriate actions, including, but not limited to:
        i. Issuance of an Order that certain actions be taken or discontinued;
        ii. A disallowance of any fees payable to the guardian surrounding said action;
        iii. An order after notice and hearing compensating the person under the guardianship for any injury or death or loss of money or property caused by the action or caused by failing to take the appropriate action;
        iv. Removal of the guardian;
        v. Such other action as may be fit and proper under the circumstances.

    b. For any action deemed deliberately harmful, fraudulent, or committed with malice, the court may also impose:
        i. Twice the actual damages incurred by the person;
        ii. Attorney's fees and costs.

4. Accountings – NRS 159.179
    a. If the proposed protected person or protected person has assets, the report must include a beginning balance and ending balance.
    b. All reports must be served on proposed protected person or protected person and his or her attorney.
    c. All expenses must be itemized; receipts for amounts over $250 must be filed, unless waived by the court.
    d. A protected person or his or her attorney is entitled to receive copies of any accountings relating to any trusts created by or for the benefit of the protected person. A protected person may submit any trust to the jurisdiction of the court if the protected person or the spouse, or both, are the grantors and sole beneficiaries of the income of the trust or if the trust was created at the direction of or with the consent of the court.

5. Appointment of Volunteer Guardian ad Litem, Advocate, or Attorney Guardian ad Litem
    a. If a court approved program for volunteers exists in the judicial district, a court may appoint a person to represent the proposed protected person or protected person as a guardian ad litem or as an advocate if the court believes that the proposed protected person or protected person could benefit from said appointment. If established, all volunteers in such programs must attend and complete appropriate training as determined by national or state sources or approved by the Nevada Supreme Court or the court in that judicial district.
    b. The guardian ad litem or advocate is an officer of the court and not a party to the case except as provided in subsection (c). His or her duty is not to offer legal advice but to advocate for the best interest of the person in a manner that will enable the court to

determine what action will be the least restrictive and best for the proposed protected person or protected person. A GAL is not always appointed in guardianship proceedings and is only utilized when the court has reason to believe such services would be beneficial in determining the best interest of the proposed protected person or protected person.

c. If a court believes that an attorney representing the proposed protected person or protected person is insufficient to provide information needed by the court to make a determination, if no volunteer guardian ad litem or advocate program exists and/or can provide a volunteer, or in extraordinary instances where an attorney ad litem may assist the court, the court may appoint an attorney guardian ad litem. This attorney will not represent the proposed protected person or protected person, but will act as an officer of the court to advocate for the proposed protected person or protected person's best interest and to provide information to the court as outlined by appropriate Court rule.

6. Advising a Proposed protected person or protected person of their Legal Rights: NRS 159.0535

This statute needs to be amended to remove the physician from obligations to advise the proposed protected person or protected person that they have a right to an attorney. The court or attorney for the proposed protected person or protected person should advise the proposed protected person or protected person of this.

EXHIBIT J

EXHIBIT J
Guardianship statutes specific to minors – *proposed*
Chapter 159A

Applicability of chapter:

-In addition to the provisions of Chapter 159, this chapter applies to any guardianship proceeding where the Protected Person is a minor. If any provision of Chapter 159 is found to conflict with a provision in this chapter, the provisions in this chapter shall control.

159A.001 (Similar to NRS 159.023) – **"Minor" defined.** "Minor" means any person who is:

1. Less than 18 years of age; or
2. Less than 19 years of age if the guardianship is continued until the person reaches the age of 19 years pursuant to NRS 159A.020.

159A.002 – Suitability of parent

1. *A parent of a minor shall be presumed to be suitable to serve as guardian where the parent has petitioned the court for guardianship.*
2. *A parent of a minor child is unsuitable to care for their child if:*
   (a) They are unable to provide for any or all of the basic needs of their child. Basic needs include:
      (i) Food
      (ii) Clothing
      (iii) Shelter
      (iv) Medical Needs
      (v) Education; and
   (b) Due to action, or inaction, they pose a significant safety risk of either physical or emotional danger to their child.
2. *When determining whether a parent is unable to provide for the basic needs of their child, the court shall consider any special needs of the child.*
3. *After a hearing on the merits, or an evidentiary hearing, in the event of competing petitions for guardians, any finding of unsuitability of a parent must be found by clear and convincing evidence. The court may nevertheless award temporary guardianship, supported by findings pending a trial or evidentiary hearing.*

159A.003 (Similar to NRS 159.044) – **Petition for appointment of guardian: Who may submit; content; needs assessment required for proposed protected minor.**

1. Except as otherwise provided in NRS 127.045, a proposed protected minor, 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 protected minor.

(c) A copy of one of the following forms of identification of the proposed protected minor 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 birth certificate;
(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) The date on which the proposed protected minor 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 protected minor will need guardianship after attaining the age of majority.

(e) Whether the proposed protected minor is a resident or nonresident of this State.

(f) The names and addresses of the relatives of the proposed protected minor 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 protected minor 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 valid driver's license number;
(3) A valid identification card number; or
(4) 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 ***any available*** documentation demonstrating the need for a guardianship, ***including any custodial orders or other court information regarding the custodial status of the proposed protected minor.***

(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 protected minor and any income to which the proposed protected minor is or will be entitled, if the petition is for the appointment of a guardian of the estate or a special guardian.

(m) The name and address of any person or care provider having the care, custody or control of the proposed protected minor.

(n) If the petitioner is not the parent(s) of the proposed protected minor, a declaration explaining the relationship of the petitioner to the proposed protected minor or to the proposed protected minor's parent(s), if any, and the interest, if any, of the petitioner in the appointment.
(o) If the guardianship is sought as the result of an investigation of a report of abuse or neglect of the proposed protected minor, whether the referral was from a law enforcement agency or a state or county agency.
(p) Whether the proposed protected minor or the proposed guardian is a party to any pending criminal or civil litigation.
(q) Whether the guardianship is sought for the purpose of initiating litigation.
(r) Whether the proposed guardian has filed for or received protection under the federal bankruptcy laws within the immediately preceding 7 years.

159A.004 – **Appointment of Investigator** (NRS 159.046 outlines appointment of investigators)

1. ***Upon filing of the petition, or any time thereafter, the court may order that an investigation into the suitability of a proposed guardian(s) to provide for the basic needs of the protected minor: food, clothing, shelter, medical needs, and basic education. The court may order an investigation to locate relatives of the proposed protected minor within the second degree of consanguinity.***
2. ***The court may order that any such investigation, pursuant to paragraph 1, be performed by the appropriate State and/or County agency charged with the authority to conduct investigations into the abuse and neglect of children.***

159A.005 (Similar to NRS 159.048) – **Contents of citation.** The citation issued pursuant to NRS 159.047 must state that:

1. ***A guardian may be appointed for the proposed protected minor;***
2. Proposed protected minor's rights may be affected, ***as well as the rights of any legal or physical custodian;***
3. ***Proposed protected minor has the right to appear at the hearing and to oppose the*** petition; and
4. Proposed protected minor has the right to be represented by an attorney, who may be appointed for the proposed protected minor by the court.
5. ***The court may appoint an attorney and/or guardian ad litem for the proposed protected minor or protected minor at any time during the proceedings pursuant to NRS 159.048.***

159A.006 (Similar to NRS 159.0483) – **Attorney for proposed protected minor or protected minor.**

A protected minor or proposed protected minor who is the subject of proceedings held pursuant to this chapter may be represented by an attorney at all stages of the proceedings. If the protected minor or proposed protected minor is represented by an attorney, the attorney has the same authority and rights as an attorney representing a party to the proceedings.

159A.0065 Guardian ad Litem for proposed protected minor or protected minor.

1. ***A protected minor or proposed protected minor who is the subject of proceedings held pursuant to this chapter may be appointed a guardian ad litem if the court believes that the proposed protected minor or protected minor could benefit from said appointment.***

2. ***The guardian ad litem is an officer of the court and not a party to the case and is not an attorney except as provided in subsection (3). His or her duty is not to offer legal advice but to advocate for the best interest of the proposed protected minor or protected minor.***
3. ***If a court believes that an attorney representing the proposed protected minor or protected minor is insufficient to provide information needed by the court to make a determination, if no volunteer guardian ad litem exists and/or can provide a volunteer, or in extraordinary instances where an attorney ad litem may assist the court, the court may appoint an attorney guardian ad litem. This attorney will not represent the proposed protected minor or protected minor, but will act as an officer of the court to advocate for the proposed protected minor or protected minor's interest and to provide information to the court as outlined by appropriate Court rule.***

159A.007 (Similar to NRS 159.049) – **Appointment without issuance of citation.** The court may, without issuing a citation, appoint a guardian for the proposed protected minor if the petitioner is a parent who has sole legal and physical custody of the proposed protected minor as evidenced by a valid court order or birth certificate and who is seeking the appointment of a guardian for the minor child of the parent. If the proposed protected minor is 14 years of age or older:

1. The petition must be accompanied by the written consent of the minor to the appointment of the guardian; or
2. The minor must consent to the appointment of the guardian in open court.

159A.008 (Similar to NRS 159.052) – **Temporary guardian for protected minor who is in need of *immediate medical attention*: petition for appointment; conditions; required notice; extension; limited powers**

1. A petitioner may request that the court appoint a temporary guardian for a protected person who is a minor ***in need of immediate medical attention which he/she cannot obtain without the appointment of a temporary guardian.*** 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 protected minor needs immediate medical attention and, ***without the appointment of a temporary guardian, cannot obtain that immediate medical attention.*** Such documentation must include a copy of the birth certificate, or other reliable documentation, verifying the age of the proposed protected minor.

(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 protected minor would be exposed to an immediate risk of physical harm if the petitioner were to provide 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 protected minor is in need of ***immediate medical attention that he/she cannot obtain without the appointment of a temporary guardian; 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. 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 feasible or was not required pursuant to subparagraph (2) or (3) 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 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 protected minor continues to be in need of ***immediate medical attention which he/she cannot obtain without the continued appointment of a temporary guardian***, 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 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.

159A.009 (Similar to NRS 159.052) – **Temporary guardian for protected minor who is *not in need of immediate medical attention;* petition for appointment; conditions; required notice; extension**

1. A petitioner may request that the court appointment a temporary guardian for the person and/or estate of a protected minor ***by filing a verified petition.***

2. The petition shall state facts, which establish good cause for appointment of the temporary guardian. The court, upon that petition or other showing as it may require, may appoint a temporary guardian of the person and/or estate of the minor. Such petition must include facts, which show that:

(a) 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;

(b) The proposed protected minor would be exposed to an immediate risk of physical, emotional, or financial harm if the petitioner were to provide notice pursuant to NRS 159.047 before the court determines whether to appoint a temporary guardian; or

(c) Giving notice to the persons entitled to notice pursuant to NRS 159.047 is not feasible under the circumstances.

3. A petition seeking the temporary appointment of a guardian on an ex parte basis shall be accompanied by an affidavit explaining the emergency that requires a guardian to be appointed before a hearing.

4. If the parent(s) of the protected minor have not had care, custody and control of the minor for the 6 months preceding the petition, a presumption shall apply that temporary guardianship of the minor's person is in the best interest of the minor.

5. 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.

6. If, before the appointment of a temporary guardian, the court determined that advance notice was not feasible or was not required pursuant to paragraph (b) or (c) of subsection 2, 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.

7. Not later than 10 court days after the ex parte appointment of a temporary guardian, the court shall hold a hearing to determine the need to extend the temporary guardianship. Except as otherwise provided in subsection 8, if the court finds by clear and convincing evidence that the proposed protected minor continues to be in need of a temporary guardian, the court may extend the temporary guardianship until a general or special guardian is appointed, pursuant to subsection 9.

8. The court may not extend a temporary guardianship pursuant to subsection 7 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.

9. The court may extend the temporary guardianship, for good cause shown, for not more than two successive 60-day periods, unless extraordinary circumstances necessitate a longer period for the temporary guardianship.

10. If for any reason the appointed guardian cannot perform the duties of a guardian, the court, on a petition filed for temporary guardianship, may appoint a temporary guardian to exercise the powers of guardian until a new permanent guardian is appointed.

159A.010 (Similar to NRS 159.061) – **Preference for parent of minor; other considerations in determining qualifications and suitability of guardian**

The parents of a minor, or either parent, if qualified and suitable, are preferred over all others for appointment as guardian for the minor***'s person or estate.*** The appointment of a parent as guardian for the minor***'s person or estate*** must not conflict with a valid order for custody of the minor.

1. In determining whether the parents of a minor, or either parent, or any other person who seeks appointment as guardian for the minor is qualified and suitable, the court shall consider, if applicable and without limitation:

(a) Which parent has physical custody of the minor;

(b) The ability of the parents, parent or other person to provide for the basic needs of the minor, including, without limitation, food, shelter, clothing and medical care;

(c) Whether the parents, parent or other person has engaged in the habitual use of alcohol or any controlled substance during the previous 6 months, except the use of marijuana in accordance with the provisions of chapter 453A of NRS;

(d) Whether the parents, parent or other person has been convicted of a crime of moral turpitude, a crime involving domestic violence or a crime involving the abuse, neglect, exploitation, isolation or abandonment of a child, his or her spouse, his or her parent or any other adult; and

(e) Whether the parents, parent or other person has been convicted in this State or any other jurisdiction of a felony, ***unless the court determines the parents, parent or other person is suitable to be guardian.***

(f) Whether the minor has not been in the care, custody, and control of the parent for the 6 months preceding the filing of the petition, in which case a rebuttable presumption arises that the parent is not suitable.

(g) Whether a proposed guardian or person seeking guardianship has engaged in one or more acts of domestic violence against the child, a parent of the child or any other person residing with the child.

3. Subject to the preference set forth in subsection 1, the court shall appoint as guardian the qualified person who is most suitable and is willing to serve.

4. In determining whether to appoint a guardian of the person and/or estate of a minor, and who should be appointed, the court must always act within the best interests of the minor child.

5. In determining which qualified person is most suitable, the court shall, in addition to considering any applicable factors set forth in subsection 2, give consideration, among other factors, to:

(a) Any nomination of a guardian for the minor contained in a will or other written instrument executed by a parent of the minor.

(b) Any request made by the minor, if he or she is 14 years of age or older, for the appointment of a person as guardian for the minor.

(c) The relationship by blood or adoption of the proposed guardian to the minor. In considering preferences of appointment, the court may consider relatives of the half blood equally with those of the whole blood. The court may consider relatives in the following order of preference:

(1) Parent.

(2) Adult sibling.

(3) Grandparent.

(4) Uncle or aunt.

(d) Any recommendation made by a master of the court or special master pursuant to NRS 159.0615.

(e) Any recommendation made by:

(1) An agency which provides child welfare services, an agency which provides child protective services or a similar agency; or

(2) A guardian ad litem or court appointed special advocate who represents the minor.

(f) Any request for the appointment of any other interested person that the court deems appropriate.

5. As used in this section, "agency which provides child welfare services" has the meaning ascribed to it NRS 432B.030.

159A.011 (Similar to NRS 159.0755) – **Disposition of estate having value not exceeding by more than $10,000 aggregate amount of unpaid expenses of and claims against estate.** If, at the time of the appointment of the guardian or thereafter, the estate of a protected minor consists of personal property having a value not exceeding by more than $10,000 the aggregate amount of unpaid expenses of administration of the guardianship estate and claims against the estate, the guardian of the estate, with prior approval of the court by order, may pay those expenses and claims from the estate and deliver all the remaining personal property to such person as the court may designate in the order, to be held, invested or used as ordered by the court. The recipient of the property so delivered shall give a receipt therefor to the guardian. The receipt is a release and acquittance to the guardian as to the property so delivered. The guardian shall file in the proceeding proper receipts or other evidence satisfactory to the court showing the delivery, and the guardian is released from his or her trust and the bond of the guardian is exonerated.

159A.012 (Similar to NRS 159.076) – **Summary administration.**

1. The court may grant a summary administration if, at any time, it appears to the court that after payment of all claims and expenses of the guardianship the value of the protected minor's property does not exceed $10,000.

2. If the court grants a summary administration, the court may:

(a) Authorize the guardian of the estate or special guardian who is authorized to manage the protected minor's property to convert the property to cash and sell any of the property, with or without notice, as the court may direct. After the payment of all claims and the expenses of the guardianship, the guardian shall deposit the money in savings accounts or invest the money as provided in NRS 159.117, and hold the investment and all interest, issues, dividends and profits for the benefit of the protected minor. The court may dispense with annual accountings and all other proceedings required by this chapter.

(b) Terminate the guardianship of the estate and direct the guardian to deliver the protected minor's property to the custodial parent or parents, guardian or custodian of the minor to hold, invest or use as the court may order.

3. Whether the court grants a summary administration at the time the guardianship is established or at any other time, the guardian shall file an inventory and record of value with the court.

4. If, at any time, the net value of the estate of the protected minor exceeds $10,000:

(a) The guardian shall file an amended inventory and accounting with the court;

(b) The guardian shall file annual accountings; and

(c) The court may require the guardian to post a bond.

159A.013 (Similar to NRS 159.079) - **General functions of guardian of person; establishment or change of protected minor's residence by guardian.**

1. Except as otherwise ordered by the court, a guardian of the person has the care, custody and control of the person of the protected minor, and has the authority and, subject to subsection 2, shall perform the duties necessary for the proper care, maintenance, education and support of the protected minor, including, without limitation, the following:

(a) Supplying the protected minor with food, clothing, shelter and all incidental necessaries, including locating an appropriate residence for the protected minor.

(b) Authorizing medical, surgical, dental, psychiatric, psychological, hygienic or other remedial care and treatment for the protected minor.

(c) Seeing that the protected minor is properly trained and educated and that the protected minor has the opportunity to learn a trade, occupation or profession.

2. In the performance of the duties enumerated in subsection 1 by a guardian of the person, due regard must be given to the extent of the estate of the protected minor. A guardian of the person may be required to incur expenses on behalf of the protected minor if the estate of the protected minor is insufficient to reimburse the guardian.

3. A guardian of the person is the protected minor's personal representative for purposes of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, and any applicable regulations. The guardian of the person has authority to obtain information from any government agency, medical provider, business, creditor or third party who may have information pertaining to the protected minor's health care or health insurance.

4. Except as otherwise provided in subsection 6, a guardian of the person may establish and change the residence of the protected minor at any place within this State without the permission of the court. The guardian shall select the least restrictive appropriate residence which is available and necessary to meet the needs of the protected minor and which is financially feasible.

5. Except as otherwise provided in subsection 6, a guardian of the person shall petition the court for an order authorizing the guardian to change the residence of the protected minor to a location outside of this State. ***The guardian must show that the placement outside of this State is in the best interest of the protected minor or that there is no appropriate residence available for the protected minor in this State.*** The court shall retain jurisdiction over the guardianship unless the guardian files for termination of the guardianship pursuant to ***NRS 159A.020*** or the jurisdiction of the guardianship is transferred to the other state. ***In any event, the guardian must file a petition for guardianship within the state of the protected minor's residence within 6 months of the relocation.***

6. A guardian of the person must file a petition with the court requesting authorization to move a protected minor to or place a protected minor in a secured residential long-term care facility.

7. This section does not relieve a parent or other person of any duty required by law to provide for the care, support and maintenance of any dependent.

8. The court may issue a visitation order, in the guardianship order or any order thereafter, awarding visitation between the protected minor and his or her parent(s) and relatives within the fourth degree of consanguinity.

159A.014 (Similar to NRS 159.085) – **Inventory, supplemental inventory and appraisal of property of protected minor.**

1. Not later than 60 days after the date of the appointment of a general or special guardian of the estate or, if necessary, such further time as the court may allow, the guardian shall make and file in the guardianship proceeding a verified inventory of all of the property of the protected minor which comes to the possession or knowledge of the guardian.

2. A temporary guardian of the estate who is not appointed as the general or special guardian shall file an inventory with the court by not later than the date on which the temporary guardian files a final accounting as required pursuant to NRS 159A.020.

3. The guardian shall take and subscribe an oath, which must be endorsed or attached to the inventory, before any person authorized to administer oaths, that the inventory contains a true statement of:

(a) All of the estate of the protected minor which has come into the possession of the guardian;

(b) All of the money that belongs to the protected minor; and

(c) All of the just claims of the protected minor against the guardian.

4. Whenever any property of the protected minor not mentioned in the inventory comes to the possession or knowledge of a guardian of the estate, the guardian shall:

(a) Make and file in the proceeding a verified supplemental inventory not later than 30 days after the date the property comes to the possession or knowledge of the guardian; or

(b) Include the property in the next accounting.

5. The court may order which of the two methods described in subsection 4 the guardian shall follow.

6. The court may order all or any part of the property of the protected minor appraised as provided in NRS 159.0865 and 159.305.

7. If the guardian neglects or refuses to file the inventory within the time required pursuant to subsection 1, the court may, for good cause shown and upon such notice as the court deems appropriate:

(a) Revoke the letters of guardianship and the guardian shall be liable on the bond for any loss or injury to the estate caused by the neglect of the guardian; or

(b) Enter a judgment for any loss or injury to the estate caused by the neglect of the guardian.

159A.015 (Similar to NRS 159.089) – **Possession of and title to property of protected minor; guardian to secure certain documents.**

1. A guardian of the estate shall take possession of:

(a) All of the property of substantial value of the protected minor;

(b) Rents, income, issues and profits from the property, whether accruing before or after the appointment of the guardian; and

(c) The proceeds from the sale, mortgage, lease or other disposition of the property.

2. The guardian may permit the protected minor to have possession and control of the personal property and funds as are appropriate to the needs and capacities of the protected minor.

3. The title to all property to which the protected minor may have a beneficiary interest therein.

4. A guardian shall secure originals, when available, or copies of any:

(a) Revocable or irrevocable trust in which the protected minor has a vested interest as a beneficiary; and

(b) Writing evidencing a present or future vested interest in any real or intangible property.

159A.016 (Similar to NRS 159.093) – **Collecting obligations due to or *for protected minor.***

1. A guardian of the estate:

(a) Shall demand all debts and other choses in action due to the protected minor; and

(b) With prior approval of the court, may sue for and receive all debts and other choses in action due to the protected minor.

2. A guardian of the estate, with prior approval of the court by order, may compound or compromise any debt or other chose in action due to the protected minor and give a release and discharge to the debtor or other obligor.

3. A guardian of the person:

(a) Shall report to the court the entry of any child support order for the support of the protected minor or the approval of any public assistance for the protected minor, within 30 days of the entry of a child support order or approval for public assistance. A copy of the child support order or document approving public assistance shall be filed with the notice filed with the court.

(b) If an order for child support is in effect for the support of the protected minor, upon entry of an order for permanent guardianship, that child support shall be immediately assigned to the guardian for the support of the protected minor.

(c) May obtain an order for child support requiring the parent(s) of the protected minor to pay child support to the guardian pursuant to the provisions of NRS 125B.070 and 125B.080.

159A.017 (Similar to NRS 159.125) – **Gifts from estate of protected minor; expenditures for relatives of protected minor.**

A guardian of the estate, with prior approval of the court by order, may, from the estate of the protected minor which is not necessary for the proper care, maintenance, education and support of the protected minor, make reasonable gifts directly, or into a trust, on behalf of the protected minor.

159A.018 (Similar to NRS 159.185) – **Conditions for removal**

1. The court may remove a guardian if the court determines that:

(a) The guardian has become mentally incompetent, unsuitable or otherwise incapable of exercising the authority and performing the duties of a guardian as provided by law;

(b) The guardian is no longer qualified to act as a guardian pursuant to section 1 of this act [Chapter 437, Laws of Nevada 2015 and] or NRS 159A.010;

(c) The guardian has filed for bankruptcy within the previous 5 years;

(d) The guardian of the estate has mismanaged the estate of the protected minor;

(e) The guardian has negligently failed to perform any duty as provided by law or by any order of the court and:

(1) The negligence resulted in injury to the protected minor or the estate of the protected minor; or

(2) There was a substantial likelihood that the negligence would result in injury to the protected minor or the estate of the protected minor;

(f) The guardian has intentionally failed to perform any duty as provided by law or by any lawful order of the court, regardless of injury;

(g) The best interests of the protected minor will be served by the appointment of another person as guardian; or

(h) The guardian is a private professional guardian who is no longer qualified as a private professional guardian pursuant to NRS 159.0595.

2. A guardian may not be removed if the sole reason for removal is the lack of money to pay the compensation and expenses of the guardian.

159A.019 (Similar to NRS 159.186) – **Additional limitation governing removal of guardian of minor; considerations for court in determining best interests of minor; removal of guardian of minor.**

1. Notwithstanding any other provision of law, except as otherwise provided in subsection 3, the court shall not remove the guardian or appoint another person as guardian unless the court finds that removal of the guardian or appointment of another person as guardian is in the best interests of the minor.

2. For the purposes of this section in determining the best interests of the minor, the court shall consider, without limitation:

(a) The ability of the present guardian to provide for the basic needs of the minor, including, without limitation, food, shelter, clothing and medical care;

(b) The safety of the home in which the minor is residing;

(c) The length of time that the minor has been in the care of the present guardian;

(d) The current well-being of the minor, including whether the minor is prospering in the environment being provided by the present guardian;

(e) The emotional bond existing between the present guardian and the minor;

(f) If the person petitioning the court to replace the present guardian was previously removed from the care, custody or guardianship of the minor:

(1) The level of participation before the petition was filed by the petitioner in the welfare of the minor; and

(2) If applicable, whether the petitioner has received instruction in parenting, participated in a program of rehabilitation or undergone counseling for any problem or conduct that the court, in appointing the present guardian, considered as an indication of the previous unfitness of the petitioner; and

(g) The mental and physical health of the present guardian.

3. The court may remove the guardian of a minor or appoint another person as guardian if the guardian files a petition to resign his or her position as guardian.

159A.020 (Similar to NRS 159.191) – **Termination of guardianship of person, estate or person and estate; procedure upon death of protected minor.**

1. A guardianship of the person and/or estate is terminated:

(a) By the death of the protected minor;

(b) Upon the protected minor's change of domicile to a place outside this state and the transfer of jurisdiction to the court having jurisdiction in the new domicile;

(c) Upon order of the court, if the court determines that the guardianship no longer is necessary; or

(1) On the date on which the protected minor reaches 18 years of age; or

(2) On the date on which the protected minor graduates from high school or becomes 19 years of age, whichever occurs sooner, if:

(I) The protected minor will be older than 18 years of age upon graduation from high school; and

(II) The protected minor and the guardian consent to continue the guardianship and the consent is filed with the court at least 14 days before the date on which the protected minor will become 18 years of age.

2. If the guardianship is of the person and estate, the court may order the guardianship terminated as to the person, the estate, or the person and estate.

3. The guardian shall notify the court, all interested parties, the trustee, and the named executor or appointed personal representative of the estate of the protected minor of the death of the protected minor within 30 days after the death.

4. Immediately upon the death of the protected minor **or emancipation of a minor:**

(a) The guardian of the estate shall have no authority to act for the protected minor except to wind up the affairs of the guardianship pursuant to NRS 159.193, and to distribute the property of the protected minor as provided in NRS 159.195 and 159.197; and

(b) No person has standing to file a petition pursuant to NRS 159.078.

(c) A final accounting must be prepared, filed, served and set for hearing as required by NRS 159.177, 159.179, and 159.181.

(d) If a protected minor is incompetent, as defined by NRS 159.019, a Petition may be filed to transition the case from a Minor Guardianship to an Adult Guardianship for the protected person. The Petition must comply with all of the requirements of NRS 159.044 and must be noticed and served in accordance with NRS 159.047 and 159.048.

5. A hearing must be held 90 days prior to the person's reaching the age of majority to determine:

(a) the possible need for guardianship beyond the age of majority;

(b) whether the protected minor requests an additional year of guardianship;

(c) to place guardian on notice of any compliance issues that have to be met prior to the close of the case.

The protected minor has the right to be represented by counsel if a request for transition to adult guardianship is presented by petition or by oral motion.

159A.021 (Similar to NRS 159.205) – **Appointment of short-term guardianship for minor child by parent: When authorized; content of written instrument; term; termination.**

1. Except as otherwise provided in this section or NRS 127.045, a parent, without the approval of a court, may appoint in writing a short-term guardianship for an unmarried minor child if the parent has legal custody of the minor child.

2. The appointment of a short-term guardianship is effective for a minor who is 14 years of age or older only if the minor provides written consent to the guardianship.

3. The appointment of a short-term guardian does not affect the rights of the other parent of the minor.

4. A parent shall not appoint a short-term guardian for a minor child if the minor child has another parent:

(a) Whose parental rights have not been terminated;
(b) Whose whereabouts are known; and
(c) Who is willing and able to make and carry out daily child care decisions concerning the minor,

➥ unless the other parent of the minor child provides written consent to the appointment.

5. The written instrument appointing a short-term guardian becomes effective immediately upon execution and must include, without limitation:
(a) The date on which the guardian is appointed;
(b) The name of the parent who appointed the guardian, the name of the minor child for whom the guardian is appointed and the name of the person who is appointed as the guardian; and
(c) The signature of the parent and the guardian in the presence of a notary public acknowledging the appointment of the guardian. The parent and guardian are not required to sign and acknowledge the instrument in the presence of the other.

6. The short-term guardian appointed pursuant to this section serves as guardian of the minor for 6 months, unless the written instrument appointing the guardian specifies a shorter term or specifies that the guardianship is to terminate upon the happening of an event that occurs sooner than 6 months.

7. Only one written instrument appointing a short-term guardian for the minor child may be effective at any given time.

8. The appointment of a short-term guardian pursuant to this section:
(a) May be terminated by an instrument in writing signed by either parent if that parent has not been deprived of the legal custody of the minor.
(b) Is terminated by any order of a court of competent jurisdiction that appoints a guardian.

159A.022 (Similar to NRS 159.215) **- Guardian of person of minor child of member of Armed Forces.**

1. A member of the Armed Forces of the United States, a reserve component thereof or the National Guard may, by written instrument and without the approval of a court, appoint any competent adult residing in this State as the guardian of the person of a minor child who is a dependent of that member. The instrument must be:
(a) Executed by both parents if living, not divorced and having legal custody of the child, otherwise by the parent having legal custody; and
(b) Acknowledged in the same manner as a deed.

➥ If both parents do not execute the instrument, the executing parent shall send by certified mail, return receipt requested, to the other parent at his or her last known address, a copy of the instrument and a notice of the provisions of subsection 3.

2. The instrument must contain a provision setting forth the:
(a) Branch of the Armed Forces;
(b) Unit of current assignment;
(c) Current rank or grade; and
(d) Social security number or service number,

➥ of the parent who is the member.

3. The appointment of a guardian pursuant to this section:
(a) May be terminated by a written instrument signed by either parent of the child if that parent has not been deprived of his or her parental rights to the child; and
(b) Is terminated by any order of a court.

<u>159A.023</u> – Parental petition for termination

1. If a parent of a protected minor petitions the court prior to the protected minor's emancipation for the termination of a guardianship of their child, the parent has the burden of proof to show by clear and convincing evidence that:

(a) There has been a material change of circumstances since the time the guardianship was created. As part of the change of circumstances, the parent must show that they have restored themselves to suitability as defined by NRS 159A.002, and

(b) The welfare of the child would be substantially enhanced by the termination of the guardianship and placement of the protected minor with the parent.

2. If the parent consented to the guardianship when it was created, the parent is only required to prove that they have restored themselves to suitability.

EXHIBIT K

EXHIBIT K
NRS 159.... Compensation of attorney in guardianship cases

1. An attorney is entitled to just, reasonable and necessary compensation for the services associated with the commencement and administration of a guardianship. The attorney's compensation cannot be paid from the assets of the ward unless and until the Court allows the payment to occur as set forth herein.
2. When an attorney who intends to seek compensation from the estate of the ward first appears in the proceeding, the attorney must give written notice of the basis of his/her compensation by filing with the court a written agreement between the client and the attorney. This agreement:
   (a) Must provide a general explanation of the compensation arrangement and how the compensation will be computed;
   (b) Must include the hourly billing rates of all timekeepers (attorneys, law clerks, para-professionals, etc.);
   (c) Must be served by the attorney on all persons entitled to notice pursuant to NRS 159.034 and/or NRS 159.047;
   (d) Is subject to approval by the Court after petition, notice and hearing.
3. A petition requesting compensation must include the following information:
   (a) A detailed statement as to the nature and extent of services performed;
   (b) Itemization of each task done, with reference to time spent on each task in an increment to the nearest one-tenth of an hour, with no minimum billing unit in excess of one-tenth of an hour;
   (c) Whether any billed time, including time spent traveling or waiting, benefited clients of the attorney other than the ward, and if so, how many other clients benefited from that time spent;
   (d) Any other information considered relevant to a determination of entitlement.

   Absent approval from all interested persons, supplemental requests for fees cannot be augmented in open court and must be properly noticed in the same manner as the underlying petition.
4. In determining whether compensation is just, reasonable and necessary, the Court may consider the following factors, without limitation:
   (a) The Court-approved, written agreement between the client and attorney setting forth the manner in which compensation is to be calculated;
   (b) Whether the services advanced, or attempted to advance, the best interests of the ward;
   (c) The qualities of the attorney: his/her ability, training, education, experience, professional standing and skill;
   (d) The character of the work to be done: its difficulty, its intricacy, its importance, the time and skill required, the responsibility imposed and the nature of the proceedings;
   (e) The work actually performed by the attorney: the skill, time, and attention given to the work;
   (f) The result: whether the attorney was successful and what benefits were derived;
   (g) The usual and customary fees charged in the relevant professional communities for each task performed, regardless of who actually performed the task. An attorney shall only be awarded an attorney rate for time spent performing services that require an attorney; a paralegal rate for time spent performing paralegal services; a fiduciary rate for time spent

performing fiduciary services; and shall not be awarded any compensation for time spent performing secretarial or clerical services.

(h) The appropriate apportionment among multiple clients of any billed time that benefited multiple clients of the attorney;

(i) The extent to which the services were provided in a reasonable, efficient and cost-effective manner, including whether there was appropriate and prudent delegation to others;

(j) The ability of the ward to pay, including, but not limited to:
   (1) The value of the estate under guardianship;
   (2) The nature, extent, and liquidity of the ward's assets;
   (3) The disposable net income of the ward;
   (4) The ward's anticipated future needs and income;
   (5) Any other foreseeable expenses; and
   (6) Any other factors that are relevant to the duties of the guardian pursuant to NRS 159.078 or 159.083.

(k) The efforts made by the attorney to reduce and minimize issues;

(l) Any actions by the attorney that unnecessarily expanded issues or delayed or hindered the efficient administration of the estate.

5. The Court shall not approve compensation for an attorney for:
   (a) Time spent on internal business activities of the attorney, including clerical or secretarial support; or
   (b) Time reported as a total amount of time spent on multiple tasks, rather than an itemization of the time expended on each task.
6. Any fees paid by a third party, including a trust, which the estate is a beneficiary, must be disclosed to and approved by the Court.
7. In addition to the compensation for ordinary services of an attorney set forth in this section, an attorney shall be entitled to receive compensation for ordinary costs and expenses incurred in the scope of the representation.

EXHIBIT L

EXHIBIT L
LEGISLATIVE RECOMMENDATIONS

Notice in Guardianship Proceedings

- NRS 159.034, NRS 159.115 and NRS 159.134 require notice of hearings of petition, sale of real estate, accountings or other significant transactions and, NRS 159.047 requires citation notice to be served on all proposed wards 14 and over. **Reality**: Service may not always take place on proposed wards who are not considered competent to understand or appreciate contents of petition. **Judge Doherty's Recommendation**: Consider strengthening statute to require service of notice of hearings, accountings and citation on proposed ward *without exception*. There is a general consensus in the North that Citation Notice and Hearing on Petition should be served on proposed subject of guardianship regardless of that person's condition or placement.

- Neither NRS 159.034 nor 159.047 require service of the *Petition for Guardianship* on the proposed ward. NRS 159.115 does not require service of *annual accountings* on persons subject to guardianship (this statute does require notice of the "particulars" of the petition be given to person and those in second degree of consanguinity). **Judge Doherty's Recommendation:** The statutes should be amended to require service, absent waiver by the court, of notice *and* annual accountings on the proposed or actual person subject to guardianship prior to hearing unless waived by the court. Washoe Bench/Bar concurs the statute does not currently require copy of Guardianship petition be attached to Citation.

- NRS 159.081 requires annual reports of the person be filed with the Court and served on the attorney for the person subject to guardianship. **Problem:** No other notice requirements are specified. **Recommendation**: Notice of such report should be served on the person subject to guardianship in all circumstances. **Further Discussion**: The Commission must address the public policy question of expanding notice to include all persons within second degree of consanguinity and other formally recognized interested persons.

- NRS 159.085 requires the filing of an inventory by the guardians of the estate within 60 days of appointment. Problem: There is no notice requirement associated with the filing of the inventory. **Judge Doherty Recommendation**: Require notice of filing and copy of inventory be served on person subject to guardianship and his/her attorney and GAL. **Further Discussion**: Whether notice of filing inventory should be sent to all persons within second degree of consanguinity and other formally recognized interested persons and, whether actual inventory should be sent to such persons.

- NRS 159.095 requires guardians to appear and represent all persons subject to guardianship *in all actions*. Guardians are not identified or noticed in criminal actions in which persons subject to guardianship are subjects of criminal actions. **Judge Doherty's Recommendation:** Guardians, if known, should be notified of pending criminal actions against persons subject to guardianship. **Further Discussion:** Does NRS 159.095 implicitly exclude criminal actions from "all actions".

- NRS 159.152 requires a confirmation hearing before the court, before a guardian may sell a security of the person subject to guardianship. There are no notice requirements for such

hearing. **Judge Doherty's Recommendation**: Require notice of hearing consistent with the provisions of NRS 159.134.

- NRS 159. 1535 sets forth publication requirements for notice of sale of the person subject to guardianship's personal property. **Judge Doherty's Recommendation:** The provisions of notice to the person subject to guardianship and those within the second degree of consanguinity at NRS 159.134 should apply.

EXHIBIT M

EXHIBIT M
LEGISLATIVE RECOMMENDATION

Recommendation relating to the Appointment of Registered Agent by Nonresident Guardian of Adult

Whereas, the Secretary of State currently accepts and records appointments of registered agents for business entities created and qualified pursuant to Title 7 of the Nevada Revised Statutes; and

Whereas, the Secretary of State's office currently has the mechanism in place through its public facing web site and Copies Division for the public to search and obtain public information of registered agents of business entities on file in the office; and

Whereas, the Secretary of State has the process and capability to collect and record public information relating to an Appointment of Registered Agent by Nonresident Guardian of an Adult and provide that information through the same registered agent search; and

Whereas, as of 07/01/2015 the Secretary of State currently accepts Appointments of Registered Agents by Nonresident Guardians of Adults with limited information, modified to fit the guardian-ward context, as reflected in the proof of appointment of guardianship; and

Whereas, the Secretary of State does not have the authority to verify the information in the appointment of registered agents, with the exception of the order appointing guardianship, the knowledge of when a nonresident guardianship is terminated, the ability to ensure that the information related to the ward, guardian, or the registered agent is kept current, or that the resignation of an appointed registered agent complies with the court's terms and whether a reassignment is appropriate; from whom a notice to cancel, resign, or reassign an appointment of registered agent should be honored; and

Whereas, it will be the responsibility of the Courts to monitor the information of a registered agent of a nonresident guardian through the Secretary of State's public search services; and

Whereas, changes to registered agent information will be the responsibility of the nonresident guardian or the Courts; and

Whereas, it is the desire to maintain the ministerial nature of this function as it relates to the appointment of registered agents for nonresident guardians of adults; and

Whereas, the Secretary of State has and will continue to cooperate with Court system;

It is hereby recommended that the process of filing an Appointment of Registered Agent for Nonresident Guardian of Adult with the Secretary of State follow the ministerial filing

processes currently in place for filing with the Secretary of State; collecting and placing in the public record the information contained in the Appointment of Registered Agent by Nonresident Guardian of an Adult form, and that the responsibility for oversight and monitoring the validity, accuracy, and status of the nonresident guardians of an adult and their registered agents be the responsibility of the Courts.

EXHIBIT N

EXHIBIT N

STATUTORY PROVISION

Add the following statement to statute in NRS chapter 159:

> Upon the filing of a guardianship action, the proposed guardian may also be required to file a proposed preliminary care plan and budget. The format of said plan, and the timing of the filing, shall be specified by Court Rule approved by the Nevada Supreme Court.

EXHIBIT O

EXHIBIT O

Guardianship Sales Statutes in Logical Order

Real Property

General

NRS 159.136 Order requiring guardian to sell real property of estate. If the guardian neglects or refuses to sell any real property of the estate when it is necessary or in the best interests of the ward, an interested person may petition the court for an order requiring the guardian to sell the property. The court shall set the petition for a hearing, and the petitioner shall serve notice on the guardian at least 10 days before the hearing.

(Added to NRS by 2003, 1759)

(After) Authorization

NRS 159.171 Executing and recording legal documents.

1. A guardian of the estate shall record a certified copy of any court order authorizing the sale, mortgage, lease, surrender or conveyance of real property in the office of the county recorder of the county in which any portion of the land is located.

2. To carry out effectively any transaction affecting the ward's property as authorized by this chapter, the court may authorize the guardian to execute any promissory note, mortgage, deed of trust, deed, lease, security agreement or other legal document or instrument which is reasonably necessary to carry out such transaction.

(Added to NRS by 1969, 430)

NRS 159.1385 Contract for sale of real property of ward authorized; limitation on commission; liability of guardian and estate.

1. A guardian may enter into a written contract, upon obtaining approval of the court for authorization to place the property on the market, with any bona fide agent, broker or multiple agents or brokers to secure a purchaser for any real property of the estate. Such a contract may grant an exclusive right to sell the property to the agent, broker or multiple agents or brokers.

2. The guardian shall provide for the payment of a commission upon the sale of the real property which:

(a) Must be paid from the proceeds of the sale;

(b) Must be fixed in an amount not to exceed:

(1) Ten percent for unimproved real property; or

(2) Seven percent for ~~improved~~ real property with any type of improvement; and

(c) Must be authorized by the court by confirmation of the sale.

3. Upon confirmation of the sale by the court, the contract for the sale becomes binding and enforceable against the estate.

4. A guardian may not be held personally liable and the estate is not liable for the payment of any commission set forth in a contract entered into with an agent or broker pursuant to this section until the sale is confirmed by the court, and then is liable only for the amount set forth in the contract.

(Added to NRS by 2003, 1760)

Notice of Sale

NRS 159.1425 Notice of sale of real property of ward: When required; manner of providing; waiver; content.

1. Except as otherwise provided in this section and except for a sale pursuant to NRS 159.123 or 159.142, a guardian may sell the real property of a ward only after, court grants authority for the sale to NRS 159.113 and 127, and notice of the sale is published in:

(a) A newspaper that is published in the county in which the property, or some portion of the property, is located; ~~or~~

(b) If a newspaper is not published in that county:

(1) In a newspaper of general circulation in the county; or

(2) In such other newspaper as the court orders; or ~~and~~

(c) The guardian, working with a realtor, may additionally publish the notice of sale in the Multiple Listing Service (MLS).

2. Except as otherwise provided in this section and except for a sale of real property pursuant to NRS 159.123 or 159.142:

~~(a) The notice of a public auction for the sale of real property must be published not less than three times before the date of the sale, over a period of 14 days and 7 days apart.~~

~~(b)~~ The notice of a ~~private~~ sale must be published not less than three times before the date on or after which ~~offers~~ the sale may ~~will~~ be ~~accepted~~ made, over a period of 14 days and 7 days apart.

3. For good cause shown, the court may order fewer publications and shorten the time of notice, but must not shorten the time of notice to less than 8 days.

4. The court may waive the requirement of publication pursuant to this section if:

(a) The guardian is the sole devisee or heir of the estate; or

(b) All devisees or heirs of the estate consent to the waiver in writing.

5. Publication for the sale of real property is not required pursuant to this section if the property to be sold is reasonably believed to have a net value of $10,000 or less. In lieu of publication, the guardian shall post notice of the sale in three of the most public places in the county in which the property, or some portion of the property, is located for at least 14 days before~~:~~

~~(a) The date of the sale at public auction; or~~

~~(b) T~~the date on or after which an offer~~s~~ will be accepted for a ~~private~~ sale.

6. Any notice published or posted pursuant to this section must include, without limitation:

~~a) For a public auction:~~

~~(1) A description of the real property which reasonably identifies the property to be sold; and(~~

~~(2) The date, time and location of the auction.~~

~~(b) For a private sale:~~

~~(1)~~ (a) A description of the real property which reasonably identifies the property to be sold; and

~~(2)~~ (b) The date, time and location, on or after that an offer~~s~~ will be accepted.

(Added to NRS by 2003, 1761; A 2009, 1661)

~~**NRS 159.1435 Public auction for sale of real property: Where held; postponement.**~~

~~1. Except for a sale pursuant to NRS 159.123 or 159.142, a public auction for the sale of real property must be held:~~

~~(a) In the county in which the property is located or, if the real property is located in two or more counties, in either county;~~

~~(b) Between the hours of 9 a.m. and 5 p.m.; and~~

~~(c) On the date specified in the notice, unless the sale is postponed.~~

~~2. If, on or before the date and time set for the public auction, the guardian determines that the auction should be postponed:~~

~~(a) The auction may be postponed for not more than 3 months after the date first set for the auction; and~~

~~(b) Notice of the postponement must be given by a public declaration at the place first set for the sale on the date and time that was set for the sale.~~

~~(Added to NRS by 2003, 1762; A 2009, 1662)~~

NRS 159.144 Sale of real property of guardianship estate ~~at private sale~~: Requirements for establishing date; manner of making offers.

1. Except for the sale of real property pursuant to NRS 159.123 or 159.142, a sale of real property of a guardianship estate ~~at a private sale~~:

(a) Must not occur before the date stated in the notice.

(b) Except as otherwise provided in this paragraph, must not occur sooner than 14 days after the date of the first publication or posting of the notice. For good cause shown, the court may shorten the time in which the sale may occur to not sooner than 8 days after the date of the first publication or posting of the notice. If the court so orders, the notice of the sale and the sale may be made to correspond with the court order.

(c) Must occur not later than 1 year after the date stated in the notice.

2. The offers made in a ~~private~~ sale:

(a) Must be in writing; and

(b) May be delivered to the place designated in the notice or to the guardian at any time:

~~(1)~~ After the date of the first publication or posting of the notice; ~~and~~

~~(2) Before the date on which the sale is to occur.~~

(Added to NRS by 2003, 1762; A 2009, 1662)

Appraisal

NRS 159.1455 Confirmation by court of sale of real property of guardianship estate ~~at private sale.~~

1. Except as otherwise provided in subsection 2, the court shall not confirm a sale of real property of a guardianship estate ~~at a private sale~~ unless:

(a) The court is satisfied that the amount offered represents the fair market value of the property to be sold; and

(b) Except for a sale of real property pursuant to NRS 159.123, the real property has been appraised within 1 year before the date of the sale. If the real property has not been appraised within this period, a new appraisal must be conducted pursuant to NRS 159.086 and 159.0865 at any time before the sale or confirmation by the court of the sale.

2. The court may waive the requirement of an appraisal upon a showing and specific findings by the court on the record that: ~~and allow the guardian to rely on the assessed value of the real property for purposes of taxation in obtaining confirmation by the court of the sale.~~

(a) An additional appraisal will unduly delay the sale; and

(b) The delay in obtaining an appraisal will impair the estate of the protected person.

(Added to NRS by 2003, 1762; A 2009, 1662)

Sale

NRS 159.1375 Sale of real property of ward to holder of mortgage or lien on such property. At a sale of real property that is subject to a mortgage or lien, the holder of the mortgage or lien may become the purchaser. The receipt for the amount owed to the holder from the proceeds of the sale is a payment pro tanto.

(Added to NRS by 2003, 1760)

NRS 159.138 Sale of equity of estate in real property of ward that is subject to mortgage or lien and of property that is subject to mortgage or lien.

1. In the manner required by this chapter for the sale of like property, a guardian may sell:

(a) The equity of the estate in any real property that is subject to a mortgage or lien; and

(b) The property that is subject to the mortgage or lien.

2. If a claim has been filed upon the debt secured by the mortgage or lien, the court shall not confirm the sale unless the holder of the claim files a signed and acknowledged document which releases the estate from all liability upon the claim.

(Added to NRS by 2003, 1760)

Confirmation

NRS 159.134 Selling real property of ward.

1. All sales of real property of a ward must be~~:~~

~~(a) Reported to the court; and~~

~~(b) C~~confirmed by the court before the sale can close and before title to the real property passes to the purchaser, pursuant to NRS 159.146.

2. ~~The report and a petition for~~ The petition for confirmation of the sale must be filed with the court not later than 30 days after the date of each sale. The date of the sale shall be the date the contract for the sale was signed.

3. The court shall set the date of the confirmation hearing and give notice of the hearing in the manner required pursuant to NRS 159.115 or as the court may order.

4. An interested person may file written objections to the confirmation of the sale, prior to the confirmation ~~the~~ of sale hearing. If such objections are filed, the court shall conduct a hearing regarding those objections during which the interested person may offer witnesses in support of the objections. The Court may entertain oral objections on the date of the hearing ~~if appropriate~~ in its discretion.

5. Before the court confirms a sale, the court must find that notice of the sale was given in the manner required pursuant to NRS 159.1425, 159.1435 and 159.144, unless the sale was exempt from notice pursuant to NRS 159.123.

(Added to NRS by 1979, 788; A 2003, 1794; 2009, 1660)

NRS 159.1415 Presentation of offer to purchase real property to court for confirmation; division of commission for sale of such property.

1. When a ~~n offer to~~ contract of sale to purchase real property of a guardianship estate is presented to the court for confirmation:

(a) Other persons may submit higher bids ~~to the~~ in open court; and

(b) The court may confirm the highest bid.

(c) Except for real property as described in NRS 159.146 (10).

2. Upon confirmation of a sale of real property by the court, the commission for the sale must be divided between the listing agent or broker and the agent or broker who secured the purchaser to whom the sale was confirmed, if any, in accordance with the contract with the listing agent or broker.

(Added to NRS by 2003, 1760)

NRS 159.146 Hearing to confirm sale of real property: Considerations; conditions for confirmation; actions of court if sale is not confirmed; continuance; successive bids if court does not accept offer or bid.

1. At the hearing to confirm the sale of real property, the court shall:

(a) Consider whether the sale is necessary or in the best interest of the estate of the ward; and

(b) Examine the return on the investment and the evidence submitted in relation to the sale.

2. The court shall confirm the sale and order conveyances to be executed if it appears to the court that:

(a) Good reason existed for the sale;

(b) The sale was conducted in a legal and fair manner;

(c) The amount of the offer ~~or bid~~ is not disproportionate to the value of the property; and

(d) It is unlikely that ~~an offer or~~ a bid would be made which exceeds the original offer ~~or bid~~:

(1) By at least 5 percent if the offer ~~or bid~~ is less than $100,000; or

(2) By at least $5,000 if the offer ~~or bid~~ is $100,000 or more.

3. The court shall not confirm the sale if the conditions in this section are not satisfied.

4. If the court does not confirm the sale, the court:

(a) May order a new sale; or

(b) May conduct a public auction in open court, ~~; or~~

~~(c) May accept a written offer or bid from a responsible person and confirm the sale to the person if the written offer complies with the laws of this state and exceeds the original bid:~~

~~(1) By at least 5 percent if the bid is less than $100,000; or~~

~~(2) By at least $5,000 if the bid is $100,000 or more.~~

5. If the court ~~does not confirm the sale and~~ orders a new sale:

(a) Notice must be given in the manner set forth in NRS 159.1425; and

(b) The sale must be conducted in all other respects as though no previous sale has taken place.

6. If a higher ~~offer or~~ bid is received by the court during the hearing to confirm the sale, the court may continue the hearing rather than accept the ~~offer or~~ bid as set forth in paragraph (~~e~~b) of subsection 4 if the court determines that the person who made the original offer being confirmed ~~or bid~~ was not notified of the hearing and that the person who made the original offer being confirmed ~~or bid~~ may wish to increase his or her ~~bid~~ price. This subsection does not grant a right to a person to have a continuance granted and may not be used as a ground to set aside an order confirming a sale.

~~7. Except as otherwise provided in this subsection, if a higher offer or bid is received by the court during the hearing to confirm the sale and the court does not accept that offer or bid, each successive bid must be for not less than:~~

~~(a) An additional $5,000, if the original offer is for $100,000 or more; or~~

~~(b) An additional $250 if the original offer is less than $100,000.~~

~~Ê Upon the request of the guardian during the hearing to confirm the sale, the court may set other incremental bid amounts.~~

7. Except as otherwise provided in subsection 8-10 below, the auction in court shall only change the name of the buyer and the price of the sale. The order confirming the sale shall act as sufficient addendum to the original contract to allow the sale to close.

8. The title company may be changed by mutual agreement by both the estate and the buyer, in writing.

9. The close of escrow date shall be at least ten judicial days from the date that the notice of entry of order confirming the sale is filed with the Clerk of the Court, unless the contract specifies a date further into the future. The parties to the sale may extend the close of escrow date, upon mutual agreement of both the estate and the buyer, in writing.

10. Where the estate owes more than the value of the property and the estate has made an agreement with the lienholder or lienholders to accept the sale price and waive any deficiency between the sale price and the amount owed to the lienholder (s), the sale shall be confirmed without the potential for bidding in court. All other portions of the confirmation of sale shall be adhered to. The valuation of the bank shall be deemed sufficient to meet the appraisement requirement for the sale. The date of the sale shall be the date of the bank approval for this type of sale.

(Added to NRS by 2003, 1762; A 2013, 921)

NRS 159.142 Sale of interest of ward in real property owned jointly with one or more persons.

1. If a ward owns real property jointly with one or more other persons, the interest owned by the ward may be sold after the court grants authority to place the property for sale to one or more joint owners of the property only if:

(a) All joint owners of the property have been noticed of the authority to place the property for sale;

(b) The guardian files a petition with the court to confirm the sale pursuant to NRS 159.134; and

~~(b)~~ (c) The court confirms the sale.

2. The court shall confirm the sale only if:

(a) The net amount of the proceeds from the sale to the estate of the ward is not less than 90 percent of the fair market value of the portion of the property to be sold; and

(b) Upon confirmation, the estate of the ward will be released from all liability for any mortgage or lien on the property.

(Added to NRS by 2003, 1761)

After Confirmation

NRS 159.1365 Application of money from sale of real property of ward that is subject to mortgage or other lien. If real property of the estate of a ward is sold that is subject to a mortgage or other lien which is a valid claim against the estate, the money from the sale must be applied in the following order:

1. To pay the necessary expenses of the sale.

2. To satisfy the mortgage or other lien, including, without limitation, payment of interest and any other lawful costs and charges. If the mortgagee or other lienholder cannot be found, the money from the sale may be paid as ordered by the court and the mortgage or other lien shall be deemed to be satisfied.

3. To the estate of the ward, unless the court orders otherwise.

(Added to NRS by 2003, 1760)

NRS 159.1465 Conveyance of real property of guardianship estate to purchaser upon confirmation of sale by court.

1. If the court confirms a sale of real property of a guardianship estate, the guardian shall execute a conveyance of the property to the purchaser.

2. The conveyance must include a reference to the court order confirming the sale, and a certified copy of the court order must be recorded in the office of the recorder of the county in which the property, or any portion of the property, is located.

3. A conveyance conveys all the right, title and interest of the ward in the property on the date of the sale, and if, before the date of the sale, by operation of law or otherwise, the ward has acquired any right, title or interest in the property other than or in addition to that of the ward at the time of the sale, that right, title or interest also passes by the conveyance.

(Added to NRS by 2003, 1763)

NRS 159.1475 Sale of real property made upon credit.

1. If a sale of real property is made upon credit, the guardian shall take:

(a) The note or notes of the purchaser for the unpaid portion of the sale; and

(b) A mortgage on the property to secure the payment of the notes.

2. The mortgage may contain a provision for release of any part of the property if the court approves the provision.

(Added to NRS by 2003, 1763)

NRS 159.148 Neglect or refusal of purchaser of real property to comply with terms of sale.

1. After confirmation of the sale of real property, if the purchaser neglects or refuses to comply with the terms of the sale, the court may set aside the order of confirmation and order the property to be resold:

(a) On motion of the guardian; and

(b) After notice is given to the purchaser.

2. If the amount realized on the resale of the property is insufficient to cover the bid and the expenses of the previous sale, the original purchaser is liable to the estate of the ward for the deficiency.

(Added to NRS by 2003, 1763)

NRS 159.1495 Fraudulent sale of real property of ward by guardian. A guardian who fraudulently sells any real property of a ward in a manner inconsistent with the provisions of this chapter is liable for double the value of the property sold, as liquidated damages, to be recovered in an action by or on behalf of the ward.

(Added to NRS by 2003, 1764)

NRS 159.1505 Periods of limitation for actions to recover or set aside sale of real property. The periods of limitation prescribed in NRS 11.260 apply to all actions:

1. For the recovery of real property sold by a guardian in accordance with the provisions of this chapter; and

2. To set aside a sale of real property.

(Added to NRS by 2003, 1764)

Personal Property

Sale

NRS 159.1515 Sale or disposition of personal property of protected person ~~ward~~ by guardian ~~without notice~~.

1. Except as otherwise provided in subsection 2, a guardian may sell or dispose of personal property of the protected person that has a value less than $100, if a notice of intent to sell or dispose of the property is mailed by certified mail or delivered personally to the protected person, his or her counsel, and all interested parties as described in NRS 159.115, and there is no objection to the sale or disposition within 15 days. ~~A guardian may sell perishable property and other personal property of the ward without notice, and title to the property passes without confirmation by the court if the property:~~

~~(a) Will depreciate in value if not disposed of promptly; or~~

~~(b) Will incur loss or expense by being kept.~~

2. A guardian may authorize the immediate destruction of the property of a protected person, without giving notice to the interested persons referred in 159.115 if:

(a) The guardian determines that the property has been contaminated by vermin or biological or chemical agents;

(b) The expenses related to the decontamination of the property cause salvage to be impractical;

(c) The property constitutes an immediate threat to public health or safety;

(d) The handling, transfer or storage of the property may endanger public health or safety or exacerbate contamination; and

(e) The value of the property is less than $100 or, if the value of the property is $100 or more, a state or local health officer has endorsed the destruction of the property. ~~The guardian is responsible for the actual value of the personal property unless the guardian obtains confirmation by the court of the sale.~~

(Added to NRS by 2003, 1764)

Notice of Sale

NRS 159.1535 Notice of sale of personal property of ward: When required; manner of providing content.

1. Except as otherwise provided in NRS 159.1515 and 159.152, a guardian may sell the personal property of the ward only after notice of the sale is published in:

(a) A newspaper that is published in the county in which the property, or some portion of the property, is located; or

(b) If a newspaper is not published in that county:

(1) In a newspaper of general circulation in the county; or

(2) In such other newspaper as the court orders.

2. Except as otherwise provided in this section:

~~(a) The notice of a public sale must be published not less than three times before the date of the sale, over a period of 14 days and 7 days apart.~~

~~(b)~~ The notice of a ~~private~~ sale must be published not less than three times before the date on which offers will be accepted, over a period of 14 days and 7 days apart.

3. For good cause shown, the court may order fewer publications and shorten the time of notice, but must not shorten the time of notice to less than 8 days.

4. The notice must include, without limitation:

~~(a) For a public sale:~~

~~(1) A description of the personal property to be sold; and~~

~~(2) The date, time and location of the sale.~~

(~~b~~a) For a ~~private~~ sale:

(1) A description of the personal property to be sold; and

(2) The date, time and location that offers will be ~~accepted~~ received.

(~~c~~b) For a sale on an appropriate auction website on the Internet:

(1) A description of the personal property to be sold;

(2) The date the personal property will be listed; and

(3) The Internet address of the website on which the sale will be posted.

(Added to NRS by 2003, 1764; A 2009, 1663)

Sale

NRS 159.154 Place and manner of sale of personal property of ward. Report of Sale to the Court.

1. The guardian may sell the personal property of a ward ~~by public sale~~ at:

(a) The residence of the ward; or

(b) Any other location designated by the guardian.

2. The guardian may sell the personal property ~~by public sale~~ only if the property is made available for inspection at the time of the sale or photographs of the personal property are posted on an appropriate auction website on the Internet.

3. Personal property may be sold ~~at a public or private sale~~ for cash or upon credit.

4. No sale or disposition of any personal property of the ward may be commenced, except as otherwise provided in NRS 159.1515, until 30 days after the filing and mailing of the inventory. The inventory shall be sent by regular mail to those specified in NRS 159.034 and an Affidavit of Mailing confirming the same shall be filed with the Court.

5. The guardian is responsible for the actual value of the personal property, in this section, unless the guardian makes a report to the court, which includes a showing that good cause existed for the sale to be made and that it was not sold for a price disproportionate to the value of the property, within 90 days of the conclusion of the sale.

6. The family members and interested persons shall be offered the first right of refusal to acquire the personal property of the ward from the estate sale at fair market value.

(Added to NRS by 2003, 1765; A 2009, 1663)

Other

NRS 159.152 Sale of security of ward by guardian. A guardian may sell any security of the ward if:

1. The guardian petitions the court for confirmation of the sale;

2. The clerk sets the date of the hearing;

3. The guardian gives notice in the manner required pursuant to NRS 159.034 unless, for good cause shown, the court shortens the period within which notice must be given or dispenses with notice; and

4. The court confirms the sale.

(Added to NRS by 2003, 1764)

NRS 159.156 Sale of interest in partnership, interest in personal property pledged to ward and choses in action of estate of ward. The following interests of the estate of the ward may be sold in the same manner as other personal property:

1. An interest in a partnership;
2. An interest in personal property that has been pledged to the ward; and
3. Choses in action.

(Added to NRS by 2003, 1765)

Lease of Property

NRS 159.157 Lease of property of ward. A guardian of the estate may lease any real property of the ward or any interest in real property:

1. Without securing prior court approval, where the tenancy is from month to month or for a term not to exceed 1 year and the reasonable fixed rental for the property or the ward's proportionate interest in such rental does not exceed $250 per month.
2. With prior approval of the court by order, for such period of time as may be authorized by the court, not exceeding any time limitation prescribed by law, and upon such terms and conditions as the court may approve. Such lease may extend beyond the period of minority of a minor ward.

(Added to NRS by 1969, 428)

NRS 159.159 Contract with broker to secure lessee. The court may authorize the guardian to enter into a written contract with one or more licensed real estate brokers to secure a lessee of the ward's property, which contract may provide for the payment of a commission, not exceeding 5 percent of the fixed rental for the first 2 years, to be paid out of the proceeds of any such lease.

(Added to NRS by 1969, 428)

NRS 159.161 Petition for approval of lease: Content; conditions for approval.

1. Petitions to secure court approval of any lease:

(a) Must include the parcel number assigned to the property to be leased and the physical address of the property, if any; and

(b) Must set forth the proposed fixed rental, the duration of the lease and a brief description of the duties of the proposed lessor and lessee.

2. Upon the hearing of a petition pursuant to subsection 1, if the court is satisfied that the lease is for the best interests of the ward and the estate of the ward, the court shall enter an order authorizing the guardian to enter into the lease.

(Added to NRS by 1969, 428; A 2003, 1794)

NRS 159.163 Agreement for rental or bailment of personal property. A guardian of the estate, with prior approval of the court by order, may enter into agreements providing for the rental or bailment of the ward's personal property. All proceedings to obtain such a court order shall be the same as required for the lease of real property.

(Added to NRS by 1969, 428)

NRS 159.165 Lease of mining claim or mineral rights; option to purchase.

1. If the property to be leased consists of mining claims, an interest in the mining claims, property worked as a mine or lands containing oil, gas, steam, gravel or any minerals, the court may authorize the guardian to enter into a lease which provides for payment by the lessee of a royalty, in money or in kind, in lieu of a fixed rental. The court may also authorize the guardian to enter into a lease which provides for a pooling agreement or authorizes the lessee to enter into pooling or other cooperative agreements with lessees, operators or owners of other lands and minerals for the purpose of bringing about the cooperative development and operation of any mine, oil field or other unit of which the ward's property is a part.

2. If the proposed lease contains an option to purchase, and the property to be sold under the option consists of mining claims, property worked as a mine, or interests in oil, gas, steam, gravel or any mineral, which has a speculative or undefined market value, the court may authorize the guardian to enter into such a lease and sales agreement or give an option to purchase without requiring the property to be sold at public auction or by private sale in the manner required by this chapter for sales of other real property.

3. If the petition filed pursuant to this section requests authority to enter into a lease with an option to purchase, in addition to the notice required by NRS 159.034, the guardian shall publish a copy of the notice at least twice, the first publication to be at least 10 days prior to the date set for the hearing and the second publication to be not earlier than 7 days after the date of the first publication. The notice must be published in:

(a) A newspaper that is published in the county where the property is located; or

(b) If no newspaper is published in the county where the property is located, a newspaper of general circulation in that county which is designated by the court.

(Added to NRS by 1969, 429; A 2003, 1794)

Agreement to Sell or Give Option to Purchase Mining Claim

NRS 159.1653 Petition to enter into agreement; setting date of hearing; notice.

1. To enter into an agreement to sell or to give an option to purchase a mining claim or real property worked as a mine which belongs to the estate of the ward, the guardian or an interested person shall file a petition with the court that:

(a) Describes the property or claim;

(b) States the terms and general conditions of the agreement;

(c) Shows any advantage that may accrue to the estate of the ward from entering into the agreement; and

(d) Requests confirmation by the court of the agreement.

2. The court shall set the date of the hearing on the petition.

3. The petitioner shall give notice in the manner provided in NRS 159.034.

(Added to NRS by 2003, 1765)

NRS 159.1657 Hearing on petition; court order; recording of court order.

1. At the time appointed and if the court finds that due notice of the hearing concerning an agreement has been given, the court shall hear a petition filed pursuant to NRS 159.1653 and any objection to the petition that is filed or presented.

2. After the hearing, if the court is satisfied that the agreement will be to the advantage of the estate of the ward, the court:

(a) Shall order the guardian to enter into the agreement; and

(b) May prescribe in the order the terms and conditions of the agreement.

3. A certified copy of the court order must be recorded in the office of the county recorder of each county in which the property affected by the agreement, or any portion of the property, is located.

(Added to NRS by 2003, 1765)

NRS 159.166 Bond and actions required upon court order to enter into agreement.

1. If the court orders the guardian to enter into the agreement pursuant to NRS 159.1657, the court shall order the guardian to provide an additional bond and specify the amount of the bond in the court order.

2. The guardian is not entitled to receive any of the proceeds from the agreement until the guardian provides the bond and the court approves the bond.

3. When the court order is entered, the guardian shall execute, acknowledge and deliver an agreement which:

(a) Contains the conditions specified in the court order;

(b) States that the agreement or option is approved by court order; and

(c) Provides the date of the court order.

(Added to NRS by 2003, 1765)

NRS 159.1663 Neglect or refusal of purchaser of mining claim or of option holder to comply with terms of agreement.

1. If the purchaser or option holder neglects or refuses to comply with the terms of the agreement approved by the court pursuant to NRS 159.1657, the guardian may petition the court to cancel the agreement. The court shall cancel the agreement after notice is given to the purchaser or option holder.

2. The cancellation of an agreement pursuant to this section does not affect any liability created by the agreement.

(Added to NRS by 2003, 1766)

NRS 159.1667 Petition for confirmation of proceedings concerning agreement: When required; notice; hearing.

1. If the purchaser or option holder complies with the terms of an agreement approved by the court pursuant to NRS 159.1657 and has made all payments according to the terms of the agreement, the guardian shall:

(a) Make a return to the court of the proceedings; and

(b) Petition the court for confirmation of the proceedings.

2. Notice must be given to the purchaser or option holder regarding the petition for confirmation.

3. The court:

(a) Shall hold a hearing regarding the petition for confirmation; and

(b) May order or deny confirmation of the proceedings and execution of the conveyances in the same manner and with the same effect as when the court orders or denies a confirmation of a sale of real property.

(Added to NRS by 2003, 1766)

Miscellaneous Provisions

NRS 159.167 Special sale of property of ward or surrender of interest therein.

1. A guardian of the estate, with prior approval of the court, may accept an offer for the purchase of the interest or estate of the ward, in real or personal property or both real and personal property, where it appears from the petition and the court determines that:

(a) The interest or estate of the ward in such property is an interest in a partnership, joint venture or closely held corporation, in which the offeror or offerors own the remaining interests in the partnership, joint venture or closely held corporation, or are offering to purchase such remaining interests.

(b) The interest or estate of the ward in such property is an undivided interest in property in which the offeror or offerors own the remaining interests in such property or are offering to purchase such remaining interests.

(c) The interest or estate of the ward to be sold or granted is an easement in or creates a servitude upon the ward's property.

2. A guardian of the estate, with prior approval of the court, may accept an offer to surrender the interest or estate of the ward in real or personal property or both real and personal property, where it appears from the petition and the court determines that:

(a) The interest or estate of the ward is contingent or dubious.

(b) The interest or estate of the ward in such property is a servitude upon the property of another.

(Added to NRS by 1969, 429)

NRS 159.169 Advice, instructions and approval of acts of guardian.

1. A guardian of the estate may petition the court for advice and instructions in any matter concerning:

(a) The administration of the ward's estate;

(b) The priority of paying claims;
(c) The propriety of making any proposed disbursement of funds;
(d) Elections for or on behalf of the ward to take under the will of a deceased spouse;
(e) Exercising for or on behalf of the ward:
(1) Any options or other rights under any policy of insurance or annuity; and
(2) The right to take under a will, trust or other devise;
(f) The propriety of exercising any right exercisable by owners of property; and
(g) Matters of a similar nature.

2. Any act done by a guardian of the estate after securing court approval or instructions with reference to the matters set forth in subsection 1 is binding upon the ward or those claiming through the ward, and the guardian is not personally liable for performing any such act.

3. If any interested person may be adversely affected by the proposed act of the guardian, the court shall direct the issuance of a citation to that interested person, to be served upon the person at least 20 days before the hearing on the petition. The citation must be served in the same manner that summons is served in a civil action and must direct the interested person to appear and show cause why the proposed act of the guardian should not be authorized or approved. All interested persons so served are bound by the order of the court which is final and conclusive, subject to any right of appeal.

(Added to NRS by 1969, 430; A 1979, 591; 2003, 1795)

NRS 159.173 Transfer of property of ward not ademption. If a guardian of the estate sells or transfers any real or personal property that is specifically devised or bequeathed by the ward or which is held by the ward as a joint tenancy, designated as being held by the ward in trust for another person or held by the ward as a revocable trust and the ward was competent to make a will or create the interest at the time the will or interest was created, but was not competent to make a will or create the interest at the time of the sale or transfer and never executed a valid later will or changed the manner in which the ward held the interest, the devisee, beneficiary or legatee may elect to take the proceeds of the sale or other transfer of the interest, specific devise or bequest.

(Added to NRS by 1969, 430; A 2003, 1796)

NRS 159.175 Exchange or partition of property of ward.

1. A guardian of the estate, with prior approval of the court by order, where it appears from the petition and the court determines that the best interests of the ward are served by such action, may:

(a) Accept an offer to exchange all or any interest of the ward in real or personal property or both real and personal property for real or personal property or both real and personal property of another, and pay or receive any cash or other consideration to equalize the values on such exchange; or

(b) Effect a voluntary partition of real or personal property or both real and personal property in which the ward owns an undivided interest.

2. Upon hearing the petition, the court shall inquire into the value of the property to be exchanged or partitioned, the rental or income therefrom, and the use for which the property is best suited.

(Added to NRS by 1969, 430)

EXHIBIT P

National Resource Center for Supported Decision-Making State Grant Program Announcement and Guidelines

Program Overview and Objectives

The National Resource Center for Supported Decision-Making (NRC-SDM) is pleased to announce its State Grant Program. The Program will award grants for state-based projects that:

(1) Adopt an innovative approach to increase knowledge of and access to Supported Decision-Making by older adults and people with intellectual and developmental disabilities (I/DD) across the life course;

(2) Collect and disseminate information to document the positive impacts of Supported Decision-Making in their state and, at least annually, issue a report documenting success stories, challenges and, any system changes that have been made to increase the understanding and use of Supported Decision-Making.

Over the past two decades, research has demonstrated a direct relationship between the self-determination of older adults and people with I/DD and their overall quality of life. The evidence shows that those who exercise greater self-determination are better problem-solvers, more independent, more likely to be employed at higher-paying jobs and less likely to be abused (Khemka, Hickson, & Reynolds, 2005; Wehmeyer, Kelchner, & Reynolds, 1996; Wehmeyer & Schwartz, 1998). One method designed to increase and maximize self-determination is Supported Decision-Making – which focuses on providing people with the help they need and want to understand the situations and choices they face, so they may make their own decisions consistent with their goals, wishes and desires. (Quality Trust for Individuals with Disabilities, 2014; Blanck, 2014).

Funded by a grant from the Administration for Community Living (ACL), NRC-SDM documents and disseminates successful Supported Decision-Making practices; conducts research to fill data and information gaps; develops training materials and provides technical assistance to ACL networks on Supported Decision-Making issues, including youth transition; develops strategy that measures and demonstrates the impact of Supported Decision-Making on the lives of people with I/DD and older Americans; and designs and commences implementation of this State Grant Program. The intent of these projects is to collaborate with aging and disability communities, networks, researchers, professionals, and providers to examine and reform policy and practice as needed to make Supported Decision-Making an alternative to guardianship and increase self-determination.

Up to 6 (six) projects may be funded through this application process. The purpose of the small grants is to stimulate innovative Supported Decision-Making practices the can be replicated around the country. Each project funded by this program will become a part of NRC-SDM's Community of Practice and receive logistical, organizational, technical, and other necessary and appropriate support from the NRC-SDM. The resources, research, best practices, and tools that are developed from these projects will be incorporated into NRC-SDM.

General Eligibility Guidelines

This Program will fund initiatives that meet Program objectives and criteria, are innovative and collaborative, and demonstrate knowledge of Supported Decision-Making and existing guardianship and other laws affecting older adults and people with I/DD in their states. Grantees who receive funding under the State Grant Program will be responsible for creating a unique Supported Decision-Making innovation tailored to the distinct characteristics and needs of their states' aging and disability networks and populations. We encourage partnerships among diverse stakeholders including older adults, people with disabilities, family members, advocates, professionals, and providers.

New applicants and former grantees of the State Grant Program are eligible for 12-month grants of up to $4,000.

Each project funded will have one principal grantee (the applicant, in most cases) plus designated partners. The principal grantee will receive the grant funds, manage the project, prepare and submit reports, and serve as the contact with the NRC-SDM. Program funds may not be used to replace lost staff or funding; to fund maintenance of effort or obligations under other grants; to acquire computers or other technology; to fund advocacy beyond that permitted by I.R.S. Code §501(c) or other applicable law; or in violation of other requirements.

The following organizations are eligible to serve as either the principal grantee or a project partner: Organizations providing services and supports to older adults and people with I/DD including private and publicly-funded entities providing advocacy, education, and rights protection, and other entities whose goal is to protect and increase awareness of the rights of older adults and people with I/DD.

Application Guidelines

Available Funding

This Program will provide 12-month grants of up to a maximum of $4,000. Larger budgets using matching funds are encouraged, but not required.

Award Period

Projects will be funded for one year – December 1, 2016, through November 30, 2017. At the discretion of the NRC-SDM, projects may be renewed for additional one-year grants. Priority will be given to projects designed to continue beyond the grant period.

Application Instructions

Our interest focuses on new initiatives and effective, innovative partnerships that meet overall program objectives and demonstrate the ability to identify and implement changes in policy and practice to increase the use of Supported Decision-Making in the applicant's state. Successful applicants will:

(1) Have active involvement by older adults and people with I/DD;

(2) Document commitment from relevant stakeholders in the public and private sector, at a minimum, including the state's DD network and the state's Aging network;

(3) Describe the current status of their state's law, policy, and practice regarding Supported Decision-Making;

(4) Describe their objectives to identify, develop, implement, and report on changes to policy and practice that increase the use of Supported Decision-Making across the life course for older adults and people with I/DD; and

(5) Commit to not use federal funds through the State Grant Program to lobby federal, state, or local officials or their staff to receive additional funding or influence legislation, and comply with all other applicable requirements.

(6) Commit to meet monthly and participate in quarterly virtual meetings of the NRC-SDM's Community of Practice.

To be considered, each application **must** include:

- **Part A – Application Narrative.** Identify the applicant and partners and describe their knowledge of and experience using Supported Decision-Making and their experience creating systems-change increasing the self-determination of older adults and people with I/DD. Describe the current use of Supported Decision-Making in your state and how your innovative project will increase the awareness and use of Supported Decision-Making by older adults and people with I/DD through the life course and help surmount any obstacles. Describe how the project will include the active involvement of older adults and people with I/DD.

- **Part B – Work Plan and Outcomes.** Describe key tasks, timeframe for tasks, anticipated measurable outcomes, and activities to be conducted by each partner.

- **Part C – Budget.** State the total project budget for the one year period from December 1, 2016 – November 30, 2017. Grantee or partner cash or in-kind contribution is not required, but encouraged. If the project will use cash or in-kind contribution by applicant or partners, the application must include the dollar amount of the match in appropriate budget category. Identify the time commitment to the project of key personnel and the total cost of that time commitment. *Note:* This program does not fund computer or other technology purchases.

- **Letters of Commitment.** The application must include a letter of commitment from each partner. The letter must describe the specific tasks that the partner will be responsible for, how collaborative tasks will be staffed and conducted, and the funds to be contributed by the partner. Letters must be submitted as part of application packet.

Application and Decision Due Dates

Applications, excepting Letters of Commitment, must be no longer than 10 pages.

Applications must be submitted on or before September 15, 2016 to:
MWhitlatch@DCQualityTrust.Org with "State Grant Program" in the subject line.
Application receipt will be confirmed by e-mail.

Applicants will be informed if their project was selected for funding by October 31, 2016.

Review Process and Selection Criteria

The NRC-SDM's Advisory Board, in consultation with ACL, will review proposals and select projects to be funded by October 31, 2016.

Projects will be selected based on the following criteria:

(1) Does the project meet overall program objectives?
(2) Does applicant demonstrate understanding of Supported Decision-Making as an alternative to guardianship and a way to increase and maximize self-determination?
(3) Does the applicant describe the need for the project in its state, how the need was determined, and how it will be met?
(4) Do the applicant and partners have the experience necessary to implement the project?

(5) Is the project collaborative and does it directly involve older adults and people with I/DD? Are partner roles adequately defined and confirmed?
(6) Are anticipated outcomes and outcome measurements appropriate to the project?
(7) Can the proposed outcomes be replicated in other parts of the country?
(8) Are staffing, budget, and timeframe consistent and appropriate?
(9) Will project activities continue beyond the project period and be replicable?
(10) Is the project innovative in concept, delivery, or impact on the community it will serve?
(11) Other criteria determined by the NRC-SDM and ACL, including, as appropriate, geographic diversity.

Deliverables:

1. Grantees are required to participate in a bi-monthly conference call with ACL, Quality Trust, and other grantees to discuss successes, challenges, and lessons learned. Grantees may be asked to lead a call on a particular issue that is occurring in their state.

2. Grantees are required, on a quarterly basis, to submit up to five bullet points on successes, challenges, and lessons learned (no more than 100 words total) to Quality Trust.

3. Grantees are required to submit a report no later than November 30, 2017. The report will briefly restate the project's goals, anticipated outcomes, and plans for achieving them, and describe any modifications to the plan and the impact of those modifications. The report will describe the progress made towards achieving anticipated outcomes, lessons learned, plans for continuation, and suggestions for replication. Grantees must include a final budget report and one copy of all products produced under grant. Products must include attribution to the NRC-SDM and the ACL.

The report will be used, in part, to determine whether to renew the project for another year.

Questions?

Contact Morgan Whitlatch, Project Director, at 202-459-4004 or MWhitlatch@DCQualityTrust.Org.

EXHIBIT Q

THE CENTER FOR SOCIAL GERONTOLOGY
2307 Shelby Avenue · Ann Arbor · Michigan · 48103
734.665.1126 · fax 734.665.2071 · email tcsg@tcsg.org

June 10, 2016

Nevada Supreme Court Justice
James W. Hardesty, Chair
Commission to Study the Administration
of Guardianships in Nevada's Courts
201 South Carson St.
Carson City, NV 89701

Honorable Justice Hardesty:

I am writing at the suggestion of Sally Crawford Ramm in hopes that you and the Commission to Study the Administration of Guardianships in Nevada's Courts will be interested in partnering/working with my organization, The Center for Social Gerontology (TCSG), on a grant proposal we are submitting to The Administration on Aging, Administration for Community Living (AoA/ACL). This is under Funding Opportunity Announcement (FOA) titled "Elder Justice Innovations Grants" (available at www.grants.gov, # HHS-23016-ACL-AoA-EJIG-0168). The category under which we are applying is Option 3, "Addressing Abuse in Guardianship."

Background on TCSG.
TCSG has been funded for many years by the federal Administration on Aging/Administration for Community Living to provide national support on development and delivery of legal services to vulnerable elders, and it is in this capacity that we have worked with Ms. Ramm. However, in addition to this work, we have a long and distinguished history in working on a variety of aspects of guardianship, particularly promoting less restrictive alternatives. This includes pioneering the use of mediation in guardianship cases beginning in the late 1980s; a national study of the operation of guardianship systems in 11 states in the mid-1990s; and development/dissemination of extensive written materials, manuals, videos on these topics.

Most relevant to this proposal, we were among the very first to recognize the emerging service industry of professional guardians and the related need for standards to guide their performance and behavior. Recognizing the potential for serious problems (and further prompted by exposes in newspapers across the country), we undertook the first ever study of professional guardians (in Michigan) and developed Standards of Practice for Michigan Professional Guardians. At the request of the (now defunct) US House Select Committee on Aging, we reworked the Michigan standards into National Standards that were published by the

Subcommittee on Housing & Consumer Interests of the Select Committee (1st Printing Dec. 1988, 2nd Printing Oct. 1989). To our knowledge this was the first attempt to set forth a comprehensive statement of roles and responsibilities of professional guardians and to also address the importance of their ensuring access to less restrictive alternatives. Based on these early and pioneering efforts, TCSG has continued to push for less restrictive alternatives to guardianship and to work seriously on issues of quality and ways to monitor professional guardians in order to prevent abuse.

The Proposed Project.

Thus since we learned from Ms. Ramm of the ground-breaking work your Commission is doing in Nevada, beginning with passage of the law which requires professional guardians to be licensed and audited, we have been eager to find ways to support your efforts, to learn from your experiences, and to pass that on as a model for what other states around the country might do. When we saw Option 3 of the FOA -- "Addressing Abuse in Guardianship" and its cited goal --

> *"... [to] support activities to avoid unnecessary guardianship and prevent and address abuse within a state and/or local guardianship ..."*

it seemed to present a tremendous opportunity to learn from and build on the Nevada experience.

We are particularly interested in working with, supporting, and learning from Nevada as you move to implement the pioneering licensing law. While other states require certain prescribed education, examination, certification of professional guardians (several actually refer to it as licensing), to our knowledge, Nevada is the only state to have enacted a meaningful licensing law with the Financial Institutions Division of the Department of Business and Industry looking specifically at business practices, thus sharing the burden of monitoring and quality assurance with the courts. As such Nevada can be a model for the nation.

Specific Proposals.

If, as we hope, you are interested in working with us, we suggest that through the grant, we could help support (with support including financial support as there is room in the budget for this) and assist in the following ways.

1. Assistance in the formation of a permanent Supreme Court Guardianship Commission, e.g., providing some funding and assistance in setting up the infrastructure of the commission, facilitating sessions on devising the mission, vision and strategic plan of the Commission and researching issues to be addressed by the Commission, especially where other states may have previous experience with a similar issue.
2. Assistance in planning for continuity of application of guardianship statutes throughout the state, e.g. helping to determine how continuity can be accomplished, taking into consideration the difference in resources available in each county and researching how other states have handled this.

3. Assistance in implementing decisions of the Commission, e.g. researching, writing information documents, and keeping participants on track to accomplish goals.
4. Translating the work done in Nevada into a model that can be disseminated nationally for use by other states to accomplish similar innovations.

We would welcome other suggestions of how we might work together to enhance the goals of the grant and the work of the Commission.

Work with a Second State.
In addition to working with Nevada, we are working with Florida (its newly formed Office of Public and Private Guardianship; Office of State Court Administration; and Office of Court Clerks), to support, assist and learn from them as they rework these offices to take on the added tasks related to certifying and monitoring private guardians, and as they work for more and consistent reporting by courts on guardianships.

Process, Next Steps, and Short Turn-Around
The grant would be a two-year grant, beginning September 2016. TCSG would be the grant recipient and would have responsibility for all paperwork and reporting required by the grant. We should hear whether we have received the grant in August.

If, as we hope, you were willing to participate, we would need a letter from you, agreeing to participate in the project. Proposal is due Monday, June 20th, so we would need to receive the letter by next Friday, June 17th.

We would also want to discuss with you or your designee what grant funds would be needed and how in general those funds would be used. The grant should allow $100,000 to $125,000 per year for Nevada for each of the two years. I should also note that the grant does require that for every 3$ in federal funds, we match with $1 of non-federal funds. Matching monies can be in in-kind services so, if you are willing, we would appreciate being able to count Commission members' time, court staff time, etc. toward meeting that in-kind match.

Thank you so much for your consideration. I look forward to hearing from you.

Sincerely,

Penny Hommel

Penelope A. Hommel
Co-Director

REFERENCES AND RESOURCES

REFERENCES AND RESOURCES

NEVADA

- Nevada Supreme Court
  - Administrative Docket Number 507 - Petition and Orders Creating the Nevada Supreme Court Commission to Study the Administration of Guardianships in Nevada's Courts
- Webpage Nevada Supreme Court' Guardianship Commission
  - Commission to Study the Administration of Guardianships in Nevada's Courts
- All Nevada Court Rules
  - Supreme Court Rules Adopted by the Supreme Court of Nevada
  - Nevada Supreme Court Rules
  - Nevada Rules of Civil Procedure
  - Nevada Rules of Professional Conduct
  - Supreme Court Rule Part VII. Rules Governing Sealing and Redacting Court Records
  - Policy for Handling Filed, Lodged and Presumptively Confidential
    - Order 7/22/2013 13-21303
    - Order 7/24/2015 Amendment 15-22497
- Second Judicial District Court – Washoe County – Adult Guardianship webpage
  - Guardianship Information and Downloadable Forms
- Eighth Judicial District Court – Clark County –webpage
  - Guardianship
  - Eighth Judicial District Family Law Self-Help Center
- Ninth Judicial District Court – Douglas County
  - Ninth Judicial District Court Rule 20.1 (Guardianships)
  - Ninth Judicial District Court Rule 30 (Special Advocates)
- Nevada Revised Statute
  - Nevada Revised Statute Chapter 159 – Guardianships
  - Nevada Revised Statute Chapter 162A – Power of Attorney for Financial Matters and Durable Power of Attorney for Health Care Decisions
  - Nevada Revised Statute Chapter 253 – Public Administrators and Guardians
  - Nevada Revised Statute Chapter 432B – Protection of Children from Abuse and Neglect
- 2015 Legislation
  - Assembly Bill 325 – A.B. 325
  - Senate Bill 262 S.B. 262
- Nevada Secretary of State
  - Living Will Lockbox
- Commission on Judicial Discipline – The Standing Committee on Judicial Ethics
  - Advisory Opinion JE15-002 http://judicial.nv.gov/Standing/Opinions/New_Opinions/

- Nevada Department of Health and Human Services
  - Aging and Disability Services Division
  - Report Elder Abuse or Neglect

NATIONAL BEST PRACTICES AND STANDARDS

- National Guardianship Association Standards of Practice
- National Guardianship Association Position Statement Regarding Right to Association
- National Probate Court Standards (see sections 3.3 – 3.5, pages 42-100)
- National Association for Court Management – Adult Guardianship Guide
- National Resource Center for Supported Decision-Making
  - http://supporteddecisionmaking.org
  - http://supporteddecisionmaking.org/state-review/nevada
- National Center for State Courts
  - Center for Elders and the Courts
  - Guardianship Webinar
- Justice Department's September 30, 2015 News Release
- Uniform Law Commission – The National Conference of Commissioners on Uniform State Laws
  - Adult Guardianship and Protective Proceedings Jurisdiction Act (UGPAA)
- *Judicial Determination of Capacity of Older Adults in Guardianship Proceedings: A Handbook for Judges*
  - *Judicial Determination of Capacity of Older Adults in Guardianship Proceedings*
- Commission on Law and Aging and the American Bar Association
  - 2015 Adult Guardianship State Legislative Update
- American Bar Associations (ABA) Guidebooks
  - Guardianship Law & Practice
  - The ABA Guidebooks for setting up a program for volunteers to monitor guardianships
  - Elder Abuse
- Uniform Health Care Decisions Act
- WINGS - Working Interdisciplinary Networks of Guardianship Stakeholders
- Social Security Program Operations Manual System (POMS) GN 00502.300 Digest of State Guardianship Laws
- Minnesota Conservator Account Auditing Program (CAAP)

APPOINTMENT OF COUNSEL

- Arizona Revised Statutes § 14-5303
- Washington Statute – RCW 11.88.045
- Vermont Title 14 Descendants' Estates and Fiduciary Relations Chapter 111 Guardianships § 3065

- Texas Statute – Title 3 Estate Codes Guardianship and Related Procedures – Chapter 1054
- Nevada Statute – NRS 159.0485

TEXAS

- *Texas Guardianship Cases: Improving Court Processes and Monitoring Practices in Texas Courts* Guardianship Study
- Supported –Decision Making Agreement Form (document from the Texas Council for Developmental Disabilities
- 2015 Legislation
  - House Bill 39 (HB 39) – Relating to guardianships for incapacitated persons and to substitutes for guardianships for certain adults with disabilities.
  - Senate Bill 1882 (SB 1882) – Relating to a bill of rights for wards under guardianship.
  - Texas Statute – Title 3 Estate Codes Guardianship and Related Procedures
- Bill of Rights (document from Travis County, Texas)
  - https://www.traviscountytx.gov/images/probate/Docs/guardianship-texas-bill-rights.pdf
- Lexology – Texas is the first state to recognize supported-decision making as alternative to guardianships – Blog Healthcare Law Insights

ARIZONA

- Arizona Guardian Training Video
- Arizona Fiduciary Licensing Program
- Arizona Code of Judicial Administration
- Fiduciaries *Chapter 3. Probate Court* Section 3-301
- Standards Section 3-302
- Forms and Probate Forms 1 Through 10 Section 3-303
- Arizona Revised Code § 14-5303
- Code of Judicial Administration – Chapter 3. Probate Court – Section 3-303 Professional Services: Statewide Fee Guidelines and Competitive Bids.

MINNESOTA

- Minnesota Court Rules – General Rules of Practice – Rule 901.01 Scope of Rules
- Minnesota Court Rules – General Rules of Practice – Rule 416 – Guardianships and Conservatorships
- Minnesota Judicial Branch – Guardianship and Conservatorship
- Minnesota Judicial Branch – Guardianship and Conservatorship Manual

BILL OF RIGHTS

- Texas Senate Bill 1882 (SB 1882) Relating to a bill of rights for wards under guardianship.
- 2015 Minnesota Statutes 524.5-120 Bill of Rights for Wards and Protected Persons.
- Nevada Division of Child and Family Services Nevada's Foster Youth Bill of Rights
- Nevada Patient's Rights NRS 449.700 to 449.750
- Nevada Consumers' Rights – Public and Behavioral Health NRS 433.456 to 433.536
- California Notice of Conservatee's Rights (Probate – Guardianships and Conservatorships)
- Florida Statutes 744.3215 Rights of persons determined incapacitate

GUARDIAN AND ATTORNEY FEES

- National Guardianship Association Standards of Practice
  - Standard 22 – Guardianship Service Fees
- National Probate Standards
  - Standard 3.1.4 Attorneys' and Fiduciaries' Compensation
- Florida
  - http://www.jud6.org/GeneralPublic/GuardianshipForms/GuardianFeePointers6thJud.pdf
  - http://www.fljud13.org/Portals/0/Forms/pdfs/ejc/fee%20packet-guidelines.pdf
  - http://www.theledger.com/article/20130203/NEWS/130209876
- Arizona Code of Judicial Administration – Chapter 3. Probate Court – Section 3-303 Professional Services: Statewide Fee Guidelines and Competitive Bids.
- Texas Standards for Court Approval of Attorney Fee Petitions

GUARDIAN AD LITEM

- Virginia's Judicial System

FLORIDA MATERIALS

- Bi Focal A Journal of the ABA Commission on Law and Aging A Guardian's Health Care Decision-Making Authority: Statutory Restrictions by Karna Sandler
- Chapter 2014-124 Committee Substitute for House Bill No. 635
- Chapter 2015-83 Committee Substitute for House Bill No. 5
- Chapter 2016-40 Committee Substitute for Senate Bill No. 232

MINOR GUARDIANSHIP STATUTES

- West Virginia Minor Guardianship Statutes
- Mississippi Minor Guardianship Statutes
- New York Minor Guardianship Statues

KIM SPOON AND SUSAN HOY 8/17/16 PRESENTATION PRIVATE PROFESSIONAL GUARDIANS see also Appendix H

- HANDOUT 1 -National Guardianship Association - A MODEL CODE OF ETHICS FOR GUARDIANS

HENRY W. CAVALLERA ATTACHMENTS

- ATTACHMENT 1 - GUIDELINES FOR COURT-APPOINTED ATTORNEYS IN GUARDIANSHIP MATTERS
- ATTACHMENT 2 – EVIDENCE IN CONTESTED GUARDIANSHIP AND CONSERVATORSHIP CASES, Oregon State Bar Elder Law Section Newsletter, Summer 2006, Penny L. Davis, The Elder Law Firm, Portland, Oregon
- ATTACHMENT 3 – SERVING ELDERLY CLIENTS IN THEIR OWN COMMUNITIES: HOW MOBILE LAWYERS CAN BE MORE EFFECTIVE LAWYERS
- ATTACHMENT 4 – HE AIN'T HEAVY, HE'S MY BROTHER: CONTESTED GUARDIANSHIPS AND INTERSTATE GUARDIANSHIP ISSUES
- ATTACHMENT 5 – MARQUETTE ELDER'S ADVISOR, GUARDIANSHIP MEDIATION
- ATTACHMENT 6 AND 7 INCLUDED IN APPENDICES UNDER APPENDIX T
- ATTACHMENT 8 – TEXAS LEGAL STANDARDS RELATED TO MENTAL CAPACITY IN GUARDIANSHIP PROCEEDINGS