

Nevada Supreme Court

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



January 22, 2016, Meeting Materials

Justice James W. Hardesty, Chair

AGENDA

ADMINISTRATIVE OFFICE OF THE COURTS

ROBIN SWEET
Director and
State Court Administrator



RICHARD A. STEFANI
Deputy Director
Information Technology

JOHN MCCORMICK
Assistant Court Administrator
Judicial Programs and Services

VERISE V. CAMPBELL
Deputy Director
Foreclosure Mediation

MEETING NOTICE AND AGENDA

Name of Organization:

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

Date and Time of Meeting: January 22, 2016, 1 p.m. to 4:30 p.m.

Place of Meeting:

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

AGENDA

- I. Call to Order
 - a. Call of Roll and Determination of Quorum
 - b. Approval of Meeting Summary from December 15, 2015 (for possible action) (*pages 6-28*)

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

- III. Discussion on Subject Matter Recommendations (General Policy Questions) (for possible action) (*pages 30-31*)

- IV. Subcommittees/Working Group Updates (for possible action)
 - a. Data/IT Subcommittee (*Hans Jessup*)
 - b. Compliance - AB 325 (*Susan Hoy and Kim Spoon*)
 - i. Non-Resident Appointment Process – SB 262 (*Justice Hardesty*)

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

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

- c. Minor Guardianship Statute (*Judge Walker*)
- d. Bill of Rights Subcommittee (*Justice Hardesty*)
- e. Legal Representation Subcommittee (*Justice Hardesty*)
- f. GAL Subcommittee (*Justice Hardesty*)
- g. Physician's Certificate and Definitions/Terms (*Justice Hardesty*)
- h. Eighth and Second Judicial District Working Groups (*Judge Steel & Judge Doherty*)

V. Other Business

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

VI. Future Meeting Dates

- a. February 26, 2016
- b. April 1, 2016
- c. April 22, 2016
- d. May 20, 2016

VII. Adjournment

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

MEETING SUMMARY

ADMINISTRATIVE OFFICE OF THE COURTS

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MEETING SUMMARY

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

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

Date and Time of Meeting: December 15, 2015, 11:00 a.m. to 4:30 p.m.

Place of Meeting:

<i>Carson City</i>	<i>Las Vegas</i>	<i>Elko</i>
Nevada Supreme Court 201 South Carson St. Law Library, Room 107	Regional Justice Center 200 Lewis Ave. 17 th Floor, Courtroom	Fourth Judicial District Court 571 Idaho Street, Dept. 2

Members Present:

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

Jay P. Raman
Sally Ramm
Kim Rowe
Christine Smith
David Spitzer
Kim Spoon
Timothy Sutton
Susan Sweikert
Elyse Tyrell

AOC Staff

Stephanie Heying
Hans Jessup
Raquel Rodriquez

I. Call to Order

a. Call of Roll and Determination of Quorum

Chairman Hardesty called the Commission to Study the Creation and Administration of Guardianships (Commission) to order at 11:00 a.m. A quorum was present.

b. Approval of Meeting Summary from November 23, 2015, meeting.

The November 23, 2015, meeting summary was unanimously approved.

II. Public Comment

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

III. Updates

The Commission received public comment at the last meeting expressing frustration with complaints that had been lodged with the Clark County Metropolitan Police Department (Metro) over criminal contentions or claims. Chief Justice Hardesty asked Mr. Jay Raman to confer with Metro 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.

Mr. Jay Raman stated he generally conversed with Metro's Abuse and Neglect detail on issues that were raised during the last meeting. Two specific issues had been identified at the last Commission 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 then nothing is investigated. Mr. Raman addressed that concern with Metro as well as the issue concerning where one goes to report. The person who spoke at the last meeting during public comment indicated he was having difficulty filing a report. He had been told he had to report to the Attorney General's office and law enforcement and all these other things. Mr. Raman has forwarded those concerns to Metro and they are meeting to discuss these concerns. Mr. Raman said they are working with law enforcement to try to revamp the process so when someone does have a complaint about guardianship abuse, or a vulnerable/older/elder person in general, that at least some one is taking a report and it is assigned and investigated. Mr. Raman was asked to provide the Commission 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 are 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.

Discussion

Mr. David Spitzer 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. Jay Raman suggested the recipient of the letter include the sheriff of major law enforcement agencies. Ms. Tyrell and Ms. Andrews agreed with the amendments to the motion.

Ms. Stephanie Heying took a roll call vote. Motion passed. Yeas 21; Nays 0; Excused 5.

Chief Justice Hardesty would initiate a letter consistent with the Commission's motion.

IV. Guardianship Data and Technology Workgroup Report and Recommendations

Mr. Hans Jessup provided a report on the Data/IT Working Group. The Workgroup reviewed and identified the types of cases and issues that need to be addressed by the courts related to guardianship matters. The Workgroup went to the National Center for State Courts (NCSC) for guidance on national standards in collecting this data and reviewed standards for the time of disposition, age of active pending case, and clearance rates. 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.

Based on its review the Workgroup recommends courts create reports to be reviewed by each District's Administrator or Chief Judge at least quarterly. The reports include:

- 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. Timeframes 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 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 they have enough resources or whether there are other issues going on that need to be addressed.

Mr. Jessup noted there has been concern raised in the rural courts about the costs associated with running and creating these reports. The Workgroup reviewed most of the systems throughout the state and found that the

Second Judicial District, Eighth Judicial District, and some of the rural courts have new systems that would allow this information to be gathered but it would require some effort and direction.

In addition, the Workgroup recommends that the courts begin tracking more data and recommends the use of an 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.

The final recommendation would be to 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.

There was a discussion about whether the Workgroup had discussed having the data collected from the courts sent to a state registry or the State Court Administrator annually. This would provide a statewide database that would be available so the public could see what is going on in the State of Nevada in guardianship cases. The Supreme Court publishes an Annual Report, which captures all the cases that have been filed in the courts throughout the state. The Report includes columns addressing civil cases, family law cases, juvenile cases, etc. The Uniform Standards of Judicial Records (USJR) collects the information for the Annual Report and some of these measures are a part of the discussion of a separate workgroup. It would be appropriate to capture guardianship cases as well but the data would need to be collected by the district courts in order to report this information.

Mr. Jessup noted most courts have the ability to track the data but might not have the case management system to extrapolate the information for the report. The new systems implemented around the State have this capability but it might take some tweaking to define it to exactly what and how the Commission wants to measure. There are older, antiquated systems such as the ADS system, which is an International Business Machines Corporation (IBM) 400 series data server. The USJR grant, operated through the Supreme Court, could provide funds for programming. The Workgroup wanted to make sure the recommendations worked for the Commission before identifying how much that would cost.

The Workgroup also identified an issue as to how the petitions are filed in the courts. USJR directs that each case be counted as a single petition (a single petition would represent one ward). Many courts file multiple wards under a single petition, which is allowed under NRS 159.057¹. This presents a problem when looking at how cases are being disposed 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

- Cost of filing fees
 - Additional costs to the people filing the petitions.
 - Additional costs to the wards.
 - Additional costs to the guardians who might charge the ward's estate.

¹ 159.057 states, where the appointment of a guardian is sought for two or more proposed 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 proposed ward or wards.

- In many cases, the attorney is asking for the same relief and to have to ask for it multiple times with multiple documents does not seem like an equitable resolution for the family cost wise.
- Waiving filing fees
 - Need to determine the basis for waiving the filing fees.
 - Concern 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.
 - 90% of the minor guardianship petitions in Washoe County are pro per.
 - Washoe Legal Services provides a free legal clinic weekly 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 that 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 wards 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 3 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? I.e., 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.

Chief Justice Hardesty asked the Commission members if they accepted the recommendations provided by the Workgroup in the memo dated October 15, 2015, excluding the filing question.

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. The motion passed unanimously.

Chief Justice Hardesty requested the Workgroup provide a report to the Commission on how the recommendations would be implemented. Chief Justice Hardesty stated he thought there would need to be amendments to USJR that would impose these requirements. The Workgroup was also asked to reach out to all the rural courts and identify those who need support services to implement this requirement. The Supreme Court is going to want to know this information as a result of any rule making that might take place. It would also be important for the Commission to understand what, if any, fiscal impacts the recommendations might have on the courts and the people tasked with collecting the data. The Workgroup was asked to review the filing of petitions and the waiver of filing fee requirements. This might require statutory change and the Commission

could address the fiscal impact separately. The Workgroup was also asked to reach out to courts for their input on the management question.

Judge Doherty offered to provide a presentation to the Commission on Second Judicial District's data collection processes and how significant keeping this data is to the efficiency of these cases. The court also collects demographic information that helps policy-making decisions based on the nature and extent of the services provided.

The Commission discussed redesigning the cover sheet so that the same information is collected throughout the state. The process should be uniform across the state. Chief Justice Hardesty asked Mr. Hans Jessup to collect cover sheets from the courts around the State and compare the cover sheets. Mr. Jessup noted the cover sheets have to be approved by the State Court Administrator so the AOC would have copies. Ms. Lora Myles has been working with the rural counties on a cover sheet and she would provide a copy to Mr. Jessup.

V. General Policy Questions and Recommendations

Commission members had provided a list of recommendations for the Commission to consider. Chief Justice Hardesty reviewed the recommendations and compiled a list of 29 general policy questions. The Commission members would discuss, debate, and evaluate the general policy questions. The fundamental question during today's meeting is whether Commission members agree to address these policy questions as a part of their recommendations to the Supreme Court. The Commission would get into the specifics of these policy recommendations over the course of the next five months.

Question 1: Should the Nevada Supreme Court establish a permanent Commission to address issues of concern to the elderly, including continue review of Guardianship Rules/processes in Nevada?

The Commission to Study the Administration of Guardianships in Nevada's Courts was established by Supreme Court order with a limited duration. Other states, including Texas have created permanent commissions to review ongoing guardianship issues, policy changes, etc. Chief 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 says the Commission would be established to address concerns to the "elderly." There was concern that if the permanent Commission only addressed issues to the "elderly" in guardianships then a large population under guardianship, including minors would not be addressed. The term elderly might be too narrow and should be broadened to include all persons under guardianship. The Commission should encompass guardianship as a whole or adult guardianship. The Commission might want to consider a separate commission if minors are addressed separately in statute.

- In Washoe County 40% of the guardianship cases are persons between the ages of 18 – 59, and almost half of guardianship cases are disabled persons.
- The Second Judicial District has more active and filed minor guardianship than adult guardianships.

Judge Walker would strongly encourage a permanent commission and noted he has served on the Juvenile Justice Commission and a Supreme Court Commission is more fleet-footed and has better continuity across legislative sessions.

The Commission agreed the commission should be under the Nevada Supreme Court since the Supreme Court has already established a precedent with this Commission. It would 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.

The Commission discussed whether "elderly" should be replaced with vulnerable persons, which would cover persons 18 and older. There was a discussion about whether this would encompass alternatives to guardianships. If the commission begins to focus on alternatives to guardianships, less restrictive means, then a commission should continue to study that as a part of the possible rules, policies, and statutory implementation. It was suggested the recommendation could read...guardians for other vulnerable persons or something along those lines to keep it focused. There was concern that using the term "vulnerable persons" would only address part of the guardianship issue. The commission should address issues of all guardianships for all persons, unless the adult and minor guardianships statutes are separated. The commission would be an accountability type of commission for the changes that are being made by this Commission.

Chief 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 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.

Further Discussion

Ms. Elyse Tyrell confirmed the motion presumed that any alternative that the Commission creates would be under the guardianship rules. Chief Justice Hardesty responded yes.

Ms. Tyrell seconded the motion. Ms. Spoon wanted to clarify the recommendation was not just dealing with persons but procedures as well. Chief Justice Hardesty responded the recommendation identifies who would be subject to and identifies statutes, rules, and processes.

Ms. Heying took a roll call vote. Motion passed. Yeas 23; Nays 0; Excused 2; Abstain 1.

Question 2: Does the Commission favor a recommendation to adopt a Bill of Rights for Wards?

The Commission had received a copy of the Bill of Rights in Texas, the draft Bill of Rights provided by Ms. Buckley and a few other alternatives from other states. Chief Justice Hardesty asked Commission members, without getting into the weeds, if they would recommend a Bill of Rights for Wards.

Discussion

The Commission discussed the Patient's Rights as outlined in Chapter 449 of the Nevada Revised Statutes. Mr. Kim Rowe noted he has found the rights under Chapter 449 to be a useful tool, in not only dealing with families

and patients, but also when working with health care 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 the 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. Commission members agreed it would be helpful to have objective parameters and would assist those working in this area. A Bill of Rights would also be beneficial to the entire system and should be written so a non-attorney could read and understand it.

Mr. Raman stated his only concern is many of the wards are not competent to read or execute the Bill of Rights and it should be inclusive of family members and people who would associate or speak on behalf of the ward.

Judge Egan Walker moved the Commission acknowledge that it favors drafting an adoption of the Bill of Rights for persons subject to guardianship jurisdiction. Ms. Susan Sweikert seconded the motion.

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 persons subject to guardianship jurisdiction, regardless of age.

Ms. Heying took a roll call vote. Motion passed. Yeas 24; Nays 0; Excused 2.

Chief Justice Hardesty asked members if they would like to serve on a subcommittee to draft the Bill of Rights for Wards. Ms. Elyse Tyrell, Ms. Christine Smith, Mr. Jay Raman, Mr. David Spitzer, Ms. Debra Bookout, Ms. Rana Goodman, and Ms. Trudy Andrews volunteered to serve on the subcommittee. Chief Justice Hardesty said he would determine the chair, and if others outside of the Commission would serve on this and other subcommittees.

Question 3 (Part 1): Does the Commission recommend the idea that every ward, regardless of means, is entitled to legal counsel?

The threshold question is:

Does the ward 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 they are appointed, or where they come from at this time.

Discussion

Chief Justice Hardesty noted if one interprets the current statute in NRS 159.0485 as already giving the right to award legal counsel then it seems what remains is 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, "...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." The statute does say if it is available compensation and expenses must be paid from the estate of the adult ward or proposed adult ward. 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 language in the statute is, the client wishes, the court may, the client must express a desire for an attorney.

Judge Walker stated when he signs an order granting a guardianship, particularly over an adult ward, he is more negatively affecting their constitutional rights than if he signed a judgment of conviction sending them to prison. A ward of a guardianship potentially cannot marry, vote, possess a firearm, engage in contacts and are subject to more dire invasions of their constitutional rights than criminal defendants. The 6th and 14th amendments of the U.S. Constitution and Gideon v. Wainwright provides counsel in a criminal context and Judge Walker 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 on 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 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. There had been an earlier discussion about adding clarification/mechanism that if an attorney is not needed, for whatever set of circumstances, there would not be an appointment of counsel. Ms. Ramm did not agree with the idea of adding an exception for people who do not need an attorney because those exceptions tend to grow. Only 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 that is facing guardianship is represented by an attorney.

Concerns

- Attorneys representing wards who zealously represent what the ward wants even when it is obvious that is not in the best interest of the ward and a tremendous amount of the wards assets are spent. There should be sanctions to be sure attorneys do not take advantage of an incompetent ward, run their fees up, and deplete the wards estate.
- Wards 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 they do not understand the process. There are many reasons why a potential ward might say no to attorney representation. Wards should have representation provided to them at the beginning of the process. If the ward cannot develop that attorney/client relationship there could be an alternative, e.g., Guardian Ad Litem (GAL).
- Having the necessary resources to appoint the attorneys for the ward.
- Some adult wards might say they do not want an attorney because they think they have done nothing wrong. Some proposed adult wards 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 policy 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 policy question number 4 might bleed into question 3. A GAL would do what is in the best interest of the person being presented for guardianship or the person under guardianship. The attorney should be representing the ward and a GAL would represent the best interest questions. The GAL is a different role and cannot be substituted for an attorney.

- Counsel helps the court make better decisions and the wards 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 has benefitted from having attorneys representing potential wards 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 ward did, at most, is get sick. The Commission has to vote yes and it would be a major step backwards if the Commission did not vote yes.

Assemblyman Sprinkle had the opportunity to meet with Ms. Buckley following the last Commission meeting and discuss some concerns that he had raised during the meeting. 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.

Judge Porter stated Washoe Legal Services has been working with the Fourth Judicial District Court and she is able to appoint an attorney for every minor guardianship case, and Nevada Legal Services provides attorneys for adults. 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 per litigants and the court was not receiving the information they needed to make decisions in the guardianship. Judge Porter agrees with Judge 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 Ward, regardless of means, is entitled to legal counsel. Ms. Debra Bookout seconded the motion.

Additional Discussion

Ms. 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 statute and asked if the Commission is saying every person should be appointed an attorney or legal counsel. Chief Justice Hardesty responded it is both; they are entitled to counsel and they should be appointed counsel. Chief Justice Hardesty asked if Judge Porter and Ms. Debra Bookout agreed to the edit *...regardless of means*, the ward is entitled to and shall be appointed legal counsel. Judge Porter and Ms. Bookout agreed to the edit.

Chief Justice Hardesty stated the problem with the statute is 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 some source other than legal aid. So now, a judge is faced with the decision of appointing private counsel. How are they going to be compensated? What if the county pushes back? There is nothing in the statute that obligates them to pay. This is a classic separation of powers problem where the judge is enforcing the plain meaning of the statute that says

a proposed ward is entitled to counsel and if they do not have legal aid available, the alternative is to appoint private counsel. How is private counsel compensated? The judge enters orders and says pay this attorney X 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. This is a serious question about whether Nevada – the declaration you have a right to counsel actually exist in cases which legal aid is not the one being appointed. 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 Trowbridge said he could see a lot of objection coming from people and the funding of these types of things. 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 some volunteers that could assist. It is going to be difficult in Clark County where there are thousands of cases a year, times \$100 an hour, times 20 hours per case. How many police officers are you willing to lay off to accommodate this?

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, a person is entitled to counsel. Clark County has approximately 60-75 new cases a month and a large percentage of them are indigent. Washoe County has between 10-20 new adult guardianship cases and 15-20 minor guardianship cases filed a month.

Motion with edits from Ms. Spoon:

Judge Nancy Porter moved to recommend the idea that every Ward, regardless of means, is entitled to and shall be appointed legal counsel. Ms. Debra Bookout seconded the motion.

Ms. Heying took a roll call vote. Motion passed. Yeas 24; Nays 0; Excused 2.

Question 3 (part 2): How and under what circumstances should an attorney be appointed?

Chief Justice Hardesty stated in light of the Commission's policy decision on part one of policy question three, he would appoint a subcommittee to examine the implementation issue surrounding the involvement of counsel. Chief Justice Hardesty would reach out to Ms. Buckley to see if she would serve on the subcommittee. Chief Justice Hardesty asked Mr. David Spitzer and Ms. Elyse Tyrell to participate on this subcommittee. Chief Justice Hardesty is going to reach out to lawyers he has identified as potential participants and would ask Drew Christensen and Bob Bell to assist in this effort as well. Chief Justice Hardesty noted Assemblyman Trowbridge and Assemblyman Sprinkle were also welcome to participate on the subcommittee.

Question 4: Does the Commission favor a GAL program similar to the state of Virginia or under some other model? How and under what circumstances should a GAL be appointed?

The prior discussion illustrated the point that GALs are different but might also play a role in the guardianship process. The Commission members were asked, from a policy standpoint, when and under what circumstances should a GAL be appointed.

Judge Doherty, Judge Steel, Judge Voy, and Judge Walker provided information on GALs from their perspective.

- The Second Judicial District Court appoints GALs on a discretionary basis, usually in cases where one of two things occurs:
 1. When there is very little information on the case, e.g., there is a pro per litigant, providing minimal information and the court is not able to ferret what the circumstances are even after appointment of counsel; and
 2. 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. The court would be looking at a best interest recommendation based on the myriad of views and positions.
- Discretion of the appointment for a GAL is included in statute.
- 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 ward as a GAL.
- The Second Judicial District is working with the Sanford Center at the University of Nevada, Reno (UNR) to develop some level of volunteer program. The volunteer would not necessarily serve as 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.
- Small legal communities would require additional resources.
- The Fourth Judicial District is conducting a preliminary investigation into how a Special Advocates for Elders (SAFE) program might work for the district.
- A GAL is subjective and Judge Steel would like to have someone who talks for the ward. This would allow an extra layer to help the court make a better decision.
- Judge Steel thought the statute as currently written would serve the needs of the court.
- Protocols should be attached to the statute by the Supreme Court. The protocol 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.
- Chapter 432B provides for the appointment of GAL in a child welfare case.
- Limitation under Chapter 159.0455 is the last phrase. The GAL is entitled to reasonable compensation from the estate of the ward. The chief limiting factor is in no more than 1% of minor guardianship cases actually involve guardianship over the estate or an estate of sizeable means to have resources in which to compensate a GAL. The challenge/limitation is the court is asking a member of the Bar to take a case with literally little or no real possibility of compensating them.

Additional Discussion

- Provide a good description of each person's role i.e., attorney, GAL, volunteer.
- Provide training.

- What would the role of the investigators be? How would this be different from a GAL? Would their roles overlap?
- 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.
- The statutory scheme allows for an attorney, a GAL, and an investigator.
- A GAL looks at everything from the perspective of the ward and the best interest of the ward, which is what, is presented to the court.
- There is a difference between a GAL and an investigative tool for the court.
- Investigators and auditors are different from GAL.
- The statute does not have a cohesive, coherent definition for a GAL.
- The statute does provide 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.

Chief Judge Gibbons noted NRS Chapter 159 does not include a definition for or set forth the qualifications of a GAL. The statute does not state the duties or payment method for a GAL. Chapter 432B subsection 500 specifically sets forth the duties of a GAL subsection a – k sets forth the qualifications and duties of a GAL. The Commission could use this statute as guidance in amending NRS Chapter 159. Judge Doherty said she would support articulating with greater specificity in either rules or statute the roles of the GAL.

Chief Justice Hardesty rephrased the question. Does the Commission favor recommendations concerning the qualifications, duties, and training of GALs?

Ms. Julie Arnold moved to have the Commission make recommendations concerning the qualifications, duties, and training of Guardian Ad Litem. Ms. Kathleen Buchanan seconded the motion. Judge Porter suggested adding compensation to the list. Ms. Arnold and Ms. Buchanan agreed to the amendment.

Ms. Heying took a roll call vote. Motion Passed. Yeas 25: Nays 0: Excused 1.

Question 5: Does the Commission recommend the use, where available of volunteers or programs similar to SAFE to assist proposed wards and the Court in guardianship proceedings?

Ms. Tyrell suggested the Commission table this question until the role of and training for the GAL is identified.

Chief Justice Hardesty noted the Commission had received information on the SAFE program in Douglas County. SAFE programs are volunteer programs similar to CASA for children. They provide input to the courts based on what they have observed when visiting with a ward. These programs are volunteer programs that provide outside input concerning their observations of the ward's needs and circumstances.

Chief Judge Gibbons provided an overview of the SAFE program in Douglas County.

- The SAFE program was started in 2009 and was modeled after the CASA program.
- CASAs are appointed under chapter 432B.
- Used the investigators and GAL statute and took it one-step further.
- Amended local court rules and created a specific rule called Special Advocate that includes both CASAs and SAFEs. Court and statutory authority are provided to appoint a SAFE.
- The order appointing the SAFE sets forth, in detail, the exact duties of the SAFE.

- The statute on GALS is empty on this topic and the order appointing SAFEs has the details.
- Extensive training is required to become a SAFE.
- Through innovation and borrowing from existing statutes and creating new court rules Douglas County was able to overcome any issues and provide a ward a volunteer advocate.
- A SAFE is not appointed in every guardianship case. Not every ward needs a SAFE. The hard part is deciding who does and who does not need a SAFE when there is limited information.
- Coordinator John Giomi reviews cases and provides input.
- SAFE could be appointed as needed, as the cases went on.
- Having a SAFE made a difference in the quality of the decisions of the court.
- Information provided allowed for less restrictive alternatives and they were able to bring people who were out of state back home to Nevada.
- The program requires a coordinator and everyone else is a volunteer.

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, it has been done in Douglas County for six years and it worked in Washoe County.

Chief 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 wards and the court in guardianship proceedings. Every district could have a different volunteer program. The question is:

Does the Commission think those volunteer programs provide benefits in addressing guardianship needs?

The Commission discussed the distinction between an attorney, GAL, and SAFE for the ward. Ms. Arnold expressed concern that there was no bright line between the three. Commission members felt 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 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, as is the CASA program. There was a concern that the SAFE program in Washoe County had the ear of the judges. It 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 being brought up by SAFEs.

Chief 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 ward. Ms. Rana Goodman noted the American Cancer Society's motto is Look Good, Feel Good. Ms. Goodman would like to see volunteers utilized more for the well-being of the ward. Ms. Goodman would like to see the volunteers utilized to visit the wards and spend time with the wards. Ms. Goodman suggested working with local beauty schools and having them come to the care facilities one day a month to provide haircuts, styles, manicures, etc. Ms. Goodman noted the ward needs to feel like

they are important to someone and volunteers could provide that. Ms. Goodman has a roster of volunteers willing to do this. The Commission discussed how the court or the guardianship statute would be involved in the volunteer services. Ms. Goodman's point was the volunteer is going to provide support services to the ward. 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.

Chief Judge Gibbons stated the answer to that is the volunteer develops a relationship with the ward 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 ward in the facility and seen the ward in many different environments. The SAFE volunteer knows how the ward really feels versus someone who might only interact with the ward occasionally. The SAFE volunteer provides a report to the court. That is where the program has made a difference and it goes beyond a normal volunteer – remember guardianships can be for the person or the estate or both. When you have 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.

Judge Doherty noted the SAFE program in Washoe County was started under Judge Scott Jordan and continued by Judge David Hardy. The program terminated when the grant to support the program terminated. The court benefited from the program. Chief 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, 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 Commission does not need to be specific as to what the program is.

Chief Justice Hardesty stated his intent of the question was to extend, to the districts, the flexibility to establish a volunteer program of their choice. A volunteer program that the district thought would be best in their circumstances as it could be limited to the access to volunteers and the number of people willing to volunteer. Commission members 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 wards.

Chief Justice Hardesty suggested rephrasing the question:

Does the Commission encourage the use of volunteers or programs by judicial districts where available, to assist proposed wards 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 Steel moved for the Commission to encourage the use of volunteers or program in our districts as appropriate and available. Judge Walker seconded the motion.

Ms. Heying took a roll call vote. Motion passed. Yeas 24; Nays 1; Excused 1

Elyse Tyrell said yes with the understanding that each district would be able to define the role. Chief Justice Hardesty responded yes, that was the motion.

Question 6: Does the Commission favor the idea of changing definitions or terminology? Should the Commission recommend changes to the Physician Certificate and if so how?

Chief Justice Hardesty said the threshold question is whether the Commission favors, as suggested in some presentations, modifications to definitions and terminology used in 159 as well as changes to the Physician Certificate (PC). Some people might favor the definition change of one term over another so the question might be too broad and revised to ask if the Commission favors revisiting some of the definitions and terminology.

Discussion Definitions and Terms:

- “Ward” – Should the term “Ward” be changed?
 - The term “Ward” sounds like it is a possession of someone.
 - In almost every commission in other states, the term “Ward” has been addressed and eliminated.
 - “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 Standards (NPS) are very specific about eliminating the term “Ward.”
 - NPS has substituted the term “respondent” for pre disposition and have suggested either person under guardianship or another phrase for post disposition.
 - The term “respondent” could be used throughout the case.
 - Concern 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 non-prerogative term for someone who is the subject of a guardianship, post adjudication.
 - “Person under guardianship” has been suggested as an alternative but there was a concern with the acronym (PUG)
 - Mr. David Slayton mentioned regretting not changing the term “Ward.”
 - 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.
- 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.
- Judge Voy said if you use the term “incapacitated” that has another distinct set of meanings when talking about the determination of life support and different things like that under different statutory provisions. You have to be careful in what term you are going to use because it could have a ripple effect.
- Issue with definitional terms used by physicians versus definitional terms used by attorneys.

Commission members were asked to provide their perception of the Physician Certificate (PC) and discuss:

- Should the PC be changed? If so, how should the PC be changed?
- If there are terms used in the PC that should be changed.
- Who should provide the PC?
- Are there other areas of the PC that should be reconsidered?

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.
- Could add questions similar to what Texas added:
 - 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.
- If the Commission is going to consider the question of least restrictive means then it begs the question about whether this would apply to the ward in all circumstances.
- Would a person be called a “ward” even though a full guardianship might not be needed? I.e., the person is incapacitated for a limited purpose.
- Making the PC an affidavit attaches liability to the affiant that this is true and accurate.
- Do not want to deter the medical community from being able to do what they need to do. Communication would remove some of the reluctance that is seen. Washoe County has 5-6 doctors who complete 90% of the incompetency evaluations.
- Exhibit 6 in Mr. Hank Cavallera’s documents includes a needs assessment used by the self-help center in Washoe County.
- 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.

Chief Justice Hardesty asked if the Commission favors modifying the PC. Assuming it does Chief 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 Commission discussed the current language in the PC is taken from statute and if language is added to PC would that require a change to the statute. Having to wait until statutes are changed to modify forms would not be practicable. The form design should be deferred to the judiciary, courts, or some other source. 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.

Additional Discussion

- Need to balance when dealing with 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 persons 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 is 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 they 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.

Chief Justice Hardesty asked:

As a policy matter, does the commission think it is best practices to require a more expanded discussion of an individual's capacity as a condition to the court ordering a guardianship?

The Commission discussed NRS 159.044 subsection 2 (j) (1) and (2) states,

(j) A summary of the reasons why a guardian is needed and recent documentation demonstrating the need for a guardianship. If the proposed ward is an adult, the documentation must include, without limitation:

(1) A certificate signed by a physician who is licensed to practice medicine in this State or who is employed by the Department of Veterans Affairs, a letter signed by any governmental agency in this State which conducts investigations or a certificate signed by any other person whom the court finds qualified to execute a certificate, stating:

- I. The need for a guardian;
- II. Whether the proposed ward presents a danger to himself or herself or others;
- III. Whether the proposed ward's attendance at a hearing would be detrimental to the proposed ward;
- IV. Whether the proposed ward would comprehend the reason for a hearing or contribute to the proceeding; and
- V. Whether the proposed ward is capable of living independently with or without assistance; and

(2) If the proposed ward is determined to have the limited capacity to consent to the appointment of a special guardian, a written consent to the appointment of a special guardian from the ward.

The Commission discussed who is allowed to sign the certificate and that the statute might need more clarity in this area. The Commission was concerned that physician assistants or people working in group homes could sign the certificates.

Judge Doherty said keeping in mind that guardianships are to be established by clear and convincing evidence, and keeping in mind that the majority of cases in family court are a preponderance of evidence. In a family court

proceeding, that is not a guardianship, 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. A doctor would be coming to court for cross-examination on a custody or divorce case but that is not the case in guardianship proceeding. An argument could be made that the only purpose of the PC 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 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 potential ward under the protection of the court because the physicians are reluctant to sign the PCs. The Commission needs to 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.

Chief Justice Hardesty stated question 13 asks if the Commission favors a person-centered planning and determination by the court that guardianships are approved only per 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 ward, 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 doctors who do not want to be involved with the PC at all.

Chief Justice Hardesty said examining the PC is a wise idea and the Commission should get input from experts who have to complete this form. The Commission should consider how changes to the PC might affect physicians. Chief Justice Hardesty deferred question 6 for further discussion. The Commission would reach out to physicians and Chief Justice Hardesty asked Mr. Rowe and Mr. Spitzer to reach out to some physician's in Washoe County and provide contact information. Judge Voy was asked to reach out to physicians in Clark County and provide contact information. Chief 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 court might be including information in their orders that states a person might have dementia or some other diagnosis and the court might be violating HIPAA if that information is available to the public. The court tries 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. 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.

Question 7: Does the Commission wish to make recommendations concerning the confidentiality of all or some of the proceedings in guardianship cases?

The Commission discussed the Supreme Court Rule 7 and the Policy for Handling Filed, Lodged, and Presumptively Confidential Documents. Both documents were filed under Administrative Docket (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 and the 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. Rowe files a petition, the PC is attached as an exhibit and e-filed marked presumptively sealed pursuant to ADKT 410.

The Commission discussed the concern of 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 abridges that or makes those records public.

The Commission discussed the concern of having medical and other sensitive information included in a case file, open to the public. There was also a concern expressed about the information not being available to the public. Particularly, in cases where the media would want to review cases to investigate whether there is an abuse of the ward or other abuses or concerns within the guardianship system. It was noted unless there are orders filed, certain information is confidential pursuant to state statute, or federal law then the information would be presumptively public. The files and hearings are open to the public. The discussion is addressing HIPAA and medical evidence that is only presumptively closed until the issue is addressed further. Guardianship hearings are more open than many court proceedings. Guardianship cases are open. The Commission has only discussed narrowly presumptively confidential medical documents and they can be reviewed upon request.

In light of the discussion and the current rules already established by other commissions, 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.

Question 8: Does the Commission recommend changes to the process for the appointment of temporary guardianships? If so, how should that process be modified?

In prior meetings, there had been some interest from Commission members to review the circumstances, timing, and supporting information for temporary guardianships. There had been discussion that temporary guardianships should be more restrictive and the notices surrounding the temporary guardianships should be changed. Chief Justice Hardesty asked members if they agreed with question 8, if they thought question 8 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, not restrictive enough?

Discussion

- The presentation on temporary guardianships showed that Nevada's statute is similar to other states. It does not appear that Nevada is doing something independent of other states in this area.
- Under the current statute, a petitioner may request the court to appoint a temporary guardian for a ward who is an adult and who is unable to respond to a substantial and immediate risk of physical harm or to a need for immediate medical attention and it is supported by documentation.
- The Eighth Judicial District 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.

Chief Justice Hardesty noted the concerns expressed in previous Commission meeting was 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.

Further Discussion

The Commission discussed the language under the minor temporary guardianship in NRS 15.052 (2). The statute requires (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 per 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 ward presents a danger to him or herself or others, or

whether the proposed ward is or has been subjected to abuse, neglect or exploitation. The Commission should review whether this should be required.

Judge Porter added 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 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 Doherty said following the Commissions conversations 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 immediately 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 how any statutory recommendations or rules and what affect they could have in other areas of the statute.

The Commission agreed relaxing the temporary appointment of minors makes sense. Judge Voy, Judge Walker, and Judge Porter are working on modifying the guardianship statutes and would work on some language for the temporary minor guardianship to address the concerns expressed today.

VI. Update on Guardianship Cases in the Courts

Clark County:

- The Court has been reviewing all cases; started with 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).
- 4,000 cases required to provide a report to the court at least once a year. (Cases have already been adjudicated and a guardianship is in place. Report of person or annual report of accounting or both required). (The court is still in the process of reviewing all the cases)
- 2,000 inventories due.
- The court is doing its best to bring everyone up to compliance.
- The court is reviewing all adult cases first and then will begin to review minor guardianship cases.

Washoe County:

- Mr. Craig Smith is the compliance officer for the Second Judicial District.
- Closed over 600 cases in the last 24 months.
- Roughly 1,300 cases when they started and are now down to 681. Expect the number to harden around 550.
- 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. (Clearance rate is narrow)
- Time to first hearing in the majority of cases to get to court is before 30 days, many first hearings within 10 days based on the temporary provision.
- Dispositions of cases are around 90 days.
- Tracking data to evaluate efficiency.
- Report to the Bench Bar Committee quarterly and the Task Force Committee monthly.

Minor guardianship cases in Washoe County:

- Closed 400 old cases where children have aged out of the jurisdiction of the court.
- Open cases around 1300 and that number should settle around 600-700 as they continue their review.

Elko County:

- 330 open guardianship cases.
- Does not have a compliance officer and the court does not have money for one.
- Law clerk and court clerk created a spreadsheet. They are entering information into the spreadsheet for the guardianship cases.
- Process started current date going backwards. Information is entered through 2009.
- Show cause orders through 2010. Judge Porter has only had to remind a guardian a second time once.
- Closed a handful of guardianship cases.
- Oldest case goes back to 1971.
- New filings are increasing.
- There were 38 new cases in 2014 and they are on track for 54 new cases in 2015.
- 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 ward is due and they set the hearing for the first accounting.

VII. Future Meeting Dates

Members were asked to review the meeting dates for 2016. The next meeting would be held on January 22, 2016. A calendar notice would be sent to members.

VIII. Adjournment

The meeting was adjourned at 4:40 p.m.

GENERAL POLICY QUESTIONS

General policy questions:

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

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

EMAIL TO LVMPD

The following email was sent to all Las Vegas Metro Police Stations on 1/6/16

To all Law Enforcement Support Technicians, Patrol Service Representatives and Patrol Officers,

It has been brought to the attention of the Abuse & Neglect Detail by the Clark County Office of the District Attorney that in some instances, citizens attempting to file a report with LVMPD for Elder Abuse, Neglect, Isolation or Exploitation have been denied the opportunity and have been told their circumstance is a civil matter.

Per NRS 200.5093 which covers mandated reporters responsibilities, stipulates that a report may be made by any other person not classified as a mandated reporter. The reporting person may file a report if the person knows or has reasonable cause to believe that an older person has been abused, neglected, exploited or isolated. A law enforcement agency which receives a report pursuant to this section shall immediately initiate an investigation of the report.

For future incidents during business hours of Monday through Friday from 0700-1700 hours, if a citizen presents to you their desire to file a report for Elder Abuse, Neglect, Exploitation and/or Isolation and you believe the circumstances may be deemed as civil and not criminal, please contact the Abuse & Neglect Detail at 702-828-3364 for guidance.

If a citizen makes contact with you outside of normal business hours wishing to file a report for Elder Abuse, Neglect, Exploitation and/or Isolation, please accept a written voluntary statement from the citizen and complete a crime report. Supervisors within Abuse & Neglect Detail will review the report in P1 to determine if it warrants further investigation.

Thank you for your assistance in this matter.

James Weiskopf, Lieutenant
Special Victims Section
Las Vegas Metropolitan Police Department

LINKS TO RESOURCES

LINKS TO RESOURCES

NEVADA

- Supreme Court Rule Part VII. Rules Governing Sealing and Redacting Court Records
 - http://www.leg.state.nv.us/Division/Legal/LawLibrary/CourtRules/SCR_RGSRCR.html
- Policy for Handling Filed, Lodged and Presumptively Confidential
 - Order 7/22/2013 [13-21303](#)
 - Order 7/24/2015 Amendment [15-22497](#)

ARIZONA

- AZ Guardian Training Video Link:
- http://www.azcourts.gov/Portals/151/PRINTVersionGUARDIAN_FINAL.pdf
- AZ Fiduciary Licensing Program: <http://www.azcourts.gov/cld/Fiduciary-Licensing-Program>
- AZ Code of Judicial Administration:
 - http://www.azcourts.gov/Portals/0/admcode/pdfcurrentcode/7-202_Amendment_06_2012.pdf
- Fiduciaries Chapter 3. Probate Court [Section 3-301](#)
- Standards [Section 3-302](#)
- Forms and Probate Forms 1 Through 10 [Section 3-303](#)

TEXAS

- Bill of Rights (document from Travis County)
 - <https://www.traviscountytexas.gov/images/probate/Docs/guardianship-texas-bill-rights.pdf>
- Supported –Decision Making Agreement Form (document from the Texas Council for Developmental Disabilities <http://www.tcdd.texas.gov/wp-content/uploads/2015/10/Supported-Decision-Making-Agreement-Oct15.pdf>)
- Guardianship cases are handled in County Trial Courts of Limited Jurisdiction – Constitutional County Court, Statutory County Court, or Statutory Probate Courts.
 - There are 18 statutory probate courts in 10 counties who handle probate matters only.
 - In the other 244 counties, guardianship cases are handled by judges who also handle other types of cases.
 - Statutory county court judges may appoint an associate judge.

COMMISSION ON LAW AND AGING AND THE AMERICAN BAR ASSOCIATION (ABA)

- 2015 Adult Guardianship State Legislative Update <http://ambar.org/guardianship>.

AMERICAN BAR ASSOCIATIONS (ABA) GUIDEBOOK

- The ABA Guidebooks for setting up a program for volunteers to monitor guardianships.
 - http://www.americanbar.org/groups/law_aging/resources/guardianship_law_practice/court_volunteer_guardianshipmonitoring.html