

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE CREATION
OF A COMMISSION TO STUDY THE
CREATION AND ADMINISTRATION
OF GUARDIANSHIPS.

ADKT 0507

FILED

MAY 07 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *E. Brown*
CHIEF DEPUTY CLERK

*ORDER APPROVING MEDIATION MANUAL AND
STATEWIDE RULE 13 FOR GUARDIANSHIP*

WHEREAS, on August 2, 2017, this court ordered the creation of a permanent Guardianship Commission to study and make recommendations in specific areas enumerated in the court's order and directed the Commission to provide a report of its recommendations to the court; and

WHEREAS, on September 12, 2019, Justice Hardesty filed a second supplement to the First Interim Report of the Guardianship Commission in which the Commission recommended adoption of a proposed Mediation Manual.

WHEREAS, this court solicited public comment on the supplemental report and a public hearing was held on the Mediation Manual on October 17, 2019; and

WHEREAS, it appears that approval of the Mediation Manual is warranted; accordingly,

IT IS HEREBY ORDERED that the proposed Mediation Manual shall be approved and read as set forth in Exhibit A.

IT IS FURTHER ORDERED that the proposed additional statewide rule 13 for Guardianship shall be approved and shall read as set forth in Exhibit B.

IT IS FURTHER ORDERED that the proposed Mediation Manual and proposed statewide rule 13 for Guardianship shall be effective 30 days from the date of this order. The clerk of this court shall cause a notice of entry of this order to be published in the official publication of the State Bar of Nevada. Publication of this order shall be accomplished by the clerk disseminating copies of this order to all subscribers of the advance sheets of the Nevada Reports and all persons and agencies listed in NRS 2.345, and to the executive director of the State Bar of Nevada. The certificate of the clerk of this court as to the accomplishment of the above-described publication of notice of entry and dissemination of this order shall be conclusive evidence of the adoption and publication of the foregoing Mediation Manual and rule.

Dated this 7th day of May, 2020.

Pickering, C.J.
Pickering

Gibbons, J.
Gibbons

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

Stiglich, J.
Stiglich

Cadish, J.
Cadish

Silver, J.
Silver

cc: Paul Matteoni, President, State Bar of Nevada
Kimberly Farmer, Executive Director, State Bar of Nevada
All District Judges
Clark County Bar Association
Washoe County Bar Association
First Judicial District bar Association
Elko County Bar Association
Douglas County Bar Association
Administrative Office of the Courts

EXHIBIT A

**Nevada Court System
Adult Guardianship Mediation Policies and
Procedures Manual**

May 6, 2020

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Adult Guardianship Mediation Policies and Procedures Manual

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Subject:

Policy #1: Mediation Defined

Date adopted/revised:

Mediation is an approach to conflict resolution or decision-making in which a mutually acceptable, neutral and impartial third party helps the participants reach consensual and informed agreements. In mediation, decision-making rests with the parties. The mediator reduces obstacles in communication, maximizes the exploration of options for resolution, and addresses the needs and concerns of those who are involved or affected by the issues under discussion.

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Subject:

Policy #2: Referrals to Mediation

Date adopted/revised:

This section describes which types of guardianship cases and issues should be referred to mediation and the timing of referrals.

I. Judicial Order of Referral to Mediation

Cases are referred for Adult Guardianship Mediation by a judge in response to a request from the protected person or proposed protected person; family of protected person or proposed protected person; attorneys for petitioner or protected person or proposed protected person; guardian ad litem; guardian/petitioner; other interested persons, or sua sponte.

The referral order (see Forms) shall:

- State the date(s) by which mediation must be completed, if applicable.
- Appoint the mediator or state how the mediator is to be appointed.
- Authorize the assigned mediator access to confidential information including the court file.
- State that mediation is confidential.
- State that mediation is voluntary and explain the responsibilities of the parties to meet the requirement of the court order.

II. Timing of Referral

Referrals may be made at any time or at any stage in a case once a petition is filed. A request for mediation may also be filed with the petition. Mediation may also be requested at any point after a determination of incapacity has been made.

III. Cases Appropriate for Referral

Court cases in which there are contested issues, or a plan or decision that needs to be made are appropriate for referral.

IV. Cases Not Appropriate for Referral

A. Ability to Participate in Mediation

Although some cases may be mediated with only a representative of the protected person or proposed protected person present, others are not

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appropriate for mediation if the protected person or proposed protected person cannot participate. The mediator has a duty to assure that all participants understand the nature of the process and how it proceeds, the role of the mediator and the parties' relationship to the mediator. If the mediator determines that any necessary participant is not able to understand these matters, mediation is not appropriate.

B. Emergency Cases

This program does not have the capacity to provide mediation when a quick decision is needed. However, once that emergency decision is made, a referral to mediation may be made if there are other issues to be decided.

C. Abuse, Neglect, Exploitation, and/or Isolation Cases

Cases in which there are allegations or findings of abuse, neglect, exploitation and/or isolation of the protected person or proposed protected person may not be appropriate for mediation. These abuses may include physical, emotional, or financial abuse by a family member, a spouse or partner, or a paid caregiver. In these cases, the true voluntariness and fairness of mediated agreements may be in doubt because of the likelihood of coerced agreement arising from fear of or threat from the abuser, if they are a party to mediation.

D. Domestic Violence Protective Orders

Cases in which there is an active domestic violence protective order between individuals who would be necessary participants in mediation may not be referred to mediation.

V. Issues Appropriate for Mediation

Mediation is available for both personal and financial issues.

When requesting mediation, the parties shall inform the court about which issues are contested or in need of decisions that they would like to discuss in mediation.

Examples of disputes, conflicts and decisions that may be appropriate for mediation include:

- Is a guardian needed?

What are the safety concerns?

Is the level of risk understood?

Is the level of risk acceptable?

Should autonomy and self-determination be limited?

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- The type or level of care or assistance that might be needed
What alternatives exist?
- Who should provide needed services or care, or be the guardian

- Communication

How do we want to relate to each other?
What information is needed or missing?
How do we share information with those who need it?

- Decision-making

Who should have the authority to make decisions?
What input, if any, should others have?
What kind of decision-making process feels fair, respectful and satisfying?
Concerns over a coercive, involuntary or adversarial process

- Family disputes and impediments to decision-making

How should the family deal with disagreements?
How does the family deal with old relationship issues such as sibling rivalry?
How does the family deal with new relationship issues such as a new spouse or companion; death of a spouse or caregiver?

- Financial decisions

How should money be spent?
How should investments be handled?
What to do about “unwise” spending

- Living arrangements

Where?
With whom?
How to decide?
How much independence or supervision?
Housekeeping concerns that threaten safety

- Health/Medical Care decisions

What care is needed?
Who should provide it?
How should medical decisions be made?
Concerns about not following care or treatment recommendations

- Needs of other family members and caregivers

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How to meet needs of the protected person or proposed protected person and themselves

How to maintain positive relationships under stress

- Post-appointment issues

May include many of the above

Disagreements with the decisions made by the guardian or who is serving as guardian

VI. Issues Not Appropriate for Mediation

Mediation is not a process in which legal findings of fact or law are made. Determination of legal capacity or incapacity is a legal finding to be made by the court. If parties agree in mediation that a guardian is necessary to meet the protected person or proposed protected person's needs, the judicial officer must still make a legal finding of incapacity in order to effect the agreement.

Whether or not abuse, neglect, exploitation is occurring, or occurred, is not a topic for mediation. That is a concern to be reported to Adult Protective Services for investigation.

Ultimately, it is the responsibility of the mediator to determine, within program policy, the appropriateness or inappropriateness to mediate, or to continue or discontinue mediation if it has already begun.

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Subject:

Policy #3: Voluntary Participation

Date adopted/revised:

Parties referred to mediation by court order fulfill their obligation by attending the Orientation Meeting with the mediator and the Initial Joint Mediation Session. Should a party be reluctant to mediate, the mediator shall explore the party's concerns and assist the party to also consider the potential benefits. Should the party ultimately decline to continue after the required attendance at the first session, the mediator should not make further efforts. The mediator is not responsible for ensuring that a party makes a "good faith effort" to mediate and shall not report to the court whether the mediator believes a party made such an effort.

At any time after attending the Initial Joint Mediation Session, a party may withdraw from mediation. If the party who has withdrawn is essential to resolution of the issues being mediated, the mediator shall terminate the mediation and report that termination without revealing details of the negotiations or the reason for termination. If the mediator, in consultation with the willing parties, determines that the unwilling party is not essential to resolution of the issues being mediated, the mediator may continue the mediation.

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Subject:

Policy #4: Professional Standards of Conduct for Mediators

Date adopted/revised:

Mediators with this project shall comply with professional standards of practice. They shall maintain impartiality and neutrality in performance of their duties.

Mediators are required to practice in accordance with the Model Standards of Conduct for Mediators, prepared in 1994 and revised and approved August 2005 by the American Bar Association, the American Arbitration Association and the Association for Conflict Resolution.

Mediators are required to conduct mediations in accordance with the requirements of the Americans with Disabilities Act of 1990. Mediators are required to complete training in the model of mediation set forth in Policy 6, Section II "Mediation Model and Style."

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Subject:

Policy #5: Confidentiality

Date adopted/revised:

Mediation communications are private and confidential. The scope of this confidentiality is defined by the Confidentiality and Mediation Agreement.

I. Scope of Confidentiality

A. Contractual and/or by Court Rule

The Confidentiality and Mediation Agreement (CMA) provides that participants (including the mediator) will not disclose outside of the mediation communications made in the course of and relating to the subject matter of the mediation. The CMA also discloses that this contractual confidentiality may be limited by statute or law. The CMA does not specify sanctions for breach of confidentiality. All who participate in mediation in this project must understand, sign and agree to uphold the CMA (see Forms). Confidentiality may also be subject to District Court Rules.

B. Mediator Confidentiality

The mediator shall keep confidential all information disclosed by any participant in preparation for and during the course of mediation, unless it is agreed otherwise. Without the prior, written consent of all parties, the mediator may not discuss details of the mediation nor release any work product from it. The mediator may not be subpoenaed to testify in any proceedings relating to this case.

Mediators will not discuss or convey any specific information from or about a mediation to judicial officers. Mediator communication with the judiciary should be minimized. When needed, communication should be made in writing, or through administrative personnel. The mediator has the responsibility to report the following without comment or recommendations:

- Non-compliance with Order of Referral to Mediation
- Party election not to mediate
- Mediator assessment that it is not appropriate to mediate
- No agreements reached in mediation

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Mediators make administrative reports on the Notice of Outcome of Mediation (see Forms) that a mediation was determined to be inappropriate, that the parties did not comply with an order of referral, that a party/parties decided not to mediate, or that the mediation was terminated without agreement; however, in doing so the mediator shall not disclose any details, including why it was inappropriate to mediate at this time, the identity of necessary participants who decided not to mediate, or why the mediation ended without agreement.

Any disclosures or discussions between or among parties or participants and the mediator in caucus is confidential. The mediator will not share such information with other parties or participants without the express, prior consent of all persons involved in the caucus.

C. Participant Confidentiality

Before beginning mediation, all participants must sign the CMA, which explains participant confidentiality. They promise to keep confidential statements made during the course of mediation, unless it is otherwise agreed. Keeping statements confidential means not repeating them outside of the mediation, except when a participant is talking to his or her attorney. No recordings may be made of mediations. The parties also pledge not to subpoena the mediator or the mediator's work product.

The mediator shall introduce the CMA before or during the Orientation Meeting, and review it at the beginning of the Initial Joint Mediation Session. When all questions have been answered, the mediator will ask participants to sign the confidentiality agreement. The mediator may not conduct the joint session until the CMA has been signed by all present at the mediation. The participants may not agree to exempt any participant from signing the CMA. However, if all necessary participants agree, a telephonic participant who has not been able to return a signed CMA may give verbal acceptance of the terms of the CMA. The mediator will document on a CMA form that verbal acceptance was given and agreed to by participants, and that a telephonic participant should still sign and return a CMA.

II. Limits of Confidentiality

A. Limits Created by Statute or Law

The confidentiality of mediation may be limited by statute or law. Mediators and other participants may in some circumstances be required to break confidentiality, possibly including:

- reporting allegations of threat or harm to a frail or vulnerable protected person to the protected person and to the appropriate social welfare and/or law enforcement agency;

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- reporting allegations of abuse or neglect of a child to the appropriate social welfare and/or law enforcement agency;
- reporting specific threats of harm to oneself or to an identified third party to the third party, to law enforcement and/or to a social welfare agency.

Mediators may have other professional roles in which they are mandated reporters, including when in the performance of his/her duties as a mediator they have reasonable cause to believe that a vulnerable [protected person] suffers from abandonment, exploitation, abuse, neglect, or self-neglect.

B. Other Limits on Confidentiality

Other limits on confidentiality may exist. Each participant should discuss with his or her attorney the implications and/or potential limitations of the decision to mediate and the tenor of statements the participant intends to make in mediation.

C. Final Agreements Released to Court

When signed by all necessary persons, agreements reached in mediation may be released to the court and recorded as a permanent court record. Agreements may be filed with the court by a party, or party's attorney, but it is not appropriate for the mediator to file agreements with the court.

D. Limits Created by Consent

Information from mediation may be disclosed outside of mediation by one or more participants with the prior, written consent of all participants. Information from mediation may be disclosed outside of mediation by the mediator with the prior, written consent of all participants and the mediator. The Consent for the Release of Information from Mediation (see Forms) is used to describe what information can be released and to whom.

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Subject:

Policy #6: Mediation Process and the Role of the Mediator

Date adopted/revised:

This section defines mediation and describes the process as mediators working for this project should practice it.

I. Mediator Responsibility

The mediator is responsible to the system of people involved in the decision-making process and provides this system with the structure and tools to voluntarily make mutually acceptable decisions, often under difficult circumstances. In this sense, the mediator's role is to empower the system so that it does not have to resort to outside parties, such as the courts, to make the decisions.

II. Mediation Model and Style

Mediation offers a facilitative, non-evaluative, problem-solving model of mediation. The emphasis of this form of mediation is on helping empower participants to reach understandings that benefit and improve communication, resolve difficult issues - beyond the legal issues - and to address conflict in ways that encourage ongoing relationships. It seeks to create understanding and consideration of the participants' interests (real needs and concerns) that may underlie the positions they take.

In instances involving a power imbalance and/or unrepresented litigants, use of a more evaluative type model of mediation may be of assistance in helping the parties come to agreement.

Mediators do not push for a particular outcome in mediation and acknowledge that whether or not to reach an agreement is the decision the participants make. The participants identify the issues they wish to address and the mediator offers them a structure or process for their discussions and decision-making. Core values of this approach are empowerment and self-determination.

Specifically, mediators with this project should conduct mediations to achieve the following goals:

- Provide an informal, less intimidating, more private process or arena for the resolution of disputes;

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- Create an atmosphere that enables the participants to fully engage in the communication and problem-solving process;
- Increase parties' involvement in resolving their own disputes;
- Facilitate the early resolution of disputes;
- Identify and address the real needs and underlying conflicts;
- Assist parties to develop a wider range of options for outcomes than are available through a court decision;
- Provide a culturally sensitive forum for the resolution of disputes;
- Assure the voice and wishes of the protected person or proposed protected person are integral to the mediation process; and
- Assure the needs, safety and well-being of the protected person or proposed protected person are considerations in the mediation discussions.

Mediators in this program are required to complete training in this model of mediation and to practice within this model in their work with this program.

III. Role of the Mediator

The mediator is the manager of the mediation process and sets the tone for the mediation. The mediator assists the parties in identifying the relevant issues for mediation and facilitates the exchange of needed information among parties.

Working with the parties, the mediator helps identify other participants who may be helpful or even essential to the mediation. The mediator screens the case, and introduces and orients participants to mediation. The mediator seeks information necessary to understand the issues to be discussed in mediation. The mediator does not, however, function as an independent fact-finder. The purpose of the mediator's requests for information is not to assess the truth or accuracy of the statement, but to understand the parties' respective perspectives and to anticipate substantive issues that might arise during the mediation.

The mediator assists the parties in uncovering needs and concerns and helps them identify options for mutual gain and agreement. Maintaining neutrality and impartiality, the mediator is an advocate for the inclusion of all appropriate interests, represented or not.

Mediators have the responsibility for identifying and assessing power imbalances and then work to balance or expose them. Ultimately, it is the role of the mediator to

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evaluate the continued appropriateness for mediation and to discontinue it when inappropriate.

IV. Stages of Mediation

Mediations conducted under this program consist of what might be thought of as two stages: preparation and the joint mediation session(s).

A. Preparation and the Pre-Joint Session Meetings

The objectives of preparation are to:

- build rapport and trust with participants;
- orient participants to the mediation process and role of the mediator;
- identify issues to be mediated;
- identify potential mediation participants;
- screen for safety, power imbalance, and other considerations for appropriateness; and
- identify strategies and accommodations for effective participation.

The primary vehicle for preparation is the pre-joint session meeting with potential mediation participants. Before the initial joint mediation session, the mediator will make preparatory contacts with all parties and those identified as potential participants. This may include: attorneys currently involved in the case; the protected person or proposed protected person; the petitioner; family members or significant others; a guardian ad litem; a guardian; Adult Protective Services worker; or other interested persons.

The mediator uses this meeting to familiarize participants with the mediation process, including the mediator's role, general goals of mediation and other process issues, including confidentiality and voluntary participation. Participants should review the Confidentiality and Mediation Agreement and have an opportunity to ask questions, air concerns and begin to get to know the mediator.

The mediator asks in these meetings what it is that people want to mediate. What needs to be decided? What concerns or disagreements exist? What are the topics for discussion? The mediator looks for information both as to the substantive issues to be discussed, as well as the dynamics that might be involved in the case. The discussion of substantive issues should be focused on permitting the mediator to understand the issues likely to be mediated and to be prepared for mediation (not on fact-finding). The mediator will want to know the

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dynamic issues (for example, are there specific relationships that are problematic, or that are working well? Are there issues of abuse, neglect, exploitation, and/or isolation [See Policy #9 Abuse, Neglect, Exploitation, and/or Isolation Protocol]?) so that the mediator can structure the mediation in a way that will allow for safety and for people to feel that they can have a voice without a concern for intimidation, and that will deal with the needs and concerns underlying the substantive issues.

Based on what the mediator learns about the issues for mediation and types of decisions or plans that need to be made, the mediator seeks information about who needs to participate. Who are the other decision-makers? Who else has opinions about these issues as well as a stake in the outcome? Who has information that may be central to a good understanding of the issues as well as the options to provide to the group? Who might be part of the solution? Is there a need for a support person?

Screening is central to these meetings to determine whether mediation is appropriate, and if appropriate, whether special strategies or accommodations are necessary to promote the safety of all participants or to help a party participate effectively. Power dynamics and protection of rights are also considerations in screening. Mediators begin screening during the preparation stage and continue screening throughout the mediation.

While professionals who participate in mediation may not often be available for a face-to-face meeting and need to be telephonic, the mediator always seeks to meet face-to-face with the protected person or proposed protected person and involved family or significant others whenever feasible. Non-professionals may not have had previous experiences with mediation, may not be as acquainted or comfortable with this type of meeting. This meeting can help to reduce power imbalance and maximize effective participation, leading to a successful mediation process. With few exceptions, these meetings should be held privately with each person. The goals of preparation and careful screening may not be met if meetings with the protected person or proposed protected person, or any person, are attended by others. Legal counsel, of course, is welcome to attend a meeting with his or her client.

Mediators treat all information received from preparatory pre-joint session discussions as confidential, unless given permission to share it. This is all part of the mediation process itself.

These preparation meetings have been demonstrated to have a direct and positive affect on the participants reaching agreement. No one should participate in mediation without preparation by the mediator.

B. Other Considerations for Preparation

The mediator's primary source of information should be the pre-joint session interviews. While the mediator may request additional information necessary to understand the circumstances of the case, the mediator should not function as an independent fact-finder. The purpose of a mediator's requests for information is not to assess the truth or accuracy of the statements, but merely to understand perspectives and to anticipate what substantive issues might arise during the mediation, and consequently who the necessary participants may be. Mediators are strongly discouraged from reading or requesting discovery. The mediator may review the court file for information; however, mediators should not spend significant amounts of time gathering information about the case or the parties outside of the pre-mediation interviews.

C. Joint Mediation Session

At the beginning of the initial joint mediation session the mediator:

- Facilitates the introduction of the participants
- Describes the process
- Explains the mediator's role
- Defines the protections and limitations of confidentiality
- Clarifies the purpose and nature of the mediation and what the participants might expect from the process
- Establishes any ground rules

When the mediator is assured that all participants have had their questions answered, understand the process and voluntarily agree to participate, the mediator will ask each participant to sign the Confidentiality and Mediation Agreement. Only when this agreement has been signed by each participant may mediation begin.

The mediator will then proceed to assist the parties to:

- Define issues and set the agenda
- Identify, gather and share needed information
- Explore interests, needs and concerns
- Generate options for possible solutions
- Evaluate options and problem solve
- Reach agreement or determine that agreement will not be reached
- Document their agreements

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D. Ongoing Screening

The mediator shall continue to screen during the mediation. The mediator shall discontinue mediation if the mediation seems unsafe or if any of the participants lack the capacity to negotiate effectively. Situations in which the mediator should consider terminating the mediation include:

- Necessary participant is unable to participate effectively;
- Necessary participant refuses to participate or exhibits behavior that undermines the mediation;
- A power imbalance cannot be balanced;
- Mediator identifies undue coercion of a party;
- The protected person or proposed protected person's rights are not adequately protected; and
- Mediator, after careful reflection, decides that he or she can no longer be of assistance to the parties.

The mediator shall immediately terminate the mediation if a participant has brought a weapon of any kind to the mediation room. The mediator may reconvene the mediation when all participants can agree not to bring weapons into the mediation room.

E. Caucus

At any time during mediation the mediator may request a caucus, or private meeting, outside of the mediation room, with a participant(s), or a participant may request a caucus with the mediator or with another participant(s). The content of these meetings remains confidential unless agreed otherwise by all those involved.

F. Subsequent Joint Sessions

Subsequent mediation sessions may be scheduled in the following situations:

- The participants have questions or concerns that cannot be satisfactorily addressed at the initial session, and that interfere with their informed consent to mediate, then the mediator shall refer them to do further research in the appropriate forum and postpone the mediation session. The mediator may reschedule mediation when the questions or concerns have been adequately resolved.

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- A necessary participant did not attend mediation and the other participants wish to reschedule, the mediator shall schedule a subsequent session.
- Agreement is not reached at the first joint session and the participants wish to continue, the mediator shall schedule subsequent sessions.

G. Terminating Mediation

Mediation may be terminated by reaching full agreement, by partial agreement or before agreement by a participant or the mediator.

1. **Termination by Reaching Agreement.** No agreement can be considered final until all necessary participants – or parties to the agreement - so consent. Only then will a written agreement be created. Agreement can be reached on some but not all of the issues in dispute. In that instance, the written agreement reflects the agreements reached and does not address other issues that may have been mediated (unless the parties wish their agreement to clarify issues still in dispute).

Agreements that are legal documents, such as stipulations, must be prepared by one of the attorneys, and not the mediator. The mediator is usually the person who prepares other informal agreements. Those necessary to fulfill the terms of the agreement shall review the agreement and sign if they choose to be bound. The drafter of the agreement will provide copies to each necessary participant, party to the agreement, and/or signatory.

The court should make a judicial officer available soon after an agreement is signed or an agreement is reached to put the agreement on the record, when appropriate. The written agreement or record of the agreement becomes binding when the court has reviewed and accepted it. When written agreements are to be filed with the court, they should be filed by a party, preferable an attorney. The mediator does not file agreements with the court.

2. **Mediator Terminates Before Agreement.** If at any time the mediator determines that mediation is inappropriate, the mediator shall inform the participants of the determination and terminate the mediation. The mediator shall inform the court that mediation is not appropriate (See Forms: Notice of Outcome of Mediation). The mediator shall not advise the court why mediation was terminated or not appropriate.

If during mediation the participants reach an impasse and the mediator determines that they are not likely to resolve the impasse, the mediator may terminate the mediation. While one of the mediator's main skills and responsibilities is to help parties move past impasse, the mediator should not prolong fruitless negotiations.

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- 3. Participant Terminates Without Agreement.** Because mediation is a voluntary process, any participant is free at any time to stop participating in mediation. In many instances it will no longer be useful or appropriate to mediate in the absence of that person, but in other instances there may still be issues that can be mediated by the group remaining. The mediator, with input from the participants, will make the determination if it is appropriate to continue mediation.

Even when disputes are not fully resolved in agreements, the areas of conflict may be reduced, better understood, or become more manageable. Important relationships and communications may have improved or been mended.

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Subject:

Policy #7: Parties and Participants in Mediation and their Roles

Date adopted/revised:

In order to determine who needs to be present in mediation it is important to understand the nature of the dispute, decision or plan that needs to be made. Some participants will be so critical to the mediation that it is not appropriate to mediate if they are not there. Some may contribute to the success of mediation but are neither negotiators nor decision-makers.

I. Necessary Participants

Necessary participants are not limited to the legal parties in the court case, nor are the legal parties always necessary participants. A necessary participant in mediation is someone who:

- has an opinion about the issues being discussed,
- has a stake in the outcome, and
- is necessary to agree on a resolution of the issues.

Participation as a necessary participant requires having the necessary capacity, and that may be with accommodation, if necessary. Having an attorney present who represents the protected person or proposed protected person is one accommodation.

Factors to be considered in determining whether someone has the capacity to mediate as a necessary participant include:

- Can he or she tell own story and understand what is being discussed?
- Can he or she listen to and understand the story of the other party?
- Does he or she understand who the parties are?
- Does he or she understand the role of the mediator?
- Does he or she understand the idea of mediation and how it will proceed?
- Can he or she generate options for a solution?
- Can he or she assess options?
- Is he or she expressing a consistent and clear opinion or position?
- Can he or she make and keep an agreement?

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Having all necessary participants involved in mediation is likely key to its effectiveness. If a necessary participant is not able or not willing to mediate, the mediator, with input from the other participants, may determine that there are other issues that may still be effectively mediated, or may terminate the session and withdraw his or her services.

II. Potential Participants and their Roles

A. The Protected Person or Proposed Protected Person

The aim of this program is for the protected person or proposed protected person to have the option to participate in mediation to the highest level possible and desired by the protected person or proposed protected person, and to the extent possible, to truly have a voice in the process; to articulate his or her needs, concerns and wishes; and to participate in the negotiation of an agreeable resolution to the protected person or proposed protected person. As a rule, mediation does not take place without the opportunity being created for the protected person or proposed protected person whose needs are being discussed to participate or be present. The role the protected person or proposed protected person takes in mediation is determined by several factors: his or her desire to participate in any or all of the process; whether or not he or she is a necessary participant given the topics for mediation; and his or her capacity to actively mediate as a necessary participant.

In any case in which a formal allegation has been made that a person is legally incapacitated, and that person is a necessary participant, mediation should not occur unless the person has access to legal counsel or a guardian ad litem (GAL).

If the protected person or proposed protected person is not going to participate in mediation, mediation should not take place unless his or her interests are adequately represented in mediation, usually through an attorney.

If the protected person or proposed protected person does not have capacity to mediate, a specific determination should be made as to whether his or her agreement and understanding of the issues is so integral to the nature of the discussion that it cannot go forward without him or her, even with his or her interests represented.

B. Attorney for Protected Person or Proposed Protected Person

Generally, it is essential that the attorney for the protected person or proposed protected person participate in the mediation process. Attorneys tend to take a different role in mediation than they do in court. In mediation the role of the attorney is to assist the client in presenting his or her wishes, to help draft

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agreements and to advise the protected person or proposed protected person on possible outcomes or alternatives.

C. Family of Protected Person or Proposed Protected Person

Often family members are central to the concerns or conflicts that are referred to mediation, or to the decisions that need to be made. In those cases, family members are also likely to be necessary participants to mediation. In many cases a family member is the petitioner and very likely to be a necessary participant.

D. Guardian ad litem (GAL)

When the degree of impairment is such that the protected person or proposed protected person is unable to effectively communicate his or her wants and needs to an attorney, a guardian ad litem (GAL) may be appointed as a legal advocate. The GAL is then responsible for advocating for what the GAL believes to be the best interests of the protected person or proposed protected person, as opposed to his or her expressed wishes. If a GAL has been appointed, he or she will be a necessary participant in any mediation.

E. Protected Person's Appointed Counsel

Under Nevada law, protected persons and/or proposed protected persons are entitled to appointed counsel to represent their legal interests and expressed wishes. They are a necessary participant in mediation.

F. Adult Protective Services (APS) Worker

When Adult Protective Services (APS) is involved in a court case that has been referred to mediation, the APS worker may, depending upon the issues being mediated and the confidentiality constraints mandated by statute and possible criminal investigation(s)/referral(s), be a necessary (and allowed) participant in mediation. The APS worker brings a perspective of what is necessary to protect the protected person or proposed protected person, and it may be essential that those interests are satisfied in any agreements that are reached. When APS information is crucial to consideration of the issues at hand and that information cannot be provided or obtained through other means, they may be a requested participant.

The participation of the APS worker may be structured in various ways. The worker may provide information to the group early in mediation about facts pertaining to safety concerns and leave it to the group to mediate without the worker to come up with a plan that addresses the concerns. The worker may rejoin the group to hear their plan and provide feedback as to how well it addresses the concerns, agreeing to the plan when it does. Alternatively, the

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APS worker may participate throughout the entire process. Any APS worker is entitled to have their counsel (the Deputy Attorney General for the Aging and Disability Services Division) present as would be the case in other settings such as a deposition or court hearing.

G. Guardian of the Person

Guardianship of the Person is a legal arrangement in which a person or other entity/agency is appointed as a guardian to make decisions for an incapacitated person about housing, medical care, legal issues, and services. If a guardian has been appointed in a case, it is likely such guardian of the person will be a necessary participant in mediation. The duties, powers and limitations of a guardian of the person are defined in statute. See NRS 159.077 et seq.

H. Guardianship of the Estate

Guardianship of the Estate is a legal arrangement in which a person or entity/agency is appointed to handle the financial affairs for another person. The guardian of the estate collects and deposits all income, pays all debts and bills, secures all assets, and handles taxes and insurance. A person appointed as guardian of the person may also be appointed as guardian of the estate, or a separate guardian of the estate may be appointed. Depending upon the issues to be mediated, the guardian of the estate may or may not be a necessary participant.

I. Others

There may be others who are involved in such a way that they are central to the issues being mediated and their participation considered. Examples include: care coordinators; assisted living home staff; personal care assistants; landlords; neighbors; etc.

III. Others Who May Have a Role in Mediation

Others who may be involved in mediation include:

- Treatment, care or service providers who may be able to provide needed information
- Spokespersons for available resources
- Spokespersons for potential benefits or entitlements
- Persons there to provide physical or emotional support to participant

The mediator will discuss with the necessary participants potential advantages and disadvantages of including any of these other persons. The mediator, in consultation with the parties, will decide the nature and extent of their participation.

IV. Authority to Enter into Agreements

It is imperative that necessary participants in mediation have the authority to commit to agreements that may be made. Whether family members, representatives from other agencies or organizations, or others, each person should enter into mediation prepared to sign agreements reached in mediation.

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Subject:

Policy #8: Safety, Balance of Power, and Protection of Rights

Date adopted/revised:

The mediator must prepare adequately for the mediation to be able to assess for safety, protection of the protected person or proposed protected person's rights, and balance of power issues. This assessment may include information from sources deemed necessary by the mediator. The mediator assesses for family violence, abuse, neglect, exploitation and/or isolation issues that might create an environment that is unsafe or would render mediation inappropriate. In most cases the mediator is capable of creating a safe, supportive environment in which power can be balanced, the protected person or proposed protected person's rights protected, and non-coercive agreements formed. (Also see Policy #9, Abuse, Neglect, Exploitation, and/or Isolation Protocol.)

I. Balance of Power and Safety

Power can be thought of as having an intended effect. Some level of power is occurring between people before they come into mediation, and some method of power is functioning during mediation. All disagreements can be thought to involve certain imbalances in power.

Power imbalances may be related to:

- relationships between and among persons
- personality and character traits
- cognitive style and capabilities
- knowledge base
- gender and age differences
- economic status
- cultural and societal stereotyping and training
- institutional hierarchies

The mediator works toward a "level playing field" by creating conditions that allow and encourage power balancing as well as taking an active role by managing information, dynamics, tactics, topics for discussion, etc. The mediator may use specific actions and strategies to balance the power including:

- providing information and an orientation to the mediation process

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- facilitating information sharing
- reframing issues
- clarifying interests
- acknowledging feelings
- seating of participants
- assuring the protected person or proposed protected person has legal representation before proceeding with mediation
- providing for the participation of other advocates and support persons
- de-jargonizing the talk at mediation using language that makes it easier for all involved to understand the process
- raising unrepresented interests
- taking a topic off the table
- reality-testing agreements
- showing equal respect to all parties through use of names, titles, etc.
- exposing imbalances

Some power imbalances threaten emotional and physical safety. The mediator assesses for safety beginning in preparation and throughout mediation, screening for coercion, control, intimidation, threats, and other signs of emotional and physical abuse as well as potential for violence.

II. Protection of the Protected Person or Proposed Protected Person's Rights

A. Participation of the Protected Person or Proposed Protected Person

An important premise of mediation is self-determination – the ability of each person to make his or her own decisions. By implication, those most affected by the decision should be part of the process. The aim of this program is for the protected person or proposed protected person to have the option to participate in mediation to the highest level possible and desired by the protected person or proposed protected person, and to the extent possible, to truly have a voice in the process; to articulate his or her needs, concerns and wishes; and to participate in the negotiation of an agreeable resolution to the protected person or proposed protected person.

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Consideration will be given to strategies and accommodations to maximize the protected person or proposed protected person's ability to participate. Even if the protected person or proposed protected person is not an active negotiator or disputant, his or her presence can change the dynamics of mediation, can help focus on the person's needs and maintain a respectful atmosphere.

As a rule, mediation does not take place without the opportunity being created for the protected person or proposed protected person whose needs are being discussed to participate or be present. The role the protected person or proposed protected person takes in mediation is determined by several factors: his or her desire to participate in any or all of the process; whether or not he or she is a necessary participant given the topics for mediation; and his or her capacity to actively mediate as a necessary participant.

The role of preparation and screening as discussed in Policy #7 is central to promoting the physical and emotional safety and protection of rights of the protected person or proposed protected person in mediation.

In any case in which a formal allegation has been made that a person is legally incapacitated, and that person is a necessary participant, mediation should not occur unless the person has access to legal counsel.

If the protected person or proposed protected person is not going to participate in mediation, mediation should not take place unless his or her interests are adequately represented in mediation, usually through an attorney.

If the protected person or proposed protected person does not have capacity to mediate, a specific determination should be made as to whether his or her agreement and understanding of the issues is so integral to the nature of the discussion that it cannot go forward without him or her, even with his or her interests represented.

B. Medical Records in Mediation

Medical records of an individual who takes part in mediation may not be used in mediation without the consent of that person.

C. Inclusion of Legal Counsel in Mediation

Legal counsel for the protected person or proposed protected person may not be excluded from attending mediation.

D. Determining Mediation Not Appropriate

If at any time the mediator determines that a necessary participant is not able to participate in the mediation or that it would otherwise be unethical to continue the mediation process, the mediator may terminate the session and withdraw his or her services.

E. Legal Counsel – Advocacy for the Legal Rights, Needs and Concerns of the Protected Person or Proposed Protected Person

1. Post-Petition, Pre-Hearing Cases. Due to the inherent doubt of mediating when the legal capacity of a party is in question, the availability of an attorney or advocate to support the protected person or proposed protected person in mediation is vital. Access to counsel regarding legal rights and assurance that the protected person or proposed protected person’s needs and concerns are articulated in the mediation process, and that they are not subject to manipulation and undue pressure, are key considerations in providing this protection.

In a guardianship case an attorney will be appointed for the protected person or proposed protected person, and that attorney shall participate in mediation, unless excused by the mediator. The alternative of the attorney reviewing any written agreement to be sure the protected person or proposed protected person fully understands it and its consequences before it is finalized may be considered in some instances, but may not be deemed to provide adequate protection.

If the protected person or proposed protected person has the capacity to mediate in a case where potential loss of rights are an issue and he or she knowingly waives legal counsel, the mediator should ascertain whether the party knows what he or she is doing, understands the rights that are at stake and of the implications of making an agreement or decision without the assistance of counsel. If the mediator is satisfied that the protected person or proposed protected person is making a knowing decision and fully understands the potential consequences of the decision, the protected person or proposed protected person may choose a support person or advocate, or may choose no assistance at all.

If the mediator is not convinced that a knowing, understanding waiver has been made, the case should not be mediated.

2. Post-Appointment Cases – Guardianship. Whether or not the protected person or proposed protected person attends the mediation, he or she should be represented by legal counsel in mediation. While best practice may be to assure that a person is present who specifically represents the protected

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person's own interests in the matter, the level of participation may be considered on a case-by-case basis, depending upon the unique facts of the situation.

F. Due Process

Mediation is not intended to circumvent the rights or due process of any person. A determination of capacity is not made in mediation, nor may a guardian be appointed in mediation. While mediation may address those topics and result in agreement about recommendations to the court on those topics, they require judicial decisions.

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Subject:

Policy #9: Abuse, Neglect, Exploitation, and/or Isolation Protocol

Date adopted/revised:

NRS Chapter 200 includes definitions related to the abuse, neglect, exploitation, and/or isolation of older persons (over the age of 60) and vulnerable persons (or protected persons with disabilities). It is acknowledged that the presence or involvement of a person of interest in an Adult Protective Services matter, a defendant in a criminal case related to treatment of a party to the proposed mediation, or accomplices to such conduct (including the concealment of such conduct) can serve to intimidate or exert influence over another party because of past or current actions. Self-neglect, on its own does not rule out mediation. The term "victim" is used frequently throughout this protocol to describe the person against whom the conduct (alleged or substantiated) occurred.

I. Appropriateness of Mediation in Cases Involving Abuse, Neglect, Exploitation, and/or Isolation

1. While there is a general presumption against mediating abuse cases, cases should not be automatically rejected without further investigation or consideration for the sole reason of possible abuse implications. Refusal to mediate a case solely because of an allegation of abuse, without further investigation, could deny a party a worthwhile alternative to the court process and potential resolution of issues that are unrelated to the abuse allegations.
2. There may be some cases for which mediation is appropriate, even though abuse, neglect, exploitation, and/or isolation has been alleged. For example, the abuse may be alleged about a person who is not a party to the mediation. Or, a case may involve an allegation about a person who is a party, but around whom the "victim" feels absolutely no intimidation as far as making a voluntary agreement. Or, the two parties may be living separately, the victim feels no intimidation around the perpetrator, and has a domestic abuse advocate who will be present. There are many possible scenarios under which an experienced mediator could determine, in concert with the affected parties, that it is safe and worthwhile to mediate.
3. Mediators should take disparities of power between parties informed by abusive conduct or allegations of abusive conduct into consideration in a culturally sensitive manner that does not re-traumatize or otherwise trigger negative emotional responses--not on a standard of the mediator projecting

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their own views of the alleged or actual conduct, but on the actual feelings of the affected parties.

4. To determine appropriateness for mediation, thorough screening is a necessity. (See Section III - Screening Guidelines for Domestic Abuse)

II. Inappropriate Cases

1. Inappropriate cases would include:
 - a. Cases in which there is a protective order or other order that does not allow the parties to be in the same vicinity of one another.
 - b. Cases in which the issue to be mediated concerns whether or not the abuse occurred.
 - c. Cases in which one party feels intimidated by another party so that a voluntary agreement or negotiation is not possible.
 - i. Indicators of intimidation could include actions by the abusing party, such as physical or emotional abuse; denial or making excuses for the actions; blaming the victim for the acts of the abuser; or admission by the victim that she/he fears a recurrence or feels unsafe in the presence of the other.
 - d. Cases in which one party threatens another or demonstrates a desire to exert physical or psychological control over another party.

III. Screening Guidelines for Domestic Abuse

Phase 1

1. The referring judicial officer should determine whether there is a Protective Order and if so, may not refer.

The mediator receiving the referral should also make that determination through inquiry. A Protective Order could have been missed as well as obtained after the referral was made. Inquiry should also include any other type of no contact order, history/presence of criminal abuse charges, or a substantiated Adult Protective Services (APS) investigation (see NRS Chapter 200 related to limitations as to confidentiality of such records under Nevada Law).

2. If Adult Protective Services (APS) has already investigated, the referring judicial officer should request appropriately redacted (as to the reporting party) records in orders related to the mediation to authorize the mediator's

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access to such records. The PS worker should be consulted as to his/her findings. If PS is a party to a case, it would be preferable for any PS investigations to occur before the mediation (to avoid mediation serving as a source of discovery for PS, or other mandatory reporters, and triggering an investigation that would otherwise not have occurred).

3. The success of the mediation may depend upon the parties being able to work together. Therefore, although mediation is oriented towards the future, past patterns of party interaction can have a significant impact upon the process. Questions about party interaction are also a valuable tool for detecting the presence of domestic abuse in a relationship. Some suggested initial screening questions are listed below.
 - a. Mediation often occurs with all parties in the same room together. Do you have any concerns about mediating in the same room with any of the parties?
 - i. *[If so:]* Can you tell me about those concerns?
 - ii. *[If the concerns are related to abuse:]* Are you fearful of this person for any reason?
 - iii. Has this person ever threatened to hurt you in any way?
 - iv. Has this person ever hit you or used any other type of physical force towards you?
 - v. Have you ever called the police, requested a protection order, or sought help for yourself as a result of abuse by this person?
 - vi. Are you currently afraid that this person will physically harm you?
 - b. If you are experiencing any other fears, please describe them. Do you feel threatened financially or emotionally? To what degree?
 - c. What feelings are you experiencing related to the conflict and to the other person(s) involved?
 - d. How have decisions been made in the past with the other person(s)?
 - e. Do you feel able to express your own needs, interests, and concerns with the other parties present? Are you able to disagree and talk about the disagreement with the others present?

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- i. *[If not:]* Are you intimidated by any other parties? *[If so:* By whom?
 - f. *[If party feels intimidated by other parties:]* Would you be able to speak up for yourself in a separate room with a mediator?
 - g. Mediation is a process that helps parties to plan for the future. Are you able at this time to think about your own future needs?
4. Screening should be in a face-to-face interview. However, when that is not possible or feasible, it may be conducted over the phone. Legal counsel for the protected person or proposed protected person should be present at the screening.
5. Screening should take into consideration the confidential nature of allegations of abuse, neglect, exploitation, and/or isolation.

Phase 2

1. If there is any indication of abuse in Phase 1, further screening is necessary.
2. The mediator should then review the available information and perform an Abuse Assessment (AA) before going forward with the mediation. The purpose of the AA is:
 - a. To assess the victim's ability to participate and adequately represent her/himself, especially regarding the potential for non-coerced settlement.
 - b. To clarify the history and dynamics of the abuse issues in order to determine the most appropriate manner in which mediation should proceed consistent with the other provisions of this protocol and to put procedures in place that assure all parties are able to negotiate to the maximum extent possible on an equal footing. In other words, to address the power imbalance and safety issues between parties before, during, and after the mediation.
 - c. To assist the parties in formulating an agreement that provides appropriate safeguards for victims, caregivers, family members, and others.
3. The AA involves a more in-depth conversation than the initial screening questions. The AA should help the mediator to assess the nature of the abuse issues in the case and to evaluate the situation so that the mediator may deal with the participants in the most appropriate manner. During the assessment, the mediator may want to consider the following:

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- a. The nature of the alleged abuse, neglect, exploitation, and/or isolation, including the history, frequency, severity and level of dangerousness, and the impact of the abuse on all parties or family members.
- b. Consideration and consultation regarding appropriate conditions and measures for protecting persons involved.
- c. A review of any pertinent related information or documentation including consultations or investigations (written or individual interviews) with others involved regarding the nature of the allegations of abuse in the case.
- d. At what stage in the case the allegations were made, and whether any investigations are pending or are still likely to occur (note: the act of filing a guardianship may be in itself part of an attempt to continue a pattern of abuse/control).

Phase 3

1. If abuse, neglect, exploitation, and/or isolation is alleged, after initial screening and an AA, the case will be determined as:
 - a. Appropriate for standard mediation;
 - b. Appropriate for mediation but necessitating some modification in form;
 - c. Inappropriate for mediation

IV. Suggested Safeguards: If the Victim Insists on Mediation or if the Case is Deemed Appropriate if Safeguards Are in Place

1. If the mediator has explained to the victim the mediation process and the reasons why the case is inappropriate for mediation, and the victim insists on mediation, the mediator must make a determination as to whether the mediation can occur with assurance of safety to all participants. (None of the factors listed under section II.1. a-d should be present, if the decision is made to mediate.)
2. If the victim insists on mediation, or if the case is determined to be appropriate with safeguards in place, the following arrangements may be made, depending on the situation. The mediator should explain to and consult with the victim regarding the need for additional arrangements before the mediation can occur:
 - a. Consultation with the mentor and/or program director.
 - b. Acknowledgment from both parties of the abusive behavior.

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- c. Appropriate advocates or supporters for the victim and the abuser (could be legal counsel) before, during, and after the mediation.
- d. A mediation site with separate waiting areas and available emergency support.
- e. Arrangements for the parties to arrive and leave the mediation session separately and at different times.
- f. If the parties are living separately, the mediator must avoid disclosure of the parties' addresses or other confidential identifying information to one another.
- g. Arrangements to hold the mediation entirely in caucus, if that becomes necessary.
- h. Mediator (or co-mediator) must have had special training in mediating abuse cases.
- i. Prior to, or early in the mediation, the mediator should again explore power dynamics with the parties in order to confirm the comfort of each participant with the mediation format and confirm the ability of each participant to speak and negotiate for him/herself. (This is also part of the AA, but it is useful to confirm this at the time of the mediation.)
- j. Mediator and the victim should work out a "code" system for notifying the mediator if the victim feels intimidated; mediator should continually check in with the victim in caucus to make sure she/he is not feeling intimidated.
- k. Mediator must feel she/he can stop the mediation at any point at which she/he believes the mediation is unsafe or that one of the parties is intimidated. If necessary, mediator must summon appropriate security or emergency help. The mediator should always take responsibility for stopping a mediation; the victim could be placed at further risk of harm if the abuser knew the session ended on the victim's account. (Mediator might say simply that it appears the parties are quite far apart in their perceptions or ideas for resolution and it would not be helpful to continue the session.)

V. Confidentiality in Screening for Abuse, Neglect, Exploitation, and/or Isolation

- 1. The mediator must keep intake/screening information confidential in accordance with applicable rules and best practices, including any limits on confidentiality such as reporting new allegations of abuse or a threat of

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- imminent harm (these limits on confidentiality must be disclosed and clearly explained to participants during initial preparation/screening contacts).
2. Unless the victim consents to the mediator's disclosure about the abuse allegations, the mediator may not disclose the information to others, including the court (unless the mediator is reporting new allegations of abuse or a threat of imminent harm to the proper authorities). (Others, including courts, should simply be told that the case is inappropriate for mediation.) The mediator should provide appropriate referrals to the victim.
 3. If a case is determined to be inappropriate for mediation due to abuse, the mediator should first establish that the victim is safe and protected. Then she/he should notify the victim of the decision not to mediate, provide appropriate referrals to the victim, and only to the extent that it is acceptable to the victim and assessed to be safe by the mediator, inform the alleged abuser of the reason why the situation is not appropriate for mediation. If it is not acceptable to notify the alleged abuser of the reason why the case is not appropriate for mediation, the mediator should simply notify the alleged abuser that the mediator is unable to mediate the case. If pressed, it may be explained that the case does not contain issues of a nature that the program is qualified or able to mediate.

VI. Notification of Judicial Officer

The mediator's responsibility to the program is to notify the Judicial Officer when:

- The mediator makes a report of harm or threat of imminent risk
- The mediator terminates a mediation as inappropriate due to domestic abuse

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Subject:

Policy #10: Case Processing & Scheduling

Date adopted/revised:

I. Time Frames

Mediation is time sensitive and to be completed in accordance with court ordered time periods. When there is a necessary ending date for mediation, it should be set out in the referral order.

Mediation should not contribute to unnecessary delay in the resolution of guardianship cases and shall not be used as a reason to extend statutory time periods. Within that context, mediation should proceed at a pace no faster than is comfortable for each necessary participant, and should attend not only to reaching agreement, but also to the quality of the agreement and the parties' satisfaction with the process.

Mediators accepting referrals should initiate preparatory contacts within three working days of receiving the referral order and contact information.

II. Processing the Referral

Referrals may be processed in accordance with local practice or as set forth in applicable local or guardianship court rules.

III. Assignment and Disqualification of Mediator

Mediators are appointed from the court-approved list. Parties may also request a specific, mutually agreeable mediator, to be appointed from the court approved list. Each interested person has the right once to challenge peremptorily the mediator appointed by the court if the challenge is made within five days after notice that the case has been assigned to a specific mediator. When such a challenge is made, interested persons may submit a stipulated request for the appointment of a specific mutually agreed mediator.

Mediators on the schedule to accept appointments are to begin the initial contacts within three working days of notice of appointment, unless referral information directs otherwise.

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IV. Scheduling

A. Mediation Session

The mediator will work with the necessary participants to find a mutually agreeable date and time for the initial joint mediation session that also is within the timeframes set out in the court's order of referral.

B. Orientation Meeting

Although the parties are welcome to initiate contact with the mediator, the mediator will contact parties to schedule the Orientation Meeting.

C. Follow-up Mediation Sessions

After the first session, the mediator will set with the parties any needed follow-up sessions and immediately notify the court of continued mediation (see Forms: Notice of Continued Mediation).

D. Canceling and Rescheduling

Unless the mediator has determined that mediation is inappropriate at the time, or a necessary participant has elected not to mediate after attending the Initial Joint Mediation Session, neither the mediator nor a party/interested person has the authority to cancel a court ordered Initial Joint Mediation Session. A person, or persons, wishing to "cancel" mediation may file a motion or request with the court asking that the order of referral to mediation be vacated.

The initial joint mediation session may be rescheduled when the necessary participants and mediator agree.

V. Mediator Billing

The mediator bills the parties for time spent in the mediation process, recorded in six minute increments.

VI. Closing the Case

A. The Notice of Outcome Form

The mediator completes the Notice of Outcome of Mediation (see Forms) at the end of the mediation process for the case and submits it to the court clerk. The court clerk will distribute it to the referring judicial officer, the parties, and place the original in the case file.

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When the mediator has assessed a case inappropriate for mediation, the mediator notifies the judicial officer making the referral.

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Subject:

Policy #11: Program Administration

Date adopted/revised:

I. Forms

The following forms are used in this program:

- Request for Mediation
- Order of Referral to Mediation
- Mediation Contact List
- Notice of Continued Mediation
- Notice of Outcome of Mediation
- Confidentiality and Mediation Agreement
- Consent for Release of Information from Mediation
- Satisfaction Survey
- Mediator Timesheet
- Program Evaluation Data Form

II. Accommodations for Participants

It is the policy of the Nevada Court System that the services, programs and activities of the court system be accessible to persons with disabilities as defined in the Americans with Disabilities Act of 1990.

The assistance of a sign language interpreter may be requested for necessary participants experiencing hearing loss. Often the court will pay for this.

III. Publicizing the Program

The District Courts shall undertake reasonable efforts to make parties, attorneys and families aware of the option to mediate adult guardianship issues.

Brochures describing the program and access to it will be made available to all parties and interested persons. The brochures shall advise people that this Adult Guardianship Mediation Manual is available at the office of the Court Clerk and online or through the State Guardianship Compliance Office.

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IV. Cost to Parties

The services of the mediator are available with the costs allocated by the mediator among the parties. Costs associated with participating (participant transportation, counsel, etc.) must be borne by the participants as determined by the Court prior to the commencement of mediation.

V. Mediator Compensation

A. Rate

Mediators shall be compensated at a rate set by agreement of the parties and approval of the Court or by the Nevada Court System for case preparation, pre-mediation and mediation conferences. Mediators must submit copies of their bills to the party designated by the referring judicial officer.

B. Billing

Charges appropriate for case preparation include time for necessary review of files and documents, phone calls and face-to-face contacts with parties to the case as well as significant collaterals. Mediators' billing should document case preparation time in six minute blocks of time. Joint mediation sessions typically are scheduled for 3-hour blocks but should be scheduled to accommodate the needs of the participants.

Appointments for joint mediation sessions or Orientation Meetings cancelled or rescheduled prior to the mediator attending the session shall not be compensated. Appointments at which the party or parties are no-shows will be compensated at one half hour.

The Mediator Timesheet shall have the case number on it and itemize services provided in 6-minute increments. It shall be attached to the mediator's invoice, which shall contain the mediator's name, name in which the mediator does business (if different), address and contact information. The invoice shall specify that it is for mediation and give the mediator's contract rate as specified by the Nevada Supreme Court or as otherwise agreed to by the parties and approved by the court. The time to be paid shall be totaled and a total amount due indicated.

Mediation costs should be reported to the guardianship compliance office for monitoring and tracking purposes statewide.

VI. Cultural Competence and Diversity

This program strives to incorporate into its policies, procedures, practice, and philosophy, a knowledge and understanding of, sensitivity to, and appreciation for

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the culture and diversity of the community it serves. In this view, traditional contexts of culture integrate with diversity and the specific histories, characteristics and qualities of each individual in recognition that each person embodies a “culture” that is uniquely his or hers.

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Subject:

Policy #12: Mediator Qualifications

Date adopted/revised:

I. Mediator Qualifications and Competencies

Mediation in adult guardianship cases is highly specialized and requires a variety of competencies and specific skills to be effective. While basic mediation skills are essential, it is not sufficient to understand the principles and process and demonstrate a capacity to apply those concepts. Mediators in this arena must also have extensive knowledge of the adult guardianship system; the special issues affecting these protected persons or proposed protected persons, their families and caregiver and support networks; and of family functioning. They must understand the substantive law relevant to these cases and have a good grasp of available community resources.

Qualifications sought include the following:

1. A degree in a relevant area of study (such as social work, law, psychology).
2. Experience related to issues and concerns associated with adult guardianship cases.
3. Empathy and compassion for protected persons or proposed protected persons and those involved with them who face concerns about capacity and care-giving needs.
4. Communication skills that foster rapport and trust building.
5. Training and experience in the mediation of family issues.
6. Knowledge in the following areas:
 - a. Adult guardianship proceedings
 - b. State statutes and court rules relevant to adult guardianship cases
 - c. Family functioning and dynamics

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- d. Abuse and exploitation of vulnerable protected persons or proposed protected persons
 - e. Understanding of the following as they may affect capacity, care-giving needs, and the support and service resources related to them:
 - i. Mental illness
 - ii. Developmental disabilities
 - iii. Substance abuse and addictions
 - iv. Dementias and related disorders, including Alzheimer's Disease
 - v. Impacts of aging
 - vi. Traumatic brain injury
 - vii. Other physical trauma or illness
7. Cultural awareness and understanding of issues of diversity, with an emphasis on marginalized populations;
8. Availability to provide mediation services.

Mediators must also complete the required week-long, 40 hour, multi-party mediator training in the facilitative model of mediation and provided in the context of adult guardianship issues or, for those mediators that have completed a facilitative 40 hour mediation training program, complete a 12 hour advanced guardianship mediation training program.

Mediators must demonstrate maturity and conduct themselves in a highly professional manner that earns the respect and confidence of the other participants. Mediators must demonstrate an understanding of and adherence to appropriate standards of practice. Ongoing training and professional development are essential in this area of mediation practice, and commitment to them should be demonstrated.

9. Senior Judges, sitting judges, and mediators selected by the parties by stipulation are not required to attend the training.

II. Mediator Selection, Monitoring and Evaluation

These qualifications and competencies discussed above, as evidenced in application materials, personal interviews, and reference information, form the basis for mediator selection.

All mediators are encouraged to keep current professional liability insurance specifically covering mediation practice.

Mediator performance is monitored and evaluated on an ongoing basis through mentoring, case consultation, record review, observation, interview, and mediator self-evaluation.

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Subject:

Policy #13: Professional Development

Date adopted/revised:

Mediators are expected to continue to expand and update their skills and knowledge in the field of mediation as well as in the substantive areas central to mediation practice in this program (see Policy #12: Mediator Qualifications). Training and education are available through professional seminars, workshops, and university-based programs.

Mediators are required to complete a minimum of two hours of training on issues of domestic abuse and exploitation of vulnerable protected persons. The training must include dynamics and indications of abuse or exploitation; deciding whether or not to mediate; and how to safely terminate mediation. This training must be completed before the mediator has sole responsibility for a case and is no longer being mentored, and no later than one year from entering the program.

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Subject:

Policy #14: Complaints and Alleged Ethics Violations

Date adopted/revised:

Any complaints against mediators or allegations of ethical violations are directed to the State or Judicial District Guardianship Compliance Office for consideration of involvement.

EXHIBIT B

ADOPTION OF NEW STATEWIDE GUARDIANSHIP RULE 13

Rule 13. Mediation and Other Forms of Alternative Dispute Resolution.

A. Definition. Mediation is an approach to conflict resolution or decision-making in which a mutually acceptable, neutral, and impartial third party helps the participants reach consensual and informed agreements. In mediation, decision-making rests with the parties. The mediator reduces obstacles in communication, maximizes the exploration of options for resolution, and addresses the needs and concerns of those who are involved or affected by the issues under discussion.

B. Application. This rule applies to all actions filed under NRS Chapter 159.

C. Procedure. The guardianship mediation manual as approved by the Nevada Supreme Court governs mediations of actions filed under these chapters.

1. At any time after an action is filed under NRS Chapter 159, any of the parties referenced in Policy #2 part I of the guardianship mediation manual may file a petition with the court requesting mediation for the purpose of providing an alternative to litigation in resolving any, some, or all matters at issue in the case.

2. The petition may include the names of any acceptable mediators.

D. Program evaluation.

1. At the conclusion of the mediation referral, the mediator shall file a Notice of Outcome of Adult Guardianship Mediation with the Court and serve a copy of the notice upon all individuals or entities who are entitled to notice under NRS 159.034.

2. All participants in the mediation will complete a survey of their experience with the mediation process.

3. Both the form of the Notice of Outcome of Adult Guardianship Mediation and the participant survey shall be as approved by the Nevada Supreme Court.