

Nevada Supreme Court

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



June 13, 2016, Meeting Materials

Justice James W. Hardesty, Chair

AGENDA

Supreme Court of Nevada

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 Administration of Guardianships
In Nevada's Courts**

Date and Time of Meeting: June 13, 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 Law Library, Room 107	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 May 20, 2016 (*pages 5 – 30*) (for possible action)
- II. Public Comment

*Because of time considerations, the period for public comment for persons who spoke at previous meetings **will be limited to 1 minute** and speakers who have not spoken at previous meetings **will be limited to 3 minutes**. Speakers are urged to avoid repetition of comments made by previous speakers.*
- III. Bill of Rights (for possible action)
- IV. General Policy Questions 22 – 25 Specific Recommendations (*pages 32 - 45*) (for possible action)
 - a. Fee structure to compensate guardians and those they hire

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

- b. Process, notice, and findings required for the approval of fees to guardians and others they hire
 - c. Process and timing for filing and evaluating an inventory and care plan for the ward
 - d. Process, timing, notice and findings the Court must make concerning accountings of the ward's estate
- V. General Policy Questions Follow-Up/Motions (*pages 47 – 49*) (for possible action)
- a. Appointment of Counsel (Q 3(2))
 - b. Supportive Living Agreements (Q 9)
 - c. Notice Requirements (Q 11)
 - d. Management/Administration of the Ward's Estate (Q 27)
 - e. Office of State Public Guardian (Q 31)
 - f. Statewide Rules for Processing of Guardianship Proceedings (Q 32)
 - g. Attorney Fees
 - h. Secretary of State's Office – SB 262
 - i. Guardianship Bonds
- VI. Terminology - Alternative to Ward (*pages 51 – 52*) (for possible action)
- VII. Minor Guardianship Statute (for possible action) (*Judge Walker, Judge Voy, and Judge Porter*)
- VIII. Data/IT Subcommittee Recommendations (*pages 54 – 57*) (for possible action) (*Steph Heying*)
- IX. Updates (for possible action)
- a. AB 325 – Private Professional Guardians Licensure (*pages 59 – 60*) (*Kim Spoon and Susan Hoy*)
 - b. NRCP Rule 60(b) (*Justice Hardesty*)
- X. Other Business
- XI. Next Meeting Date
- a. Tuesday, June 21, 2016, 1:00 p.m.
- XII. 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

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MEETING SUMMARY

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

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

Date and Time of Meeting: May 20, 2016, 11:00 a.m. to 5:00 p.m.

Place of Meeting:

LAS VEGAS
University of Nevada, Las Vegas William S. Boyd School of Law Thomas and Mack Moot Court 4605 S. Maryland Parkway, Las Vegas

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
Senator Harris
Assemblyman Glenn Trowbridge
Julie Arnold
Debra Bookout
Kathleen Buchanan (Jeff Wells Proxy)
Rana Goodman

Susan Hoy
Jay P. Raman
Sally Ramm
Terri Russell
Christine Smith
David Spitzer
Kim Spoon
Tim Sutton
Elyse Tyrell

AOC Staff

Stephanie Heying
Hans Jessup

Call of Roll and Determination of Quorum

Chairman Hardesty called the Commission to Study the Administration of Guardianships In Nevada's Courts (Commission) to order at 11 a.m. A quorum was present.

Approval of Meeting Summary from April 22, 2016, meeting

The April 22, 2016, meeting summary was unanimously approved.

Public Comment

Public comment was transcribed verbatim, and is included as a separate attachment to the meeting summary.

Update

Justice Hardesty thanked Commissioner Smith and members of the Boyd School of Law staff for their hospitality. Justice Hardesty updated the Commission members on the work that had been accomplished since the previous meeting; a draft for the minor guardianship statute amendments had been completed, the Secretary of State's Office had provided suggestions on a number of topics, Ms. Buckley received correspondence regarding the Bill of Rights. Justice Hardesty notified the Commission that Ms. Rana Goodman had been selected as the 2016 Senior of the Year and congratulated her on the well-deserved award and recognition.

Florida Auditing Program presented by Ms. Sharon Bock, Clerk and Comptroller, Palm Beach County and Mr. Anthony Palmieri, Senior Internal Auditor, Division of Inspector General, Palm Beach County

Justice Hardesty thanked Mr. Anthony Palmieri and Ms. Sharon Bock for their willingness to travel from Florida to provide a presentation before the Commission. Mr. Palmieri and Ms. Bock would provide information to the Commission regarding accounting and various financial aspects concerning guardianship.

Ms. Sharon Bock introduced herself to the Commission as the elected Clerk and Controller for Palm Beach County and introduced Mr. Anthony Palmieri, Chief Guardianship Investigator from the Inspector General's Division. Ms. Bock acknowledged Justice Hardesty's efforts in bringing the Commission together to do this very important work; the Commission should be commended for this. The financial monitoring and auditing of guardianship cases is one of the emerging issues in the United States. Two issues, which are at the highlight at the federal level, are the monitoring of the Ward's financial assets and the overuse of psychotropic drugs. Ms. Bock recommended the Commission hear a presentation regarding the overuse of psychotropic drugs in the future. Florida and Nevada are on the leading edge of what has been referred to as the "Elder Boom" because of the ever-expanding elder population. The U.S. Census chart illustrated that during the 20th Century the "over 65" population grew from 3 million to over 37 million people, accounting in the 20th Century for about twelve percent of our total population. A further breakdown illustrated the population of those ages 85 and older grew from 100,000 in 1900 to 5.3 million by the turn of the century. The baby boomers are those born between 1946 and 1964 and turned 65 starting in the year 2011. By examining the graph, it is clear that the number of older Americans have and will continue to increase dramatically between 2010 and 2030. By 2030, the older population is estimated to grow between 35 million to over 71 million people and that will take up about twenty percent of the U.S. population. Florida is ground zero in leading this projected growth trend. Florida is currently where other states will be by the year 2030, that is, nearly twenty percent of Florida's population already consists of residents 65 or older, this makes Florida the leading state per capita for over 65 years old, but also the leading state in those over 85 years old. Nevada also has a high population of residents over 65 years old,

which is over fourteen percent of the states total population. Regarding issues concerning Alzheimer's type dementia, experts report that one of the first faculties to be impaired by Alzheimer's is financial cognition. With an estimated half of the population age 85 and older, having Alzheimer's related diagnosis, the link between diminished capacity and an increase in guardianship case filings is clear. Florida alone has nearly as many Alzheimer's diagnoses as California despite only having about half of the population that California has. This means that Florida, long before the rest of the states, has been forced to develop policies and strategies to meet and most effectively address the needs of the aging population. It has been clearly documented that as aging takes place, there is a corresponding transfer of wealth. Constitutionally, individuals are presumed to have the capacity to handle their own financial affairs through mechanisms such as wills, trusts, and other legal proceedings. However, for a myriad of reasons many individuals end up with the courts assuming this role. Today there are approximately 1.5 million people under the courts' guardianship jurisdiction in the United States, because of this it is estimated that third parties control well-over \$270 billion in assets across the United States. In Palm Beach County alone, the court appointed guardians control about half a billion dollars, in just over 2800 cases. For this reason, objective and professional monitoring and reporting of court appointed guardians assets to the court has received the increased scrutiny of the media, victimized families, and advocacy groups. Because of the increased interest sparked by advocacy groups, Ms. Bock had been invited to participate in a national conversation about court appointed guardians led by the assistant secretary for the federal department of Health and Human Services. The good news about the conversation is that when the federal government finally looks into guardianship there will be money to fight for across the country, for states like Nevada. Like Nevada, there are several proactive states that are looking into individual audits and investigations to determine how court appointed guardians are managing their wards financial assets; many of those states are also considering Florida as a model. Currently, twelve states have mandated annual reviews on their guardianship statutes, including Florida and Nevada. Nevada Revised Statute, section 159.177 (1) and 159.176 require the filing of an annual accounting and an annual court guardianship review respectively. It has been reported that in Clark County less than half of the 3800 active guardianship cases are actually audited or reviewed on an annual basis and this is common among most states. In contrast, under Florida Statute 744.368, the clerks and courts are mandated to audit guardianship reports, including the initial inventory and annual accounting and advise the courts of their confidential findings. Florida is a unique national model because they have 100% compliance with the statutory mandate. As the clerk of the Circuit Court, the court has a very unique role within the court system, because they are an independent third party whose duties run directly to the citizens and because they do not have a relationship to the outcome of a case, they are able to provide ongoing support and audit reporting which are neutral and unbiased statements of fact. The reports arm the judges with in-depth knowledge in which to make their decisions. An important outcome of their audited cases is that the judges' decisions are accepted by all stakeholders including families, advocacy groups and even guardians. The concept of independent auditing is the hallmark of a good audit program. Ms. Bock's office also has complete and unfettered access to all court records, including confidential records, to also be able to have direct access to the records and the judges themselves. Clerks will sit in court hearings and be able to tell the judge some of our audit findings and read them. The audit findings are confidential, no one has access to them, and this was done statutorily. Clerks who perform audits and investigations are highly trained to detect malfeasance and fraud in accordance to nationally recognized audit and investigatory best practices, specifically, because we are accredited by Florida's Commission for Law Enforcement Accreditation, our audit reports and investigations are readily relied upon by law enforcement in the event of prosecution. Other professional certifications held by Ms. Bock's staff are; certified inspector general, certified inspector general auditor, certified inspector general investigator, certified public accountants, certified fraud examiners, certified internal auditors, and certification and control self-assessments.

Mr. Palmieri stated all guardianship initial verified inventories and the annual accountings are audited by specially trained deputy clerks. Enhanced audits are performed by professional auditors within the clerks Division of Inspector General when significant red flags are identified in a guardianship case. Since passage of a 2014 statute, Florida clerks have been performing the enhanced audits. The components of enhanced audits and

investigations include third party verifications. The clerks' statutory duties include the ability, with court permission, to subpoena and obtain any records they may need from a guardian or third parties to conduct an audit or investigation; the documents can be bank and brokerage account statements, medical records, attorney files, and a host of other documents. The investigative techniques may include an inspection of bank vaults, safe deposit boxes, and physically verifying reported personal property, including the contents of art and jewelry collections. In addition, clerks may scrutinize all publically and commercially available information about the guardian, including social media accounts, court records, law enforcement records, and real and personal property records. If need be, clerks may interview any party including but not limited to the person under guardianship, the attorney, guardian, and any other party that may have relevant information regarding the audit or investigation. If serious or potentially criminal activity is uncovered, clerks have the authority to conduct covert surveillance. Enhanced audits can be very time consuming and expensive. There are three ways a case is triggered to receive an enhanced audit. First, the specially trained clerks may find a red flag; the Commission was provided a list of most common red flags in the meeting materials. Second, a judge may request an enhanced audit for a case. Third, a case may trigger an enhanced audit through a notification through the clerk's Guardianship Fraud Hotline. The Guardianship Fraud Hotline (Hotline) began in 2011 and was the first in the nation that allowed confidential reporting by the public. Hotline cards and posters were distributed throughout the county and especially in areas of high concentration of the elderly such as 55 years and older communities and assisted living facilities. Through this program, the Clerk's office takes part in a training of guardians, family members, caregivers, bank personnel, law enforcement, medical staff, adult protective services, and others, to help identify financial exploitation in guardianships. Mr. Palmieri walked the Commission through an actual ongoing case from Palm Beach County to illustrate the process. Mrs. Janet Courtland is a recently widowed 85-year old who was adjudicated incapacitated due to her diagnosis of her progressive Alzheimer's Dementia. The court appointed an attorney that served Mrs. Courtland in a dual role, as her attorney and as her guardian, which is allowable under Florida law. Two red flags were noted by the clerk deputy; first, there was almost thirty notices of unavailability pleadings filed in the guardianship case files, second, excessive attorney fees for administrative work were being reallocated by the court to the attorney's guardianship bill, and third, this was a clear indication that the court was not pleased with the guardian's billing practice. After reviewing the red flags an enhanced audit was initiated where all disbursements including; capital transactions, attorney and guardianship fees in Mrs. Courtland's case were reviewed. Beyond Mrs. Courtland's case, Florida has scrutinized every case the attorney had opened in the circuit. By looking at the attorney's work broadly, the clerks noted all the attorney's notices of unavailability pleadings and compared them to her own records. In the end, it was concluded that although she was on vacation, she was simultaneously billing for and collecting thousands of dollars of unearned, yet court approved attorney and guardianship fees from Mrs. Courtland and other wards. The suspicions were confirmed by looking at the attorney's Facebook page where she had posted her vacation photos. In reviewing Mrs. Courtland's case files it was also discovered that the guardian petitioned the court and was authorized by court order to sell Mrs. Courtland's residence. After researching home values in the area, the clerks became aware that the proposed sales price was less than half the appraised value, this triggered a more extensive investigation of supporting documentations. What was found was an email docketed in the case from the listing real estate agent to the guardian. The first thing the clerks noticed was the guardian redacted in black marker some information on the email, using some technology the clerk was able to uncover the redacted part that stated "Hello Mom". The guardian was the listing real estate agent's mother, which is a significant violation of Florida guardianship law in the Conflict of Interest Statute. A few other noteworthy findings of the investigation revealed the house was purchased by a company with connections to the listing agent; it was renovated for \$25,000 and was sold or flipped, three months later for about \$190,000. What was even more egregious was that the attorney, in this case, was a former general magistrate, or commissioner, in Florida's court system.

Ms. Bock stated during Mrs. Courtland's case investigation, the courts were apprised of the findings throughout and upon conclusion, because of the information, the judge's action was swift and undisputed. Another important outcome of the audits and investigations is that because the clerks use professional standards, law

enforcement can use the audit information provided by the clerks to find probable cause to pursue guardians criminally. Unethical and fraudulent behavior by guardians in Florida has now moved from civil courts to the criminal courts, creating a deterrent effect that has rippled throughout the guardianship community, weeding out those that prey on the weak and vulnerable. Since September 2011, which is when Ms. Bock started the guardianship program, the Clerk and Comptroller's office has received over 600 calls to the Hotline, initiated over 900 audits and investigations, identified over 5 million dollars returned to the wards, referred over 20 cases to law enforcement with two arrests, and passed 5 guardian attorneys to the Florida Bar for investigation and disbarment proceedings. Locally, the Florida State Attorney has partnered with Ms. Bock's office to further educate the public and train law enforcement in recognizing the signs of elder abuse, particularly with first responders. At the state level, in Florida in 2016, for the first time a bill was passed that gave the Department of Elder Affairs the opportunity and the obligation to allow to the certification, registration, monitoring, and disciplining of professional guardians on a statewide basis. The Department of Elder Affairs is working with the clerks and the clerks are doing the auditing, investigating at the local level, and then rolling up the findings to the state level. This is one of the reasons that Florida's model is going to continue to get better. Most of the problems the clerks face are with family guardians; the clerks have been embraced by the Professional Guardianship Association and have received numerous awards. Ms. Bock's office trains the professional guardians and they go to every state guardianship annual conferences. Ms. Bock stated her office has found that for the most part guardians and professional guardians want to do the right thing. Ms. Bock thanked the Commission for the work being done in Nevada and offered to answer any questions.

Justice Hardesty asked Ms. Bock if the position of Senior Internal Auditor with the Division of Inspector General was a position created by the legislature.

Ms. Bock stated under the Comptroller function of her job description, she holds the position of County Auditor as well and she created and certified, under the Inspector General's Office and the Association of Inspector Generals, Mr. Palmieri's position. Ms. Bock hired Mr. Palmieri to run the guardianship program. The program consists of six trained Deputy Clerks. Now that Florida has gotten involved, it would be ideal for the federal government to get involved. Ms. Bock is working with the Department of Elder Affairs to receive grants; the county commissions have helped fund Mr. Palmieri's position. Ms. Bock stated guardianship is so individualistic and not a single case fits into a specific mold, each case is very different from the next. Ideally, having auditors at the local level who know the advocates, the guardians, and who work closely with judges would be best.

Justice Hardesty asked, since some counties in Florida are rural, if the rural Clerk Comptroller offices offer the services provided by Mr. Palmieri or if the auditor services are provided by the state or other counties.

Ms. Bock stated Florida has 10 urban counties out of 67 counties; Palm Beach County is a largely agricultural county and Florida has more rural counties than urban counties. Florida is divided among seven regions. Some counties may only have 10 guardianship cases and everyone in the state does the level one audit which consists of looking at the inventory and the annual accounting, what cannot be done at the level one audit is bring in the professional auditing. Florida has strategically placed accredited Inspector General Offices and divided the state into regions in order to break out services to all regions.

Justice Hardesty asked if Ms. Bock is providing auditors for services for counties outside of Palm Beach.

Ms. Bock stated this was correct and the services were for enhanced audits in which the cases would need to have the conditions for this type of audit.

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

Mr. Palmieri stated the audits do include those types of reviews.

Justice Hardesty stated with his conversations with law enforcement, district attorneys, and the attorney general around the state, they identified a challenge regarding having the expertise necessary in order to dig in to complicated transactions and uncovering "Hello Mom" is an example of this challenge. Justice Hardesty asked if the information found in the audits and investigations was shared with law enforcement.

Mr. Palmieri stated the information is absolutely shared with law enforcement and if there is a case presented to law enforcement they can contact the Clerk and Comptroller's office and efforts will be coordinated.

Justice Hardesty clarified that the clerks provide service at the request of law enforcement.

Mr. Palmieri stated they do provide service to law enforcement at their request.

Ms. Bock stated one of the reasons she certified her office through the Law Enforcement Certification Process as an accreditation is because she wanted the investigations to look like and have the same elements of a criminal case. When her office refers cases to law enforcement, the clerks present law enforcement with probable cause for criminal elements. Ms. Bock stated she also works closely with the State Attorney and the State Attorney created a task force with law enforcement specifically for elder crimes.

Justice Hardesty noted the audit findings are confidential and asked how the press gains access to defalcations, informing the public that these exist.

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

Justice Hardesty stated a compelling issue in Nevada concerns wards who may not have means but have serious medical concerns and overmedication was mentioned as a significant issue in guardianship cases. Justice Hardesty asked if there was a mechanism in Florida to address annual reports to the court that are not necessarily financially related, but deal with a ward's well-being.

Mr. Palmieri stated that according to Florida statute, the clerk has the duty to audit the guardianship reports, which include the financial reports and the reports of person.

Ms. Bock added that Florida is a bifurcated system and anything having to do with the person is charged to the Department of Children and Families. For example, if there is a suspicion or red flag that is detected and a problem such as overmedication or abuse is suspected, it is reported directly to the Department of Children and Families. The clerks do not deal with the person, except for the fact that the Hotline receives many calls regarding these matters, which are immediately reported to the proper parties.

Justice Hardesty stated one of the problems that exist in Nevada is a judicial commission opinion that limits ex parte communications with judges. Justice Hardesty asked Ms. Bock and Mr. Palmieri to comment on how to handle the complaints when they reach the judges.

Mr. Palmieri stated he would provide Ms. Heying a White Paper regarding this issue. First, the clerk is never a party and the case law is very specific about the clerk not being a party to guardianship proceedings. Second, even though there may be a statutory exception making the clerk a party, a clerk's duty is to advise the court.

Ms. Bock stated it has been interesting what her office has been through over the past years; legislation would not have passed if it were not for combined efforts with the Bar. In Fort Meyers, Florida, they were hit with an attorney complaint alleging that what the Clerk and Comptroller's Office does is ex parte and the judge in that jurisdiction threw it out based on legal research. Ms. Bock stated that information would be given to Ms. Heying as well. It has been projected that the guardianship area of law will stabilize around the year 2040. Justice Hardesty asked about the technological support that would be needed to support this model.

Ms. Bock stated her office had been working with the National Center for State Courts to receive grants.

Mr. Palmieri stated obtaining statistics was a manual process. About 15 months ago the clerks developed data points for college interns, which would be going through each case file and pulling out data. Mr. Palmieri stated he hoped to be one of the first in the nation to be able to extract that data.

Justice Hardesty asked if the services provided by the Clerk and Comptroller's Office had been used or sought to address juvenile guardianships.

Mr. Palmieri stated guardianships of minors, elderly persons, and developmentally disabled individuals were all encompassed in the 2800 cases they handle.

Ms. Sally Ramm asked if additional accountability and regulation of guardianships have decreased the availability of guardians.

Ms. Bock stated Florida had not seen a decrease in availability of guardians but had seen a decrease of bad guardians.

Ms. Kim Spoon asked if the rural counties pay the Clerk and Comptroller's Office per case being worked on.

Ms. Bock stated currently the counties, like Palm Beach County, are doing that at no cost. They would be seeking grant money in order to show it works and then seek appropriations. This model has been incredibly difficult to fund but the counties in Florida had been supportive.

Ms. Arnold asked what the ratio is between audits to cases when dealing with the audits conducted in Palm Beach County.

Mr. Palmieri stated since 2011, he has looked at about 900 cases and there are 2800 open cases and about 500 to 600 new cases per year, but there was not a ratio that he could provide.

Ms. Bock stated her office currently has six Deputy Clerks that do level one audits. There are five auditors in the Inspector General's Office, Mr. Palmieri handles about ninety percent of the audits as the Head Auditor, and there are three volunteers and three interns.

Ms. Julie Arnold asked if Florida had a mandated reporter statute and if so, who receives the reports from the mandated reporters.

Mr. Palmieri stated Florida statute 415 requires all persons to contact the Florida Abuse Hotline for reasonable suspicion of exploitation, abuse, and neglect on vulnerable persons and contact the Department of Children and Families. There are also categories of mandatory reporters in the sense that they must identify themselves to the Florida Abuse Hotline.

Ms. Arnold asked who the guardians are that have established a good relationship with the Clerk and Comptroller's Office.

Mr. Palmieri stated there are categories of guardians in Florida; one type of guardian is the bar licensure attorneys. Another type of guardians are professional guardians, there are different types of professional guardians in Florida such as private guardians and public guardians.

Ms. Elyse Tyrell asked Ms. Bock who had been in charge of her training and who had handled the training for the initial clerks and auditors.

Ms. Bock stated they looked all over the United States for best practices and found very little, they began reading all Florida Statutes and immediately became members of the National, Local, and State Guardianship Associations. They began interviewing the Department of Children and Families to understand their role and law enforcement's role. Ms. Bock was already the elected auditor and understood the auditing standards but the Clerk and Comptroller's Office would need to understand the guardianship and what made guardianship different.

Ms. Tyrell asked if Ms. Bock and Mr. Palmieri had educated themselves on the guardianship investigation processes.

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

Judge Cynthia Dianne Steel expressed concern regarding the mistrust of the public. Many individuals have expressed their fears concerning corrupt judicial and government entities. The idea that a clerk could call a judge to discuss a case could be perceived as ex parte communication. The Commission is trying to mitigate the trust issues the public has. Judge Steel expressed concern and asked if it would be permissible for a judge to make a ruling based on information received from the Clerk and Comptroller's Office, which may be confidential information that no one else has.

Mr. Palmieri stated if the information is a finding of fact, which has been included in the guardianship report; the judge may make a ruling based on the information. In guardianship, most court proceedings are adversarial and there are many cases in guardianship, which are not adversarial. In Florida, it is statutory that guardians have an attorney but there may not be checks and balances.

Judge Steel asked what the population base was for Palm Beach County's jurisdiction and asked how many probate judges they had.

Ms. Bock stated the population was 1.5 million year round and there were 6 probate judges.

Senator Becky Harris asked for further explanation regarding Florida's annual plan.

Mr. Palmieri stated the annual plan and the financial inventory of accounting are the ways the court maintains oversight of the case and what is happening financially. The clerk has the statutory duty to audit those reports. The guardianship plan will contain information about the upcoming year of the person under guardianship, such as; where they will reside, which doctors they will be seeing, what social needs they may have and how they will meet the social needs. There is a statutory requirement of what the guardianship plan must contain and in addition, there must be an annual doctor's report attached to the guardianship plan. The most important thing

on the doctor's report is whether the person would still require a guardian or should an evaluation be done to verify that the person has regained their capacity.

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

Mr. Palmieri stated that by Florida Statute there is a preference for appointing family members. Unfortunately, there are not exact numbers to determine the percentage, but a rough estimate would be about 25-30% are professional guardians and the rest are family members. The family members first file an application to become the guardian, there is an order from the court appointing the family member as guardian along with letters of guardianship. Within three months, the family member must undergo an eight-hour training class. If the person under guardianship is a minor and the family member serving as guardian is a natural parent, they must attend a four-hour training course. Mr. Palmieri stated by Florida Statute, for their circuit, the contents of the training class are assembled by the Bar Association, approved by the Chief Judge in the circuit, and the actual administration of the classes is conducted by Catholic Charities, they also serve as a professional guardian as a corporation and the cost for that is \$55. When the deputy clerks docket the letters and orders of guardianship and notice that it is a family member guardian, they are sent a letter from Ms. Bock which offer services from her office and from Mr. Palmieri and other resources are also listed for the family member guardians. Mr. Palmieri stated statutorily there is a provision for bonding but it is not mandated.

Ms. Bock added about two thirds of guardians are family members and about 90% of the audits in which problems are found are in family member guardianship cases.

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

Assemblyman Glenn Trowbridge asked if the family guardians appointed by the courts were subject to a lesser background check, licensing, bonding, and training process and if they are required to complete the same reports as professional guardians.

Mr. Palmieri stated Florida's Clerks Guardianship Auditing Bill of 2014-switched language from "may" to "shall" on credit reports and level 2 background checks. Prior to the language change in 2014, the court was waiving the background checks and consumer credit report reviews. Family member guardians are held to the same reporting standards as the professional guardians when it comes to the guardianship plans, the inventories, and accountings.

Ms. Bock stated if the family member guardians do not submit documentation on the due dates the clerks work with them and try to train them and even help them fill out forms because guardians need the help. If they do not comply within reasonable time, the clerks send letters for show cause.

Ms. Terri Russell asked if cases are revisited more than once per year.

Mr. Palmieri stated there have been cases, which have needed to be revisited or required the guardian to submit something every month, but for the majority of cases, annual reports are used.

Ms. Bock stated they do have a "watch list". There have been people that have been so close to the unethical borderline that everything that they submit must be monitored. The goal is to make sure the ward is not harmed; it is more proactive than reactive.

Ms. Barbara Buckley noted, mechanically when the audit is done it remains confidential, she asked if the parties are given the reports as well as to the courts.

Mr. Palmieri stated the report is not provided to the parties. The audit report is held confidential and docketed into the case file and becomes part of the record but held confidential in the physical file and sealed. The report can be released per a court order.

Ms. Bock added when a report is made to the Hotline about possible financial abuse or other suspicions, once the report is complete, the clerks will often call the person who reported the allegation and let them know the findings. This practice helps to close the loop and keeps a positive perception that justice is being served and someone is watching out for the well-being of the ward.

Mr. David Spitzer asked who bares the cost of defending against an audit that has (inaudible 2:22:04). Would those costs be covered by the guardian or the state?

Mr. Palmieri stated the clerks are very conscientious not to incur unreasonable fees due to the work they are processing, ultimately, defending or answering those questions, if it were an attorney, they would petition the court to cover the costs.

Judge Steel asked if in the event an item is stolen from the ward and it is discovered in the audit report, the court would file charges.

Mr. Palmieri stated in that event, the clerks would issue an audit report to the court making recommendations on the civil side; the clerks would report that with law enforcement and file a report with law enforcement for prosecution.

Chief Judge Michael Gibbons stated Nevada has only one county, Douglas County, which has a similar program called Special Advocates for Elders (SAFE). The SAFE program consists of mostly volunteers; Chief Judge Gibbons asked what the role of the volunteers is in Palm Beach County and their training and if their role would be expanded in order to keep the costs down.

Mr. Palmieri stated the three interns in Palm Beach County handle the manual review of all the guardianship case files, there are 2800 open cases and when the closed cases are added, it is a significant amount of cases. The interns are obtaining the data points for all the cases. The two volunteers aid in administration of the program and handle things such as logs, scanning, cross-referencing paperwork; investigations are strictly handled by professionals.

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

Mr. Palmieri stated the Florida Supreme Court approves rules of probate that are drafted by the Florida Bar.

Ms. Bock stated in Florida, the process is the Bar is the rule making body for the Supreme Court but every rule of court goes to the Supreme Court for approval. Florida has Supreme Court Administrative Orders, much like Nevada.

Justice Hardesty clarified, some of the reports Florida has initiated were initiated through court rule rather than legislative action.

Ms. Bock stated that was correct. In fact, if Florida had not started at the administrative or judicial level, the statute would have never been accomplished.

Justice Hardesty stated Clark County has a population of 2.4 million and has 3129 pending cases since May 20, 2016 and one judge and no support. Washoe County's population is 550,000, a little less than 1000 cases, not including minors, and one judge for those thousand cases, once per week. When the Commission speaks about the importance of resources, it would be fair to conclude that Nevada has no resources performing these essential functions. Justice Hardesty asked the Commission if there were further questions for Ms. Bock or Mr. Palmieri, the Commission had no additional questions. Justice Hardesty thanked Ms. Bock and Mr. Palmieri for their availability and for providing the presentation and stated the information provided was very helpful. Justice Hardesty thanked Florida, Palm Beach County, and the Clerk and Comptroller's Office for allowing Ms. Bock and Mr. Palmieri to provide the presentation.

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

Justice Hardesty introduced Ms. Gail Anderson from the Secretary of State's Office. Justice Hardesty was privileged to meet with Ms. Anderson and Secretary of State, Ms. Barbara Cegavske to clear up some of the questions that exist regarding how the Lockbox function currently operates and explored issues relating to how the Lockbox might be available to the guardianship community going forward in dealing with things such as, will designations, agreements, etc.

Ms. Anderson spoke regarding the context of the existing Living Will Lockbox (Lockbox) as a vehicle repository for particular documents. The considerations that are assessed would need to be given to a similar electronic filing system for another purpose. In 2009, the Nevada Legislature established the framework for a secure online registry, which allows a person to post an electronic copy of a will or document and retrieve that document when needed. At the time, there was already existing law concerning the Secretary of State maintaining a registry of advanced directives for healthcare and this was added, enhanced, and encoded in Nevada Revised Statute (NRS) Chapter 225. What exists is an internet website registry, which contains an electronic reproduction of each document filed by a registrant, this electronic reproduction must be capable of being viewed in the registry, downloaded, and printed. There are several aspects that would be assessed and would need to be considered to create or utilize a virtual Lockbox; the registrant and the process to submit a registration and information, Ms. Anderson provided a list of documents that are used currently for the Lockboxes. The registration agreement requires certain information and an agreement, which involves a certification and authorization of who may access the filed documents, liability waiver in regard to the ministerial body or the Secretary of State, the terms of the agreement and a signature. This registration is not notarized and there is a provision, if a person has prepared such documentation and been submitted by someone other than the registrant, there is a signature required for who prepared it. The registrant is issued a wallet card and they are advised to carry it on their person, they are also advised to provide their registration information to close family members or friends. The primary or secondary contacts are written on the registration, if they make a change and wish to remove someone as a contact, they can request it through a different process, this does not happen often. The other consideration concerns how registrants are identified and documents are named and stored in any given system. There needs to be a registrant identifier, which is a very important consideration. For the

Lockbox that identifier is a combination of the first 3 letters of their last name and their date of birth, month, day and year. Those are the identifiers for this program. The system that issues the registrant's card issues a unique number for that registrant. Another consideration concerns making changes to registration information, some changes include; adding additional healthcare documents, replacing currently stored documents with different documents, revoking documents that have been filed, or changing registration information such as address, phone number, email, primary emergency contact, or alternate emergency contact information. Another consideration is who has access to retrieve the information that is filed in the repository. Since the Lockboxes focus on the advanced directives for healthcare, the targeted providers for this program since its inception have been hospitals, hospices, physicians, and nursing facilities that have medical personnel. There needs to be a limited process for who has access to this information filed and that must be given by the person granting it or, in the case of the providers, hospitals, emergency rooms, and hospices also have a mechanism in which they also register with the Secretary of State's Office as a provider. Each registered provider has an administrative contact that is a designated contact with the Secretary of State's Office for the program. They manage that organization's access for the Lockbox, set up and disable usernames and passwords for staff, which is supposed to be limited within their organization, are responsible for will keeping records current and in good standing with the Secretary of State's Office, and are required to complete and return an annual update letter to the Secretary of State's Office assuring all of the contact information for that organization is current. Most of the filers for the Lockboxes give that registrant information to their immediate family or close friends and their contact persons, occasionally there is a falling out between family and registrants and changes may need to be made and that needs to be considered. The final consideration is the internal administrative processing, how filings are received, how filings are entered and how filings are stored. For the Lockbox program filings are received by fax to a special fax number, by hard copy mail, or hand delivery. The fax copies to that special number are stored in a queue that are then pulled by the processor in the Secretary of State's Office. The information from the registration agreement is manually entered into the data system, regardless of how it is received. The documents filed by mail or hand delivery are scanned into the internal registry; the entire packet is then named and attached as a record to that registrant's data record in the Secretary of State's data system. Another consideration on the administrative side would be to consider the workload, since it is all entered manually, there is significant staff time needed in order to process the work, not only new filings, but also changes made to the registration agreements, adding additional documents, and revoking documents as well. Another main consideration is secure data storage, appropriate offsite backup, and security from breaches and attacks. Those are a few things Ms. Anderson had thought of that relate to the contexts of what the Commission may be considering which currently exist in the Secretary of State's Office with the Lockbox program. Justice Hardesty asked if there was a possibility of the Secretary of State's Office receiving an effect directive from the selection of a guardian as an item that could be included in the Lockbox.

Ms. Anderson stated there had been discussion regarding that request but anything that is proposed would need to be approved by the Secretary of State. Healthcare directives accessed by medical providers and guardianships with the interest of the court and the public have different audiences that want to see and need to see the documents. With the healthcare directives there is a whole set of the medical limitations of the law of medical information that may or may not be included in some of the filings received. To merge the two may not be feasible at this time due to the different audiences that would need to access the documents.

Justice Hardesty stated the Secretary of State's Office would need research support in order to accommodate this kind program.

Ms. Anderson added the Secretary of State's Office currently has one person that handles the Lockbox program as well as other programs. Additional staff would be needed in order to help with the data entry processing to keep up with a new program.

Ms. Kim Spoon asked if a list exists of who can be providers and asked if this list was compiled according to statute or according to the Secretary of State.

Ms. Anderson stated the Secretary of State's Office has a list of approved providers. There is not a listed statute regarding who can apply as a provider.

Ms. Arnold stated she had received reports that stated the hospital emergency room staff was unaware of the Secretary of State's Lockbox program.

Ms. Anderson stated there is a need for ongoing education and outreach, a hospital has many different departments, the emergency room being one of the many departments, and in the emergency room, for a person in a critical situation, a person may be asked if they have an advanced directive. There is communication that is needed within many departments within a hospital.

The Commission did not have further questions.

Senate Bill 262

Justice Hardesty has been working with the Secretary of State's Office on the issue of registration for out-of-state guardians. A plan has been formulated that will be subject of a motion that will be presented to the Commission in June. In essence, the plan would simplify the process and take the Secretary of State's Office out of trying to determine who is and who is not a guardian, which is a process for which the Office has zero resources and it does not make much sense to do it that way. If it were handled the same way LLCs and corporations are then it would be straightforward, and would be a simple filing. If there is a failure, that issue can be addressed by the court rather than the Secretary of State's Office. It is an easier process to follow and would be easier for those who serve as agents for non-resident guardians.

Justice Hardesty called the meeting back to order following a 30 minute break for lunch.

Term Incapacitated

Mr. Kim Rowe and Ms. Elyse Tyrell provided a memo with revisions to Chapter 159, incorporating the concept of "Incapacitated Person."

Ms. Kim Spoon is concerned that the definition does not include a statement about financials. The definition states . . . "the ability to meet essential requirements for physical health, safety, or self-care without appropriate assistance." Ms. Spoon asked if the definition should include something about financial stability. Ms. Tyrell accepted the amendment to include financial stability.

Ms. Tyrell moved to approve the definition for incapacitated, amending the definition to include financial stability. Judge Egan Walker seconded the motion. Motion passed.

Ms. Heying was unavailable to take a roll call vote. Justice Hardesty asked for a vote. Members present voted in favor of the motion. No one was opposed.

Term Ward

The Commission discussed alternatives to the term *Ward* in previous meetings. Ms. Dara Goldsmith had indicated there is some objection to the approach of changing the term *Ward* in her statement during public comment. Mr. Tim Sutton had made a similar point in an email. Justice Hardesty suggested the Commission pass on making a recommendation on this item at this time, while continuing to monitor how other jurisdictions

develop this terminology. Justice Hardesty did not want to discourage suggestions, recommendations, or a motion on this subject.

Discussion

- Senator Becky Harris is not sure what the correct terminology should be or how the Commission might come to an answer but there has been enough public testimony indicating the term *Ward* is offensive. Senator Harris suggested the Commission defer this discussion for another month so additional research could be conducted as to what other states are doing in this area. Senator Harris said it is important that the dignity of individuals be protected in this process. One of the ways this can be done is by listening to the public comment.
- Justice Hardesty stated the term *Person in Need of Protection* continues to come up. Justice Hardesty shares Senator Harris' view that the term *Ward* has a negative connotation and the term a *Person in Need of Protection* or one of the alternative terms would diminish that consequence.
- Ms. Tyrell did not see anything negative in the term *Ward*. It alerts everyone that that is the person who needs protection. The phrase a *Person in Need of Protection* does not tell anyone there is a court order in place and that there are things that need to be done. A *Person in Need of Protection* means for whatever reasons this person has been deemed or not legally deemed. Ms. Tyrell is in favor of keeping the term *Ward*.
- Judge Steel had passed this idea by the Bench Bar in the community and they are against changing the term from *Ward*.
- Judge Porter is fine with the term *Ward*.
- Ms. Julie Arnold prefers the term *Ward*. Ms. Arnold noted any term that is used in this context will be offensive to a few but she does not think it is inherently offensive and it is much better than terms like incompetent or incapacitated.
- Judge Doherty said this is an effort to pull guardianship out of the shadows of oversight to make these cases more relevant in both understanding and simplicity. This is not the time and place to argue for sustaining a term that is isolating and is more derogatory than not by virtue of its existence. The term has a level of less than equal with respect to reference. Changing the term is a simple validation of the humanity of the persons we are trying to protect. The Bench Bar in Washoe County fully supports modification to the language and many members have already incorporated changes into their dialect, while others are drafting or adopting pleadings that change that reference. Judge Doherty said if the Commission is really moving forward in this area of work they would need to give a little more equalization of and validation to all the participants in the action and the term *Ward* does not do that.
- Justice Hardesty referred the Commissioners to the meeting materials and alternatives to the term *Ward* that had been suggested. A number of the terms have a national connection e.g., the National Guardian Association refers to *Protected Person* and *Protected Minor Person*.
- Ms. Sally Ramm stated person first and person-centered care is the trend in both Nevada and nationally. Making this change would be a beacon in the way Nevada is looking at guardianships. It would say Nevada is going to look at person-centered guardianships and putting the person first by virtue of a person-centered guardianship. Ms. Ramm prefers the terms *Person Subject to Guardianship* and the *Person Under Guardianship*.

Justice Hardesty deferred agenda item VI (b) to the next meeting. Commissioners were asked to share their thoughts with each other in the interim.

Minor Guardianship Draft Statute

Commissioners were provided a draft minor guardianship statute. Judge Walker explained the draft pulls in areas of Chapter 159 that refer to minors, with some tweaks to the language so there is a consistent statutory scheme. The draft also includes some new language specific to minors. The basic theme was to remove a few

areas of inconsistency or challenge. The draft represents the judges' collective thoughts on how best to serve the needs of the minors in a section apart from Chapter 159.

Some feedback had been received from Commissioners regarding amendments to the language related to guardian ad litem and attorneys and their roles, duties, and responsibilities. Judge Walker asked Commissioners to provide their feedback so the judges could consider the suggestions and bring a final product back for a vote at the June 21 meeting.

Judge Porter pointed out the two different statutes for temporary guardianships for minors. The working group discovered the temporary guardianship of minors is used in different ways in different communities. Many of the temporary guardianship for minors in Clark County are filed due to a need of medical care of the minor where the parents, for religious reasons, cannot agree to medical care. Judge Porter sees situations where the parents are not taking care of their children. A grandparent or someone else steps in and needs immediate guardianship of that child to get them out of a dangerous situation so there are two statutes to address the different situations. Judge Porter would like to see the statute give the judge the power to order child support through the guardianship proceeding as well as visitation. Judge Porter would draft language in this area.

Judge Voy stated the draft does include a provision that mandates guardians get the existing child support obligation or other benefits because that did not exist before.

Mr. Jeff Wells said he is concerned that the new definition in NRS 159A.002 – Suitability of Parents fits in with Chapter 432B. In the examples about the family, the family would end up being involved with the Department of Child and Family Services. Mr. Wells would like to have the definitions mirror each other as opposed to adding a problem where under one statute it is not neglect but it is in the other statute. This could become confusing if the statutes do not work together. Judge Voy said you rarely see a petition under 432B for educational neglect or medical needs neglect. Judge Voy said the statutes mirror what the Commission is trying to take care of when talking about a minor. Judge Walker will review the definitions and see if they need to drag them in or modify these in any way.

Judge Doherty said there are different standards of proof under Chapter 432B and stated she would not want to mislead or give the impression the same standards or proof are being used because the same definitions are being use. Judge Doherty said the Commission should pay attention to that and clarify the standard of proof.

Ms. Barbara Buckley thanked the judges for their work and let them know she would email her suggested changes. It would be good to clarify the role of the attorney. One of the provisions made it sound as if the attorney had to act as a guardian ad litem as opposed to a traditional attorney/client model and she did not think that was the intent.

Commission members were encouraged to provide the working group feedback on the draft so they could make amendments and bring a revised draft back to the Commission at the June 21 meeting. The Commission would vote on the draft at that meeting.

Guardianship Data and Technology Workgroup

The Guardianship Data and Technology Workgroup (Workgroup) provided a memo summarizing its work and recommendations to the Commission. Mr. Hans Jessup noted the Workgroup feels it has accomplished the tasks assigned by the Commission. The Workgroup had previously recommended having court performance measurements (age of pending case, time to disposition, and clearance rates) for guardianship cases. Mr. Jessup reported that the USJR statistics are being updated to include these measures currently.

In addition, the Workgroup recommends a uniform Guardianship Information Sheet (Information Sheet). In developing the Information Sheet, the Workgroup incorporated elements of forms currently used by other jurisdictions, relevant statutes, and by asking courts what type of information they would need. The Information Sheet does include estate values, which are used to determine filing fees. The Information Sheet would need to be modified if the Commission makes recommendations to modify estate values and filing fees.

Finally, the Workgroup recommends a court rule directing courts when a petition is filed for two or more wards pursuant to NRS 159.057, to maintain separate case files. There were 2,488 guardianship cases reported to USJR last year. If one petition were filed for two or more wards, USJR would have no way of measuring how many individuals are under guardianship or how to measure the individual outcomes. The recommended rule tries to address this without putting additional burdens on attorneys or the guardians filing with the court, potentially increasing costs. The rule puts the onerous on the court to create a separate case file.

Judge Doherty thought the Information Sheet was well done and asked if the expectation is that each district will use the Information sheet. If so, is there a vision of an entity that would collect this information at the county or state level? Would training be provided? Mr. Jessup responded it is the recommendation of the Workgroup that the Information Sheet become a statewide form. NRS 3.275 gives the State Court Administrator the authority to ask courts to do that. How the information collected is used, would be up to the courts. The information collected because of the Information Sheet would help ensure the type of information filed with the court is accurate. Judge Doherty suggested the Workgroup take the leadership in training the counties in how to apply the Information Sheet. Justice Hardesty stated he thinks it is the intent of the Administrative Office of the Courts to collect this data and if there were a permanent elder committee or continuation of this committee, it would use this data to help guide decision making.

Judge Doherty noted the statute does not currently reference limited guardianships it references special guardianships. Ms. Jessup will correct the language on the Information Sheet.

Judge Doherty suggested the elimination of NRS 159.057, which allows the filing of dual cases. Judge Doherty explained not only is the data not accurate but every case in which there are two individuals the individuals are typically married. The court will inevitably discuss the lead person in the relationship, typically the male husband. More often than not, orders are not entered with respect to the other spouse, data or specific substantive narrative is not included with respect to the other spouse, many times those long-term relationships are antagonistic, and yet the court is treating them as a single case. It is more dignified and easier for the court to have the cases filed separately. Judge Walker agreed with Judge Doherty and said for minor guardianships, if it is acute there are usually multiple sibling families and kids have different needs and age out of the minor guardianship at different times. It is critically important that each minor have an individualized case.

Judge Porter stated the draft court rule is a good compromise. The rule would not require multiple petitions to be filed, which could increase the costs if an attorney is hired and a single petition has to be filed on each child. Judge Porter suggested another way this could be dealt with is to require separate petitions for adults but still allow one petition for multiple children and then the court would break out the individual case files.

Justice Hardesty said he was going to suggest the Commission recommend, to the legislature, the elimination of filing fees in minor guardianship cases. The monetary impact is minimal but the staff and judicial time to determine indigence and waive the fees is not. Judge Porter is concerned when a potential guardian hires an attorney and the attorney charges extra because they have to file successive petitions. Judge Voy suggested asking courts for the filing fees that have been collected in minor guardianship cases.

Justice Hardesty said the concern expressed by Judge Doherty might be accommodated in the rule suggested by the Workgroup. The Commission needs a little more information on this prior to taking a vote. Justice Hardesty

asked Judge Porter, Judge Walker, and Judge Voy to obtain the filing fees on minor guardianships from their clerk's office.

NRCP Rule 60 (b)

The Commission had asked Justice Hardesty to convey to the Supreme Court their emergency motion on the application on the Nevada Rules of Civil Procedure and Rules of Evidence to Guardianship proceedings. The matter has been presented and discussed by the Nevada Supreme Court. An Order would be issued under the Administrative Docket 507 addressing this item.

Bill of Rights

Prior to the meeting, Ms. Barbara Buckley received comments from Commissioners, which were incorporated into the draft that was provided in the meeting materials. Justice Hardesty asked Commissioners if there were additional edits to the proposed draft Bill of Rights (Rights).

Right #7 – The right to exercise full control of all aspects of life not specifically granted by the court to the guardian.

Ms. Spoon is concerned that there is no way to specify everything in a court order that has to be done for a ward, especially, when the guardian has just begun to petition for the ward. Ms. Spoon would like the language to be reviewed.

Right #8 – The right to control the respondent's personal environment based on the respondent's preferences to never be moved except if it is in the respondent's best interest.

Ms. Spoon is concerned with "never" and asked if that could be reviewed.

Right #16 – The right to unimpeded, private, and uncensored communication and visitation with persons of the respondent's choice, except if the court determines that certain communication or visitation has cause or is likely to cause harm to the respondent the guardian may limit, supervise, or restrict communication or visitation, but only to the extent necessary to protect the respondent from harm.

Ms. Buckley received contradictory input to #16. Suggestions:

- To have a presumption that the person under guardianship can talk to whomever they want. That should be the starting point. If the guardian chooses to restrict that because the person is causing harm or is antagonizing the person under guardianship, you could have the guardian stop the visits temporarily but to seek court approval not later than X amount of days.
- Only the court should be able to restrict visits.
- The guardian could restrict visitation without court involvement.

Ms. Buckley suggested the right could be spelled out in a statute that might include the ability of a guardian, in an emergency, to restrict visits pending a court review. Ms. Spoon thought the guardian should be able to restrict visitation in an emergency then notify the court within 7 – 10 days, and the court could take further action, if necessary.

Remedy (c) - Judge Steel had a concern with remedy (c) an order compensating a person under the guardianship for any injury or death or loss of money or property cause by the action or caused by failing to take the appropriate action. Judge Steel asked if it was anticipated that this would be heard by the guardianship judge. Ms. Buckley responded the court may want the ability to hear it in a guardianship action but not every

case would involve injury or death. Most of the cases would involve a loss of money or property, and a person would have the option to go to civil court in the same way they are now.

Right #18 – The right to vote in a public election, marry, and operate a motor vehicle unless restricted by the court.

- Some Commissioners had a concern with the right to marry. Ms. Tyrell suggested the ward could seek the authority to get married.
- This language was pulled from the Texas Bill of Rights. Ms. Buckley double-checked Nevada statute because in the beginning it should be what powers the guardian has. The statute is silent on that right. Ms. Buckley assumes that should be the statute and the policy direction should be satisfied and then the bill would mirror the statute. That is unaddressed and it probably should be.
- Justice Hardesty's intent was for the Bill of Rights to be adopted as a part of the statutory changes in the general section.
- Judge Doherty stated it is not just a contractual right it is a constitutional right to association issue as well. Judge Doherty is leaning against taking it out unless there is a specific statutory provision that the court can say "yes you can marry" or "no you cannot" similar to the language for voting and the firearms.
- Ms. Arnold is concerned with the right to operate a motor vehicle, adding the Department of Motor Vehicles has its own set of regulations as to who can and cannot operate a motor vehicle. Operating a motor vehicle is a privilege not a right.
- NRS 159.0593 states if the court orders a general guardian for a proposed ward that court shall determine by clear and convincing evidence whether the person shall be prohibited from possessing a firearm. NRS 159.0594 contains similar language for the determination of whether the proposed ward lacks mental capacity to vote. Ms. Buckley suggested some of these important rights could be spelled out so there can be a case-by-case determination. Statutory language allows the ward to retain his or her right to vote unless . . . here is a presumption that you keep this right but if the ward cannot exercise the capacity that could be spelled out in the petition and the court has the statute to back it up. The statute states, if the court makes findings pursuant to subsection 1, the court must include the finding in a court order.

Ms. Arnold noted the condition of many adult wards is going to deteriorate over time. The ward may be capable of exercising these rights at the time of the guardianship but that might change in the future so a review of the wards condition should occur.

Justice Hardesty is interested in the case plan Mr. Palmieri referred to in his presentation. Part of the Commission's recommendation should compel the annual report to include information about the ward's mental and physical health and any progress or deterioration. This should be a part of the annual review and if the judge wants to schedule additional reviews during the year, they can.

Ms. Spoon's said when the guardian files a petition they do not know the ward very well, i.e., their circumstances or how well the person can drive. The guardian might have to come back to the court within a short period because the guardian now has the functional assessment and it says the person under guardianship should not be driving. Ms. Spoon was not sure that this was practical in terms of guardianships of seniors since many are not able to drive by the time they come into a guardianship.

Judge Doherty said the best practice is under the area of probate. The initial petition filing has both a plan of care and a plan of finance. A rough draft was incorporated into both of the Second Judicial District's samples of self-help petitions, as well as the attorney petition as an attachment to articulate a general plan of care. This document forces the guardians to articulate a general plan of care, which is invaluable for those family members to have that conversation so we are moving towards that.

Ms. Buckley suggested surveying what other states do, particularly Texas. Articulating what it means and what it does not mean if you are under a general guardianship and every right is removed. That should be spelled out. Justice Hardesty said if we are going to approach guardianship cases by the least restrictive means, and the court concludes this person should be under a general guardianship, then a lot of the rights would be forfeited, given the definition placed on incapacitation and the fact every other alternative has been considered and the person is not capable of forming decisions.

The purpose of the Bill of Rights is to inform a person under guardianship of their rights and the rights that have been affected by the guardianship order. Judge Doherty said the Bill of Rights is intended for all of us, and is meant to reinforce to the ward and to recognize that the person remains a thriving existing human being. The ward may have lost a large segment of their legal rights and constitutional rights and ability to control their finances but they have not lost their right to associate or enjoy life in generalized manners. Guardianship is so encompassing. It is not inappropriate to validate what exists in human beings and what we control legally and that is what the Bill of Rights is intended to do. Judge Doherty suggests removing "marry" and "operating a motor vehicle" but leave that within the realm of discussion. It is important that there is a presumption that communication is open. Right #16 could say the guardian may limit for articulable reasons because it is a constant issue of disassociation of family members based on those segregations.

Ms. Arnold suggested simplifying the language in the Bill of Rights so wards and guardians understand what they mean. The Bill of Rights statutory language could be separated into a separate, simplified Bill of Rights. Ms. Ramm agreed the Bill of Rights should be more understandable. If the Bill of Rights were included in statute then it would need to be written in statutory language then a separate Bill of Rights could be designed with language that is more precise. Posters and educational items could be designed for guardians and wards.

Ms. Ramm said one of the topics the Commission has not addressed yet but she would like to put on the table is guardianships of people with developmental disabilities. The Commission has addressed minors and adults but has not addressed developmental disabilities and the right to vote, marry, and operate a vehicle fits into this group of people. At some point, the Commission is going to need to review the guardianship laws and come up with a scheme that fits people with developmental disabilities.

Justice Hardesty suggested instead of relying on a Bill of Rights that would be adopted by the legislature a Bill of Rights could be enumerated and judges have to address those rights in an order. The Court could enunciate a rule that directs judges to specify what rights are retained and what rights are not in every order.

Judge Walker is concerned about how the Bill of Rights would apply to minors since they do not have all rights. Senator Harris agreed and said the Commission has not discussed how the Bill of Rights would affect minor's rights. Minors have important rights that are transitory as they age, and presumably, a minor would no longer be under a guardianship when they reach the age of majority. The Commission needs to look at what happens in those cases and it needs to be sure it does not inadvertently limit or expand those rights for minors.

Ms. Buckley said the Texas Bill of Rights was limited to adults but there is a Bill of Rights in Chapter 432B foster care proceedings. Ms. Buckley said one way to resolve this might be to remove a couple provisions that are more appropriate for the statute. Ms. Buckley could take away some of the more detailed provisions and suggest potential statutes for those areas and then shorten the language in the Bill of Rights to contain the more enabling rights. For example, having the right to be treated with dignity is hard to put in statute but easy to put in a Bill of Rights.

Judge Steel suggested a Bill of Rights be served on everyone who has the right to notice from the service of the petition.

Right #26 – The Right to receive a report on all assets held by any trust. Ms. Arnold is concerned with “any.” The ward has the ability to find out about things that come directly to him or her but not to the full accounting of “any” trust in “any” circumstances. If there is a special needs trust that has been set up, an accounting would be appropriate but “any” seems too broad.

Chief Judge Gibbons said a Bill of Rights is critical. There is a state constitutional provision for a Victim’s Bill of Rights, which is general, and then there are a number of legislative enactments in different areas setting forth the specifics. Chief Judge Gibbons suggested the Commissioners par back some of the Bill of Rights and look for legislative changes. Justice Hardesty agreed the Commission could par this back, generalize the terms, and reserve for legislation or court rule implementation of the operations.

Mr. Wells expressed the need for a Bill of Rights. The biggest complaints from family members were that they felt they had been excluded from relationships with the ward and that there were unnecessary restrictions against the ward. The Commission should not take all the ward’s rights away and then make them go back to court to regain those rights.

Ms. Spoon said under a general guardianship many of the persons have dementia by the time they are under a guardianship, and they might not be able to do certain things. For example, if they have the right to operate a motor vehicle at the time of guardianship but by the next month they cannot then the guardian would have to go back to court to have that right removed. The guardian might have to go back to court multiple times to have certain rights taken away. Under a general guardianship the person does not have the capacity to do most things which is why the guardianship is being brought and to have to go back to court to take things away would be burdensome and costly for the guardian and the ward. It would be different under a special guardianship with limited capacity.

Judge Walker is always struck that in the area of guardianship he more negatively affects a person’s rights than if he sends someone to prison. The ability to invade a person’s rights should be slow. It should be difficult to remove a person under guardianship’s rights.

Ms. Buckley said if you look at most of the rights, aside from marry and obtaining a driver’s license, most of the rights are general and it would be hard to find one to disagree with even in a general guardianship. Ms. Buckley suggested pulling out the Bill of Rights that should be in statute and the rest of the rights are rights a person never gives up.

There was a discussion about remedies being included in a Bill of Rights and the concern that there would be objections in the legislature because the remedies are creating an area of civil law. A Bill of Rights is intended to inform a person of their rights e.g., you have the right to keep your dignity. Judge Steel had suggested including remedies because she was concerned there would be a Bill of Rights but no remedies if a person’s rights were violated. Justice Hardesty said the Supreme Court has two cases that have said in the absence of specification in a private right of action to enforce a provision of the statute you do not have any so there has to be a provision in her and it does not have to be specific. It could be as general as the ward has the right to enforce these rights through a private action. The court could enter such relief as appropriate in a given case. The legislature has then allowed the private right of action on behalf of the ward to enforce the rights and the court has the right to hear it and enter such remedies, as it deems appropriate in a given case. Mr. Spitzer said that is included in Right #17 – The right to petition the court.

The idea was to generalize the rights retained for a person under a guardianship. Justice Hardesty urged the Commission to approach this and compile two separate documents to address a general guardianship and a limited guardianship. Justice Hardesty’s concern is the courts make the findings, which will ultimately guide much of this.

Senator Harris and Assemblyman Trowbridge were asked for their view on the legislature adopting a Bill of Rights. Senator Harris said based on how well Senate Bill 262 was embraced last session she has no reason to anticipate a Bill of Rights would not be well received. The Bill of Rights reaffirms basic rights and correct treatment of those that are most vulnerable in our society. Assemblyman Trowbridge noted the plainer the English the better off we are.

Justice Hardesty said several items presented as recommendations are susceptible to court rule as opposed to legislation action. Assemblyman Trowbridge thought approaching this in a different direction would be a better. The burden should be on the courts when designating someone to be a person under guardianship to delineate what human rights are being taken away, allowing the court to determine if this should be a general or limited guardianship. Justice Hardesty appreciates the suggestion and he was leading up to the suggestion that the statute should say the court shall delineate what rights are retained and what rights are removed. That would be in the statute and then the court system could establish, by court rule, what those orders would look like. Senator Harris said to the extent that it is appropriate the court is allowed to be more nimble in addressing these concerns, she does not have a problem with the court acting and addressing this through court rules. To the extent that the court fails to act or does not choose to act then the legislature would be forced to step in and provide direction as to how the situation should be dealt with. As the Commission continues through the agenda and votes on recommendations, Senator Harris would be happy to have the conversation about what would be appropriate for court rule and what would be appropriate for legislation. The legislature has the ability to include forms or Bills of Rights or other documents into statute and there is flexibility with the language. It does not have to be difficult, tenuous, or complex wording that people have a difficult time understanding. Lay forms could be included in statute.

General Policy Questions

22. Does the Commission wish to make recommendations concerning the fee structure to compensate guardians and others they hire?

Justice Hardesty stated rather than get into the weeds about what that fee structure would look like the threshold question is - Is question 22 an issue the Commission would like to make recommendations about?

Judge Walker moved that the Commission offer recommendations concerning the fee structure to compensate guardians and others they hire. Motion seconded.

Ms. Heying took a roll call vote. Yeas 20, Nays 0, Excused/Absent 6.

During the roll call vote, Ms. Rana Goodman said yes with a question. She did not recall if a guardian had provided the Commission information on what they thought a fair fee schedule should be. Justice Hardesty said he was not sure that had been thoroughly vetted yet but the question is should the Commission revisit how this is structured and in the current statute there is a general provision about the right to be compensated but there is not much guidance concerning the subject. Information from other states' schedules had been provided during the first few meetings. Ms. Goodman said she would like there to be a fee structure.

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?

Assemblyman Trowbridge moved that the Commission make recommendations concerning the process, notice, and findings required for the approval of fees to guardians and others they hire. Senator Harris seconded the motion.

Ms. Heying took a roll call vote. Yeas 21, Nays 0, Excused/Absent 5.

24. Does the Commission wish to make recommendations concerning the process and timing for filing and evaluating an inventory and care plan for the ward?

Justice Hardesty added "care plan" for the ward to the recommendation. There was a suggestion to add budget and Justice Hardesty said the budget should be included in the care plan.

Debra Bookout moved to make recommendations concerning the process and timing for filing and evaluating an inventory and care plan for the ward. Ms. Terri Russell seconded the motion.

Ms. Heying took a roll call vote. Yeas 21, Nays 0, Excused/Absent 5.

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?

Senator Harris moved for the Commission to make recommendations concerning the process, timing, notice and findings the Court must make concerning accountings of the ward's estate. Ms. Christine Smith seconded the motion.

Ms. Heying took a roll call vote. Yeas 21, Nays 0, Excused/Absent 5.

Discussion

Ms. Tyrell noted there were statutes addressing this and asked what is envisioned. Justice Hardesty said it would include much of what they heard this morning from Florida. Adopting that business plan and calling for auditors and investigators, which was a part of a previous recommendation. Justice Hardesty envisioned a formalized plan that would bring about investigators, auditors, zones, dealing with rural counties. Senator Harris would like to add there are virtually no provisions in the statute telling a court what to do if there are objections. That would be encompassed in that as well.

26. Does the Commission wish to make any recommendations in the use of bonds and the allocation of costs for bonds in guardianship appointments?

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

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

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

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

Discussion

Mr. Jay Raman said Ms. Spoon and Ms. Hoy had indicated there were difficulties in acquiring bonding during their presentation in a previous meeting. Ms. Hoy said this was a fidelity/surety bond for the business of a private professional guardian. Ms. Tyrell added as an attorney for family members bonds are difficult to obtain so they typically insist their clients do blocked accounts. Mr. Raman asked if there could be guidance from the Commission, judicial rule, or legislative action that would provide the bond issuers more comfort in writing the bonds. Ms. Tyrell said there were insurance companies that would work with the attorneys and families and write bonds but they have disappeared. Ms. Spoon stated she has not had too much trouble getting the surety bonds but they have to be smaller. That is why they do blocked accounts for the larger estates. The more money you have the harder it is to find a company to underwrite the bond. Judge Doherty said the Florida legislation provided this morning expects a bond to be posted.

Justice Hardesty said all of this requires the judge to make findings as to why they are not imposing the bond or blocked account, and this allows some leeway in given cases but that implies a presumption in favor. Judge Doherty said there is a need to move away from family members not being bonded because we continue to hear, and the courts know much of the fraudulent behavior is associated with family members.

Mr. Raman did not have additional questions based on Florida's presumption for the bond. It is his personal view that if the bond is in place and if things go badly, at least something can be recovered. Mr. Raman would vote in favor of the Commission making recommendations trying to do something to ease the difficulty family members have in obtaining a bond. That is different than what is being proposed but it could be addressed through the Commission.

Justice Hardesty asked the Commission to take up the motion on the table, which requires the court must make findings if the court does not order a bond or blocked account, then the Commission would come back to Mr. Raman's suggestion.

Ms. Heying took a roll call vote. Yeas 21, Nays 0, Excused/Absent 5.

Additional Discussion

Mr. Raman asked if the Commission wishes to make recommendations concerning statutory or judicial enhancements to improve family members being able to obtain a bond for the purposes of guardianship. Mr. Raman suggested having a bonding agency explain why they are not able to grant such bonds and try to find common ground.

The Commission discussed this issue. Bonds and blocked accounts were being used interchangeably but they are not the same thing. A bond may be posted by a guardian if they are able to obtain a bond from a bonding company. Accounts would be blocked if a bond cannot be obtained. If an account is blocked the guardian would not have access to the account. A fixed amount that supplements income might be provided monthly from the blocked account, pursuant to a court order.

Judge Steel said another issue is a ward might receive a large sum of money, e.g., an award in a personal injury case, and the court is not made aware so there is no bond or blocked account.

Judge Doherty suggested it might be an affirmative obligation the Commission would want to put in statute. Justice Hardesty thought that would be a part of the annual report. The point Mr. Raman was trying to make was what about the availability of bonds and the Commission should examine this by looking at bonding companies/agencies to find out why it is not an insurable risk. Mr. Raman agreed and said that is why he

thought the Commission might make headway to find out why the bonds are not available. Justice Hardesty passed on this point until the Commission can find out or get someone to address the Commission on the issues surrounding bond availability.

Question 27 – Does the Commission wish to make recommendations concerning the management/administration of the ward's estate including the process and notice requirements to sell estate assets?

Question 27 addresses issues surrounding notices concerning the sale of estate assets. Justice Hardesty stated the statutes are relatively clear but there does seem to be some uncertainty. Mr. Alan Pearson had provided public comment and suggested some changes to the statute in this area. Justice Hardesty suggested deferring this question until the Commission could review the suggestions.

The Commission discussed the current practice of how the sale of a ward's personal property is handled and noticed. A ward may have been placed in a facility and instead of paying to have the personal property stored; the personal property may be sold or offered to the family for purchase. The courts might receive notice in the annual accounting that says everything the ward owned was sold for X amount. There is no accounting to the court or request for permission ahead of time and there is no inventory, visual or otherwise in many cases. The guardian may sell the car because the ward is no longer driving. Ms. Tyrell said she would advise them to do their best to get fair market value for the car but beyond that, there is no requirement.

The Commission discussed safe deposit boxes. There is a concern that a guardian could access a ward's safe deposit box and sell the contents, e.g., jewelry without getting a real appraisal or without considering the ward has a trust or will that states who they want to receive the jewelry. Jewelry may be sold for pennies on the dollar.

Justice Hardesty suggested there is a requirement that the process associated with the disposition of personal property be the same as it is with real property. Any disposition of personal property has to be court approved. That might not include an appraisal, there needs to be some disposition of this.

The Commission discussed notice requirements for the pending sale of personal property and personal assets. Notice should be provided to ensure the ward and/or their counsel are informed of what is anticipated to be sold, and if there is a dollar value in excess of a certain amount there should be a formal proceeding, similar to the proceeding for the sale of real property. A ward may have assets that have little or no value. Not all personal property needs to be sold unless there is an economic reason to do so.

The Commission discussed whether courts require an inventory of the safe deposit box. Ms. Hoy stated it is her practice to do an inventory of the safe deposit box but not close the box if there are valuables in the safe deposit box. The annual safe deposit fee would continue to be paid until they would absolutely have to do some type of disposition. The contents of a safe deposit box might not be included in the inventory because the guardian is not aware that a safe deposit box exists. If a safe deposit box is discovered an addendum to the inventory should be filed with the court. Judge Doherty and Judge Steel noted the safe deposit box is rarely noted in the inventory. Judge Doherty said there are often references to the safe deposit box at the end of the case. There should be a requirement that the contents of safe deposit boxes are inventoried.

The personal property needs to be inventoried, including the contents of a safe deposit box, as a starting point and if the personal property is going to be disposed of then notice must be given to the fact that the personal property is being disposed of and why.

The process for objection could be on many grounds e.g., how do you anticipate the sale of the personal property is too low, is there sentimental value, monetary gain from the assets.

The Commission discussed that at the time of the final accounting relatives often come in asking what happened to this or that because there is no real record anywhere of the purchase of the item e.g., jewelry, art work, etc. or what was really in the safe deposit box. Justice Hardesty asked where the original inventory is, why isn't the original inventory accurate, why isn't the original inventory distributed, and why notice of the inventory was not provided. If this occurs then when an individual is complaining that some personal property is missing e.g., the Monet and there was no Monet listed in the original inventory and the person did not address it then, then they cannot come back years later asking where this is.

Ms. Buckley said the practice and the course is that the personal property is never inventoried so notice is not provided. Ms. Buckley suggested if the statute is re-written it should include that the Person Under the Guardianship should be asked what they want to retain. That is not currently happening and there are many distraught people because items from their mother, father, kids are being destroyed and they are never asked.

Ms. Spoon suggested reaching out to the Public Guardians since they deal with this most often with indigent wards.

Justice Hardesty suggested the Commission pass the subject of personal property, safe deposit boxes, and inventory verification to the next meeting for discussion. Justice Hardesty would review the probate statute because there are specific areas that deal with personal property. He would also like to find out what other states are doing on this subject under best practices and to have Ms. Buchanan or her colleagues provide some input in this area.

Question 28 – Does the Commission wish to make recommendations concerning the data used to manage guardianship cases?

Justice Hardesty stated this recommendation is more of a court issue that gets to the point of the recommendations presented by the Guardianship Data and Technology (GDT) Workgroup. Justice Hardesty did not think the Commission needed to act on this recommendation if it acted on the recommendations from the GDT Workgroup.

29. Does the Commission wish to make recommendations concerning the use of statewide forms and statewide rules in guardianship proceedings?

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

Discussion

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

Ms. Heying took a roll call vote. Yeas 19, Nays 0, Excused/Absent 7.

Other

Justice Hardesty said the chief remaining topic has to do with attorney fees. There was a preference, on the part of the Commission, to adopt some form of regulation over attorney fees. Justice Hardesty would like to hear from members what is it about attorney fees that they would like regulated. From his perspective, the biggest omission or problem from the information presented to the Commission is the failure on the part of the judges to insist on the compliance with and independent review of attorney fee applications before getting into the amount of fees.

The Brunzell case requires a judge, in every civil case where fees are going to be awarded, to access four factors. The factors were enumerated in Mr. Hank Cavallera's letter to the Commission with a factor added. The factors require the judge to 1) examine the reasonableness of service; 2) the specific time spent; 3) the reasonableness of the fee; and 4) if there is any reason to deviate because of the results obtained. Justice Hardesty said at a minimum the recommendation of the Commission should be that judges make findings consistent with the Brunzell factors.

Justice Hardesty would like the Commission to provide informal direction on this, as he would like to put a motion together at the next meeting. Commission members were asked if they agree that the judge should approve, at the commencement of the case, the hiring of the attorney by the guardian (the fee contract). The Commissioners responded yes. Justice Hardesty asked the Commissioners to provide suggestions beyond the Brunzell that have to be found by the court on the record. The case plan Assemblyman Trowbridge suggested must include a budget for attorney fees; an anticipated budget, not a cap. Judge Walker added the budget for attorney fees should contemplate the budget for other professional fees as well.

Future Meeting

The Commission is currently scheduled to meet on June 21. There is a lot of work that needs to be done before June 21 and Justice Hardesty suggested the Commission hold another meeting prior to the June 21 meeting. Ms. Heying will distribute proposed meeting dates on Monday.

Adjournment

The meeting was adjourned at 5 p.m.

GENERAL POLICY QUESTIONS 22-25

SPECIFIC RECOMMENDATIONS

Specific Recommendations General Policy Questions 22 -25

Q22 – Recommendations concerning the fee structure to compensate guardians and others they hire.															
Judge Steel	<p>Private PROFESSIONAL Guardians need to be able to run their business through receipts from the Persons Recommended for Guardianship Protection. If they cannot financially maintain their own business, they run the risk of being forced to resign or being removed for cause.</p> <p>There needs to be a business plan.</p> <p>Hard costs are estimates only:</p> <table style="width: 100%; border: none;"> <tr> <td style="padding-left: 20px;">Office Overhead: (Rent/phones/bonds/miscellaneous)</td> <td style="text-align: right; padding-left: 20px;">\$4,000.00</td> </tr> <tr> <td style="padding-left: 20px;">Travel Expenses:</td> <td style="text-align: right; padding-left: 20px;">\$1,500.00</td> </tr> <tr> <td style="padding-left: 20px;">Assistant at \$15.00 per hour x 40 x 52 divided by 12 =</td> <td style="text-align: right; padding-left: 20px;">\$2,600.00</td> </tr> <tr> <td style="padding-left: 20px;">Employee taxes & benefits</td> <td style="text-align: right; padding-left: 20px;">\$2,600.00</td> </tr> <tr> <td style="padding-left: 20px;">Guardian Salary</td> <td style="text-align: right; padding-left: 20px;">\$5,000.00</td> </tr> <tr> <td style="padding-left: 20px;">Storage</td> <td style="text-align: right; padding-left: 20px;"><u>\$500.00</u></td> </tr> <tr> <td style="text-align: right; padding-right: 20px;">Total</td> <td style="text-align: right; padding-left: 20px;">\$16,200.00</td> </tr> </table> <p>Divided by National Guardian Wards per Certified Guardian (25) = \$648.00 per Ward as base monthly fee.</p> <p>With two certified Guardians: (50) = \$325.00 per Ward ----and so on.</p> <p>Setting overhead costs as basic monthly costs eliminates billing time for administrative costs.</p> <p>Then bill for services by the certified guardian at an hourly rate which covers the salary and benefits of the certified guardian for such services as attending Doctor Appointments, well checks, communication with relatives/attorneys/facilities, locating family, funding sources, placement....(Indicate any increased hourly rate for specialized services.)</p> <p>My numbers are for example only as I am not familiar with the specific billing hours for certified guardian/social service provider or the overhead necessary to operate a successful venture.</p>	Office Overhead: (Rent/phones/bonds/miscellaneous)	\$4,000.00	Travel Expenses:	\$1,500.00	Assistant at \$15.00 per hour x 40 x 52 divided by 12 =	\$2,600.00	Employee taxes & benefits	\$2,600.00	Guardian Salary	\$5,000.00	Storage	<u>\$500.00</u>	Total	\$16,200.00
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Guardian Salary	\$5,000.00														
Storage	<u>\$500.00</u>														
Total	\$16,200.00														

Jay Raman	<p>Guardianship is a system where people rights and control have been taken away because they have been determined incapable of making those decisions due to mental or physical deficits. What is accomplished by a guardian and ancillary services are things that often would be done at very little cost if the person was of sound mind and body. Because the guardian is stepping into the ward's shoes in fulfilling those duties, and because the ward has a significantly reduced say in the process, all measures must be employed to make decisions, which are least costly to the wards and ward's estate. A guardian is a fiduciary, and likewise is supposed to 'guard' the money – not used it in a way that damages the ward.</p> <p>I feel the safest way to protect our wards who do not really have a say how their money is being used, is to set a fee schedule for guardians, as well as any attorneys or accountants they may endeavor to hire for the purpose of fulfilling their duty to their ward. With a fee schedule, the definition of fee (which is currently "reasonable" and nothing more) will finally be defined. With a fee schedule, judges who are normally reluctant to chop attorneys or guardians fees will have the rule of law on their side when it comes to how much is charged. When a limited and reasonable fee is all that is allowed in the first place, the need to cut a fee is far less likely.</p> <p>There must also be a percentage cap on how much the guardianship and related professional services can consume of the wards estate on an annual basis. Obviously with any rule there are exceptions, so when services are expected to exceed that cap, the professional must petition the court (at their own expense) as to why the cap must be exceeded, why this is a necessary function for the ward to have to bear, and how much it will be exceeded by.</p> <p>In the context that soon wards will have appointed counsel, and those counsel will either be provided free or on a fee schedule type basis – it is only fair and equal that the attorneys the guardian hires to help themselves with the ward's affairs (and then bills to the wards estate) is also on a reasonable fee schedule. Without such a mechanism, it's an unfair and potentially hypocritical system.</p> <p>Regarding the actual fee structure for guardians, I highly recommend the Florida structure. It's been in place for years, provided compensation in line with the guardian's years of experience, and is drastically cheaper than what is currently being charged in Nevada (in some cases 50% cheaper). Regarding a fee structure for attorneys, I would suggest the same rate as what appointed counsel on criminal cases normally gets, \$150/hr. I do not see the guardianship attorney profession folding up due to the fee schedule, there is a glut of supply currently in the legal profession and many newer lawyers will gladly work for these wages. In both instances, I would recommend a cap similar to what the Veterans Administration uses, 4% per year.</p>
David Spitzer	<p>Once a guardian has been appointed, they should be required to submit a proposed budget that includes their anticipated fees for the next calendar year. This filing should be made along with the inventory within 60 days of the appointment. Any anticipated extraordinary fees should be required to be approved in advance by the court.</p>

Christine Smith	<p>Adopt a form of regulation and standard schedule for reasonable and necessary attorneys' fees.</p> <p>Fee schedules should be determined by local rule in each jurisdiction.</p> <p>The Supreme Court should adopt fee schedules judges must follow. Deviations would require special findings.</p> <p>There should be an independent review of attorneys' fee requests and the process must guard against failure of judges to insist on independent review of attorneys' fee requests.</p> <p>Block billing should not be permitted.</p>
Kim Rowe	<p>I do not believe statutory changes are needed in this area. Judges currently have the discretion to approve fees for guardians and those they hire. If a judge wants the guardians to submit an estimated budget after they have a chance to become familiar with what is needed I think that is appropriate, but I prefer the judges exercise discretion on what they feel is appropriate in this regard. I am concerned that too tight of controls will discourage private professional guardians from serving. The registration process has already caused a decrease in private guardians and additional limitations on compensation, while appealing on their face may well have unintended consequences in terms of availability of a pool of qualified private professional guardians.</p>
Elyse Tyrell	<p>I would like to see a Guardian lay out for the Court and the parties involved as early in the case as possible what their rates are, as well as the rates of those they hire. The Court should maintain its discretion on approving the payment of fees and expenses, as the Court deems appropriate for the Ward.</p>
Susan Sweikert	<p>All expenditures should be reasonable, necessary, and in the best interest of the ward. Fees should be based on fees customarily paid, and time customarily spent for performing like services in the community. Fees should be consistent in each Nevada County. The ward's estate should not be charged for any attorney fees for resolving problems created by guardian misconduct.</p>
Julie Arnold	<p>I think the fees have to be reflective of what task is being performed, e.g. Doing taxes requires more skill than running errands or the guardian must hire a tax preparer. And just because someone is a professional (say a lawyer or a Doctor) that does not mean they get to charge their professional hourly rate for performing guardian tasks.</p>
Susan Hoy	<p>A. Guardians and their attorney should request the approval of rates in the initial petition so that Wards and their attorney will be aware of the potential expenses. Certain vendors are industry standard, such as realtors, appraisers (real & personal property) and the presumption should be that the Guardian will not pay more than the community's going rate. The vendors should be licensed and bonded.</p>

Fee Structures for Guardians: Categorize the services and summarize in the petition for fee confirmation or payments. Providing a summary of the charges sets forth a synopsis of the complexity of the case. Further breakdown could include Financial Case Management & Person Case Management. The first year of the Guardianship (typically within the first three months the case weighting may be heavy on both spectrums but ongoing bills and case plans should reflect stability and maintenance.) This may also make it easier for the Judge to review the petition and invoice.

Consideration must be made to the Professional Guardian that is maintaining a State License and Certification. Licensure requires an office space, surety bond, appropriate state and county licenses and fees, internal audits by CPA's of the business and annual fees paid to the Licensing Agency. Certification requires Continuing Education Credits and the cost of renewing the certificate and ongoing education.

- **Clerical/Administrative:** This should be a flat monthly rate to cover these costs. These are tasks that are done in each and every case. Tasks in this category include but not limited to: processing a ward's mail, faxing, filing, maintaining storage of files as required by statute, photocopying. The hard costs of the business the costs such as: office space, phone, internet, alarm systems, utilities, regular postage costs, insurances, licenses, office supplies and equipment, annual fees paid to software programs such as the Estate Management Programs, outlook, servers, anti-virus software, after- hour services, cell-phones.
- **Case Management:** Includes managing and organizing the entire case – person or estate. Oversight of any case management is done either directly by the Certified Guardian or overseen by the Certified Guardian. (Social Service & support staff) These tasks include but not limited to: Preparing the initial and ongoing care plans, inventory, budgets and annual accountings. Attend court hearings. Scheduling physician appointments, coordinating transportation and attending the appointment (when necessary – not all appointments require the Guardians attendance and attention should be paid to coordinating with facility and caregivers when at all possible) ordering and obtaining past medical records. Examining and authorizing bill payment (this should be billed as a group activity to include signing the check), bookkeeping services to include monthly reconciliation of all bank account, depositing funds to the bank (direct deposit should be utilized whenever possible) preparing social security and VA fiduciary payee reports, Marshaling of assets, drafting and forwarding correspondence to financial institutions, stock companies and verifying values and notifying of the Guardianship (this could be considered an extraordinary expense depending on the portfolio of the ward and the work that needs to be completed) Attend care conferences & monthly visits with the ward; additional visits (more than monthly) the billing detail should explain the circumstances and reason for additional Guardian visit. Coordinating services with providers (list is not inclusive) such as accountants (to complete taxes), appraisers, real estate agents, auctioneers, should be limited to just the time to coordinate the services. Applying for Public Assistance benefits and the maintaining of these benefits.
- **Extraordinary Fees:** Any service (list is not inclusive) completed by the Guardian that may be specific to that particular case and is a one-time occurrence such as : Litigation, recovery actions, coordination of the sale of real and personal property, coordination of any repairs to real or personal property. Coordination of out of state placement, seeking care providers for a ward with behavioral issues and placement issues, seeking medical opinions and decision making authority at end of life (if no advance directive is present) or for any other chronic illnesses.

	<p>Attention should be paid to services that can be provided to the ward at a lesser rate and more cost effectively. Such as shopping or delivering items to the ward, utilizing personal shoppers or courier services if at all possible.</p>
Rana Goodman	<p>The fee structure should be based on common sense and good business practice; i.e. we have no long distance charges within Our city limits so why are charges made for sending faxes from one office to another? There should be a simple office services fee per Hour, per client for a person to do filing, billing, banking and anything else a staff member need do in a week or a day to service the account of a ward.</p> <p>It is not reasonable to charge fragments of an hour to file a notice, make a phone call, fax a document etc.</p>
<p>Q23 – Recommendations concerning the process, notice, and findings required for the approval of fees to guardians and others they hire.</p>	
Chief Judge Gibbons	<p>WDCR 35 (6) (a) and (b) and NJDCR 20.1 (e) (1) and (2) set forth the procedure for approval of fees. A uniform procedure should be included in the NRS and these rules provide a model.</p> <p>These rules do not require findings so a mandate for written findings that the fees were reasonable and necessary should be added.</p>
Judge Steel	<p>The professional guardian should attach their basic monthly fee, plus an outline of services available and the billable rate (or set fee) as an exhibit to the petition for guardianship approval. The Petition to approve, or petition for instructions, should list any special services anticipated for a particular person considered for guardianship protection.</p> <p>The court needs to find that the compensation is reasonable (to be determined for universal application); review expenses to determine that they were necessary and reasonable, whether the professionals engaged to perform services on behalf of the guardianship, or the person or estate of the Protected Person were necessary, reasonable and appropriate.</p>
Jay Raman	<p>I feel that in this future system, the anticipated fees need to be provided to the court, so that the court can make sure at that they are not excessive and provide enough detail for potential investigation. There are clear examples where notice needs to be given in a similar way as was done at the inception of a guardianship. Notice needs to be provided to all interested parties (family included) if the fees exceed the annual cap, or if real estate is being sold or disposed of, or if property valued at more than \$5000 is being sold or disposed of.</p> <p>I believe in the approval process, private professional guardians far too often rely on the services of an attorney for tasks, which they should be able to accomplish on their own. It seems unnecessary that an experienced guardian who is in charge of 50+ wards runs their annual accountings through an attorney, costing the ward considerably more money than the guardian just doing their work on their own. One would presume if any ancillary services are needed for an annual accounting – it would be from an accountant. Despite that common sense, private professional guardians are normally using an attorney for these basic functions that non-professional guardians hardly ever hire an</p>

	<p>attorney for. There must be guidelines on when the guardian can hire an accountant or attorney to do or check over 'their work'.</p> <p>Other suggestions are good, such as approval of the attorney being used or other services by the court. The suggestion of including what guardian and ancillary services will cost in the care plan is a fair suggestion as well.</p> <p>Otherwise, this question was largely covered in the answer to policy question #22.</p>
David Spitzer	<p>Guardians should be required to submit fees requests annually for routine matters, such as hourly compensation, travel-mileage, and small miscellaneous expenses. These may be compensated by the court allowing the guardian to spend the respondent's assets at a capped amount per month, i.e. no more than \$1000 per month. All these expenses should be included in the annual report and fee request, along with an itemized statement. This request would be noticed just as the annual report is and should be addressed at a court hearing. The court should be required to find that, after review and hearing, the fee requests are adequately documented, necessary and reasonable and do not substantially impact the viability of the respondent's estate. All extraordinary expenses should be the subject of a special request for instructions to the court detailing the nature and necessity of the proposed expense. After notice to all parties and family who have been previously noticed, the court at its discretion could approve the request if there is no opposition, or hold a hearing on the matter.</p>
Christine Smith	<p>All processes must ensure the best interest of the person under guardianship.</p> <p>The process should include approval by judges for the hiring of professionals by guardians at reasonable fees so the assets of the person under guardianship are not spent unreasonably for unreasonable attorneys' or other professionals' fees in the event disputes must be settled.</p> <p>The person under guardianship should receive notice in writing of fees/services of professionals and other financial ramifications at the beginning of the guardianship process. The notice must provide a general explanation of the compensation arrangement and how the compensation was computed.</p> <p>All bills for services provided must include a detailed breakdown of the services.</p> <p>Fees must be commensurate with the services rendered and allowed only when the guardian and/or attorney has performed the services ensuring the needs and best interests of the person under guardianship.</p> <p>When family members initiate legal proceedings in connection with the person under guardianship, if they lose in the proceedings they should pay all fees, and the fees should not come out of the finances/assets of the person under guardianship.</p>

Kim Rowe	<p>There are already sufficient statutory requirements regarding this area. Once again, the use of a budgetary process will focus all participants, the guardian, judge and interested parties on the costs likely to be incurred. Prior approval of expenditures more than a certain percentage over the the estimated budget could be used as a control. The planning required to file a budget and care plan will reduce uncertainty and later surprises to the judge and parties.</p>
Elyse Tyrell	<p>Same as above- I would like to see a Guardian lay out for the Court and the parties involved as early in the case as possible what their rates are, as well as the rates of those they hire. Perhaps in their initial petition to become Guardian, which is then noticed to all interested parties. There has always been the understanding that a guardian who hires someone for a service for the ward is responsible for the bill, and only when the Court determines those fees to benefit the Ward and approve them, is it appropriate to pay them from the Ward's estate. The Court should maintain its discretion on approving the payment of fees and expenses, as the Court deems appropriate for the Ward.</p> <p>I think the Court should continue to use the reasonable and necessary determination as provided for in NRS 159.183.</p>
Susan Sweikert	<p>All requests for fees must be accompanied by an itemized description of services performed, how it benefited the ward, and receipts if applicable. Only those fees determined by the court to be reasonable and customary for the community should be approved.</p>
Julie Arnold	<p>I think fees must be approved by the court, with notice of the hearing to interested parties.</p>
Susan Hoy	<p>The Guardian should disclose the hourly rates and fee schedule in the initial petition.</p> <p>Any expectation of any vendor or provider that may be hired could be disclosed upon the initial petition with confirmation that the fee paid will not exceed the community's going rate. Or in the case of a CPA (just as an example) the fee to the CPA will not exceed \$350.00 without further court authority. (The guardian needs the ability to hire certain providers and vendors without having to constantly petition the court. For example: If a ward owns a home, it is assumed that the guardian to provide the value for the inventory will need to hire appraisers, (real property and personal property) Or if the ward has a coin collection, an expert in the field should be hired to provide an accurate inventory and value. As much as possible these should be disclosed to the court and included in the petition with a request/statement "these services are necessary to the accuracy, preservation of the estate and the well-being of the ward and will not exceed \$xxxx amount without court authority and shall be provided by a licensed and bonded individual/company" This approach may still make it difficult for the guardian to get the work done timely and cost effectively; but would provide the court with a template of the plan for the case. The same would apply with any placement. The Guardian intends to seek placement in an assisted living that based upon the wards income and assets will not exceed \$xxxx amount monthly.</p> <p>Guardians should be able to advance payment from the wards' estate towards fees that have been earned and invoiced pending confirmation at the annual accounting. The fee advancement could be limited to \$xxx amount per month. The explanation as to any</p>

	<p>additional fees owed upon confirmation should be explained in the petition as to the circumstances.</p> <p>Petitions should include Brunzell Analysis that the fees were reasonable.</p>
Rana Goodman	<p>These questions seem repetitive, but I'm doing my best here. If a guardian goes to court for several clients and they are in court per client 20 minutes, 30 minutes, etc. the fee should be divided equally including travel time between the total amount of client covered that day. The exception would be if one client took far more time in court than the others.</p>
<p>Q24 – Recommendations concerning the process and timing for filing and evaluating an inventory and care plan for the ward.</p>	
Judge Steel	<p>A care plan, along with the budget and the inventory should be filed no later than 60 days after the guardianship is established, sooner if possible. Supplements to information regarding inventory or care plan should be encouraged. Initially, the guardian may not have all the information to make measured decisions on behalf of the person considered for guardianship protection. A care plan will determine the level of intervention into the life of the person qualified for guardianship protection. Once the guardianship is established, the guardian has been awarded the tools to determine the status of the estate and the true needs of the qualified person. Reasons must be stated in the petition for the level of intervention of the guardianship over the person. Those reasons must be a basis for the final decision approving the guardianship. (The court needs to either adopt the reasons for the level of support or deny the proffer and explain the denial).</p>
Jay Raman	<p>The inventory should be filed within 30 days of a petition for guardianship has been initially and temporarily granted. The inventory should have to include a photographing of the entire dwelling of the wards home/property, and the running of a credit report to identify bank accounts and liabilities. There should be a court-mandated form sent to all noticeable parties about objecting to the inventory if something appears to be missing from the inventory. It might be best to have a court appointed person separate from the guardian doing or supervising the taking of the inventory.</p> <p>Care plans should be submitted as soon as practicable, generally with the petition for guardianship and within 60 days a plan with more detailed planning for the long term.</p>
David Spitzer	<p>The Inventory, care plan and a proposed budget should all be filed within 60 days of the appointment of a guardian. All parties should be notified, including family and the court should set a hearing if it receives any objections.</p>
Christine Smith	<p>The inventory must include a care plan and budget.</p> <p>The ward must be notified of the care plan including fees at the beginning of the process.</p>

Kim Rowe	I believe the current statutory requirements concerning the timing of the filing of the inventory are sufficient. This may also be the appropriate time to file a budget as well as a care plan. Requiring service of the inventory in the same manner and on the same parties as the Petition has been discussed and I have no real objection to that concept.
Elyse Tyrell	Current statutes mandate the Inventory being filed with the court within 60 days of the appointment of the Guardian. I think this is a reasonable period of time for the guardian to get an idea of what the assets and income of the ward are. I think it would be appropriate for a care plan to be filed at the same time. Both of which can be amended if needed, but neither of which should be required to be set for hearing, unless special circumstances arise and the Court can order such a hearing.
Susan Sweikert	Initial and final inventory should include photos or video of any and all valuables of the ward. Notice to family members of initial inventory for verification and accuracy.
Julie Arnold	<p>An initial inventory should be filed within 30 days of letters being issued – with a requirement that it be updated if significant assets are found or assets thought to be the Ward’s turn out not to be.</p> <p>If copies of the inventory are mailed out to interested parties with a speak-now-or-forever-hold-your-peace response time (30 days? 45 days?) Then assets thought to have significant value can be appraised if necessary.</p> <p>Hopefully, there will be a care plan for the Ward when the petition is filed, but lacking that, I think at least a preliminary plan should be produced within 30 days.</p>
Susan Hoy	<p>Whenever possible the care plan should be filed with the initial petition. At a minimum, a preliminary care plan should be drafted and submitted with the petition or as a supplement prior to the first hearing. The Care Plan should be filed within the first 60 days of the case. Care plans should include the following components: residence, any rights the ward will retain, that the plan for care is the least restrictive to meet care needs of the ward, the means in which the care plan will be met such as a budget and that the estate supports the plan for the long term and if not the plan for continued care. The care plan is then holistic to include the direct care to the ward and the financial means that this plan will entail. The budget should include the burn rate of the estate with the current plan and a projected plan once the funds are depleted.</p> <p>Inventories should include the anticipated annual income.</p>
Rana Goodman	The inventory, if unusual should be authenticated by an appraiser of those types of furnishings, art objects, jewelry etc. If a safe deposit box is to be accessed, a bank manager should be in attendance to verify what is there and photographs should be taken to verify any items contained.

	<p>All inventory should be verified with the insurance company of the ward.</p> <p>A care plan should be verified with the family doctor if possible and most assuredly the family If possible.</p> <p>Medication MUST be verified with a doctor and signed off on before dispensing. Over medicating seems to be reoccurring in group homes and Many facilities.</p>
<p>Q25 – Recommendations concerning the process, timing, notice and findings the Court must make concerning accountings of the ward’s estate.</p>	
<p>Chief Judge Gibbons</p>	<p>WDCR 35 (8) and NJDCR 20.1 (g) set forth the procedure for accountings. A uniform procedure should be included in the NRS and these rules provide a model.</p> <p>The accountings should also be sworn to or affirmed as accurate and complete to the best of the knowledge of the author of the reports. The court should make written findings that the accountings are accurate and complete if the accountings are traversed.</p>
<p>Judge Steel</p>	<p>A. Annual accounts for general guardianships; more frequent at ordered by the court;</p> <p>B. There should be the ability for the court to consider summary guardianships where the income is consumed by the monthly expenses on behalf of the Person Provided with Guardianship protection, especially for private guardians. To insist on annual accountings that can consume precious resources, or potentially eliminate the possibility of obtaining a guardian does not seem prudent or protective.</p> <p>C. Findings:</p> <ul style="list-style-type: none"> a. The specific time covered by the accounting b. All income captured in correct category c. All expenditures captured and explained; d. Are expenditures responsible, appropriate, and reasonable, in line with budget and care plan? e. Entries for Guardianship services are examined and found to be for the benefit of the Person Awarded Guardianship Protection. f. Entries for Legal Representation to be paid out of the estate of the Person Awarded Guardianship Protection are examined, compared and contrasted to Brunzell factors; the work was necessary to protect the interests of the person and the estate. g. Insure that all elements required to be included in the Accounting has been addressed pursuant to NRS 159.179.

Jay Raman	Accountings must occur annually, and there always should be some independent action taken to verify an accounting is accurate. Ultimately, it was the court that granted the guardianship and stripped the ward of the ability to manage their finances. The court must take responsibility and ownership of making sure the guardian is not taking advantage through misleading accountings. It is probably best that annual accountings be provided to family members of the ward as well. A robust investigative mechanism is the only thing that can enable the court to be the check and balance on the guardian taking advantage of a ward. Without verifiable facts, I do not believe findings of fact can be accurately made.
Christine Smith	Require trust accountings.
Kim Rowe	I have no problem with the current requirements concerning filing accountings. The primary concern emanates from courts not uniformly requiring the filing of accountings. When used in connection with care plans and budgets, I think accountings on an annual basis are sufficient. Notice should go to the persons who receive the Petition so if there are objections they can be raised by interested parties at that time.
Elyse Tyrell	I think the statutes in place for the process, timing and notice are adequate. I think a reasonable and necessary standard would be good for the approval of the accounting of expenditures made on behalf of the ward.
Susan Sweikert	Require additional, immediate, accountings whenever well-founded complaints are filed against the guardian. Fines for guardians who do not file accountings in timely manner.
Julie Arnold	<p>Barring allegations of wrongdoing, I think annual accountings make sense. I really like the Florida model for investigations.</p> <p>Notice to interested parties.</p> <p>Findings that the Ward's assets are accounted for and expenses are Reasonable.</p>
Susan Hoy	<p>Estates with values (greater than \$1 million) or complex portfolio the court would have the discretion to order more frequent accountings or require that the accountings are prepared or reviewed by a CPA.</p> <p>Accountings should include a summary page, exhibits including the register of actions. A register of action would include the date, check number, payee and reason for the payment (memo). Each transaction should be categorized to match the budget and any discrepancies should be addressed in the petition.</p>

	<p>The inventory to the beginning balances of each year should match and thereafter.</p> <p>Private Guardians should be allowed to have summary accountings. When the ward is a recipient of public benefits and all income is used towards care a synopsis of this could be provided in the Annual Report of Guardian.</p>
Rana Goodman	<p>Depending on the value of the ward's estate, it is my opinion that an accounting must be delivered to the court or compliance office no less than each 6 months.</p> <p>Although most guardians are honest, the few that are not have made it bad for those that are not. It is far too easy to drain a bank account in a year.</p>

WDCR Rule 35. Guardianships.

1. All guardianship petitions shall be verified.
2. All petitions for appointment of guardian of an incompetent or person of limited capacity shall:
 - (a) Set forth the written factual allegations of a licensed physician or other qualified evaluator to support a finding of incompetency or limited capacity of the proposed ward, or explain why such factual allegations cannot be made.
3. Immediately upon appointment, every guardian shall complete and file with the clerk's office, an Acknowledgment of Receipt of the Instructions to Guardian on the form published by the court.
4. A guardian shall advise the court in writing of any change of address of the guardian or of the ward within 30 days of any change.
 - (a) Within 30 days after moving out of state a guardian shall file a petition naming a co-guardian who is qualified to serve under [NRS 159.059](#).
5. Any change or withdrawal of counsel shall be submitted to the court for approval, except where another licensed attorney is substituted in accordance with Rule 23. Counsel for a guardian cannot withdraw or substitute in the guardian as his or her own counsel (in proper person) without prior court order.
6. Attorney's and/or guardian's fees payable from a guardianship estate shall be approved by the court prior to payment, after application, notice and hearing.
 - (a) Every application for fees shall state with specificity the information required by [NRS 150.060\(1\)\(a\)-\(e\)](#).
 - (b) The notice of hearing shall contain the amount of attorney's and/or guardian's fees requested and shall be served in accordance with [NRS 159.115](#).
7. The reporting requirements of [NRS 159.081](#), [159.085](#) and [159.177](#) shall be strictly enforced and may be filed on the reporting form published by the court.
8. All accounting shall contain a summary or recapitulation showing:
 - (a) The beginning balance of cash accounts (the figure from the inventory if it is a first accounting, or the ending balance of the prior accounting if it is a subsequent accounting);
 - (b) Itemization of disbursements including date, check number, payee, purpose and amount;
 - (c) A recapitulation showing beginning balance, plus receipts, less disbursements and the balance in the account; and
 - (d) A schedule of assets showing any gains on sales or other disposition of assets, with the remaining property on hand.
9. Proof of service of the Order of Appointment of Guardian in accordance with [NRS 159.074](#) shall be filed with the court.

NDCR Rule 20.1. Guardianships.

- (a) This rule governs the practice and procedure of all proceedings under Title 13 of the Nevada Revised Statutes.
- (b) All petitions for guardianship shall be verified. A petition for temporary guardianship shall contain a prayer for permanent guardianship.
- (c) Upon appointment, every guardian shall certify that he or she has read and understands the "Instructions for Guardians" form available through the Clerk of the Court. The guardian shall execute and file the certified "Instructions for Guardians" prior to the issuance of the temporary or permanent Letters of Guardianship by the Court Clerk.

(d) A guardian shall advise the court in writing of a change of address of the guardian or of the ward within thirty (30) days of any change.

(1) Thirty (30) days prior to a move out of state, and in no case later than thirty (30) days after such a move if advance notice is not available, a guardian shall file a petition naming a co-guardian who is qualified to serve under [NRS 159.059](#).

(e) Attorney and/or guardian fees payable from a guardianship estate shall be approved by the court prior to payment, after application, notice, and hearing.

(1) Every application for fees shall state with specificity the information required by statute.

(2) The notice of hearing shall contain the amount of attorney and/or guardian fees requested and shall be served in accordance with statute.

(f) The reporting requirements of [NRS 159.081](#), [159.085](#), and [159.177](#) shall be strictly enforced and may be filed on the reporting form published by the court.

(g) All accountings shall contain a summary or recapitulation showing:

(1) The beginning balance of cash accounts (the figure from the inventory if it is a first accounting, or the ending balance of the prior accounting if it is a subsequent accounting);

(2) Itemization of disbursements, including date, check number, payee, purpose, and amount;

(3) A recapitulation showing beginning balance, plus receipts, less disbursements and the balance in the account; and

(4) A schedule of assets showing any gains on sales or other disposition of assets, with the remaining property on hand.

(h) Proof of service of the Order of Appointment of Guardian in accordance with [NRS 159.074](#) shall be filed with the court within twenty (20) days after the order is entered unless good cause is shown for a delay.

(i) A petition to terminate the guardianship, with a complete accounting, shall be filed and set for hearing at the earliest of either:

(1) Prior to the guardianship expiring as a matter of law, as in the case of a minor reaching the age of majority;

(2) Within three (3) months after the ward's reason for incapacity is resolved, as in the case of a temporary medical problem;

(3) Within three (3) months after the guardianship has expired, as a matter of law due to the ward's death; or

(4) Within one (1) month after a temporary guardianship expires based upon its own terms.

(j) In a case where a ward has deceased during the course of a guardianship, and the entire assets of the guardianship will be subject to a set aside or summary estate, the guardian may file a set aside or summary estate pursuant to [NRS Chapters 145](#) and [146](#) in the same matter without opening a new case file and without the payment of a new filing fee.

[Added; effective June 17, 2010.]

GENERAL POLICY QUESTIONS

General Policy Questions 6/13/16 Meeting

- **Question #3 (2)** – How and under what circumstances would legal counsel be appointed?

Motions

1. The Commission authorizes the chair to send a letter to County Commissioners to provide financial support to legal aid organizations to make counsel available for all wards until the next legislative session.
 2. The Commission urges the legislature approve an increase in recording fees of \$1.50 pursuant to [NRS 247.305](#) for funds to be distributed by each county to legal aid organizations to provide legal counsel for all wards in guardianships proceedings.
- **Question #9** – Does the Commission support a recommendation to adopt Supportive Living Agreements similar to the approach taken in Texas, with the exception that the court would retain jurisdiction and inventories and annual reports would be required to be filed with the court?
 - **Question #11** – Should the notice requirements in Chapter 159 be amended, and if so how?
 - **Question #26 (2)** – Does the Commission wish to urge the issue of bond availability be addressed by the Nevada Legislature?
 - **Question #27** – Does the Commission wish to make recommendations concerning the management/administration of the ward's estate including the process and notice requirements to sell estate assets and personal property?
 - **Question #31** – Does the Commission recommend an Office of State Public Guardian to serve as the Public Guardian in all counties. The Office would include the retention of accountants, auditors, and investigators to provide support to counties whose population is 100,000 or less.
 - **Question #32** – Does the Commission call upon the Supreme Court to adopt uniform statewide court rules and forms for the processing of guardianship proceedings in all Nevada District Courts?
 - Note, we recognize that local rules may be requested by the District Courts to address particularly local issues. Any such requests must be supported by an explanation for the local need and may not deviate or conflict with the statewide rule.
 - **Attorney Fees** – A motion for Attorney Fees will be offered at the meeting.

NOTICE

NRS 159.034 Notice by petitioner: To whom required; manner for providing; waiver of requirement; proof of giving filed with court.

1. Except as otherwise provided in this section, by specific statute or as ordered by the court, a petitioner in a guardianship proceeding shall give notice of the time and place of the hearing on any petition filed in the guardianship proceeding to:

- (a) Any minor ward who is 14 years of age or older.
- (b) The parent or legal guardian of any minor ward who is less than 14 years of age.
- (c) The spouse of the ward and all other known relatives of the ward who are within the second degree of consanguinity.
- (d) Any other interested person or the person's attorney who has filed a request for notice in the guardianship proceedings and has served a copy of the request upon the guardian. The request for notice must state the interest of the person filing the request and the person's name and address, or that of his or her attorney.
- (e) The guardian, if the petitioner is not the guardian.
- (f) Any person or care provider who is providing care for the ward, except that if the person or care provider is not related to the ward, such person or care provider must not receive copies of any inventory or accounting.
- (g) Any office of the Department of Veterans Affairs in this State if the ward is receiving any payments or benefits through the Department of Veterans Affairs.
- (h) The Director of the Department of Health and Human Services if the ward has received or is receiving benefits from Medicaid.
- (i) Those persons entitled to notice if a proceeding were brought in the ward's home state.

2. The petitioner shall give notice not later than 10 days before the date set for the hearing:

- (a) By mailing a copy of the notice by certified, registered or ordinary first-class mail to the residence, office or post office address of each person required to be notified pursuant to this section;
- (b) By personal service; or
- (c) In any other manner ordered by the court, upon a showing of good cause.

3. Except as otherwise provided in this subsection, if none of the persons entitled to notice of a hearing on a petition pursuant to this section can, after due diligence, be served by certified mail or personal service and this fact is proven by affidavit to the satisfaction of the court, service of the notice must be made by publication in the manner provided by [N.R.C.P. 4](#)(e). In all such cases, the notice must be published not later than 10 days before the date set for the hearing. If, after the appointment of a guardian, a search for relatives of the ward listed in paragraph (c) of subsection 1 fails to find any such relative, the court may waive the notice by publication required by this subsection.

4. For good cause shown, the court may waive the requirement of giving notice.

5. A person entitled to notice pursuant to this section may waive such notice. Such a waiver must be in writing and filed with the court.

6. On or before the date set for the hearing, the petitioner shall file with the court proof of giving notice to each person entitled to notice pursuant to this section.

(Added to NRS by [2003, 1768](#); A [2009, 1644](#); [2013, 905](#))

NRS 159.047 Issuance of citation upon filing of petition for appointment of guardian; persons required to be served.

1. Except as otherwise provided in [NRS 159.0475](#) and [159.049](#) to [159.0525](#), inclusive, upon the filing of a petition under [NRS 159.044](#), the clerk shall issue a citation setting forth a time and place for

Comment [DS1]: Suggest that the Court's investigator serve the Ward with the citation and petition, file an affidavit of service and observations at the time of the service regarding Protected Person's welfare/environment

Comment [DS2]: Notice required only for "hearings." No required notice of filing inventory, report of guardian, ; no requirement of serving the documents to interested persons/parties

Comment [DS3]: Verification of notice to Person recommended for guardianship is sketchy. If the person cannot respond, cannot sign a RRR, and the parent/proposed guardian "hands the document to the Protected Person.

Comment [DS4]: No mention of serving any of the documents or pleadings, Just notice of hearing and or Citation.

Comment [DS5]: Seems to indicate the Petitioner can determine the method of service; however, Clark required initial notice by Certified Mail, Return Receipt Requested

Comment [DS6]: Clark requires that the RRR green receipt be copied and filed, and or Certificate of mailing

the hearing and directing the persons or care provider referred to in subsection 2 to appear and show cause why a guardian should not be appointed for the proposed ward.

2. A citation issued under subsection 1 must be served upon:

- (a) A proposed ward who is 14 years of age or older;
- (b) The spouse of the proposed ward and all other known relatives of the proposed ward who are:
 - (1) Fourteen years of age or older; and
 - (2) Within the second degree of consanguinity;
- (c) The parents and custodian of the proposed ward;
- (d) Any person or officer of a care provider having the care, custody or control of the proposed ward;
- (e) The proposed guardian, if the petitioner is not the proposed guardian;
- (f) Any office of the Department of Veterans Affairs in this State if the proposed ward is receiving any payments or benefits through the Department of Veterans Affairs; and
- (g) The Director of the Department of Health and Human Services if the proposed ward has received or is receiving any benefits from Medicaid.

(Added to NRS by 1969, 414; A [1981, 1934](#); [1999, 1397](#); [2001, 870](#); [2003, 1774](#); [2013, 909](#))

NRS 159.0475 Manner of serving citation.

1. A copy of the citation issued pursuant to [NRS 159.047](#) must be served by:

(a) Certified mail, with a return receipt requested, on each person required to be served pursuant to [NRS 159.047](#) at least 20 days before the hearing; or

(b) Personal service in the manner provided pursuant to [N.R.C.P. 4](#)(d) at least 10 days before the date set for the hearing on each person required to be served pursuant to [NRS 159.047](#).

2. If none of the persons on whom the citation is to be served can, after due diligence, be served by certified mail or personal service and this fact is proven, by affidavit, to the satisfaction of the court, service of the citation must be made by publication in the manner provided by [N.R.C.P. 4](#)(e). In all such cases, the citation must be published at least 20 days before the date set for the hearing.

3. A citation need not be served on a person or an officer of the care provider who has signed the petition or a written waiver of service of citation or who makes a general appearance.

4. The court may find that notice is sufficient if:

(a) The citation has been served by certified mail, with a return receipt requested, or by personal service on the proposed ward, care provider or public guardian required to be served pursuant to [NRS 159.047](#); and

(b) At least one relative of the proposed ward who is required to be served pursuant to [NRS 159.047](#) has been served, as evidenced by the return receipt or the certificate of service. If the court finds that at least one relative of the proposed ward has not received notice that is sufficient, the court will require the citation to be published pursuant to subsection 2.

(Added to NRS by 1969, 414; A [1981, 1935](#); [1995, 1077](#); [2003, 1775](#); [2013, 909](#))

NRS 159.048 Contents of citation. The citation issued pursuant to [NRS 159.047](#) must state that the:

1. Proposed ward may be adjudged to be incompetent or of limited capacity and a guardian may be appointed for the proposed ward;

2. Proposed ward's rights may be affected as specified in the petition;

3. Proposed ward has the right to appear at the hearing and to oppose the petition; and

4. Proposed ward has the right to be represented by an attorney, who may be appointed for the proposed ward by the court if the proposed ward is unable to retain one.

(Added to NRS by [1981, 1931](#); A [2003, 1775](#))

Comment [DS7]: Petition not served. Only citation.

Comment [DS8]: Assuming that this is only in reference to initial Citation generated by Petition for Approval of Guardianship, and not for Citation for accounting

Comment [DS9]: So if there are no relatives (frequently the case in guardianship cases) the notice must be published to the general public? This causes extra expense on the estate and an extension of time to hear the matter. Services could be unduly delayed.

Comment [DS10]: Changing the wording to Protected Person,,,,,removing "incompetent" Suggest Above named person may be awarded guardianship protection..."

TERMINOLOGY

Ward

Prior to Guardianship Approval:

Person Facing Guardianship (PFG)

Candidate for Guardianship Protection (CGP) *

Person Considered for Guardianship Protection (PCGP)

Adult Considered for Guardianship Protection (ACGP)

Minor Considered for Guardianship Protection (MCGP)

Post Guardianship Approval: (Physical Disability/Mentally Disadvantaged)

Protected Person (PP) *

Incapacitated Person (IP)

Person Subject to Guardianship (PSG) *

Person Under Guardianship (PUG)

Person Awarded Guardianship Protection (PAGP)

Adult Awarded Guardianship Protection (AAGP)

Minor Awarded Guardianship Protection (MAGP)

Respondent *

Ward *

Alternative Terms to Ward Provided at 4/22 Guardianship Commission meeting

- Proposed Person Subject to Guardianship
- Person Subject to Guardianship
- Probate Standards
 - Respondent (prior to adjudication)
 - Person Subject to Guardianship (after adjudication)
- Protected Person (National Guardian Association)
- Protected Minor Person (National Guardian Association)
- Respondent – Appropriate when person is going through the initial court proceedings
- Person Facing Guardianship
- Candidate or Nominated

An email was sent on 5/4 asking members to provide literature, writings, and/or suggestions to the term Ward.

Two responses were received.

Terri Russell - I like candidate for guardianship, and then I liked protected person. Because when decisions are made, it puts everyone on notice. How will this decision or action “protect” this person.

Tim Sutton - I honestly don't see the need to change the term. The term “ward” has no pejorative connotations whatsoever in mind. That being said, it appears that a majority of the commission feels that the term is antiquated and negative and is leaning towards changing it. If I had to recommend a change, I would go with Respondent (pre-adjudication) and Protected Person (post-adjudication).

GUARDIANSHIP DATA AND TECHNOLOGY COMMITTEE REPORT AND RECOMMENDATIONS

ADMINISTRATIVE OFFICE OF THE COURTS

ROBIN SWEET
Director and
State Court Administrator

JOHN MCCORMICK
Assistant Court Administrator
Judicial Programs and Services



RICHARD A. STEFANI
Deputy Director
Information Technology

VERISE V. CAMPBELL
Deputy Director
Foreclosure Mediation

MEMORANDUM

TO: Guardianship Commission

FROM: Guardianship Data and Technology Workgroup

DATE: May 13, 2016

SUBJECT: Report and Recommendations of the Guardianship Data and Technology Workgroup

Since October 2015, the Guardianship Data and Technology Workgroup (GDT) has met six times and has made multiple recommendations to the Guardianship Commission. These recommendations have included court performance measures (age of pending case, time to disposition, and clearance rates) for guardianship cases, as well as establishing a statewide guardianship information sheet. Most recently, the GDT met in March and May 2016. During these meetings the GDT finalized the Commission approved Guardianship Case Information Sheet and drafted a proposed court rule for how guardianship matters should be filed with the court

When considering the Guardianship Case Information Sheet, the GDT took all similar forms utilized around the state and reviewed the type of information currently required at the initial filing of guardianship proceedings. This information was used to develop the attached information sheet. The GDT voted to recommend that the Guardianship Commission ask the State Court Administrator, Robin Sweet, to review the Guardianship Information Sheet and direct its use to all District Courts pursuant to [NRS 3.275](#).

As mentioned in GDT's previous report, [NRS 159.057](#) allows for multiple guardianships to be filed under a single petition. Court case management systems around Nevada track the initial petition as the beginning of a guardianship case, thus the filing of a single petition for multiple guardianships would create inaccurate case counts, and prevent the implementation of court performance measures that ensure guardianship matters are being managed appropriately. To address this issue the GDT drafted the attached court rule directing how guardianship matters should be maintained by the court and parties. Accordingly, the GDT recommends the attached court rule be reviewed by the Commission and if appropriate forwarded to the Nevada Supreme Court for consideration.

The GDT members feel that they have accomplished the tasks that were assigned by the Guardianship Commission. Therefore, the GDT will hold no further meetings unless additional tasks are assigned by the Commission. We thank the Commission for the opportunity to improve the Nevada Judiciary.

GUARDIANSHIP INFORMATION SHEET

I. Party Information (provide both home and mailing addresses if different)

In the Matter of Guardianship of the Person, Estate, or the Person and Estate of: (name/address/phone):	Attorney for Guardian (name/address/phone):
<input type="checkbox"/> A Minor <input type="checkbox"/> An Adult	
Attorney for Subject of Guardianship (name/address/phone):	Attorney for Second Guardian (name/address/phone):

II. You must attach a copy of ONE of the following forms of identification for each of the guardianship proceedings. Check the box for the type of identification filed. (See NRS 159.044)

Guardian	Second Guardian	Subject of Guardianship
<input type="checkbox"/> Social Security Number	<input type="checkbox"/> Social Security Number	<input type="checkbox"/> Social Security Number
<input type="checkbox"/> Taxpayer Identification Number	<input type="checkbox"/> Taxpayer Identification Number	<input type="checkbox"/> Taxpayer Identification Number
<input type="checkbox"/> Valid Passport Number	<input type="checkbox"/> Valid Passport Number	<input type="checkbox"/> Valid Passport Number
<input type="checkbox"/> Valid Driver's License Number	<input type="checkbox"/> Valid Driver's License Number	<input type="checkbox"/> Valid Driver's License Number
<input type="checkbox"/> Valid Identification Card Number	<input type="checkbox"/> Valid Identification Card Number	<input type="checkbox"/> Valid Identification Card Number

III. Please fill out the information requested for Guardianship

<p>A. Placement of Adult Subject to Guardianship Proceedings</p> <table style="width: 100%;"> <tr> <td><input type="checkbox"/> Group Home</td> <td><input type="checkbox"/> Skilled Nursing Home</td> </tr> <tr> <td><input type="checkbox"/> Secured Facility</td> <td><input type="checkbox"/> Out of State</td> </tr> <tr> <td><input type="checkbox"/> Guardian</td> <td><input type="checkbox"/> Family/Friends</td> </tr> <tr> <td><input type="checkbox"/> Host Family</td> <td><input type="checkbox"/> Independently</td> </tr> <tr> <td><input type="checkbox"/> Support Adult Residence</td> <td><input type="checkbox"/> Other: _____</td> </tr> </table>	<input type="checkbox"/> Group Home	<input type="checkbox"/> Skilled Nursing Home	<input type="checkbox"/> Secured Facility	<input type="checkbox"/> Out of State	<input type="checkbox"/> Guardian	<input type="checkbox"/> Family/Friends	<input type="checkbox"/> Host Family	<input type="checkbox"/> Independently	<input type="checkbox"/> Support Adult Residence	<input type="checkbox"/> Other: _____	<p>C. Specify the Current County/State in which the Guardian(s) reside:</p> <input type="checkbox"/> _____ County, Nevada <input type="checkbox"/> Other State: _____
<input type="checkbox"/> Group Home	<input type="checkbox"/> Skilled Nursing Home										
<input type="checkbox"/> Secured Facility	<input type="checkbox"/> Out of State										
<input type="checkbox"/> Guardian	<input type="checkbox"/> Family/Friends										
<input type="checkbox"/> Host Family	<input type="checkbox"/> Independently										
<input type="checkbox"/> Support Adult Residence	<input type="checkbox"/> Other: _____										
<p>B. Specify the Type of Guardianship:</p> <table style="width: 100%;"> <tr> <td><input type="checkbox"/> Person</td> <td><input type="checkbox"/> Person and Estate</td> </tr> <tr> <td><input type="checkbox"/> Estate</td> <td><input type="checkbox"/> Special</td> </tr> <tr> <td><input type="checkbox"/> Temporary</td> <td></td> </tr> </table>	<input type="checkbox"/> Person	<input type="checkbox"/> Person and Estate	<input type="checkbox"/> Estate	<input type="checkbox"/> Special	<input type="checkbox"/> Temporary		<p>D. Specify the Type of Guardian(s):</p> <input type="checkbox"/> Spouse <input type="checkbox"/> Private: License Number : _____ <input type="checkbox"/> Other Relative <input type="checkbox"/> Other: _____ <input type="checkbox"/> Public Guardian				
<input type="checkbox"/> Person	<input type="checkbox"/> Person and Estate										
<input type="checkbox"/> Estate	<input type="checkbox"/> Special										
<input type="checkbox"/> Temporary											
<p>F. Estimated Estate Value:</p> <table style="width: 100%;"> <tr> <td><input type="checkbox"/> \$0 to \$2,500</td> <td><input type="checkbox"/> \$2,501 to \$20,000</td> <td><input type="checkbox"/> \$20,001-\$200,000</td> </tr> <tr> <td><input type="checkbox"/> \$200,001 or More</td> <td></td> <td></td> </tr> </table>	<input type="checkbox"/> \$0 to \$2,500	<input type="checkbox"/> \$2,501 to \$20,000	<input type="checkbox"/> \$20,001-\$200,000	<input type="checkbox"/> \$200,001 or More			<p>E. Gender and Age</p> <input type="checkbox"/> Male Date of Birth: _____ <input type="checkbox"/> Female Date of Majority: _____				
<input type="checkbox"/> \$0 to \$2,500	<input type="checkbox"/> \$2,501 to \$20,000	<input type="checkbox"/> \$20,001-\$200,000									
<input type="checkbox"/> \$200,001 or More											

IV. Affirmation: This document DOES -OR- DOES NOT contain the social security number of persons pursuant to NRS 159.044.

Date

Signature of initiating party or representative

Draft Court Rule Regarding NRS 159.057

NRS 159.057 allows a single petition to be filed for two or more wards under certain circumstances. This is due in part to facilitate reduced costs for filing fees and recognizing the similar circumstances often necessitating a guardianship. NRS 159.057 also requires guardians to maintain separate records for each ward. The maintaining of separate records is necessitated by the separate needs, decisions, and subsequent circumstances for each ward. Accordingly, while NRS 159.057 allows a single petition to be filed, a separate case shall be created and maintained for each individual ward, so that subsequent pleadings for each ward are filed and maintained in their respective case.

DRAFT

MINOR GUARDIANSHIP FILING FEES COLLECTED IN THE LAST TWO YEARS

COURT	AMOUNT COLLECTED	
Second Judicial District	\$823.50 (3 cases each charged \$274.50 filing fee)	
Fourth Judicial District	\$0	
Eighth Judicial District	\$10,736 FY 15	\$10,093.50 FY 16

AB 325

Areas within AB 325 that should be reevaluated or reconsidered by the legislature that the Commission should discuss:

- 1) The Fidelity bonding requirement needs to be clarified. It is not clear just who is to be bonded within the business. (AB 325 , Sec. 33, #2)
- 2) Licensure of a single individual along with licensing the business-if the business is being licensed, why not just mandate that a certified guardian must be part of the day to day business for the business to be licensed, not also license the individual. (AB 325, Sec. 51, #2c and #3)
- 3) Language clarification of “guardian” vs. “certified guardian” when used in AB 325, Sec. 51, #2c which states “have a guardian who has a license issued pursuant to sections 2 to 50....”. The term “guardian” in definitions under AB 325, section 15, #1a states that the term “Guardian” is defined as stated in NRS 159.017. That section states that “Guardian” means any person appointed as s guardian of the person, of the estate or both. But under Sec. 51, 2c of AB 325, the “guardian” is not appointed, the entity is appointed. Although the FID brought this forward to the LCB, they did not change the language from “guardian” to “certified guardian” which would have clarified the discrepancy. In the hearings, the FID commissioner stated that this is not an issue and the term “guardian” is not a concern so we should be fine. Just not sure that will always be the case.
- 4) Allow pooled account for those guardianship accounts that cannot or should not be named on the account with individual accountings. AB 325, Sec. 37, #1 states that ”a licensee shall maintain a separate guardianship account for each ward. This is not always feasible and the Court should be able to have the flexibility to order funds to be kept in a pooled account if that is for the best interest of the ward.
- 5) Summary Administration is to apply to Private Prof. Guardians and remove AB 325, Sec 36, #5.
- 6) Clarification of licensed/certified guardian to be on premise every day as interpreted by FID. (AB 325, Sec. 51, #2c) who has stated several times that this means the licensed or certified guardian must be on premises at all times.

What steps could be taken to attract ethical, responsible, private professional guardians in support of this system as a profession:

Attracting ethical, responsible private professional guardians means for those of us that are practicing to continue to set the bar and standards above average. Private professional guardian businesses need to be sure to create a culture within the businesses that does not tolerate activities or practices that do not meet our national standards and model code of ethics. That as individuals practicing, we become leaders to mentor one another for the betterment of our clients and that we hold each other accountable. That being stated, to reach actual steps to attract the type of private professional guardians into practice within Nevada will be extremely difficult until many issues are resolved. The following are problem areas to be addressed:

- 1) The perception encouraged by certain individuals, groups, and publications that the private professional guardian industry as a whole is corrupt has to change. While there has been a few individuals who have tainted the industry by wrongful practices in the 25 years the industry has been viable, it is a very small percentage of the past and present practicing private guardians. There needs to be acknowledgement within the communities served that the private professional guardians provide a valuable service to a very vulnerable population and that those services are respected and appreciated.
- 2) The uncertainty of the licensure end result needs to be resolved. Time will take care of this, but until then, it is pretty certain that no business would want to open under the present circumstances. It is unclear as to how much the fees will cost still in regards to the licensure in the future as there has already been hints of fees increases. There are also the unknown costs of the required examinations (audits). Along with the uncertainty of the costs for licensure, the unknown in regards to upcoming legislation is also a concern to anyone thinking of starting a business. It is difficult to begin a process when the rules are still in flux.
- 3) Fees for service should not to be capped or limited but should be decided upon in regards to the reasonableness of the guardianship case itself. There can be structure to assist in defining reasonableness, but by limiting the ability of a private business to survive financially will only keep private professional guardianship businesses from starting in the first place.
- 4) Private professional guardians should be dealt with as the professionals that they are. They should not be micromanaged in how they provide services, but need to be able to work in a fluid manner in order to deal with the many changes and challenges each guardianship case presents.
- 5) Private professional guardians should be seen as an important part of the community that serves a vulnerable population by other agencies and entities that do the same. Agencies should be willing to collaborate with private professional guardianship business for the good of the client. This includes the public guardians' offices and Elder Protective Services.
- 6) Those parties who were found guilty of betraying the trust of the wards they served were very well trained and came out of the public guardian system before they went private. It is difficult to know how to gage the honesty of any private professional guardian as individuals in all factions of business can fall prey to addictions and criminal acts. A review of how other states handle training of their private guardians might be enlightening. There can be classes taught through our community colleges but it is uncertain if there would be enough interest state wide to entice the colleges to offer such a course(s). Internships with licensed private guardianship businesses might be the best way to train a potential private guardian.
- 7) Consideration should be made to AB325 that encompass not only private professional individuals acting as guardians but those serving as trustees & probate administrators as a profession (not related to those they are serving). The license should be a fiduciary license not just a "guardian" license.