

FILED

SEP 29 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT

BY *[Signature]*
CHIEF DEPUTY CLERK



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

16-30339

Appendix A

General policy questions:

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

18. Does the Commission favor the use of auditors independent of the Court system to evaluate financial records, fee requests and other petitions/motions raising financial issues concerning the ward?
19. Does the Commission favor recommendations concerning the training, licensure or other matters pertaining to the practice of private professional guardians?
20. Does the Commission wish to make recommendations concerning the use, timing, training, or caseloads of the Public Guardians?
21. Does the Commission wish to make recommendations concerning the use and appointment of private professional guardians?
22. Does the Commission wish to make recommendations concerning the fee structure to compensate guardians and others they hire?
23. Does the Commission wish to make recommendations concerning the process, notice and findings required for the approval of fees to guardians and others they hire?
24. Does the Commission wish to make recommendations concerning the process and timing for filing and evaluating an inventory for the ward?
25. Does the Commission wish to make recommendations concerning the process, timing, notice and findings the Court must make concerning accountings of the ward's estate?
26. Does the Commission wish to make any recommendations in the use of bonds and the allocation of costs for bonds in guardianship appointments?
27. Does the Commission wish to make recommendations concerning the management/administration of the wards estate including the process and notice requirements to sell estate assets?
28. Does the Commission wish to make recommendations concerning the data used to manage guardianship cases? Does the Commission approve of the draft court rule regarding NRS 159.057, which allows a petition to be filed for more than one person under certain circumstances?
29. Does the Commission wish to make recommendations concerning the use of forms in guardianship proceedings?
30. Does the Commission wish to make recommendations limiting a guardian's authority to isolate or restrict access to a ward from family and friends?
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.
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?
33. Does the Commission recommend a supplemental chapter NRS 159A to address minor guardianships?
34. Does the Commission support legislation to expand the use of the current Secretary of State's Lock Box Program to allow for the designation of guardian forms?

Appendix B


**ELDER / VULNERABLE
EXPLOITATION –
LAW ENFORCEMENT AND
DISTRICT ATTORNEY
PERSPECTIVES**


Chief Deputy District Attorney
 Jay P. Raman

Elder / Vulnerable Exploitation Topics

- ☐ 1) The Law
- ☐ 2) Perspectives
- ☐ 3) Private Professional Guardianship Exploitation
- ☐ 4) Family member Guardianship Exploitation

The mission is clear

- ☐ **NRS 200.5091 Policy of State.** It is the policy of this State to provide for the cooperation of law enforcement officials, courts of competent jurisdiction and all appropriate state agencies providing human services in identifying the abuse, neglect, exploitation and isolation of older persons and vulnerable persons through the complete reporting of abuse, neglect, exploitation and isolation of older persons and vulnerable persons.

Elder/Vulnerable Exploitation: The Law

"Exploitation" means any act taken by a person who has the trust and confidence of an older person or a vulnerable person or any use of the power of attorney or guardianship of an older person or a vulnerable person to:

- (a) Obtain control, through deception, intimidation or undue influence, over the older person's or vulnerable person's money, assets or property with the intention of permanently depriving the older person or vulnerable person of the ownership, use, benefit or possession of his or her money, assets or property; or
- (b) Convert money, assets or property of the older person or vulnerable person with the intention of permanently depriving the older person or vulnerable person of the ownership, use, benefit or possession of his or her money, assets or property.

□ NRS 200.5092

Elder/Vulnerable Exploitation: The Law

- NRS 200.5092 allows for broad spectrum of criminal activity to be prosecuted as Elder / Vulnerable Person Exploitation or Abuse
- The penalties (most severe provide for 8-20 years prison, per count) are rightfully harsh
- The Statute was designed to include people who exploit through guardianship
- Question: Did the taking of the wards money provide a benefit the ward, or the suspect? Was it excessive or justifiable?

My Perspective (DA)

- The public hates elder exploitation /abuse
 - Victims have worked hard all their lives to make their nest egg
 - Someone comes in and destroys that
 - People feel sorry for the Victim, want to punish the suspect
 - People also wouldn't want this to happen to them/their family members when they get older or vulnerable
- People are extremely mad at the previous guardianship system here in Clark County
- These types of cases have very high jury appeal

My Perspective (DA)

- ❑ Many older victims will fall into both categories of victim
- ❑ A: Older (60 years or older)
- ❑ B: Vulnerable
- ❑ "Vulnerable person" means a person 18 years of age or older who:
 - ❑ (a) Suffers from a condition of physical or mental incapacitation because of a developmental disability, organic brain damage or mental illness; or
 - ❑ (b) Has one or more physical or mental limitations that restrict the ability of the person to perform the normal activities of daily living.

My Perspective (DA)

- ❑ Older people are treated the same as vulnerable, because it is presumed that they are susceptible to the same abuse vulnerable people are - there are many undiagnosed vulnerable who are elderly
- ❑ There is a recognized gray-area of where vulnerable starts
- ❑ Common aging diseases make older people more vulnerable
- ❑ We only need one, age, mental or physical issue

My Perspective (DA)

- ❑ Exploitation of vulnerable or older person cases likely will be proved circumstantially
- ❑ If the Victim is suffering from a mental condition that is severe enough to classify them as 'vulnerable', it is possible they may not be competent to be a witness
- ❑ Even if some valuable information could be testified to by the vulnerable person, it has to be accounted for that there may be a degradation in the Victim's mental state, or they may pass away
- ❑ Because it is likely the Victim will not be called as a witness, the case is approached the same even if the Victim has passed away

My Perspective (DA)

- ☐ Types of cases worked on for exploitation theft and fraud
 - Guardians
 - Private Professional, Private individual (friend or girlfriend), family member
 - Caregiver
 - Attorneys

Law Enforcement Perspectives

- ☐ Elder / Vulnerable Person cases are difficult cases to investigate
 - Unique issues present in these cases
 - Cases come from multiple departments within the same police department

Suggestions to prevent crime / improve ability to investigate

- ☐ The Court must examine the fees guardians charge
 - Proper scrutiny of invoices can and would prevent theft
- ☐ Requirement of sufficiently detailed explanation of actual activity being billed for is helpful, including if service was provided by person other than guardian (specific times, locations, events)

Law Enforcement Perspectives

Suggestions to prevent crime / improve ability to investigate

- ☐ Enforcement of time frames for filing documents, inventory and annual accountings reduces window for theft from wards, and also presents more evidence if those filings were falsified
- ☐ Court enforcement of required 'blocked' of accounts or having bonds in place is important
- ☐ Within the proposed budget for ward's expenses, more attention should be paid to things classified as 'miscellaneous' expenses and fees - those may lack paper trail, could lend to fraud

Law Enforcement Perspectives

Suggestions to prevent crime / improve ability to investigate

- ☐ Notification of interested parties (family) should be investigated and verified. Generic examples that have been tendered to guardianship court before that they couldn't identify any family members to notify, does not reveal the lengths to which the guardian conducted their search
- ☐ Standards should be set up to show to what length should search for family be done
- ☐ Standards should be set up on what occurs with wards estate once they pass away, if no heirs

PRIVATE PROFESSIONAL GUARDIANSHIP EXPLOITATION: Patience Bristol



Case Study: Patience Bristol

- ☐ Well established Private Professional Guardian working for guardianship company / running her own also
- ☐ "Professional Fiduciary Services of Nevada"
- ☐ "Guardianship Solutions, Inc."
- ☐ Previous employment at Clark County Public Guardian's Office
- ☐ Previous employment at Child Protective Services
- ☐ Criminal case involved 4 wards, both elderly and vulnerable people

Patience Bristol: Victims Ly and Nguyen

- ☐ -An Thi Ly was a vulnerable person, age 55
- ☐ -Lung Van Nguyen was an elderly/vulnerable person, age 80
- ☐ Ly and Nguyen were a married couple
- ☐ Ly would care for her husband, Nguyen as she was in better health and he was in poor health
- ☐ Ly suffered a stroke which rendered her unable to communicate and incompetent to manage her own affairs
 - A doctor at Spring Valley Hospital conducted the evaluation, made determination

Patience Bristol: Victims Ly and Nguyen

- ☐ Nguyen suffered from advanced dementia
 - Diagnosed by a doctor
- ☐ When Ly was hospitalized and no one to care for Nguyen he was admitted to a care facility for hospice care

Timeline

 - ☐ March 4, 2013 - Patience Bristol appointed guardian for Ly
 - ☐ March 20, 2013 - Patience Bristol appointed guardian for Nguyen
 - ☐ May 25, 2013 - Nguyen dies
 - ☐ (Patience Bristol is guardian for Nguyen only for approximately 2 mo.)

Patience Bristol: Victims Ly and Nguyen

- ❑ When Bristol was appointed in March 2013 Ly and Nguyen's combined liquid assets were \$243,000 in two bank accounts
- ❑ Bristol closed those accounts, transferred to a US Bank account on March 20, 2013 (same day appointed for Nguyen), Bristol is sole signer "Anh Thy Ly c/o Patience M. Bristol, Guardian"
- ❑ May 9, 2013 Bristol closes the US Bank account, transfers to Nevada State Bank
- ❑ Between March 20 and June 11, 2013, Bristol removes over \$135,000 through a series of cash withdrawals and check payments
- ❑ Only \$52,000 was used for the benefit of Ly & Nguyen

Patience Bristol: Victim Dutton

- ❑ Jean Dutton, a vulnerable person age 50, was appointed a guardian in 2010 - Patience Bristol
- ❑ Dutton's money was at Bank of Nevada from 2010 - March 2013
- ❑ Bristol then moves the money to US Bank, and then two months later moves the money to Nevada State Bank
- ❑ Dutton had approximately \$100,000 at the time the money was moved

Patience Bristol: Victim Dutton

- ❑ Bristol removed \$32,000 over 46 transactions from March to June 2013
- ❑ This occurred sometimes on a daily basis
- ❑ Many of the cash withdrawal slips had notations such as "medications," "personal spending," and "personal items" suggesting it was used for the benefit of Dutton
- ❑ Dutton was interviewed in August 2013 - said during that timeframe had seen Bristol only 1x
 - She provided him with nothing
 - Facility Dutton stayed at confirmed the same, they had to step in and provide hygiene items because guardian wasn't

Patience Bristol: Victim Dutton

- During the timeframe, Bristol paid less than \$1,000 for the benefit of Dutton (phone bill, bank fees, and an assistant)
- Bristol paid herself \$5,792.00 for guardianship services during the period
 - Yet she did not meet with Dutton or provide any guardianship services on his behalf
 - Was not even returning Dutton's phone calls
- Total amount stolen from Dutton
\$38,494

Patience Bristol: Victim Berger

- Kristina Berger was a vulnerable person who's previous guardian was her mother, until her mother passed away in 2008
- Patience Bristol was appointed successor guardian
- In March 2013 two check were deposited in Berger's bank account, \$5,000 from Berger's father, and \$500 from her special needs trust
- All of the money was withdrawn through 16 cash withdrawals in March and April 2013
- Berger had not seen Bristol from February 2013 to May 2013, in May Bristol gave Berger three small checks for personal needs - they bounced

Patience Bristol: Victim Berger

- Besides stealing the \$5,500, Bristol:
- Took personal property that belonged to Berger, including heirlooms and other jewelry
- Bristol took 57 items of her and Dutton's and pawned them at pawnshops all of the valley
- After all of this, Berger was able to identify only 12 of her items at pawnshops
- For those 12 items that could be identified, Bristol had received \$5,000 from pawnshops
- Search warrant of Bristol's home uncovered several more pieces of Berger's and Dutton's jewelry

Patience Bristol: Victim Berger

- The approximately 30 pieces of jewelry taken from Berger were valued at \$47,873
- Emotional impact of this Victim's case more damaging than the financial impact
- Many of the jewelry items that could not be recovered from pawns were fond memories that Berger had of her mother
- Berger said that Bristol had been emotionally terrorizing her
- Berger's father only sent the \$5,500 (later stolen) at the request of Bristol, saying that she needed the money to meet Berger's basic needs

Patience Bristol: Victims

When Bristol was later interviewed:

- Admitted she had a gambling problem, spent much of her wards money at bars around the valley
- Admitted that she falsely represented money taken that should have gone to funeral expenses (for Nguyen) or pre-need burial policy

Total amount stolen from
 Ly and Nguyen: \$102,511
 Dutton: \$38,494
 Berger: \$19,475*

Patience Bristol: Fate

- Patience Bristol was charged with numerous counts of Exploitation of Elderly, Exploitation of Vulnerable, Burglary, and Obtaining Money Under False Pretenses
- In relatively quick fashion, she pled guilty to Exploitation of Elderly/Vulnerable Person
- She is serving 3-8 years in prison

8	THE STATE OF NEVADA,	Case No. Agreement 07/2016
9	Plaintiff,	
10	-vs-	CASE NO: C-15-294851-1
11	PAIYENCE MARIE BRISTOL,	DEPT NO: XI
12	#1497888	
13	Defendant.	
14	GUILTY PLEA AGREEMENT	
15	I hereby agree to plead guilty to: EXPLOITATION OF ELDERLY VULNERABLE	
16	PERSON (Category B Felony - NR: 200.5092, 200.5099), as more fully alleged in the	
17	charging document attached hereto as Exhibit "A".	
18	My decision to plead guilty is based upon the plea agreement in this case which is as	
19	follows:	
20	Both parties recommend a sentence of three (3) to eight (8) years in the Nevada	
21	Department of Corrections. Additionally, both parties stipulate to a restitution figure of	
22	\$160,480.19 (\$102,511.19 to AHN THI LY and LING VAN NGUYEN; \$38,494.88 to	
23	JEAN DUTTON & \$19,472.00 to KRISTINA BERGER), with an Owe Recognition	

Family member guardian exploitation



Family member exploitation

- ❑ Family member exploitation cases are more difficult to prove under Nevada's elder exploitation statute. "As used in this subsection, "undue influence" does not include the normal influence that one member of a family has over another."
- ❑ BUT not under a Guardianship Scenario:
- ❑ (a) Obtain control, through deception, intimidation or undue influence -Would not normally apply to guardianship
- ❑ SO:
- ❑ (b) Convert money, assets or property of the older person or vulnerable person with the intention of permanently depriving the older person or vulnerable person of the ownership, use, benefit or possession of his or her money, assets or property.



OFFICE OF THE ATTORNEY GENERAL

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FOR IMMEDIATE RELEASE

Date: July 12, 2016

Contact: Monica Moazez

MMoazez@ag.nv.gov / 702-486-0657

Attorney General Laxalt Announces Elder Exploitation Guardianship Abuse Prosecution in Northern Nevada

Carson City, NV – Nevada Attorney General Adam Paul Laxalt announced that Wade Fordin, 53, of Elko County, was arrested on one count of exploitation of an older person and one count of theft, both category “B” felonies. The alleged crimes were committed between February 2012 and November 2013.

The *State of Nevada v. Fordin* criminal complaint follows the Attorney General’s Office’s first ever guardianship abuse conviction in *State of Nevada v. Wendy Rudder*. The defendant in that case, providing public guardian services pursuant to a contract with Lincoln County, pleaded guilty to one count of misconduct of a public officer related to unauthorized withdrawals from a ward’s guardianship account. Defendant Rudder was sentenced in the spring of 2015.

“Working on ways to protect the most vulnerable are a priority for me,” said Laxalt. “These prosecutions are firsts for the Attorney General’s Office and are added to the first ever human trafficking conviction and illegal Internet gaming operator conviction my prosecutors obtained last year. I look forward to achieving future firsts and continued convictions with this hardworking team.”

According to the criminal complaint, Fordin was appointed as the permanent guardian of his 80-year-old mother Helen Mae Fordin and her estate, after it was determined that she was unable to care for herself. As a guardian, Fordin was entrusted funds for the limited purpose of providing for her care. However, Fordin subsequently converted more than \$6,000 of her funds for his own personal use.

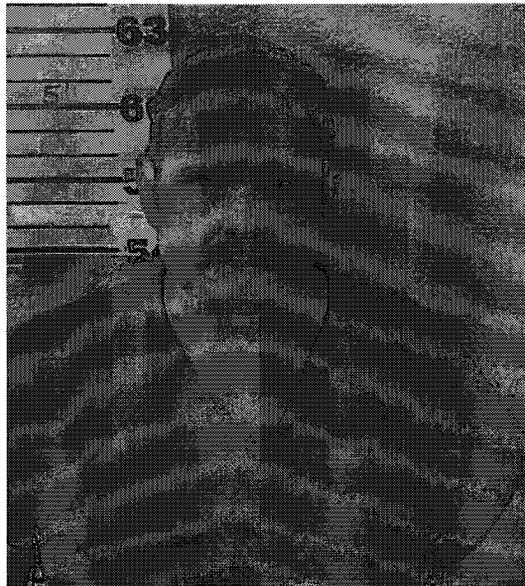
Laxalt further stated, “This case was referred to my Office from Elko County during my third Law Enforcement Summit in February, and demonstrates the importance of collaborative efforts with law enforcement. My prosecutors will continue to partner with local law enforcement and district attorneys to deter the exploitation of vulnerable

populations, and to ensure our elderly are treated with respect and dignity-- not victimized.”

This latest arrest comes only a week after the Nevada Legislature’s Interim Finance Committee unanimously approved AG Laxalt’s request to combat increasing financial fraud within the State using non-taxpayer settlement funds awarded to his Office. AG Laxalt’s request includes the allocation of more than \$400,000 of non-taxpayer settlement funds to the Legal Aid Center of Southern Nevada in order to boost their capacity to fight civil guardianship exploitation and abuse.

A criminal complaint contains allegations that a defendant has committed a crime. Every defendant is presumed innocent until and unless proven guilty in a court of law.

This case is being prosecuted by the Office of the Nevada Attorney General’s Fraud Unit. To view the filed criminal complaint for Wade Fordin, click [here](#).



FORDIN, WADE

(Photo courtesy of the Elko County Sheriff's Office)

###

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

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

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

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

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

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

Thank you for your assistance in this matter.

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

Appendix C

GUARDIANSHIP FLOW CHART

What is a Guardianship?

A party seeking a guardianship ("Petitioner/ Proposed Guardian") files an action with the Court to request the power to handle the affairs of another party ("proposed ward"). The guardianship request may be to handle the affairs of the person only, the estate of the person, or both.

[CLICK HERE FOR INSTRUCTIONS](#)

Review the Instructions for Guardian prior to filing any matter

[CLICK HERE FOR INSTRUCTIONS](#)

Starting the case

A General Petition is filed with the Court to initiate the case. The Petition will request that the Court grant a Guardianship over the person, the estate, or the person **and** estate of the proposed ward.

[CLICK HERE TO REVIEW THE NRS](#)

[CLICK HERE FOR INSTRUCTIONS](#)

[CLICK HERE FOR PETITION](#)

The Guardianship Petition must include specific information about the proposed guardian.

[CLICK HERE TO REVIEW THE NRS](#)

[CLICK HERE FOR INSTRUCTIONS](#)

The Petition must include a written statement from a doctor or a suitably qualified person regarding the condition of the proposed ward and the need for a guardianship.

[CLICK HERE TO REVIEW THE NRS](#)

[CLICK HERE FOR INSTRUCTIONS](#)

[CLICK HERE FOR BLANK FORM](#)

A hearing must be scheduled by contacting the Administrative Assistant for D12 by telephone or in person. A Citation will be issued by the Clerk of the Court.

[CLICK HERE FOR INSTRUCTIONS](#)

Notice of the hearing (the Citation to Appear) must be mailed to all required parties at least 20 days prior to the hearing.

[CLICK HERE TO REVIEW THE NRS](#)

[CLICK HERE FOR INSTRUCTIONS](#)

Petitioner must obtain permission from the Court if he/she intends to achieve notice of the hearing by publication. If so, notice of the hearing must be given 20 days prior to the hearing.

[CLICK HERE TO REVIEW THE NRS](#)

[CLICK HERE FOR INSTRUCTIONS](#)

At the hearing, the Court will determine whether to grant the petition, deny it, or continue the proceedings.

[CLICK HERE TO REVIEW THE NRS](#)

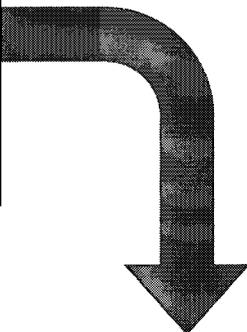
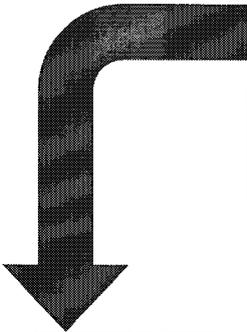
If an Order is entered appointing a Guardian, Letters of Guardianship shall be executed under oath by the appointed guardian. The Clerk of Court will issue and file the Letters.
[CLICK HERE TO REVIEW THE NRS](#)



An Inventory/Appraisal of the Ward's financial estate must be filed in the case within 60 days of the Order Appointing Guardian.
[CLICK HERE TO REVIEW THE NRS](#)
[CLICK HERE TO VIEW INVENTORY FORM](#)



Once a guardianship has been ordered, the Court will conduct annual reviews of the physical and/or financial condition of the Ward
[CLICK HERE TO REVIEW THE NRS](#)



Guardianship of Person
An Annual Report upon the condition of the Ward must be filed within 60 days of the 12 month anniversary of the Order Appointing Guardian.
[CLICK HERE TO REVIEW THE NRS](#)
[CLICK HERE FOR BLANK ANNUAL REPORT](#)

Guardianship of Person AND Estate
If a Guardianship was granted over the person and estate of the Ward, the Guardian must file both an Annual Report and an Annual Accounting.
[CLICK HERE TO REVIEW THE NRS](#)
[CLICK HERE FOR BLANK ANNUAL REPORT](#)
[CLICK HERE FOR ACCOUNTING FORM](#)

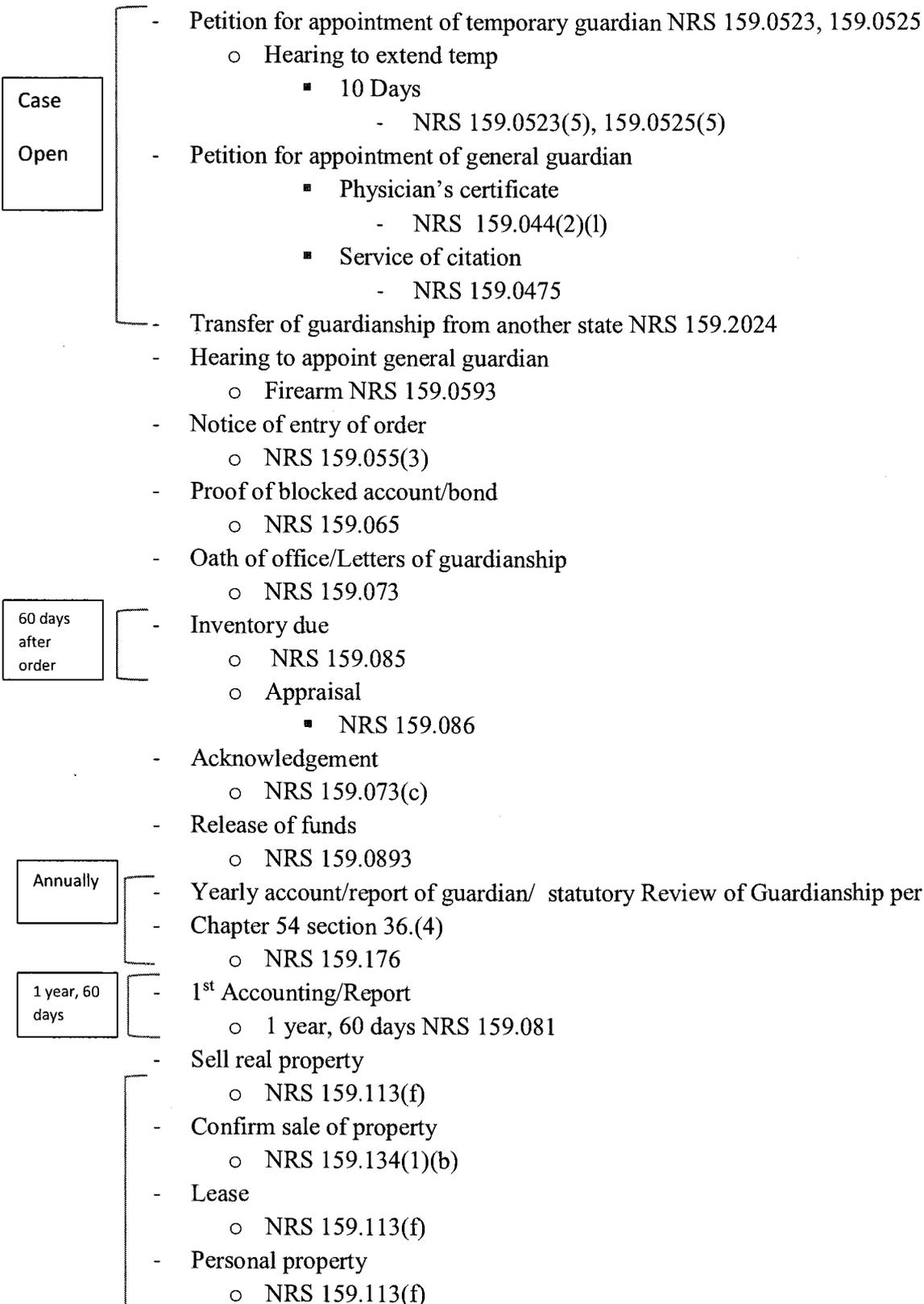
Guardianship of Estate
An Accounting of the Ward's financial situation must be filed annually. A hearing must be set on the Annual Accountings. The hearing must be noticed to all interested parties.
[CLICK HERE TO REVIEW THE NRS](#)
[CLICK HERE FOR ACCOUNTING FORM](#)



For estates with a value under \$10,000, the Court may allow summary accounting, which does not require the filing of an Annual Accounting.
[CLICK HERE TO REVIEW THE NRS](#)

Additional steps may be required. Consult appropriate state and local laws for further information

Timeline provided by Eighth Judicial District Court



Any time during the guardianship

- Collection of debts due to the ward
 - o NRS 159.093
- Permission to defend against legal claims
 - o NRS 159.095
- Invest ward's property
 - o NRS 159.117
- Borrow money
 - o NRS 159.121
- Petition for instructions
 - o NRS 159.169
- Enter into contracts
 - o NRS 159.079
- Make gifts
 - o NRS 159.125
- Estate planning
 - o NRS 159.113(1)(h),(i),(j),(k)
- Submit trust to jurisdiction of the court
 - o NRS 159.113(l)
- Advice or approval of any act relating to the ward's estate
 - o NRS 159.113(2)(a)
- Sell or give a mining claim
 - o NRS 159.1653
- Removal of guardian
 - o NRS 159.185
- Resignation of guardian
 - o NRS 159.1873
 - o Accounting
 - NRS 159.1877
- Appointment of successor guardian
 - o NRS 159.187
- Termination of guardianship
 - o NRS 159.1905
 - o Final accounting
 - 90 days NRS 159.177
 - o May be a transfer of jurisdiction
 - NRS 159.2023
- Final discharge
 - o NRS 159.199

Any time during the guardianship

End of Case

Appendix D

MEMORANDUM

To: Chief Justice James W. Hardesty

From: Debra Bookout

Date: August 3, 2015

Re: Guardianship Fees in other States

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

Nevada NRS 159.183

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

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

Arizona § 14-5109. Disclosure of compensation; determining reasonableness and necessity

- A. When a guardian, a conservator, an attorney or a guardian ad litem who intends to seek compensation from the estate of a ward or protected person first appears in the proceeding, that person must give written notice of the basis of the compensation by filing a statement with the court and providing a copy of the statement to all persons entitled to notice pursuant to §§ 14-5309 and 14-5405. **The statement must provide a general explanation of the compensation arrangement and how the compensation will be computed.**
- ...
- C. Compensation paid from an estate to a guardian, conservator, attorney or guardian ad litem **must be reasonable and necessary**. To determine the reasonableness and necessity of compensation, the court must consider the best interest of the ward or protected person. The following factors may be considered to the extent applicable:
 1. Whether the services provided any benefit or attempted to advance the best interest of the ward or protected person.
 2. The **usual and customary fees charged in the relevant professional community for the services**.
 3. The size and composition of the estate.
 4. The extent that the services were provided in a reasonable, efficient and cost-effective manner.
 5. Whether there was appropriate and prudent delegation to others.
 6. Any other factors bearing on the reasonableness of fees.

- D. The person seeking compensation has the burden of proving the reasonableness and necessity of compensation and expenses sought.

Pursuant to Rule 33(F) of the Arizona Rules of Probate Procedure, the court shall follow the statewide fee guidelines for determining “reasonable compensation” set forth in ACJA (Arizona Code of Judicial Administration) § 3-303. Those fee guidelines apply to all court appointed fiduciaries, specifically guardians.

Compensation shall meet the following requirements, ACJA §3-303(D)(2):

- a. All fee petitions shall comply with Rule 33 of the Arizona Rules of Probate Procedure.
- b. All hourly billing shall be in an increment to the nearest one-tenth of an hour, with no minimum billing unit in excess of one-tenth of an hour. **No “value billing” for services rendered is permitted, rather than the actual time expended.**
- c. **“Block billing” is not permitted.** Block billing occurs when a timekeeper provides only a total amount of time spent working on multiple tasks, rather than an itemization of the time expended on a specific task.
- d. Necessary travel time and waiting time may be billed at 100% of the normal hourly rate, except for time spent on other billable activity; travel time and waiting time are not necessary when the service can be more efficiently rendered by correspondence or electronic communication, for example, telephonic court hearings.
- e. Billable time that benefits multiple clients, including travel and waiting time, shall be appropriately apportioned among each client.
- f. Billable time does not include:
 - (1) Time spent on billing or accounts receivable activities, including time spent preparing itemized statements of work performed, copying, or distributing statements; however, time spent drafting the additional documents that are required by court order, rule, or statute, including any related hearing, is billable time. The court shall determine the reasonable compensation, if any, in its sole discretion, concerning any contested litigation over fees or costs; and

- (2) Internal business activities of the Professional, including clerical or secretarial support to the Professional.
- g. The **hourly rate charged for any given task shall be at the authorized rate, commensurate with the task performed**, regardless of whom actually performed the work, but clerical and secretarial activities are not separately billable from the Professional. The Professional shall abide by the following requirements:
- (1) An attorney may only bill an attorney rate when performing services that require an attorney; a paralegal rate when performing paralegal services; a fiduciary rate when performing fiduciary services; and shall not charge when performing secretarial or clerical services, for example and
 - (2) A fiduciary may only bill a fiduciary rate when performing services that require the skill level of the fiduciary; a companion rate when performing companion services; a bookkeeper rate when performing bookkeeping and bill-paying services for a client; and shall not charge when performing secretarial or clerical services, for example. ...

The court shall further consider the following factors in determining what constitutes reasonable compensation, pursuant to ACJA § 3-303(D)(3):

- a. The **usual and customary fees or market rates charged in the relevant professional community for such services**. Pursuant to Rule 10.1, Arizona Rules of Probate Procedure, market rates for goods and services are a proper and ongoing consideration for the court in Title 14 proceedings.
- ...
- c. Common fiduciary services rendered in a routine guardianship or conservatorship engagement. The fiduciary shall provide a reasonable explanation for exceeding these services. The **common fiduciary services** are:
 - (1) Routine bookkeeping, such as disbursements, bank reconciliation, data entry of income and expenditures, and mail processing: four (4) hours per month, at a commensurate rate for such services;
 - (2) Routine shopping: six (6) hours per month if the ward is at home, and two (2) hours per month if the ward is in a facility, at a commensurate rate for such services;

- (3) One routine personal visit per month by the fiduciary to the ward or protected person;
 - (4) Preparation of conservator's account and budget: five (5) hours per year;
 - (5) Preparation of annual guardianship report: two (2) hours per year; and
 - (6) Marshalling of assets and preparation of initial inventory: eighty (80) hours.
- d. Not more than one attorney may bill for attending hearings, depositions, and other court proceedings on behalf of a client, nor bill for staff to attend, absent good cause;
 - e. Each fiduciary and guardian ad litem shall not bill for more than one person to attend hearings, depositions, and other court proceedings on behalf of an Estate, absent good cause. This provision does not preclude an attorney, who represents a fiduciary or guardian ad litem, from submitting a separate bill.
 - f. The total amount of all annual expenditures, including reasonable professional fees, may not deplete the Estate during the anticipated lifespan of the ward or protected person, until and unless the conservator has disclosed that the conservatorship has an alternative objective, such as planned transition to public assistance or asset recovery, as set forth in the disclosure required by Rule 30.3 of the Arizona Rules of Probate Procedure.
 - g. The request for compensation in comparison to the previously disclosed basis for fees, any prior estimate by the Professional, and any court order;
 - h. The expertise, training, education, experience, and skill of the Professional in Title 14 proceedings;
 - i. Whether an appointment in a particular matter precluded other employment;
 - j. The **character of the work to be done**, including difficulty, intricacy, importance, necessity, time, skill or license required, or responsibility undertaken;
 - k. The conditions or circumstances of the work, including emergency matters requiring urgent attention, services provided outside regular business hours, potential danger (for example: hazardous materials, contaminated real property, or dangerous persons), or other extraordinary conditions;

- l. The **work actually performed, including the time actually expended, and the attention and skill-level required for each task**, including whether a different person could have rendered better, faster, or less expensive service;
- m. The result, specifically whether benefits were derived from the efforts, and whether probable benefits exceeded costs;
- n. Whether the Professional timely disclosed that a projected cost was likely to exceed the probable benefit, affording the court an opportunity to modify its order in furtherance of the best interest of the Estate;
- o. The **fees customarily charged and time customarily expended for performing like services** in the community;
- p. The degree of financial or professional risk and responsibility assumed; and
- q. The fidelity and loyalty displayed by the Professional, including whether the Professional put the best interest of the Estate before the economic interest of the professional

Washington § 11.92.180.

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

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

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

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

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

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

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

...

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

...

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

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

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

(3) The court shall consider all of the factors described in this subsection (3) in determining the reasonableness of any compensation or cost. The court may determine the weight to be given to each factor and to any other factor the court considers relevant in reaching its decision:

- (a) **The time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform** the service properly;
- (b) The likelihood, if apparent to the fiduciary, that the acceptance of the particular employment will preclude the person employed from other employment;
- (c) (I) **The compensation customarily charged in the community for similar services** with due consideration and allowance for the complexity or uniqueness of any administrative or litigated issues, the need for and local availability of specialized knowledge or expertise, and the need for

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

- (II) As used in this subsection (3), unless the context otherwise requires, “community” means the general geographical area in which the estate is being administered or in which the respondent, ward, or protected person resides.
- (d) The nature and size of the estate, the liquidity or illiquidity of the estate, and the results and benefits obtained during the administration of the estate;
- (e) Whether and to what extent any litigation has taken place and the results of such litigation;
- (f) The life expectancy and needs of the respondent, ward, protected person, devisee, beneficiary, or principal;
- (g) The time limitations imposed on or by the fiduciary or by the circumstances of the administration of the estate;
- (h) The adequacy of any detailed billing statements upon which the compensation is based;
- (i) Whether the fiduciary has charged variable **rates that reflect comparable payment standards in the community for like services**;
- (j) The **expertise, special skills, reputation, and ability of the person performing the services** and, in the case of a fiduciary, whether and to what extent the fiduciary has had any prior experience in administering estates similar to those for which compensation is sought;
- (k) The terms of a governing instrument;
- (l) The various courses of action available to a fiduciary or an individual seeking compensation for a particular service or alleged benefit and whether the course of action taken was reasonable and appropriate under the circumstances existing at the time the service was performed; and

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

California § 2623. Compensation And Expenses Of Guardian Or Conservator

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

§ 2640. Petition by guardian or conservator of estate

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

. . .

- (c) Upon the hearing, the court shall make an order allowing (1) any compensation requested in the petition the court determines is **just and reasonable** to the

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

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

(a) Standards for determining just and reasonable compensation

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

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

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

(b) No single factor determinative

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

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

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

Ohio Sup R 73. Guardian's compensation

(A) Setting of compensation

Guardian's compensation shall be set by local rule.

(B) Itemization of expenses

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

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

(A) The compensation that may be taken by guardians as a credit in their accountings, without application and order first obtained, must be less than or equal to that provided by the following schedule:

- (1) 5% of income from intangible investments and deposits and all installment receipts, such as Social Security or Veteran's Benefits.

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

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

(A) Guardian's compensation for services as guardian of the estate in non-indigent guardianships shall be computed annually upon application and entry and shall be supported by calculations and documentation. The following fee schedule shall apply unless extraordinary fees are requested. Extraordinary fee applications shall be set for hearing unless hearing is waived by the Court.

- (1) Income/Expenditure Fee. Excluding income from rental real estate, four percent (4%) of the first \$10,000 of income received, plus three percent (3%) of the balance in excess of \$10,000, and four percent (4%) of the first \$10,000 of expenditures except expenditures pertaining to rental real estate, plus three percent (3%) of the balance in excess of such \$10,000. If the guardian manages rental real estate, a fee amounting to ten percent (10%) of gross rental real estate income may be allowed. If the guardian receives net income from rental real estate actively managed by others, then the guardian shall treat such net income as ordinary income. No fee shall be allowed to the guardian on expenditures pertaining to rental real estate. As used in this rule, "income" shall mean the sum of income as defined in Section 1340.03 O.R.C., plus pension benefits, plus net gains from the sale of principal. Assets held by the ward at the date of appointment are deemed to be principal and not income.
- (2) Principal Fee. \$3.00 per thousand for first \$200,000 of fair market value, and \$2.00 per thousand on the balance of the corpus, unless otherwise ordered.
- (3) Principal Distribution Fee. \$3.00 per thousand for the first \$200,000 of fair market value of corpus distributed upon the termination of the

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

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

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

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

Texas § 1155.002. Compensation for Certain Guardians of the Person

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

§ 1155.003. Compensation for Guardian of the Estate

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

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

Florida § 744.108. Guardian and attorney fees and expenses

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

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

The Workgroup proposed the following experienced based fees:

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

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

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

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

MEMORANDUM

To: Justice Hardesty
From: Debra Bookout
Date: September 13, 2016
Re: The Elder Justice Center, Thirteenth Judicial Circuit
Guardian fees

I spoke with Jennifer Branch who is a counselor at the Elder Justice Center in Hillsboro County, Florida, the Thirteenth Judicial Circuit. The creation of the Elder Justice Center arose from a Workgroup comprised of the Sixth and Thirteenth Judicial Circuits formed to address problems in guardianships. The Workgroup surveyed all of Florida's Circuits to get an idea of the guardian rates seen in each individual Circuit. From the first Workgroup of 2005, whose members were court staff, attorneys and guardians, came recommendations for guardian fee rates based on years of experience. The Workgroup reconvened in 2009 and surveyed the Circuits again, and again set rates based on years of experience but narrowed those years and allowed for the guardian to ask for an increase in those rates through judicial review. The Workgroup also provided for a long list of guidelines for the court in determining the reasonableness of the guardian's fees. Those guidelines have evolved over the years.

The Elder Justice Center provides assistance to the court regarding guardian fees and accountings. The Clerk of the Court has one full time auditor who audits every accounting filed in the Circuit. The Center has three full time counselors who review guardianship cases, including review of fee statements. When a guardian submits a fee request, the fee request is submitted to the Center for review. Based on the guidelines with the fee checklist in hand, the counselor will make a recommendation to the court whether to approve the fee request, approve a partial payment of the fee request or deny the fee request. This checklist and recommendation is reviewed by a general magistrate before it goes to the judge. If the guardian disagrees with the Center's recommendations, he or she has the opportunity to object and have a hearing on the objections.

Ms. Branch advised that the system has worked remarkably well. The guidelines and system of review apply to both private professional guardians and non-professional guardians. She advised that the guardians generally follow the guidelines and the vast majority of the fee requests are determined without a hearing.

Attached are the Workgroup Guardian Fee guidelines (from 2005 and 2009) and the Elder Justice Center checklist that is used in Hillsboro County. Also attached are samples of Orders in guardianship fee cases to show the level of scrutiny given to guardian fee statements in Hillsboro County.



CHAMBERS OF
CIRCUIT JUDGE
THIRTEENTH JUDICIAL CIRCUIT
TAMPA, FLORIDA 33602

HILLSBOROUGH COUNTY
GEORGE EDGECOMB COURTHOUSE
800 E. Twiggs Street, Rm.430
Tampa, Florida 33602

CLAUDIA RICKERT ISOM
Phone: (813) 272-5221
Fax: (813) 301-3765

TO: Hillsborough County Professional Guardians and Attorneys
FROM: Hon. Claudia Rickert Isom, Administrative Judge
Probate, Guardianship & Trust Division
DATE: January 22, 2010
SUBJECT: Guardian Fee Workgroup Report Approval

I am pleased to announce that Chief Judge Manuel Menendez has reviewed and approved the Final Report of the Guardian Fee Workgroup. The workgroup recommended an increase in guardian fee rates, and also an adjustment to the rate schedule, which has been and will continue to be based on a guardian's years of experience. Most Workgroup members felt there was enough flexibility in the current guidelines pertaining to billing procedures, and no changes were recommended in that regard.

The new rates, to be effective **January 20, 2010**, are as follows:

\$45.00 per hour for new guardians, until their third anniversary
\$60.00 per hour after the third anniversary, until the fifth anniversary
\$75.00 per hour after the fifth anniversary

Upon petition of the guardian or upon the court's own initiative, the court retains the discretion to adjust hourly rates higher or lower for each professional guardian (individually), as deemed appropriate by the court. For purposes of determining years of experience, the court recognizes a guardian as "professional" when they have been appointed to three or more non-relative wards.

Any questions regarding implementation of the new fee structure should be directed to Jennifer Branch at the Elder Justice Center, 813-276-2726, or Magistrate Sean Cadigan, at 813-276-8517.

Joint Circuit Workgroup on Guardian Fees

A Collaborative Effort of Florida's Sixth and Thirteenth Judicial Circuits

REPORT

To: Honorable Susan Sexton, Administrative Judge, Probate/Guardianship - 13th Circuit
Honorable Ray E. Ulmer, Jr., Administrative Judge, Probate/Guardianship - 6th Circuit
Honorable George W. Greer, Probate/Guardianship – 6th Circuit

From: Joint Circuit Workgroup on Guardian Fees
Sean Cadigan - 13th Circuit Contact
Keela Samis - 6th Circuit Contact

Date: December 6, 2004

The Joint Circuit Workgroup on Guardian Fees was established based on a request from Michael Bridenback, Court Administrator for the Thirteenth Judicial Circuit. Mr. Bridenback, citing the different requirements for guardians filing of fee petitions among various jurisdictions and noting that professional guardians practices in the Sixth and Thirteenth Judicial Circuits, requested the Workgroup recommend guidelines to the Administrative Judges.

Workgroup members are: Sean Cadigan, Keela Samis, Pam Campbell, Thomas Tripp, Carolyn Dempsey, Alison Carpenter, Tamara Cribben, Sharon Van Wart, Marcia Larkin, Faith Dunne, Robert Hines and Henry Nobles.

The Workgroup met on August 27 and October 1, 2004. The Workgroup submits the following recommendations to the Administrative Judges Susan Sexton and Ray E. Ulmer, Jr.:

Experienced Based Fee Proposal, with Proposed Rules to Address Fee Inequities

This proposal is a basic fee structure primarily based on years of experience. The Workgroup recommends the following hourly fee rates:

Professional Guardians with 0-5 years (60 months) are entitled to bill at a rate of \$40.00 per hour.

Professional Guardians with 6-9 years of experience are entitled to bill at a rate of \$55.00 per hour.

Professional Guardians with 10 or more years are entitled to bill at a rate of \$70.00 per hour.

Upon petition of the guardian or upon the court's own initiative, the court retains the discretion to adjust hourly rates higher or lower for each professional guardian (individually), as deemed appropriate by the court.

Elimination of the Guardian Versus Clerical Fee Distinction

The Workgroup recommends the elimination of the guardian versus clerical distinction because review of such petitions is unduly burdensome. Nonetheless, this recommendation suggests that reasonable steps must be taken in order to avoid potential fee inequities that would likely result from the elimination of clerical/guardian distinction. Therefore, the Workgroup recommends written rules/guidelines to address particular billing issues that include bill paying, travel, shopping, copying/faxing/filing, and arranging transportation and appointments, as well as attendance at appointments.

The Workgroup members agreed on the following rules/guidelines:

Bill paying - Fees shall not exceed two hours of billable time (at the applicable rate) each month for bill paying without providing a written justification. If more than two hours, the guardian is given the opportunity, if faced with some extraordinary circumstances, to provide justification for seeking higher fees than the court would normally believe to be appropriate in an average month.

Travel - Guardians would be entitled to bill travel time, but not mileage. Guardians may, of course, seek deductions of their actual mileage on their income tax returns. The group recommends, however, that guardians be required to list their actual mileage per trip, with each line-item billing entry for travel time. This will provide the court the ability to assess whether the travel time charged was reasonable.

Guardians traveling from outside of the county where the court is located will only be compensated for travel time from the court's county line.

Shopping - The Workgroup recommends imposing two standard "per-month" fee caps by rule, allowing for exceptional circumstances.

Ward in home: Cap of 2.5 hours per month

Ward in facility: Cap of 1.0 hour per month

Guardians would be permitted to provide a detailed explanation justifying fees for shopping in excess of the fee cap guidelines. An example of when it may certainly be appropriate to exceed those caps/guidelines would be in the month of December, due to holiday shopping. Additionally, the guidelines associated with the rules should explain that, when possible, guardians should attempt to get the ward's companion(s) to perform these services. It is not in the best interest of the ward to have a guardian charge \$70.00 per hour to run to the store for milk and bread. Caretakers may be allotted a small amount of cash each month for this purpose, with the requirement that they provide receipts to the guardian to account for that cash.

The Workgroup also recommends that guardians be authorized to reimburse themselves up to \$20.00 per month for purchases made for the ward, without a court order - so long as receipts are maintained to back up the expenditures.

Arranging Transportation, Appointments & Services for the Wards and Attendance at Appointments - While it would not be appropriate to try to impose a cap in this category, it would be appropriate to set forth some guidelines in the Rules that would help to avoid fee inequities in this area as a result of the elimination of billing at a clerical rate.

Guardians should be advised to be mindful that arranging transportation and appointments is something that could be done by clerical staff (such staff were utilized), and, therefore, does not really require the fiduciary expertise of a professional guardian. Fees for such services should be kept at a minimum and anytime that billing in this regard covers a substantial amount of time, a detailed explanation should be provided.

With regard to attendance at appointments, guardians should be encouraged to utilize companions for routine visits, such as dental cleanings and eye exams. Certainly, whenever a guardian must be present to meet with a provider or otherwise exercise some fiduciary duty, billing guardian time is appropriate. If, however, a guardian can avoid lengthy periods of time where they are simply waiting in a doctor's office with the ward or attending a funeral or family function with a ward, efforts should be made to do so. Guardians should be encouraged to enlist help in this regard whenever possible.

Recognizing that some hired companions charge a minimum amount of hours, if it would cost less to have the guardian attend such a function with the ward than it would to hire the companion for that minimum period that actually exceeds the time needed, then, in that event, the guardian should provide a brief statement explaining that in the fee statement.

Copying/Faxing/Filing

Billing related to this activity should be limited to 1.0 hour per month, without a written explanation in the fee petition – explaining any extraordinary circumstances that may justify higher billing in this category.

Frequency of filing fee petitions

Fee petitions should never be filed less than once a year.

The guardian may file the first petition may be filed at the three or six month mark, so long as the Inventory has been filed, and then one would be filed every six months thereafter.

Fees should not be approved unless the Inventory was filed and has been approved.

If a guardian is unable to timely file the Inventory, due to circumstances beyond his/her control, a petition for an extension and a proposed order should be filed with the Court *prior* to the deadline. Additionally, subsequent fee petitions would not be approved if an accounting is delinquent (without a court-ordered extension) or until the accounting has been approved.

Multiple Wards (Husband & Wife or Sibling Group)

When a guardian conducts one billable activity that is for the benefit of more than one related ward, the guardian should divide the billing equally between all three fee petitions. However, in a situation where that is not possible - where, for example, the billable time is only 1/10th of an hour and not divisible for billing purposes, the guardian should bill only one ward and keep track of such billing. In that way, the next time that situation comes up with the same husband and wife or the same sibling group, the guardian can make sure that the ward who was billed the last

time is not billed again. The guardian should essentially take turns billing the wards in this situation - so as to be as equitable as possible.

Agency Guardians

Agency guardians may bill fees for discussing a ward at an internal agency staff meeting. And such billing should be reasonable and any extraordinary amount of billing in that regard should be accompanied by written justification - demonstrating the exceptional circumstances.

Case Specific Reductions

At the Court's discretion and after the guardian has been given an opportunity to be heard, the Court may reduce a guardian's fees due to a guardian's individual failures to meet his/her statutory or court-ordered responsibilities. A history of repeated non-compliance may result in a reduction of the guardian's fee rate. However, individual instances of non-compliance may also be appropriate for one-time reductions in fees, as opposed to a permanent rate reduction.

Examples of such non-compliance are:

- late filings
- failure to notify the Court of the ward's relocation
- failure to notify the Court of the current address and telephone number of the guardian
- failure to provide required copies of documents/pleadings to all interested parties, including the ward, when applicable
- failure to timely close the guardianship
- failure to properly transfer the guardianship to the appropriate jurisdiction

None of the Workgroup members expressed any objections in this regard and such language should be included in any proposed guidelines.

Mandatory Pro Bono Reporting Requirements

The professional guardians should be required to provide a current list of case names and case numbers on an annual basis, specifically designating which cases are pro bono cases. Guardians should be directed to satisfy that requirement by filing a new Application for Appointment as Guardian annually or filing a List of Cases annually with the court. The Court will benefit from knowing how many cases a guardian has active on a pro bono basis. Such information could be considered in evaluating any requests for deviation from the standard experienced based fee rates and would assist the court in finding successor guardians when necessary. In this way, the court can avoid asking an already burdened guardian, who has a high number of pro bono cases, to accept a pro bono case.

Procedural Rules

1. The fees and costs awarded to date are to be in the petition and order. Time periods covered are to be stated in the petition and order. An amended petition or new order will be required if the petition or order omits these requirements.
2. Petitions for fees are to include an itemized statement of services, expenses, and the rate charged for services.
3. Notices to, or signature of, guardian of the property and/or the Veterans Administration must be submitted with the petition for fees when applicable.
4. Proposed orders for fees are to include blank spaces and the court will fill in the amounts.
5. The itemization of services shall be listed in chronological order.
6. Billing is to be done in tenths of an hour.
7. Calls to and from the clerk, the administrative staff of the court, the general magistrate's assistant or the judicial assistant for issues relating to guardian error should not be billed.
8. Non-substantive cover letters to the clerk should not be billed.
9. Time spent to review orders/instruction from the court resulting from the guardian's failure to file documents on a timely basis or otherwise meet court-ordered or statutory obligations, and work to produce amended documents as a result of such non-compliance, shall not be billed.

CONCLUSION

We respectfully submit the above recommendations for your review and approval. With your approval, Sean Cadigan and Keela Samis will draft a proposed administrative order to implement the new fee structure and rules. The proposed administrative order will then be sent to our respective Chief Judges for their consideration. That process will involve Court Counsel for each Circuit reviewing the proposal and making a recommendation to the Chief Judge(s).

Finally, the Workgroup determined that our courts would benefit from the development of form fee petitions and form logs, including common language that would be universally accepted and recognized in each Circuit. The Workgroup intends to continue working in that regard as a separate project.

Thank you for your consideration of our Report.

MEMORANDUM

TO: Hillsborough County Professional Guardians
FROM: General Magistrate Sean Cadigan
RE: Guardian Fee Changes
DATE: December 29, 2004

I hope that you have all enjoyed a safe and happy Holiday Season. I would like to thank each of you for your hard work on behalf of the wards of this court. It has been my pleasure, since coming into the Division in February, to get to "know" our local guardians, through reviewing your guardianship files and your participation in hearings or administrative projects involving guardianship.

Those of you who attended my meeting with our professional guardians, at the courthouse back in June, might remember me talking about forming a joint circuit workgroup with members from Pinellas and Hillsborough Counties to address guardian fees and procedures. Some of you also know that your local chapter of the Florida Statewide Guardianship Association had written Judge Sexton to ask her to consider a change in the prevailing guardian fee schedule, including a rate increase. I am happy to report that the workgroup was formed and it has made significant progress with regard to this issue.

I have enclosed, for your perusal, a copy of the written report from this Joint Circuit Workgroup on Fees. As you will see, professional guardians from both circuits and guardianship attorneys actively participated in the efforts of the Workgroup. This Report was delivered to the administrative judges for both circuits; and while Pinellas County expects to obtain approval by the end of January, Judge Sexton has already reviewed the Workgroup's recommendations and has approved an informal implementation, effective January 1, 2005. We will be seeking an administrative order from our Chief Judge to formalize the policies and procedures and to make it a part of the official records for our Circuit. However, Judge Sexton strongly supports the recommended changes, which includes a raise for our most experienced guardians and an elimination of the two-tiered "guardian" versus "clerical" billing structure. It is anticipated that these changes will help expedite the review of the fee petitions and, as a result, the Judge indicated that she would agree to apply the new policies and procedure for guardian activity occurring on or after January 1, 2005. Guardian activity conducted

through the end of 2004 must be submitted under the old system and will be reviewed using that two-tier fee schedule.

Please take some time to review the enclosed Report and familiarize yourself with the changes. Should you have any questions, please feel free to contact me at 276-8517 or you may call Marcie Larkin, from the Elder Justice Center, at 276-2726.

As you will see, the new fee schedule is based on the number of years of experience that a professional guardian has. However, you are afforded the opportunity to request that Judge Sexton, as Administrative Judge for the Division, review your hourly rate for a possible increase. For example, a guardian with only four years of experience may have taken on a particularly high volume of cases, including *pro bono* guardianships, and may have experience handling particularly complicated matters or some other educational background or experience that may justify the Court modifying the standard fee rate. If you feel that you fit in such a category and wish for your rate to be evaluated further, it will be necessary for you to submit a detailed written request to the Court. Until further notice, such requests should be submitted to the Court's Elder Justice Center for processing. The request should set forth all the factors that you believe support an increase in your hourly rate and should include substantiating documents when appropriate. How much or how little you submit will be your choice, but the professional guardian has the burden of convincing Judge Sexton that a modification is warranted, as the ultimate decision in this regard will be hers as the Administrative Judge for the Division.

Once Pinellas County has obtained their Administrative Judge's approval, we will be working on proposed "matching" administrative orders that will set forth the specifics as clearly as possible in each Circuit. In the meantime, rely on the details of the enclosed Report and ask questions as necessary. It is my sincere hope that these changes will achieve fair results for both our wards and our professional guardians and will make the fee process much less cumbersome, thereby enabling the turn-around-time for approval to be much quicker. The Workgroup intends to continue exploring the possibility of developing a form petition for your use, with standard language or codes that could even further expedite the review process and avoid some of the misunderstandings that have occurred in the past, simply because we had different guardians billing the same types of activities in different ways or with varying and sometimes confusing descriptions.

Please accept my sincerest wishes for a New Year filled with good health and happiness.

SOC/ms

Copies to: Honorable Susan Sexton, Administrative Judge
 Marcia Larkin, Esq., Elder Justice Center

ADMINISTRATIVE OFFICE OF THE COURTS
GENERAL MAGISTRATE
THIRTEENTH JUDICIAL CIRCUIT OF FLORIDA

SEAN O. CADIGAN

PROBATE GUARDIANSHIP AND TRUST

MEMORANDUM

TO: Hillsborough County Professional Guardians
FROM: General Magistrate Sean O. Cadigan *SC*
RE: Filing Guardian Fee Petitions Implementing Approved Changes
DATE: February 9, 2005

I am writing in an effort to further clarify some issues that will affect the filing of guardian fee petitions. As you know, Judge Susan Sexton has approved an implementation of the new procedures for guardian fees that were established through our joint circuit workgroup with members from Pinellas and Hillsborough counties. A copy of the written report from the Joint Circuit Workgroup on Fees, outlining the new procedures, was provided as an attachment to the previous Memorandum that I sent you in December of last year. As previously indicated, the effective date of these changes was January 1, 2005. This means that guardian activity occurring on or after January 1, 2005 will be subject to the new policies and procedures for reviewing fee petitions, as outlined in the written report from the Joint Circuit Workgroup on Fees.

While there will undoubtedly be a transition period as a result of the implementation of these new policies and procedures, please be advised that your time frame for submitting guardian fee petitions should not change; rather, your next fee petition should be filed as it normally would, six months after the last petition was submitted. In doing so, you will most likely find that you incurred guardian fees and costs both before January 1, 2005 and also after January 1, 2005 within the same fee petition period. Since the new policies and procedures for reviewing guardian activity are effective as of January 1, 2005, please note that any guardian activity submitted in your next fee petition that covers activity prior to January 1, 2005, must be submitted according to the former bi-level billing requirements (distinguishing clerical from guardian related duties) together with the approved \$60/hour for guardian duties and \$25/hour for clerical duties. Then, you should subtotal hours and fees/costs for the guardian activity occurring prior to January 1, 2005. Next, any guardian activity submitted in that same fee petition for

activity on or after January 1, 2005 must be submitted in accordance with the implemented changes as they pertain to you respectively. After detailing this information, please subtotal the hours and fees/costs for the guardian activity on or after January 1, 2005. Please do not file two separate fee petitions to achieve this result. By including all six months of guardian activity in this fashion, the court will be able to effectively and efficiently transition into implementing the new policies and procedures. We realize that this will complicate the preparation of the fee petition, but please remember that it will only substantially affect that one period.

In addition, the fee narrative/itemized statement of account attached to petitions for fees regarding guardian activity on or after January 1, 2005, will need to include information in a format that will make review of the request efficient. Due to the elimination of the guardian versus clerical distinction, the new changes include certain safeguards to avoid potential fee inequities in the following categories:

- | | |
|--|---|
| 1) Bill paying related activity | 2.0 hours per month maximum, without detailed explanation |
| 2) Shopping related activity | |
| a) Ward resides in home | 2.5 hours per month maximum, without detailed explanation |
| b) Ward resides in facility | 1.0 hours per month maximum, without detailed explanation |
| 3) Clerical related activity
(e.g. filing, faxing, copying) | 1.0 hours per month maximum, without detailed explanation |

For each line-item entry that fits into a safeguard category, you must identify the specific safeguarded category in which the line-item belongs. To do so, it will be necessary to place, to the left or to the right of the description, a letter "B" to represent a bill paying entry, a letter "S" to represent a shopping related entry, and a letter "C" to represent a clerical related activity. Additionally, within the fee narrative/itemized billing statement, a subtotal for each of these safeguard categories shall be provided at the end of *each month*. To illustrate, an example has been provided as an attachment to this Memorandum (*See Attachment A*). Your cooperation is critical to ensure that petitions will be considered promptly under the new policies and procedures. We realize that this requires a modest additional effort on your part in preparing your fee petitions. But, by providing the information in this manner, it will significantly facilitate the court's review of the reasonableness of the services provided. It is anticipated that adherence to these new procedures will dramatically reduce the turnaround time for fee approval.

Other safeguards, in addition to those provided in this Memorandum, are also implemented within the new changes which must be followed. Those safeguards are referenced in the written report from the Joint Circuit Workgroup on Fees, to wit: regarding travel vs. mileage and arranging transportation/appointments/attendance at appointments. While these

safeguards to not have specific caps set, they should nonetheless be taken into consideration when completing the fee narrative/itemized account.

As we enter into this transition phase together, it may be necessary to periodically make adjustments in order to give full force and effect to the new policies and procedures. For this, I thank you in advance for your continued consideration and support. Please know that our collaborative efforts will better serve the Ward, as well as you as the guardian, and also the court by ensuring that your petitions for fees are fairly and promptly considered. If you have any questions concerning the new guardian fee changes or any information contained in this Memorandum, you are welcome to contact me at (813) 276-8517 or Marcie Larkin at the Elder Justice Center at (813) 276-2726. I, again, thank you for your continued efforts as we move forward on this issue together.

ATTACHMENT

NOTE: In this example, fees are assessed at a guardian rate of \$55.00 per hour.

<u>Date of Service</u>	<u>Description of Services</u>	<u>Hours</u>	<u>Amount</u>	
1/1/05	*B Write checks to TECO for monthly payments.	.1	\$5.50	
1/12/05	*C Fax copies of court order to Ward's doctor and file copy of fax confirmation.	.1	\$ 5.50	
1/15/05	Spoke with Ward's doctor re: fax, contents of order, and status of Ward.	.2	\$11.00	
1/16/05	*B Write checks to Verizon, and City of Tampa Utilities for monthly payments.	.2	\$11.00	
Subtotals:	Bill paying .3 hours		\$16.50	amount
	Shopping _____ hours		_____	amount
	Clerical .1 hours		\$5.50	amount
2/2/05	Attend quarterly care plan meeting re: Ward.	2.0	\$55/hr	\$110.00
2/6/05	*S Bought three (3) nightgowns for Ward at Wal-Mart with miscellaneous toiletries	.5	\$55/hr	\$27.50
2/8/05	Visit Ward at facility and delivered nightgowns and toiletries purchased.	1.0	\$55.00	\$55.00
Subtotals:	Bill paying _____ hours		_____	amount
	Shopping .5 hours		\$27.50	amount
	Clerical _____ hours		_____	amount

Thirteenth Judicial Circuit Guardian Fee Workgroup

FINAL REPORT

August 3, 2009

The 13th Judicial Circuit Guardian Fee Workgroup was established based on a request from Judge Claudia R. Isom. Noting that the last workgroup met in 2004, approximately five years ago, Judge Isom wanted to form a group, to take a look at what progress has been made since the 2004 workgroup met, and to see if there were any new issues that need to be addressed by the Court.

Workgroup members are: Magistrate Sean Cadigan, Jennifer Branch, Tamara Cribben, DeeWynn Cox, Lona DiCerb, Jill Giordano, Julie Goddard, Julia Kite-Powell, Shelley Mirpuri, Henry Nobles, Joe Ellen Rowe, Teri St. Hilaire, Russell Shenk, Douglas Stalley, Russell Winer, and Nicole Woodard.

The workgroup met on April 24 and June 5, 2009. The workgroup submits the following recommendations to Judge Claudia R. Isom:

Stipend:

The idea of a stipend, paid to a professional guardian at the time of their appointment, was presented to the workgroup. As many guardians pointed out, there is a considerable amount of work to be done, when a guardianship is established. Current guidelines allow for a professional guardian to petition for fees after three months, but not many guardians are currently doing this. Some members appeared to be in favor of a stipend, but no consensus was reached, as to a reasonable amount, or whether most guardians would be in favor of a stipend. Currently, there are no circuits in Florida, which allow a stipend.

This issue should be explored further, as a separate project.

Change in Guardian Fee Rates:

A statewide fee survey was conducted. Guardian fees across the state vary from \$40.00 per hour, to as high as \$150.00 per hour. Many circuits have varying rates, depending on the guardian's level of experience, and the complexity of the case. One circuit establishes the guardian's rate of pay, depending on the percentage of pro bono cases they carry.

Most workgroup members felt an overall increase in guardian rates of pay is warranted. Most also believed that the timeframes that separate the pay rates should be narrowed. Some concern was raised over the proposed pay increase, given the current economic climate.

The following pay scale was proposed:

Years 1 through 3	\$50.00 per hour
Years 3 through 5	\$65.00 per hour
Over 5 years	\$80.00 per hour

A more modest increase should also be considered:

Years 1 through 3	\$45.00 per hour
Years 3 through 5	\$60.00 per hour
Over 5 years	\$75.00 per hour

Currently, in this circuit, we have the following number of guardians in each pay scale, with the majority of guardians on the low end of the scale:

\$40.00 per hour (One to five years)	7 guardians
\$55.00 per hour (Five to ten years)	6 guardians
\$70.00 per hour (Over ten years)	3 guardians

With the proposed "narrowing" of the experience required between pay scales, the numbers would shift, as indicated below:

One to three years	4 guardians
Three to five years	3 guardians
Over five years	9 guardians

Ward Visitation/Billing for Visits:

In general, professional guardians should visit monthly. If more frequent visits are required, the professional guardian should explain, in his or her billing entry description, why the extra visit was necessary, and describe how the visit benefitted the ward. If a guardian chooses to use a companion service for social visits to the ward, guardians should check to see if the agency requires a minimum time (e.g. two hour minimum), and if the hourly charge is less than the guardian's rate of pay.

No changes to existing policy are recommended.

Banking Issues/Direct Deposit:

Currently, professional guardians are strongly encouraged to have all of a ward's monthly income directly deposited. Of course, there are occasions when a direct deposit is not possible. Guardians have been asked to give detail on a fee petition, or in the billing statement, if they have to deposit a check that could not be directly deposited (e.g. refund check). Guardians occasionally also have to conduct banking business in person, at a branch office. Guardians should offer a more detailed description of the duties performed, to show the court that the visit was necessary, and in the ward's best interest.

No changes to existing policy or procedure are recommended.

Doctor Visits:

It was agreed that guardians must attend certain appointments with their wards, especially visits to new doctors, or specialists. It is usually not necessary for the guardian to attend routine appointments with an established physician. Historically, guardians have been encouraged by the court, to have a companion or caregiver accompany the ward to those visits, where the guardian's presence was not required.

Workgroup members agreed that the guardian should offer details for any appointment he/she attends with the ward. Generally speaking, entries that have a high level of detail, or justification as to why the guardian had to attend the appointment, have not been reduced by the court.

No changes to existing policies are recommended.

Monthly Caps for Bill Pay/Clerical/Shopping:

The 2004 Guardian Fee Workgroup recommended the following caps on certain billable guardian duties:

<i>Bill paying</i>	<i>2 hours per month</i>
<i>Shopping</i>	<i>2.5 hours per month if ward at home, 1 hour per month, if ward in a facility</i>
<i>Clerical</i>	<i>1 hour per month</i>

The 2004 Workgroup agreed that these monthly caps could be exceeded, if an explanation was included.

Some members voiced a desire to eliminate the caps, stating that professional guardians have sufficient training and knowledge to meet the needs of their wards, and that monthly caps on certain duties are unnecessary, and should be eliminated. After discussion, most members showed support for leaving the caps in place, with the understanding that the caps can be exceeded, if a reasonable explanation is provided to the court.

No changes to existing policies are recommended.

CONCLUSION

It is respectfully requested that the Court consider the workgroup recommendation as to a possible guardian rate increase at this time.

GUARDIAN FEE CHECKLIST

Petition Filed; Separate Petitions for Fees & Costs; Billing Statement Only

Date Petition(s)/Billing Statement filed: _____; Date file received by EJC: _____

Proposed order provided; E-mailed attorney for proposed; date received: _____

Hold Fees? Yes No **Considerations:** Order (to File/Disapproving) dated: _____;

Review/pending Order on Guardianship Report: _____;

Professional Guardian File Deficiencies; Other: _____

Ward: _____ **Case No.:** _____ -CP- _____ **Division:** _____

Type of Guardianship: Person Person & Property Property
 Plenary Limited Minor Voluntary VA

Attorney: _____ Guardian: _____

Current Guardian of Property (only if different): _____

Date Guardian Appointed: _____ Successor Guardian? Yes No

CURRENT Billing Period (this petition) _____ to/through _____

• Rates Billed \$ _____ /hr.; \$ _____ /mile • Approved Rates? Yes No

• Total hours stated: _____ • Total hours billed: _____ • Hour Variance: _____

• Fees Requested: \$ _____ • Costs Requested \$ _____ • Total: \$ _____

• Discrepancies between Billing & Petition Yes No • Mathematical errors? Yes No

Explanation and/or corrected totals: _____

• Notice and certificate of service given to:

- Attorney Yes No N/A
- Ward, if limited or voluntary Yes No N/A
- Interested parties Yes No N/A

• If voluntary or VA, consent filed? Yes No N/A

• Objections filed? Yes No N/A

Total Assets from last Accounting filed: \$ _____ Date: _____

• Amount of total liquid assets \$ _____

A. Fees from Last Two Billing Periods:

1. _____ to _____

- Amount requested (fees & costs) \$ _____
- Amount awarded (fees & costs) \$ _____

2. _____ to _____

- Amount requested (fees & costs) \$ _____
- Amount awarded (fees & costs) \$ _____

B. Total of all fees awarded to date \$ _____

◇ Bill-paying activity:

- Does any month exceed the 2 hour maximum cap? Yes No N/A
- If yes, is there a justified explanation provided? Yes No N/A

◇ Shopping related activity for the ward:

- Does any month exceed the respective cap? Yes No N/A
(2.5 hours/mo. Ward at home; 1.0 hour/mo. Ward at facility)
- If yes, is there a justified explanation provided? Yes No N/A

◇ Clerical activity, such as copying/faxing/filing:

- Does any month exceed the 1 hour maximum cap? Yes No N/A
- If yes, is there a justified explanation provided? Yes No N/A

Comments:

Recommendations to the Court based on Discrepancies and Comments above:

Fees appear reasonable		Fees charged without description	
Fees not charged at approved rates		Fees issue - over monthly cap without explanation, for: <input type="checkbox"/> bill paying <input type="checkbox"/> shopping <input type="checkbox"/> clerical	
Fees issue- Other (<i>explanation above</i>)		Fees issues - fees excessive/not customarily chargeable to ward (<i>explanation above</i>)	
Order Granting partial fee reserving jurisdiction		Order to File Supplement	

Fees Reviewed by: _____ Date: _____

Additional Comments:

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, STATE OF FLORIDA
PROBATE, GUARDIANSHIP, TRUST AND MENTAL HEALTH DIVISION

IN RE: THE GUARDIANSHIP OF

██████████,
Incapacitated Ward.

CASE NO.: █-CP-█

DIVISION: A

ORDER DENYING PETITION/MOTION WITHOUT PREJUDICE

THIS CAUSE having come before the Court on the PETITION FOR ORDER AUTHORIZING PAYMENT OF COMPENSATION AND EXPENSES OF GUARDIAN filed by ██████████ on April 7, 2016, and the undersigned, having considered the allegations and having reviewed the court file and being otherwise duly advised in the facts and premises herein, finds that insufficient facts and/or documentation have been alleged/presented to permit the Court the make a determination thereon. It is therefore

ORDERED and ADJUDGED that the PETITION FOR ORDER AUTHORIZING PAYMENT OF COMPENSATION AND EXPENSES OF GUARDIAN is hereby **DENIED without prejudice**.

It is further

ORDERED and ADJUDGED that the moving party may re-file said petition or motion with additional facts/allegations/documentation in support thereof. Specifically:

The Guardian must comply with Administrative Order S-2013-040 GUARDIANSHIP PROCEDURE, dated July 18, 2013. The time billed must be in one-tenth (0.10) of an hour increments; and, the PETITION must include the certification required immediately before the guardian's signature, pursuant to Section 20 of said Administrative Order. Additionally, the rate billed should not exceed \$25.00 per hour, the rate customarily allowed for non-professional guardians in this Circuit. Although the PETITION states that the Petitioner is a professional guardian, public records of the Statewide Public Guardianship Office do not confirm that and additional information or an evidentiary hearing would be necessary to establish the appropriateness of any rate of pay in excess of the customary rate allowed for non-professional guardians. Noting the number of bills paid, for any bill paying charges, would also be helpful.

DONE and ORDERED in Chambers at Tampa, Florida, this ____ day of August, 2016.

HERBERT BAUMANN, JR.
CIRCUIT COURT JUDGE

Copies to: ██████████, Esq., via JAWS delivery

**IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, STATE OF FLORIDA
PROBATE, GUARDIANSHIP, TRUST AND MENTAL HEALTH DIVISION**

IN RE: THE GUARDIANSHIP OF

CASE NO.: 15-CP- [REDACTED]

[REDACTED],
Partially Incapacitated Ward.

DIVISION: A

**ORDER AUTHORIZING PARTIAL PAYMENT OF COMPENSATION
AND EXPENSES OF GUARDIAN AND RESERVING JURISDICTION
OVER THE REMAINING FEES AND/OR COSTS REQUESTED**

On the petition of [REDACTED] (Guardian) for an order authorizing payment of guardian fees for services rendered and expenses incurred for the benefit of [REDACTED] (the Ward), the Court having examined the Petition, including the attached detailed billing statement, as well as the contents of the court file in this proceeding and having considered the criteria established by Section 744.108(2), Florida Guardianship law, and finding that the material allegations of the petition are true, and being otherwise fully advised, it is

ORDERED AND ADJUDGED as follows:

1.) That Guardian has requested that the Court authorize \$4,390.00 as reasonable compensation for guardianship services performed from April 4, 2015, through May 18, 2016, and \$46.63 for costs incurred during that same period, totaling \$4,436.63.

2.) That the following problems was/were noted with the Petition and/or the attached detailed billing statement: Petitioner billed 0.3/hr. for every check written to pay an expense of the Ward, which is three (3) times higher than the amount of time per

bill customarily charged and authorized in this Circuit for bill paying, absent an explanation being provided. There were a total of 47 such entries (0.3 each) on the detailed billing statement, which makes the issue a significant one that the Court should consider further – only upon the presentation of competent evidence in support thereof, at a hearing.

3.) That the partial amount of \$3731.63 [\$4,390.00 minus \$705.00 for the reason(s) stated above – not yet authorizing 0.2/check for each of the 47 expense paid and billed during this period] is found to be a reasonable amount of guardian fees to be awarded *at this time without a hearing* for the service of the Guardian for the period from April 4, 2015, through May 18, 2016, based on the documentation before the Court without a hearing, and the sum of \$46.63 is found to be a reasonable amount of costs to be award to said Guardian for that period.

4.) That the Guardian of the Property of the Ward is authorized and directed to pay said partially authorized fees and costs from the assets of the Ward's estate, for a total of \$3,731.63 and that funds may be released from the restricted depository, if applicable, to pay this court-approved compensation.

5.) That the Court expressly reserves jurisdiction to award the portion of the requested fees for this period that are not being awarded at this time – upon satisfactory presentation, by the Guardian, of sufficient evidence that justifies compensation for the not-yet-approved amount.

DONE and ORDERED in Chambers at Tampa, Florida, this ____ day of August, 2016.

HERBERT BAUMANN, JR.
CIRCUIT COURT JUDGE

Copies to:

Attorney [REDACTED], Esq., via e-mail delivery

[REDACTED], via US Mail delivery to [REDACTED] FL 33610

**IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, STATE OF FLORIDA
PROBATE, GUARDIANSHIP, TRUST AND MENTAL HEALTH DIVISION**

IN RE: THE GUARDIANSHIP OF

CASE NO.: ■-CP-■

■,
Incapacitated Ward.

DIVISION: A

**ORDER AUTHORIZING PARTIAL PAYMENT OF GUARDIAN FEES &
COSTS WITHOUT HEARING AND RESERVING JURISDICTION TO
CONDUCT HEARING OVER THE BALANCE OF THE AMOUNT REQUESTED**

On the petition of ■ (Guardian) for an order authorizing payment of guardian fees for services rendered for the benefit of ■ (the Ward), the Court having examined the Petition, including the attached detailed billing statement, as well as the contents of the court file in this proceeding and having considered the criteria established by Section 744.108(2), Florida Guardianship law, and finding that the material allegations of the petition are true, and being otherwise fully advised, it is

ORDERED AND ADJUDGED as follows:

1.) That the Guardian has requested the Court authorize \$5,856.50 as reasonable compensation for guardianship services performed from April 23, 2013, through November 7, 2014, including costs/expenses.

2.) That a full determination has been made as to a portion of the fees/costs requested and considered, to date, but not as to the following specific billing/cost entry or entries, which still must be considered and for which a determination has not been made:

- a.) 3/8/2013 Expense (“Expense”) – \$631.00; and
- b.) 5/13/2014 Expense (“Vital Check”) – \$22.00.

3.) That the partial amount of \$5,2035.00 [\$5,856.50 minus \$653.00, the amount of insufficiently described expenses that were included without any substantiating documentation attached (one of which was incurred prior to the issuance of the Letters of Guardianship), which still require consideration and determination] is found to be a reasonable amount of guardian fees, under only the particular circumstances of this case, to be awarded at this time for the service of the Guardian for the period from April 23, 2013, through November 7, 2014, based on the documentation before the Court without a hearing. This determination is based on the fact that the Ward is now deceased and the written consent of the Personal Representative of the deceased Ward's probate estate has been filed, which appears to cover these fees. The approval of the amount requested shall not serve as precedent in regard to the hourly rate or rates charged in this matter, as the Court is not making a determination that the rate or rates charged by the Guardian are appropriate.

4.) That the Guardian of the Property of the Ward has already paid herself the amount she requested in fees and expenses. Therefore the Attorney for the Guardian must either set this matter for hearing on the expense amounts not yet authorized or the Guardian shall repay the amount of \$653.00 to the guardianship within fifteen (15) days of the date of this Order. This order is being entered to help offset further delay in the payment of guardian fees attributable to the judicial disposition of the full fee petition in this case.

5.) That the Court expressly reserves jurisdiction to award, as additional expenses/costs for this billing period, the portion of the requested amount that still must be considered and determined – upon satisfactory presentation, by the Guardian, of competent evidence that justifies compensation for the not-yet-approved amount.

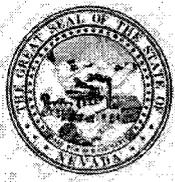
DONE and ORDERED in Chambers at Tampa, Florida, this ____ day of August, 2016.

CIRCUIT COURT JUDGE

Copies to:

██████████, Esq., via electronic delivery
██████████, via electronic delivery

Appendix E



STATE OF NEVADA
 DEPARTMENT OF HEALTH AND HUMAN SERVICES
 AGING AND DISABILITY SERVICES DIVISION

Reno Office
 445 Apple Street, Suite 104
 Reno, NV 89502

RICHARD WHITELY
Interim Director

JANE GRUNER
Administrator

BRIAN SANDOVAL
Governor

(775) 688-2964 • Fax (775) 688-2969
adsd@adsd.nv.gov

August 12, 2015

To: Chief Justice James Hardesty
 Fr: Sally Ramm
 Re: Temporary Guardianship Statutes

Following is information found during research on temporary guardianship statutes in other states:

**Source: 2014 Emergency Guardianship Statutes
 American Bar Association Commission on Law and Aging**

Note: NS = No specific language refers to language in the temporary/emergency provisions, but language in the guardianship code may apply. Numbers refer to the number of states indicating that answer.

1. Is a capacity determination a standard for Appointment?
 - a. Yes 15
 - b. No 15
 - c. N.S. 22

2. Does alleged incapacitated person have a right to counsel at hearing?
 - a. Yes 30
 - b. No -0-
 - c. GAL 4
 - d. N.S. 11

3. Does alleged incapacitated person have a right to be present at hearing?
 - a. Yes 19
 - b. No -0-
 - c. N.S. 30

4. Maximum duration of temporary guardianship:
 - a. 15 days 1
 - b. 20 days 2
 - c. 30 days 14
 - d. 45 days 2
 - e. 60 days 9
 - f. 90 days 9
 - g. 120 days 11
 - h. 180 days 4
 - i. At appointment or dismissal of petition – 4
 - j. Upon resolution of appeal or action – 1

k. N.S. 3

5. Standard of Proof	
a. Clear & Convincing	12
b. Showing of necessity	1
c. Preponderance of evidence	3
d. Substantial evidence	1
e. N.S.	32

Following are excerpts from the guardianship statutes of a few states which are relevant to temporary guardianships. There is little commonality among the states, especially as to terminology like conservatorship/guardianship, visitor/investigator/volunteer/guardian ad litem, and fiduciary/guardian. The new term for ward is “alleged incapacitated person” for a potential ward and “ruled incapacitated person” for ward.

Arizona 14.530(B)(5): The petitioner files a report from a physician, a registered nurse practitioner or a psychologist detailing the need for a guardian and the basis for the emergency unless the report is waived by the court on a showing of good cause by a party to the action.

Arizona 14.5310(C): Unless the proposed ward is represented by independent counsel, the court shall appoint an attorney to represent the proposed ward in the proceeding on receipt of the petition for temporary appointment. The attorney shall visit the proposed ward as soon as practicable and shall be prepared to represent the interest of the proposed ward at any hearing on the petition.

California Probate Code 2250 (c)(1): A licensed professional fiduciary shall include in the petition a proposed hourly fee schedule or another statement of proposed compensation from the estate of the proposed ward for services performed...This proposal shall not preclude a court from later reducing the petitioner's fees or other compensation.

California Probate Code 2250 (c)(2)(B): Also included in the petition for a temporary guardian will be an agreement to accept the appointment and the prior relationship between the petitioner and the proposed ward.

California Probate Code 2250(6)(a): The court investigator shall do all of the following prior to the hearing, unless it is not feasible to do so: Interview the petitioner and the proposed ward personally; interview proposed conservator if different from the petitioner; interview the proposed conservatee's spouse or registered domestic partner, relatives within the first degree, neighbors, and, if known, close friends. Interview the proposed conservatee's relatives within the second degree before the hearing; inform the proposed conservatee of the contents of the citation, the nature, purpose, and effect of the temporary conservatorship, and of the right of the proposed conservatee to oppose the proceeding, to attend the hearing, to have the matter of the establishment of the conservatorship tried by jury, and to be represented by legal counsel...

California Probate Code 2250(6)(c): If the investigator does not visit the conservatee until after the hearing at which a temporary conservator was appointed, and the conservatee objects to the appointment of the temporary conservator or requests an attorney, the court investigator shall report this information promptly, and in no event more than three court days later, to the court.

California Probate Code 2250(6)(d): If it appears to the court investigator that the temporary conservatorship is inappropriate, the court investigator shall immediately, and in no event more than two court days later, provide a written report to the court so the court can consider taking appropriate action on its own motion.

California Probate Code 2252(a): A temporary guardian...has only those powers and duties of a guardian or conservator that are necessary to provide for the temporary care, maintenance,

and support of the ward and that are necessary to conserve and protect the property of the ward from loss or injury. Includes medical care (b)(1-2).

California Probate Code 2252(e): A temporary conservator is not permitted to sell or relinquish, on the conservatee's behalf, any lease or estate in real or personal property used as or within the conservatee's place of residence without the specific approval of the court...[after] notice of the hearing and... finding that the action is necessary to avert irreparable harm to the conservatee.

California Probate Code 2253(a): If the temporary conservator of the person proposed to move the conservatee to a place other than that where they resided prior to the commencement of the proceedings, that power shall be requested of the court in writing unless previously ordered by the court. The request shall be included with the petition for temporary conservatorship. The request shall specify in particular the place to which the temporary conservator proposed to move the conservatee, and the precise reasons why it is believed that the conservatee will suffer irreparable harm if the change of residence is not permitted, and why no means less restrictive of the conservatee's liberty will suffice to prevent that harm.

California Probate Code 2253(g): ...The temporary conservator may not be authorized to move the conservatee from this state unless it is additionally known that such removal is required to permit the performance of specified non-psychiatric medical treatment, consented to by the conservatee, which is essential to the conservatee's physical survival. A temporary conservator who willfully removes a temporary conservatee from this state without authorization of the court is guilty of a felony.

California Probate Code 2254(a): A temporary conservator may remove a temporary conservatee from their residence without court authorization if an emergency exists. Emergency is described as the place of residence being unfit for habitation or if the temporary conservator determines in good faith based upon medical advice that removal from the place is required to provide medical treatment to alleviate severe pain or to diagnose or treat a medical condition which, if not immediately diagnosed and treated, will lead to serious disability or death.

Florida Statute 744.3031(1): The powers and duties of the emergency temporary guardian must be specifically enumerated by court order. The court shall appoint counsel to represent the alleged incapacitated person during any such summary proceedings, and such appointed counsel may request that the proceeding be recorded and transcribed.

Florida Statute 744.3031(3): The court may appoint an emergency temporary guardian on its own motion if no petition for appointment of guardian has been filed at the time of entry of an order determining incapacity.

Florida Statute 744.3031(5): The court may issue an injunction, restraining order, or other appropriate writ to protect the physical or mental health or safety of the person who is the ward of the emergency temporary guardianship.

Florida Statute 744.3031(9)(a-b): An emergency temporary guardian shall file a final report no later than 30 days after the expiration of the emergency temporary guardianship. A court may not authorize any payment of the final fees of the temporary guardian or his or her attorney until the final report is filed.

Oregon Revised Statute 125.600(3): A temporary fiduciary may be appointed only for a specific purpose and only for a specific period of time. The period of time may not exceed 30 days. The court may extend the period of the temporary fiduciary's authority for an additional period not to exceed 30 days upon motion and good cause shown. The court may terminate the authority of a temporary fiduciary at any time.

Oregon Revised Statute 125.605(4): The court shall appoint a visitor if the petition seeks appointment of a temporary guardian or conservator. Within three days after the appointment of the temporary fiduciary, the visitor shall conduct an interview of the respondent. The visitor

shall report to the court within five days after the appointment of a temporary fiduciary. The report of the visitor shall be limited to the conditions alleged to support the appointment of a temporary fiduciary.

Oregon Revised Statute 125.600(5): ...no fee shall be charged to any person filing an objection to the appointment of a temporary fiduciary or to the extension of a temporary fiduciary's authority.

Texas Estates Code Title 3 Section 1251.002: A person for whom a temporary guardian is appointed under this chapter may not be presumed to be incapacitated.

Texas Estates Code Title 3 Section 1251.004: On the filing of an application for temporary guardianship, the court shall appoint an attorney to represent the proposed ward in all guardianship proceedings in which independent counsel has not been retained by or on behalf of the proposed ward.

Texas Estates Code Title 3 Section 1251.008: At a hearing under this subchapter, the proposed ward has the right to: (1) receive prior notice; (2) be represented by counsel; (3) be present; (4) present evidence; (5) confront and cross-examine witnesses; and (6) a closed hearing if requested by the proposed ward or the proposed ward's attorney.

Texas Estates Code Title 3 Section 1251.009: If the applicant for a temporary guardianship is not the proposed temporary guardian, a temporary guardianship may not be granted before a hearing on the application unless the proposed temporary guardian appears in court.

Texas Estates Code Title 3 Section 1251.011: A court may not ordinarily appoint the Department of Aging and Disability Services as a temporary guardian under this chapter. The appointment of the department as a temporary guardian under this chapter should be made only as a last resort.

Revised Code of Washington 11.88.045 (1)(a): Alleged incapacitated individuals shall have the right to be represented by willing counsel of their choosing at any stage in guardianship proceedings. The court shall provide counsel to represent any alleged incapacitated person at public expense when either: (i) The individual is unable to afford counsel, or (ii) the expense of counsel would result in substantial hardship to the individual, or (iii) the individual does not have practical access to funds with which to pay counsel. If the individual can afford counsel but lacks practical access to funds, the court shall provide counsel and may impose a reimbursement requirement as part of a final order.

Revised Code of Washington 11.88.045 (1)(b): Counsel for an alleged incapacitated individual shall act as an advocate for the client and shall not substitute counsel's own judgment for that of the client on the subject of what may be in the client's best interests. Counsel's role shall be distinct from that of the guardian ad litem, who is expected to promote the best interest of the alleged incapacitated individual, rather than the alleged incapacitated individual's expressed preferences.

Revised Code of Washington 11.88.045 (4): In all proceedings for appointment of a guardian or limited guardian, the court must be presented with a written report from a licensed physician, psychologist or advanced registered nurse practitioner who have personally examined and interviewed the alleged incapacitated person within thirty days of preparation of the report to the court and shall have expertise in the type of disorder or incapacity the alleged incapacitated person is believed to have.

Prepared by Sally Ramm, Elder Rights Attorney
Nevada Aging and Disability Services Division

Appendix F

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

MEMORANDUM

TO: Guardianship Commission

FROM: Hans Jessup, Chair of the Guardianship Data and Technology Workgroup

DATE: October 15, 2015

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

The Guardianship Data and Technology Workgroup (GDT) met on October 1, 2015 and October 15, 2015. During these meetings the GDT reviewed best practices of other states, national standards, and local court processes for managing guardianship matters. Through our review of this issue, we narrowed our initial approach to determine what the GDT would recommend the Nevada Judiciary begin doing now. This approach was used primarily to identify the information needed for Guardianship matters as the GDT begins considering what data and technology should be used to better manage these cases going forward. Accordingly, the GDT has the following recommendations:

1. The Guardianship Commission requests the State Court Administrator require the use of an information sheet to gather necessary guardianship information, which may then be used by the court to manage guardianship cases throughout the life of the case. A draft data information sheet used in the Second Judicial District Court is attached for your consideration and review. If there are more than one requested guardian on a case, then each potential guardian should submit a separate information sheet. Nevada Revised Statute (NRS) 3.275 allows for the use of a form approved by the State Court Administrator for obtaining information regarding the nature of each civil case filed in the district court. Accordingly, we feel that this form could be approved specifically for use in filing guardianship related matters.
2. It is also recommended that courts create the following reports to be reviewed by each District's Administrator or Chief Judge at least quarterly. District Courts throughout the state need to administratively review guardianship cases and determine if files need to be cleaned up or addressed. These reports will assist in their management of this task.
 - a. Time to Disposition – A report that shows the average amount of time (days) in which a guardianship matter is being disposed. This is necessary, as national standards suggest guardianship matters should be disposed, by the appointment of a guardian, within 90 days of filing. Cases undisposed after 90 days should warrant additional court attention.
 - b. Age of Active Pending Case - This report is used to determine the age of active cases pending disposition before the court. Timeframes should be used to determine the age of current cases pending adjudication (e.g., 0-30 days, 30-60 days, 60-90 days, and 90-120). Understanding the magnitude of filings within these time frames will help determine where court resources should be focused.

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- c. Clearance Rates – A court should strive to dispose of as many cases as are filed. Clearance rates can be used to determine if additional resources or staff are needed to ensure the court is able to keep up with the cases being filed in the court.

It should be noted that some GDT members expressed concerns about the costs of developing these reports for rural courts. While limited funds are available through the Administrative Office of the Courts, courts can contact the Nevada Supreme Court, Research and Statistics Unit to receive technical assistance on how best to capture and report this information.

3. It is recommended that an educational class or training regimine be created for judges, and if appropriate court staff, on what to look for or how to review inventories and accountings.

Future GDT meetings will consider best practices and what measures should be established for post adjudication activity. Additionally, court system capabilities will be reviewed. Together this information will assist the GDT and this Commission in developing a road map and reasonable standards that the Nevada Judiciary can use to develop systems that better manage guardianship cases going forward.

Attachments
Information Sheet

Supreme Court of Nevada
ADMINISTRATIVE OFFICE OF THE COURTS

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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

MEMORANDUM

TO: Guardianship Commission
FROM: Guardianship Data and Technology Workgroup
DATE: February 18, 2016
SUBJECT: Report and Recommendations of the Guardianship Data and Technology Workgroup

The Guardianship Data and Technology Workgroup (GDT) met in December 2015 and January 2016. During these meetings the GDT discussed the implementation of the Commission approved recommendations of Court Performance Measures (CPM) and utilization of a Guardianship Data Information Sheet, and how best to facilitate the implementation of these recommendations.

When reviewing how to implement Court Performance Measures, the GDT determined that current Nevada law concerning guardianship matters complicates the implementation of Age of Active Pending Case and Time to Disposition performance measurements due to how cases are to be filed, tracked, and adjudicated. For instance, NRS 159.057 allows for, but does not require, multiple proposed wards to be filed under a single petition. A case filed with multiple wards therefore cannot be tracked individually and complicates when a case is closed, reopened, and adjudicated. Further, CPM cannot be uniformly applied to guardianship matters since some cases reflect multiple wards and other cases reflect single wards. To address this issue, the GDT recommended to the Guardianship Commission that a court rule be established directing that guardianship cases be filed with a single petition for a single ward. Members of the Commission expressed concern over the impact of imposing filing fees for each individual considering multiple parties can currently file under a single petition. At the request of the Commission, this issue was tabled until it could be further researched by the GDT and AOC staff, including if a remedy existed for waiving filing fees.

At the next Commission meeting, the GDT presented their findings on filings fees and waivers. The GDT presented that filing fees are being assessed inconsistently in the State. In addition, the GDT explained the impact of a court rule requiring separate petitions for separate wards would not cause a significant fiscal impact for minor guardianships, as they typically have no filing fees associated with them due to not having estate values. For adult guardianships the fiscal impact would also be minimal, as it appears most adult guardianship matters generally only have one ward per petition. Upon reviewing the applicability of fee waivers on guardianship matters, the GDT could find no additional mechanism for waiving filing fees other than a request to proceed in *forma pauperis*.

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The GDT has discussed the implementation of CPM in all District Courts. Since the GDT workgroup was created, the Judicial Council of the State of the Nevada, Court Administration Committee created the USJR Phase III Working Group which is currently formulating CPM for Age of Active Pending Case and Time to Disposition for all case types, including guardianship matters. The GDT, which has several members on the USJR Phase III working group, is taking into consideration the Phase III model and methodology being created and standardized to ensure consistent statewide CPM.

In addition to the discussions of CPM, the GDT has drafted and disseminated a draft of the Guardianship Information Sheet to the GDT members' courts for consideration and feedback. The draft Guardianship Information Sheet was created by combining three currently used guardianship information sheets, as well as by adding additional information required by NRS and additional items discussed in the GDT and Commission meetings. Once the information sheet is reviewed, the GDT will submit it to the Commission and seek permission to disseminate it statewide for review and comment.

Finally, the GDT has discussed and is following the implementation of various court applications being utilized by GDT members in the effort to track post adjudicatory proceedings in guardianship matters. This information sharing is enabling new ideas and the development of best practices to improve the management of guardianship matters in Nevada.

Supreme Court of Nevada
ADMINISTRATIVE OFFICE OF THE COURTS



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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.

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ESTATE VALUE \$2,500 - \$20,000

	19.013	19.020	19.030	19.031 ¹	19.3135	19.0303/AB65 ²	19.0312 ³	Ordinance	Total
Douglas	\$72	\$1.50	\$32	\$25	\$10	DCC 2.50.060 \$20	\$5 includes DCC 3.42.020	DCC 3.36.010 \$10 DCC 2.50.060 \$20	\$195.50
Carson City	\$72	\$1.50	\$32	\$25	\$20		\$10	CMC 2.35.010; CMC 2.36.010; CMC 2.37.010	\$180.50
White Pine	\$72	\$1.50	\$32	\$25	\$10	\$20	\$10		\$170.50
Esmeralda									\$170.50
Churchill	\$72	\$1.50	\$32	\$25	\$10	\$20 CC 4.90.060			\$160.50
Lyon	\$72	\$1.50	\$32	\$25	\$20 Ord. 536			LY Ord. 548 \$10	\$160.50
Nye	\$72	\$1.50	\$32	\$25	\$20 Ord. 389			Ord. 256	\$160.50
Storey									\$160.50
Lincoln	\$72	\$1.50	\$32	\$25	\$20 Ord. 2009-4 County				\$150.50
Pershing									\$149.00
Humboldt									\$145.50
Eureka	\$72	\$1.50	\$32	\$25					\$130.50
Mineral	\$72	\$1.50	\$32	\$25					\$130.50
Lander									\$130.50
Clark									NO FEE
Washoe									NO FEE
Elko									NO FEE

¹ Additional fees in civil actions. Programs for legal aid.

² AB 65 – 2009 Legislative Session NRS 19.0303 Additional fees in civil actions: Programs for court security. 1. In any county, the board of county commissioners may, in addition to any other fee required by law, impose by ordinance a filing fee of not more than \$20 to be paid on the commencement of any civil action or proceeding in the district court for which a filing fee is required and on the filing of any answer or appearance in any such action or proceeding for which a filing fee is required, except as otherwise required pursuant to NRS 19.034.

³ Additional fees in civil actions; Pro bono programs and programs for abused or neglected children and victims of domestic violence.

ESTATE VALUE \$20,001 - \$199,999

	19.013	19.020	19.030	19.031	19.0313 5 ⁴	19.0302/ AB 65 ⁵	19.0303 /AB 65	19.0312	19.0313 6	19.0315 7	Ordinance	Total
Douglas	\$72	\$1.50	\$32	\$25	\$10	\$99	\$20 DCC 2.50.06 0	\$5 includes DCC 3.42.020	\$10		DCC 3.36.010 \$10 DCC 3.48.020 \$20	\$294.50
Clark	\$72	\$3.00	\$32	\$25		\$99	\$20 includes CCC 2.32.08 0	\$10 includes CCC 2.32.040(a)	\$10	\$15 includes CCC 2.32.010		\$286.00
Carson City	\$72	\$1.50	\$32	\$25		\$99					CMC 2.35.010; NRS .0313(3); CMC 2.36.010; 19.03135; CMC 2.37.010; NRS 19.315; Totals \$50	\$279.50

⁴ Additional fees in civil actions; Programs for prevention and treatment of abuse of alcohol and drugs.

⁵ AB 65 – 2009 Legislative Session On the filing of a petition for letters testamentary, letters of administration or a guardianship, which fee does not include the court fee prescribed by NRS 19.020, to be paid by the petitioner:

- (1) Where the stated value of the estate is \$200,000 or more..... \$352
- (2) Where the stated value of the estate is more than \$20,000 but less than \$200,000 \$99
- (3) Where the stated value of the estate is \$20,000 or less, no fee may be charged or collected.

⁶ Additional fees in civil actions; Programs of mediation in cases involving custody or visitation of child; neighborhood justice centers.

⁷ Additional fees in civil actions; Programs for alternative dispute resolution.

ESTATE VALUE \$200,000+

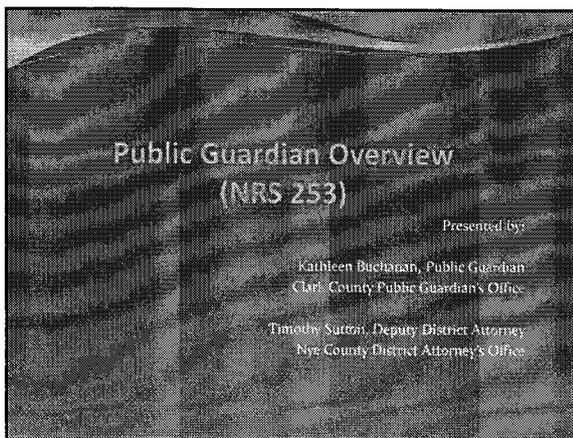
	19.013	19.020	19.030	19.031	19.0313	19.0302/ AB 65 ⁸	19.0303/ AB 65	19.0312	19.0313	19.0315 /AB 535	Ordinance	Total
Douglas	\$72	\$1.50	\$32	\$25	5	\$349	\$20 DCC 2.50.060	\$5 includes DCC 3.42.020	\$10		DCC 3.36.010 \$10 DCC 3.48.020 \$20	\$544.50
Clark	\$72	\$3.00	\$32	\$25		\$352	\$20 includes CCC 2.32.080	\$10 includes CCC 2.32.040(a)	\$10	\$15 includes CCC 2.32.010		\$539.00
Carson City	\$72	\$1.50	\$32	\$25		\$352					CMC 2.35.010; NRS .0313(3); CMC 2.36.010; 19.03135; CMC 2.37.010; NRS \$50 total	\$532.50
Washoe												\$527.50
White Pine	\$72	\$1.50	\$32	\$25	\$10	\$352					ProBono \$10	\$522.50

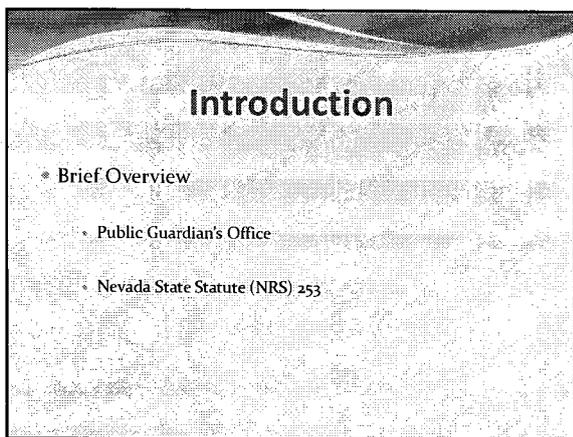
⁸ AB 65 – 2009 Legislative Session On the filing of a petition for letters testamentary, letters of administration or a guardianship, which fee does not include the court fee prescribed by NRS 19.020, to be paid by the petitioner:

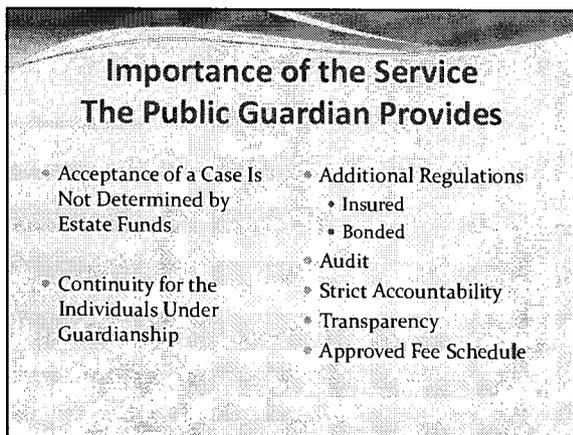
- (1) Where the stated value of the estate is \$200,000 or more..... \$352
- (2) Where the stated value of the estate is more than \$20,000 but less than \$200,000 \$99
- (3) Where the stated value of the estate is \$20,000 or less, no fee may be charged or collected.

Elko	\$72	\$1.50	\$32	\$25		\$352/\$10	\$20 includes ECC 04- 2009	\$20				\$522.50
Esmeralda												\$522.00
Churchill	\$72	\$1.50	\$32	\$25	\$10	\$352	\$20 CC 4.090.060					\$512.50
Lyon	\$72	\$1.50	\$32	\$25		\$352	\$20 LY Ord. 536			LY Ord 548 \$10		\$512.50
Nye	\$72	\$1.50	\$32	\$25		\$352/\$10	Ord. 256/\$20					\$512.50
Storey												\$512.50
Lincoln	\$72	\$1.50	\$32	\$25		\$352	\$20 Ord. 2009-04 County					\$502.50
Pershing												\$502.50
Humboldt												\$497.50
Lander												\$497.50
Eureka	\$72	\$1.50	\$32	\$25		\$352						\$482.50
Mineral	\$72	\$1.50	\$32	\$25		\$352						\$482.50

Appendix G







Mission Statement

To Protect the Social Well-Being, Economic Welfare and Dignity of Citizens While Ensuring Services Are Provided with Integrity and Accountability by Court Appointment, for Vulnerable Individuals.

Services

- Guardianship
 - Mandated
- Voluntary 60+ Representative Payeeship
 - Non-Mandated
 - Free Public Service
 - Least Restrictive

When Does the Public Guardian's Office Get Involved?

- No Family or Friends Are Able, Willing or Appropriate to Serve
- Assist Those Who Suffer from Cognitive Impairment
- Restore Quality of Life

Who Can Refer a Case?

- Anyone
- Typical Referrals Are Received from:
 - Family Members
 - Friends
 - Physicians
 - Neighbors
 - Hospitals
 - Financial Institutions
 - Law Enforcement Agencies
 - Senior Service Agencies

Who Do We Serve?

- All Ages
- Medicaid/County Recipients
- Estate Cases
- Physically Abused
- Financial Exploitation

What Is Our Role?

- Investigate the Need for Guardianship
- Protect from Alleged Physical Abuse
- Investigate Alleged Exploitation
- Restore a Quality of Life for the Individual
- Advocate on Behalf of the Individual

How Are Finances Handled?

- Budgets Developed
- Marshalling of Assets
- Paying Bills
- Filing Court Accountings

Guardianship Training Program

- Basic Training Class
 - Non-Mandated
- A Free Public Service
- Offered Bi-Monthly

Clark County Offers a 60 + Representative Payeeship Service

- Voluntary Program
- Financial Management Only
- Not a Legal Process
- Free Service to Clients
- Least Restrictive Program

Governing Statutes

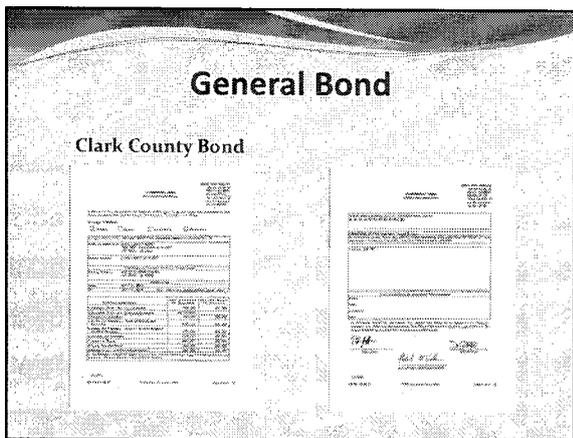
- NRS 253 – Public Guardian
- NRS 159 – Procedures in Guardianship

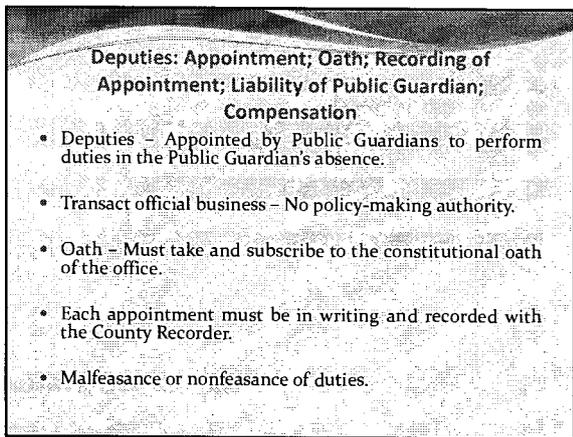
Public Guardian

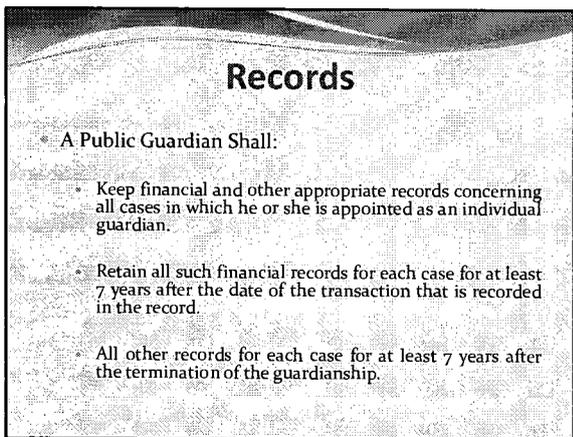
- Board of County Commissioners of each county establishes the office of the Public Guardian.
- Compensation of a Public Guardian is fixed by the Board of County Commissioners and paid out of the County General Fund.

Clark County Fee Schedule

The image shows a document header for the Clark County Board of Commissioners. Below the header is a table with two columns: 'FEE' and 'AMOUNT'. The table lists various fees such as 'Application Fee', 'Guardianship Fee', and 'Annual Fee'. At the bottom of the page, there is a section for 'APPROVED BY' with a signature line and the date '7/27/16'.







Qualifications of Person for Whom Public Guardian May Be Appointed

- Be a Resident of Nevada
- Court Determines Removal of a Guardian

Petition for Appointment

- Any Qualified Person
- Notification to Public Guardian
- Statement Signed by the Public Guardian

Powers, Duties, Rights and Responsibilities

- The Public Guardian Has:
 - Powers
 - Duties
 - Rights
 - Responsibilities

Legal Assistance

- Retain Attorneys
- Attorney Fees
- District Attorney of the County

Investigation of Financial Status, Assets and Personal and Family History of Person for Whom Public Guardian Has Been Appointed

- Investigate
- Confidential Information

Allocation of Costs Incurred in Appointment Proceedings and Administrative Costs

- Cost Authorization by the Court Only if the Estate Is Able to Pay
- The Financial Ability of the Individual to Pay Costs

Value of Guardian's Services Allowable as Claim Against the Individual's Estate; Deposit of Money Received by Public Guardian

- Reasonable Value of a Public Guardian's Service.
- Money Received in Payment of a Claim Deposited to the County General Fund.

Request for Advance of Money to Pay Expenses of Guardianship; Payment of Advances; Reimbursement of Advances from Assets of Estate of the Individual

- Advance of Money
- Revolving Fund
- Reimbursement

Reports and Budgets To and Investigations by Board of County Commissioners

- The Board of County Commissioners may:
 - Establish Regulations
 - Review Reports or Budgets
 - Investigate Any Guardianship

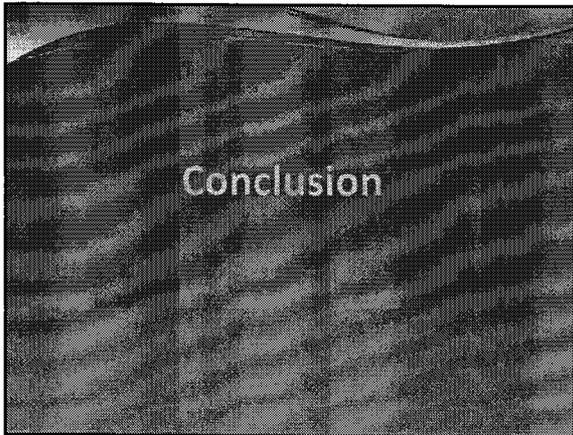
Termination of Appointment

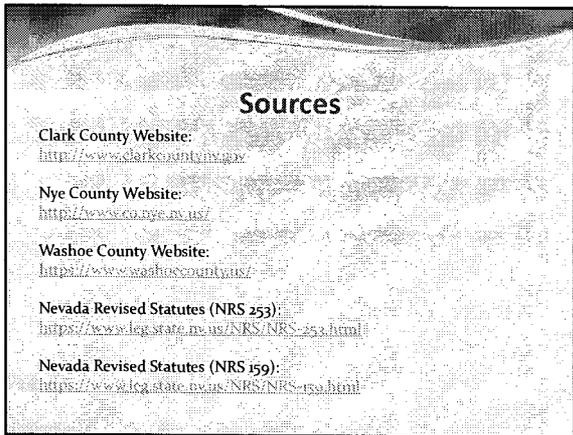
- Services No Longer Necessary
- No Pay Source (Statutory)

Examples of Clark County Forms

- Guardian's Acknowledgment of Duties and Responsibilities Form
- Certificate of Incapacity Form
- Admonishment Form
- Guardianship Referral Form
- Representative Payeeship Form

Guardian's Acknowledgment of Duties and Responsibilities Form





Nevada Public Guardians Facts

August 2015

County provided:	Office Space	Storage Space	Phone	Cell Phone	Copier	Fax	Computers	Vehicle
Churchill	Y	Y	Y	Y	Y	Y	Y	Y
Clark	Y	Y	Y	Y	Y	Y	Y	Y
Carson City	Y	N	Y	Y	Y	Y	Y	N
Douglas	Y	N	Y	N	Y	Y	Y	N
Elko	Y	N	Y	N	Y	Y	Y	Y
Esmeralda	Y	N	Y	N	Y	Y	Y	Y
Eureka	Y	N	Y	N	Y	Y	Y	Y
Humboldt	Y	Y	Y	N	Y	Y	Y	N
Lander	Y	Y	Y	N	Y	Y	Y	N
Lincoln	Y	Y	Y	N	Y	Y	Y	N
Lyon	Y	Y	Y	Y	Y	Y	Y	Y
Mineral	Y	Y	Y	N	Y	Y	Y	N
Nye	Y	Y	Y	N	Y	Y	Y	Y
Pershing	Y	Y	Y	Y	Y	Y	Y	Y
Storey	N	N	N	N	N	N	N	N
Washoe	Y	N	Y	Y	Y	Y	Y	Y
White Pine	Y	Y	Y	Y	Y	Y	Y	N

Nevada Public Guardians Facts

August 2015

County	# PG Staff	# PG Staff	# PG Staff	# Wards (active cases)	# Wards on Medicaid	Budget	Under another county office's budget	fees received in 2014
Churchill	Shannon Ernst	2	13	11	9,960.*	Human Services	4,200.	
Clark	Kathleen Buchanan	21	399	282	2,400,000.	No	524,000.	
Carson City - Storey	Deborah Marzoline	3	68	58	—	No	104,000.	
Douglas	Claudette Springmeyer	2	38	27	82,100.	No	8,560.	
Elko	Kathleen Jones	1.5	25	24	0	Human Services	6,000.	
Esmeralda	Danielle Johnson	1	1	1	0	District Attorney	0	
Eureka	Pernecia Johnson	1	2	1	0	Clerk/Treasurer	0	
Humboldt	Michael McDonald	1.5	7	7	0	District Attorney	0	
Lander	Theodore Herrera	1	1	1	0	District Attorney	0	
Lincoln	Daniel Hooge	2	2	2	5,000.*	District Attorney	0	
Lyon	Sherry Stone	1	24	22	128,330.	No	6,158.	
Mineral	Michael C. James	2	13	13	110,000.	No	0	
Nye	Pamela Webster	2	12	9	1,000.	Human Services	430.	
Pershing	Bryce Shields	1.5	20+	20+	0	District Attorney	0	
Storey	Deborah Marzoline	2.5	3	3	20,000.	No	0	
Washoe	Susan DeBoer	15	188	148	1,716,769.	No	182,731.49	
White Pine	Michael Wheable	1.5	4	4	0	District Attorney	0	

*does not include staffing expenses

Appendix H

PROFESSIONAL GUARDIANS - WHAT WE DO AND WHY

- a. Much of what professional guardians do is similar to family guardians only with more clients as all guardians must follow NRS Chapter 159.
- b. The public and private agencies also do the same work with some differences with individual County requirements and policy and due to NRS Chapter 253 which applies to Public Guardians.

- ### WHY DO PROFESSIONAL GUARDIANS AND GUARDIAN CASE MANAGERS DO THIS WORK?
- a. Guardians can make a real difference.
 - b. Guardians can save lives by being able to intervene and get the medical help needed for persons who have been neglected of themselves or neglected by others.
 - c. Guardians can save estates from foreclosures, scams, and exploitation.
 - d. In most cases the ward's quality of life is greatly increased or the chances of a dignified death are improved due to a guardian's involvement.
 - e. Guardians can assist in finding family who may have lost contact.
 - f. There are not many professions that have the ability to affect a person for the good as guardians can and that is why professional guardians do this work.

BUT.....

- Guardianship work is not for the faint of heart.
- The rewards have to be internalized as much of what guardians do is not in the public eye due to confidentiality issues - it is difficult to explain actions to those who do not understand what guardians are doing as guardians are bound by privacy laws.
- Many of the parties guardians serve are not aware of what is being done for them so they cannot appreciate the assistance they are receiving.
- Guardianship work is 24 hours a day every day.
- The responsibility of having to deal with every aspect of several persons lives can be quite taxing physically and emotionally and is very stressful.
- Guardians have to make at times very serious decisions regarding those they serve which can put a tremendous amount of pressure on the guardian.

- There are certainly hazards as well.
- When you take away the money or home from an exploiter, they can become quite angry and sometimes threatening.
- We deal with frightened and confused wards that are going through a traumatic experience without the cognitive ability to understand what is happening to them which can present many challenges.
- While going into homes to search for items and to do inventories, guardians are subjected to biohazard situations, hoarding disasters, dangerous or dead animals, physical hazards such as unstable flooring, unimaginable smells, and other unpleasant circumstances.

- Due to the monetary loss or other mental health issues wards may be experiencing, it is very important that a guardian validates with others that what a ward is expressing is accurate especially if they are reporting negative events. Otherwise, caregivers, family members, and others, including guardians, can be implicated in events that may not have even happened with possible dire consequences.
- Guardians deal with family dissension where no matter what is done, no one is able to agree to anything except to blame the guardian.
- Still others do not comprehend the reasons guardians do what guardians do for the wards and become upset at decisions guardians make and try to adversely affect the guardianship process.

WHAT DO WE DO AS PROFESSIONAL GUARDIANS?

Referrals:

- Referrals can come from anywhere in the community.
- For private guardians, the referral can include infants, children, and adults from anywhere in the state.
- County agencies may have restrictions on what age group they will take referrals on.
- County agencies also deal with only those who reside or have property in their county.
- The majority of referrals for all professional guardians are for the aged who are suffering from some type of dementia or other medical issues.
- But other referrals include the mentally ill, Traumatic Brain Injuries, intellectually and physically disabled, and minors with financial circumstances that require a guardian.

Investigations:

Referrals start the investigation.

All investigations include interviews to try to get as much information as possible from the proposed ward, family, neighbors, friends, medical personnel and others regarding the circumstances that started the discussion about needing a guardianship.

Due to the restrictive nature of guardianships to the ward, guardianships should always be the last resort in dealing with a person's crisis.

- Investigations are needed to look into other alternatives to guardianship including looking into possible estate plans.
- Prof. guardians also need to look at alternatives to their appointment due to the cost to the taxpayer or proposed ward's estate.

Why Not Family?

- One issue that many people do not understand is why professional guardians are brought into a case when there is family.
- Many times the families are concerned about taking on the role of the guardian because it changes the dynamics in the family and causes resentment and misunderstanding by their loved ones.
- Some families feel they are just too far away to be an effective decision maker and want someone closer to take that role.
- Sometimes the families are the problem and a third party needs to be brought in to intervene.
- Throughout the investigation finding family is imperative. Not only do we need to find out where the family stands in relationship to the proposed ward and guardianship, but also to make sure we find family for notification purposes.

Privacy and HIPAA

- a. The proposed ward's privacy is an issue we deal with all the time and starts with the referral.
- a. Although the person is not deemed incompetent until a guardianship is granted, we have to be careful that we do not overstep our boundaries in obtaining the information we need when the proposed ward is compromised.
- a. Proposed guardians who are given a referral and then investigate can fall under the HIPAA Privacy Rule for Permitted Uses and Disclosures.
- a. "Serious Threat to Health or Safety": "Covered entities may disclose protected health information that they believe is necessary to prevent or lessen a serious and imminent threat to a person or the public, when such disclosure is made to someone they believe can prevent or lessen the threat (including the target of the threat)."

Next Step

- a. A question that needs answering is how emergent is the situation and is there an emergency guardianship vs. a general guardianship necessary.
- a. It is important in either proposal, we meet the requirement of explaining per statutory language how and why the proposed ward is:
 - o In a substantial and immediate risk of physical harm or has an immediate need for medical attention, both of which the person is unable to respond to, and/or may present a danger to himself or others or is being subjected to abuse, neglect or exploitation.
- a. In addition that statutory language, an investigation is also about finding the appropriate documentation to clarify the need for the guardianship as required by law.
- a. Once all the information is obtained, the guardian will find an attorney to assist with the guardianship process, give the attorney all the information obtained and proceed with the guardianship action.

DUTIES OF A GUARDIAN

Guardians work in 4 areas:

- a. the person;
- a. finances;
- a. property; and
- a. legal requirements

PERSON
Duties include but are not limited to:

- 1. Monitor and manage the mental, physical and social well-being of the ward on a continuous basis including overseeing care providers, patient services, medical personnel and making sure all medical needs are being maintained as needed.
- 2. Be available at all times to authorize procedures, medication changes, admits, discharges or any other issues where authorization/consent is needed.
- 3. Be available at all times to be notified of emergency issues or other issues affecting the ward.
- 4. Be available at all times to make decisions regarding the well-being of the ward.
- 5. Review contracts, releases, and other documents needing guardian's signature.
- 6. Provide the least restrictive environment as possible while maintaining the measures needed to keep the ward safe within the ward's financial capability.
- 7. Maintain a quality of life that the ward's physical health, mental health, and finances will allow.

PERSON CONT.

- 8. Safeguard the ward's dignity and privacy as much as possible.
- 9. Protect the ward from abuse, neglect, or harm.
- 10. Report to Elder Protective Services and/or complete police reports if illegal activities are discovered and following through to the conclusion of the investigation and/or legal proceedings.
- 11. Advocate for the ward's needs whenever needed.
- 12. Review all mail with personal mail going to the ward if appropriate and financial bills going to the guardian of the estate or financial representative.
- 13. Maintain a log of events, interventions, daily activities, and health issues, if possible.
- 14. Develop a plan for end of life issues by discussing issues beforehand with ward and family if appropriate and reviewing estate planning documents.

FINANCES
Duties include but are not limited to:

- 15. Inventory the finances of the ward in order to marshal all assets.
- 16. Secure, freeze, close, move, and retitle accounts as appropriate.
- 17. Maintain all accounts in guardianship accounts separate from guardian's personal accounts.
- 18. Notify creditors as to why a debt cannot be paid if there are not funds of the ward to pay the debt. Protect the ward from exploitation or other illegal activities against the ward's estate.
- 19. Report to Elder Protective Services and/or complete police reports if illegal activities are discovered and following through to the conclusion of the investigation and/or legal proceedings.
- 20. Make financial decisions regarding the care and needs of the ward based on the financial capability of the ward.
- 21. Pay bills.
- 22. Maintain trust accounts as needed in facilities for the ward's personal needs.
- 23. Maintain budget and anticipate ward's financial needs within that budget.
- 24. Monitor investments.

FINANCES cont.

- Prepare information for taxes and make sure taxes are prepared and filed.
- Review all mail with personal mail going to the ward if appropriate.
- Review contracts and other financial representative documents before signature.
- Complete applications and follow through for entitlements and benefits such as Medicaid, Medicare, other medical insurance, V.A. Aids and Attendance, Social Security, SSI, and disability.
- Maintain a daily accounting of all income and expenditures, keeping all receipts if possible.
- Develop a plan for end of life issues such as paying for a preneed by discussing issues beforehand with the ward and family if appropriate and reviewing estate planning documents.
- Maintain a log explaining unusual and/or large expenditures.

PROPERTY

Duties include but are not limited to the following with court approval where necessary:

- Secure and maintain all real and personal property as soon as possible.
- Search residence for valuables, important documents, and money.
- Inventory and document personal property.
- Approve real and personal property as appropriate.
- Sell or rent real property and personal property such as a mobile home as appropriate.
- Store, sell, donate, and/or dispose of personal property as appropriate.
- Continue to secure and maintain real and personal property throughout guardianship if kept within the possession of the ward.
- Install and maintain any safety equipment as necessary for the ward in the ward's residence.
- Keep all receipts and maintain a record and explaining where all personal properties are or where the property went if no longer in the possession of the guardianship.

LEGAL

Duties include but are not limited to:

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

DEATH AND DYING

Two of the most important issues we deal with as prof. guardians are the dying process and death of almost all of our clients.

Each person has their own journey during the declining process and death is of course the final step.

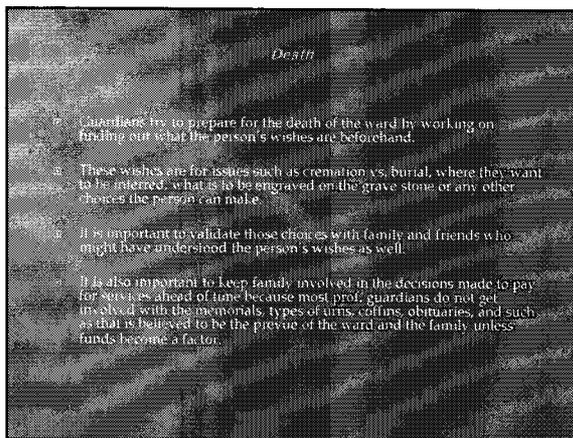
Dying

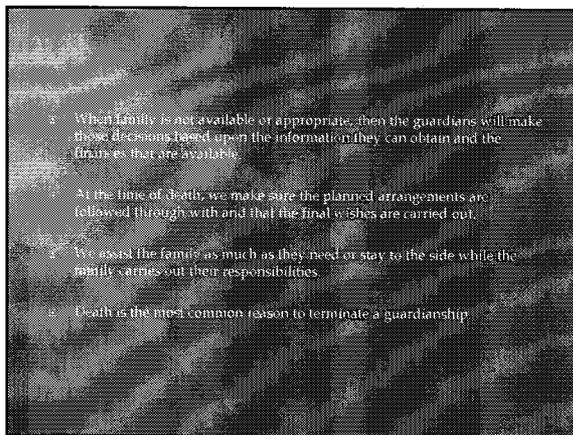
- a. Part of our duty and responsibility as guardians is to make the death process as dignified and painless as possible.
- b. It is important that guardians advocate for the needs and wishes of their clients many of whom can no longer speak for themselves.
- c. The guardian deals with the families' grief process as well and need to make sure they are included if they desire to do so and are appropriate to do so.
- d. The guardians and sometimes with families, are the ones to decide whether or not to have that surgery to prolong life, or, to put in that feeding tube, or to say That is enough.

- a. Always with wishes stated in end of life documents if we have them, quality of life factors are many times the deciding factors in the decisions we make for the ward.
- b. For the most part, the guardians are the final decision makers.

We deal with hospice agencies on a continuous basis; we work closely with doctors, nurses, and caregivers to make sure that the client is as comfortable as possible, and make sure the family is contacted and involved if appropriate to do so.

- a. We make sure to have the living wills and durable power of attorney for health care available to all appropriate medical personnel and are now in the process of dealing with the POLST forms for all clients (POLST stands for Physician Order for Life Sustaining Treatment).



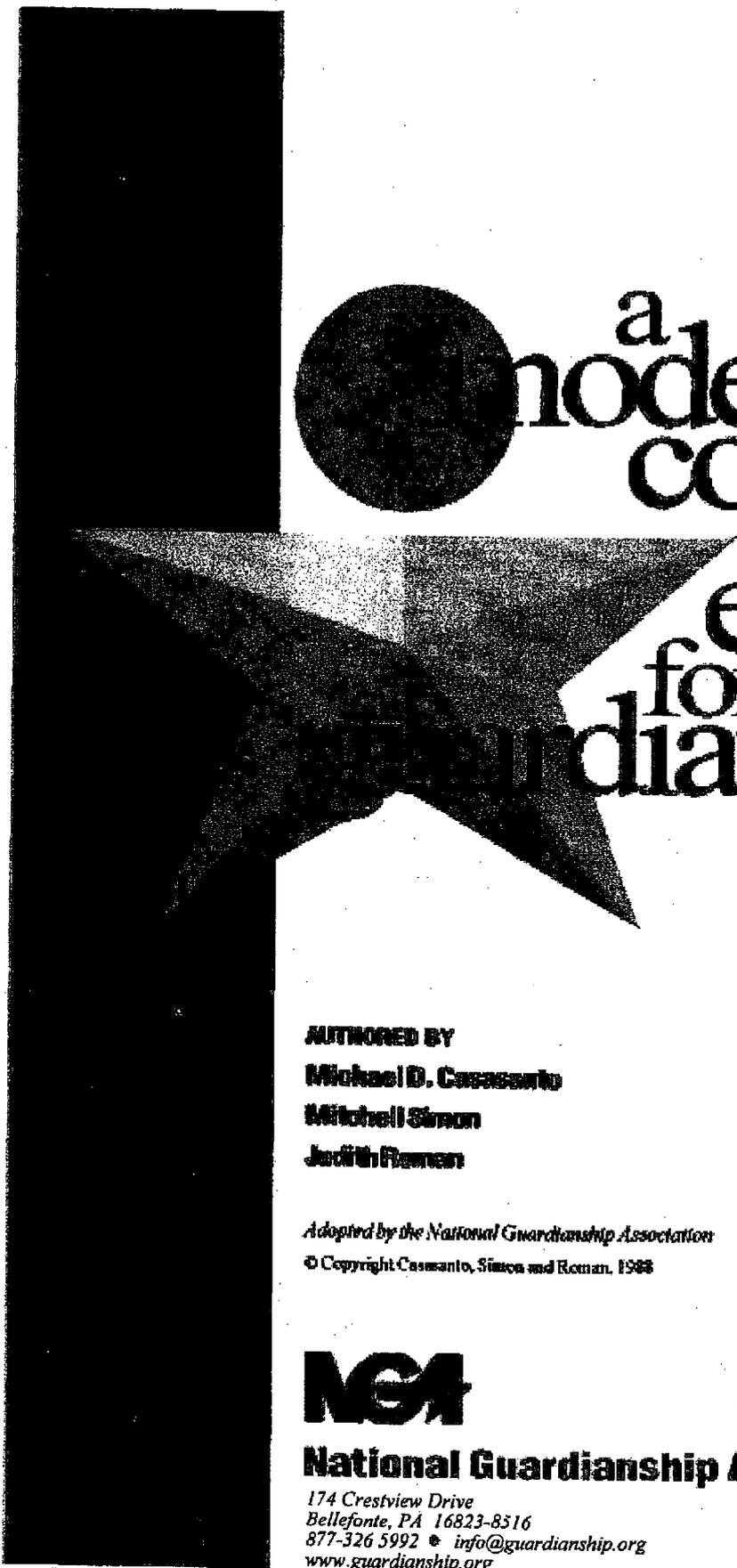


**HANDOUTS FOR THE PRESENTATION BY SUSAN HOY AND KIM SPOON
AUGUST 17, 2015**

EXHIBIT 1 A MODEL CODE OF ETHICS FOR GUARDIANS

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

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



a
model
code
of
ethics
for
guardians

AUTHORED BY

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Adopted by the National Guardianship Association

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L Introduction

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

It is not surprising in light of this genesis that reform of the basic process by which guardianships are imposed has been a relatively recent development². While much scholarly and judicial time has been devoted to the debate over the procedural protections to be afforded incompetent persons prior to imposition of a guardianship, insufficient work has been done to guide the actions of guardians who are charged with the enormous responsibility of substituting their judgment for that of another human being. The purpose of the Model Code is to suggest ethical and legal standards designed to simplify and improve this decision making process.

Since the Model Code is designed to address the guardian-ward relationship, we have assumed that the underlying adjudication of incompetency is accurate and made in accordance with procedural due process³. Therefore, the question of whether a guardianship should have been imposed at all is beyond the scope of this article⁴.

We have not, however, assumed that all guardianships are necessarily limited to those functions that the individual is incapable of actually performing, since "limited guardianship" is not the norm in all states. In a survey conducted in 1984, Casasanto, Newman and Saunders found that the forty-one states responding to their survey, thirteen had no provision for limited guardianship⁶. Therefore, the Model Code provides a framework for making decisions both on behalf of individuals who are deemed incompetent under a statute providing for plenary guardianship but who clearly retain the functional ability to make certain decisions, and for individuals, with a narrowly limited guardianship. This distinction is significant since the ability of the ward to participate in a decision making process will vary depending on the situation. For example, the Model Code suggests that an ethical guardian should look more closely at, and possibly defer to, the expressed wishes of a ward with an overbroad guardianship in those areas where functional competence still exists. Based on the above, the Code, in some situations, adopts what may on first blush look like an anomalous position by mandating deference to the currently expressed wishes of a legally incompetent person. We believe, however, this is mandated by the important ethical precept that the individual's rights of self-determination should be observed whenever possible.

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



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

A. Guardianship Models

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

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

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

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



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

1. Best Interest Standard

The Best Interest Standard mirrors the view that the guardian's duties are akin to those imposed on a parent. Under this standard, the charge of the guardian is to make an independent decision on behalf the ward which will be in the ward's best interest as defined by more objective, societally shared criteria⁸. This type of decision making is most appropriate for individuals without previous competency. The profoundly retarded individual described in Case 1, above, seems to meet this standard.

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

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

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

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8. Compare Dussult, "Guardianship and Limited Guardianship in Washington State: Application for Mentally Retarded Citizens," 13 *Conn. L. Rev.* 585 (1978) with Gauvey, Leviton, Shuger & Sykes, "Informed and Substitute Consent to Health Care Procedures; a Proposal for State Legislation," 15 *Harv. J. Legis.* 431 (1978); See also *Matter of Conroy*, 98 N.J. 321, 486 A.2d 1209 (1985).
 9. President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research, *Deciding to Forego Life-Sustaining Treatment*, at 1341 (1983) (hereinafter referred to as Report of the President's Commission).
 10. *Id.* at 136.
 11. See *Pennsylvania Assn. for Retarded Children v. Pennsylvania*, 334 F. Supp. 1257 (E.D. Pa. 1971); Frollk, *supra* note 2.



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

2. Substituted Judgement

The principal of substituted judgement requires the surrogate to attempt to reach the decision the incompetent person would make if that person were able to choose¹³. Use of this model for decision making allows the guardian to make decisions in accord with the incompetent person's own definition of well-being. It is critical to note that this model can only be used if the guardian, through available sources of information, is able to determine the prior preferences of the ward¹⁴. The Model Code, based as it is on the belief that this type of decision making should be utilized if possible, imposes a duty on guardians to attempt to find this information.

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

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

B. Intermittent Incompetence

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

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

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

14. *Id.* at 133.



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

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

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

II. The Model Code

Preamble

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

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

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

16. See *supra* notes 7 and 8.



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

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

Rule 1 - Decision-Making: General Principles:

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

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

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



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

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

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

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

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



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

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

Rule 2 - Relationship Between Guardian and Ward:

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

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

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

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

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



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

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

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

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

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

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

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



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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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

Rule 5 - Management of the Estate:

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



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

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

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

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

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

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

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



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

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

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

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

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



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

Rule 6 - Termination and Limitation of the Guardianship:

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

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

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

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

VII. Conclusion

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

EXHIBIT 2

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

GUARDIANSHIP

AN OVERVIEW

The logo for Guardianship Services of Nevada, Inc. (GSSN) features the letters G, S, S, and N in a large, bold, black serif font. The two 'S' characters are intertwined, with the top loop of the first 'S' overlapping the top of the second 'S', and the bottom loop of the second 'S' overlapping the bottom of the first 'S'. The 'G' is on the left, the 'N' is on the right, and the two 'S's are in the center.

Guardianship Services of Nevada, Inc.

GUARDIANSHIP-AN OVERVIEW

WHAT IS A GUARDIANSHIP?

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

DEFINITIONS

GUARDIANSHIP

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

GUARDIAN

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

WARD

Individual for whom a guardian has been appointed.

COMPETENCY

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

INCOMPETENCY

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

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

ALTERNATIVES TO GUARDIANSHIP

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

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

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

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

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

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

WHY A GUARDIAN MAY BE NEEDED

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

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

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

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

TYPES OF GUARDIANSHIPS

GUARDIAN OF PERSON

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

GUARDIAN OF ESTATE

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

SUMMARY ADMINISTRATION

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

GUARDIAN OF PERSON AND ESTATE

Guardian responsible for both personal and financial care

General (Permanent) Guardian

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

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

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

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

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

TEMPORARY GUARDIAN OF PERSON AND/OR ESTATE

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

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

Extension of Temporary Guardianship hearing

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

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

SPECIAL GUARDIAN

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

CO-GUARDIAN

Two or more people share guardianship responsibilities.

PRIMARY COURT DOCUMENTS

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

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

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

DUTIES OF A GUARDIAN

Guardians work in 4 areas:

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

2. **FINANCES** Duties include but are not limited to:
 - Investigate the finances of the ward in order to marshal all assets
 - Secure, freeze, close, move, and retitle accounts as appropriate

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

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

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

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

4. LEGAL Duties include but are not limited to:

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

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

KEYS TO A SUCCESSFUL GUARDIANSHIP

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

HELPFUL WEBSITES:

Nevada Guardianship Association – www.nevadaguardianshipassociation.org

National Guardianship Association – www.guardianship.org

Guardianship Services of Nevada – www.gsnv.net

Division of Aging Services – www.nvaging.net

Washoe County District Court – www.washoecourts.com

Sanford Center for Aging – www.unr.edu/sanford.com

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EXHIBIT 3

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

Date of Assessment / /

INITIAL ASSESSMENT

Name: «ward.name»

Social Security #: «ssn»

Ward's Current location: «ward.address»

Date of Birth: «dob»

Age: «ward.age»

Medicare #: «medicare»

Medicaid #: «medicaid»

Marital Status: «mar.status»

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

Referral Information:

Source of Information:

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

Are there belongings here with you? _____ Check with Security Facility Safe

Driver's License? ___ Yes ___ No # _____ Feel safe driving? _____

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

Does the individual live Alone? ___ Y ___ N In a House _____ An Apartment _____ Other _____

Cell Phone? _____ Home Phone # _____

Religious Affiliation: _____

Does the individual have children? _____ Yes _____ No

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

Name	Age	Address	Phone
------	-----	---------	-------

_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Does the individual have siblings or other relatives? _____ Yes _____ No

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

Name	Age	Address	Phone
------	-----	---------	-------

_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

ESTATE PLANNING DOCUMENTS

Living Will Yes No

Durable Power of Attorney Yes No

For Health Care: (identify who and what authority)

For Property: (identify who and what authority)

Pre-Paid Funeral Arrangements Yes No

Location:

Funeral Home

Burial Plot(s) Yes No

Location:

State of Birth: _____

Education: _____

Father's Name: _____

Mother's Maiden Name: _____

Veteran: _____Y _____N

Branch of Service: _____

Dates/War Time: _____

Occupation: _____

Financial/ Business Management:

Where is your mail received? _____

Are bills paid in person or by mail? _____

Does anyone help you with your finances or Bills? _____ Who _____

Is automatic deposit in place for income? _____

To what account? _____

Have Federal Taxes been filed: _____

Bank Accounts

Name of Bank	Location	Type Account	Amount

Safety Deposit Box Yes No

Located at: _____ Key Location: _____

Life Insurance: Name

Beneficiary

Insurance: Company Premium obtain copy of card

Health: _____
Home: _____
Car: _____
Medicare Part A: _____
Medicare Part B: _____
Medicaid: _____

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

Allergies:

Ongoing Medical Conditions Yes No

Diagnosis/Condition	Date Diagnosed	Effect

What Pharmacy do you use: _____

Current Medications Yes No
Self-Administered Yes No If no, Explain: _____
Is the individual forgetful in relationship to medication? Yes No

Drug Name	Reason	Amount

Identify all sources of income:

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

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

1. _____
2. _____
3. _____

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

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

Identify all of the person's debts:

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

Utilities: (approximate monthly cost) Identify all utilities.

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

Medical Bills: (Identify all medical bills)

Name	Amount
------	--------

Hospitalizations / Surgeries in previous three (3) years

Hospital	Admission date	Length of stay	Treatment
----------	----------------	----------------	-----------

Has the Physician made statements about?

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

Physician(s) Name	Address	Telephone #	Specialty

What interpersonal issues is the individual dealing with at this time?

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

Describe Care Provided:

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

Participation or assistance received:

Does the client leave home?

Are there pets in the home?

What activities are important to the client?

How does the client identify life accomplishments?

What are current hopes and life goals?

Of what is the client most afraid?

Does the client understand current condition or illness?

Have arrangements / your wishes been made known after death?

OTHER COMMENTS:



Simple Sample

01/01/1950 To 12/31/2049

Show tabs on one row

Other case

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

Open Date 07/06/2011 Close Date 07/01/2012 1 of 1 New List Delete This List

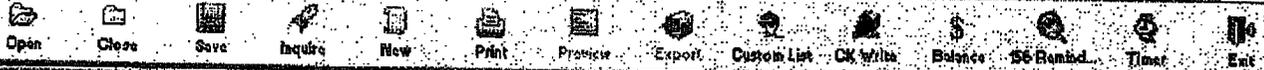
Style Intake New Client

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

Printing The Screen, Please Wait...



File Edit Tools Window Help



Simple Sample

01/01/1950 To 12/31/2049

Show tabs on one row

Other case

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

Open Date 07/06/2011

Close Date 07/01/2012

1 of 1

New List

Delete This List

Style Intake New Client

Print Screen

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

Printing The Screen, Please Wait ...



RECORD OF VISIT

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

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

PHYSICAL CONDITION: Weight: _____ Height: _____ (noticeable changes)

1) Describe Overall Appearance:

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

3) Describe Level of Medical Services Provided or Needed:

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

Dental Exam: _____ Physician Visits: _____

Eye Exam: _____ Lab Work: _____

Upcoming Appointments: _____

_____/_____/_____

_____/_____/_____

_____/_____/_____

Other: (Specialist) _____

5) Hospitalization: (Record Most Recent)

DATE: _____ LOCATION: _____ REASON: _____

_____/_____/_____

_____/_____/_____

_____/_____/_____

6) Medication:

Attach most recent MAR

CONTINUED PLACEMENT ASSESSMENT:

Admission Date: _____

1) Discuss Appropriateness of Present Placement:

(Concerns/pending discharge plans and barriers):

SOCIAL CONDITIONS:

1) Describe Behaviors: (Improved: _____ Stable: _____ Regression: _____)

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

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

COMMENTS:

Reminder: Check DNR Status of face sheet contact information

Obtain copies if not already in file.

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

Follow Up :

Guardian/Case Manager: _____
Signature/date

HOSPITAL VISIT FORM

Client: «ward.name»

Facility: «facility.name»

Seen by: _____

Facility Phone #: «facility.number»

Date of Visit: ____/____/____

Facility Case Manger: _____

Admit date: ____/____/____

Current Attending Doctor: _____

Transferred from: _____

Admit Diagnosis: _____

Acute Treatment: _____

Medications: _____

Report from DR/Nurse: _____

Discharge Plan: _____

Chart Review: _____

Comments: _____

Appendix I

GUARDIANSHIP: OUTREACH & EDUCATION

Alabama

State judiciary and affiliates

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

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

Other state offices, agencies, and their affiliates

Alabama Disabilities Advocacy Program – provides informational pamphlet

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

Law schools

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

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

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

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

Alaska

State judiciary and affiliates

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

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

Other state offices, agencies, and their affiliates

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

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

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

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

State or local bar associations

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

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

https://www.alaskabar.org/servlet/content/member_events.html

Non-profit, non-governmental organizations

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

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

Alaska Center for Resource Families – provides self-study workbook

<http://www.acrf.org/Self->

[StudyCourses/AdoptSeries/WORKBOOKAdoption2011.pdf](http://www.acrf.org/Self-StudyCourses/AdoptSeries/WORKBOOKAdoption2011.pdf)

Arizona

State judiciary and affiliates

Arizona Court System – provides informational video

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

Maricopa Superior Court – provides training manual and modules

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

Other state offices, agencies, and their affiliates

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

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

Arizona Department of Economic Security – provides pamphlet on guardianship subsidies

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

State or local bar associations

State Bar of Arizona – provides informational pamphlet and sponsors CLEs

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

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

Non-profit, non-governmental organizations

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

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

Law schools

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

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

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

Arkansas

State offices, agencies, and their affiliates

Arkansas Governor's Developmental Disabilities Council – provides guardianship booklet

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

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

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

State or local bar associations

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

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

Non-profit, non-governmental organizations

Arkansas Legal Services Partnership – provides informational pamphlet

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

Arkansas Voices – small guardianship section in caregivers’ handbook
http://www.arkansasvoices.org/uploads/1/4/9/2/14920838/handbook_for_kinship_caregivers.pdf

California

State judiciary and affiliates

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

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

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

Guardianship Assistance Program Training Manual

[http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0CCUQFjABahUKEwj9yJik9Y3HAhXNKYgKHflaDrI&url=http%3A%2F%2Fwww.courts.ca.gov%2Fpartners%2Fdocuments%2FGAP-trainingman-](http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0CCUQFjABahUKEwj9yJik9Y3HAhXNKYgKHflaDrI&url=http%3A%2F%2Fwww.courts.ca.gov%2Fpartners%2Fdocuments%2FGAP-trainingman-SanBern.doc&ei=COW_Vf2kI83ToAT9tbmQCw&usq=AFOjCNHX351rvSDL3LJxvW95ylKFaNnXgQ&sig2=KFqVIREu-b75xg5GmCnOAO)

[SanBern.doc&ei=COW_Vf2kI83ToAT9tbmQCw&usq=AFOjCNHX351rvSDL3LJxvW95ylKFaNnXgQ&sig2=KFqVIREu-b75xg5GmCnOAO](http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0CCUQFjABahUKEwj9yJik9Y3HAhXNKYgKHflaDrI&url=http%3A%2F%2Fwww.courts.ca.gov%2Fpartners%2Fdocuments%2FGAP-trainingman-SanBern.doc&ei=COW_Vf2kI83ToAT9tbmQCw&usq=AFOjCNHX351rvSDL3LJxvW95ylKFaNnXgQ&sig2=KFqVIREu-b75xg5GmCnOAO)

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

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

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

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

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

http://www.scsccourt.org/self_help/probate/guardianship/guardianship_home.shtml

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

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

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

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

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

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

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

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

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

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

Other state offices, agencies, and their affiliates

Fresno Law Library – offers guardianship workshop

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

Kern County Law Library – offers workshop

http://kclawlib.org/home/Self_Help.html

Sacramento Public Law Library – offers guardianship workshop

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

State or local bar associations

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

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

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

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

Non-profit, non-governmental organizations

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

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

Immigration Center for Women and Children – provides information

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

Public Law Center – offers guardianship clinic

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

Law schools

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

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

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

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

Monterrey College of Law – offers guardianship workshop

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

Colorado

State judiciary and affiliates

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

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

Other state offices, agencies, and their affiliates

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

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

State or local bar associations

Colorado Bar Association – provides informational brochure and offers CLEs

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

<http://cle.cobar.org/Seminars/Event-Info/sessionaltcd/EL040705L> - CLE on Issues in Guardianship and Conservatorship

Connecticut

State judiciary and affiliates

Connecticut Judicial Branch – provides educational brochure and research guides

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

Connecticut Probate Courts – provides user guide

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

Delaware

State judiciary and affiliates

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

<http://courts.delaware.gov/chancery/guardianship/>

<http://www.google.com/url?sa=t&ret=j&q=&esrc=s&source=web&cd=24&ved=0CDQQFjADOBRqFQoTCMvM4PDgiccCFRYtiAod3g0I9Q&url=http%3A%2F%2Fcourts.delaware.gov%2Fforms%2Fdownload.aspx%3Fid%3D28638&ei=o8->

[VYvvPJbaoATem6CoDw&usq=AFQjCNGgwVFrGLlo0a7wd2zxqpWHUGApbQ&sig2=KDX0_2MNWYnHv8emzGP_kg&bvm=bv.99261572,d.cGU](http://www.google.com/url?sa=t&ret=j&q=&esrc=s&source=web&cd=24&ved=0CDQQFjADOBRqFQoTCMvM4PDgiccCFRYtiAod3g0I9Q&url=http%3A%2F%2Fcourts.delaware.gov%2Fforms%2Fdownload.aspx%3Fid%3D28638&ei=o8-VYvvPJbaoATem6CoDw&usq=AFQjCNGgwVFrGLlo0a7wd2zxqpWHUGApbQ&sig2=KDX0_2MNWYnHv8emzGP_kg&bvm=bv.99261572,d.cGU)

Florida

State judiciary and affiliates

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

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

Other state offices, agencies and their affiliates

State Department of Elder Affairs – provides handbook

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

State or local bar associations

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

<http://www.floridabar.org/tfb/TFBConsum.nsf/48e76203493b82ad852567090070c9b9/e8fd739d221b11c085256b2f006c5a4e?OpenDocument>

[http://www.floridabar.org/FBWEB/CLEReg.nsf/0/bc280ec23a7d6aa685257c4b004a6218/\\$FILE/1673-YLD-14.pdf](http://www.floridabar.org/FBWEB/CLEReg.nsf/0/bc280ec23a7d6aa685257c4b004a6218/$FILE/1673-YLD-14.pdf)

Broward County Guardianship class

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

Non-profit, non-governmental organizations

Florida Guardian Ad Litem – sponsors conferences and provides training

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

Florida State Guardianship Association – sponsors trainings and CLEs

https://www.floridaguardians.com/wp-content/uploads/2015/05/Guardianship-Essentials-Flyer_2015.pdf - Essentials of Guardianship

Florida Pro Bono – offers training

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

Georgia

State judiciary and affiliates

Georgia Probate Court – provides handbooks and videos about guardianship

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

Other state offices, agencies, and their affiliates

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

http://aging.dhr.georgia.gov/sites/aging.dhs.georgia.gov/files/imported/DHR-DAS/DHR-DAS_Publications/ELAP-%20GUARDIANSHIP%202012.pdf

State Department of Education – provides handbook

http://archives.gadoe.org/documents/ci_exceptional/Transitional%20Manual/XI_TranMan_Guardianship_Estate_Planning_9-11.pdf

State or local bar associations

Georgia Bar Association – brief mention of guardianship in wills pamphlet

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

Hawaii

State offices, agencies, and their affiliates

State of Hawaii – provides pro se informational packets

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

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

Idaho

State judiciary and affiliates

State of Idaho Judicial Branch – provides guardianship training module

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

State or local bar associations

Idaho Bar Association – provides informational pamphlet

http://www.isb.idaho.gov/pdf/legal_education/bro_guardianship.pdf

Illinois

State offices, agencies, and their affiliates

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

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

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

State or local bar associations

Illinois Bar Association – provides informational pamphlet and offers CLEs

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

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

Non-profit, non-governmental organizations

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

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

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

Illinois Pro Bono – offers training

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

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

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

Indiana

State or local bar associations

Indiana Bar Association – offers brochure available for purchase

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

Non-profit, non-governmental organizations

The Arc, Indiana – provides information and videos

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

Indiana Legal Services – provides informational brochure

http://www.indianalegalservices.org/sites/indianalegalservices.org/files/Guardians%20Ad%20Litem%20-%20-%20-%20PDF%20Brochure_0.pdf

Iowa

State offices, agencies and their affiliates

Iowa Governor’s Developmental Disabilities Council – provides handbook

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

State or local bar associations

Iowa Bar Association – provides guardianship handbook

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

Non-profit, non-governmental organizations

Iowa Legal Aid – multiple pamphlets on various guardianship issues

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

Kansas

State judiciary and affiliates

Kansas Judicial Council – provides guardian training materials

<http://www.kansasjudicialcouncil.org/GuardianConservatorTraining.shtml>

State or local bar associations

Kansas Bar Association – provides informational pamphlet

http://www.ksbar.org/?aging_law

Kentucky

State offices, agencies, and their affiliates

Kentucky Protection & Advocacy State Agency – provides handbook

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

Louisville County Attorney – provides information

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

Non-profit, non-governmental organizations

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

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

Louisiana

[to follow]

Maine

State offices, agencies, and their affiliates

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

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

Non-profit, non-governmental organizations

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

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

Maryland

State or local bar associations

Maryland Bar Association – provides informational pamphlet

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

Non-profit, non-governmental organizations

a. Maryland Disability Law Center – provides handbook

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

Massachusetts

State judiciary and affiliates

Massachusetts Court System – provides general information

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

Non-profit, non-governmental organizations

Massachusetts Guardianship Association – provides handbook and informational videos

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

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

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

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

Law schools

Volunteer Lawyers Project – provides training and clinics

Boston University School of Law – Guardianship of Minors Training

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

http://www.vlpnet.org/volunteer/item.6167-Guardianship_Clinics

Michigan

State offices, agencies, and their affiliates

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

http://www.nlrc.aoa.gov/nlrc/legal_issues/capacity/docs/Michigan_Guardian_Handbook.pdf

Non-profit, non-governmental organizations

Michigan Guardianship Association – educational DVD available for sale.

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

Minnesota

State judiciary and affiliates

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

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

Non-profit, non-governmental organizations

Minnesota Association for Guardianship and Conservatorship – provides information and handbooks

<http://www.minnesotaguardianship.org>

Mississippi

State judiciary and affiliates

Mississippi Judiciary – provides information on the duties of a guardian

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

Non-profit, non-governmental organizations

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

<http://www.mslegalservices.org>

Missouri

State offices, agencies, and their affiliates

State Department of Health and Senior Services – provides guardianship manual

http://www.moadvocacy.org/Manuals/Guardianship_Conservatorship_2007.pdf

State or local bar associations

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

http://www.mobar.org/uploadedFiles/Home/Publications/Legal_Resources/Brochures_and_Booklets/Probate_Law_Resource_Guide/full.pdf

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

Non-profit, non-governmental organizations

Missouri Protection & Advocacy Services – provides brochure

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

Law schools

- a. UKMC Institute for Human Development – provides resource guide
 - i. [http://moddcouncil.org/uploaded/MO%20Guardianship%20RESOUR
CE%20GUIDE%20rev%20Dec%202010.pdf](http://moddcouncil.org/uploaded/MO%20Guardianship%20RESOUR
CE%20GUIDE%20rev%20Dec%202010.pdf)

Montana

State judiciary and affiliates

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

Other state offices, agencies, and their affiliates

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

Nebraska

State judiciary and affiliates

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

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

Other state offices, agencies, and their affiliates

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

http://dhhs.ne.gov/children_family_services/Guidebooks/Legal%20Guardianship%20Guidebook.pdf

Non-profit, non-governmental organizations

Disability Rights Nebraska – provides information

http://www.disabilityrightsnebraska.org/resources/law_in_brief_word/guardianship.html

Law schools

University of Nebraska – Lincoln – provides outline of guardianship practices

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

Nevada

State judiciary and affiliates

Clark County Courts – provides guardianship training manual

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

Other state offices, agencies, and their affiliates

Clark County – provides basic overview of guardianship

http://www.clarkcountynv.gov/depts/public_guardian/Pages/TypesofGuardianship.aspx

State or local bar associations

Nevada State Bar – offers CLEs on guardianship

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

Non-profit, non-governmental organizations

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

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

Law schools

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

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

New Hampshire

State judiciary and affiliates

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

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

Non-profit, non-governmental organizations

New Hampshire Legal Aid – provides general overview

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

New Jersey

State judiciary and affiliates

State Court System – provides basic overview

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

Other state offices, agencies, and their affiliates

State Department of Human Services – provides basic overview

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

State or local bar associations

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

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

Non-profit, non-governmental organizations

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

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

New Mexico

State judiciary and affiliates

State Court System – provides handbook

https://tribalstate.nmcourts.gov/index.php/component/docman/doc_download/NMGA-Guardianship-Handbook-5-07%20from%20J.%20Johnson.pdf

State or local bar associations

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

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

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

Non-profit, non-governmental organizations

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

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

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

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

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

New York

State judiciary and affiliates

State Court System – provides information, forms, and training

https://www.nycourts.gov/courts/nyc/family/faqs_guardianship.shtml

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

State or local bar associations

New York Bar Association – provides informational pamphlets and forms

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

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

Dutchess County Bar Association – provides guardianship training

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

Non-profit, non-governmental organizations

New York County Lawyers' Association – provides guardian training

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

Law schools

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

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

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

Albany School of Law – sponsors CLEs

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

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

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

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

North Carolina

State judiciary and affiliates

State Court System – provides information and pamphlet

www.nccourts.org/Support/FAQs/FAQs.asp?Type=15&language=2

www.nccourts.org/forms/documents/1184.pdf

Other state offices, agencies, and their affiliates

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

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

Law schools

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

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

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

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

North Dakota

Other state offices, agencies, and their affiliates

State Government – provides handbook

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

Non-profit, non-governmental organizations

Legal Services of North Dakota – provides informational brochure

http://www.legalassist.org/?id=86&form_data_id=68

Ohio

State judiciary and affiliates

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

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

State or local bar associations

Ohio Bar Association – provides pamphlet

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

Non-profit, non-governmental organizations

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

http://www.ohiolegalservices.org/public/legal_problem/wills-and-probate/guardianships/qandact_view

Oklahoma

State offices, agencies, and their affiliates

State Department of Human Services – FAQ section on guardianship

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

State or local bar associations

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

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

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

Non-profit, non-governmental organizations

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

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

Oregon

State judiciary and affiliates

State Court System – provides information

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

Non-profit, non-governmental organizations

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

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

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

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

Pennsylvania

State judiciary and affiliates

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

Other state offices, agencies, and their affiliates

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

Non-profit, non-governmental organizations

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

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

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

Rhode Island

State or local bar associations

Rhode Island Bar Association – provides CLEs on guardians for children and includes short section on guardianship in guide covering various topics for seniors

<https://www.ribar.com/For%20the%20Public/elderlylawhandbook.aspx>
<https://www.ribar.com/NewsDetail.aspx?NewsId=434>

Non-profit, non-governmental organizations

Rhode Island Disability Law Center – provides handbook
http://www.ridlc.org/publications/Guardianship_and_Alternatives_To_Guardianship_Booklet.pdf

South Carolina

State judiciary and affiliates

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

Other state offices, agencies, and their affiliates

Greenville County, SC – provides handbook
http://www.greenvillecounty.org/probate/GC_Forms/GCBooklet.pdf

State or local bar associations

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

[http://www.scbars.org/Portals/0/Documents/Senior_Citizens - rev101712.pdf?ver=2014-11-13-143128-787](http://www.scbars.org/Portals/0/Documents/Senior_Citizens_-_rev101712.pdf?ver=2014-11-13-143128-787)
<http://www.scbars.org/public/files/docs/GALbrochure.pdf>

South Dakota

State offices, agencies, and their affiliates

South Dakota Department of Human Services – provides information and forms

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

Tennessee

[to follow]

Texas

State offices, agencies, and their affiliates

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

https://www.dads.state.tx.us/news_info/publications/brochures/pub395-guardianship.pdf

State or local bar associations

Texas Bar Association – provides pamphlet; guide to guardianship

https://www.texasbar.com/AM/Template.cfm?Section=Free_Legal_Information2&Template=/CM/ContentDisplay.cfm&ContentID=27877

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

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

Advanced Elder Law and Advanced Guardianship Law courses 2014

Non-profit, non-governmental organizations

Texas Guardianship Association – provides guardianship process information

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

Law schools

University of Texas at Austin – sponsors CLE

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

Utah

State judiciary and affiliates

State Court System – provides information and links to forms

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

Other state offices, agencies, and their affiliates

Utah Office of Public Guardian – provides information

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

Non-profit, non-governmental organizations

Guardianship Associates of Utah – provides various articles on guardianship

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

Utah Legal Services – provides information

http://www.utahlegalservices.org/public/legal_problem-en-us/family-law/guardianship-conservatorship/begin-questions-answers-guardianship-and-conservatorship-1

Law schools

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

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

Vermont

State judiciary and affiliates

State Court System – provides information and forms

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

Other state offices, agencies, and their affiliates

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

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

Non-profit, non-governmental organizations

Vermont Law Help – provides information

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

Vermont Family Network – provides brochure

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

Virginia

State judiciary and affiliates

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

http://www.courts.state.va.us/courtadmin/aoc/cip/programs/gal/adult/guardian_conserv_proceedings.pdf

Other state offices, agencies, and their affiliates

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

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

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

Non-profit, non-governmental organizations

Virginia Legal Aid Society – provides brochure

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

Virginia CLE – sponsors CLEs

<https://vacle.org/product.aspx?zpid=4971&zskuid=18355> -

Representation of Incapacitated Persons as a Guardian Ad Litem

Washington

State judiciary and affiliates

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

http://www.courts.wa.gov/programs_orgs/guardian/

State or local bar associations

Washington State Bar – Advanced Guardianship Issues CLE

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

King County Bar Association – provides handbook and CLEs

http://www.kcba.org/cle/family_volunteer_guardian_handbook.pdf

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

Non-profit, non-governmental organizations

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

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

The Arc of Washington State – provides general information

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

West Virginia

State judiciary and affiliates

State Court System – provides training tutorial

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

Non-profit, non-governmental organizations

Legal Aid of West Virginia – provides information

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

Appalachian Legal Services – provides leaflet

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

Appalachian Benefits Assistance Corporation – provides handbook

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

Wisconsin

State offices, agencies, and their affiliates

State Department of Health Services – provides information and handbook

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

http://www.co.brown.wi.us/i_brown/d/aging_disability_resource_center/guardianship_booklet_from_wi_website.pdf

State or local bar associations

Wisconsin Bar Association – provides handbook and brochure

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

Law schools

Marquette University Law School – offers CLE

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

Wyoming

State judiciary and affiliates

State Court System – provides PowerPoint presentation

http://www.courts.state.wy.us/Documents/CJP/TrainingDocs/Guardianships_PowerPoint.pdf

Other state offices, agencies, and their affiliates

Wyoming Guardians Ad Litem Program – provides information and forms

<http://gal.wyo.gov>

Appendix J

MEMORANDUM

Date: August 3, 2015

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

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

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

I. INTRODUCTION.

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

II. DISCUSSION.

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

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

A. Dealing With Court Appointed Guardians.

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

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

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

B. Petition To Appoint A Permanent Guardian.

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

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

C. Temporary Guardianships.

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

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

D. End of Life Decision Making.

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

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

E. Conclusion.

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

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

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

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

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

(2) A police department or sheriff's office;

(3) The county's office for protective services, if one exists in the county where the suspected action occurred; or

(4) A toll-free telephone service designated by the Aging and Disability Services Division of the Department of Health and Human Services; and

(b) Make such a report as soon as reasonably practicable but not later than 24 hours after the person knows or has reasonable cause to believe that the older person has been abused, neglected, exploited or isolated.

2. If a person who is required to make a report pursuant to subsection 1 knows or has reasonable cause to believe that the abuse, neglect, exploitation or isolation of the older person involves an act or omission of the Aging and Disability Services Division, another division of the Department of Health and Human Services or a law enforcement agency, the person shall make the report to an agency other than the one alleged to have committed the act or omission.

3. Each agency, after reducing a report to writing, shall forward a copy of the report to the Aging and Disability Services Division of the Department of Health and Human Services and the Unit for the Investigation and Prosecution of Crimes.

4. A report must be made pursuant to subsection 1 by the following persons:

(a) Every physician, dentist, dental hygienist, chiropractor, optometrist, podiatric physician, medical examiner, resident, intern, professional or practical nurse, physician assistant licensed pursuant to chapter 630 or 633 of NRS, perfusionist, psychiatrist, psychologist, marriage and family therapist, clinical professional counselor, clinical alcohol and drug abuse counselor, alcohol and drug abuse counselor, music therapist, athletic trainer, driver of an ambulance, paramedic, licensed dietitian or other person providing medical services licensed or certified to practice in this State, who examines, attends or treats an older person who appears to have been abused, neglected, exploited or isolated.

(b) Any personnel of a hospital or similar institution engaged in the admission, examination, care or treatment of persons or an administrator, manager or other person in charge of a hospital or similar institution upon notification of the suspected abuse, neglect, exploitation or isolation of an older person by a member of the staff of the hospital.

(c) A coroner.

(d) Every person who maintains or is employed by an agency to provide personal care services in the home.

(e) Every person who maintains or is employed by an agency to provide nursing in the home.

(f) Every person who operates, who is employed by or who contracts to provide services for an intermediary service organization as defined in NRS 449.4304.

(g) Any employee of the Department of Health and Human Services.

(h) Any employee of a law enforcement agency or a county's office for protective services or an adult or juvenile probation officer.

(i) Any person who maintains or is employed by a facility or establishment that provides care for older persons.

(j) Any person who maintains, is employed by or serves as a volunteer for an agency or service which advises persons regarding the abuse, neglect, exploitation or isolation of an older person and refers them to persons and agencies where their requests and needs can be met.

(k) Every social worker.

(l) Any person who owns or is employed by a funeral home or mortuary.

5. A report may be made by any other person.

6. If a person who is required to make a report pursuant to subsection 1 knows or has reasonable cause to believe that an older person has died as a result of abuse, neglect or isolation, the person shall, as soon as reasonably practicable, report this belief to the appropriate medical examiner or coroner, who shall investigate the cause of death of the older person and submit to the appropriate local law enforcement agencies, the appropriate prosecuting attorney, the Aging and Disability Services Division of the Department of Health and Human Services and the Unit for the Investigation and Prosecution of Crimes his or her written findings. The written findings must include the information required pursuant to the provisions of NRS 200.5094, when possible.

7. A division, office or department which receives a report pursuant to this section shall cause the investigation of the report to commence within 3 working days. A copy of the final report of the investigation conducted by a division, office or department, other than the Aging and Disability Services Division of the Department of Health and Human Services, must be forwarded within 30 days after the completion of the report to the:

(a) Aging and Disability Services Division;

(b) Repository for Information Concerning Crimes Against Older Persons created by NRS 179A.450; and

(c) Unit for the Investigation and Prosecution of Crimes.

8. If the investigation of a report results in the belief that an older person is abused, neglected, exploited or isolated, the Aging and Disability Services Division of the Department of Health and Human Services or the county's office for protective services may provide protective services to the older person if the older person is able and willing to accept them.

9. A person who knowingly and willfully violates any of the provisions of this section is guilty of a misdemeanor.

10. As used in this section, "Unit for the Investigation and Prosecution of Crimes" means the Unit for the Investigation and Prosecution of Crimes Against Older Persons in the Office of the Attorney General created pursuant to NRS 228.265.

(Added to NRS by 1981, 1334; A 1983, 1653; 1985, 1491; 1987, 2130, 2218; 1989, 904; 1991, 135; 1993, 2226; 1995, 2250; 1997, 108, 1349, 2608, 2610, 2637, 2639; 1999, 137, 2242, 2245, 2248, 3518; 2001, 158, 161, 776; 2003, 905; 2005, 1109, 2172; 2007, 746, 1224, 1849, 3080; 2009, 2372, 2445, 2992; 2011, 1093, 1514; 2013, 141, 953)

NRS 432B.220 Persons required to make report; when and to whom reports are required; any person may make report; report and written findings if reasonable cause to believe death of child caused by abuse or neglect; certain persons and entities required to inform reporters of duty to report.

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

(a) Except as otherwise provided in subsection 2, report the abuse or neglect of the child to an agency which provides child welfare services or to a law enforcement agency; and

(b) Make such a report as soon as reasonably practicable but not later than 24 hours after the person knows or has reasonable cause to believe that the child has been abused or neglected.

2. If a person who is required to make a report pursuant to subsection 1 knows or has reasonable cause to believe that the abuse or neglect of the child involves an act or omission of:

(a) A person directly responsible or serving as a volunteer for or an employee of a public or private home, institution or facility where the child is receiving child care outside of the home for a portion of the day, the person shall make the report to a law enforcement agency.

(b) An agency which provides child welfare services or a law enforcement agency, the person shall make the report to an agency other than the one alleged to have committed the act or omission, and the investigation of the abuse or neglect of the child must be made by an agency other than the one alleged to have committed the act or omission.

3. Any person who is described in paragraph (a) of subsection 4 who delivers or provides medical services to a newborn infant and who, in his or her professional or occupational capacity, knows or has reasonable cause to believe that the newborn infant has been affected by prenatal illegal substance abuse or has withdrawal symptoms resulting from prenatal drug exposure shall, as soon as reasonably practicable but not later than 24 hours after the person knows or has reasonable cause to believe that the newborn infant is so affected or has such symptoms, notify an agency which provides child welfare services of the condition of the infant and refer each person who is responsible for the welfare of the infant to an agency which provides child welfare services for appropriate counseling, training or other services. A notification and referral to an agency which provides child welfare services pursuant to this subsection shall not be construed to require prosecution for any illegal action.

4. A report must be made pursuant to subsection 1 by the following persons:

(a) A person providing services licensed or certified in this State pursuant to, without limitation, chapter 450B, 630, 630A, 631, 632, 633, 634, 634A, 635, 636, 637, 637A, 637B, 639, 640, 640A, 640B, 640C, 640D, 640E, 641, 641A, 641B or 641C of NRS.

(b) Any personnel of a medical facility licensed pursuant to chapter 449 of NRS who are engaged in the admission, examination, care or treatment of persons or an administrator, manager or other person in charge of such a medical facility upon notification of suspected abuse or neglect of a child by a member of the staff of the medical facility.

(c) A coroner.

(d) A member of the clergy, practitioner of Christian Science or religious healer, unless the person has acquired the knowledge of the abuse or neglect from the offender during a confession.

(e) A person working in a school who is licensed or endorsed pursuant to chapter 391 or 641B of NRS.

(f) Any person who maintains or is employed by a facility or establishment that provides care for children, children's camp or other public or private facility, institution or agency furnishing care to a child.

(g) Any person licensed pursuant to chapter 424 of NRS to conduct a foster home.

(h) Any officer or employee of a law enforcement agency or an adult or juvenile probation officer.

(i) Except as otherwise provided in NRS 432B.225, an attorney.

(j) Any person who maintains, is employed by or serves as a volunteer for an agency or service which advises persons regarding abuse or neglect of a child and refers them to persons and agencies where their requests and needs can be met.

(k) Any person who is employed by or serves as a volunteer for a youth shelter. As used in this paragraph, "youth shelter" has the meaning ascribed to it in NRS 244.427.

(l) Any adult person who is employed by an entity that provides organized activities for children.

5. A report may be made by any other person.

6. If a person who is required to make a report pursuant to subsection 1 knows or has reasonable cause to believe that a child has died as a result of abuse or neglect, the person shall, as soon as reasonably practicable, report this belief to an agency which provides child welfare services or a law enforcement agency. If such a report is made to a law enforcement agency, the law enforcement agency shall notify an agency which provides child welfare services and the appropriate medical examiner or coroner of the report. If such a report is made to an agency which provides child welfare services, the agency which provides child welfare services shall notify the appropriate medical examiner or coroner of the report. The medical examiner or coroner who is notified of a report pursuant to this subsection shall investigate the report and submit his or her written findings to the appropriate agency which provides child welfare services, the appropriate district attorney and a law enforcement agency. The written findings must include, if obtainable, the information required pursuant to the provisions of subsection 2 of NRS 432B.230.

7. The agency, board, bureau, commission, department, division or political subdivision of the State responsible for the licensure, certification or endorsement of a person who is described in subsection 4 and who is required in his or her professional or occupational capacity to be licensed, certified or endorsed in this State shall, at the time of initial licensure, certification or endorsement:

(a) Inform the person, in writing or by electronic communication, of his or her duty as a mandatory reporter pursuant to this section;

(b) Obtain a written acknowledgment or electronic record from the person that he or she has been informed of his or her duty pursuant to this section; and

(c) Maintain a copy of the written acknowledgment or electronic record for as long as the person is licensed, certified or endorsed in this State.

8. The employer of a person who is described in subsection 4 and who is not required in his or her professional or occupational capacity to be licensed, certified or endorsed in this State must, upon initial employment of the person:

(a) Inform the person, in writing or by electronic communication, of his or her duty as a mandatory reporter pursuant to this section;

(b) Obtain a written acknowledgment or electronic record from the person that he or she has been informed of his or her duty pursuant to this section; and

(c) Maintain a copy of the written acknowledgment or electronic record for as long as the person is employed by the employer.

(Added to NRS by 1985, 1371; A 1987, 2132, 2220; 1989, 439; 1993, 2229; 1999, 3526; 2001, 780, 1150; 2001 Special Session, 37; 2003, 910, 1211; 2005, 2031; 2007, 1503, 1853, 3084; 2009, 2996; 2011, 791, 1097; 2013, 957, 1086)

NRS 159.1853 Petition for removal.

1. The following persons may petition the court to have a guardian removed:
 - (a) The ward;
 - (b) The spouse of the ward;
 - (c) Any relative who is within the second degree of consanguinity to the ward;
 - (d) A public guardian; or
 - (e) Any other interested person.
 2. The petition must:
 - (a) State with particularity the reasons for removing the guardian; and
 - (b) Show cause for the removal.
 3. If the court denies the petition for removal, the petitioner shall not file a subsequent petition unless a material change of circumstances warrants a subsequent petition.
 4. If the court finds that the petitioner did not file a petition for removal in good faith or in furtherance of the best interests of the ward, the court may:
 - (a) Disallow the petitioner from petitioning the court for attorney's fees from the estate of the ward; and
 - (b) Impose sanctions on the petitioner in an amount sufficient to reimburse the estate of the ward for all or part of the expenses incurred by the estate of the ward in responding to the petition and for any other pecuniary losses which are associated with the petition.
- (Added to NRS by 2003, 1766)

NRS 159.044 Petition for appointment of guardian: Who may submit; content; needs assessment required for proposed adult ward.

1. Except as otherwise provided in NRS 127.045, a proposed ward, a governmental agency, a nonprofit corporation or any interested person may petition the court for the appointment of a guardian.

2. To the extent the petitioner knows or reasonably may ascertain or obtain, the petition must include, without limitation:

(a) The name and address of the petitioner.
 (b) The name, date of birth and current address of the proposed ward.
 (c) A copy of one of the following forms of identification of the proposed ward which must be placed in the records relating to the guardianship proceeding and, except as otherwise provided in NRS 239.0115 or as otherwise required to carry out a specific statute, maintained in a confidential manner:

- (1) A social security number;
- (2) A taxpayer identification number;
- (3) A valid driver's license number;
- (4) A valid identification card number; or
- (5) A valid passport number.

↪ If the information required pursuant to this paragraph is not included with the petition, the information must be provided to the court not later than 120 days after the appointment of a guardian or as otherwise ordered by the court.

(d) If the proposed ward is a minor, the date on which the proposed ward will attain the age of majority and:
 (1) Whether there is a current order concerning custody and, if so, the state in which the order was issued; and
 (2) Whether the petitioner anticipates that the proposed ward will need guardianship after attaining the age of majority.

(e) Whether the proposed ward is a resident or nonresident of this State.
 (f) The names and addresses of the spouse of the proposed ward and the relatives of the proposed ward who are within the second degree of consanguinity.

(g) The name, date of birth and current address of the proposed guardian. If the proposed guardian is a private professional guardian, the petition must include proof that the guardian meets the requirements of NRS 159.0595. If the proposed guardian is not a private professional guardian, the petition must include a statement that the guardian currently is not receiving compensation for services as a guardian to more than one ward who is not related to the person by blood or marriage.

(h) A copy of one of the following forms of identification of the proposed guardian which must be placed in the records relating to the guardianship proceeding and, except as otherwise provided in NRS 239.0115 or as otherwise required to carry out a specific statute, maintained in a confidential manner:

- (1) A social security number;
- (2) A taxpayer identification number;
- (3) A valid driver's license number;
- (4) A valid identification card number; or
- (5) A valid passport number.

(i) Whether the proposed guardian has ever been convicted of a felony and, if so, information concerning the crime for which the proposed guardian was convicted and whether the proposed guardian was placed on probation or parole.

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

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

- (I) The need for a guardian;
- (II) Whether the proposed ward presents a danger to himself or herself or others;
- (III) Whether the proposed ward's attendance at a hearing would be detrimental to the proposed ward;
- (IV) Whether the proposed ward would comprehend the reason for a hearing or contribute to the proceeding;

and

(V) Whether the proposed ward is capable of living independently with or without assistance; and

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

(k) Whether the appointment of a general or a special guardian is sought.

(l) A general description and the probable value of the property of the proposed ward and any income to which the proposed ward is or will be entitled, if the petition is for the appointment of a guardian of the estate or a special guardian. If any money is paid or is payable to the proposed ward by the United States through the Department of Veterans Affairs, the petition must so state.

(m) The name and address of any person or care provider having the care, custody or control of the proposed ward.

(n) If the petitioner is not the spouse or natural child of the proposed ward, a declaration explaining the relationship of the petitioner to the proposed ward or to the proposed ward's family or friends, if any, and the interest, if any, of the petitioner in the appointment.

(o) Requests for any of the specific powers set forth in NRS 159.117 to 159.175, inclusive, necessary to enable the guardian to carry out the duties of the guardianship.

(p) If the guardianship is sought as the result of an investigation of a report of abuse, neglect or exploitation of the proposed ward, whether the referral was from a law enforcement agency or a state or county agency.

(q) Whether the proposed ward or the proposed guardian is a party to any pending criminal or civil litigation.

- (r) Whether the guardianship is sought for the purpose of initiating litigation.
- (s) Whether the proposed ward has executed a durable power of attorney for health care, a durable power of attorney for financial matters or a written nomination of guardian and, if so, who the named agents are for each document.
- (t) Whether the proposed guardian has filed for or received protection under the federal bankruptcy laws within the immediately preceding 7 years.

3. Before the court makes a finding pursuant to NRS 159.054, a petitioner seeking a guardian for a proposed adult ward must provide the court with an assessment of the needs of the proposed adult ward completed by a licensed physician which identifies the limitations of capacity of the proposed adult ward and how such limitations affect the ability of the proposed adult ward to maintain his or her safety and basic needs. The court may prescribe the form in which the assessment of the needs of the proposed adult ward must be filed.

(Added to NRS by 1981, 1931; A 1989, 533; 1995, 1076, 2771; 1997, 1343; 1999, 1396; 2001 Special Session, 15; 2003, 1772; 2005, 815; 2007, 2025, 2075; 2009, 1646, 2519; 2013, 906)

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

1. A resident of Nevada is eligible to have the public guardian of the county in which he or she resides appointed as his or her temporary individual guardian pursuant to NRS 159.0523 or 159.0525.
2. A resident of Nevada is eligible to have the public guardian of a county appointed as his or her permanent or general individual guardian if the proposed ward is a resident of that county and:
 - (a) The proposed ward has no relative or friend suitable and willing to serve as his or her guardian; or
 - (b) The proposed ward has a guardian who the court determines must be removed pursuant to NRS 159.185.
3. A person qualified pursuant to subsection 1 or 2, or anyone on his or her behalf, may petition the district court of the county in which he or she resides to make the appointment.
4. Before a petition for the appointment of the public guardian as a guardian may be filed pursuant to subsection 3, a copy of the petition and copies of all accompanying documents to be filed must be delivered to the public guardian or a deputy public guardian.
5. Any petition for the appointment of the public guardian as a guardian filed pursuant to subsection 3 must include a statement signed by the public guardian or deputy public guardian and in substantially the following form:

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

6. A petition for the appointment of the public guardian as permanent or general guardian must be filed separately from a petition for the appointment of a temporary guardian.
 7. If a person other than the public guardian served as temporary guardian before the appointment of the public guardian as permanent or general guardian, the temporary guardian must file an accounting and report with the court in which the petition for the appointment of a public guardian was filed within 30 days of the appointment of the public guardian as permanent or general guardian.
 8. In addition to NRS 159.099, a county is not liable on any written or oral contract entered into by the public guardian of the county for or on behalf of a ward.
 9. For the purposes of this section:
 - (a) Except as otherwise provided in paragraph (b), the county of residence of a person is the county to which the person moved with the intent to reside for an indefinite period.
 - (b) The county of residence of a person placed in institutional care is the county that was the county of residence of the person before the person was placed in institutional care by a guardian or agency or under power of attorney.
- (Added to NRS by 1977, 487; A 1999, 920; 2007, 2490; 2009, 2272)

(Added to NRS by 1975, 408; A 1997, 1219; 1999, 5; 2007, 273)

NRS 41A.120 Consent of patient: When implied. In addition to the provisions of chapter 129 of NRS and any other instances in which a consent is implied or excused by law, a consent to any medical, surgical or dental procedure will be implied if:

1. In competent medical judgment, the proposed medical, surgical or dental procedure is reasonably necessary and any delay in performing such a procedure could reasonably be expected to result in death, disfigurement, impairment of faculties or serious bodily harm; and

2. A person authorized to consent is not readily available.

(Added to NRS by 1975, 408; A 1997, 1220; 1999, 5)

NRS 159.052 Temporary guardian for minor ward who is unable to respond to substantial and immediate risk of physical harm or to a need for immediate medical attention: Petition for appointment; conditions; required notice; extension; limited powers.

1. A petitioner may request the court to appoint a temporary guardian for a ward who is a minor and who is unable to respond to a substantial and immediate risk of physical harm or to a need for immediate medical attention. To support the request, the petitioner must set forth in a petition and present to the court under oath:

(a) Documentation which shows that the proposed ward faces a substantial and immediate risk of physical harm or needs immediate medical attention and lacks capacity to respond to the risk of harm or obtain the necessary medical attention. Such documentation must include, without limitation:

(1) A copy of the birth certificate of the proposed ward or other documentation verifying the age of the proposed ward; and

(2) A letter signed by any governmental agency in this State which conducts investigations or a police report indicating whether the proposed ward presents a danger to himself or herself or others, or whether the proposed ward is or has been subjected to abuse, neglect or exploitation; and

(b) Facts which show that:

(1) The petitioner has tried in good faith to notify the persons entitled to notice pursuant to NRS 159.047 by telephone or in writing before the filing of the petition;

(2) The proposed ward would be exposed to an immediate risk of physical harm if the petitioner were to provide notice to the persons entitled to notice pursuant to NRS 159.047 before the court determines whether to appoint a temporary guardian; or

(3) Giving notice to the persons entitled to notice pursuant to NRS 159.047 is not feasible under the circumstances.

2. The court may appoint a temporary guardian to serve for 10 days if the court:

(a) Finds reasonable cause to believe that the proposed ward is unable to respond to a substantial and immediate risk of physical harm or to a need for immediate medical attention based on the age of the proposed ward and other factors deemed relevant by the court; and

(b) Is satisfied that the petitioner has tried in good faith to notify the persons entitled to notice pursuant to NRS 159.047 or that giving notice to those persons is not feasible under the circumstances, or determines that such notice is not required pursuant to subparagraph (2) of paragraph (b) of subsection 1.

3. Except as otherwise provided in subsection 4, after the appointment of a temporary guardian, the petitioner shall attempt in good faith to notify the persons entitled to notice pursuant to NRS 159.047, including, without limitation, notice of any hearing to extend the temporary guardianship. If the petitioner fails to make such an effort, the court may terminate the temporary guardianship.

4. If, before the appointment of a temporary guardian, the court determined that advance notice was not required pursuant to subparagraph (2) of paragraph (b) of subsection 1, the petitioner shall notify the persons entitled to notice pursuant to NRS 159.047 without undue delay, but not later than 48 hours after the appointment of the temporary guardian or not later than 48 hours after the petitioner discovers the existence, identity and location of the persons entitled to notice pursuant to that section. If the petitioner fails to provide such notice, the court may terminate the temporary guardianship.

5. Not later than 10 days after the date of the appointment of a temporary guardian pursuant to subsection 2, the court shall hold a hearing to determine the need to extend the temporary guardianship. Except as otherwise provided in subsection 7, if the court finds by clear and convincing evidence that the proposed ward is unable to respond to a substantial and immediate risk of physical harm or to a need for immediate medical attention, the court may extend the temporary guardianship until a general or special guardian is appointed pursuant to subsection 8.

6. If the court appoints a temporary guardian or extends the temporary guardianship pursuant to this section, the court shall limit the powers of the temporary guardian to those necessary to respond to the substantial and immediate risk of physical harm or to a need for immediate medical attention.

7. The court may not extend a temporary guardianship pursuant to subsection 5 beyond the initial period of 10 days unless the petitioner demonstrates that:

(a) The provisions of NRS 159.0475 have been satisfied; or

(b) Notice by publication pursuant to N.R.C.P. 4(e) is currently being undertaken.

8. The court may extend the temporary guardianship, for good cause shown, for not more than two successive 60-day periods, except that the court shall not cause the temporary guardianship to continue longer than 5 months unless extraordinary circumstances are shown.

(Added to NRS by 1981, 1932; A 1997, 1194; 1999, 1397; 2001, 871; 2003, 1776; 2007, 2026; 2009, 1649; 2013, 910)

Appendix K

COMMENTS RECEIVED FROM JUDGE DOHERTY AND JUDGE STEEL

Judge Frances Doherty - Listed below are additional areas of consideration for the Guardianship Commission's work. I have noted when the recommendation is specifically consistent with that of the National Probate Court Standards (NPCS) and the applicable section or sections. The first suggestion addresses statewide IT proposals which were developed with the assistance of Craig Franden and are consistent with some, although not all of the practices we have implemented. The IT proposals are not in any particular order of priority. My suggestions are reflective of my views and not necessarily of the entire District since limited time has prevented my review of all suggestions with my colleagues. Most of my suggestions address adult guardianship matters but have substantial crossover to minor guardianship cases. Thank you for this opportunity. **(Judge Doherty's suggestions/comments in black)**

Judge Dianne Steel - Prior to accountability there needs to be clarity on expectations and requirements. A review by the Commission of current Nevada Revised Statutes and District Court Rules will undoubtedly reveal areas that can be improved on the State and District levels. It will be necessary for all three branches of government to coordinate a successful restructuring of guardianship. **(Judge Steel's suggestions/comments in blue)**

- I. **DEVELOP STANDARDIZED DATA OUTSIDE OF THE USJR TO INCLUDE REFLECTION OF BEST PRACTICES¹:**
 - A. Record and report data regarding use of alternative dispute resolution. (See NPCS 2.5, 3.3.2, 3.3.10)
 - A monthly count of mediation and settlement conferences. Count each scheduled proceeding once, regardless of the duration of days.
 - B. Record and report statewide data on entry of orders regarding least restrictive oversight including nature and extent of guardianship order: person, person & estate or limited guardianship. (See NPCS 3.3.2, 3.3.10)
 - C. A monthly count of the distinct order types by the following:
 - Order Appointing Guardian of the Estate and Person
 - Order Appointing Guardian of the Estate
 - Order Appointing Guardian of the Person
 - Order Appointing Guardian – Limited
 - Order Appointing Guardian - Special
 - D. Record and report entry of orders denying guardianship and diverting or redirecting guardianship petitions to less restrictive plan of care(See NPCS 3.3.2, 3.3.10);
 - E. Record and report data on cases in which incapacitated person has counsel, and/or when orders enter appointing court appointed counsel, guardian ad litem and/or investigators. (See NPCS 3.3.5 & NRS 159.0455, NRS 159.046, NRS 159.0483, NRS159.0485) (This one should be handled some type of 'order appointing special party' or similar. This should be a count of the number of cases where a separate order is filed appointing. May need a separate order code for each party type.)

¹ Sections I and II would be addressed by the Data/IT Subcommittee appointed prior to the September 16, 2015, meeting.

- F. Record and report data on clearance rate for newly filed cases from date of filing to date of entry of dispositional order. (See NPC 3.3.3). (This would involve a calculation of by the number of distinct cases disposed, divided by the number of new cases/petitions filed. This will result in a clearance rate percentage).
- G. Record and report of entry of ex parte orders and temporary orders prior to adjudicatory hearing (See NPC 3.3.6) (Report the monthly number of temporary guardianships ordered).
- H. Record and report hearing data on filings and dispositions of temporary and permanent guardianship petitions. (This may also be a milestone tracking mechanism). (See NPC 3.3.8)
- I. Monthly count of the initial permanent hearing after petition filed. According to best practice, the hearing should be held 'expeditiously'. (See NPC 3.3.8(A))
- J. Monthly report on presence/absence of Respondent (ward/proposed incapacitated person) (See NPC 3.3.8(B))
- K. Monthly report on presence of proposed guardian at hearing. (See NPC 3.3.8(C))
- L. Record and report relevant demographic data to assist Court in managing overarching matters effecting incapacitated persons, i.e.:
 - Report type of placement of incapacitated person: locked facility, acute care facility, skilled care facility, assisted living, group home, relative care, independent living;
 - Report type of guardian: relative/spouse; private guardian; public guardian; institutional fiduciary;
 - Report age of incapacitated person, broken into 10 year increments;
 - Incapacitated persons (ward) residing out of state;
 - One or more guardians residing out of state.
- M. Consider recording and reporting assumption of jurisdiction over private trusts.
- N. Update systems to implement triggers when guardianship is granted to detect compliance or failure to comply with a statutory deadline.
- O. Uniform Statewide Case Management System.
- P. Uniform USJR measures in compliance with statutory mandates.

II. DEFINE METHODS FOR JURISDICTIONS TO MEET AND TRACK "MILESTONES" IN GUARDIANSHIP CASES CONSISTENT WITH BEST PRACTICES AND FOR PURPOSES OF COURT MANAGEMENT - POTENTIAL STATUTORY MILESTONES LISTED BELOW²:

A. PREDISPOSITION:

- i. Citation issued and appropriately noticed prior to Hearing on Petition – NRS 159.034, NRS 159.047, and NRS 159.0475.
- ii. Proof of Notice of Hearing filed 10 days prior to hearing by Petitioner - NRS 159.034.
- iii. Nevada is Respondent's (proposed ward's) home state or has property here - NRS 159.1998
- iv. Petition filed in county where Respondent (proposed ward) resides - NRS 159.037
- v. 10 day extension hearing conducted on all ex parte ordered temporary guardianships - NRS 159.052

² Sections I and II would be addressed by the Data/IT Subcommittee appointed prior to the September 16, 2015, meeting.

- vi. Permanent hearing conducted and Respondent (proposed ward) present or excused - NRS 159.0535
 - a. Respondent (ward) advised of right to counsel - NRS 159.0535
 - b. investigator appointed
 - c. Guardian ad Litem appointed
- vii. Order dismissing, granting, limiting guardianship entered
 - a. Bond addressed
 - b. Firearms addressed
 - c. Voting privileges addressed
 - d. Summary estate addressed
 - e. Incapacitated person served within 5 days - NRS 159.074
 - f. Notice of Entry of Order filed with Court - NRS 159.074
 - g. Order contains names, addresses and telephone number of guardian, incapacitated person's (ward's) attorney and investigator. - NRS 159.074
 - h. Appeal filed within 30 days of entry of order - NRS 159.325.

B. POST DISPOSITION:

- i. Acknowledgement of Receipt of Instructions filed (Washoe County)
- ii. Letters issued
 - Required Bond posted
- iii. Letters filed with Office of Recorder in real estate cases - NRS 159.087(1)
- iv. Initial Inventory filed 60 days from order - NRS 159.085
- v. Annual Report of Person filed within 60 days of anniversary of order appointing - NRS 159.081(1)(a)
- vi. Annual Accounting filed on non-summary estates within 60 days of anniversary of order appointing - NRS 159.177, NRS 159.081(5)
- vii. Hearing conducted on non-summary annual accountings - NRS 159.181.

C. REMOVAL/RESIGNATION OF GUARDIAN/TERMINATION OF GUARDIANSHIP:

- i. Petition to Remove
 - Citation issued NRS 159.1855
- ii. Petition to Resign
- iii. Citation issued pursuant to NRS 159.1873(2)
- iv. Successor guardian appointed prior to discharge - NRS 159.1875(1)
- v. Accounting and hearing by resigning guardian must be completed - NRS 159.1877(1)
- vi. Petition to Terminate Guardianship
 - If incapacitated person (ward) dies, interested parties must be informed within 30 days - NRS 159.073(1)(c)(V)
 - Order terminating guardianship entered - NRS 159.1855(2) & 159.187(2)
 - Final accounting filed
 - Hearing conducted - NRS 159.1855(2) & 159.187(2)
 - Winding up of affairs within 180 days of termination or, 90 days of appointment of successor trustee - 159.193
 - Order discharging guardian and exonerating bond upon verification and completion of winding up of affairs. NRS 159.199

- Post termination aftercare - Develop funding for the ward until social security or other benefits begin or are reinstated for the person (social security benefits often takes 30-60 days).

SUBSTANTIVE LAW PROPOSALS

III. DEFINITIONS/TERMS (NRS 159.013 – 159.033)

- Eliminate use of terms "ward", "incompetent" and "insane" in adult guardianship cases and replace with more commonly acceptable terms as "Respondent" (prior to disposition) (See NPC 3.3.1(c)(1)), "incapacitated person" or "person under a guardianship" or other more neutralized terms after guardianship issues.
- Terms of art could be re-expressed in a more modern style of language for better understanding by today's user.
- Restate vague language, such as that found in the Guardian ad litem and appointment counsel references to place accountability for resources.

IV. TEMPORARY GUARDIANSHIPS (NRS 159.052, 159.0523, 159.0525)

- Enhance limitations on Emergency Appointment of Temporary Guardian. (See NPC 3.3.6)
- Currently the guardianship is for 10 days and notice must be accomplished within 2 days. From the judicial perspective the timing is short, especially for the first extension hearing. The extension hearing must be noticed and held within 10 days.
 - So, if the court signs the 10 day temporary order on Monday, notice mailed by Wednesday for the hearing on the 10th day, Thursday – there are frequently no other persons present at the extension hearing.
 - To shorten the term of the 10 day emergency date would risk the ability of those with a right to notice from receiving service.
 - At the temporary extension, the petition can be extended for 30 to 60 days. If notice was too short for appearances, objections or competing petitions, effectively, the petition is continued without objection. Without an investigator, the court could be perceived as standing in the shoes of an advocate if the order is denied.
 - No hearing date is required for the extension hearing. If the Ward's emergency has passed or if the Ward dies during this time, there is no responsibility on the part of the guardian to return to court.
 - The temporary Guardian can petition for a second extension, often ex parte, and may remain the temporary guardian for up to 5 months with judicial findings.
 - There is no required deadline to file the initial Citation after the Petition has been filed. For this reason, every temporary letter of guardianship should display an expiration date consistent with the designation in the Order of Temporary Guardianship.

V. APPOINTMENT OF GUARDIANS FOR ADULTS (NRS 159.0487 – 159.075)

- Enhance statutory emphasis on court's responsibility to identify less restrictive alternatives to guardianships. (See NPC 3.3.10)
- Create mandatory findings necessary to impose temporary guardianships, extensions of guardianship or permanent guardianships.
 - For appointment of guardians
 - For access to assets or disposal of personal property

iii. To proceed in a case without counsel or Guardian ad litem for the ward.

VI. APPOINTMENT OF GUARDIANS FOR MINORS (NRS 159.0483, 159.052, 159.061, 159.186, 159.205, 159.215)

- A. Create a separate statute to address guardians for minors separate from adult guardianships, i.e., NRS 159A Minors, NRS 159B Adults. This would include separating the temporary guardianships as well.
- B. Review and implement NPC3 protocols for proceedings regarding guardianships for minors at NPC3 3.5.
- C. State legislation to separate adult guardianship sections from minor guardianships will re-focus the attention of the guardianship partners on what is needed for improvement, and identify gaps in each area that needs to be filled.
- D. The Legislature repealed NRS 159.059 in one bill and amended it in another. Guardian qualifications for the two areas are different. NRS 159.059 contained the requirement for adult and minor guardianship; however, minor guardianship qualifications were not readdressed.
- E. Segregated subjects will also provide a more user friendly document for citizens who may get lost in the back and forth of the two age-related guardianships, while trying to determine which statutes overlap both.
 - i. Especially true for unrepresented persons trying to navigate statutes.
 - ii. Restructuring the statute will allow quicker access to the necessary areas for either a person looking to be a guardian over a minor or an adult.

VII. APPOINTMENT OF COUNSEL/RIGHT TO COUNSEL (NRS 159.0485, 159.0535)

- A. Appoint counsel for all adult Respondents who cannot afford representation or who otherwise cannot access their own attorney. (See NPC3 3.3, NPC3 3.3.5; NRS 159.0535)
- B. Address appointment of counsel for every Ward at the inception of a petition. A statute without funding is not effective. Wards deserve legal protection, even when they have competency issues and cannot ask for or understand the need for an attorney.
 - i. Create a meaningful canvass to determine whether or not the Ward wants an attorney and knows there is a right to counsel. Mandate an attorney or Guardian ad litem for the Ward in the event of trial or evidentiary hearing.

VIII. APPOINTMENT OF GUARDIAN AD LITEM (NRS 159.0455, 159.095)

- A. Appoint a Guardian ad litem for every Ward at the inception of the case. A statute without a program to provide GAL's or funding to acquire GAL's is not effective. It is important for the court to know what is in the best interests of the Ward which may be in conflict with the Ward's wishes.
- B. Restate vague language, such as that found in the Guardian ad litem and appointment counsel references to place accountability for resources.

IX. QUALIFICATIONS FOR GUARDIANSHIP (NRS 159.059)

- A. Require background checks for all guardians. (See NPC3 3.3.12)
- B. The Legislature repealed NRS 159.059 in one bill and amended it in another. Guardian qualifications for the two areas are different. NRS 159.059 contained the requirement for both; however, minor guardianship qualifications were not readdressed. (This was also included under section V).

X. PRIVATE PROFESSIONAL GUARDIANS (NRS 159.0595)

- A. Number of Wards
- B. Licensing Board
- C. Definitions
- D. Reasonable
- E. Personal Mail
- F. Standardized Fee Schedule (Guardians/Attorneys)
 - i. Caps.
 - ii. Billing: Only the Guardian and the Ward's Counsel can petition for fees.
 - iii. Fee schedule.
 - iv. Per statute, the Ward never bears the cost for a Petition which does not result in a guardianship.
- G. **BURDEN OF PROOF:** Depending on the petition before the court, the person seeking to create, end or change the Guardianship usually has the burden to show their prayer should be granted by the court. The Court should determine which party has the burden of proof prior to a bench trial or evidentiary hearing.
- H. **STANDARD OF PROOF:** Currently, the standard of proof is clear and convincing evidence. The Commission may want to look at lessening the standard for ending the Guardianship on Petition by the Ward

XI. INVESTIGATOR (NRS 159.046, 159.074)

- A. Require appointment of court investigator, third party investigator or court visitor upon filing of all petitions for guardianships. (See NPC 3.3.4; NRS 159)
- B. Mandate available resources to investigate circumstances in a case from the inception through the final accounting. The court must be able to direct or refer a case to an independent investigator to insure the safety of a Ward's person and estate. The costs of the investigator can be recaptured from the estate or paid by the County depending on circumstances. A Ward should not have to possess a sufficient estate before the court can mandate investigation. The Court cannot look to the estate for payment prior to the appointment of a guardian over the estate. Most abuses of the Ward's person or estate are usually within 20 days of the filing of the petition, and prior to the court's ability to sua sponte order protection.
 - i. Social well-being investigator (post-certification may be necessary where investigators are going out into the field).
 - a. Are allegations of physical abuse accurate?
 - b. Have all family members been notified of the guardianship case? As the court cannot appoint anyone who has not petitioned for guardianship, notification will at least inform family members and interested parties of the opportunity to object to or support the current proposed guardian. They may also consider their own petition for guardianship of the proposed Ward.
 - c. Is the Ward being intimidated or overwhelmed?
 - ii. Financial investigator
 - a. Is someone taking financial advantage of the Ward's estate?
 - b. Is the Ward paying bills and attending to business?

- iii. Fraud investigator
 - a. Has someone taken the Ward's estate under false presences?
 - b. Has the Ward's identity been compromised?

XII. PROCEDURES FOR GUARDIANSHIP PROCEEDINGS (PETITION/HEARINGS) (NRS 159.034 - 159.0486)

- A. Confirm rules of evidence apply in contested guardianship hearings including right to confront witnesses and challenge evidence. (See 14 Amendment to U.S. Constitution; NPCS 3.3.9)
- B. Confirm which standard of evidence applies to matters outside determination of whether Respondent meets criteria for a guardianship and guardianship is necessary to protect Respondent or Respondent's estate.
- C. Specifically prioritize guardianship court's jurisdiction to hear related matters of abuse, neglect, third party fraud and tort claims involving incapacitated person.
- D. Mandate court review of every petition within 2 judicial days of filing, and take available, appropriate and jurisdictional action. (I.e. refer to independent investigation for report to parties or to an appropriate governmental agency.)
- E. The current petition utilized by Clark County follows the statute in required language in order presented by the statute.
 - i. Additional information could be designated by Eighth Judicial District Court Rule (EDCR).
 - ii. Special format could be designated by EDCR.
 - iii. Forms are available, however, the area of guardianship is complicated and complex as it should be to avoid violating a person's Constitutional Rights without good cause. Many proposed guardians/objectors cannot complete the forms and often the court will obtain additional information from the parties at the initial hearing.
 - iv. The only person required to complete the petition is the proposed guardian, with assistance of an attorney if retained, and the Doctor to supply meager information to support the claims in the petition.
 - v. Since the Doctor and the proposed guardian prepare independent documents, the corroboration of information is helpful to the court's determination regarding the necessity of a guardianship.
 - vi. To require more involvement of additional persons could be problematic where the proposed Ward has few or no family members available to assist with personal medical or estate issues.

XIII. PHYSICIANS' CERTIFICATE: The certificate currently utilized by Clark County has been revised several times, and, unfortunately, they are all still in use. A consistent form would be helpful. The statement is formulated to inform the court that a doctor, or other "qualified person," has diagnosed the proposed ward with a physical or mental health problem without exposing every detail of the Ward's personal health status for public consumption. The physician is required to state whether the patient can attend the hearing, whether the patient is a danger to him/herself or others and if the patient required a guardian over the person, the estate or the person or estate. (NRS 159.044, 159.0523, 159.0525, 159.0535)

- A. Improve substantive requirements of Physicians Certificate. (See NPCS 3.3.9 narrative)
- B. The certificate must be prepared, signed and filed prior to an order for guardianship if the guardianship is not by consent of the Ward.

- C. Due to the nature of the content, it should be filed under seal. Filing the certificate under seal, with any medical evaluation/diagnosis would give the court more information to determine whether or not to grant an emergency temporary guardianship.
- D. The certificate as it now stands is more like a recapitulation, without the supporting documentation.
- E. The court needs to insure that the Ward is protected under the HIPAA laws. The current status could be violating the federal protection of a patient. The information is collected and filed prior to any form of guardianship, pursuant to statute and definitely without the consent of the Ward.
- F. The petition should also follow HIPAA law and refer the court, decision maker, to the sealed certificate.
- G. The check boxes are easy, however, to require that a doctor dictate the diagnosis, have the diagnosis transcribed and prepared for an emergency could endanger the patient who many need immediate court assistance. There must be a compromise that will enable the court to have enough information, enable the doctor to inform the court and supply support for anyone who has the right to be notified the comfort that the Ward is protected and the Order has a basis upon which to issue.
- H. Doctor's notes, when included in the description portion of the certificate are all but impossible to read.
- I. The minimal information in a Physician's Certificate was an effort to protect the Ward's privacy. Additional information in the Physician's Certificate (which is currently open to public inspection) decreases the Ward's privacy. The question is: Where should the balance point be placed?
- J. Clear up any ambiguity regarding when, and on what standard a Ward may be excused from any hearing.
- K. Physician to determine whether the Ward has demonstrated poor judgment or is truly incapacitated.
- L. Include definitions on Certificate regarding definitions such as legal capacity; contractual capacity; incapacity.

XIV. COMPLIANCE: Mandate a system to be identified to insure compliance with statutory deadlines for reporting and accounting. Compliance can be one of the most fleeting events to capture in Guardianship cases. The Court can create programs to include all possible events which need to be watched by the courts. Even though the statutes spell out the times for compliance, and the orders state the expectations, it is still a problem for the court to monitor every guardianship case. A reminder letter to the guardian from a compliance officer when a filing event has been missed and a follow up citation from the court could remedy many oversights, which can be very costly to the Ward's person and estate.

- A. In-house compliance officer (responding to the court) to maintain records and insure documents are:
 - ii. Timely filed, and
 - iii. Information is completed (Has a recapitulation been included in the accounting, do the figures add up, do they reconcile with prior accountings?)
 - iv. As there is no court hearing required for the annual Report of the Guardian regarding the Ward's person, the compliance officer should review the report for completion of information; refer to court if information is not sufficient. The court

can determine whether to refer the report to an independent investigator for further information, or to cite the parties in for a more detailed review.

- B. Public Compliance Officer to monitor and review concerns of the public regarding the guardianship process, to audit the court's efficiency and to work with independent investigator where necessary. Public Compliance Officer may also review petitions as they would be public record once filed.

XV. FIDUCIARY REPORTS/ANNUAL ACCOUNTING/COMPENSATION: Preparation of reports is a drain on the ward's assets. The more "work" required on behalf of the ward, the fewer volunteers to perform guardianship services without payment. The courts currently have the power to order less time between reports, but should do so only if it benefits the ward. The increase in number of reports will also increase the use of judicial resources, compliance officers and court hearings. (NRS 159.065, 159.067, 159.069, 159.071, 159.0755, NRS 159.105, 159.176, 159.177, 159.179, 159.181, 159.183, 159.184)

- A. Mandate bond and set standardized protocols for determining the amount of bond on all cases - require specific findings of fact and conclusions of law if bond is not imposed or is smaller than standardized amount. (See NPC 3.3.15)
- B. Consider appropriate sanctions for failure to comply with timely account and report filing.

XVI. TRAINING AND EDUCATION (NRS 159.0592)

- A. Require training for all non-professional guardians and regulate training for professional guardians. (See NPC 3.3.11, NPC 3.3.14)
- B. Clark County has two training programs in existence. UNLV Law School, in conjunction with Legal Aid of Southern Nevada, conducts training which focuses on how to become a guardian and how to file specific motions when you are a guardian or seeking to challenge the actions of a guardian.
- C. The Public Guardian's Office offers training on the rights, duties and responsibilities of guardians.
- D. Provided training and education regarding Guardianship
 - i. CLE Credits
 - ii. Clear up misinformation
 - iii. Produce
 - iv. Bench/Bar meetings

XVII. ADMINISTRATIVE PROPOSALS

- A. Identify reasonable caseload for judicial officer overseeing guardianship cases and enforce such caseload limitations statewide. (Suggestion: at this time one judicial officer for every 500 cases)
- B. Ensure judicial court clerk staff ratio is in conformity with guardianship workload assignment. (Suggestion at this time one court clerk for every 500 cases.)
- C. Ensure each jurisdiction's IT Department is adequately staffed and trained to accommodate significant workload and management load responsibilities of guardianship cases.
- D. Ensure each jurisdiction is staffed with sufficient ratio of case compliance officers capable of supporting judicial responsibilities for review, management and competent oversight of guardianship caseload. (Suggestion at this time one case compliance officer for every 500 cases).
- E. Ensure guardianship stakeholders are financially supported to execute necessary responsibilities (i.e. Elder Protective Service, Child Protective Services, Office of Public

Guardian, Office of District Attorney and Court Appointed Counsel) to perform statutorily required functions.

- F. Require statewide standardized forms in guardianship matters to ensure conformity with statutory requirements and consistency of oversight.
- G. Develop District Court Rules to address the standard of practice statewide will provide more consistency and predictability when multiple jurisdictions are involved in one person's life.
- H. Develop local rules to address the particular dynamics of a court in order to address the regional needs and available resources.
 - i. Judicial Districts have financial and population challenges. Permitting a district to take advantage of all of its strengths and to analyze weaknesses for greater efficiency will better serve the community.
 - ii. Local rules are easier to adjust to accommodate for any unintended consequences of new requirements.

XVIII. PRIVACY CONCERNS: There needs to be a balance of information which is public and that is sealed. When a will is filed in the court proceeding, it places the Ward at risk, especially where the Ward, while competent, has dis-inherited a relative. Placing trust and estate planning information in the public portion of the file, also places the Ward at potential risk of identity fraud or damage to assets.

- A. Bank/financial account statements should not be attached to an Accounting unless the account number (and social security number if on the document) has been redacted or at least partially redacted. The name should be left on the account, but the mailing address should be removed.
- B. Discovery requests could request non-redacted information if there is any question of authenticity.

XIX. FAMILY INVOLVMENT: Family constellations are complex. That said, every member should have the ability to present information to the court; they should have information regarding the court process and procedure. This will require education.

- A. Family members who are not chosen as guardians should still have access to information presented to the court and be able to weigh in on future issues. Unless they specifically waive notice, notice of any court pleading or report should also be served on non-guardian family members.
- B. As far as consultation, the court cannot mandate the nature of a family relationship, but can encourage the exchange of information between family members in the best interest of the Ward.

XX. FAMILY MEDIATOR PROGRAM: A mandated program could work with the families and assist the court in educating the family members about their rights and mediate visitation that is beneficial to the Ward. There would need to be additional staffing and training in jurisdictions that already have statutory mediation programs for custody.

- A. Currently, in Clark County, the UNLV Boyd Law School, in conjunction with the Legal Aide Center of Southern Nevada, provides opportunities for mediation with law students, supervised by a law professor. This is not available in summer sessions.
- B. Mandated mediation would overwhelm the law school mediation program and would require more Family Mediation Center staff members. The Family Mediation Center (FMC) currently provides two to three mediations a month.

XXI. MISCELLANEOUS

- A. Develop statutory process by which guardians are notified of all civil and criminal actions in which persons under a guardianship are involved.
- B. Develop complaint process for incapacitated person or interested persons to pursue concern through expedited process with the Court. (See NPCS 3.3.18)

XXII. MODEL COURT PROGRAM created by the National Association for Court Management. We should strive to maintain the goals of the Model Court, and reach out for their assistance.

- A. Clark County in compliance with model court
 - i. Annual Reports of the Guardian re: Ward's status
 - ii. Court Performance Measures (Currently self-imposed)
 - iii. Notice
 - iv. Consideration of less restrictive alternatives
 - v. Prompt hearings
 - vi. Clear and Convincing evidence standard
 - vii. Training for Guardians (Currently by community partners)
 - viii. Standardized forms
 - ix. E-Filing
 - x. Available Alternative Dispute Resolution Techniques (minimal)
 - xi. Sustainability Evaluations (RE proposed budgets)
 - xii. Contempt Citations for Deficiencies (Out of compliance)
 - xiii. Freezing Assets and Suspending Letters on Showing of Exploitation or Mismanagement
 - xiv. Show Cause Hearings for Leaving the Jurisdiction
- B. Partial adherence with Model Court
 - i. Compliance oversight
 - ii. Availability of forms and ease of use
 - iii. Service
 - iv. Citizen Complaints
 - v. Notice that the Guardian is leaving the jurisdiction
 - vi. Judicial training
- C. Goals to adhere to model court
 - i. Evaluations: to measure court's efficiency
 - ii. Attorneys for wards
 - iii. Independent investigators
 - iv. Independent auditors
 - v. Volunteer program to meet with Wards
 - vi. Plan presented by Guardian for "Person Only" plan
 - vii. Volunteer guardians
 - viii. Fee schedule
 - ix. Differentiated Case Management (triage emergency cases)

Appendix L

Texas Guardianship Reform Efforts

By David Slayton

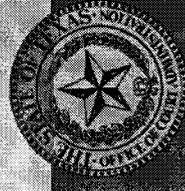
Administrative Director, Texas Office of Court Administration
Executive Director, Texas Judicial Council



OFFICE OF COURT ADMINISTRATION

Silver Tsunami

- Over age 65 population in Texas will more than double by 2040.
- Many of these individuals will need help managing their affairs - some through the appointment of a guardian.
- TX currently has just over 400 state-certified guardians that handle 5,000 of the more than 40,000 active guardianships.
- 10 out of 254 counties have probate courts with resources to adequately prevent abuse.



Who was involved?

WINGS stands for the Texas Working Interdisciplinary Network of Guardianship Stakeholders and is a collaborative group of stakeholders dedicated to improving guardianship in Texas.

The Judiciary

Texas Legal Services

AARP

Disability Rights Texas

Alzheimer's Association

Texas Guardianship Association

ARC of Texas

Social Security Administration

Texas Veterans Commission

Department of Aging and Disability Services

Department of Family and Protective Services

State Bar of Texas



How did WINGS Get Started

- In 2013, the Texas Office of Court Administration was selected by the National Guardianship Network to establish one of four state pilot WINGS groups.
- The WINGS group is working in conjunction with the Texas Judicial Council's Elders Committee.



OFFICE OF COURT ADMINISTRATION

Goals for Texas WINGS

1. Identify strengths and weaknesses in the state's current system of adult guardianship and less restrictive decision making options;
2. Address key policy and practice issues;
3. Engage in outreach, education and training; and
4. Serve as an ongoing problem solving mechanism to enhance the quality of care and quality of life of adults in or potentially in the guardianship and alternatives system.



Identifying Priorities Timeline

September 2013

- **Texas Guardianship Assessment Survey**
- Sent to judges, medical professionals, mental health professionals, self advocates, advocacy organizations, attorneys, certified guardians, court visitors, state legislators and other interested stakeholders.

November 2013

- **Full WINGS Group Meets to Discuss Survey**
- The group narrowed down a list of 26 issues to focus on 8

January 2014

- **Three Work Groups Formed and Met to Discuss Priorities and Solutions**
- 1) Alternatives to Guardianship, 2) Support Services 3) Person-Centered Assessments

August 2014

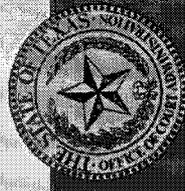
- **Elder's Committee Meets to Discuss Legislative Recommendations**
- Committee proposes three recommendations to be reviewed by Texas Judicial Council



OFFICE OF COURT ADMINISTRATION

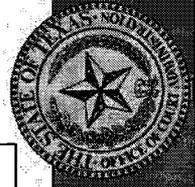
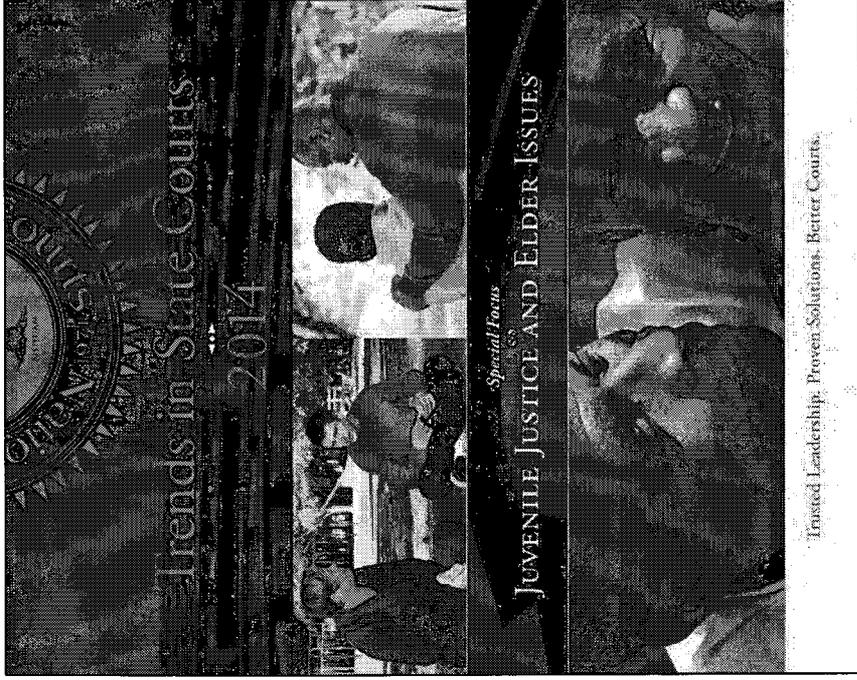
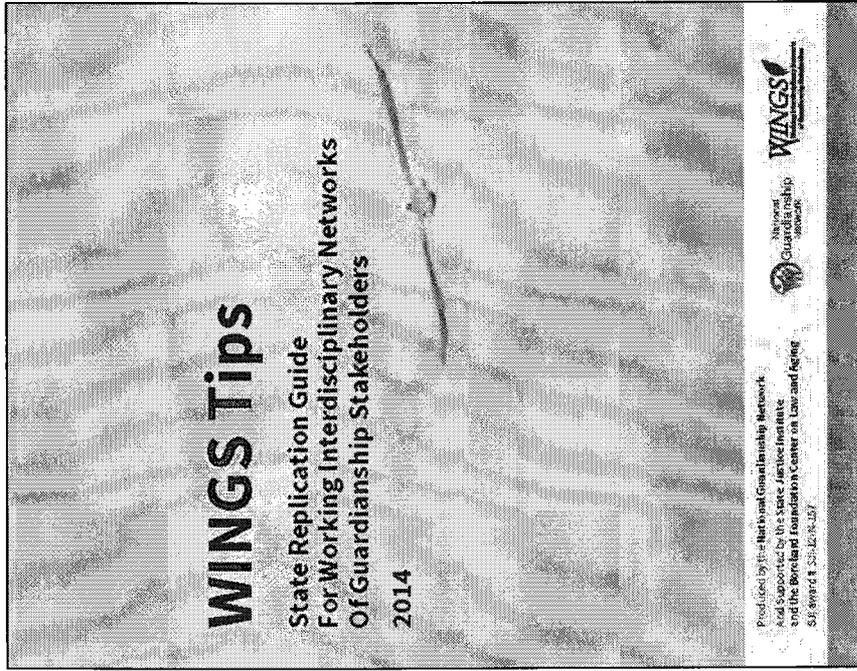
Priorities Discussed with WINGS and the Elders Committee

1. Services to coordinate alternatives to guardianship;
2. Support services to assist family/friend with becoming a guardian;
3. Support services to assist family/friend (non-professional) guardians to complete their legally mandated duties;
4. Court visitor qualifications, standards and procedures;
5. A standardized form for courts to obtain an accurate and detailed assessment of a proposed protected person's functional limitations; and
6. Template to assist guardians in developing a person-centered plan.



Texas WINGS Group Press

- Featured in several national publications including:



OFFICE OF COURT ADMINISTRATION

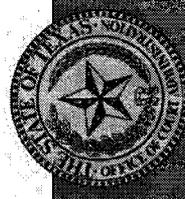
Elder's Committee Recommendations to the Texas Legislature

1. Strengthen guardianship alternatives and improve guardianships
2. Create a statewide guardian of last resort
3. Fund OCA's legislative appropriations request to create a pilot program for guardianship compliance specialists to review guardianship filings



Recommendation 1: Strengthen Guardianship Alternatives and Improve Guardianships

- Recognize supported decision making agreements
- Require the court to make a finding that no less restrictive alternatives exists to resolve the need for a guardianship
- Require the applicant or applicant's attorney to certify to the court that the guardianship is necessary and alternatives to guardianship have been explored



Recommendation 1: Strengthen Guardianship Alternatives and Improve Guardianships (cont)

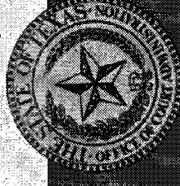
- Requiring the physician examination letter or certificate to state whether improvement in the proposed ward's condition is possible and state time period after which individual should be re-evaluated to determine if guardianship is necessary
- Require court to consider the ward's right to make personal decisions about residence
- Require the court to consider the adult's preference of the person to be appointed a guardian by the court
- Require the applicant's attorney to be certified by the Bar as completing a course study in guardianship law and procedure



Recommendation 2: Statewide Guardian of Last Resort

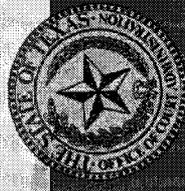
- A guardian of last resort is needed when no one is available to assume the responsibility of guardianship or when the assets of the proposed ward are insufficient to pay for a private guardian.
- Expand the Guardianship Service Program under the Department of Aging and Disability Services (DADS) by removing the requirement that people be referred by Adult Protective Services (APS) or Child Protection Services (CPS)

Photo © Mary Ellen Mark



Recommendation 3: Pilot Program for Guardianship Compliance Specialists

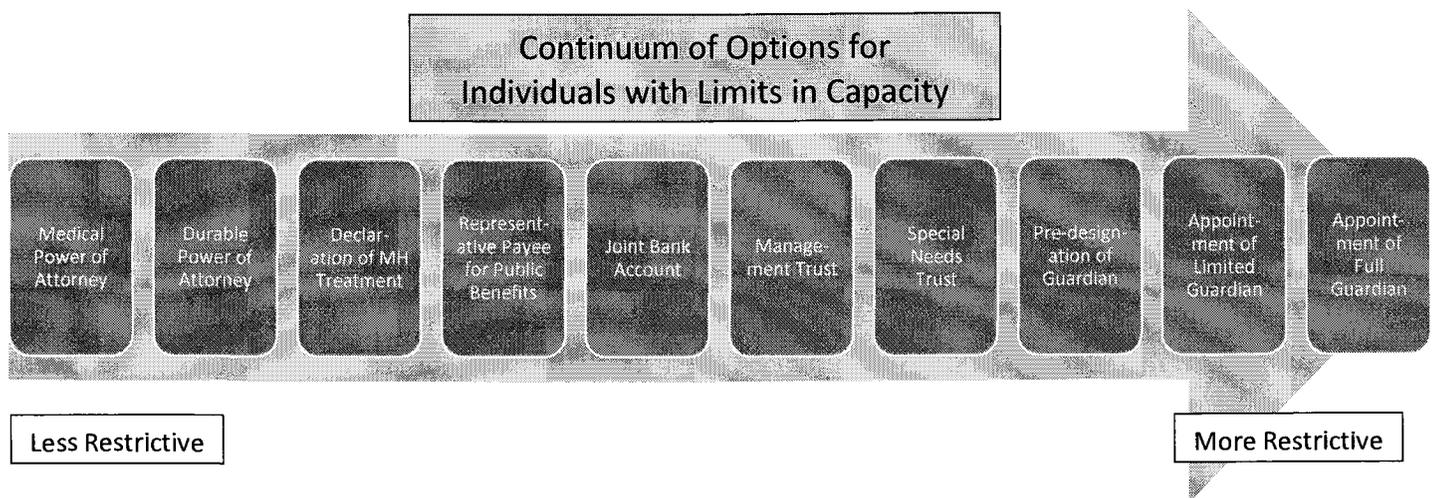
- OCA requested funding for a pilot program to place guardianship compliance specialists across the state to review guardianship filings
- Program will help determine if guardians are:
 - Following statutorily required procedures
 - Review annual reports filed by guardians
 - Ensure that exploitation and or neglect of persons under guardianship is not occurring
- \$550k received over the biennium
 - 3 FTEs



Overview of Texas Judicial Council Elders Committee Legislative Proposals

The Problem

- Over 50,000 active guardianship cases in Texas as of 8/31/14.
- Number of guardianships granted has increased by 60% since 2011 (4,370 in 2014).
- Texas population of individuals over age 65 in Texas expected to double by 2040.
- Texas only has specialized courts for guardianship cases in 10 counties. In the other 244 counties, the cases are primarily handled by constitutional county judges.
 - Counties without specialized probate courts lack resources to ensure wards are not exploited by guardians.
- Judges and lawyers claim that individuals do not adequately seek alternatives to guardianship. Alternatives are spread throughout the statutes making the alternatives difficult to locate and utilize.
- Some attorneys filing guardianship applications lack understanding of guardianship law and can do harm to individuals.
- Physicians evaluating individuals for potential guardianship are not required to state whether there is a likelihood of improvement in the proposed ward's condition or the timeframe for that improvement, meaning that individuals may stay under guardianship when it is no longer necessary.
- Guardians who might have capacity to assist with decisions about their residence may not be afforded the opportunity to do so. Guardians may currently move wards to more restrictive care facilities without notice to the court.



Legislative Proposals

1. Guardianship Alternatives and Supports and Services

SUMMARY: There are currently several statutory alternatives to guardianship. These alternatives are spread throughout the Estates Code, Health and Safety Code, and Civil Practices and Remedies Code, making it difficult for judges, attorneys and others to locate the alternatives when needed. In addition, there is no requirement that the alternatives be explored for appropriateness prior to the filing or granting of a guardianship. In addition, with supports and services, some proposed wards might be able to function in some areas without a guardian, but there is no requirement that these be explored prior to the filing or granting of a guardianship. This bill would address these issues by:

- providing a condensed list of alternatives to guardianship and their statutory references, where appropriate;
- requiring judges, attorneys and applicants to explore alternatives to guardianship prior to the filing and granting of a guardianship; and
- requiring judges, attorneys and applicants to consider whether supports and services can be put into place that would prevent the need for a guardianship.

2. Certificate of Medical Examination Modification

SUMMARY: Under current law, a proposed ward must be examined prior to appointment of a guardian by a physician to determine their mental capacity. However, there is no requirement for the physician to report to the court if the proposed ward's condition might improve and in what period of time that improvement might occur. Thus, an individual whose condition improves might remain under guardianship longer than necessary. This bill would address those issues by:

- requiring the physician's certificate of medical examination to include information on whether the proposed ward's condition might improve and the time period within which the condition might improve; and
- requiring, when appropriate, the ward to be reevaluated pursuant to the physician's recommendation to determine if the capacity of the individual has improved to a point where a guardianship is no longer necessary.

3. Guardianship Decisions about Residence

SUMMARY: One of the issues that arose during the committee's study was lack of consideration of a ward's preference as to their residence. In addition, there were stories of ward's being moved to more restrictive residences without prior permission of the court of such a move. This bill addresses those issues by:

- requiring judges and attorneys to consider whether a proposed ward can retain the ability to make decisions about their personal residence; and

- requiring guardians to obtain permission from the court prior to moving a ward into a more restrictive residence.

4. Applicant Attorney Training requirement

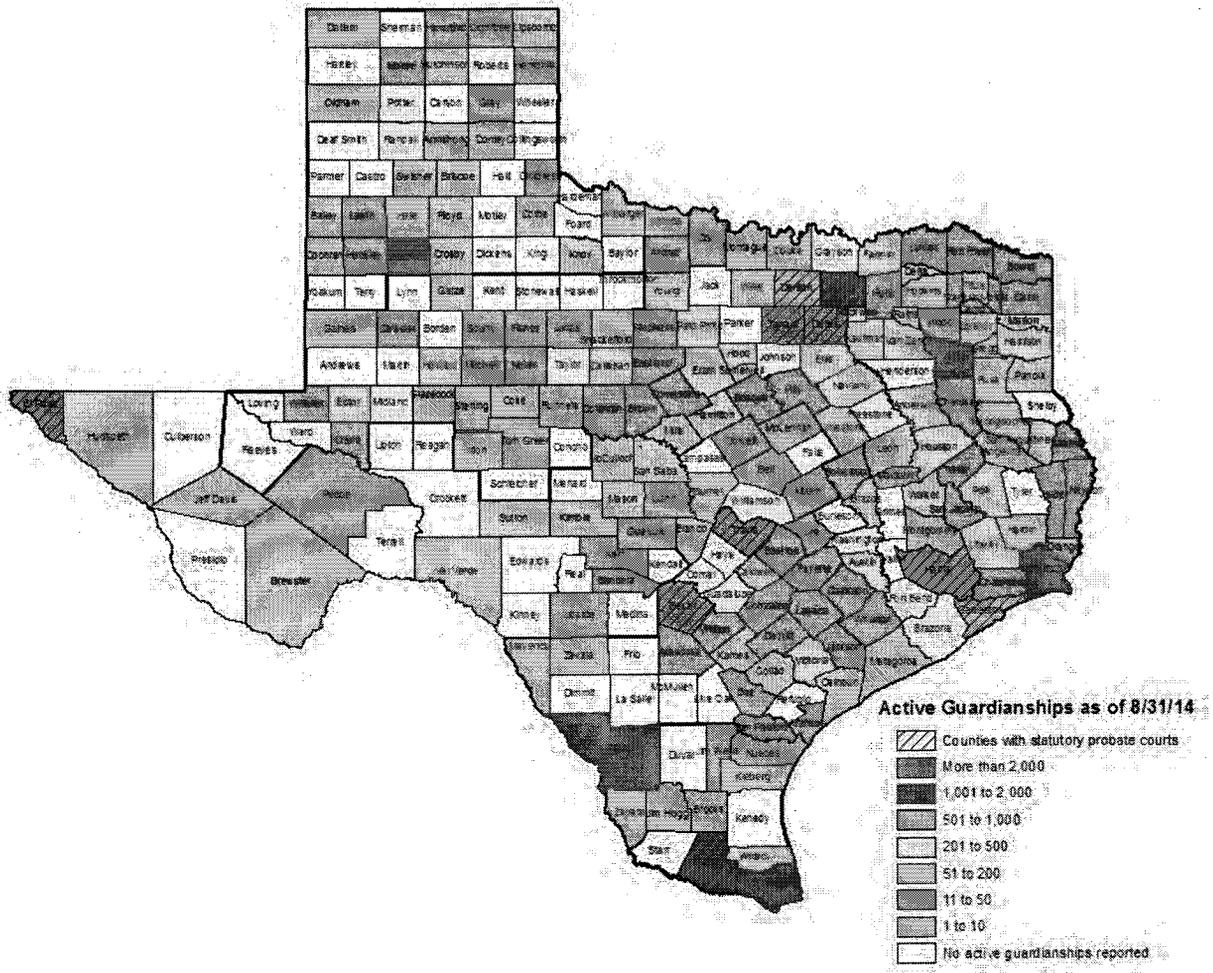
SUMMARY: Guardianship law is complicated and has serious consequences for the individuals impacted by it. Therefore, it is vitally important that attorneys practicing guardianship law have adequate training. While most attorneys practicing regularly in this area have sufficient training, the committee found that there are concerns about attorneys practicing without sufficient knowledge. This bill would address these issues by:

- requiring the applicant's attorney to obtain four hours of training in guardianship law prior to the filing of an application for guardianship; and
- increasing the required training from three to four hours to add an additional hour of training on alternatives to guardianship and supports and services.

Supported Decision-Making Framework

SUMMARY: An emergency alternative to guardianship is the supported decision-making framework. In this arrangement, an adult with a disability enters into an arrangement with another individual to assist the adult in making life decisions, including the adult's residence; what services, supports and medical care the adult wants; who the adult wants to live with; and where the adult wants to work; all without impeding the self-determination of the adult. The bill would:

- Establish a legal framework for a supported decision-making agreement in Texas;
- Ensure protections are in place to reduce abuse or exploitation through such an agreement.



Appendix M

Capacity and Competence

Lo, Bernard. *Resolving Ethical Dilemmas: A Guide for Clinician, 2nd Editions*. Lippincott Williams & Wilkins, 2000: 80-93.
<http://www.som.ucsf.edu/som/education/gme/links/riskmanagement.asp>
<http://manuals.ucsfmedicalcenter.org/AdminManual/AdminManualHome.htm>

Key Points:

- **Capacity: decision-making ability, determined by any attending physician**
- **Competence: capacity to make medical decision, determined by the courts**
- **Assess capacity even when patient agrees with your recommendations**
- **Consult psychiatry, ethics committee, and/or risk management in difficult situations**

1. Capacity

- Balance autonomy with harm
- Usually not challenged when the patient agrees with the physician, but still should be assessed
- Standards
 - Makes and communicates a choice
 - Appreciates
 - Medical situation and prognosis
 - Nature of recommended care
 - Alternative courses of care
 - Risks, benefits, and consequences of each alternative
 - Decisions are consistent with patient's values and goals
 - Decisions do not result from delusions
 - Uses reasoning to make a choice
- Standards may be stricter when options have greater risk
- Questions
 - "Tell me what you believe is wrong with your health now."
 - "What is [] likely to do for you?"
 - "What do you believe will happen if you do not have []?"
 - "If these benefits or risks occurred, how would your everyday activities be affected?"
 - "Tell me how you reached your decision. Help me understand your decision."
- Mental status tests: can have abnormal tests but have capacity and be deemed competent
- Restrictions on refusal of care (based on prior cases):
 - Communicable diseases
 - Pregnancy
 - Treating competent patients for their own benefit
- Documentation
- Surrogate decision-making and substituted judgment: what decision would the patient make if he/she were capable?

2. Who determines capacity: attending physicians – housestaff under attendings in an urgent situation

- Psychiatry: helpful for additional documentation in difficult evaluations
 - 5150: 72 hour legal hold placed on person who "as a result of a mental disorder, is a danger to others or to himself or herself, or gravely disabled"
 - Age >21 with Alzheimer's, brain injuries, or other organic brain disorders or intoxication may be held under 5150

3. Competence: patient has the capacity to make informed decisions about medical interventions

- Determined by the courts, but in practice determined *de facto* by physicians
- Can be competent in one realm, but not another

4. Resources

- Risk management: 353-1842, website above
- Ethics committee: Bernie Lo

Definitions of incapacity/incompetence

NRS 1.427 “Incapacitated” defined. “Incapacitated” means unable to perform the duties of office because of advanced age or mental or physical disability.

(Added to NRS by 1997, 1087; A 2009, 1338)

NRS 3.092 Retirement because of incapacity, disability or advanced age.

1. A district judge who has served as a district judge, a judge of the Court of Appeals or a justice of the Supreme Court in any one or more courts for a period or periods aggregating 5 years or more and who becomes permanently incapacitated, physically or mentally, to perform the duties of office may retire from office regardless of age.

2. Any district judge who retires pursuant to the provisions of subsection 1 or who is retired because of advanced age or physical or mental disability pursuant to Section 21 of Article 6 of the Constitution of the State of Nevada is entitled to receive annually from the State of Nevada, a pension for the remainder of his or her life, the same pension the judge would receive under NRS 3.090 based on his or her years of service but without regard to his or her age.

3. Any judge, or a guardian of a judge on behalf of the judge if the judge is unable to act, who desires to retire voluntarily must give notice in writing to the Governor. The Governor shall appoint three physicians licensed to practice medicine in the State of Nevada to examine the judge and report the results to the Governor in writing. If a majority of the physicians is of the opinion that the judge is permanently incapacitated, physically or mentally, the Governor shall approve the retirement. The judge or a guardian of the judge must file with the Executive Officer of the Public Employees’ Retirement Board an affidavit setting forth the fact of the judge’s retirement and the years he or she has served in either or both of such courts.

NRS 41.300 Insane persons; presumption of legal capacity on discharge. After a person’s insanity has been judicially determined, such person can make no conveyance or other contract, or delegate any power or waive any right until the person’s restoration to presumed legal capacity, or until the person has been judicially declared to be sane. A certificate from the superintendent or resident physician of the insane asylum to which such person may have been committed showing that such person had been discharged therefrom shall establish the presumption of legal capacity in such person from the time of such discharge.

[1:23:1941; 1931 NCL § 3536]

NRS 41.310 Adjudication of sanity. The district courts of the several counties shall have jurisdiction to hear and determine the question as to whether or not a person, previously adjudicated to be insane, shall be adjudicated to be sane.

[2:23:1941; 1931 NCL § 3536.01]

NRS 41.320 Petition seeking restoration of status as sane; notice. Any person, on behalf of an alleged insane person, may file a petition in the district court seeking an order restoring the alleged insane person to the status of a sane person. Upon the filing of the petition for that purpose, the clerk shall give such notice of the filing of the same as the court may order.

[3:23:1941; 1931 NCL § 3536.02]

NRS 41.325 Notice of adjudication of sanity to be given to Administrative Officer and Medical Director of Northern Nevada Adult Mental Health Services. After any proceeding in which a person, previously adjudicated to be insane, is adjudicated to be sane, the clerk of the district court shall immediately notify the Administrative Officer and the Medical Director of Northern Nevada Adult Mental Health Services of the adjudication.

(Added to NRS by 1959, 851; A 1973, 92, 1218; 1985, 231; 2001, 1116)

NRS 111.679 Capacity to make or revoke. The capacity required to make or revoke a deed upon death is the same as the capacity required to make a will.

(Added to NRS by 2011, 1349)

NRS 141.060 Incapacity of joint personal representatives. If one of several personal representatives of the same estate to whom letters have been granted dies, becomes incapacitated or disqualified, or otherwise becomes incapable of executing the duties of the office, or if the letters are revoked or annulled according to law with respect to one personal representative, the remaining personal representative shall proceed and complete the administration of the estate.

[90:107:1941; 1931 NCL § 9882.90]—(NRS A 1999, 2282)

NRS 159.019 “Incompetent” defined. “Incompetent” means an adult person who, by reason of mental illness, mental deficiency, disease, weakness of mind or any other cause, is unable, without assistance, properly to manage and take care of himself or herself or his or her property, or both. The term includes a person who is mentally incapacitated.

(Added to NRS by 1969, 412; A 1999, 1396; 2003, 1770)

NRS 159.022 “Limited capacity” defined. A person is of “limited capacity” if:

1. The person is able to make independently some but not all of the decisions necessary for the person’s own care and the management of the person’s property; and
2. The person is not a minor.

(Added to NRS by 1981, 1931; A 1999, 1396; 2003, 1771)

NRS 160.070 Evidence of necessity for guardian for incompetent. If a petition is filed for the appointment of a guardian of a mentally incompetent ward, a certificate of the Secretary or a representative of the Secretary, setting forth the fact that such person has been rated incompetent by the Department of Veterans Affairs on examination in accordance with the laws and regulations governing the Department of Veterans Affairs and that the appointment of a guardian is a condition precedent to the payment of any money due such person by the Department of Veterans Affairs, constitutes prima facie evidence of the necessity for such appointment.

[6:28:1929; NCL § 9553]—(NRS A 1995, 1079)

NRS 162A.070 “Incapacity” defined. “Incapacity” means the inability of an individual to manage property or business affairs because the individual:

1. Has an impairment in the ability to receive and evaluate information or make or communicate decisions even with the use of technological assistance;

NRS 166A.100 “Incapacitated” defined. “Incapacitated” means lacking the ability to manage property and business affairs effectively by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, disappearance, minority or other disabling cause.

(Added to NRS by 2007, 285)

NRS 166.040 Competency of settlor; writing required; circumstances when writing meets requirements for trust to be created for benefit of settlor; settlor’s ability to hold other powers.

1. Any person competent by law to execute a will or deed may, by writing only, duly executed, by will, conveyance or other writing, create a spendthrift trust in real, personal or mixed property for the benefit of:

- (a) A person other than the settlor;
- (b) The settlor if the writing is irrevocable, does not require that any part of the income or principal of the trust be distributed to the settlor, and was not intended to hinder, delay or defraud known creditors; or
- (c) Both the settlor and another person if the writing meets the requirements of paragraph (b).

NRS 293.5415 Circumstances in which person adjudicated mentally incompetent declared ineligible to vote; certain judicial findings required. A person is not ineligible to vote on the ground that the person has been adjudicated mentally incompetent unless a court of competent jurisdiction specifically finds by clear and convincing evidence that the person lacks the mental capacity to vote because he or she cannot communicate, with or without accommodations, a specific desire to participate in the voting process and includes the finding in a court order.

(Added to NRS by 2013, 59)

NRS 293.542 Duty of court to provide notification of judicial finding that person lacks mental capacity to vote. Within 30 days after a court of competent jurisdiction issues an order stating that the court specifically finds by clear and convincing evidence that a person lacks the mental capacity to vote because he or she cannot communicate, with or without accommodations, a specific desire to participate in the voting process, the court shall provide a certified copy of the order to:

1. The county clerk of the county in which the person is a resident; and
2. The Office of the Secretary of State.

(Added to NRS by 1997, 2776; A 2013, 59)

NRS 412.2645 Person may not be tried or punished while incompetent.

1. A person may not be tried or adjudged to punishment under this Code while incompetent.
2. For the purposes of this section, a person is incompetent when presently suffering from a mental disease or defect rendering the person unable to understand the nature of the proceedings against that person or to conduct or cooperate intelligently in the defense of the case.

(Added to NRS by 2013, 1098)

NRS 432B.070 "Mental injury" defined. "Mental injury" means an injury to the intellectual or psychological capacity or the emotional condition of a child as evidenced by an observable and substantial impairment of the ability of the child to function within a normal range of performance or behavior.

(Added to NRS by 1985, 1369)

NRS 433.099 "Intellectual disability" defined. "Intellectual disability" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

(Added to NRS by 1975, 1591; A 2013, 662)—(Substituted in revision for NRS 433.174)

NRS 433.5473 "Person with a disability" defined. "Person with a disability" means a person who:

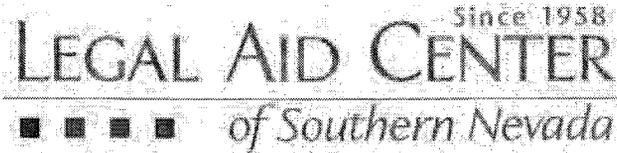
1. Has a physical or mental impairment that substantially limits one or more of the major life activities of the person;
2. Has a record of such an impairment; or
3. Is regarded as having such an impairment.

(Added to NRS by 1999, 3230)

NRS 615.120 "Physical or mental disability" defined. "Physical or mental disability" means a physical or mental condition which materially limits, contributes to limiting or, if not corrected, will probably result in limiting an individual's activities or functioning. It includes behavioral disorders characterized by deviant social behavior or impaired ability to carry out normal relationships with family and community which may result from vocational, educational, cultural, social, environmental or other factors.

(Added to NRS by 1967, 828)

Appendix N



October 16, 2015

ATTORNEYS FOR INDIVIDUALS INVOLVED IN GUARDIANSHIP PROCEEDINGS

Requests have been made for the provision of comprehensive legal services for individuals who are facing proceedings to establish a guardianship over their person/estate in guardianship court. Below are some discussion/decision points.

Statutory Basis for Appointment of Counsel for Guardians

NRS 159.0485 provides that at the first hearing for the appointment of a guardian for a proposed adult ward, the court shall advise the proposed adult ward who is in attendance at the hearing or who is appearing by videoconference at the hearing of his or her right to counsel and determine whether the proposed adult ward wishes to be represented by counsel in the guardianship proceeding. If the proposed adult ward is not in attendance at the hearing because the proposed adult ward has been excused pursuant to NRS 159.0535 and is not appearing by videoconference at the hearing, the proposed adult ward must be advised of his or her right to counsel pursuant to subsection 2 of NRS 159.0535.

If an adult ward or proposed adult ward is unable to retain legal counsel and requests the appointment of counsel at any stage in a guardianship proceeding and whether or not the adult ward or proposed adult ward lacks or appears to lack capacity, the court shall, at or before the time of the next hearing, appoint an attorney who works for legal aid services, if available, or a private attorney to represent the adult ward or proposed adult ward. The appointed attorney shall represent the adult ward or proposed adult ward until relieved of the duty by court order. (emphasis added). NRS 159.0485(2).

Subject to the discretion and approval of the court, the attorney for the adult ward or proposed adult ward is entitled to reasonable compensation and expenses. Unless the court determines that the adult ward or proposed adult ward does not have the ability to pay such compensation and expenses or the court shifts the responsibility of payment to a third party, the compensation and expenses must be paid from the estate of the adult ward or proposed adult ward, unless the compensation and expenses are provided for or paid by another person or entity. If the court finds that a person has unnecessarily or unreasonably caused the appointment of an attorney, the court may order the person to pay to the estate of the adult ward or proposed adult ward all or part of the expenses associated with the appointment of the attorney. NRS 159.0485(3)

Washoe County Model for the Provision of Legal Services

In Washoe County, legal assistance is provided by Washoe Legal Services (WLS). Two attorneys routinely appear in guardianship proceedings, providing direct representation to wards using a traditional attorney/client model. For proposed wards 60 and over, upon the filing of the petition and before the first hearing, the court issues an order that appoints a WLS attorney to represent the ward and gives the attorney the necessary power to become knowledgeable about the case. This allows the WLS attorney to visit with the proposed ward prior to the hearing and determine: 1) if an attorney-client relationship can be formed and; 2) if it can, what the proposed ward's wishes are concerning the guardianship. This allows the attorney to be prepared at the first hearing and in many cases avoid a second hearing. If the attorney feels that the client can articulate their desires, the attorney represents the ward at the initial proceedings – in determining whether a guardian is needed, the extent of the guardianship needed, and in the development and presentment of a report on the plan for the individual to be placed under a guardianship. Once the guardianship has been ordered, the attorney typically stays on the case in order to monitor the financial and other dealings the guardian engages in and to review annual accountings for accuracy and fairness. WLS's ADSD grant does not allow for direct compensation, but does encourage clients and other participants to donate to WLS in light of the work performed. WLS does not bill the estate of any ward. When the attorney decides that the proposed ward is incapable of entering into an attorney/client relationship, the attorney advises the court of this fact, requests that best practices be followed in the consideration of the request for the guardianship, but does not officially confirm representation.

Facts about Washoe County:

Model utilized:	Traditional attorney/client model
Total funding:	\$200,000 (2 part time attorneys 1 part time staff. Salary, benefits and overhead)
Source of funding:	\$70,000 ADSD Grant (tobacco money) \$40,000 Other Sources \$90,000 filing Fees
#of individuals represented in a year:	120
Estimated caseload of each attorney:	30 current active
Number of cases in jurisdiction	700 cases

Clark County:

In Clark County, there are approximately 8,700 guardianship cases. By one estimate, after the cases are examined and cases no longer needed to be open are closed, the estimated caseload will equal 3,400.

In 2005, at the request of the Eighth Judicial District Court, the Southern Nevada Senior Law Program began assisting individuals in guardianship court. They began with two attorneys and acted pursuant to a guardian ad litem model. In contested cases, they investigated the situations and made recommendations to the Court. Funding was provided by several sources,

including an Independent Living Grant funded by the State of Nevada. In 2014, the State of Nevada Division of Aging and Disability Services requested that the Senior Law Project change its model to a traditional attorney/client model. The Southern Nevada Senior Law Program began operating an attorney/client model and used other funding to continue its Guardian Ad Litem work. In 2015, the Independent Living Grant was ended. At the time, the Southern Nevada Senior Law Program ceased providing legal assistance in the guardianship arena. It is finishing cases already underway; no new appointments are currently being accepted.

To begin to create a comprehensive legal program for individuals over whom a guardianship is sought, the following should be decided:

1. **Model of Representation:** What model of representation should be followed? For all clients with capacity, should the attorney represent the wishes of the ward (direct representation model) or the best interests model (GAL model)? If a person over whom a guardianship is sought is unable to voice a desire to have an attorney, does the attorney represent the client under a “reasonably necessary protective action” standard suggested by the Model Rule? Use a “substituted judgment model? Withdraw? Or use a best interest standard?

Tentative Recommendation:

The traditional attorney/client model is the most supported model. All attorneys should follow this model. If the client does not have the ability to express their wishes, the attorney should follow a legal interest standard, (i.e., expressed wishes of the respondent, including those contained in an advance directive, as to the matter before the court are presented to the court; ensure there is no less restrictive alternative to guardianship or in the matter before the court; proper due process procedure is followed; no substantial rights of the respondent are waived; all allegations are proved by the proper standard of evidence; the proposed guardian is a qualified person, and all orders are least restrictive of the personal freedom of the person under guardianship consistent with the need for supervision).

Vermont’s statute sets forth these elements. (14 V.S. A. sec. 3065). This should be adopted by court rule.

2. **Initial Appointment of an Attorney:** Before any guardian is appointed, the attorney for the individual over whom guardianship is sought should have an opportunity to meet with their client. If the client is not in court, any hearing should be continued to allow the attorney to visit with the client at their place of residence.
3. **Length of Representation:** Should the attorney withdraw after decisions have been reached with regard to whether a guardianship is appropriate, placement review, and a plan of care are developed? If this occurs, who will ensure that the individual’s assets/resources are appropriately spent for the individual’s care? Should appointment

continue in these cases? Does the answer change if a family member is involved versus a private professional guardian?

Tentative Recommendation:

The attorney should remain on the case until the guardianship is terminated so as to handle any issues that the ward desires and to file objections, if necessary, to any accounting irregularities. This model is followed in Washoe County.

4. **Sizeable Estates:** How many individuals involved in guardianship proceedings have the resources in their estate to pay the attorney for the individual? If this is a source of payment, should private attorneys be appointed to represent the ward? If so, what is an appropriate hourly fee for this attorney and should the expenses of this attorney be paid from the estate? If this plan is not thought desirable, would the ward be represented by Legal Aid attorneys? If so, would the legal aid attorney bill the estate at the amount the nonprofit expends?

Tentative Recommendation:

Defer to the Guardianship Commission for their preference. With the large number of individuals in need of help, it seems more logical to have private attorneys be appointed to help individuals with large estates and to have legal aid attorneys assist with the indigent. Legal Aid attorneys would prefer not to bill the estate.

5. **Alternate Program Design:** Could a CASA or SHARE program accompany an attorney program to provide a one-on-one volunteer with an opportunity to check on the individual under a guardianship? If mandatory mediation or other significant changes were made to the system, could the need for legal services be reduced? Could a pro bono program be developed to augment the services of dedicated legal services attorneys?

Tentative Recommendation:

A CASA or SHARE program may have a role in helping individuals. Mandatory mediation seems to be working in Washoe County and should be explored. A pro bono program could be developed to augment the work of Legal Aid attorneys to serve vulnerable seniors. However, since many of the attorneys who practice in this Court may have conflicts of interest, a new group of attorneys would have to be recruited to assist. Using the model successfully employed by the Children's Attorney Project, staff attorneys could assist in training/mentoring pro bono attorneys. A training curriculum and website support would be provided. Trained pro bono attorneys could increase over time to assist with the provision of legal services to individuals in guardianship court.

Appendix O

**INVOLUNTARY GUARDIANSHIP
REFERRAL PROCESS CLARK COUNTY
NEVADA AND NEVADA REFORM
PROPOSAL**

RICHARD BLACK - NOVEMBER 4, 2015

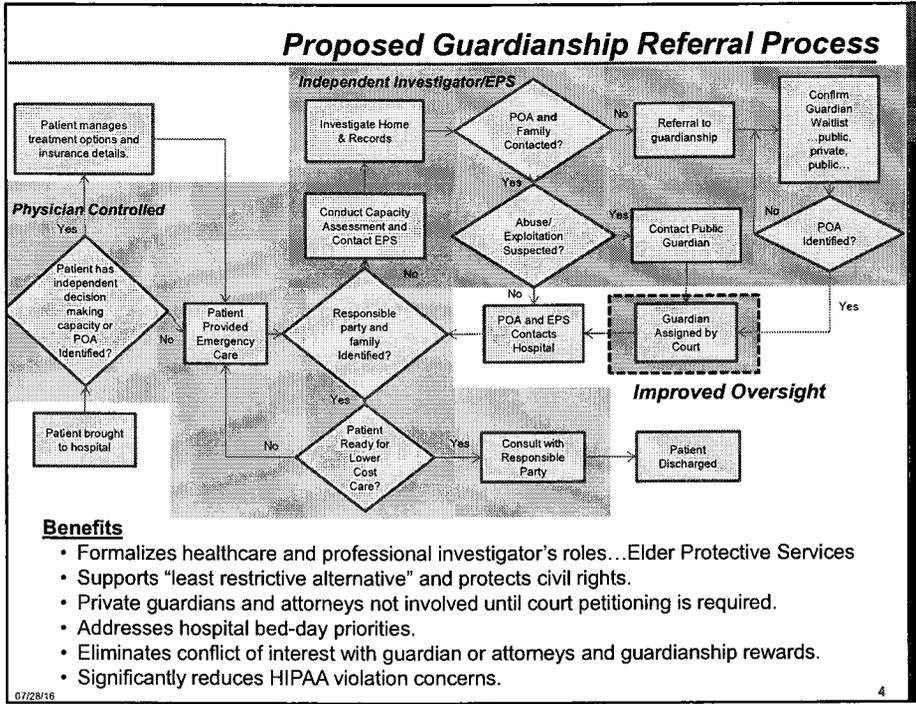
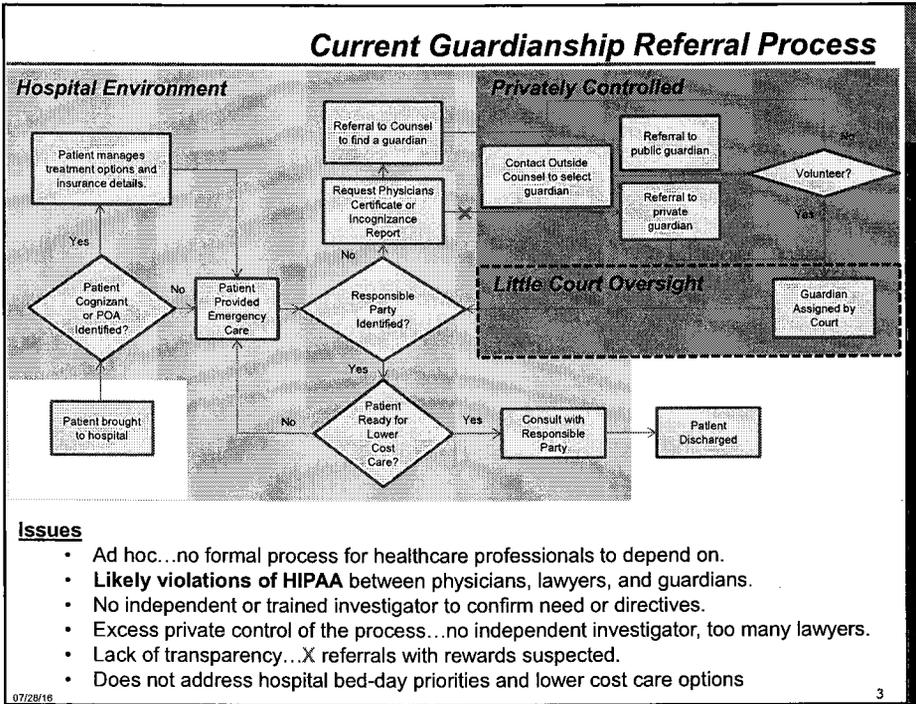
WITH INPUT FROM THE FOLLOWING:

- SUSAN HOY - PRIVATE PROFESSIONAL GUARDIAN AND COMMISSION MEMBER**
- KATHLEEN BUCHANAN - CLARK COUNTY PUBLIC GUARDIAN AND COMMISSION MEMBER**
- RANA GOODMAN - MEDIA REPRESENTATIVE AND COMMISSION MEMBER**
- SUSAN SWEIKERT - VICTIM ADVOCATE AND COMMISSION MEMBER**
- SALLY RAMM - ELDER LAW ATTORNEY NEVADA AGED AND DISABILITY SERVICES AND COMMISSION MEMBER**
- GINNY CASAZZA - PRESIDENT NATIONAL GUARDIANSHIP ASSOCIATION, 2015 AND WASHOE COUNTY RESIDENT**
- TAMMY SEVER - ELDER PROTECTIVE SERVICES MANAGER, CLARK COUNTY**

Introduction

Introduction

- This document defines the current process for **involuntary** guardianship referrals and the obligations to HIPAA and proposed changes to be considered by the Nevada Guardianship Reform Commission.
 - Current Process Map
 - Proposed Process Map
 - Risks and Issues
 - Impacted Organizations
 - Benefits



Healthcare and APS Impact

Healthcare Providers

- Insures HIPAA compliance.
- Formalizes family notification and guardianship referral process.
 - Healthcare providers required to notify family if a caregiver presents a person with suspect cognizance and no POA.
 - Removes attorney involvement in identifying a guardian.
- Eliminates need to solicit private guardians directly.
- Insures transparent publicly controlled process to protect civil rights.
- Formalizes family court relationship with healthcare providers and investigators.

Elder Protective Services (EPS)

- Formalizes EPS investigative authority to confirm residence, finances, insurance and family notified.
- Independently validates caregiver representations.
- Manages a transparent guardianship referral process.
- Manages a waitlist process to insure timely referral *if family cannot be identified*.

07/28/16

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Proposed Guardianship Referral Process Benefits

Proposed Benefits

- Streamlines and improves transparency of the process.
- Insures a thorough medical and neurological assessment from the onset to help define least restrictive care requirements.
- Insures HIPAA compliance.
- Insures timely identification of appropriate party to support hospital needs.
- Integrates Elder Protective Services to conduct independent investigations.
- Improves protection of civil rights of the elderly and their estates.
- Removes attorney involvement in routine cases.
- Insures notification of family.
- Insures law enforcement referral if abuse/neglect is suspected.
- Removes financial conflict of interest with private guardians.
- Fairly distributes balance between public and private guardian assignment.

07/28/16

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Appendix P

LIST OF RECOMMENDATIONS AND CATEGORIES FOR THE GUARDIANSHIP COMMISSION

1. DEFINITIONS/TERMINOLOGY

- A. Definition for incompetent.
- B. NRS 159.019, 159.025, 159.027 – Definitions of “incompetent,” “proposed ward,” and “ward.” Should be updated to reflect more person-centered language.
- C. NRS 159.0487: Change the word “incompetents.”
- D. New definition of incapacity or incompetency based upon several ideas from the conferences and recent re-review of Scottish guardianship laws.
- E. Eliminate use of terms “ward”, “incompetent” and “insane” in adult guardianship cases and replace with more commonly acceptable terms as “Respondent” (prior to disposition) (See National Probate Court Standards (NPCS) 3.3.1(c)(1)), “incapacitated person” or “person under a guardianship” or other more neutralized terms after guardianship issues.
- F. Change the term “ward.” Consider designating a person who may be in need of a guardianship as a Citizen with possible guardianship needs prior to the development of a guardianship, afterward as The Citizen subject to guardianship. The word Citizen serves as a subtle reminder that the subject of the petition has constitutional rights, legal rights and the right to maintain dignity in the proceedings.
- G. Add definitions of guardian ad litem and investigators. (See NRS 159.033, 432B.505)
- H. Define methods for jurisdictions to meet and track milestones in guardianship cases consistent with best practices and for purposes of court management. (*Could also fall under data category*)
 - a. Predisposition
 - b. Post-disposition
 - c. Removal/Resignation of Guardian/Termination of Guardianship
- I. Define the interaction between probate/guardianship/trust matters.
- J. Resident Agent: More clarity and expectations. (*Could also fall under requirements category*)
- K. Definitions and terminology should be consistent with physicians’ terminology.
- L. Review and consider Texas Legal Standards Related to Mental Capacity in Guardianship Proceedings.

2. PHYSICIAN’S CERTIFICATE

- A. Define a formal incognizance assessment for proposed ward by a certified neurologist/psychiatrist and the ward’s primary care physician.
- B. Improve substantive requirements of Physicians Certificate. (See NPCS 3.3.9 narrative)
- C. Mandatory and well-defined capacity assessments by a certified neurologist/psychiatrist, the Ward’s primary care physician, and family.
- D. Determine whether the certificate of physician should be filed under confidential protection. The document has not usually been authenticated at the time of a temporary guardianship request.

3. PERSON-CENTERED PLANNING & SUPPORTED DECISION-MAKING PROTOCOL

- A. Develop and adopt a "person-centered" evaluation to incorporate levels of capacity.
- B. Person-centered planning includes rules, statutes, and care planning that puts the wishes, needs, values, and life-experience of the person facing guardianship before the efficiency of the court or the convenience of the guardian.
 - a. Supported Decision-Making
- C. Supported Decision-Making Protocol (See Page 19 -28 of HB 39 Chapter 1357 Supported Decision-Making Agreement Act, Texas)
 - a. Establish legal framework for a supported decision-making agreement
 - b. Ensure protections are in place to reduce abuse or exploitation through such an agreement.
- D. Enhance statutory emphasis on court's responsibility to identify less restrictive alternatives to guardianships. (See NPCS 3.3.10)
- E. Determination of whether or not a ward should have a guardianship.
- F. Determine the necessity of services.
- G. NRS 159.054: Include alternatives to guardianship in the statutes, possibly here.
- H. NRS 159.0755 – 159.111: Powers and Duties of Guardian: Review carefully, keeping in mind that there are different categories of guardian, e.g. family, public, private, and looking at the language to change it to being centered on the person under guardianship and not on the efficiency of the court system or the convenience of the guardian.
- I. Insure process pursues the "least restrictive alternative" to guardianship and protects the vulnerable person's civil rights, estate, and estate directives.

4. RIGHT TO NOTICE

- A. Define a formal notification process and assure that all interested family members are notified and that ward or an advocate for the ward is present for all court hearings. Ward should be present for at least the initial hearing (in person or by Skype).
- B. Mailing Matrix
- C. IT data screen for purpose of court notices. (*Could also fall under data category*)
- D. Affidavit regarding what was done to discover parties with right to notice.
- E. NRS 159.034, 159.0345: Providing notice. Statute should be reviewed to include privacy issues and timing.
- F. NRS 159.074: Copy of order of appointment to be served upon ward. Include people on whom the notice of the hearing is served.
- G. Contacting Family Members prior to establishing Guardianship: Petitioners should detail the steps they have taken to locate family members in their petition.
- H. Signed USPS receipts for notices of hearings presented to the court guaranteeing family was identified and formally notified.
- I. Collect the e-mail address for persons who should be or have requested notice of hearings and court compliance correspondence.

5. TEMPORARY GUARDIANSHIPS

- A. NRS 159.0523, 159.0235: Temporary guardianship. Review statutes to address timing of hearings, notice, duties of guardian, and level of proof.
- B. Enhance limitations on Emergency Appointment of Temporary Guardian. (See NPC 3.3.6)
- C. Very little discussion has focused on care of the senior BEFORE they become wards in the first place. Last month, one of the judges from up north made a great point about guardians who search the home, purse or other personal items to garner information about a POTENTIAL ward. She stated that “this act is violating their civil rights.” I would also suggest that doctors signing the “check the box” diagnosis prior to temporary guardianship also violate HIPAA laws. Therefore, no guardianship, temporary or other should be effective for 48 hours and notification of family should be proven & mandatory. (*Could also fall under right to notice category*)
- D. Formal needs assessment and notification process (including having the ward presented to the court) before an involuntary temporary guardianship is established. (*Could also fall under right to notice category*)

6. MINOR GUARDIANSHIP STATUTE

- A. Separate guardianship statutes for minors and adults creating NRS 159A and 159B.
- B. Revise relevant statutes to address minor guardianships.
- C. Separate statutes governing guardianship over minors and those governing guardianship over adults.
- D. Focus on issues for minors (1) regarding temporary guardianship by removing the requirement of an agency letter or police report (perhaps a standard of reasonableness and/or best interest of the child would be appropriate); (2) creation of a presumption in favor of guardianship if the parents have been absent from the child’s life for a year or more; (3) creation of an omnibus department for the rural counties; (4) application of the Uniform Child Custody Jurisdiction and Enforcement Act UCCJEA to minor guardianships; and (5) a provision regarding the award of visitation and child support. Judge Walker and I have been working on entirely new statutes for minors, but I feel that is too large a project for the limited time we have. Additionally, there are good, workable provisions in the current statutes, so a complete overhaul is probably unnecessary.
- E. Review and implement NPC 3.5 protocols for proceedings regarding guardianships for minors at NPC 3.5.
- F. Consider adding someone from the Governor’s Council on Developmental Disabilities to the work group for statutes on guardianship over minors. Contact is Sherry Manning, Executive Director, at smanning@dhhs.nv.gov.
- G. Consider sub-categories for the statute (NRS 159) to include: Definitions; Administrative Responsibilities (process/procedure); Global Guardianship Requirements; Adult Guardianship requirements; Minor Guardianship requirements.

7. COUNSEL/REPRESENTATION/GAL

- A. Develop legislation and process for appointment of counsel for adults and minors.
- B. Appoint counsel for all adult Respondents who cannot afford representation or who otherwise cannot access their own attorney. (See NPCS 3.3, NPCS 3.3.5; NRS 159.0535)
- C. Representation for people facing guardianship is essential and should not depend on the inconsistent funding sources of grants and donations.
- D. Establish procedure for court to appoint Guardian, Guardian Ad Litem, and Attorney on a rotational basis.
- E. Appoint counsel, the GR and the Attorney/Client Relationship. Court appointed attorneys for GR need to have a clear understanding as to when an attorney-client relationship can be established.
 - a. The attorney has an ethical obligation to determine whether the client (proposed Ward) can engage in an attorney-client relationship. How can the lawyer do this? Does the attorney have to go beyond the interview with the perspective client? Should the attorney seek input from the client's family or friends? What does the physician's certificate opine on this issue? What if the client does have some level of an impairment?¹
 - b. Does the attorney² have to determine that the client with diminished capacity³ has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client's own well-being?
- F. Utilization of a GAL just before the utilization of appointed counsel or that both be appointed.
- G. Any proposal to fund appointed counsel should include funding for the appointment of a GAL.
- H. GAL Program: Virginia Court System has a viable model program.
- I. Create a Guardian or Attorney Ad Litem for Incapacitated Persons (Adults)
- J. Create a Guardian or Attorney Ad Litem for Children
- K. Attorneys should not be allowed to represent a client in a lawsuit, or any action, and then turn around and be named as a beneficiary of the client's estate. This gives the appearance of undue influence. This becomes even more concerning when their client is referred over for guardianship when the case settles.
- L. An attorney who represents a guardianship should not also serve as counsel for the trustee of the trust. This is a conflict of interest.
- M. NRS 159.1853: Petition for removal. Add that the person under guardianship may hire their own attorney, or ask for the appointment of an attorney, regardless of having been judged to need a guardian.

¹ The Nevada Rules of Professional Conduct direct that if a client has diminished capacity, a lawyer "shall as far as reasonably possible, maintain a normal client-attorney relationship with the client." NRPC 1.14

² The attorney has to effectively communicate with the client. The client has to be able to participate intelligently in decisions concerning the objectives of the representation and the means by which such objectives can be achieved.

³ The Uniform Health Care Decisions Act provides that "capacity means the ability to understand the significant benefits, wishes and alternatives to proposed health care and to make and communicate a health care decision." Capacity in that context of living in the community and without help involves some if not all of the same capacity issues. If a GR does not have such capacity, can he or she have an attorney/client relationship?

- N. No attorney should be allowed to withdraw from a case when representing a ward unless another attorney is available to replace him/her. It leaves a ward, already in a vulnerable position, totally in a helpless state.
- O. Establish limit on income for free legal representation.
- P. Limits should be set on amount appointed attorneys can be paid (can also be under "Fees" category)
- Q. The Court should appoint a Guardian Ad Litem (GAL) in each case. A GAL's role is to act in the Guardianship Respondent's (GR) (proposed Ward's) best interest. The role of the GAL and of appointed Counsel conflict and these roles cannot be served by the same attorney. In order to determine the best interest of the GR, the GAL must first come to an understanding of the GR's wishes. The wishes of the GR maybe set forth in prior documents or by prior communications with family. The GAL then needs to determine if the GR's interest can be fulfilled and if not what is in the GR's best interest if the GR's wishes cannot be fulfilled (i.e. lack of money, etc.) The GAL is to try and implement the advanced planning of the GR to the greatest extent possible. The GAL can also recommend new guardianship solutions.
 - a. If counsel is to be appointed for the GR, there needs to be a uniform understanding of the duties of such counsel.
 - b. If the GR's (Ward's) counsel believes the GR can participate in his or her case, and if the GR is going to object to the appointment of a guardian, the best and most cost effective way to deal with the challenge is to have the GR;s counsel ask the Court to have the GR examined by a physician, psychiatrist, or neuropsychologist. Under this framework, the initial physician's certificate and needs assessment filed with the Court would establish a rebuttable presumption that a guardian is needed subject to the exams requested by the GR's counsel. This eliminates the cost of dueling doctors in the courtroom. The physician/expert appointed by the Court would be paid from the GR's estate. Please note that the doctor's testimony is not the only evidence of a need for a guardianship.

8. SPECIAL GUARDIANSHIP/LIMITED GUARDIANSHIP

- A. Revise the language in NRS 159.0801 to provide that special guardianship authorities are those specified in the order granting special guardianship and those granted upon further petition, notice, and determination of the court.
- B. The Courts need to utilize NRS 162A.250 (2) to a greater extent. Under this statute, a Court can allow an agent to retain specific powers.
- C. In the absence of utilizing NRS 162A.250 (2), the Court would appoint the petitioner/proposed guardian as the general guardian of the estate subject to the Ward's ability, to fully or with assistance, to carry out those areas of decision making reserved to the Ward. If the guardian determined that the Ward could not carry out a reserved area of decision-making, the guardian would file a report to the Court. This would not require an immediate hearing, but would be addressed by the Court at the next hearing on the case. IN the interim, the guardian would seek the Ward's input to the extent possible in said area of decision-making. This would reduce fees and costs.

9. COURTS

- A. Develop an evaluation system to measure the court's efficiency.
- B. Discuss and provide guidance on the court's duties to the ward.
 - a. Court must look out for the ward when it comes to whether they need guardianship or not.
 - b. Court must look out for the ward when it comes to costs incurred by the ward at the direction of the guardian.
- C. Formalize Family Court's role/responsibility in reporting and supporting criminal prosecution of identified exploitation by private professional guardians. Sanctions and misdemeanor charges are inadequate when the ward's estate has been fraudulently taken or misused.
- D. The Court needs to be much more of an advocate of what is in the best interest of the ward when it comes to the Wards:
 - a. Health;
 - b. Placement; and
 - c. Finances.
- E. Ensure judicial court clerk staff ratio is in conformity with guardianship workload assignment. (Suggestion at this time one court clerk for every 500 cases.)
- F. Statutes for minors and adults should require a hearing on the annual statement of condition of the ward, with the ward present unless the court orders otherwise.

10. INVESTIGATORS/COMPLIANCE

- A. Have bonded/certified independent investigators.
- B. Separate the investigation function from the guardianship function, including money for the court to pay for investigators. Investigations prior to granting guardianships are a best practice in all cases, and essential in contested cases.
- C. Require appointment of court investigator, third party investigator or court visitor upon filing of all petitions for guardianships. (See NPC 3.3.4; NRS 159)
- D. Investigations prior to granting guardianships are a best practice in all cases, and essential in contested cases.
 - a. Guardians ad litem (GAL) would be effective in providing this service, as well as trained investigators who are not appointed as guardian ad litem. Appointing an attorney to do this work is not necessary, and is not a good expenditure of legal resources.
 - b. Volunteer GAL programs work. They must be supervised. Training is critical. And, the court order giving them authority to act must delineate clearly the boundaries of the work they do. The GAL work should terminate when the guardianship begins, unless the court determines otherwise as an exception.
 - c. Who should the GAL volunteers report to? Perhaps a paid leader of the organization who then interfaces with the court. The volunteers themselves should have no ex-parte discussions with the court.
 - d. Funding should not depend on the inconsistent sources of grants and donations.
- E. Establish a formal assessment procedure to be conducted by Senior Protective Services, Children's Protective Services, or a court-appointed investigator for each involuntary guardianship.

- F. Compliance Officers/Investigators assigned to each court to ensure timelines defined by NRS are complied with in accordance with law.
- G. Establish an independent compliance office with the ability/responsibility to report to Family Court/law enforcement and file charges if NRS is not being adhered to by guardians/attorneys.
- H. Ensure each jurisdiction is staffed with sufficient ratio of case compliance officers capable of supporting judicial responsibilities for review, management and competent oversight of guardianship caseload. (Suggestion at this time one case compliance officer for every 500 cases).
- I. Integrate an independent investigator, preferably Elder Protective Services as part of the needs assessment, investigation, and guardian nomination.
- J. Independent family court compliance officers with the obligation to file complaints to law enforcement of NRS violations by guardians and their attorneys.
- K. A case compliance officer is needed to make sure that appropriate and timely steps are taken by the guardian in carrying out his/her/their/its responsibilities.
- L. Private Professional Guardians as state licensed, nationally certified, background checked professionals should have the ability to investigate guardianship referrals they receive as long as they use legal means to obtain the information required by statute to be presented to the Court through a petition for guardianship.
- M. If investigations are to be done by a third party, investigations in guardianship cases need to be done once a referral is received as the information is needed in order to complete a petition to present to the Court. If investigations will not be allowed by those who want to proceed with the guardianship process, then:
 - a. Referrals for Private Professional Guardians (PPG's) are to go to which ever PPG a party wishes to refer to. This allows for PPG's to be validated for their service to the community as most referrals are done through word of mouth. The PPG is to do an intake that assists them in deciding whether or not the referral is a proper referral to pursue in terms of the PPG's experience and abilities including meeting with the referred party. If the PPG decides the referral is applicable to the PPG's practice, that intake would then be provided to the Guardianship Investigator to trigger the investigative procedure.
 - b. Public Guardian's offices should also be allowed to do their own intake, including meeting the referred party, and after completing the intake, provide it to the Guardianship Investigator to trigger the investigative procedure.
 - c. Other parties pursuing guardianships would complete an intake form for the Guardianship Investigator as well.
 - d. The Guardianship Investigator is to be an employee of either the District Court or the Aging and Disability Division for the State of NV. This person would be specifically trained to do guardianship investigations. As a general employee of the Court or Division (not Elder Protective Services), age of the referred party should not be an issue, nor would a pay source be an issue. This person would have the authority to obtain medical and financial records, estate plans and order evaluations required by statute. This person would be required only to obtain information and not form an opinion as to the appropriateness of the referral. The investigator would have two weeks to complete the investigation with extensions as needed or to be done sooner

if the referral is an emergency. In an emergency, the investigator would complete a preliminary investigation to substantiate the emergency situation and again order any evaluation required by statute. All information gathered would then be given back to the party pursuing the guardianship.

- e. The person or entity pursuing the guardianship would then decide whether or not they have sufficient information obtained from the investigator to continue the guardianship process. If so, a petition is completed and filed with the Court. The investigator is to be notified and given a copy of the petition to ensure that the information obtained in the investigation is the same information in the petition. If the party who initiated the investigation does not pursue the guardianship, that information is to be provided to the investigator with the reasons why.
- f. Once the investigation has been completed, no party, entity, or agency should be deciding whether a guardianship is suitable or not, but should base the decision to go forward on whether or not: (1) the Public Guardian, PPG, or other potential guardian is equipped to meet the needs of the referred party; (2) there is sufficient information required by statute; (3) the situation meets other statutory requirements to proceed; or (4) an alternative option has been found to meet the needs of the referred party.
- g. If the investigator believes a case not being pursued does have sufficient information to go before the Court, that investigator can then send the information to the court compliance officer, or an appointed clerk to complete an application to the Court similar to a TPO process as the referred party is seen as an at risk person in the community. It is important that the decision as to whether or not a guardianship is appropriate is to be decided only by a judge with the information provided by the investigator, by information provided in the petition, by the representation of the respondent's appointed attorney, and by the respondent's input as well.

11. FEES

- A. Create a standard fee structure.
- B. Publish a standard fee schedule for professional Guardian, Guardian Ad Litem and Attorney.
- C. A fee schedule for guardians.
- D. Fees: Private Guardian fees should be standardized throughout the State of Nevada. Public Guardian fees determined by their operational budget.
- E. Determine excessiveness of fees, which is only addressed by the court if someone complains.
- F. Prohibit guardians/attorneys from using the ward's estate to pay for their own personal legal fees. This is a business expense, not the ward's responsibility.
- G. The guardian has the fiduciary responsibility to care for the ward and the ward's estate. If he/she is not going to do that, they have failed in their fiduciary duty and should not be paid for failure. If the guardian has left bills unpaid for the ward for family to pay, while charging the estate excessive fees for administrative duties, those bills should be charged back and deducted from the accounting.
- H. Each side, ward and guardian pays their own legal fees.
- I. Court scrutinize fiscal appropriateness of the performance of services:
 - a. Whether an attorney needed in a real estate transaction.
 - b. Whether the Guardian should have tasked a PCA with doing something, rather than charging the full guardian's hourly rate.

- J. Eliminate guardian's ability to access estate funds to pay for litigation defending their position. Legal fees should be an overhead expense not a specific Ward paid expense.

12. BILLINGS

- A. Scrutinize billings -The current guardianship system is set up in a way where, if the court is not examining fees and questioning things, sua sponte, it is the wolf guarding the hen house. It is implicit that when the court is looking at 'reasonable fees' that not only the money, but the services charged for must be actually reasonable and necessary.
- B. Billing: Appropriate billing practices:
 - a. Best Interest, best practice, by utilizing cost effective services when appropriate. This would include billing at a tiered rate depending on the complexity of the task.
 - b. Duplication of service is not appropriate.

13. ACCOUNTINGS

- A. NRS 159.176 – 159.184: Accountings: Review for length of time between accountings, requiring hearings regarding the accountings, and when the hearings should be noticed and held. Also, review "Compensation and expenses of guardian."
- B. Establish a statewide web-based guardianship accounting program with receipt logging and auditing capability.
- C. Budgets
 - a. Mandated, or requested by jurisdiction
 - b. Forms
 - c. Pursuant to noticed hearing or approved unless challenged?
- D. Accounting's *that were un-challenged*, yet no one seems to understand that they were not challenged due to the cost to the ward of doing so.
- E. Statewide web-based guardianship accounting software with expense reporting, receipt logging and auditing capability. Continue with integration of Dept. of Business and Industry as defined in the new licensing law.

14. INVENTORY

- A. Establish procedure for having family review/verify ward's initial inventory to insure accuracy.

15. BONDS

- A. NRS 159.065, 159.067, 159.069, 159.071: Bonds. Review for amounts, and to insure that all people under guardianship are properly protected.
- B. Mandate bond and set standardized protocols for determining the amount of bond on all cases - require specific findings of fact and conclusions of law if bond is not imposed or is smaller than standardized amount. (See NPC 3.3.15)
- C. The courts should in all (but spousal cases) require appropriate bonding or blocked accounts over the Ward's assets.

16. ANNUAL REPORTS ON CONDITION OF THE PERSON AND THE SPECIAL ADVOCATES FOR ELDERS PROGRAM (SAFE)

- A. Annual reports help the Court have a better understanding of the Ward's ongoing and possible changing needs. An annual report is particularly helpful if the Ward is still living alone in the community.
- B. A supplement to the annual report is the utilization of a "Special Advocate for Elders" (SAFE) project. SAFE was developed to provide additional oversight of the Ward's interest and needs in a guardianship proceeding. The SAFE program would recruit community volunteers who receive training in the guardianship process. SAFE's should not be used as a GAL because of a lack of experience and in-depth training.

17. MANAGEMENT OF ESTATE/SALE OF PERSONAL PROPERTY

- A. NRS 159.0755: Administration of Smaller Estates: Review for amount and types of assets covered and for the level of vulnerability of the person under guardianship.
- B. NRS 159.113 – 159.125: Management of Estate: Review carefully, keeping in mind that there are different categories of guardian, e.g. family, public, private, and looking at the language to change it to being centered on the person under guardianship and not on the efficiency of the court system or the convenience of the guardian. (*Could also fall under the person-centered category*)
- C. NRS 159.1535 – 159.156: Sale of Personal Property: Include a provision that the property of the person under guardianship may not be purchased by the guardian or by anybody related to or in business with the guardian.

18. REQUIREMENTS/BACKGROUND CHECKS/REFERRAL PROCESS

- A. Proposed guardians should be required to undergo a background check including fingerprinting.
- B. Require background checks for all guardians. (See NPC3 3.3.12)
- C. Public and professional private guardians should be required to report their annual certification to a state agency.
- D. Prohibit the appointment of guardians over a specific age (i.e. Mancarelli case).
- E. Private Professional Guardians should be degreed and hold the appropriate certifications. I can think of no other profession that we would allow a person in a power position over medical, financial and social that does not require these qualifications.
- F. Guardians should not serve as guardian and as trustee. This is a clear conflict of interest.
- G. Proposed guardianship referral process.

19. PUBLIC GUARDIAN

- A. Public Guardians should never be challenged by Private Guardians to assume a case because the funds have been depleted. In the event, a Private Guardian closes their practice, the decision for the Public Guardian to inherit their cases should be mutually agreed upon. The Public Guardian must be able to effectively and efficiently manage an influx of cases to serve the individuals best interest.
- B. NRS 253.250 Allows the public guardian to refuse to accept a person needing guardianship if they cannot find a source to pay for the care of that person. This leaves the most vulnerable

people without any assistance. While it is understood that the public guardian's office cannot take the responsibility to pay for the care of people in this situation, a solution must be found for vulnerable and older people who are left out of any public services.

20. TRAINING AND CURRICULUM

- A. Develop curriculum and method for educating parents and schools on alternatives to guardianships
- B. Develop curriculum and method for training law enforcement on elder/vulnerable exploitation.
- C. Require training for all non-professional guardians and regulate training for professional guardians. (See NPC 3.3.11, NPC 3.3.14)
- D. Mandatory POST training for elder abuse and neglect including financial abuse. Require certification of guardians and require annual continuing education standard.
- E. Establish a guardianship education/training program for family members and concerned citizens. This alone might eliminate some grievances and concerns.
- F. Educational class or training regimen be created for judges, and if appropriate court staff, on what to look for or how to review inventories and accountings.
- G. Take the training for guardianship certification away from the Pennsylvania center. Why does Nevada law mandate all people wishing to be certified go through a center in Pennsylvania who will only take certification away if a guardian if convicted of a felony, and will not even sanction for proven wrong doing?
- H. The Nevada Revised Statutes now allow the Court to direct that training be offered to guardians. This could be done in each District on a quarterly basis to a small group of recently appointed guardians. The training would be done by attorneys and others selected by the presiding judge.
- I. Communication training for judges and lawyers. Any education in this area will help all involved have a better understanding of communication with the population and its possible limitations in a court setting.

21. TRAINING/VOLUNTEERS

- A. Companionship
- B. Shopping Trips
- C. Beauty shop/"Feel Good –Look Good"

22. SENIOR ABUSE/NEGLECT/EXPLOITATION/COMPLIANT PROCESS

- A. Direction in statute regarding agency with responsibility to investigate allegations.
- B. Whether a negotiated "recovery" action mitigates against the criminal allegations.
- C. Develop complaint process for incapacitated person or interested persons to pursue concern through expedited process with the Court. (See NPC 3.3.18)
- D. Specifically prioritize guardianship court's jurisdiction to hear related matters of abuse, neglect, third party fraud and tort claims involving incapacitated person.
- E. Define a grievance/complaint procedure and dispute resolution process for family members and citizens who have concerns about guardianship issues. Identify a contact person to which a family member/concerned citizen could report urgent concerns about the ward/guardian.

- F. Formalize Family Court's role or obligation to support criminal prosecution of suspected exploitation.
- G. Guardians should be required by law, just like a priest, attorney, doctor, or teacher to report abuse.

23. GUARDIANSHIP REVIEW TEAM/ROUND TABLE/COMMITTEE

- A. Create a guardianship review team to determine the gaps in reporting.
- B. Conduct two round tables a year including guardians, law enforcement, and attorneys.
- C. Create a committee of guardians, attorneys, law enforcement, judges, and law school representative(s) to develop the educational program and plan for ongoing education.

24. WARD'S BILL OF RIGHTS

- A. Ward's Bill of Rights - One of the ideas that came out of the two conferences was to incorporate the NGA Standards of Practice in a new Ward's Bill of Rights.
 - a. Something along the line of: "A Ward has the right to have a guardian who complies with the following standards..." Something we will have to work on and probably easier than codifying the Standards. It was mentioned that too many objections could be raised to codifying the standards, but no one really wants to object to a Bill of Rights! The Bill of Rights could come from the Supreme Court, as in Texas (SB 1882), or from the Legislature.

25. CASELOADS/CASE MANAGEMENT

- A. Reduction of Caseloads: No guardian should have more cases than they are capable of managing. Therefore, if resources prohibit appropriate staffing levels, a wait list should be implemented, whether it is a governmental agency or a private practitioner. A person-centered approach for those under guardianship is critical in delivering services to meet mandated laws their best interest. (*Could also fall under person-centered approach category*)
- B. Identify reasonable caseload for judicial officer overseeing guardianship cases and enforce such caseload limitations statewide. (Suggestion: at this time one judicial officer for every 500 cases)
- C. Establish a limitation of caseload per private professional guardian.

26. STANDARDIZED FORMS

- A. Develop current standardized forms and appoint an office responsible for regular review and to update as needed.
- B. Require statewide-standardized forms in guardianship matters to ensure conformity with statutory requirements and consistency of oversight.
- C. Healthcare directives as a required part of the standardized forms.

27. DATA

- A. Develop a statewide data base system for tracking and reporting.
- B. Develop standardized data to include reflection of best practices.
- C. Ensure each jurisdiction's IT Department is adequately staffed and trained to accommodate significant workload and management load responsibilities of guardianship cases.
- D. Request that the State Court Administrator require the use of an information sheet to gather necessary guardianship information, which may then be used by the court to manage guardianship cases throughout the life of the case.
- E. Courts create the following reports to be reviewed by each District's Administrator or Chief Judge at least quarterly.
 - a. Time to disposition
 - b. Age of Active Pending Case
 - c. Clearance Rates

28. MEDIATION

- A. Mandatory mediation in contested guardianship cases and before assignment of a guardian ad litem or temporary guardian. Educate the parties on process and costs of private guardianship outside the court and objectively seek a resolution directly between the parties petitioning. Remove the attorneys from this process.
- B. Mediation with family plus the ward versus guardianship.
- C. In all contested cases, mediation should be the first step in resolving the issue presented.

29. GRANTS/FINANCIAL SUPPORTS

- A. Research to determine if there are grants for law enforcement of guardianship exploitation.
- B. Ensure guardianship stakeholders are financially supported to execute necessary responsibilities (i.e. Elder Protective Service, Child Protective Services, Office of Public Guardian, Office of District Attorney and Court Appointed Counsel) to perform statutorily required functions.

30. CONFIDENTIALITY/MEDIA

- A. Confidentiality. Would the Courts be interested in designating all/or a portion of the case as automatically sealed? (*Documents. I.e. will, estate planning...*)
- B. Media. Could the Rules require more time for notice to guardianship participants prior to a hearing to permit a meaningful opportunity to support or object to the Media in the courtroom?
- C. Adult guardianship cases should not be automatically closed and sealed.
- D. If the committee adopted the Nevada Supreme Court's guidelines on cameras in the courtroom, it would solve a lot of problems. Guidelines include pool shooting, at least a 24 - hour notice to the court of wanting cameras in the courtroom to allow for a hearing.

31. FACILITIES/VETERANS

- A. Treatment of the treatment of the "ward", what, why, how, and how is the treatment of the wards in the facilities they are currently in.
- B. All veterans should first be being taken to the VA for treatment when they are entitled to it. This is a benefit they earned and is not deducted from their estate. Some are not taken by their guardian because the location is not convenient, that is unacceptable.
- C. Some are being denied visitors where the law says that cannot be denied.
- D. Some group homes are not providing sanitary conditions, sufficient food, etc. Calls to the ombudsman help a little, but they are short staffed. Basically, these wards overall are warehoused and no one seems to care.

32. OTHER

- A. NRS 159.044: Is it good practice to allow the guardian 120 days after appointment to provide information that should be included in the petition?
- B. NRS 159.062: Guardian nominated by will. Add other advance directives documents, e.g. trust, power of attorney. (See NRS 162A.250)
- C. Confirm rules of evidence apply in contested guardianship hearings including right to confront witnesses and challenge evidence. (See 14 Amendment to U.S. Constitution, NPC 3.3.9)
- D. Confirm which standard of evidence applies to matters outside determination of whether Respondent meets criteria for a guardianship and guardianship is necessary to protect Respondent or Respondent's estate.
- E. Develop statutory process by which guardians are notified of all civil and criminal actions in which persons under a guardianship are involved.

Appendix Q



A nonprofit organization improving justice through leadership and service to courts

Mary Campbell McQueen
President

Tom M. Clarke, Ph. D.
*Vice President of Research and
Chief Information Officer
Williamsburg Office*

January 15, 2016

Chief Justice Hardesty
Ms. Robin Sweet
Nevada Supreme Court

Dear Chief Hardesty and Ms. Sweet,

On behalf of the National Center for State Courts, I congratulate you on being selected as a pilot state for the Conservatorship Accountability Project (CAP).

NCSC received five carefully drafted applications. Members of our review panel resolved to award three implementation awards and two planning awards. The planning awards were given to states that require some structural changes, such as updating Supreme Court rules, hiring staff, or improving technologies, before proceeding with implementation. We have selected Nevada for a planning award. The panel recognizes the need for legislative actions and court reforms to bring necessary resources to this topic. For this reason, we encourage the Nevada team to prioritize the planning phase, which includes acquiring and modifying the software and developing a sound implementation plan. It is expected that the project will be piloted in Clark County and transferred to additional jurisdictions when they reach the necessary capacity.

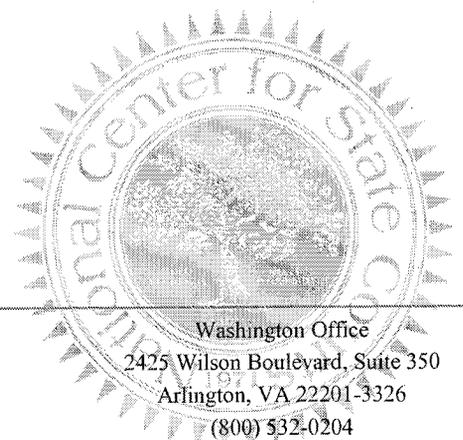
We welcome Nevada as a member of the CAP Network, along with Minnesota, Indiana, Iowa, Texas, and New Mexico. Members are expected to share experiences and advice through NCSC's Network.

Next week I will connect with the Nevada CAP project manager, Mr. Wilson, to discuss tasks, timeframe, technical assistance, and participation in the CAP Network. We are very excited to initiate this project and congratulate you on this achievement. Please contact me at buekert@ncsc.org or 757-259-1861 if you have any questions or suggestions.

Respectfully,

Brenda K. Uekert, Ph.D.
Principal Court Research Consultant

cc: Mr. Riley Wilson



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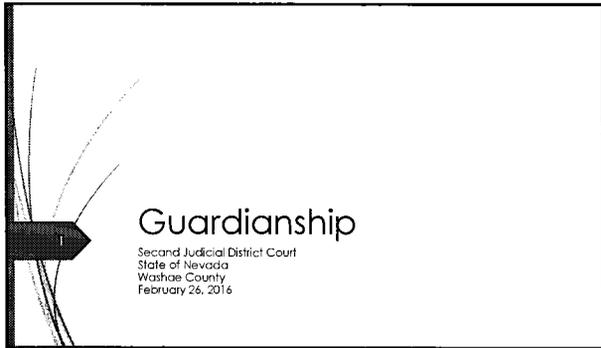
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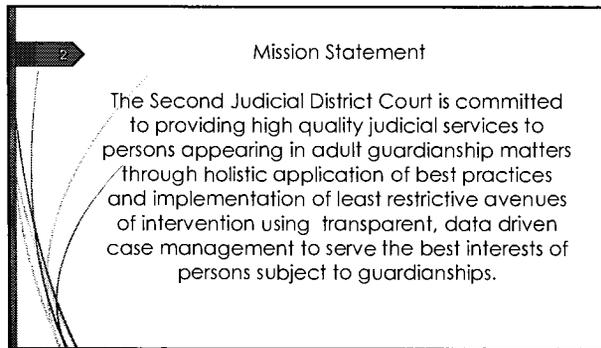
www.ncsonline.org

APPENDIX Q - CAAP AWARD
Q 2

Appendix R

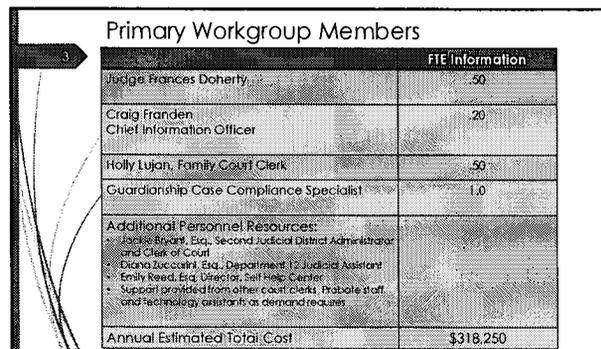


Guardianship
 Second Judicial District Court
 State of Nevada
 Washoe County
 February 26, 2016



Mission Statement

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



Primary Workgroup Members

	FTE Information
Judge Frances Doherty	.50
Craig Franden Chief Information Officer	.20
Holly Lujan, Family Court Clerk	.50
Guardianship Case Compliance Specialist	1.0
Additional Personnel Resources: Jackie Bryant, Esq., Second Judicial District Administrator and Clerk of Court Diana Buccocini, Esq., Department 12 Judicial Assistant Emily Reed, Esq., Director, Self Help Center Support provided from other court clerks, Probate staff and technology assistants as demand requires	
Annual Estimated Total Cost	\$318,250

The Ground We've Covered

- 2013
- 2014
- 2015 - 2016
 - January 2015
 - Created Case Compliance Specialist Position
 - Spring 2015
 - Added multiple sub-reports to summary case report to capture additional data consistent with national trends
 - Summer 2015
 - Bi-weekly meetings continue to further streamline data entry, court processes, for example bond tracking, etc.
 - Judge Egan Walker assumes Minor Guardianship Cases
 - October 2015
 - Incorporated National Probate Court Standards (NPCS)

The Current Terrain

- Using Data to Identify Areas of Improvement
 - Time to Disposition
 - Timely Filings of Mandatory Reports
 - Continued Demographic Data Gathering
- Washoe County Guardianship Taskforce & Bench Bar
 - Data Guided Work Prioritization
 - Pro Per Forms and Training
 - Bond Protocols
 - Least Restrictive Methods
 - Creation of Mediation Protocol
- Alternative Dispute Resolution (ADR)
- Improved Demographic Understanding of Persons Under Guardianships

Building the Remaining Path

- Personal Care Plan and Proposed Annual Budget
- Automated Case Management
 - Improved Automated Order Generation
 - Milestone Query via Public Website

Summary Monthly Adult Guardianship Case Status Report

- 1.0 Caseload Reports
- 2.0 Additional Caseload Statistics
- 3.0 Demographic Data
 - 3.1 Adult Subject to Guardianship - Placement
 - 3.2 Adult Subject to Guardianship - Age Breakdown
 - 3.3 Types of Guardians

8 Pending Adult Guardianship Cases

Checked by: [Name]

Case No.	Case Name	Age	Sex	Race	Religion	Education	Income	Assets	Liabilities	Guardian	Status
1
2
3
4
5
6
7
8

Pending Adult Guardianship Cases
Checked by: [Name]

Check up on pending in the previous date and
Be sure you have a case with any in that being held. Reported cases are not labeled here. Date of case is determined by the date the status was updated.

Pending Action: A report on case that is not pending the reporting period, an opening of a new case.

Pending Action - In Progress: A report on case that is not pending the reporting period, an opening of a new case.

Pending Action - Thing Done: A report on case that is not pending the reporting period, an opening of a new case.

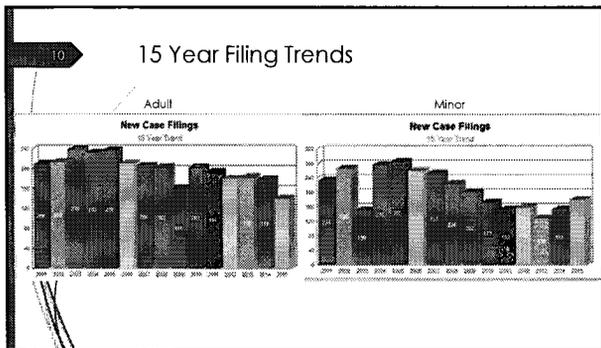
Disputed Report/Action: A report on case that is not pending the reporting period, an opening of a new case.

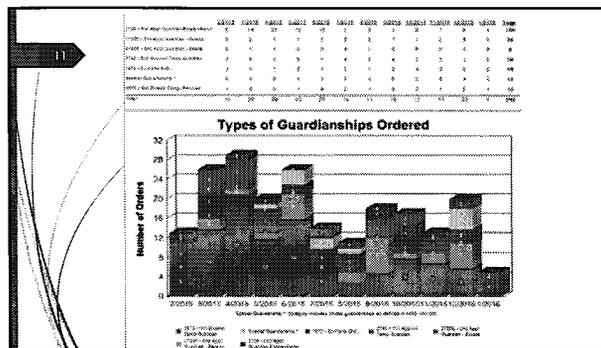
9 Case Filings Last 12 Full Months

Total Adult Filings: 142 Total Minor Filings: 182

New Case Filings
Last 12 Full Months

New Case Filings
Last 12 Full Months





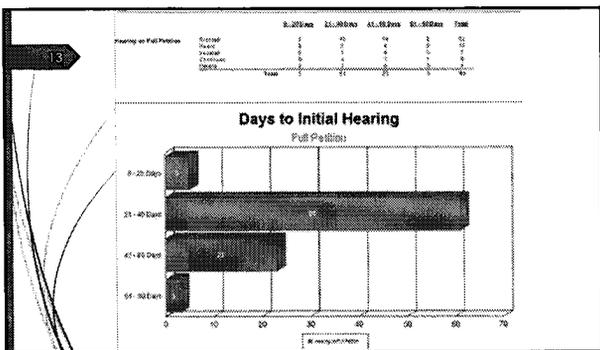
12 Case Load Reports

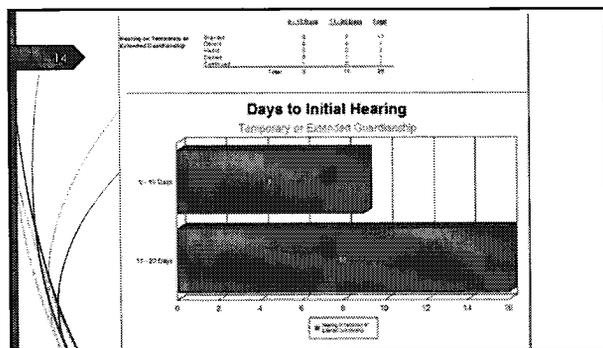
1.4 - Average Time to Disposition for Pending Active Cases - Last 12 Full Months
Cases Initially Filed Since January 1, 2014
 (The table below shows cases disposed that were initially filed since January 1, 2014 (since new case management protocols were put in place).)

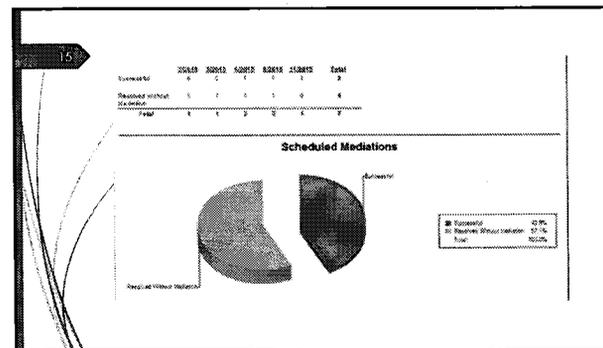
Average Number of Days	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025
2014	142	124	118	112	105	98	92	85	78	72	65	58

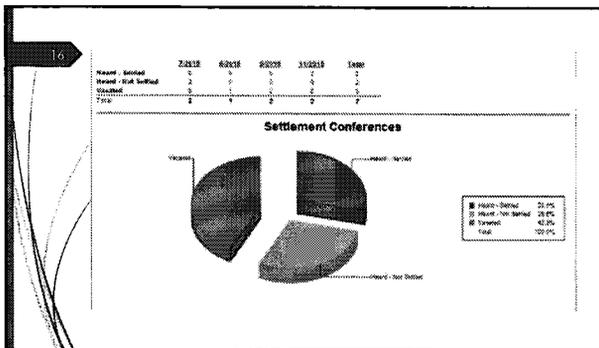
1.5 - Adult Guardianship Cases Disposed
 (State of Florida - USCA database as provided in Appendix A)

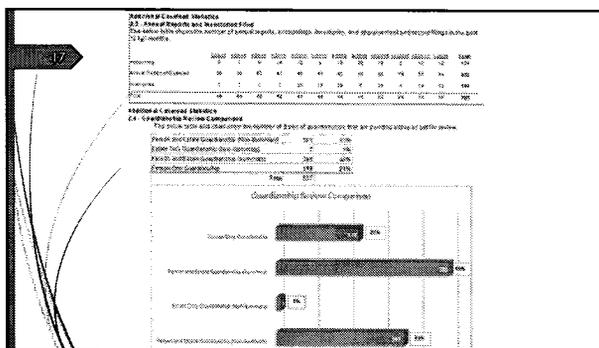
Case Disposition	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025
Revoked/Dismissed/Withdrawn	4	12	15	11	14	9	7	8	6	5	4	3
Reinstated/Restored/Reopened	6	8	10	9	7	6	5	4	3	2	1	1
Dismissed/Dismissed with Case File	6	3	4	5	4	3	2	1	1	0	0	0
Dismissed/Dismissed with Case File	2	1	1	1	1	1	1	1	1	1	1	1
Terminated	0	1	1	1	1	1	1	1	1	1	1	1
Reinstated/Restored/Reopened	0	1	1	1	1	1	1	1	1	1	1	1
Total	16	26	33	30	29	26	23	21	19	17	15	13

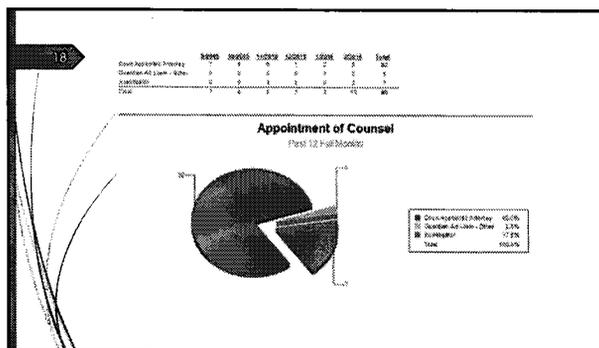


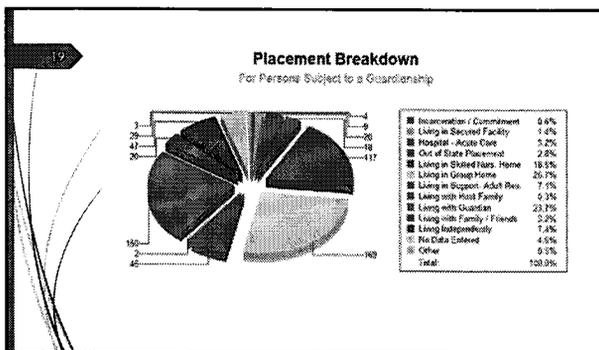


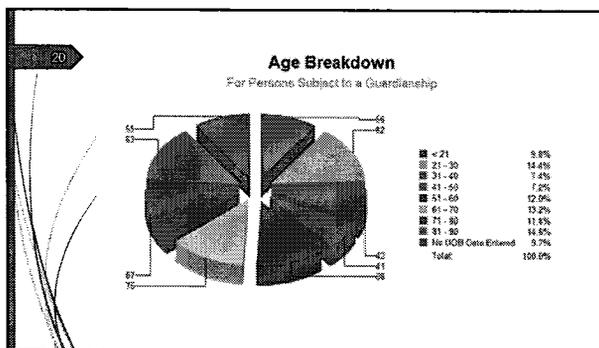


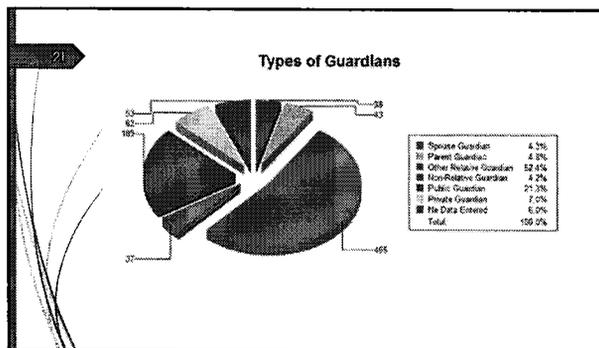












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I ... believe that Nevada's courts will continue to earn the public's trust and confidence if we adhere to the rule of law, are proactive in the management of our cases, creative in our efforts to provide access to the courts, sensitive to the needs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

Chief Justice James W. Hardesty
State of the Nevada Judiciary
Nevada Legislature Seventy-Eight session,
April 15, 2015

Second Judicial District Court



State of Nevada Washoe County

January 2016

Honorable Frances Doherty Summary Monthly Adult Guardianship Case Status Report

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- 1.3 - Types of Guardianships Ordered for the Last 12 Full Months
- 1.4 - Average Time to Disposition for the Last 12 Full Months - Filed Since January 2014
- 1.5 - Cases Disposed in the Last 12 Full Months

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 - 2.1.1 - Timeliness of First Hearing on Full Petition
 - 2.1.2 - Timeliness of First Hearing on Temporary and Extended Petition
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- 3.1 - Adult Subject to Guardianship - Placement
- 3.2 - Adult Subject to Guardianship - Age Breakdown
- 3.3 - Types of Guardians

Please note that certain data groups may not appear in this report, due to no data being returned from the report query.

Caseload Reports

1.1 - Status of Pending Adult Guardianship Cases

Average Age of Case reflects time of initial petition to either time of disposition or current date.

	0 - 30 Days	31 - 60 Days	61 - 90 Days	91 - 180 Days	181 - 365 Days	Greater than 365 Days	Total
Pending Active	7	5	1	4	1	0	18
Pending Active - Temp Order	1	2	1	0	0	3	7
Disposed / Set For Review	141	307	74	49	6	37	614
Total	149	314	76	53	7	40	639



Cases represented in the previous table and this graph contain cases with any initial filing date. Disposed cases are not listed here. Age of case is determined by the date the status was updated.

Pending - Active: A count of cases that, at the start of the reporting period, are awaiting disposition.

Pending Active - Ex Parte Order: A count of cases that have an ex parte order of guardianship filed and are awaiting further action.

Pending Active - Temp Order: A count of cases that have an order of temporary guardianship filed and are awaiting disposition.

Disposed/Set for Review: A count of cases at the end of each month that, following an initial Entry of Judgment, are awaiting a regularly scheduled review involving a hearing before a judicial officer during the reporting period.

These days represent the time from petition to adjudication, at which point the cases stop aging. This group represents cases that are awaiting a regularly scheduled review (ex., annual report). These cases do not continue to age, and therefore, remain static in their respective age grouping.

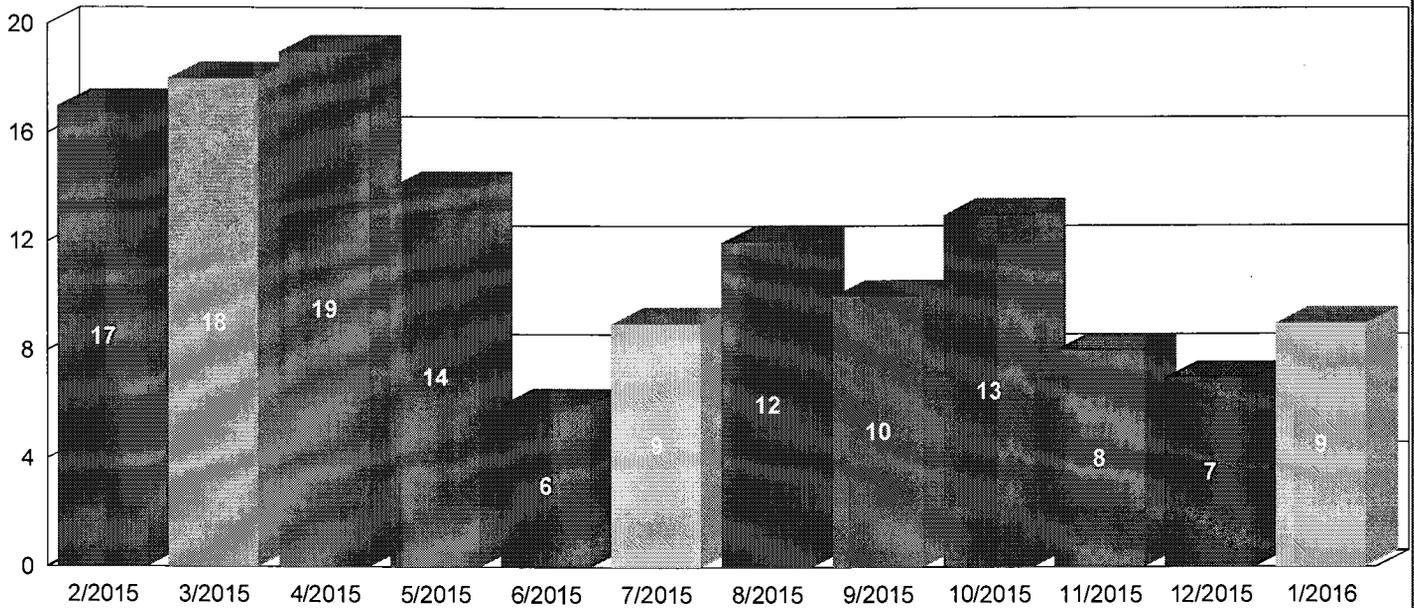
Caseload Reports

1.2 - New Adult Guardianship Cases

New Adult Guardianship cases filed in the previous 12 months.

New Case Filings

Last 12 Full Months



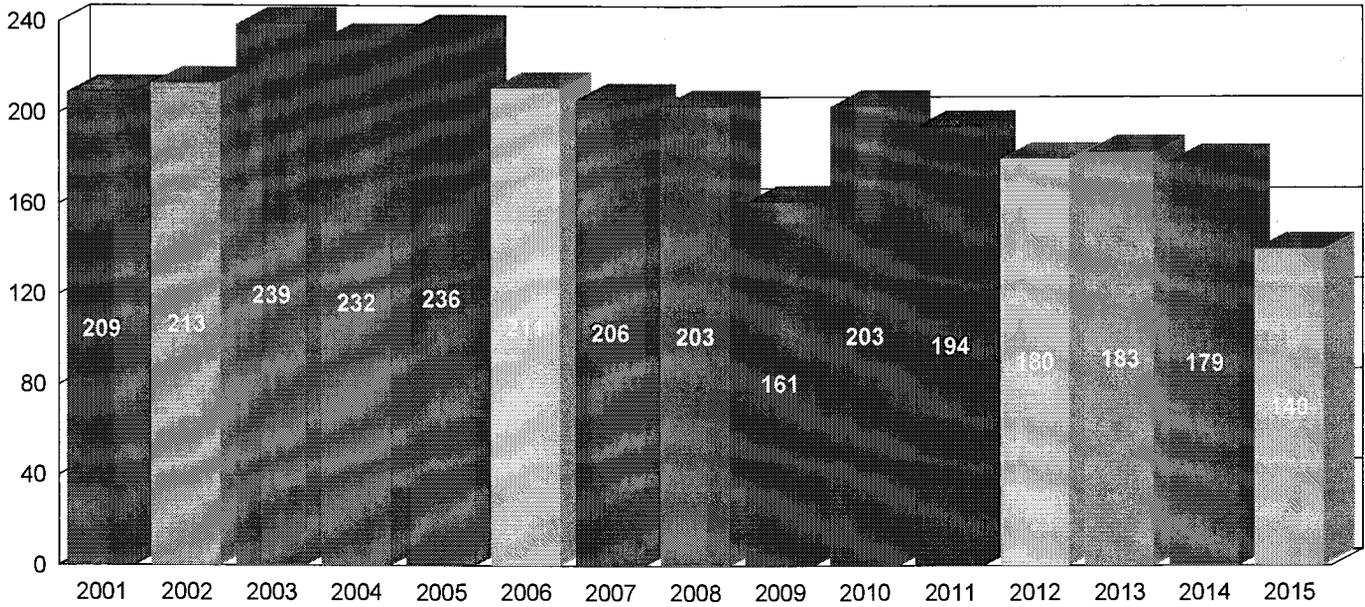
Caseload Reports

1.2.1 - New Adult Guardianship Cases

New Adult Guardianship cases filed in the previous 15 years.

New Case Filings

15 Year Trend



Caseload Reports

1.3 - Types of Guardianships Ordered

The below table shows the number and types of guardianships ordered in the past 12 full months. Definitions regarding the statutory authority for types of guardianships are listed in Appendix A.

NPCS 3.3.2 Initial Screening

Probate courts should encourage the appropriate use of less intrusive alternatives to formal guardianship and conservatorship proceedings.

NPCS 3.3.10 Less Intrusive Alternatives

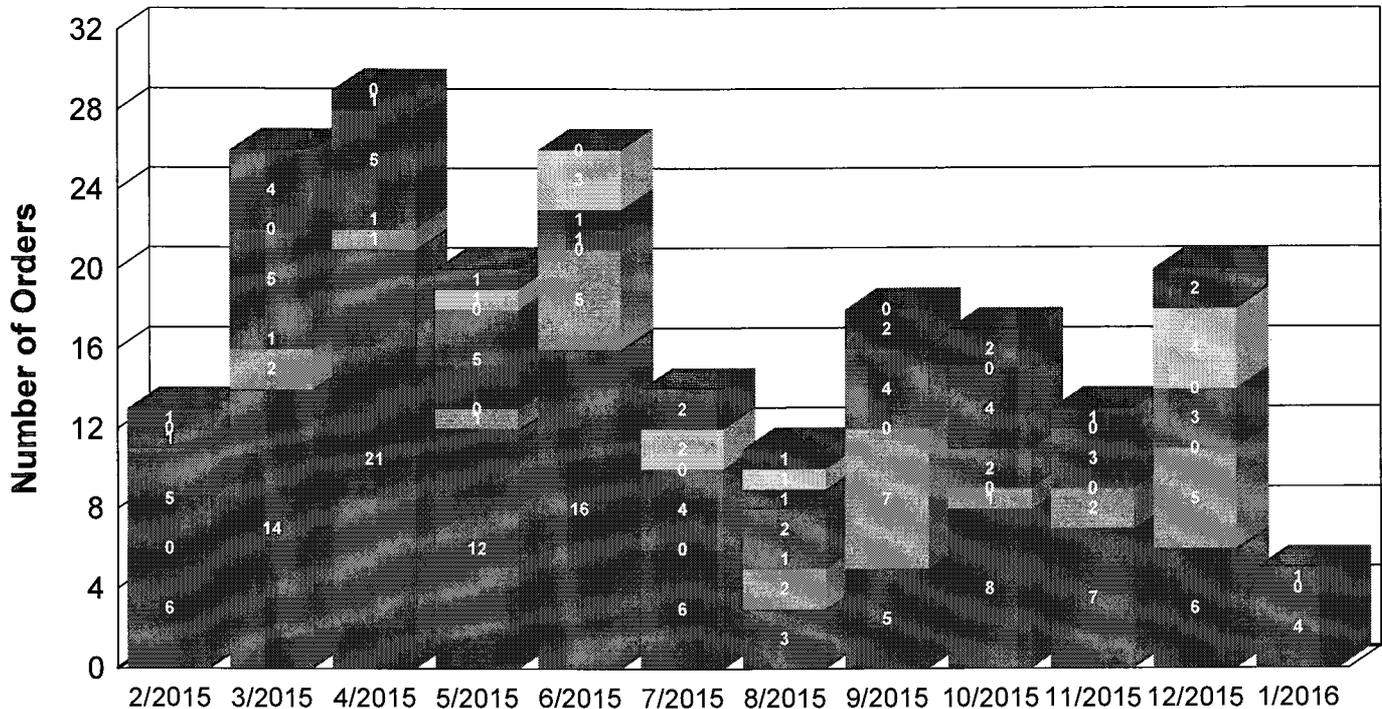
A. Probate courts should find that no less intrusive appropriate alternatives exist before the appointment of a guardian or conservator.

B. Probate courts should always consider, and utilize, where appropriate, limited guardianships and conservatorships, or protective orders.

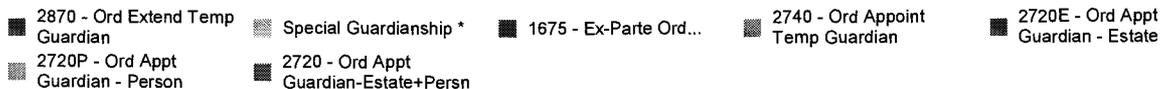
C. In the absence of governing statutes, probate courts, taking into account the wishes of the respondent, should use their inherent or equity powers to limit the scope of and tailor the guardianship or conservatorship order to the particular needs, functional capabilities, and limitations of the respondent.

	2/2015	3/2015	4/2015	5/2015	6/2015	7/2015	8/2015	9/2015	10/2015	11/2015	12/2015	1/2016	Total
2720 - Ord Appt Guardian-Estate+Persn	6	14	21	12	16	6	3	5	8	7	6	4	108
2720P - Ord Appt Guardian - Person	0	2	1	1	5	0	2	7	1	2	5	0	26
2720E - Ord Appt Guardian - Estate	0	1	1	0	0	0	1	0	0	0	0	0	3
2740 - Ord Appoint Temp Guardian	5	5	5	5	1	4	2	4	2	3	3	0	39
1675 - Ex-Parte Ord...	1	0	1	0	1	0	1	2	4	0	0	0	10
Special Guardianship *	0	0	0	1	3	2	1	0	0	0	4	0	11
2870 - Ord Extend Temp Guardian	1	4	0	1	0	2	1	0	2	1	2	1	15
Total	13	26	29	20	26	14	11	18	17	13	20	5	212

Types of Guardianships Ordered



*Special Guardianship * category includes limited guardianships as defined in NRS 159.026



Caseload Reports

1.4 - Average Time to Disposition for Pending Active Cases - Last 12 Full Months

Cases initially filed since January 1, 2014

The table below shows cases disposed that were initially filed since January 1, 2014 (since new case management protocols were put in place).

	<u>2/2015</u>	<u>3/2015</u>	<u>4/2015</u>	<u>5/2015</u>	<u>6/2015</u>	<u>7/2015</u>	<u>8/2015</u>	<u>9/2015</u>	<u>10/2015</u>	<u>11/2015</u>	<u>12/2015</u>	<u>1/2016</u>	<u>Total</u>
Average Number of Days	41.2	76.4	63.3	48.9	91.1	67.3	89.9	43.0	124.4	51.1	90.2	87.0	74.24

Caseload Reports

1.5 - Adult Guardianship Cases Disposed.

State of Nevada - USJR definitions are provided in Appendix A.

	<u>2/2015</u>	<u>3/2015</u>	<u>4/2015</u>	<u>5/2015</u>	<u>6/2015</u>	<u>7/2015</u>	<u>8/2015</u>	<u>9/2015</u>	<u>10/2015</u>	<u>11/2015</u>	<u>12/2015</u>	<u>1/2016</u>	<u>Total</u>
First Dispositions													
Bench N/J/T Judgment Reached	6	16	12	13	19	5	7	8	9	5	10	5	115
Setld/Withdrn w/o Jud Conf/Hrg	0	6	2	2	1	0	2	2	0	2	1	0	18
Setld/Withdrn with Jud Conf/Hg	0	3	0	0	4	3	0	2	0	0	2	1	15
Involuntary Dismissal	0	1	0	0	0	0	0	0	3	1	5	0	10
Transferred	0	0	0	2	1	1	0	0	0	0	1	0	5
Setld/Withdrn ADR	0	1	0	0	0	0	0	0	0	0	0	0	1
Total	6	27	14	17	25	9	9	12	12	8	19	6	164
Final Dispositions													
Guard: Death	3	3	3	2	11	5	1	10	11	2	14	10	75
Order Term Guard or Final Actg	1	0	1	0	5	0	0	0	0	1	0	2	10
Guard: Restoration/Competency	0	1	1	0	0	1	0	0	1	1	0	1	6
Total	4	4	5	2	16	6	1	10	12	4	14	13	91

Additional Caseload Statistics

2.1 - Timeliness of First Hearing - Last 12 Full Months

2.1.1 - Hearing on Full Petition

Scheduled hearings for the last 12 months, broken out by the number of calendar days from initial petition filing to first hearing on a full petition.

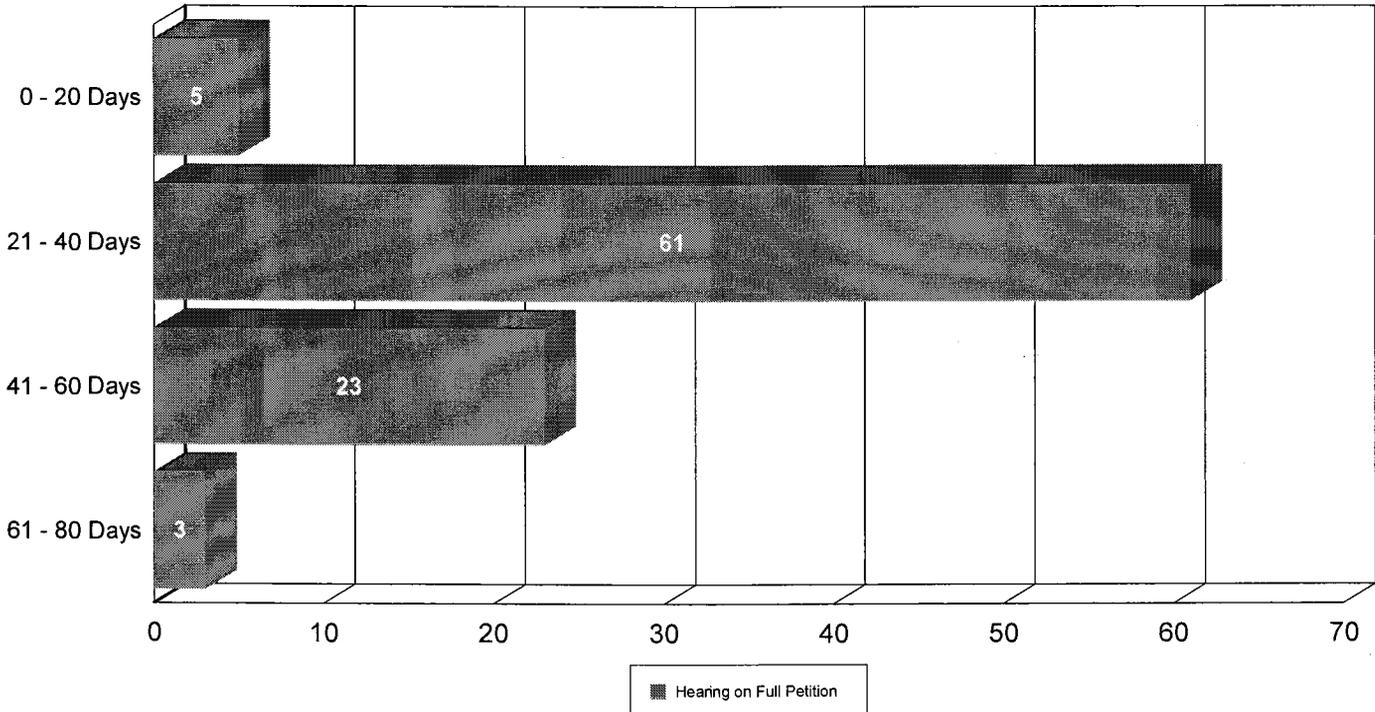
NPCS 3.3.8 Hearing

- A. Probate courts should promptly set a hearing for the earliest date possible.
- B. Respondents should be present at the hearing and all other stages of the proceeding unless waived.
- C. Probate courts should make reasonable accommodations to enable the respondent's attendance and participation at the hearing and all other stages of the proceeding.
- D. A waiver of a respondent's right to be present should be accepted only upon a showing of good cause.
- E. The hearing should be conducted in a manner that respects and preserves all of the respondent's rights.
- F. Probate courts may require the court visitor who prepared a report regarding the respondent to attend the hearing.
- G. Probate courts should require the proposed guardian or conservator to attend the hearing.

		<u>0 - 20 Days</u>	<u>21 - 40 Days</u>	<u>41 - 60 Days</u>	<u>61 - 80 Days</u>	<u>Total</u>
Hearing on Full Petition	Granted	3	43	14	2	62
	Heard	0	9	4	0	13
	Vacated	0	3	4	0	7
	Continued	0	4	1	1	6
	Others	2	2	0	0	4
	Total	5	61	23	3	92

Days to Initial Hearing

Full Petition



Additional Caseload Statistics

2.1 - Timeliness of First Hearing - Last 12 Full Months

2.1.2 - Hearing on Temporary or Extended Guardianship

Scheduled hearings for the last 12 months, broken out by the number of calendar days from initial petition filing to first hearing on temporary or extended guardianship.

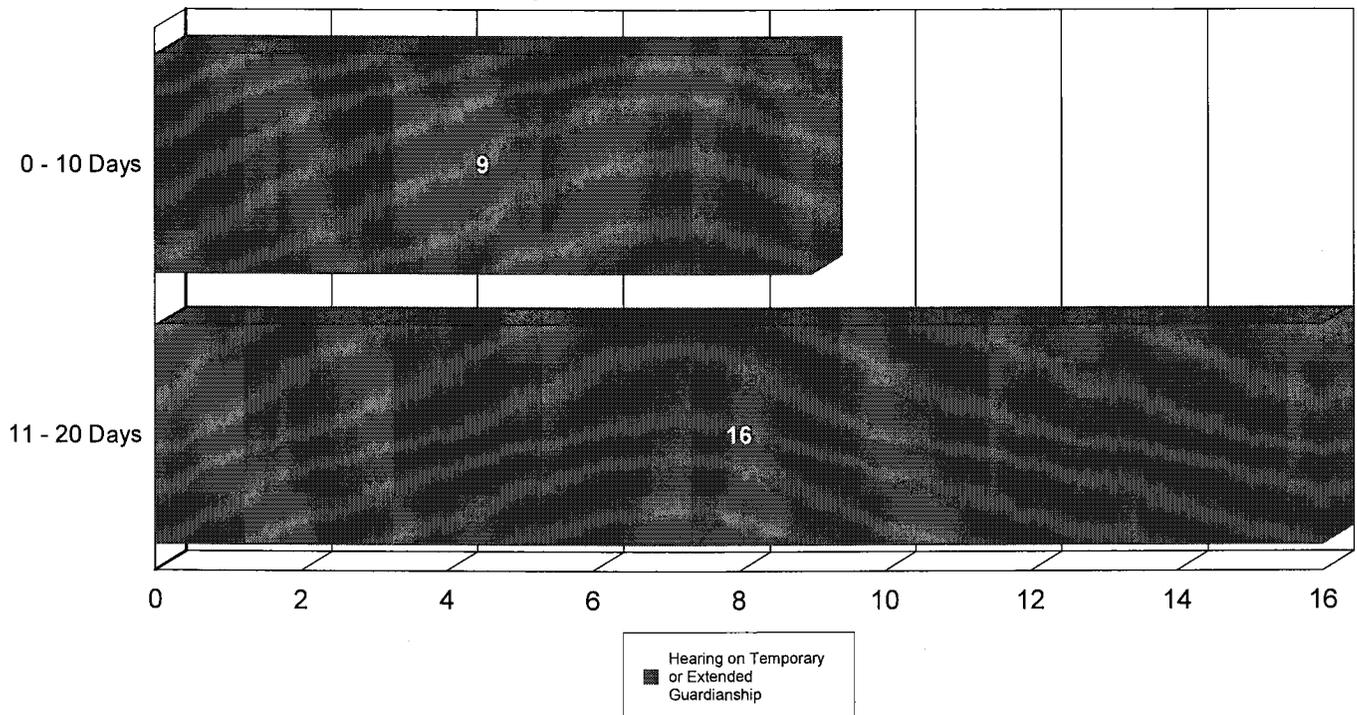
NPCS 3.3.8 Hearing

- A. Probate courts should promptly set a hearing for the earliest date possible.
- B. Respondents should be present at the hearing and all other stages of the proceeding unless waived.
- C. Probate courts should make reasonable accommodations to enable the respondent's attendance and participation at the hearing and all other stages of the proceeding.
- D. A waiver of a respondent's right to be present should be accepted only upon a showing of good cause.
- E. The hearing should be conducted in a manner that respects and preserves all of the respondent's rights.
- F. Probate courts may require the court visitor who prepared a report regarding the respondent to attend the hearing.
- G. Probate courts should require the proposed guardian or conservator to attend the hearing.
- H. Probate courts should make a complete record of the hearing.

		<u>0 - 10 Days</u>	<u>11 - 20 Days</u>	<u>Total</u>
Hearing on Temporary or Extended Guardianship	Granted	8	9	17
	Others	0	4	4
	Heard	0	2	2
	Denied	0	1	1
	Continued	1	0	1
	Total	9	16	25

Days to Initial Hearing

Temporary or Extended Guardianship



Additional Caseload Statistics

2.2 - Alternative Dispute Resolution: - Last 12 Full Months

2.2.1 - Scheduled Mediations

Cases are grouped based upon resolution type. Pending mediations, if available, are labeled as 'Outcome Pending.'

NPCS 2.5.1 Referral to Alternative Dispute Resolution

Probate courts should refer appropriate cases to appropriate alternative dispute resolution services including mediation, family group conferencing, settlement conferences and arbitration.

NPCS 3.3.2 Initial Screening

Probate courts should encourage the appropriate use of less intrusive alternatives to formal guardianship and conservatorship proceedings.

NPCS 3.3.10 Less Intrusive Alternatives

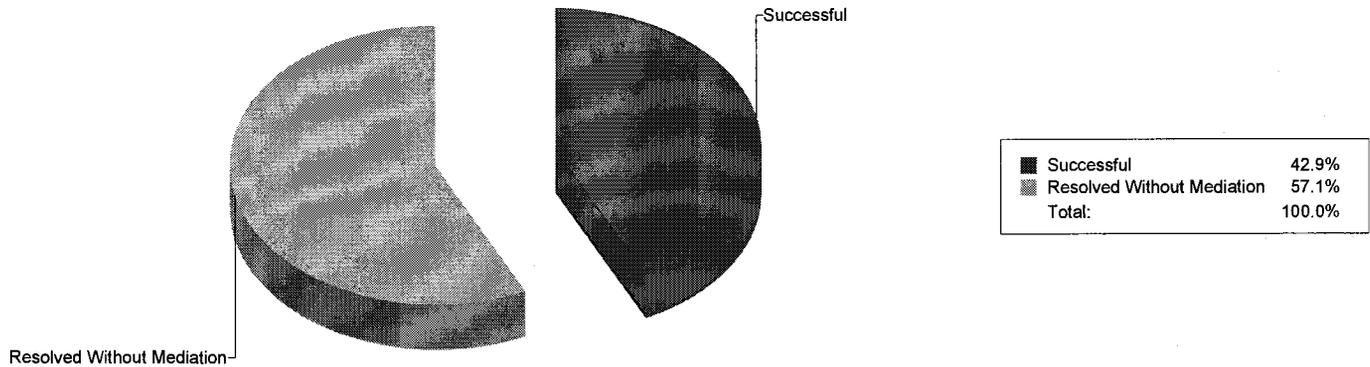
A. Probate courts should find that no less intrusive appropriate alternatives exist before the appointment of a guardian or conservator.

B. Probate courts should always consider, and utilize, where appropriate, limited guardianships and conservatorships, or protective orders.

C. In the absence of governing statutes, probate courts, taking into account the wishes of the respondent, should use their inherent or equity powers to limit the scope of and tailor the guardianship or conservatorship order to the particular needs, functional capabilities, and limitations of the respondent.

	<u>2/2015</u>	<u>3/2015</u>	<u>6/2015</u>	<u>8/2015</u>	<u>11/2015</u>	<u>Total</u>
Successful	0	0	1	1	1	3
Resolved Without Mediation	1	1	1	1	0	4
Total	1	1	2	2	1	7

Scheduled Mediations



Additional Caseload Statistics

2.2 - Alternative Dispute Resolution: - Last 12 Full Months

2.2.2 - Scheduled Settlement Conferences

Events are grouped based upon resolution type. Pending settlement conferences are labeled as 'Outcome Pending.' Multiple events may occur on a single case. This new data element capture began July 1, 2015.

NPCS 2.5.1 Referral to Alternative Dispute Resolution

Probate courts should refer appropriate cases to appropriate alternative dispute resolution services including mediation, family group conferencing, settlement conferences and arbitration.

NPCS 3.3.2 Initial Screening

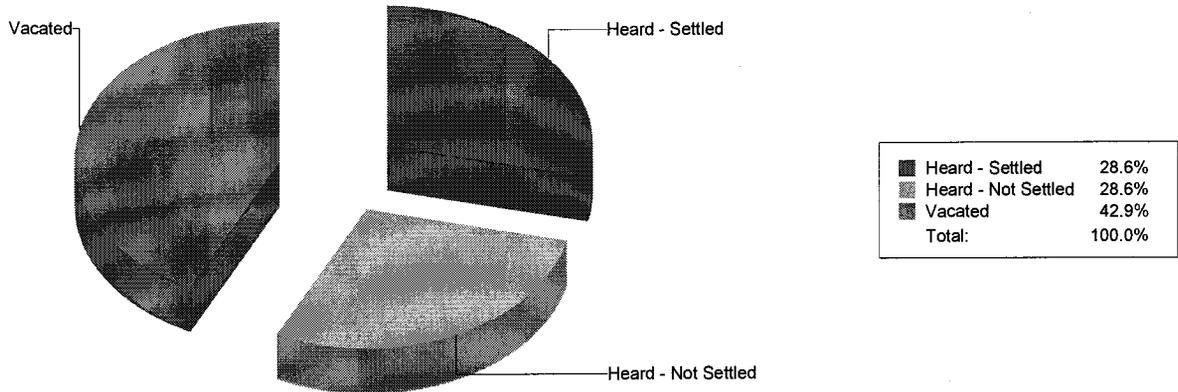
Probate courts should encourage the appropriate use of less intrusive alternatives to formal guardianship and conservatorship proceedings.

NPCS 3.3.10 Less Intrusive Alternatives

- A. Probate courts should find that no less intrusive appropriate alternatives exist before the appointment of a guardian or conservator.
- B. Probate courts should always consider, and utilize, where appropriate, limited guardianships and conservatorships, or protective orders.
- C. In the absence of governing statutes, probate courts, taking into account the wishes of the respondent, should use their inherent or equity powers to limit the scope of and tailor the guardianship or conservatorship order to the particular needs, functional capabilities, and limitations of the respondent.

	<u>7/2015</u>	<u>8/2015</u>	<u>9/2015</u>	<u>11/2015</u>	<u>Total</u>
Heard - Settled	0	0	0	2	2
Heard - Not Settled	2	0	0	0	2
Vacated	0	1	2	0	3
Total	2	1	2	2	7

Settlement Conferences



Additional Caseload Statistics

2.3 - Annual Reports and Inventories Filed

The below table shows the number of annual reports, accountings, inventories, and appraisement and record filings in the past 12 full months.

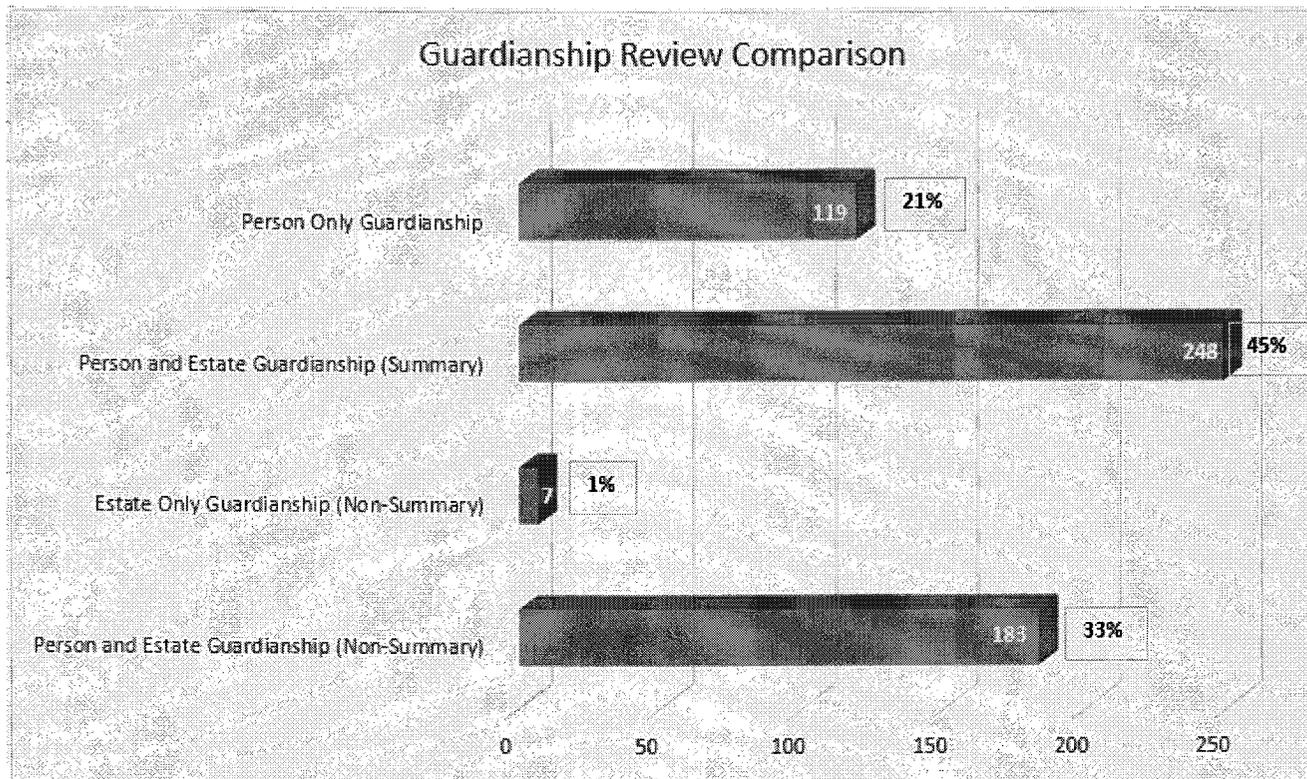
	<u>2/2015</u>	<u>3/2015</u>	<u>4/2015</u>	<u>5/2015</u>	<u>6/2015</u>	<u>7/2015</u>	<u>8/2015</u>	<u>9/2015</u>	<u>10/2015</u>	<u>11/2015</u>	<u>12/2015</u>	<u>1/2016</u>	<u>Total</u>
Accounting	9	7	9	14	12	8	16	20	13	5	10	12	135
Annual Report of Guardian	35	39	42	41	46	47	45	33	56	19	55	44	502
Inventories	1	7	1	7	25	33	28	6	13	4	10	13	148
Total	45	53	52	62	83	88	89	59	82	28	75	69	785

Additional Caseload Statistics

2.4 - Guardianship Review Comparison

The below table and chart show the number of types of guardianships that are pending active or set for review.

Person and Estate Guardianship (Non-Summary)	183	33%
Estate Only Guardianship (Non-Summary)	7	1%
Person and Estate Guardianship (Summary)	248	45%
Person Only Guardianship	119	21%
Total	557	



Data is currently captured manually. Efforts continue to make these data available via the Courts case management system.

Additional Caseload Statistics

2.5 - Appointment of Counsel - Last 12 Full Months

Court appointed counsel for the last 12 months, broken out by the party type. This new data element capture began September 1, 2015.

NPCS 3.3.5 Appointment of Counsel

A. Probate courts should appoint a lawyer to represent the respondent in a guardianship/conservatorship proceeding if:

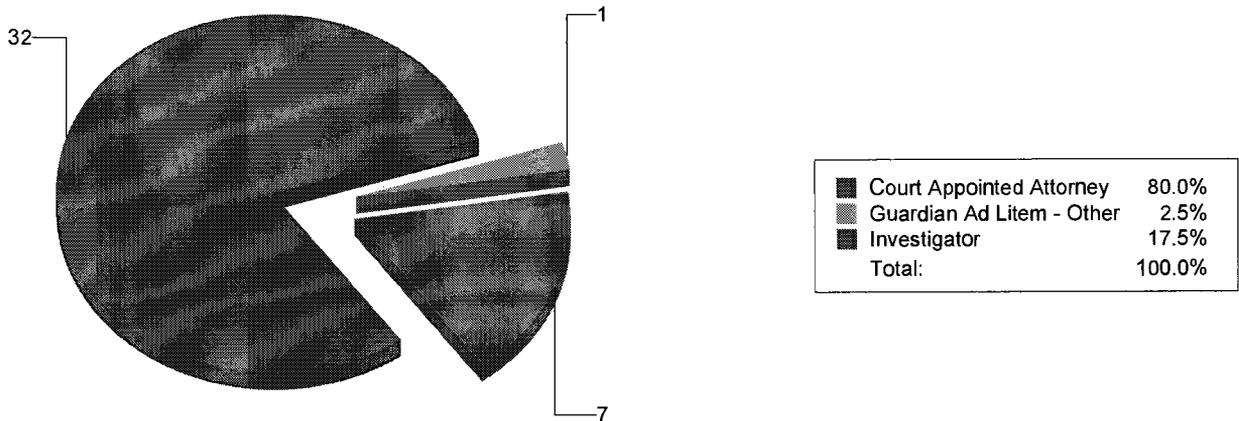
- (1) Requested by the respondent; or
- (2) Recommended by the visitor; or
- (3) The court determines that the respondent needs representation; or
- (4) Otherwise required by law.

B. The role of counsel should be that of an advocate for the respondent.

	<u>9/2015</u>	<u>10/2015</u>	<u>11/2015</u>	<u>12/2015</u>	<u>1/2016</u>	<u>2/2016</u>	<u>Total</u>
Court Appointed Attorney	7	8	6	1	2	8	32
Guardian Ad Litem - Other	0	0	0	0	1	0	1
Investigator	0	0	3	2	0	2	7
Total	7	8	9	3	3	10	40

Appointment of Counsel

Past 12 Full Months



Demographics

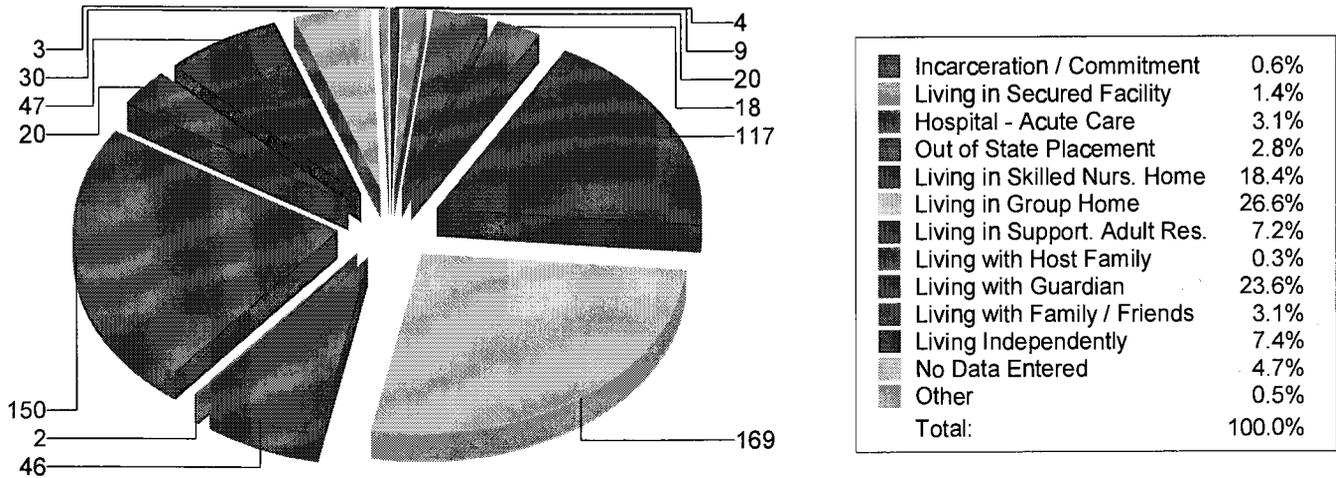
3.1 - Placement

For all pending cases, the chart below shows the percentage breakdown of guardian types in Adult Guardianship cases.

Please note: 'No Data Entered' represents those cases that are pending active and awaiting a case disposition, where a placement has not yet been established. Definitions for placement and care are located on Appendix C.

Placement Breakdown

For Persons Subject to a Guardianship

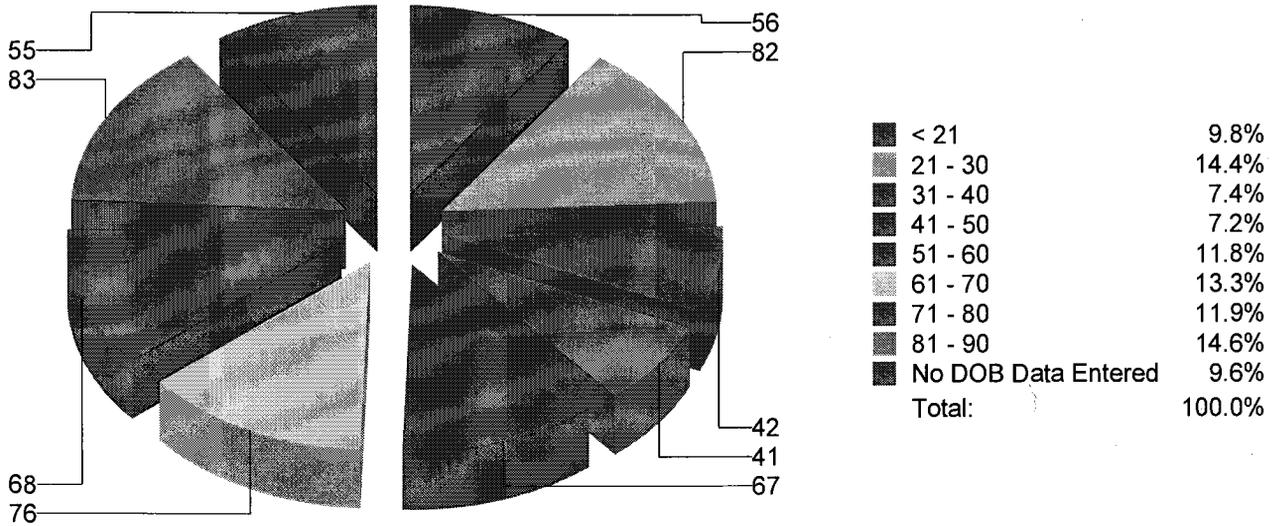


Demographics

3.2 - Adult Subject to Guardianship - Age Breakdown

The table and chart below show the breakdown in age of persons subject to a guardianship in pending cases. Please note: Previous to January 2014, this data was not captured. As data is added to the case management system, the percentage of 'No DOB Data Entered' will decrease.

Age Breakdown
For Persons Subject to a Guardianship

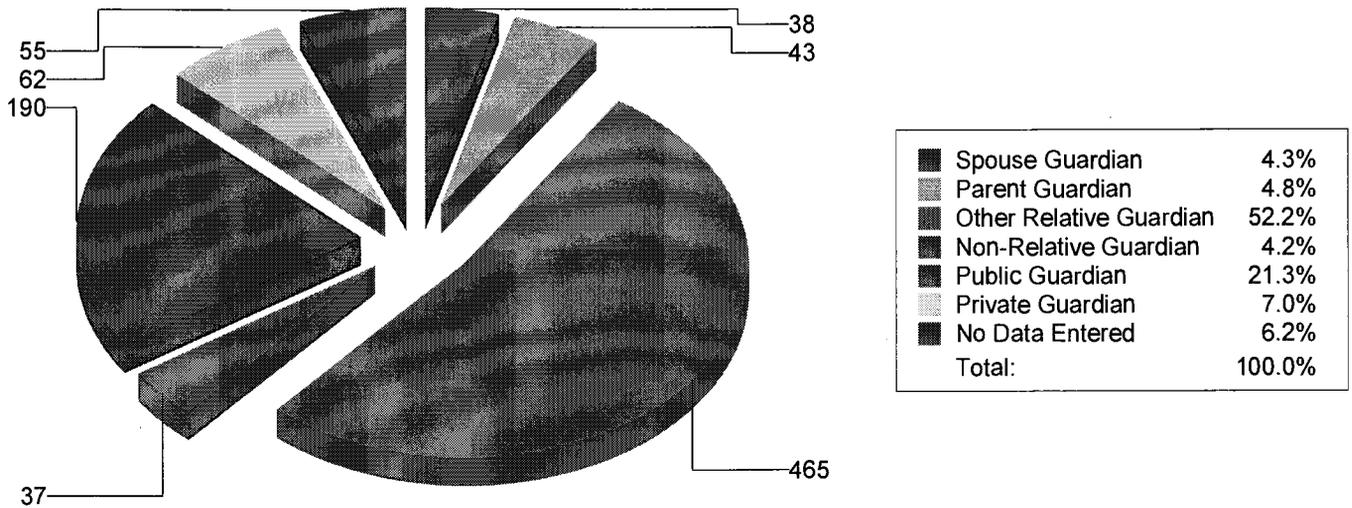


Demographics

3.3 - Guardian Types

For all pending cases, the chart below shows the percentage breakdown of guardian types in Adult Guardianship cases. Please note: Previous to January 2014, this data was not captured. As data is added to the case management system, the percentage of 'No Data Entered' will decrease.

Types of Guardians



Appendix A. Statutory Authority for types of Guardianships

NRS 159.0487 provides for the appointment of 5 different types of Guardian.

1. Guardians of the Person, of the Estate, or of the Person and Estate for incompetents or minors whose home state is this State

This is a General Guardianship over the Person, Estate or both over a person found to be incompetent with all of the powers available under NRS 159 granted to the Guardian. However the Guardian must still petition the Court before taking action in relation to certain aspects of the Person and or Estate.

a. Summary Administration of a Guardianship Estate (NRS 159.076)

Ordinarily a Guardianship of Estate requires annual accountings to be heard on noticed hearing by the Court. However where it appears after payment of all claims and expenses of the guardianship that the value of the Wards property does not exceed \$10,000 the Court may dispense with annual accountings and all other proceedings required by this chapter. However the Guardian must notify the Court through an amended inventory should the net estate exceed \$10,000 and file annual accountings from that point on.

2. Guardians of the Person, of the Estate, or of the Person and Estate for incompetents or minors who, although not residents of this State, are physically present in this State and whose welfare requires such an appointment

This is the same type of Guardianship as described at 1. However it is the physical proximity in state and the circumstantial requirement of appointment rather than residence which allows the Court to make an order. The powers granted are the same and subject to the same statutory requirements of permission before action is taken.

3. Guardians of the Estate for nonresident incompetents or nonresident minors who have property within this State

This describes a guardianship concerned with property held in this state only.

4. Special Guardians (NRS 159.026, NRS 159.0801, NRS 159.0805)

This is a guardianship over a person found to be a limited capacity as opposed to incompetency. The Court may dictate the powers granted to the Special Guardian and, save in emergency situations, must apply to the Court for instruction or approval before commencing any act relating to the person of limited capacity. The Special Guardian of the Person may also be granted powers to manage and dispose of the estate of the Ward.

5. Guardians ad litem

Not applicable to this analysis.

6. Temporary Guardian of the Person and/ or Estate (NRS 159.0523/0525)

The Court may grant a temporary guardianship over the Person, Estate or both. This may be granted on an ex parte basis but in such circumstances must be heard not later than 10 days after the date of appointment or the guardianship will expire. The Court may extend the guardianship for no longer than 5 months unless extraordinary circumstances are shown. The Court shall limit the powers of the Temporary Guardian to those necessary to respond to a substantial and immediate risk of physical harm or financial loss as is relevant.

Appendix B. USJR – Family Disposition Definitions

Non-Trial Dispositions: A major classification category for family-related case dispositions in which a case is disposed of by a dismissal, default, settlement, withdrawal, transfer, or other non-trial action.

Other Manner of Disposition: A subcategory of family-related non-trial case type dispositions including ones of unknown specificity or dispositions not attributable to one of the other defined family-related disposition categories.

Dismissed for Want of Prosecution: A subcategory of family-related non-trial dispositions involving cases dismissed by the court because the plaintiff, petitioner, or obligee has voluntarily ceased to pursue a case.

Involuntary (Statutory) Dismissal: A subcategory of family-related non-trial dispositions involving cases adjudicated by an order of dismissal being entered because the legal time statute has expired, with no other judgment or order being rendered for the case.

Default Judgment: A subcategory of family related non-trial dispositions involving cases in which the defendant(s) either chose not to or failed to respond to (i.e. answer) the plaintiff's allegations.

Settled/Withdrawn Without Judicial Conference or Hearing: A subcategory of family related non-trial dispositions for cases settled out of court, voluntarily withdrawn from the court docket by the plaintiff, and/or by joint stipulation without a conference or hearing with a judicial officer.

Settled/Withdrawn With Judicial Conference or Hearing: A subcategory of family related non-trial dispositions for cases settled, voluntarily withdrawn from the court docket by the plaintiff, and/or by joint stipulation following a conference or hearing with a judicial officer.

Settled/Withdrawn by Alternative Dispute Resolution (ADR): A subcategory of family related non-trial dispositions involving cases that were referred by the court to programs such as mediation or arbitration and through those processes, were successfully settled and/or withdrawn from the court docket during the reporting period.

Transferred: A subcategory of family-related non-trial dispositions involving cases in which a judicial order transfers a case from one court to another jurisdiction. Transferred does not mean transferring the case from one judge or master to another judge or master within the same court.

Trial Dispositions: A major classification category for family-related case dispositions that involves a hearing and determination of issues of fact and law, in accordance with prescribed legal procedures, in order to reach a judgment in a case before a court.

Bench (Non-Jury) Trial: A subcategory of family related trial dispositions involving a trial in which there is no jury and a judicial officer determines both the issues of fact and law in the case. For statistical purposes, a Bench trial is initiated when an opening statement is made, the first evidence is introduced, or the first witness sworn, whichever comes first, regardless of whether a judgment is reached.

Disposed After Trial Start: A subcategory of family related bench (non-jury) trial dispositions in which a judicial officer determines both the issues of fact and law in the case, but no judgment is reached, typically because the case settles during the trial.

Judgment Reached: A subcategory of family related bench (non-jury) trial dispositions in which a judicial officer determines both the issues of fact and law in the case and a judgment is rendered by the court/judicial officer.

Appendix C: LEVELS OF CARE/PLACEMENTS

Jail/Commitment Facility: Placement in a commitment facility pursuant to a civil protocol which occurs when a person is involuntarily admitted into an acute care, locked, psychiatric hospital for serious mental health impairments pursuant to the provisions of NRS 433A. Placement in a jail results when a person is arrested and incarcerated in a locked detention facility pending criminal disposition.

Locked/Secure Facility: Placement serving persons who are experiencing serious psychiatric disabilities and require a secure, safe and structured living environment in which they may benefit functionally from psychiatric rehabilitation services and progress to a less restrictive level of care. The facility providing long-term care is designed to restrict a resident of the facility from leaving the facility, a part of the facility or the grounds of the facility through the use of locks or other mechanical means unless the resident is accompanied by a staff member of the facility or another person authorized by the facility or the guardian. This does not include a residential facility providing long-term care which uses procedures or mechanisms only to track the location or actions of a resident or to assist a resident to perform the normal activities of daily living. NRS 159.0255

Hospital-Acute Care: Placement in an acute care hospital of a person receiving brief 24-hour in-patient treatment and recovery care for a serious, health condition or trauma.

Out of State Placement: Placement of a resident of the State of Nevada in a location/facility out of Nevada's boundaries in order to meet placement needs or requirements.

Skilled Nursing Home: Placement of a person in a skilled nursing home receiving continuous 24-hour residential support for activities of daily living and nursing support for challenges associate with disabilities. Skilled nursing homes may also provide transitional rehabilitation and medical services for persons transitioning from hospitalization to a lesser restrictive living circumstance. NRS 449.0039.

Group Home: Placement of a person in a private home that furnishes food, shelter, assistance and limited supervision to a person with an intellectual disability or with a physical disability or a person who is aged or infirm. The term includes, without limitation, an assisted living facility. NRS 449.017.

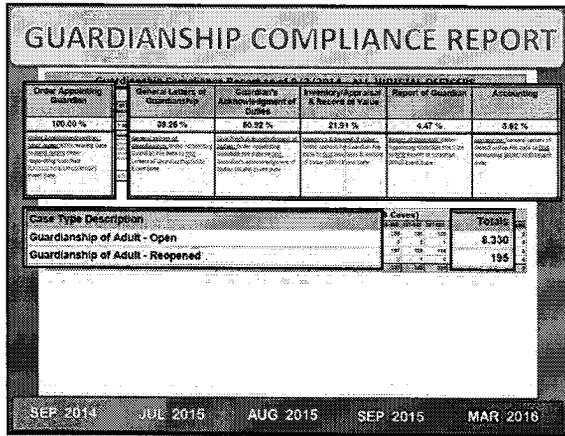
Supportive Adult Residence: Placement maximizes elder or disabled persons independence while providing supplemental services as needed, i.e., medication management, meal preparation, transportation, apartment cleaning, general health care services, 24 hour monitoring. See also NRS449.017.

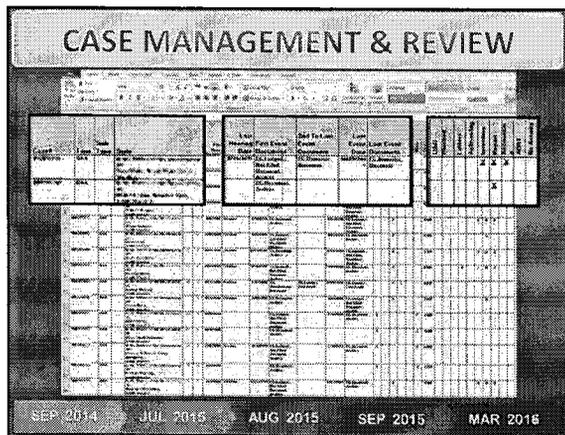
Host Family /Guardian/Family/Friend: Placement of a person in a family home that allows the living experience of a home setting with a non-relative, relative, guardian or friend who provides housing, meals and services designated in the person's care plan, such as transportation, medication reminders, companionship, socialization, and assistance with activities of daily living.

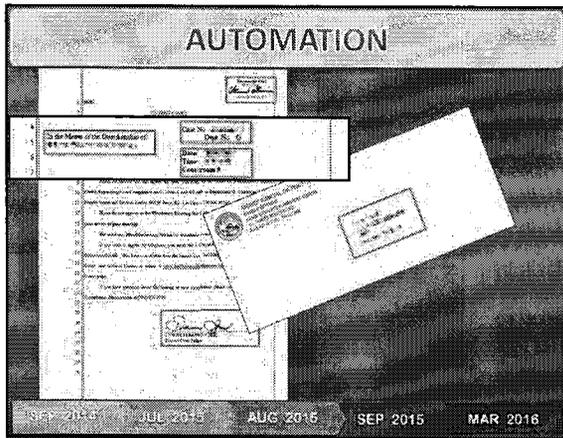
Independent Living: Placement of a person in their own home living with or without supportive services.

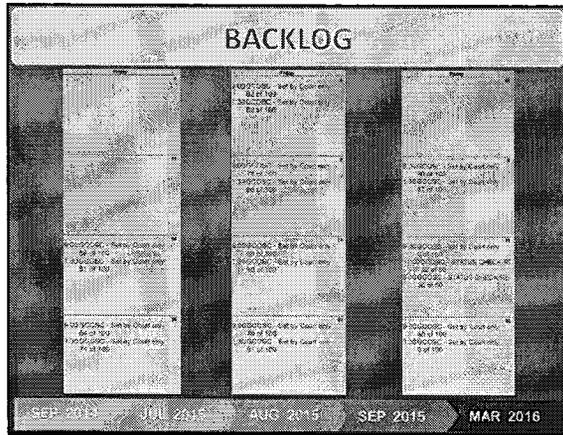
Appendix S

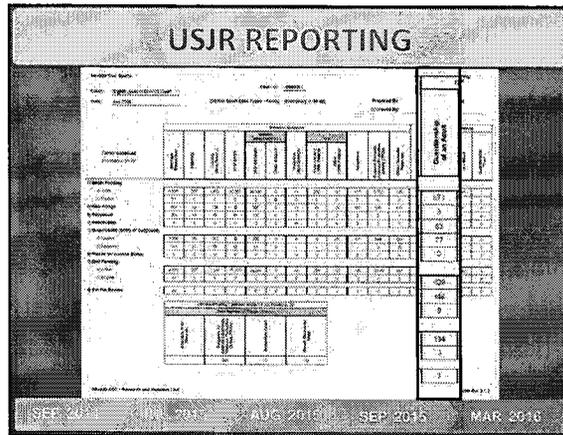


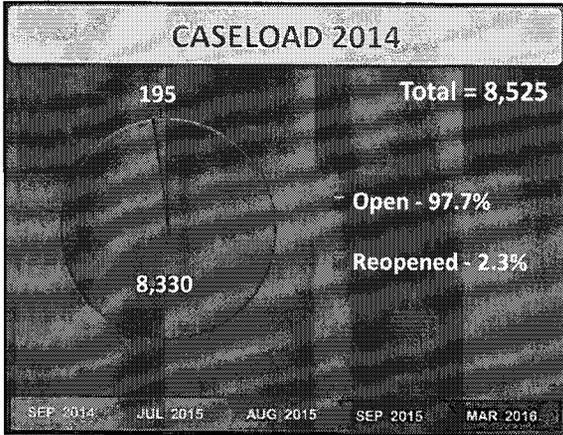


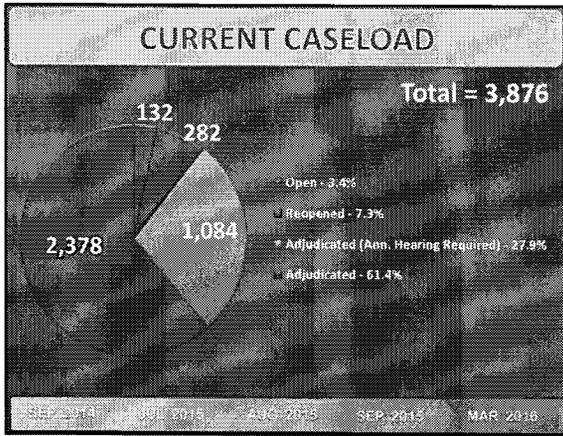


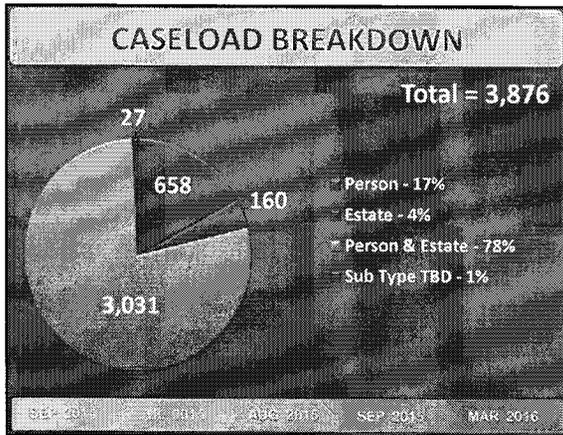


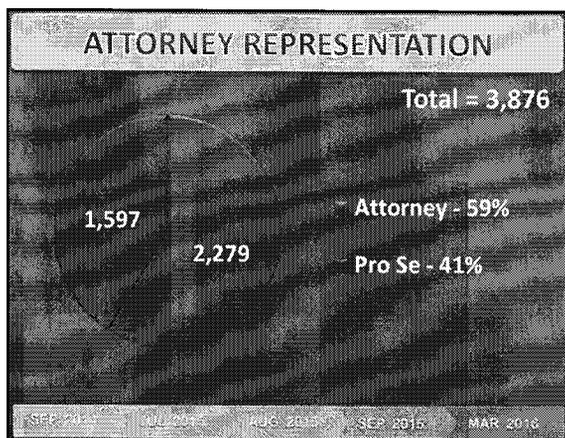


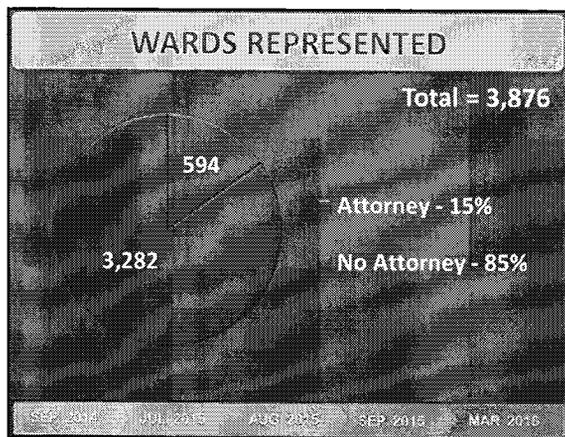


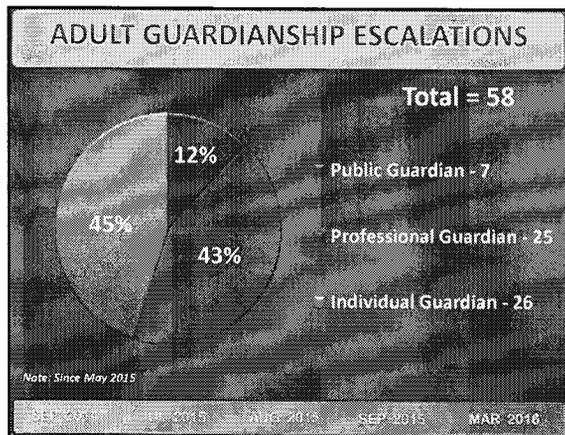












FUTURE EFFORTS

- Implementation of "My Minnesota Conservatorship" for our Court
- Implementation of automated real time notifications and mailings
- National Standards for Guardianship Reporting

FUTURE EFFORTS

The screenshot shows a web application titled "MyNY Guardianship". It features a navigation bar with tabs for "MyNY Guardianship", "MyNY Conservatorship", and "MyNY Reporting". Below the navigation bar, there is a section for "Case Details" with various fields and a "Print" button. The main content area is currently empty.

FUTURE EFFORTS

The screenshot shows the same web application with a table of cases. The table has columns for "Case ID", "Case Name", "Case Type", "Case Status", and "Case Date". There are several rows of data. On the right side, there is a sidebar with various filters and options, including "Case Type", "Case Status", and "Case Date".

Appendix T

Attorney Fees in Guardianship Matters

John C. Smith, Esq., Reno, Nevada

1. *The “guardianship” process – a unique environment.*
 - *Social, medical and legal participants,*
 - *“Best interests” and “Least restrictive environment”,*
 - *A “front loaded” process (The Texas Model).*

2. *Attorney fee considerations:*
 - a. *Continual Transparency,*
 - b. *Written fee agreements,*
 - c. *Division of duties/fees,*
 - d. *The review and approval process.*
 - *NRPC 1.14, 2.1 and 1.5,*
 - *NRS 159.0485(3), 159.105, 159.183(1)(c),*
 - *“Brunzell Factors” (Brunzell v. Golden Gate National Bank, 85 Nev. 345, 455 P.2d 31 (1969)),*
 - e. *The “Arizona” Model.*

3. *Some suggestions.*

Retainer and Fee Indemnification Agreement

Guardianship Matters

1. Parties. The parties to this agreement are John C. Smith (Attorney) and _____, hereafter referred to as "Applicant".

2. Client. It is agreed between Attorney and Applicant that whoever becomes the "petitioner" in a guardianship action shall for all purposes, legal and otherwise, be considered Attorney's only client in this matter. Applicant shall be treated as a party receiving all information required to be noticed by law, but shall not have the authority of a "client".

2. Subject Matter of Agreement. Applicant has requested, and attorney has agreed, to pursue a guardianship action, either involving Applicant as a petitioner and/or a third party as, and a proposed Ward named _____.

3. Charges. Applicant acknowledges that in pursuing the above mentioned guardianship action, the attorney and/or the attorney's employees are entitled to be compensated at the following rates: a) John C. Smith's rate is \$360.00 per hour; and b) Paralegal's rate is \$150.00 per hour. Both of these rates are "inclusive" meaning that no billing will occur for photocopy costs, postage, faxing, or long distance calls. The estimated fees and costs for this matter are \$3,500.00 to \$5,000.00, and will become the primary obligation of the Proposed Ward's estate once approved by the Court.

Charges include but are not limited to a) court appearances; b) conferences with the Client, petitioner or Interested Party; c) office conferences; d) legal research; e) review of file materials and documents sent or received; f) travel time; g) waiting time; h) preparation for and attending hearings and court conferences; and i) drafting of pleadings, correspondence and office memoranda. There is a minimum time charge of 10 minutes for time as to any item billed.

4. Indemnification. Applicant acknowledges that although the proposed Ward's estate will become primarily liable for attorney fees and costs incurred, the Court has the final determination of what amount will be approved for payment to Attorney. Accordingly, should the Court not approve the full amount of fees and costs requested for any reason other than a finding that such work was not performed or was performed in bad faith, Applicant shall be responsible to pay attorney the difference between the amount requested and the amount approved by the Court; such amount

to be a direct obligation of Applicant to Attorney and deducted from any amount held by attorney as and for a retainer for this purpose.

5. Cooperation. Applicant agrees to cooperate fully with the attorney in all matters during the term of this agreement, including providing the attorney all relevant information necessary to pursue the work described above. In the event the Applicant does not fully cooperate with the Attorney, the attorney reserves the right to withdraw from continuing with the guardianship matter in accordance with the applicable Rules of the Court.

6. Retainer. As a retainer to demonstrate Applicant's commitment to this matter, a retainer in the amount of \$_____.00 shall be paid to Attorney at the initiation of this matter. The retainer will be held in the Attorney's Trust Account and promptly refunded to Applicant should the Court approve, and Attorney receive, all of the fees and cost requested, otherwise, any difference will be deducted from the Applicant's retainer before any balance is refunded.

Once begun, as acknowledged by the execution of this Agreement, if this matter is discontinued, Attorney shall be granted payment of at least \$1,000.00 as a non-refundable amount of fees earned.

7. Outcome. The Applicant understands that the attorney cannot and does not promise or guarantee any specific result or outcome in this matter.

APPROVED AND ACCEPTED

APPROVED AND ACCEPTED

Date _____

Date _____

, Applicant

John C. Smith, Attorney

Law Office of John C. Smith
 410 California Ave., Ste. 100, Reno, Nevada 89509
 775.324.9100, Fax 775.334.4433

Client:

Matter:

Permanent Hearing: _____

Date Done 00-16	Services	N P W	D R	S I	F I	Done by	Time/ Hourly Rate	Amount
	Inform client of documentation to bring (Proposed Ward ID/Nickname, asset/liability info)	N	N	N	N		N/C	\$0
	Initial consultation (situation/history/desired outcome/unmet needs/guardianship alternatives /types/"most-suited"/likely costs/self-determination /least restrictive means/"Care Plans"/Medicaid /Spousal Resource Allocation/Fee Agreement)				N	Atty	: 360	\$
	Review Guardianship Questionnaire (Ward attend hearings?/Relative info-contact info-contacted?/ guardian qualified/ verify supporting information		N	N	N	Atty	: 360	\$
	Draft / Request / receive / review "Physicians Certificate"			N	N	Atty	: 360	\$
	Draft / Request / receive / review "Admonition", if needed	N	N	N	N	Atty	: 360	\$
	Determine and create "Master Notice List"; copy to file bottom left side; Exhibit Index created		N	N	N	Para	: 150	\$
	Determine / verify that statutory parties are notified of guardianship action		N	N	N	Atty	: 360	\$
	Complete "Pre-Petition Checklist"			N	N	Para	: 150	\$
	Draft Petition for guardianship & gather and review exhibits;	N				Atty	: 360	\$
N/C	Create master "pleading" and "order" forms		N	N	N	Para	N/C	\$
	Coordinate Client review /signing of Petition;	N	N		N	Atty	: 360	\$
	Prepare Guardian's Acknowledgment; meet with client to review and coordinate signature; file	N				Atty	: 360	\$
	Prepare Petition with supporting docs and file;	N				Para	: 150	\$
	Obtain Client + Ward confidential information and file into Court	N				Para	: 150	\$
	Call setting clerk and set hearing (:05) Prepare Citation, have issued (:35); prepare transmittal letters to Notice List (:30); Prepare certified mailing package; mail (:35);		N	N	N	Para	: 150/	\$

NPW =non-pleading work; DR=drafted; SI=signed; FI=files; EM=e-mail; FX=fax ; N= n/a

PC=phone call; ATTY=attorney; PARA=paralegal ; P= Pending

APPENDIX T - ATTORNEY FEES

Date Done 00-16	Services	N	D	S	F	Done by	Time/ Hourly Rate	Amount
		P W	R	I	I			
N/C	Copy of Petition to Washoe Legal Services with request to participate		N	N	N	Para	N/C	\$0
N/C	Prepared request for approval of attorney fees; Notice of Hearing	x				Para	N/C	\$0
	Follow up on Ward + Guardian attending Permanent hearing		N	N	N	Para	: 150	\$
	Complete Pre-Court checklist and file review; prepare and file Proof of Service		N	N	N	Para	: 150	\$
	Send copy of draft Order to Court and Washoe Legal Services		N	N	N	Para	N/C	\$0
	Draft proposed Order appointing permanent guardian (:45); attending hearing (1:00)	N				Atty	: 360	\$
	Prepare Notice of Entry of Order appointing Permanent Guardian; file and send to Notice List	N				Para	: 150	\$
	Draft Letters of Permanent Guardianship; have issued; file into Court and obtain certified copies	N				Para	: 150	\$
	Follow up on posting of bond if required by Court		N	N	N	Para	: 150	\$
	Record Permanent Letters of Guardianship if real property involved		N	N	R	Para	: 150	\$
	Prepare letter to client regarding the required Inventory		N	N	N	Atty	: 150	\$
	Review information on finances and assets; prepare draft inventory and supporting exhibits	N		N	N	Para	: 150	\$
	Final review of Inventory draft		N	N	N	Atty	: 360	\$
	Coordinate client signature(s) on Inventory and file into Court	N				Para	: 150	\$
	Estimated time for miscellaneous phone calls to facilitate guardianship process by paralegal		N	N	N	Para	: 150	\$
	Estimated time for miscellaneous phone calls to facilitate guardianship process by attorney		N	N	N	Atty	: 360	\$

Total Estimated Fees for Services Rendered \$00+/-

Filing Fees and Costs

District Court filing fee for Petition..... \$ 274/\$527

Total Estimated Fees and Costs..... \$00+/-

NPW =non-pleading work; DR=drafted; SI=signed; FI=files; EM=e-mail; FX=fax ; N= n/a

PC=phone call; ATTY=attorney; PARA=paralegal ;; P= Pending

Nevada Rules of Professional Conduct (emphasis added)

Rule 1.14. Client With Diminished Capacity.

(a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.

(c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

Rule 2.1. Advisor. In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.

Rule 1.5. Fees.

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

(1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) The fee customarily charged in the locality for similar legal services;

(4) The amount involved and the results obtained;

(5) The time limitations imposed by the client or by the circumstances;

(6) The nature and length of the professional relationship with the client;

(7) The experience, reputation, and ability of the lawyer or lawyers performing the services; and

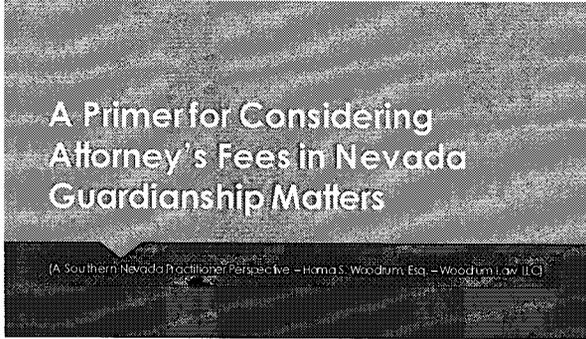
(8) Whether the fee is fixed or contingent.

(b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.

Second Judicial District Court Local Rules

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.







Uncontested Minor Guardianship

- Case in Point: Mr. and Mrs. Grand have two grand children, placed with Permatta Child Protective Services removed the children from their parents' care owing to drug dependency in their home. They've been caring for the children over the summer on their limited joint Vogel security income and need to apply for assistance for the children in school and take them for check-ups. They need court orders and authority.
 - Step 1: Gather Information & Obtain forms
 - Step 2: Complete and file forms & Obtain hearing date and service notice
 - Step 3: Appear, with words parent and become a Guardian (Order + Letters)
 - Step 4: Notice of Entry, Inventory (if applicable) & Annual Reporting

Minor Guardianships are Person Centric

- Guardianship of the Person only is most likely
- Guardians often don't have means
- Words of ten don't have estates
- Goals include applying for services, benefits, and school enrollment
- Objective measure of qualification (minor status)

Contested Minor Guardianships

- Subjective measures of play
 - Best interests of the child standard
 - Compelling family members interests
 - Case law trends regarding abandonment, (in Re the Guardianship of N.M.)
- Visitation
- Similar to custody disputes in complexity, regardless of estate existence/Value
- "One Family, One Judge"
- Hearing in ester system
- Varied timelines and fees

Uncontested Adult Guardianship

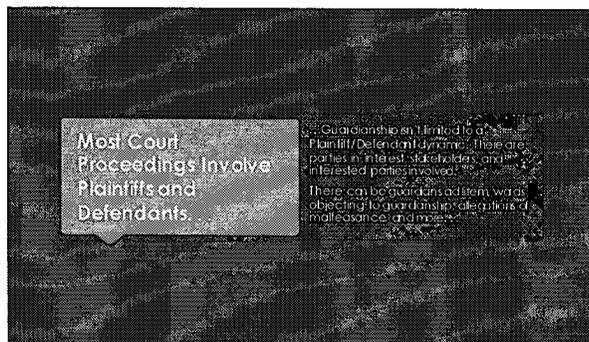
- Case in Point: Dot is worried about her father, Dan. Dan was recently diagnosed with dementia and needs help paying bills and managing medications. The doctors office would continue with Dot because Dan has no siblings, planning documents, or family. Her power of attorney, Dot has no siblings, and Dan's wife passed away last year. She is going to have her dad go to adult day care while she is at work and live with him otherwise. Dan has always trusted his daughter and is happy to have her help out.
- Step 1: Gather information & obtain forms (acknowledge Certificate of incapacity)
- Step 2: Complete and file forms & Obtain hearing date and service notice (national, state, court, county, Adult Guardian, Complaint to Court)
- Step 3: Appear, with ward present and become guardian (Orders & Letters)
- Step 4: Notice of Entry, Inventory & Account, accounting (if General Admin) and Report of guardian

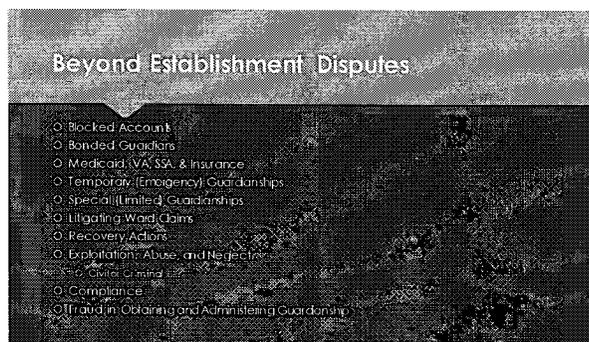
Person and Estate Adult Guardianships

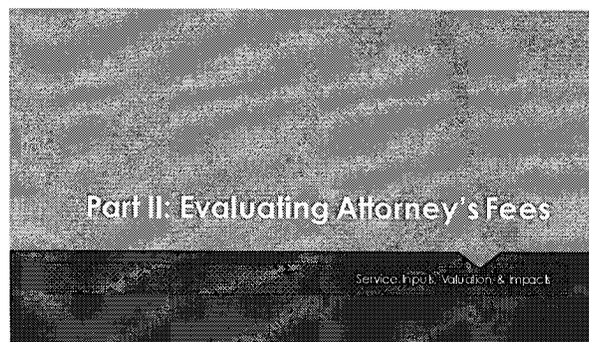
- Guardianship of the Person and Estate is most likely
- Guardians have varying means
- Wards have benefits, insurance, and personal affairs to get/keep in order
- Goals include applying for services, benefits, and planning for long term care
- Medically based measure of qualification (capacity)
- If subjective element, can necessitate second opinion, objection by the ward or others

Contested Adult Guardianships

- Nominations and Hierarchies
 - Statutory guidelines
- Notice (and Parties Entitled to Notice)
- Similar to divorce disputes regarding asset investigation
- Similar to custody disputes regarding visitation, control of care, rights
- Judge-centered system since June 2015
- Ongoing need while trial/discovery pends
- Ward representation
- Estate Planning Components







Service Inputs

- Time and Service
- Pro Bono Work
- Unpaid Work
- Hardware
- Expertise/Skill
- Continuing Education
- Overhead
- Office & Staff
- Expenses
 - Day to Day Expenses: Management, etc.
 - Marketing/Outlay

Service Valuation

- Components of Attorney Attention and Time
 - Experience
 - Education
 - Guidance
 - Ethics
 - Resources
 - Conflict & Communication
 - Knowledge
- Avoiding Litigation
 - Admiration and "Outside the Box" Thinking

Service Impacts

- Securing Organization, Costs
 - Wages
 - Office
 - Public
 - Mutual Agreements, Public Counsel
 - Courts
 - Outlays
 - Non-Profit
- Heavy 15 Benefits insured
- Individual Work
- Public

Responsibility for Fees

in interpreting an older version of the guardianship statutes, the Nevada Supreme Court has held that:

A guardian who employs counsel in behalf of the ward does not personally obligate to pay for counsel's services. See *In re Estate of Gentry*, 137 Nev. 222, 223, 137 P.3d 133 (2004). The Nevada Supreme Court also held in *In re Estate of Gentry*, 137 Nev. 222, 223, 137 P.3d 133 (2004), that the guardian is not personally liable for the costs of counsel's services unless the guardian is certified to do so in the order of appointment, and the guardian is not personally liable for the costs of counsel's services unless the guardian is certified to do so in the order of appointment, and the guardian is not personally liable for the costs of counsel's services unless the guardian is certified to do so in the order of appointment.

Common v. Colaw, 72 Nev. 100 (1954); *In re Estate of Gentry*, 137 Nev. 222, 223, 137 P.3d 133 (2004); *In re Estate of Gentry*, 137 Nev. 222, 223, 137 P.3d 133 (2004); *In re Estate of Gentry*, 137 Nev. 222, 223, 137 P.3d 133 (2004).

Fee Shifting

- Some statutory provision for others to bear attorney's fees
- Prevailing guardian in a dispute often has attorney's fees paid forward
- Not clearly settled
 - Orders of Judgment
- Double Damages

Procedural Components to Consider

○ Petition for Establishment	○ Acknowledgement
○ Certificate of incapacity	○ Inventory
○ Citation and Notice	○ Real Property Sales <ul style="list-style-type: none"> ○ Permission
○ Publication of Notice	○ Confirmation/Refinance
○ Court Appearance	○ Annual Report
○ Appointment	○ Annual Accounting
○ Orders and Letters	○ Continuation
○ Notice of Entry, Appeal Period	○ Termination
○ Blocked Account &/or Bonding	

8-10 Hours to Establish

The average **uncontested single minor guardianship** takes 8-10 hours of attorney and staff time. This process includes: through drafting documentation, meeting with client(s), preparing for court, attendance at court, and preparation of compliance documentation afterwards. It also includes client education.

10-15 Hours to Establish

The average **uncontested adult guardianship** takes 10-15 hours of attorney and staff time. The cost from initial filing through drafting documentation, meeting with client(s), preparing for court, and attendance at court. It also includes the inventory, but does not include the financial requirements of client education time.

Actual Cases Compared

<ul style="list-style-type: none"> ○ The Guardianship of M.T. ○ Guardianship Established: 3/7/15 ○ Attorney hours: 69 as of 4/14/16 ○ Summary Guardianship Admin ○ Expenses: \$167.45 ○ No Family ○ Guardian: Clark County Public Guardian 	<ul style="list-style-type: none"> ○ The Guardianship of W.R. ○ Guardianship Established: 3/3/15 ○ Attorney hours: 84.70 as of 2/12/16 ○ General Guardianship Admin ○ Expedited Recovery Status ○ Trial Settlement Inc. described Recovery ○ Expenses: \$427.00 as of 2/12/16 ○ Expert Witness/Depositors ○ Extended Family ○ Guardian: Family Member
---	---

...Balanced Against Estate's Ability to Pay

NRS 159.183 provides:

In evaluating the ability of a ward to pay such compensation and expenses, the court may consider:

- (a) The nature, extent and quality of the ward's assets;
- (b) The disposable net income of the ward;
- (c) Any foreseeable expenses; and
- (d) Any other factors that are relevant to the duties of the guardian pursuant to NRS 159.079 or 159.083.

Going Forward

- Vexatious litigation
- Resources for self-represented parties
- Self-help forms
- Harmonization
- Procedural safeguards
- New technology to lower costs
- Ward representation
- Remedies to protect wards
- Inviting more talent into the guardianship arena

LAW OFFICES OF
HANCOCK AND CAVALLERA, PLLC
410 CALIFORNIA AVENUE, SUITE 100
RENO, NEVADA 89509
TELEPHONE (775) 329-7102
FACSIMILE (775) 334-4433

EMILY F. HANCOCK
HENRY W. CAVALLERA

April 18, 2016

HONORABLE JAMES HARDEST, JUSTICE
Nevada Supreme Court, and
Members of the Nevada Supreme Court
Commission on Guardianships

Re: Attorney's Fees

Dear JUSTICE HARDESTY AND COMMISSION MEMBERS:

Attached hereto, please find "Proposed Amendments to NRS 159.105." The proposal adds a section to NRS 159.105.3 by adding a subsection (c). This proposal sets forth factors the Court is to consider in approving attorney's fees.

Also, proposed is a new section to be added as NRS 159.105.4. This sets forth limitations on the awarding of attorney's fees if a petition has been filed to remove the guardian under NRS 159.185.1 if the defense of such a petition is found to be without just cause.

I strongly urge that attorney fee issues remain in the province of the Judge. The Judge observes the conduct of the attorney, the readiness of the attorney during Court appearances, knows the parties and representatives in the case and knows the facts that need to be considered in out of Court matters.

Any attempt to take attorney's fees out of the Judge's discretion would, in my opinion, be a disaster. The Courts across the country make many decisions in regards to attorney's

HONORABLE JAMES HARDEST, JUSTICE
April 18, 2016
Page 2

fees in all types of cases.

As a side note, I am currently in the process of retiring from the full time practice of law and only have two guardianship cases left. I bring this up so that commission members know I do not have a self-interest in this issue.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Henry Cavallera".

HENRY CAVALLERA, ESQ.

HWC/

Proposed amendment to NRS 159.105

(Factors for the Court to Consider in Determining Attorney's Fees)

Add: NRS 159.105. 3. (c) Factors to be considered by the Court in awarding attorney's fees are as follows:

- 1) the time spent by the attorney as set forth in counsel's affidavit;
- 2) the outcome of the case and the beneficial results for the ward as measured by the guardian, or other person or entity, being able to assist the ward as set forth in NRS 159.077, 159.019 and 159.083 based upon the needs of the ward;
- 3) additional facts to be considered by the Court in awarding attorney's fees are:
 - a. benefits to the ward from the efforts of the attorney which are not set forth in NRS 159.077, 159.079, and 159.083
 - b. contested nature of any hearings;
 - c. litigation on behalf of the guardian for the benefit of the ward other than to obtain the guardianship;
 - d. the novelty and/or quality of the work performed by the attorney;
 - e. obtaining results in the case that are consistent with the overall policy of NRS 159 which is protective in nature to meet the needs of an adult ward, who by reason of mental illness, mental deficiency, disease, weakness of mind or any other cause, is unable without assistance properly to manage and take care of himself or herself or his or her property, or both;
- 4) the importance, intricacy and emergency nature of the task; and
- 5) a finding that the fees and costs are reasonable and necessary.

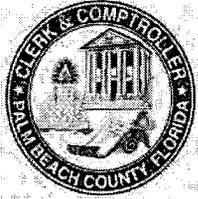
Add: NRS 159.105. 4.

4. Attorney's fees may not be awarded to the guardian's attorney in the following situations:

- (a) if the petition brought before the court is frivolous or without just cause;

(b) fees for defending a successful petition brought by another, including the ward, to remove a guardian pursuant to NRS 159.185. 1 (b) (c) (d) (e) (f) and (h) if the defense of the guardian is without just cause.

Appendix U



SHARON R. BOCK
Clerk & Comptroller
Palm Beach County

GUARDIANSHIP FRAUD & FINANCIAL EXPLOITATION

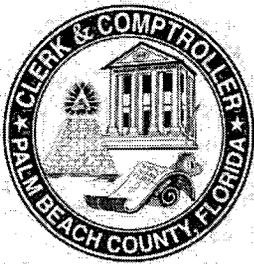
25 Red Flags

Red flags are areas of concern that the Clerk & Comptroller's accredited Division of Inspector General (IG) may have regarding assets, income, or disbursements. When one or more red flags are identified during an assessment or audit, a team of highly qualified professionals will thoroughly audit and investigate the red flags. The IG will compare its audit findings to Florida Guardianship Law, Florida Probate Rules, and Court Orders; and the IG will report its findings to the Court and, if necessary, local, state, & federal law enforcement as well as other state & federal agencies.

The Clerk & Comptroller's Guardianship Fraud Program targets anyone who preys upon the vulnerability of an incapacitated or minor ward in Palm Beach County including, but not limited to, guardians, attorneys, caregivers, family members, friends, and neighbors. "The Study of Elder Financial Abuse" (Metlife June 2011) reported that elderly citizens are being exploited in the U.S. by \$2.9 billion per year; a 12% increase from 2008. 34% of the financial exploitation was perpetrated by family members, friends, and neighbors. There are over 2,600 guardianships in Palm Beach County.

The Clerk & Comptroller's accredited Division of Inspector General is more concerned when:

1. Allegations of fraud, waste, and exploitation are reported to the Clerk's Guardianship Fraud Hotline.
2. There is significant family discourse.
3. The guardianship assets are unprotected.
4. A trust is involved.
5. There are unusual transactions: real estate, gift cards, vehicles, credit cards, vacations, personal service contract.
6. Accountings are amended, inaccurate, unorganized, or untimely submitted.
7. Large amounts or frequent amounts of cash are withdrawn ("miscellaneous", "incidentals" cash).
8. There is a lack of supporting documentation especially proof of payment and what is benefit to the ward.
9. Items such as income, assets, or disbursements are missing, omitted, or incorrect on inventory.
10. Attorney and guardian fees do not fully detail date, tasks performed and benefit to ward.
11. There is a no separation of duties and there are direct and indirect conflicts of interest.
12. The ward has no relatives or is isolated from friends and family.
13. The guardianship assets are large and financial transactions are complex.
14. The family guardian, caregiver, or family member is unemployed or underemployed.
15. The guardian, attorney, caregiver, or family member is living a lavish lifestyle.
16. The attorney or guardian is suspended, discharged, fired, or quits.
17. There are large disbursements or purchases that are subsequently ratified by Court order.
18. There is singular control over the guardianship with non adversarial proceedings and lack of oversight.
19. Unaccepted accounting practices are used.
20. The guardian is not bonded. Education requirement is waived. There was no criminal background check.
21. The guardian and/or attorney do not have relevant guardianship experience.
22. The guardian, attorney, caregiver, or family member is having significant financial difficulty.
23. The attorney has been the subject of an investigation or disciplinary actions by The Florida Bar.
24. There are allegations of physical abuse. * Report physical abuse and neglect to Florida Abuse Hotline at 1-800-96-ABUSE
25. The guardian or ward's last known whereabouts are unknown. No one has seen ward but caregiver.



SHARON R. BOCK
Clerk & Comptroller
Palm Beach County

POSITION STATEMENT ON CLERK'S GUARDIANSHIP DUTIES AND EX PARTE COMMUNICATION FLA. STAT. §744.368 and §744.3685

I. INTRODUCTION

The Florida Constitution establishes the Clerk of the Circuit Court as part of the judiciary.¹ One of the Clerk's key duties is to serve as custodian of court records, including guardianship files.² Specifically, Florida Statutes charge the Clerk with reviewing each initial and annual guardianship report, and auditing the verified inventory and accountings within specified timeframes.³ In 2014, the Florida Legislature voted near-unanimously to amend Florida's guardianship laws.⁴ These changes increased the authority and responsibility of the Clerk, in the Clerk's role as an auditor of guardianship reports. Specifically, as a result of the amendments, the following sections of statute were added:

Fla. Stat. §744.368(5) states that "[i]f the clerk has reason to believe further review is appropriate, the clerk may request and review records and documents that reasonably impact guardianship assets, including but not limited to, the beginning inventory balance and any fees charged to the guardianship."

Fla. Stat. §744.368(6) states that "[i]f a guardian fails to produce records and documents to the clerk upon request, the clerk may request the court to enter an order pursuant to s. 744.3685(2) by filing an affidavit that identifies the records and documents requested and shows good cause as to why the documents and records requested are needed to complete the audit."

Fla. Stat. §744.3685(2) states that "[i]f a guardian fails to comply with the submission of records and documents requested by the clerk during the audit, upon a showing of good cause by affidavit of the clerk which shows the reasons the records must be produce, the court may order the guardian to produce the records and documents within a period specified by the court unless the guardian shows good cause

¹ Fla. Const., Art. V, §16.

² Fla. Stat. 744.368.

³ Fla. Stat. 744.368(1)-(3).

⁴ CS/HB 635 (2014) – Guardianship. Available at:
<http://myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=51743>.

as to why the guardian may not be compelled to do so before the deadline specified by the court. The affidavit of the clerk shall be served with the order.”

The purpose of this position statement is to exercise due diligence by outlining how Fla. Stat. §744.368 (5) – (6) and Fla. Stat. §744.3685(2) authorize the Clerk to file an affidavit, without simultaneously notifying or serving parties to the case, requesting that the Court issue an order to show cause when records and documents related to a guardianship audit have not been provided by the guardian as previously requested by the Clerk. This memorandum does not address §744.368(7), relating to the Clerk’s ability to issue subpoenas upon application to the Court, as supported by an affidavit.

II. ANALYSIS

A. A Florida Statute specifies that the Clerk’s affidavit shall be served with the Court’s order.

Florida Rules of Civil Procedure require every document filed in an action to be served in accordance with the requirements of the relevant Florida Rule of Judicial Administration.⁵ The relevant Florida Rule of Judicial Administration provides in pertinent part that “[u]nless...a statute...specifies a different means of service, every pleading subsequent to the initial pleading and every other document filed in any court proceeding...must be served in accordance with this rule on each party.⁶ In this instance, a statute does specify a different means of service. Fla. Stat. §744.3685(2) specifies that “[t]he affidavit of the clerk shall be served with the order.” (emphasis added). Accordingly, the Clerk is not required to serve the parties with the affidavit until it is accompanied by the Court’s order.

B. Filing of the affidavit may be accomplished with either the Clerk or the Court, either by paper or electronically.

Florida Rules of Civil Procedure require every document filed in an action to be filed in accordance with the requirements of the relevant Florida Rule of Judicial Administration.⁷ The relevant Florida Rule of Judicial Administration provides in pertinent part that “[p]aper documents and other submissions may be manually submitted to the clerk or court...for filing by...any self-represented non-party...[h]owever, any self-represented nonparty that is a governmental or public

⁵ Fla. R. Civ. P. 1.080(a)

⁶ Fla. R. Jud. Admin. 2.516

⁷ Fla. R. Civ P. 1.080(2).

agency...may file documents by electronic submission is such entity has the capability of filing documents electronically.⁸ Further, Fla. R. Jud. Admin. 2.516(e) defines filing in pertinent part as “filing them with the clerk in accordance with Rule 2.525, except that the judge may permit documents to be filed with the judge.” Based on the above, the Clerk may file an affidavit pursuant to the requirements of Fla. Stat. §744.368(6), with either the Clerk or the Court, either by paper or electronically.

C. No ex parte communication occurs when a Clerk files an affidavit with the Court because the Clerk is part of the judiciary and not a party to the case.

Black’s Law Dictionary defines ‘ex parte communication’ as “as communication between counsel and the court when opposing counsel is not present.” The same dictionary defines ‘ex parte order’ as “an order made by the court upon application of one party to an action without notice to the other.” With regard to guardianship cases, the Clerk is a part of the judiciary and acts as an arm of the court to provide an independent check and balance when it comes to guardianship audits.⁹ Further, the Clerk neither meets the definition of ‘party,’ which is defined as “one by or against whom a lawsuit is brought,” nor a ‘litigant,’ defined as a “party to the lawsuit.”¹⁰ As the Clerk is a part of the judiciary, acts as an arm of the court, does not appear in the style of guardianship cases, and is a nonparty in guardianship actions, the Clerk can cause neither an ex parte communication, nor ex parte order to occur when reporting information or filing an affidavit with the Court. Arguing in the alternative, if the Clerk were a party to the case and the type of aforementioned communication were considered ex parte, it would still be allowed under judicial canons as it is expressly authorized by Florida Statutes.¹¹

D. Due process occurs when the party receiving the order from the Court also receives a copy of the Clerk’s affidavit and is afforded an opportunity to request a timely hearing to show why they should not be compelled to produce records requested by the Clerk.

Due process is defined as “the conduct of legal proceedings according to established rules and principles for the protection and enforcement of private rights, including notice and the right to a fair hearing before a tribunal with the power to

⁸ Fla. R. Jud. Admin. 2.525 (d)(2).

⁹ Fla. Const., Art. V, §16; Fla. Stat. 744.368.

¹⁰ Black’s Law Dictionary, Third Pocket Edition.

¹¹ Fla. Code of Judicial Conduct Canon 3(B)(7)(e); Fla. Stat. §744.368(6); Fla. Stat. §744.3685(2).

decide the case.”¹² Fla. Stat. §744.3685(2) specifies that “[i]f a guardian fails to comply with the submission of records and documents requested by the clerk during the audit, upon a showing of good cause by affidavit of the clerk which shows the reasons the records must be produced, the court may order the guardian to produce the records and documents within a period specified by the court unless the guardian shows good cause as to why the guardian may not be compelled to do so before the deadline specified by the court. The affidavit of the clerk shall be served with the order” (emphasis added). Based on the above, due process occurs when the guardian receives a copy of the Clerk’s affidavit along with the Court’s order, and has an opportunity to request an evidentiary hearing where they can show good cause for not producing the documents the Clerk requested. There are no substantive due process issues at stake in a hearing about whether documents should be provided so the Clerk can complete an audit. The Court at an evidentiary hearing is not issuing a final judgment, or entertaining a full trial, but merely making a determination regarding the production of documents.

III. Conclusion

Fla. Stat. §744.368 (5) – (6) and Fla. Stat. §744.3685(2) authorize the Clerk to file an affidavit, without simultaneously notifying or serving parties to the case, requesting that the Court issue an order to show cause when records and documents related to a guardianship audit have not been provided by the guardian as previously requested by the Clerk. The filing of an affidavit in this manner complies with Florida Rules of Judicial Administration governing service and filing. Further, because the Clerk is a part of the judiciary, acts as an arm of the court, and is not a party to any guardianship case, the filing of an affidavit requesting a show cause order does not cause any ex parte communication or ex parte order to occur. Even if the Clerk were a party to the case, Florida Judicial Cannons would allow this type of ex-parte communication since it is expressly authorized by Florida Statute. Finally, guardians’ due process rights are preserved when the Clerk files an affidavit and the Court issues an order because the guardian receives a copy of the Clerk’s affidavit at the time they are served the Court order and they have an opportunity to request an evidentiary hearing to show good cause as to why they should not have to produce the documents requested by the Clerk, before the Court-established deadline to produce the documents.

¹² Black’s Law Dictionary, Third Pocket Edition.



1 of 19 DOCUMENTS

LexisNexis(R) Florida Annotated Statutes
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The Florida code and constitution are updated for all 2016 emergency legislation through Chapter 243 with the exception of Chapters 16, 40, 140, 160, 178, 220, 224, and 231, which are in progress.

Title XLIII. Domestic Relations. (Chs. 741-753).
Chapter 744. Guardianship.
Part VI. Powers and Duties.

GO TO FLORIDA STATUTES ARCHIVE DIRECTORY

Fla. Stat. § 744.3701 (2016)

§ 744.3701. Confidentiality.

(1) Unless otherwise ordered by the court, upon a showing of good cause, an initial, annual, or final guardianship report or amendment thereto, or a court record relating to the settlement of a claim, is subject to inspection only by the court, the clerk or the clerk's representative, the guardian and the guardian's attorney, the guardian ad litem with regard to the settlement of the claim, the ward if he or she is at least 14 years of age and has not been determined to be totally incapacitated, the ward's attorney, the minor if he or she is at least 14 years of age, or the attorney representing the minor with regard to the minor's claim, or as otherwise provided by this chapter.

(2) The court may direct disclosure and recording of parts of an initial, annual, or final report or amendment thereto, or a court record relating to the settlement of a claim, including a petition for approval of a settlement on behalf of a ward or minor, a report of a guardian ad litem relating to a pending settlement, or an order approving a settlement on behalf of a ward or minor, in connection with a real property transaction or for such other purpose as the court allows.

(3) A court record relating to the settlement of a ward's or minor's claim, including a petition for approval of a settlement on behalf of a ward or minor, a report of a guardian ad litem relating to a pending settlement, or an order approving a settlement on behalf of a ward or minor, is confidential and exempt from the provisions of *s. 119.07(1)* and *s. 24(a)*, *Art. I of the State Constitution* and may not be disclosed except as specifically authorized.

HISTORY: S. 39, ch. 90-271; s. 1091, ch. 97-102; s. 1, ch. 2015-84, eff. July 1, 2015.

NOTES:

Amendments.

The 2015 amendment rewrote the section heading, which formerly read: "Inspection of report" and rewrote the section, which formerly read: "(1) Unless otherwise ordered by the court, any initial, annual, or final guardianship report or amendment thereto is subject to inspection only by the court, the clerk or the clerk's representative, the guardian and the guardian's attorney, and the ward, unless he or she is a minor or has been determined to be totally incapacitated, and the ward's attorney. (2) The court may direct disclosure and recording of parts of an initial, annual, or final report in connection with any real property transaction or for such other purpose as the court allows, in its discretion."

LexisNexis (R) Notes:

CASE NOTES

1. *Fla. Stat. § 744.447(2)* entitled the ward's estranged adult child, as next of kin, to notice of the guardian's petitions to perform any acts requiring court approval under *Fla. Stat. §§ 744.441 or 744.446*, Fla. Stat. if the adult child filed a request for notices and copies of pleadings, as provided in the *Florida Probate Rules. Swan v. Trost (In re Trost)*, 100 So. 3d 1205, 2012 Fla. App. LEXIS 19550 (Fla. 2nd DCA 2012).

TREATISES AND ANALYTICAL MATERIALS

1. Florida Estates Practice Guide, Appendix PRG Florida Probate and Guardianship Rules, Part III Guardianship, Rule 5.620. Inventory.
2. Florida Estates Practice Guide, Appendix PRG Florida Probate and Guardianship Rules, Part III Guardianship, Rule 5.690. Initial Guardianship Report.
3. Florida Estates Practice Guide, Appendix PRG Florida Probate and Guardianship Rules, Part III Guardianship, Rule 5.695. Annual Guardianship Reports.
4. Florida Estates Practice Guide, Appendix PRG Florida Probate and Guardianship Rules, Part III Guardianship, Rule 5.696. Annual Accounting.
5. Florida Estates Practice Guide, Appendix PRG Florida Probate and Guardianship Rules, Part III Guardianship, Rule 5.720. Court Monitor.
6. *Florida Family Law, Division IV Dissolution of Marriage, Chapter 57A Electronic Lawyering, § 57A.01* Electronic Access to the Courts.
7. *Florida Family Law, Division IV Dissolution of Marriage, Chapter 57A Electronic Lawyering, § 57A.20* Notice of Confidential Information within Court Filing.
8. Florida Probate Code Manual, Florida Probate Rules, Scope.
9. *LexisNexis Practice Guide: Florida Civil Motion Practice, Chapter 1 Preliminary Motions, VII. Forms, § 1.41* Notice of Confidential Information Within Court Filing.
10. *LexisNexis Practice Guide: Florida Civil Motion Practice, Chapter 10 Summary Judgment, VII. Forms, § 10.70* Notice of Confidential Information Within Court Filing.

11. *LexisNexis Practice Guide: Florida Civil Discovery, Chapter 1 Discovery Strategy and Planning, VII. Forms, § 1.112* Notice of Confidential Information Within Court Filing.
12. *LexisNexis Practice Guide: Florida Civil Discovery, Chapter 6 Oral Depositions, VII. Forms, § 6.61* Notice of Confidential Information Within Court Filing.
13. *LexisNexis Practice Guide: Florida Civil Discovery, Chapter 7 Oral Depositions Outside of Florida, VII. Forms, § 7.61* Notice of Confidential Information Within Court Filing.
14. *LexisNexis Practice Guide: Florida Civil Discovery, Chapter 9 Interrogatories, VI. Forms, § 9.33* Notices and Motions.
15. *LexisNexis Practice Guide: Florida Civil Discovery, Chapter 14 Protective Orders, VI. Forms, § 14.30* Notice of Confidential Information Within Court Filing.
16. *LexisNexis Practice Guide: Florida Civil Discovery, Chapter 16 Review of Discovery Orders, VII. Forms, § 16.40* Notice of Confidential Information Within Court Filing.
17. *LexisNexis Practice Guide: Florida Trial and Post-Trial Procedure, Chapter 13 Proceedings in Appellate Courts, VIII. Forms, § 13.83* Notice of Confidential Information Within Court Filing.

STATE BAR PUBLICATION

1. *Florida Guardianship Practice, 15 Accountings and Reports of Guardians of the Property, II. Accountings and Reports, C. [§ 15.9]* Forms For Reports.
2. *Florida Guardianship Practice, 15 Accountings and Reports of Guardians of the Property, II. Accountings and Reports, L. [§ 15.18]* Service Of Reports.
3. *Florida Guardianship Practice, 15 Accountings and Reports of Guardians of the Property, II. Accountings and Reports, M. [§ 15.19]* Inspection Of Accountings.
4. *Florida Guardianship Practice, 15 Accountings and Reports of Guardians of the Property, II. Accountings and Reports, N. Objections, 3. [§ 15.22]* Filing And Hearings On Objections.



1 of 1 DOCUMENT

FLORIDA RULES OF COURT

*** This document reflects the changes received through April 1, 2016 ***

The Fifteenth Judicial Circuit -- Palm Beach County
Administrative Orders
Series 6. Civil

Fla. 15th Jud. Cir. AO 6.306-12/10 (2016)

Review Court Orders which may amend this Rule.

6.306-12/10 IN RE: GUARDIANSHIP MATTERS TO BE AUDITED BY CLERK & COMPTROLLER

Persons who are placed in guardianship need an effective and efficient review of guardianship accountings, plans, and inventories. *Florida Statute 744.368* sets forth statutory time frames within which guardianship accountings, plans and inventories must be reviewed. Different levels of review may be necessary to provide a thorough audit of the files.

NOW THEREFORE, pursuant to the authority conferred by *Florida Rule of Judicial Administration 2.215*, it is **ORDERED** as follows:

A. LEVEL 1 AUDIT

1. The Clerk shall:

- a. Conduct the statutorily required audit/review of all initial, annual, simplified, interim, trust or final accountings, plans and inventories pursuant to Chapter 744, Florida Statutes. This review shall consist of a desk review (worksheet) of the guardianship reports in conjunction with the supporting documentation filed with the report.
- b. Prepare and forward to the Court the file and the Clerk's review along with a proposed order approving the initial, annual, interim or final accounting, plan or inventory.
- c. Prepare and forward to the General Magistrate or Judge a Notice of Delinquency and an Order Setting Contempt Hearing if an initial an annual report is not timely filed.
- d. Send correspondence to the guardian/attorney stating the discrepancies and allowing reasonable time for a response if there is a discrepancy. If there is no response, the Clerk will prepare a Notice of Delinquency and an Order Setting Contempt Hearing which will be submitted to the General Magistrate or Judge.

2. Upon review of the file, the Clerk will determine if a Level 2 or Level 3 audit is needed.

B. LEVEL 2 & LEVEL 3 AUDITS

1. If the Clerk determines that a Level 2 Audit is necessary the Clerk will:

- a. Examine the guardianship report and attempt to verify selected questionable items.
- b. Conduct limited inquiries and/or requests for supporting documentation to resolve the issues.
- c. Submit to the General Magistrate or Judge the file and audit report identifying any discrepancies within 90 days after the filing of the verified inventory and accountings pursuant to *Florida Statute sec. 744.368*. If the 90 day time period is insufficient to complete the audit, the Clerk shall file an Ex-Parte Motion for Extension of Time to Complete Review, along with a proposed order.
- d. If the filed documents are insufficient to properly audit the account at any stage in the review or documents are not produced timely upon written request by the Clerk, the Clerk will prepare an order for the Court to order the guardian to file the report within 15 days after the service of the order upon her or him or show cause why she or he should not be compelled to do so as provided by *Florida Statute 744.3685*.
- e. If the documents are still not forthcoming after service of the above order, the Clerk shall notify the Court that the documents were not timely received and will request that a hearing be set.
- f. Determine if a Level 3 Audit is necessary.

2. If the Clerk determines that a Level 3 Audit is necessary the Clerk will:

- a. Examine and attempt verification of all significant items pertinent to the guardianship report.
- b. Conduct a detailed review of the accounts and attendant transactions which may include third party confirmation.
- c. Submit to the General Magistrate or Judge the file and audit report identifying any discrepancies within 90 days after the filing of the verified inventory and accountings pursuant to *Florida Statute sec. 744.368*. If the 90 day time period is insufficient to complete the audit, the Clerk shall file an Ex-Parte Motion for Extension of Time to Complete Review, along with a proposed order.
- d. If the filed documents are insufficient to properly audit the account at any stage in the review or documents are not produced timely upon written request by the Clerk, the Clerk will prepare an order for the Court to order the guardian to file the report within 15 days after the service of the order upon her or him or show cause why she or he should not be compelled to do so as provided by *Florida Statute 744.3685*.
- e. If the documents are still not forthcoming after service of the above order, the Clerk shall notify the Court that the documents were not timely received and will request that a hearing be set.

C. QUALITY CONTROL SAMPLE

Each year the Clerk shall randomly select a sample of guardianships and perform a comprehensive audit of related

transactions and records. From the selected sample, the Clerk will conduct a Level 2 or Level 3 audit as described above.

D. CONFIDENTIALITY

In accordance with *Florida Statute 744.3701(1) & (2)*, any data included in the reports and supporting documentation prepared by the Clerk auditor which came directly from the guardianship reports shall remain confidential and not available for review by the general public without a court order.

DONE AND ORDERED in Chambers at West Palm Beach, Palm Beach County, Florida this 20 day of December, 2010.

PETER D. BLANC

CHIEF JUDGE



Protect our most vulnerable citizens



REPORT FRAUD & WASTE

If you suspect someone of misusing a ward's finances or guardianship assets, report it!

CLERK & COMPTROLLER'S GUARDIANSHIP FRAUD HOTLINE



561.355.FRAUD (561.355.3728)
Calls are confidential



www.mypalmbeachclerk.com/fraud



fraud@mypalmbeachclerk.com



Governmental Center
301 N. Olive Ave, 9th floor, West Palm Beach

*A guardianship is a legal arrangement under which a person (guardian) has the legal right and duty to care for another person (ward) and/or his/her property.



Follow us online



ClerkPBC



@ClerkPBC



SHARON R. BOCK
Clerk & Comptroller
Palm Beach County

WARNING SIGNS OF FRAUD OR WASTE

Using the Guardianship Fraud Hotline, you can report suspected fraud, waste or financial mismanagement involving court-appointed guardians over elderly, minor children and incapacitated individuals.

This includes but is not limited to:

- ✓ Missing money or property
- ✓ Suspicious loans, funds transfers, opened or closed accounts/lines of credit
- ✓ Suspicious purchase or sale of real estate or personal property
- ✓ Violations of federal, state or local laws, rules or regulations
- ✓ Guardian has a conflict of interest or exhibits signs of more expensive lifestyle
- ✓ Forced removal from their home or residence

If you suspect physical abuse or neglect, please contact the Florida Department of Children and Families at 1-800-96ABUSE (1-800-962-2873).

Si usted ha sido testigo de que un tutor nombrado por los tribunales haya hecho mal uso de las finanzas de la persona bajo su tutela, repórtelo por favor a Clerk & Comptroller's Fraud Hotline.

Appendix V

MEMO

To: Uniform Law Commissioners
From: David English and Nina Kohn
Re: Revision of the Uniform Guardianship and Protective Proceedings Act Prepared for the
2016 Annual Meeting of Uniform Law Commission
Date: June 1, 2016

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The Drafting Committee is charged with revising selected portions of the Uniform Guardianship and Protective Proceedings Act (UGPAA) in order to implement some of the recommendations of the Third National Guardianship Summit (NGS) and otherwise to update the Act. This memo highlights the overarching concerns guiding the Committee's work.

Protection for persons subject to guardianship or conservatorship, including improved monitoring of appointees. As recent media coverage of exploitation by guardians and conservators suggests, there is significant concern about ensuring the accountability of guardians and conservators. The Committee worked to find a balance between enhancing protections for persons subject to guardianship and conservatorship, and not making the processes overly cumbersome or expensive. One innovation in the revised Act is to allow the court to identify people who will be given notice of certain key changes or suspect actions, and who can therefore serve as an extra set of eyes and ears (Section 310, Section 411). Other revisions include a provision that makes bond a default option for conservators (Section 416) and provisions that clarify relevant factors in setting fees for guardians and conservators (Section 210, Section 317, Section 418).

Better guidance for appointees. The revised Act seeks to provide greater guidance to appointees, many of whom are lay people. Revisions include a clearer decision-making standard (Section 314, Section 419), and clarity as to the role of prior appointees including appointed health care agents or attorneys-in-fact who, absent a court order to the contrary, retain their authority even after a guardianship or conservatorship has been put in place (Section 205, Section 318, Section 414).

Enhanced procedural rights for respondents. One key concern facing the Drafting Committee is that guardianships and conservatorships are over-used and over-broad. The Committee has worked to strike a balance between the need to provide meaningful procedural rights for persons alleged to need a guardian or conservator, and the need not to make the process for appointing a guardian or conservator overly complex or expensive. Key revisions include a narrower exception to the general rule that the respondent must be present at the hearing (Section 308, Section 409), a requirement that explicit findings be made before certain fundamental rights are removed (Section 310), and the elimination of provisions that would have allowed appointment of a guardian for an adult by will or writing without prior judicial approval.

Enhanced procedural rights for persons subject to guardianship and conservatorship. The Drafting Committee has focused attention on the rights of persons subject to guardianship and conservatorship, including their right and ability to seek termination or modification of the appointment, or removal of a guardian. Key revisions related to these concerns include a provision that the court provide the person notice of key rights (Section 310, Section 412), provisions for attorney representation of persons subject to guardianship and conservatorship (Section 321, Section 322, Section 433, Section 434), a limitation on the guardian or conservator's ability to charge fees to oppose the person's efforts to alter the appointment (Section 317, Section 433), and additional triggers for reconsideration of an appointment (Section 321, Section 322, Section 433, Section 434).

Facilitation and encouragement of less restrictive alternatives. A central aim of the Drafting Committee's work has been to facilitate and encourage the use of less restrictive alternatives, including technological and decision-making support and single-issue court orders in lieu of guardianship and conservatorship. To this end, the revised Act provides that neither guardianship nor conservatorship is appropriate where the person's needs could be met with technological assistance or decision-making support (Section 301, Section 401). It also allows for a protective order in lieu of guardianship or conservatorship (Section 118); the 1997 version, by contrast, only provided for such an order in lieu of conservatorship.

Visitation and communication with third parties. In recent years, some family members of persons subject to guardianship have raised concerns that guardians have unreasonably restricted the ability of persons subject to guardianship to receive visitors and communicate with others, and family advocates have encouraged legislative responses to address this concern. The revised Act includes a variety of provisions addressing this concern. These include a limitation on a guardian's ability to curtail communications, visits, or interactions between the person subject to guardianship and third parties (Section 317) and a requirement that the guardian give priority to a residential settings that allow the person to interact with those important to the person (Section 315). Along similar vein, it establishes a default that the adult children and spouse/domestic partner of a protected person are entitled to notice of the protected person's death or a significant change in the protected person's condition (Section 310).

Modernized provisions related to minors subject to guardianship. While the Committee's focus has largely been on adults, the Committee is also concerned with updating provisions related to guardianship for minors. To this end, consistent with modern trends in the law, the revised Act provides for greater involvement of the minor in decisions involving them. The age of involvement for a minor has been lowered from 14 to 12, the decision-making standard for guardians now calls on them to consider the minor's view (Section 207), and an attorney must be appointed for the minor in certain situations (Section 205).

Improved compliance with limited guardianship and conservatorship requirements. The Drafting Committee has recognized that, despite the best efforts of previous Committees, there is a lack of compliance with the 1997 Act's requirement that limited guardianships and conservatorships be used where they would meet the person's needs. In order to facilitate compliance with this direction, the Drafting Committee has crafted a sample petition which makes it easier for a petitioner to seek a limited order, and a sample order which makes it easier for a court to craft a

limited order. In addition, the revised Act requires petitions seeking a full guardianship or conservatorship to do more to justify that approach (Section 302, Section 402).

Updated language. The terms “ward,” “incapacitated person,” and “disabled person” are increasingly seen as demeaning and offensive and were rejected by the NGS. The Committee has worked to find alternatives to this language. After much discussion, the Committee arrived at a decision to use the terms “person subject to guardianship” and “person subject to conservatorship” in lieu of “ward.”

Person-centered planning. A key theme of the NGS recommendations was the need to infuse person-centered planning into guardianship and conservatorship. The Committee has worked to do so. For example, included as part of these revisions is a new requirement for a guardian’s plan (Section 318), and provisions to facilitate court monitoring of compliance with guardian’s and conservator’s plans (e.g., Section 320, Section 425).

Title of Act. The current title of the Act is the source of some confusion. One reason for this is that it does not use the term “Conservatorship” despite the fact that provisions related to Conservatorship constitute roughly one-half of the Act. Another reason is that the term “protective proceedings” is confusing as the term is increasingly associated with protective orders in domestic violence and elder abuse cases, which are not covered in the Act. Additionally, in the previous Act, the term “protective proceeding” was used to cover conservatorships and single transaction orders in lieu of conservatorship. As the revised Act allows for such orders in lieu of guardianship as well, the title is now an even poorer fit for the substance of the Act. The Chair and the Reporter therefore recommend revising the title to the “Uniform Guardianship and Conservatorship Act.”

Appendix W

State of Nevada

NEVADA SILVER HAired LEGISLATIVE FORUM

(Nevada Revised Statutes 427A.320 through 427A.400)



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555 East Washington Avenue, Room 4400
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July 22, 2016

The Honorable James W. Hardesty
Chief Justice of Nevada Supreme Court
Chair, Commission to Study the Administration of Guardianships in Nevada's Courts
Nevada Supreme Court
201 South Carson Street, Suite 250
Carson City, Nevada 89701-4702

Dear Honorable Chief Justice Hardesty and Commissioners:

As President of the Nevada Silver Haired Legislative Forum (Forum), I write to you on behalf of all the Forum members, to personally thank you for this opportunity to share the Forum's concerns regarding the Commission's General Policy Question No. 1—Should the Nevada Supreme Court establish a permanent Commission to address issues of concern to the elderly, including continue review of Guardianship Rules/processes in Nevada? (Commission to Study the Administration of Guardianships in Nevada's Courts, May 20, 2016, Agenda and Meeting Materials-page 20 of 71).

As you know, the Forum was created to identify and act upon issues of importance to aging persons (*Nevada Revised Statutes* 427A.320). Throughout the 2015-2016 Interim, the Forum received testimony regarding guardianships, which was very similar to the Commission's testimony. Based on the many statements presented and the knowledge of Nevada's unchallenged growth of our over 60-years-of-age population, the Forum unanimously agreed to request the Nevada Supreme Court establish a permanent Commission to address guardianship concerns, including the review of the rules and processes (Forum's Work Session, June 21, 2016).

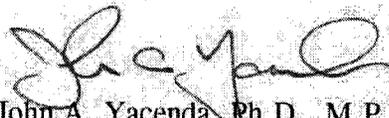
The Honorable James W. Hardesty

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July 22, 2016

Again, thank you kindly for your consideration of the Forum's request to establish a permanent Commission to address guardianship concerns. Additionally, the Forum shares its gratitude to you, and all the Commission members, for your tireless endurance of the rigorous demands and for the courtesy to which you afforded the public and the State of Nevada.

Respectfully,



John A. Yacenda, Ph.D., M.P.H., P.A.H.M.
President, Nevada Silver Haired Legislative Forum
Senate District No. 16

JAY/ms

cc: Becky Harris, Senator, Nevada Legislature
Michael Roberson, Majority Leader, Nevada Legislature; Chair, Legislative Commission
Michael C. Sprinkle, Assemblyman, Nevada Legislature
Glenn E. Trowbridge, Assemblyman, Nevada Legislature

Appendix X

State	Pertinent Language	Statute
Alabama	<p>1. a guardian has the same duties, powers, and responsibilities as a guardian for a minor as described in Section 26-2A-78(b), (c), and (d). 2. A guardian is entitled to reasonable compensation for services as guardian and to reimbursement for room, board, and clothing personally provided to the ward, but only as approved by order of the court.</p>	<p>1. Ala. Code § 26-2A-108 2. Ala. Code § 26-2A-78 (d)</p>
Alaska	<p>1. the guardian has the powers and duties of a conservator under this chapter; however, the guardian may not apply the ward's money or property for the services as guardian or for room and board that the guardian or the guardian's spouse, parent, or child has furnished the ward unless, before payment, the court finds that the ward is financially able to pay and that the charge is reasonable. 2. A guardian of a ward, for whom a conservator has also been appointed, shall have the custody and care of the ward and is entitled to receive reasonable sums for services and for room and board furnished to the ward as agreed upon between the guardian and the conservator.</p>	<p>1. Alaska Stat. Ann. § 13.26.150 (c)(6) 2. Alaska Stat. Ann. § 13.26.150 (d)</p>
Arizona	<p>1. If not otherwise compensated for services rendered a...guardian who is appointed pursuant to this article...is entitled to reasonable compensation from the estate of the ward if the petition is granted, or from the petitioner if the petition is denied. 2. If compensation by the ward or the petitioner is not feasible the court shall determine and pay reasonable compensation for services rendered by a...guardian appointed in a guardianship proceeding. 3. Any guardian of a ward for whom a conservator also has been appointed shall control the custody and care of the ward and is entitled to receive reasonable sums for the guardian's services and for room and board furnished to the ward as agreed upon between the guardian and the conservator if the amounts agreed upon are reasonable under the circumstances.</p>	<p>1. Ariz. Rev. Stat. Ann. § 14-5314 (A) 2. Ariz. Rev. Stat. Ann. § 14-5314 (F) 3. Ariz. Rev. Stat. Ann. § 14-5312 (B)</p>
Arkansas	<p>A guardian shall be allowed such compensation for his or her services as guardian as the court shall deem just and reasonable.</p>	<p>Ark. Code Ann. § 28-65-108 (a)</p>
California	<p>Such compensation for services rendered by the guardian or conservator as the court determines is just and reasonable.</p>	<p>Cal. Prob. Code § 2623 (2)</p>

<p>Connecticut</p>	<p>Compensation payable to the conservator or guardian of any person who is supported wholly or in part by the state in any humane institution, or who is receiving benefits under any of the state's programs of public assistance, shall be based upon services rendered and shall not exceed five per cent of the gross income to the estate during the period covered by any account. The conservator or guardian shall be entitled to compensation of not less than fifty dollars for any accounting period continuing for at least a year. If extraordinary services are rendered by any conservator or guardian, the Court of Probate, upon petition and hearing, may authorize reasonable additional compensation. A copy of the petition and notice of hearing shall be lodged in the office of the Commissioner of Administrative Services in Hartford at least ten days before the hearing. No commission or compensation shall be allowed on any moneys or other assets received from a prior guardian or conservator nor upon any amount received from liquidation of loans or other investments.</p>	<p>Conn. Gen. Stat. Ann. § 45a-594 (a)</p>
<p>Delaware</p>	<p>1. A guardian of the person of a person with a disability for whom a guardian of the property also has been appointed shall control the custody and care of the person with a disability and is entitled to receive reasonable compensation for the guardian's services and for room and board furnished to the person with a disability as approved by the Court. 2. All persons who serve as guardian of the property of a person with a disability shall be entitled to reasonable compensation for their services.</p>	<p>1. Del. Code Ann. tit. 12, § 3922 (c) 2. Del. Code Ann. tit. 12, § 3927 (b)</p>
<p>Florida</p>	<p>1. A guardian, or an attorney who has rendered services to the ward or to the guardian on the ward's behalf, is entitled to a reasonable fee for services rendered and reimbursement for costs incurred on behalf of the ward. 2. When fees for a guardian or an attorney are submitted to the court for determination, the court shall consider the following criteria: time/labor, novelty/difficult of problem & skill required to perform service, likelihood that acceptance of particular employment will preclude other employment, fee customarily charged in the locality for similar services, nature/value of incapacitated person's property & amount of income earned by estate & responsibilities/potential liabilities assumed by person, results obtained, time limits imposed by circumstances, nature/length of relationship with incapacitated person, and experience/reputation/diligence/ability of person performing service.</p>	<p>Fla. Stat. Ann. § 744.108 (1), (2)(a)-(i)</p>

Georgia	<p>1. At the time of the appointment of the guardian or at any time thereafter, any of the following powers may be specifically granted by the court to the guardian upon such notice, if any, as the court shall determine...</p> <p>2. To receive reasonable compensation from the estate of the ward for services rendered to the ward</p>	<p>1. Ga. Code Ann. § 29-4-23 (b) 2. Ga. Code Ann. § 29-4-23 (b)(6)</p>
Hawaii	<p>If not otherwise compensated for services rendered, a guardian...is entitled to reasonable compensation from the estate... Compensation may be paid and expenses reimbursed without court order. If the court or the family court determines that the compensation is excessive or the expenses are inappropriate, the excessive or inappropriate amount shall be repaid to the estate.</p>	<p>Haw. Rev. Stat. Ann. § 560:5-417</p>
Idaho	<p>If not otherwise compensated for services rendered or expenses incurred, any...guardian...appointed in a protective proceeding is entitled to reasonable compensation from the estate for services rendered and expenses incurred in such status, including for services rendered and expenses incurred prior to the actual appointment of said guardian or temporary guardian which were reasonably related to the proceedings</p>	<p>Idaho Code Ann. § 15-5-314 (1)</p>
Illinois	<p>The guardian of the person may petition the court for an order directing the guardian of the estate to pay an amount periodically for the provision of the services specified by the court order.</p>	<p>755 Ill. Comp. Stat. Ann. 5/11a-17 (a).</p>
Indiana	<p>If not otherwise compensated for services rendered, any guardian, attorney, physician, or other person whose services are provided in good faith and are beneficial to the protected person or the protected person's property is entitled to reasonable compensation and reimbursement for reasonable expenditures made on behalf of the protected person. These amounts may be paid from the property of the protected person as ordered by the court.</p>	<p>Ind. Code Ann. § 29-3-4-4</p>

<p>Iowa</p>	<p>1. The court shall allow and fix from time to time the compensation for fiduciaries, other than personal representatives, and their attorneys for such services as they shall render as shown by an itemized claim or report made and filed setting forth what such services consist of during the period of time they continue to act in such capacities. 2. Fiduciary--includes personal representative, executor, administrator, guardian, conservator, and the trustee of any trust described in section 633.10.</p>	<p>1. Iowa Code Ann. § 633.200 2. Iowa Code Ann. § 633.3 (14)</p>
<p>Kansas</p>	<p>Nothing in this section shall prohibit a guardian or conservator from collecting a reasonable fee, as approved by the court, for carrying out the duties and responsibilities as guardian or conservator.</p>	<p>Kan. Stat. Ann. § 59-3068 (b)(3)</p>
<p>Kentucky</p>	<p>...guardians...are entitled to reasonable compensation for services rendered and to reimbursement for reasonable and necessary expenses incurred in the exercise of their assigned guardianship or conservatorship duties and powers. Such compensation and reimbursement shall be paid from the financial resources of the ward and shall not exceed: A commission of not more than six percent (6%) of the income collected by the fiduciary, payable at the time the income is collected; and either, but not both, of the following, as elected by the fiduciary: An annual commission of three-tenths of one percent (0.3%) of the fair market value of the real and personal property in the care of the fiduciary; or An annual commission of not more than six percent (6%) of the fair market value of the principal distributed by the fiduciary, payable at the time the principal is distributed.</p>	<p>Ky. Rev. Stat. Ann. § 387.760 (2)(a), (2)(b)(1-2)</p>

<p>Louisiana</p>	<p>Compensation payable to tutors or curators shall be based upon services rendered and they shall receive a minimum compensation of thirty-five dollars from the amount of monies received during the period covered by the account; provided however that if such monies received are more than three hundred and fifty dollars but less than five hundred dollars, the compensation of tutors and curators shall be ten per cent of the monies received in any one year; and provided also that if such monies are more than five hundred dollars, then the compensation shall be five per cent of the monies received in any one year, but not less than fifty dollars. In the event of extraordinary service rendered by such tutor or curator, the court may, upon petition and after hearing thereon, authorize additional compensation therefor payable from the estate of the ward. Notice of such petition and hearing shall be given the proper office of the veterans administration in the manner provided in the case of hearing on a fiduciary's account or other pleading. No commission or compensation shall be allowed on the monies or other assets received from a prior tutor or curator, nor upon the amount received from liquidation of loans, or other investments.</p>	<p>La. Stat. Ann. § 29:362</p>
<p>Maine</p>	<p>Any guardian of one for whom a conservator also has been appointed shall control the custody and care of the ward, and is entitled to receive reasonable sums for his services and for room and board furnished to the ward as agreed upon between him and the conservator, provided the amounts agreed upon are reasonable under the circumstances</p>	<p>Me. Rev. Stat. tit. 18-A, § 5-312</p>
<p>Maryland</p>	<p>1. Except in unusual circumstances...the guardian is entitled to the same compensation and reimbursement for actual and necessary expenses as the trustee of a trust. No petition or hearing is required to entitle the guardian to compensation and expenses. Upon the petition of any interested person and upon a finding by the court that unusual circumstances exist, the court may increase or decrease compensation. 2. If the guardian is appointed as the guardian of a disabled person who is a recipient of long-term care services and supports under the Maryland Medical Assistance Program and whose income is subject to § 15-122.3 of the Health-General Article, the guardian is not entitled to receive more than \$50 per month in compensation unless the court makes a finding that unusual circumstances exist. 3. A trustee is entitled to be reimbursed out of the trust property, with interest as appropriate, for:</p>	<p>1. MD EST & TRST § 13-218 (a) 2. MD EST & TRST § 13-218 (b) 3. Md. Code Ann., Est. & Trusts § 14.5-709 (a)(1-2)</p>

	<p>Expenses that were properly incurred in the administration of the trust, and To the extent necessary to prevent unjust enrichment of the trust, expenses that were not properly incurred in the administration of the trust.</p>	
<p>Massachusetts</p>	<p>If not otherwise compensated for services rendered, any...guardian...appointed in a protective proceeding and any attorney whose services resulted in a protective order or in an order that was beneficial to a protected person's estate is entitled to reasonable compensation from the estate. Compensation may be paid and expenses reimbursed without court order, but, if the court later determines that the compensation is excessive or the expenses are inappropriate, the excessive or inappropriate amount shall be repaid to the estate on such terms as the court may order, including, but not limited to, costs, interest and attorney fees. The court may order that such compensation be paid by any party or parties as it shall determine.</p>	<p>Mass. Gen. Laws Ann. ch. 190B, § 5-413</p>
<p>Michigan</p>	<p>the guardian of an individual for whom a conservator also is appointed controls the ward's custody and care and is entitled to receive reasonable amounts for those services and for room and board furnished to the ward as agreed upon between the guardian and the conservator if the amounts agreed upon are reasonable under the circumstances.</p>	<p>Mich. Comp. Laws Ann. § 700.5315 (1)</p>

<p>Minnesota</p>	<p>1. A guardian is entitled to reasonable compensation for services as guardian and to reimbursement for expenditures made on behalf of the ward, in a manner consistent with section 524.5-502.</p> <p>2. When the court determines that a guardian or conservator has rendered necessary services or has incurred necessary expenses for the benefit of the ward or protected person, the court may order reimbursement or compensation to be paid from the estate of the protected person or from the county having jurisdiction over the guardianship or protective proceeding if the ward or protected person is indigent. The court may not deny an award of fees solely because the ward or protected person is a recipient of medical assistance. In determining compensation for a guardian or conservator of an indigent person, the court shall consider a fee schedule recommended by the Board of County Commissioners. The fee schedule may also include a maximum compensation based on the living arrangements of the ward or protected person. If these services are provided by a public or private agency, the county may contract on a fee-for-service basis with that agency.</p>	<p>1. Minn. Stat. Ann. § 524.5-315 (a) 2. Minn. Stat. Ann. § 524.5-502 (c)</p>
<p>Mississippi</p>	<p>In the final account the court or chancellor in vacation shall make an allowance to the guardian for his services not to exceed five percent (5%) on the value of the estate which shall be equitably prorated where the guardianship has been administered by two (2) or more guardians, except as hereinafter provided. In the event of extraordinary services rendered by such guardian the court may, upon petition and after hearing thereon, authorize additional compensation therefor payable from the estate of the ward. Notice of such petition and hearing shall be given the proper office of the bureau in the manner provided by Section 35-5-17. In annual or partial accounts the court or chancellor may allow a guardian a reasonable commission for his services based upon the amount of disbursements, or, in proper cases where the amount based on disbursements would be inadequate, on the amount received or invested, or the total value of the estate as in other cases of guardianship, but not to exceed the maximum hereinabove provided for, except that in any event the court or chancellor in vacation, in its discretion may allow a minimum commission of One Hundred Dollars (\$100.00) per annum. The guardian may be allowed from the estate of his ward reasonable premiums paid by him to any corporate surety upon his bond. The guardian's attorney may be allowed from the estate of the ward a reasonable attorney's fee for legal services to the estate or to the ward, if the court be of the</p>	<p>Miss. Code. Ann. § 35-5-23</p>

	<p>opinion that the services were proper and rendered in good faith, the amount of the fee to be in the discretion of the court.</p>	
<p>Missouri</p>	<p>A guardian or conservator shall be allowed such compensation for his services as guardian or conservator, as the court shall deem just and reasonable. Additional compensation may be allowed for his necessary services as attorney and for other necessary services not required of a guardian or conservator. Compensation may also be allowed for necessary expenses in the administration of his trust, including reasonable attorney fees if the employment of an attorney for the particular purpose is necessary. In all cases, compensation of the guardian or conservator and his expenses including attorney fees shall be fixed by the court and may be allowed at any annual or final accounting; but at any time before final settlement the guardian or conservator or his attorney may apply to the court for an allowance upon the compensation or necessary expenses of the guardian or conservator and for attorney fees for services already performed. If the court finds that the guardian or conservator has failed to discharge his duties as such in any respect, it may deny him any compensation whatsoever or may reduce the compensation which would otherwise be allowed. The court may consider ties of blood, marriage or adoption, in making allowances of compensation to guardians and conservators.</p>	<p>Mo. Ann. Stat. § 475.265</p>
<p>Montana</p>	<p>The full guardian or limited guardian is entitled to receive reasonable sums for the guardian's services and for room and board furnished to the ward as agreed upon between the guardian and the conservator, provided the amounts agreed upon are reasonable under the circumstances.</p>	<p>Mont. Code Ann. § 72-5-321 (4)</p>
<p>Nebraska</p>	<p>Any guardian of one for whom a conservator also has been appointed shall control the custody and care of the ward and is entitled to receive reasonable sums for the guardian's services and for room and board furnished to the ward as agreed upon between the guardian and the conservator if the amounts agreed upon are reasonable under the circumstances.</p>	<p>Neb. Rev. Stat. Ann. § 30-2628 (b)</p>

<p>Nevada</p>	<p>1. Subject to the discretion and approval of the court and except as otherwise provided in subsection 4, a guardian must be allowed: Reasonable compensation for the guardian's services; Necessary and reasonable expenses incurred in exercising the authority and performing the duties of a guardian; and Reasonable expenses incurred in retaining accountants, attorneys, appraisers or other professional services.</p> <p>2. Reasonable compensation and services must be based upon similar services performed for persons who are not under a legal disability. In determining whether compensation is reasonable, the court may consider: The nature of the guardianship; The type, duration and complexity of the services required; and Any other relevant factors.</p> <p>3. In the absence of an order of the court pursuant to this chapter shifting the responsibility of the payment of compensation and expenses, the payment of compensation and expenses must be paid from the estate of the ward. In evaluating the ability of a ward to pay such compensation and expenses, the court may consider: The nature, extent and liquidity of the ward's assets; The disposable net income of the ward; Any foreseeable expenses; and Any other factors that are relevant to the duties of the guardian pursuant to NRS 159.079 or 159.083.</p> <p>4. A private professional guardian is not allowed compensation or expenses for services incurred by the private professional guardian as a result of a petition to have him or her removed as guardian if the court removes the private professional guardian pursuant to the provisions of paragraph (b), (d), (e), (f) or (h) of subsection 1 of NRS 159.185.</p>	<p>Nev. Rev. Stat. Ann. § 159.183</p>
<p>New Hampshire</p>	<p>Every guardian shall be allowed a reasonable compensation for all proper expenses and services in the discharge of the guardianship. Administrative expenses approved by the court, including but not limited to guardianship fees, legal fees, and appraisal costs shall be paid out of the estate of the ward as a priority over other debts and obligations of the ward to the extent that funds are available and the needs of the ward are being met. The balance of the account due to the guardian shall be a lien upon all of the estate of the ward, real and personal, not disposed of. After a person ceases to be guardian, he or she may maintain an action for the recovery of said money owed for expenses and services.</p>	<p>N.H. Rev. Stat. Ann. § 464-A:23</p>

New Jersey	If another person has been appointed guardian of the ward's estate, the guardian of the ward's person is entitled to receive reasonable sums reimbursement and fees for his services and for room and board furnished to the ward, provided the same has been agreed upon between him the guardian of the person and the guardian of the estate; and provided, further, that the amounts agreed upon are reasonable under the circumstances	N.J. Stat. Ann. § 3B:12-41
New Mexico	A guardian of an incapacitated person for whom a conservator also has been appointed shall control the care and custody of the incapacitated person and is entitled to receive reasonable sums for services and for room and board furnished to the incapacitated person.	N.M. Stat. Ann. § 45-5-312
New York	1. The court shall establish, and may from time to time modify, a plan for the reasonable compensation of the guardian or guardians. The plan for compensation of such guardian must take into account the specific authority of the guardian or guardians to provide for the personal needs and/or property management for the incapacitated person, and the services provided to the incapacitated person by such guardian. 2. If the court finds that the guardian has failed to discharge his or her duties satisfactorily in any respect, the court may deny or reduce the compensation which would otherwise be allowed.	1. N.Y. Mental Hyg. Law § 81.28 (a) 2. N.Y. Mental Hyg. Law § 81.28 (b)
North Carolina	A guardian of the person is entitled to be reimbursed out of the ward's estate for reasonable and proper expenditures incurred in the performance of his duties as guardian of the ward's person.	N.C. Gen. Stat. Ann. § 35A-1241
North Dakota	The guardian is entitled to receive reasonable sums for services and for room and board furnished to the ward as approved by the court or as agreed upon between the guardian and the conservator, provided the amounts agreed upon are reasonable under the circumstances.	N.D. Cent. Code Ann. § 30.1-28-12 (10)

Ohio	<p>Compensation payable to guardians shall be based upon services rendered and shall not exceed five per cent of the amount of moneys received during the period covered by the account required by section 5905.11 of the Revised Code. In the event of extraordinary services by any guardian, the probate court, upon petition and hearing thereon, may authorize reasonable additional compensation. A copy of the petition and notice of hearing thereon shall be given the proper office of the veterans' administration in the manner provided in the case of hearing on a guardian's account or other pleading. No commission or compensation shall be allowed on the moneys or other assets received from a prior guardian nor upon the amount received from liquidation of loans or other investments.</p>	Ohio Rev. Code Ann. § 5905.13
Oklahoma	<ol style="list-style-type: none"> 1. Every guardian must be allowed the amount of his reasonable expenses in the execution of his trust, and he must also have such compensation for his services as the court in which his accounts are settled deems just and reasonable. 2. To the extent that the services of a guardian or limited guardian of the property are for the collection of income of the ward, compensation for such services shall not exceed seven and one-half percent (7 ½ %) of the income so collected. For the purposes of this section, "income" means funds received by and accounted for by the guardian or limited guardian on behalf of the ward, other than from the sale of property of the ward, plus the net proceeds from the sale of property of the ward in excess of the value of such property as last determined in the guardianship proceeding. 3. All compensation and reimbursements pursuant to this section shall be approved by the court prior to payment. 	<ol style="list-style-type: none"> 1. Okla. Stat. Ann. tit. 30, § 4-401 (A) 2. Okla. Stat. Ann. tit. 30, § 4-401 (B) 3. Okla. Stat. Ann. tit. 30, § 4-401 (C)
Oregon	Varies by County.	
Pennsylvania		
Rhode Island	<p>Probate courts are authorized to allow in the settlement of the accounts of any limited guardian or guardian such reasonable sums as the limited guardian or guardian shall have paid for the suitable support of his or her ward and the ward's family, and also a reasonable compensation to the limited guardian or guardian for his or her services. It is permissible for a limited guardian or guardian to decline compensation, and shall not be grounds for removal of the limited guardian or guardian</p>	33 R.I. Gen. Laws Ann. § 33-15-27

<p>South Carolina</p>	<p>Any guardian of one for whom a conservator also has been appointed shall control the custody and care of the ward and is entitled to receive reasonable sums for his services and for room and board furnished to the ward as agreed upon between him and the conservator, provided the amounts agreed upon are reasonable under the circumstances.</p>	<p>S.C. Code Ann. § 62-5-312 (b)</p>
<p>South Dakota</p>	<p>Any guardian, conservator, attorney for any guardian or conservator and the attorney for the minor or person alleged to need protection, and any other individuals appointed by the court in connection with a guardianship or conservatorship proceeding, are entitled to reasonable compensation from the estate, including reimbursement for costs advanced</p>	<p>S.D. Codified Laws § 29A-5-116</p>
<p>Tennessee</p>	<p>The fiduciary may receive reasonable compensation for services rendered. The court shall set the actual compensation to be paid, taking into account: The complexity of the property of the minor or person with a disability; The amount of time the fiduciary spent in performing fiduciary duties; Whether the fiduciary had to take time away from the fiduciary's normal occupation; Whether the services provided the minor or person with a disability are those the fiduciary should normally have provided had there been no need for a fiduciary; and, Such other matters as the court deems appropriate.</p>	<p>Tenn. Code Ann. § 34-1-112 (a)(1-5)</p>
<p>Texas</p>	<p>1. Person: The court may authorize compensation for a guardian serving as a guardian of the person alone from available funds of the ward's estate or other funds available for that purpose. The court may set the compensation in an amount not to exceed five percent of the ward's gross income. If the ward's estate is insufficient to pay for the services of a private professional guardian or a licensed attorney serving as a guardian of the person, the court may authorize compensation for that guardian if funds in the county treasury are budgeted for that purpose. 2. Estate: The guardian of an estate is entitled to reasonable compensation on application to the court at the time the court approves an annual or final accounting filed by the guardian under this title. A fee of five percent of the gross income of the ward's estate and five percent of all money paid out of the estate, subject to the award of an additional amount under Section 1155.006(a) following a review under Section 1155.006(a)(1), is considered reasonable under this section if the court finds that the guardian has taken care of and managed the estate in compliance with the standards of this title.</p>	<p>1. Tex. Est. Code Ann. § 1155.002 (a-b) 2. Tex. Est. Code Ann. § 1155.003 (a-b) 3. Tex. Est. Code Ann. § 1155.004 (1-2)</p>

	<p>3. In determining whether to authorize compensation for a guardian under this subchapter, the court shall consider: the ward's monthly income from all sources; and, whether the ward receives medical assistance under the state Medicaid program.</p>	
<p>Utah</p>	<p>Any guardian of one for whom a conservator also has been appointed shall control the custody and care of the ward and is entitled to receive reasonable sums for services and for room and board furnished to the ward as agreed upon between the guardian and the conservator, if the amounts agreed upon are reasonable under the circumstances.</p>	<p>Utah Code Ann. § 75-5-312 (5)</p>
<p>Vermont</p>	<p>Before making a dividend, the court may allow to the guardian, out of the estate of the ward, a reasonable sum for his expenses in the management and settlement of the property for expenses in taking care of the person and family of the ward during the settlement, and for wearing apparel of the ward and his family.</p>	<p>Vt. Stat. Ann. tit. 14, § 2847</p>
<p>Virginia</p>	<p>In stating and settling the account, the commissioner of accounts shall allow the fiduciary any reasonable expenses incurred by him and, except in cases in which it is otherwise provided, a reasonable compensation in the form of a commission on receipts or otherwise. Unless otherwise provided by the court, any guardian appointed pursuant to Chapter 20 (§ 64.2-2000 et seq.) or Chapter 21 (§ 64.2-2100 et seq.) shall also be allowed reasonable compensation for his services.</p>	<p>Va. Code Ann. § 64.2-1208 (A)</p>
<p>Washington</p>	<p>A guardian or limited guardian shall be allowed such compensation for his or her services as guardian or limited guardian as the court shall deem just and reasonable. Guardians and limited guardians shall not be compensated at county or state expense. Additional compensation may be allowed for other administrative costs, including services of an attorney and for other services not provided by the guardian or limited guardian...In all cases, compensation of the guardian or limited guardian and his or her expenses including attorney's fees shall be fixed by the court and may be allowed at any annual or final accounting; but at any time during the administration of the estate, the guardian or limited guardian or his or her attorney may apply to the court for an allowance upon the compensation or necessary expenses of the guardian or limited guardian and for attorney's fees for services already performed. If the court finds that the guardian or limited guardian has failed to discharge his or her duties as such in any respect, it may deny the guardian any compensation whatsoever or may reduce the compensation which would otherwise be allowed. Where the incapacitated person is a</p>	<p>Wash. Rev. Code Ann. § 11.92.180</p>

	<p>department of social and health services client residing in a nursing facility or in a residential or home setting and is required by the department of social and health services to contribute a portion of their income towards the cost of residential or supportive services then the department shall be entitled to notice of proceedings as described in RCW 11.92.150. The amount of guardianship fees and additional compensation for administrative costs shall not exceed the amount allowed by the department of social and health services by rule.</p>	
<p>Washington D.C.</p>	<p>As approved by order of the court, any case reviewer, visitor, attorney, examiner, conservator, special conservator, guardian ad litem, or guardian is entitled to compensation for services rendered either in a guardianship proceeding, protective proceeding, or in connection with a guardianship or protective arrangement. Any guardian or conservator is entitled to reimbursement for room, board, and clothing personally provided to the ward from the estate of the ward, but only as approved by order of the court. Compensation shall be paid from the estate of the ward or person or, if the estate of the ward or person will be depleted by payouts made under this subsection, from a fund established by the District.</p>	<p>D.C. Code Ann. § 21-2060 (a)</p>
<p>West Virginia</p>	<p>Any guardian or conservator, whether full, temporary, or limited, is entitled to reasonable compensation as allowed by the court from the estate, including reimbursement for costs advanced. The frequency and amount of all compensation must be approved by the court.</p>	<p>W. Va. Code Ann. § 44A-1-13 (a)</p>
<p>Wisconsin</p>	<p>A guardian of the person or a guardian of the estate is entitled to compensation and to reimbursement for expenses as follows:</p> <ol style="list-style-type: none"> 1. Compensation: Subject to court's approval, as determined under par. (b), a guardian shall receive reasonable compensation for the guardian's services. The court shall use the following factors in deciding whether compensation for guardian is just and reasonable: The reasonableness of the services rendered; The fair market value of the services rendered; Any conflict of interest of the guardian; The availability of another to provide the services; The value and nature of the ward's assets and income, including the sources of the ward's income; Whether the ward's basic needs are being met; The hourly or other rate proposed by the guardian for the services. The amount of compensation may be determined on an hourly basis, as a monthly stipend, or on any other basis that the court determines is reasonable under the circumstances. The 	<ol style="list-style-type: none"> 1. Wis. Stat. Ann. § 54.72 (1) 2. Wis. Stat. Ann. § 54.72 (2) 3. Wis. Stat. Ann. § 54.72 (3)

<p>court may establish the amount or basis for computing the guardian's compensation at the time of the guardian's initial appointment.</p> <p>2. Reimbursement of expenses: The guardian shall be reimbursed for the amount of the guardian's reasonable expenses incurred in the execution of the guardian's duties, including necessary compensation paid to an attorney, an accountant, a broker, and other agents or service providers.</p> <p>3. Court Approval Required: A court must approve compensation and reimbursement of expenses before payment to the guardian is made, but court approval need not be obtained before charges are incurred.</p> <p>The fees of the guardian shall be: Reasonable and appropriate; Set and approved by the court. The fees of the guardian shall not be approved by the court unless all reports required of the guardian are current.</p>	<p>Wyo. Stat. Ann. § 3-2-111 (a-b)</p>
<p>Wyoming</p>	

Appendix Y

TERMINOLOGY USED FOR PROPOSED WARD, RESPONDENT, WARD, PROTECTED PERSON

Nevada	Proposed Ward	"Proposed ward" means any person for whom proceedings for the appointment of a guardian have been initiated in this State or, if the context so requires, for whom similar proceedings have been initiated in another state.	Nevada Revised Statute 159.025 (Added to NRS by 1969, 412; A 2009, 1644)
	Ward	"Ward" means any person for whom a guardian has been appointed.	NRS 159.027 (Added to NRS by 1969, 412)
Alaska	Protected Person	A person for whom the court has appointed a conservator because the person cannot manage their money or property due to a disability, advanced age or illness.	http://www.courts.alaska.gov/shc/guardian-conservator/glossary.htm
	Respondent	In a guardianship case, the respondent is the person who is alleged to be incapacitated and in need of a guardian. In a conservatorship case, the respondent is the person who is alleged to need a conservator to help manage money or property.	Note: After a guardian is appointed, the "respondent" is called a "ward." Note: After a conservator is appointed, the "respondent" is called a "protected person."
Arizona	Ward	A ward is a person for whom the court appoints a guardian.	
	Protected Person	Means a minor or any other person for whom a conservator has been appointed or any other protective order has been made.	
	Protected proceeding	Means a proceeding under the provisions of section 14-5401 to determine that a person cannot effectively manage or apply his estate to necessary ends, either because he lacks the ability or is otherwise inconvenienced, or because he is a minor, and to secure administration of his estate by a conservator or other appropriate relief.	

	Ward	Means a person for whom a guardian has been appointed. "Minor ward" means a minor for whom a guardian has been appointed solely because of minority.	
Iowa	Respondent	The individual person for whom a conservatorship or guardianship is sought.	
	Protected Person	An order appointing a conservator under Iowa's conservatorship law (not to be confused with civil or criminal protective orders and no contact orders from domestic abuse, adult and child abuse, and victim protection.)	New term being used in Iowa under the Iowa Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act
	Ward	The individual person for whom a guardian or conservator has been appointed to handle personal or financial matters.	(or protected person – new term being used in Iowa under the Iowa Uniform Adult Guardianship and Protective Jurisdiction Act)
Colorado	Protected Person	Term used to describe someone who is subject to a conservatorship and has a conservator appointed to help them.	
	Respondent	A person who has been named in a court case, and was served legal documents that were started and given to the Court by another person, known as the "petitioner." If the Respondent wishes to have a say in the case he or she must file or give a response to the Court.	
	Ward	Term used to describe someone who is subject to a guardianship and has a guardian appointed to help them.	
Florida	Ward	Means a person for whom a guardian has been appointed.	
	Alleged Incapacitated Person or Person at Risk	Individual for whom a guardianship proceeding has been initiated.	
Minnesota	Protected Person	Means a minor or other individual for whom a conservator has been appointed or other protective order has been made.	
	Respondent	Means an individual for whom the appointment of a guardian or conservator or other protective order is sought.	
	Ward	Means an individual for whom a guardian has been appointed.	
Montana	Protected Person	Means a minor or other person from whom a conservator has been appointed or other protective order has been made.	
	Protective	Means a proceeding under the provisions of 72-5-409 to determine that a	

	Proceeding	person cannot effectively manage or apply the person's estate to necessary ends, either because the person lacks the ability or is otherwise inconvenienced or because the person is a minor, and to secure administration of the person's estate by a conservator or other appropriate relief.	
	Ward	Means a person for whom a guardian has been appointed. A "minor ward" is a minor for whom a guardian has been appointed solely because of minority.	
New Hampshire	Proposed Ward	The "proposed ward" is the person for whom a guardianship is sought. Once the guardianship has been ordered by the court, the person becomes the "ward."	
New Mexico	Protected Person	An adult for whom a protective order has been issued.	
	Protective Order	An order appointing a conservator or other order related to the management of an adult's property.	
	Protective Proceeding	A judicial proceeding in which a protective order is sought or has been issued.	
	Respondent	An adult for whom a protective order or the appointment of guardian is sought.	
Oregon	Respondent	A person for whom a protective order is sought.	
	Protective Order	A court order to protect the person or estate of a respondent or protected person.	
	Protective Proceeding	Any proceeding governed by ORS Chapter 125. Generally, this includes guardianships, conservatorships, temporary guardianships and conservatorships, but can also include other actions, including direct court action in the person's affairs.	
	Protected Person	A person for whom a protective order has been issued.	
Texas	Proposed Ward	A person alleged to be incapacitated in a guardianship proceeding.	
	Ward	An incapacitated person who has been placed in the care, custody, and supervision of a guardian.	

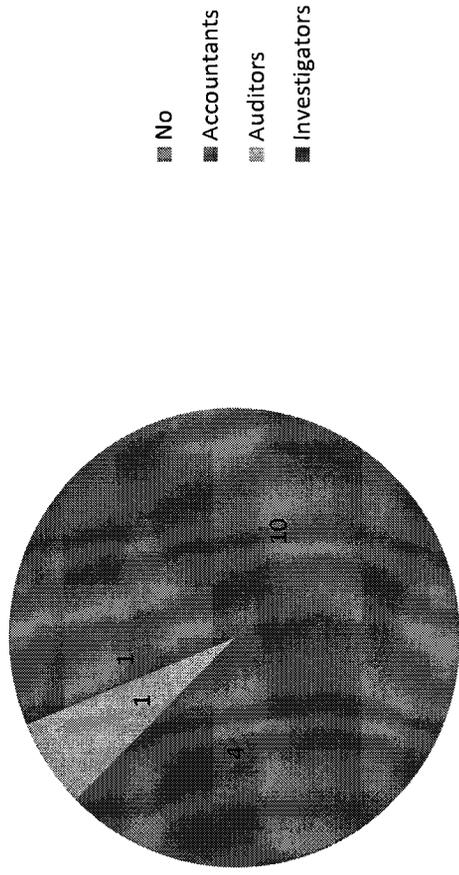
Utah	Protected Person	Means a person for whom a conservator has been appointed. A "minor protected person" means a minor for whom a conservator has been appointed because of minority.	Title 75 Chapter 1 Part 2 Section 201
	Protective Proceeding	Means a proceeding described in Section <u>75-5-401</u>	
	Ward	Means a person for whom a guardian has been appointed. A "minor ward" is a minor for whom a guardian has been appointed solely because of minority.	
Washington	Protected Person	Means an adult for whom a protective order has been issued.	
	Protective Order	Means an order adopting a guardian of the estate or other order related to the management of an adult's property, including an order issued by a court in another state appointing a conservator.	
	Protective Proceeding	Means a judicial proceeding in which a protective order is sought or has been issued.	
	Alleged Incapacitated Person (AIP)	Prior to the establishment of a guardian, the proposed protected person is called the "Alleged Incapacitated Person"	
	Adjudicated Incapacitated Person (IP)	If the Court makes a determination that the AIP is incapacitated and in need of a guardianship, the AIP may be referred to as an adjudicated Incapacitated Person or IP.	
	Respondent	Means an adult for whom a protective order or the appointment of a guardian of the person is sought.	
West Virginia	Protected Person	<p>An adult individual, eighteen years of age or older, who has been found by a court, because of mental impairment, to be unable to receive and evaluate information effectively or to respond to people, events, and environments to such an extent that the individual lacks the capacity:</p> <p>(A) To meet the essential requirements for his or her health care, safety, habilitation, or therapeutic needs without the assistance or protection of a guardian; or</p> <p>(B) To manage property or financial affairs or to provide for his or her support or for the support of legal dependents without the assistance or protection of a conservator.</p>	<p>A finding that the individual displays poor judgment alone is not sufficient evidence that the individual is a protected person within the meaning of this subsection.</p> <p>"Protected person" also means a person whom a court has determined is a missing person.</p>

<p>NGA Ethics and Standards for Guardians</p>	<p>Ward</p>	<p>A person for whom a guardian has been appointed, Synonyms include Conservatee, disabled person, protected person, and incapacitated person</p>	
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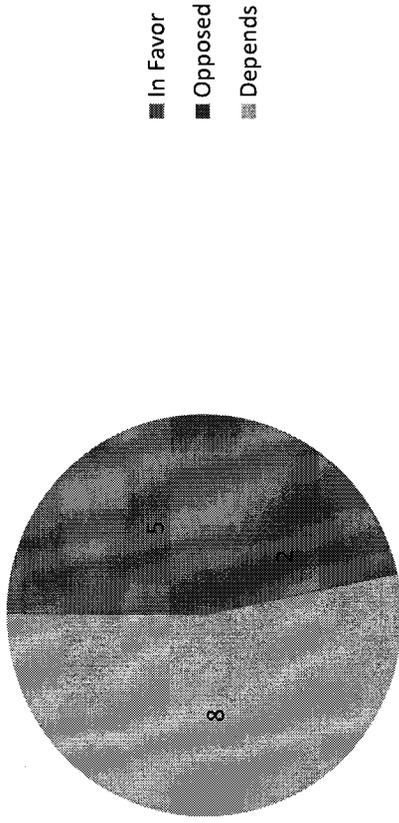
Appendix Z

2016 RURAL PUBLIC GUARDIAN SURVEY

Question 1 - Do you employ or contract with any accountants, auditors, or investigators?



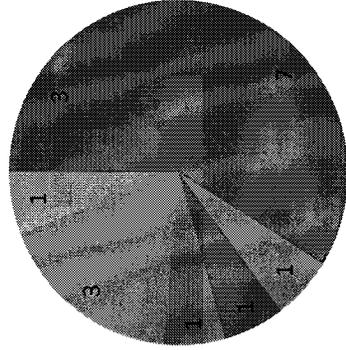
Question 2 - Would you be in favor of or opposed to the formation of an Office of State Public Guardian?



Concerns/Questions

- Duplication of efforts
- How will it be funded?
- Loss of personal connection
- Not enough info
- Logistics

Question 3 - What eligibility requirements or restrictions do you have in place that limit your ability to file for guardianship of proposed wards?



- No Limits
- Age
- County/City-imposed
- Residency
- Not incarcerated
- Number limit
- Pay source