

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

ADKT 0507

FILED

MAY 30 2018

FIRST INTERIM REPORT OF
THE GUARDIANSHIP COMMISSION

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

On August 2, 2017, the Supreme Court of Nevada created a permanent Guardianship Commission to address issues of concern to those persons who would be subject to the guardianship statutes, rules and processes in Nevada.

The Court appointed the Honorable James W. Hardesty, Justice, as Chair of the Committee on September 14, 2017. The individuals listed in Attachment A were appointed to serve on the permanent Guardianship Commission by the Supreme Court of Nevada. Senator Becky Harris and Dawna Richert have since resigned, and Danielle Christensen of Washoe Legal Services was appointed to the permanent Guardianship Commission on January 25, 2018.

The Commission held lengthy meetings on October 10, 2017; November 13, 2017; April 25, 2018; and a brief meeting on May 15, 2018. The October 10 meeting included a review of the final report of the Nevada Supreme Court's Commission to study the Administration of Guardianships in Nevada's courts, an overview of the 2017 Nevada Legislative amendments, as well as a review of Administrative Docket 507, and the Order Setting Forth Duties of the Permanent Guardianship Commission. The Commission also held a general

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discussion on caseload statistics from the Second and Eighth Judicial District Courts, the creation of the State Compliance Office, and the development of statewide rules and forms.

The November 13 meeting included presentations on (1) U.S. Senate Bill 178 and Section 501 of the Act, providing amendments to the Elder Justice Act of 1999 placing new responsibilities on the highest courts of each state concerning elder care; (2) Supported Decision making, a lesser restrictive alternative to guardianship; and (3) the Nevada Supreme Court Settlement Program as a potential model for mandatory settlement conferences in guardianship cases. A general discussion occurred concerning case load statistics from Rural Courts, statistical reports from the Compliance Officers in the Second and Eighth Judicial District Courts, the creation and operation of the State Compliance Office and the appointment of subcommittees to create statewide rules and forms.

The Rules Subcommittee, co-chaired by John Michaelson and Dania Reid, met every other week between December 2017 and March 2018. Members of the subcommittee include Danielle Christensen, Homa Woodrum, Lynn Hughes, Mallory Nelson, Michael Keane, Judge Nancy Porter, Judge Nathan Tod Young, and Kate McCloskey. The subcommittee drafted 6 rules that were recommended for submission to the full Guardianship Commission.¹

¹The statewide Guardianship Rules recommended for submission to the Supreme Court are attached to this Report as Attachment B.

The Forms Subcommittee, chaired by Jim Berchtold, met every other week between November 2017 and May 2018. Members of the subcommittee include Stephanie McDonald, Michael Keane, Homa Woodrum, Emily Reed, Sabrina Sweet, Judge Nathan Tod Young, Judge Nancy Porter, and Kate McCloskey. The subcommittee drafted 81 uniform guardianship forms, for use statewide by Proper Person litigants, which were recommended for submission to the full Guardianship Commission.²

The April 24 meeting of the full Commission reviewed all the proposed statewide rules and forms submitted by the subcommittees. The May 16 meeting included a final review and full Commission vote on all rules and forms created by the subcommittees. By unanimous vote, all rules and forms submitted to the Guardianship Commission have been recommended to the Supreme Court of Nevada for adoption.

A Unanimous Commission recommends:

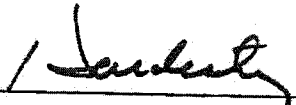
1. The statewide rules for Guardianship be adopted by the Supreme Court of Nevada.
2. The statewide forms for Guardianship be adopted by the Supreme Court of Nevada.

The Supreme Court of Nevada set public hearings for public comment on the proposed uniform guardianship forms and court rules at its next earliest convenience. The Commission also reports that it will continue to study the remaining 9 categories of statewide rules listed

²The statewide Guardianship Forms recommended for submission are attached to this Report as Attachment C.

in the Court's Order of August 2, 2107; the adoption of uniform reporting criteria for guardianship cases; and the impact, including recommended amendments necessary, resulting from the guardianship reform legislation adopted by the 2017 Legislature.

Respectfully submitted,


_____, J.

cc: All Supreme Court Justices
All Permanent Guardianship Commission Members
All Rural District Court Judges
Chief Judge Elizabeth Gonzalez, Eighth Judicial District Court
Judge Gloria Sturman, Eighth Judicial District Court
Judge Vincent Ochoa, Eighth Judicial District Court
Judge William Potter, Eighth Judicial District Court
Chief Judge Scott Freeman, Second Judicial District Court
Judge Frances Doherty, Second Judicial District Court
Judge David Humke, Second Judicial District Court
Ms. Julie Bobzien, Executive Director-VARN
Mr. James Conway, Executive Director-Washoe Legal Services
Ms. Barbara Buckley, Executive Director-Legal Aid Center of Southern Nevada
Ms. Anna Marie Johnson, Executive Director-Nevada Legal Services
Ms. Sheri Cane Vogel, Executive Director-Southern Nevada Senior Law Program

ATTACHMENT A

GUARDIANSHIP COMMISSION MEMBER LIST

JUDGES/STAFF

Vincent Ochoa	8 th Judicial District Court
Gloria Sturman	8 th Judicial District Court
Egan Walker	2 nd Judicial District Court
Dawna Richert	8 th Judicial District Court JEA

PUBLIC/PRIVATE GUARDIANS

Karen Kelly	Clark County Public Guardian
Shelly Register	Private Guardian, Washoe County

LAWYERS

Debra Amens	Private Counsel
Jim Berchtold	Legal Aid
Elizabeth Brickfield	Private Counsel
Henry Cavallera	Retired
Lynn Hughes	Private Practice
Michael Keane	Private Practice
John Michaelson	Private Practice
Jennifer Salem	Private Practice
Jennifer Rains	Public Defender, Washoe County

Dania Reid

Deputy District Attorney, Washoe County

STATE REPRESENTATIVES

Mary Bryant

UNR

Becky Harris

State Senator

Lynda Hascheff

AARP

Homa Woodrum

Department of Health & Human Services

ATTACHMENT B

**STATEWIDE GUARDIANSHIP RULES
RECOMMENDED FOR SUBMISSION TO THE SUPREME COURT**

	TOPIC	RULE
1.	AB 319	<p>Where the court appoints a guardian for the proposed protected minor without issuing a citation on the basis the petitioner and proposed guardian is a parent who has sole legal and physical custody of the proposed protected minor:</p> <ol style="list-style-type: none"> 1. The court shall conduct a hearing on the appointment of such a guardian; 2. Upon indicia that the minor does not consent to the guardianship, the matter shall be set for a full hearing with citation notice; and, 3. The provisions of this section only apply where the petitioner is a parent with sole legal and sole physical custody of the proposed protected minor and is petitioning as the sole proposed guardian.
2.	Citations	<p>Rule regarding service of citations</p> <p>Where a statute specifies the person or entity that shall prepare, issue, and/or serve a citation/notice, that statute shall control. In all other cases, the petitioner of the particular petition at issue, shall prepare the citation/notice. If a citation is required, the petitioner shall have it issued by the clerk of the court. The petitioner shall then serve a copy of the citation/notice, and where applicable the petition or other required documents, and shall file proof of such service with the court. If a particular statute requires the manner in which service shall be made, service shall be made in compliance with that statute. Otherwise, service shall be made as required by NRCP 4.</p>
3.	Content of guardianship plans	<p>Initial Guardianship Plan</p> <ol style="list-style-type: none"> (a) <i>Initial guardianship plan in general.</i> The proposed guardian may file an initial guardianship plan not later than 60 days after the date of appointment as general or special guardian of the person, estate, or person and estate or, if necessary, upon such further time as the court may allow. (b) <i>Guardian of the person.</i> The initial guardianship plan shall set forth objectives for meeting the goals, needs and preferences of the person, and may: <ol style="list-style-type: none"> (1) Emphasize a person-centered philosophy; (2) Address the residential setting or facility best suited for the needs of the person and, if applicable, the place or proposed place of residence; (3) Address medical, psychiatric, social, vocational, educational, training, and recreational goals, needs and preferences of the person;

	TOPIC	RULE
		<p>(4) Address, to the extent known or discoverable, whether the person's finances and budget are sufficient or flexible to meet the person's known and reasonably anticipated needs;</p> <p>(c) <i>Guardian of the estate.</i> The initial guardianship plan shall set forth a financial plan and budget for the management of income and assets that corresponds with the care plan for the person and addresses the goals, needs and preferences of the person, and may:</p> <ol style="list-style-type: none"> (1) Emphasize a person-centered philosophy; (2) Maintain the goal of prudently managing, but not necessarily eliminating, risks; (3) Address available assets and income; (4) Address known and reasonably anticipated expenses; (5) Address public and insurance benefits for which the person is eligible; and <p>(d) <i>Attestation.</i> The initial guardianship plan shall contain an attestation that the proposed guardian or guardian has consulted with the person to the extent possible and has considered the person's wishes consistent with the rights retained by the person under guardianship and the provisions of the initial guardianship plan.</p>
4.	Scope of Rules	<p>Scope of Rules</p> <p>(a) <i>Scope of rules in general.</i> These rules govern the procedure in the district courts in all guardianship actions.</p> <p>(b) <i>Proper person litigants.</i> When a proposed guardian or guardian is not represented by an attorney, the proposed guardian or guardian must comply with these rules.</p>
5.	Commencement of Action	<p>Commencement of Action</p> <p>A guardianship action is commenced by filing a petition for appointment as temporary, general, or special guardian of the person, estate, or person and estate.</p>
6	Rule for handling ex parte communication from the GCO	<p>Ex Parte Communication:</p> <p>(a) In order to carry out the court's oversight and enforcement of compliance in guardianship proceedings, communications which might otherwise be considered ex parte communications under the Nevada Code of Judicial Conduct, Rule 2.9, may be received and reviewed by the court under the provisions of this rule if such communication raises a significant concern about a guardian's compliance with his or her statutory duties and responsibilities, or the Protected Person's welfare.</p>

TOPIC	RULE
	<p>(b) In response to such communication, the court may:</p> <ol style="list-style-type: none"> 1. Review the court file and take any action that is supported by the record, including but not limited to, ordering a report on the Protected Person's condition, an inventory, an accounting, or any other filing which is outstanding; 2. Appoint a Guardian ad Litem ("GAL"); 3. Appoint an Attorney ad Litem; 4. Appoint an investigator pursuant to NRS 159.146; 5. Appoint a financial forensic specialist; 6. Refer the matter to the appropriate law enforcement agency; 7. Refer the matter to the appropriate licensing agency; 8. Refer the matter to appropriate agencies, including but not limited to child protective services or Elder Protective Services; 9. Set a hearing regarding the communication, requiring the parties' attendance, and/or require a response from the guardian concerning the issues raised by the communication; or, 10. Decline to take further action on the communication, with or without replying to the person initiating the communication, or returning any written communication received from such person. <p>(c) If the communication does not raise significant concerns regarding the guardian's compliance or the Protected Person's welfare, and would otherwise be prohibited ex parte communication under the Nevada Code of Judicial Conduct, Rule 2.9, the court shall:</p> <ol style="list-style-type: none"> 1. Return the written communication to the sender, if known, and 2. Disclose notice of the communication to the guardian, Guardian ad Litem, the protected person, the protected person's attorney, and all parties of record and their attorneys. <p>The court shall disclose any ex parte communication reviewed under section (b) of this rule, and any action taken by the court, to the guardian, GAL, the protected person, the protected person's attorney, and all parties of record and their attorneys.</p>