Supreme Court of Nevada
ADMINISTRATIVE OFFICE OF THE COURTS

ROBIN SWEET
Director and
State Court Administrator

JOHN MCCORMICK
Assistant Court Administrator
Judicial Programs and Services

RICHARD A. STEFANI
Deputy Director
Information Technology

MEETING SUMMARY

Prepared by Raquel Espinoza
Administrative Office of the Courts

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

Date and Time of Meeting: June 21, 2016, 1:30 p.m. to 4:30 p.m.
Place of Meeting:

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

Members Present:

Chief Justice James W. Hardesty, chair
Chief Judge Michael Gibbons
Judge Frances Doherty
Judge Nancy Porter
Judge Cynthia Dianne Steel
Judge William Voy
Judge Egan Walker
Assemblyman Michael Sprinkle
Assemblyman Glenn Trowbridge
Trudy Andrews
Julie Arnold
Debra Bookout
Kathleen Buchanan (Jeff Wells Proxy)
Rana Goodman
Susan Hoy
Jay P. Raman
Sally Ramm
Terri Russell
David Spitzer
Kim Spoon
Tim Sutton

AOC Staff

Raquel Espinosa
Stephanie Heying
Hans Jessup

Call of Roll and Determination of Quorum

Chairman Hardesty called the Commission to Study the Administration of Guardianships In Nevada's Courts (Commission) to order at 1:30 p.m. A quorum was present.

Approval of Meeting Summary from June 13, 2016, meeting

Staff was still preparing the meeting summary from June 13, 2016. The meeting summary would be distributed for review prior to the next meeting.

Public Comment

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

Updates

Justice Hardesty notified Commissioners he had submitted a letter to Chief Justice Ron Parraguirre on behalf of the Guardianship Commission (Commission) requesting an extension of their work to September 30. The Court conferred and an order was entered by Chief Justice Parraguirre granting the extension to September 30. Justice Hardesty would like to hold three additional meetings between now and the September 30, to finalize discussions and vote on the remaining issues, and to review and approve the final report that will be submitted to the Supreme Court with the Commission's recommendations.

Justice Hardesty provided an update on Elder Justice Innovation Grant application. This grant would provide $100,000-$125,000 per year for the next two years to the State of Nevada to assist the Administrative Office of the Courts (AOC) and the Supreme Court in implementing the recommendations made by the Commission. Nevada was one of four states selected for this unique opportunity. The grant application deadline was June 17. Justice Hardesty received an email earlier today from Lauren Lisi stating the grant application for all four states had been submitted and they should be notified whether the grant application was accepted by mid-August. This would be a big opportunity to take the recommendations and carry them into actions with funds available to the state.

The meeting summary from June 13, 2016, was not available but it would be available at the next Commission meeting.

Bill of Rights

Ms. Buckley had made edits to the Bill of Rights based upon comments received from Commissioners during the last Commission meeting, and edits Chief Judge Gibbons and others had provided following the meeting. Ms. Buckley stated the comments received were excellent and clarified the intent of the Bill of Rights. The Bill of Rights should be short and clear. Expanded language to rights that should be added to statute is included separate from the 17 Bill of Rights. Examples of the rights that should be added to statute include visits/communication. The recommendation is that the person under guardianship has the right to receive communications and visits, they may refuse them, but the guardian may only limit, supervise, or restrict them to the extent necessary to protect the person under guardianship from harm. If they have to do that, the guardian must notify the court. A longer statute that spells out the specifics of this right in the Nevada is necessary and the Bill of Rights would be more general.

DRAFT

Chief Judge Gibbons thanked Ms. Buckley for providing outstanding work while putting the Bill of Rights together. Ms. Buckley surveyed all the other states, took the best parts and considered the comments from the Commission members to compile the Bill of Rights. Chief Judge Gibbons stated the Bill of Rights would set the tone for the entire work of the Guardianship Commission. Many concerns expressed through the Commission's work and through public comment will be minimalized if the Bill of Rights is enacted.

Justice Hardesty stated there are 17 points in the Bill of Rights together with a statement, which states, "nothing in the document abrogates other remedies existing in law, all of these rights are enforceable through a private right of action." Justice Hardesty suggested the rights be included in the Guardianship Oath together with the "all of these rights are enforceable through a private right of action" statement. Ms. Buckley stated it was a good suggestion and it would remain consistent with the Bill of Rights. Justice Hardesty suggested the Commission conduct a separate vote on statutory modifications associated with the Bill of Rights.

> **Judge Egan Walker moved to adopt the Bill of Rights with an understanding they would be included in the Guardianship Oath and be subject to enforceability through a private right of action. Chief Judge Gibbons seconded the motion.**

Ms. Kim Spoon asked for clarification regarding what is meant by a private right of action. Justice Hardesty explained a number of statutes contain rights or obligations. For example, certain individuals who file complaints with the Labor Commissioner will have an argument about wages that they are paid, unless the statute contains the right of action, meaning they can sue on that right; they are limited as their remedy to go through the Labor Commissioner to seek relief. In this instance, if all one did was list a set of Bill of Rights without making it clear that an abridgement of any of these was subject to suit, essentially, there would be no remedy to the rights listed. Ms. Spoon clarified this would be a civil action.

Judge Frances Doherty asked if that would suggest the rights would be statutory. Justice Hardesty stated the group would be included in a statute along with the aforementioned provisions. If the legislature declares that, it is enforceable. The ward's counsel could bring an action based on an abridgement of those rights and the action could be one for damages or for injunctive or equitable relief. Ms. Buckley stated the point was not to encourage litigation but to know what the rights of the individuals are and to get situations resolved.

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

<u>Rights that Should be Added to Statute</u>

The second component of Ms. Buckley's proposal was an articulation of rights that would be added to statute, and deal with visits and communications, the ward moving to and from a facility, remedies, the requirement for a case plan, accounting requirements, appointment of attorney, and duties. Some of the matters had previously been discussed by the Commission and some had been previously voted on but Justice Hardesty would like the Commission to separate each topic and vote on each one separately.

1. Visits/Communications

Judge Nancy Porter asked for clarification of subsection 2. Chief Judge Gibbons stated the second paragraph was missing two words "unable to." This section would read, "if the ward was unable to express consent to interact then consent may be presumed based on a person's prior relationship with such other person unless the ward has previously documented his/her wishes not to interact with the person." Ms. Buckley stated this was taken from the other statutes and one other bill of rights on what the presumption should be if that person no longer

DRAFT

had the capacity, yet had a long-time family friend visit them for many years. Judge Porter stated that cleared up her question.

Ms. Spoon asked for clarification regarding the statement that read "then consent may be resumed based on the person's prior relationship with such other person." If it was a good relationship, they could continue seeing them. If it were a bad relationship, would the guardian have the right to say that the person should not see them? Ms. Buckley referred to the first subsection, if a guardian believes that substantial harm can come as a result of the visits, the guardian always has that ability to restrict it and go to court. For example, this neighbor wants to visit, but x, y, and z is present and this is why we do not think it is prudent or could be harmful. Ms. Spoon stated the answer clarified her question.

4. Initial Plan

Assemblyman Glenn Trowbridge asked that the term "residential setting" in section 4, under the initial plan, be changed to not exclude all other types of facilities. Justice Hardesty asked if it would be acceptable to change the language to "residential setting or facility." Assemblyman Trowbridge accepted the change. Ms. Buckley noted the changes. She would prepare a final draft to include the changes and noted the Legislative Counsel Bureau (LCB) may change the language as well.

2. Moves – NRS 159.079(4)

Mr. Kim Rowe had questions regarding moves. Mr. Rowe said it would be a good concept to have court permission required if there is an objection, but there would need to be the same limiting language about protecting the ward. Often times you may have someone who does not want to move but the level of care may no longer be appropriate, therefore the need to move the ward would need to happen first and a court order would come second. Mr. Rowe suggested adding language that would allow the guardian, in their discretion, to move a ward if they think they are at risk of harm. Ms. Spoon stated if there were persons living in their home and are then taken to a hospital and cannot go back to the home for any reasons, it would be difficult and burdensome for a guardian to have to go to court in order to get the individual discharged and placed in an appropriate facility. Ms. Spoon suggested notifying the court within 10 days of a move if there are issues. Ms. Buckley stated there would be a way to reconcile the suggestions to deal with an emergency situation, or a hospital transfer but still ensure there is court involvement if there is a request for a change that is either to a more restrictive environment, over the wishes of the person under guardianship, pursuant to the wishes of the family, and other types of situations which have caused concern. Justice Hardesty suggested the section could be divided into two sections to address the first concept separately from the moves that would be necessitated by emergencies or a change in mental or physical condition of the ward. Judge Doherty agreed that exigent circumstances could be worked into the section. Judge Doherty noted the Commission had worked on notice provisions at the previous meeting and asked if the same notice provision could be used, instead of stating "notify the closest family members" the language could state "notify, pursuant to 159.134" which are the second degree family members. The Commission is trying to conform all of the notice protocols.

Justice Hardesty stated the intent would be to vote on the notice provisions. Judge Doherty had summarized notice requirements under a single statute so that any time one references a notice requirement one will be referencing the statute, by doing so all the individuals who are required to receive notice are encompassed. If the Commission approved the subjects the language would be added to the report so the language between and among various recommendations is collated.

DRAFT

Mr. James Conway from Washoe Legal Services offered a suggestion. Mr. Conway stated he believed the concept of being moved from their home into a nursing home or similar facility is something wards fear and may be the biggest thing a ward would object to above anything else in a guardianship. Any statute that addresses this issue should include factors on what the court should consider in making a determination on a ward's best interest. Mr. Conway suggested the phrase "best interest" is too vague but statutory language helping the court to resolve a dispute over the appropriate placement would be helpful to the court and to practitioners. Mr. Conway would work with Ms. Buckley to propose appropriate language for this issue.

3. Remedies

Ms. Spoon addressed remedies and stated there is already language in the statute concerning the guardian and not being able to pay the guardian fees if an action is brought against the guardian and it is proven so. Ms. Spoon asked if it had been coordinated with the statutes. Ms. Buckley researched when there are deliberately malicious and fraudulent acts, which are rare but have been seen, what the remedies would be. Ms. Buckley went to the existing statute and used the same exact language in order to remain consistent. It is limited to the fraudulent sale of real property under NRS 159.1495, but the same language is utilized and would be the same across the board.

4. Initial Plan

Ms. Spoon said this section currently states, "upon the filing of the initial plan the proposed guardian should file…" Ms. Spoon stated the language does not match what the Commission is looking at with regard to the 60-day requirements such as a care plan or a budget. Ms. Spoon expressed concern about when the guardian should do this, at the time of the petition or within the 60-day period, this point seemed unclear. Justice Hardesty stated it was a good point; the understanding was that this would kick in within 60 days of the granting of the guardianship action. Mr. David Spitzer agreed with Ms. Spoon and stated the level of detail being asked in describing the initial plan is going to infringe or encourage prospective guardians to be very invasive in the proposed person under guardianship's private life. Mr. Spitzer suggested the standard for granting the guardianship remain the same, but the initial plan should line up with the filing of the inventory. Where all financial matters have been explored and are known, pursuant to court order, the living situation of the ward is more firmly known and the initial plan modified to reflect that something must be filed with the inventory 60 days after the granting of the guardianship. Justice Hardesty stated there might need to be a temporary plan filed with the petition concerning the residential setting and possibly include interim medical or personal care services. Mr. Spitzer noted all language in the current proposal was mandatory and would need to be modified. Justice Hardesty stated it might be a challenge to meet some of the requirements without knowing more about the financial condition of the estate.

Mr. Rowe stated the Second Judicial District and the Task Force had been working with Judge Doherty to create a standardized guardianship petition. An element of the petition is what one would hope to accomplish with the guardianship, in many ways the information being provided to the judge on the front end would be a limited version of this information. This would guide the court to understand where the guardianship stands currently and what the hopes are in achieving the guardianship with the hope that down the road, when a guardian is appointed and has access to more information, they will be able to provide a more complete plan of action and additional information the court will need. Justice Hardesty stated it would make sense that there would be a proposed case plan filed with the petition itself and followed on with a more specific and detailed case plan if the guardianship is going to be approved. Ms. Buckley stated the idea behind the proposed initial plan is to get a snapshot. If there were two competing guardianship petitions, (1) a family member would plan to put the ward in a nursing home, (2) the other family member would plan to do residential care and has a much more realistic handle on the budget that would be good information to know in the beginning and in 60 days. It would provide

DRAFT

information that is more detailed. Justice Hardesty asked Mr. Rowe and Mr. Spitzer to work together to send alternative language to Ms. Buckley for this section, recognizing there would be a separation between a proposed plan and a plan that would have to be adopted within 60 days after the approval of the guardianship. Judge Doherty stated she understood the Commission was going in the direction of a preliminary care plan, which would be the first 60 days and then a care plan at 60 days and even a preliminary budget recognizing no more is known than is known. Judge Doherty had asked a petitioning guardian what their care plan was and the petitioning guardian stated they would take their parent to an assisted living facility. Judge Doherty stated it would be preferable to know this kind of information at the beginning and have a preliminary discussion about it than wait 60 days because everything happens in 60 days and unwinding that would be very difficult, if there were an objection. A preliminary care plan, up front, would be very helpful as the petitions are put in. Ms. Julie Arnold stated it is often good to have a Guardian ad Litem in a competing petition situation. They can look at whether the competing individuals are considering realistic budgets and plans of care. Ms. Arnold stated she would like to see section 7-C broadened to give the judge the ability to appoint an Attorney Guardian ad Litem on a case-by-case basis, regardless of whether volunteer individuals are available or not. There are situations where the expertise that an attorney can bring to the situation is needed. It would not be good if you they could not be appointed due to the current language in this section. Ms. Sally Ramm added it was a wonderful description of duties of an Attorney Guardian ad Litem volunteer.

5. Accountings

Mr. Kim Rowe had a question on subsection 5 item 3, which states, "all expenses must be itemized; receipts for amounts over $100 must be filed (optional now)." Currently, receipts for anything over $100 are optional. Receipts are infrequently attached to most of the accountings he has seen. Would this create a burden or a problem depending upon how much interaction a public or private professional guardians is having with a particular person and the estate? Does this change the dynamic or costs of what they are trying to do? Mr. Rowe would like to know what the consequences would be.

Chief Judge Gibbons recommended adding language, "unless waived by the court." His experience has been the same as Mr. Rowe's experience. The receipts are usually not needed but we start with the presumption that we should have them to document exactly what the expenses are, but the court could do away with them if it is burdensome or expensive.

Ms. Spoon said it would be a good idea to include asking for a waiver in their initial petitions, if they feel that is something that…just ask for it and see what the court says in terms of that. Where else would we do it because we do not want to have to go into court again, before our accounting to waive it?

Ms. Buckley said another suggestion someone had provided was if in the plan or the first document you have the receipt of how much it cost, the facility or residential facility that is sufficient. You would not have to do it every month if it is on file, you could refer to it. Ms. Spoon said there could be hundreds of receipts that would go into an annual accounting for a person and on some may only have two per month. For those who have hundreds of receipts she would see this as a burden. Ms. Spoon understands why you would want it to be presumed that they would have the receipts but that is already in the statutes, that they should have receipts for everything. Ms. Spoon is wondering if instead of asking to be waived by the court we can assume, as we are doing now, that we do not need those receipts unless asked for by the court.

Judge Egan Walker stated he did not disagree that it creates a burden but he strongly agreed with Chief Judge Gibbons' perspective that the default be that receipts are produced. For example, a public, published case regarding Bob Fryer, an attorney who was providing both attorney services and guardian services for veteran

DRAFT

wards, he cooked books in cases Judge Walker looked at. Judge Walker would get annual accountings that had line-by-line entries with amounts for the items but there was no way to know, without seeing receipts, whether what he said he was using the money for was actually spent. Judge Walker does not handle adult guardianships but if a person were going to account to him, he would want to see receipts at the outset that substantiate what the expenses are. The default should be production of receipts and the dialogue could be with a private or public guardian at the initial petition or at some other point in the case. The trial courts have the two dimensions of paper and the accounting, this should not be minimized, however that does not tell the judges anything about where the money is actually being spent without receipts. Ms. Spoon stated the private and professional guardians do have the receipts but the court would need to understand that in cases, which involve many receipts, it might be a huge burden to the courts.

Judge Doherty said the recommendation is best practices. The reality is our courts do not have the resources to be as thorough as we are talking about, but that is a different issue. Can the resources in the Second Judicial District do this, honesty? Every receipt of hundred receipts of how many cases per month we handle, I can guarantee you, as an additional caseload, no, but I support the concept of this. We do not have the resources. Justice Hardesty said you do not have the resources yet.

Mr. Jeff Wells asked how many years the $100 was the figure for the accounting and if the Commission would want to review that and possibly change it to $200. Justice Hardesty stated he was not sure of how long the figure had been in use but the Commission could look into it.

6. Appointment of Attorney, duties
8. Advising a Ward of their Legal Rights

Justice Hardesty asked the Commission if items 6 and item 8 could be the subject of Supreme Court Rule (SCR) rather than a statute. The court governs the practice of law, the requirements for counsel, and the requirements for courts. Ms. Buckley stated items 6 and 8 could be the subject of court rule; however, the statute would need to be changed. There currently exist statues that talk about the appointments of attorneys and guardian ad litems, those statutes may need to be stripped to allow them to include more duties in the rule. Justice Hardesty stated he would move items 6 and 8 to a separate section and urge the Supreme Court to adopt rules that encompass the concepts, amend the statutes as necessary, and accommodate the enforcement of these duties by Supreme Court Rule (SCR). Ms. Spoon appreciates the language in item 8. She noted there are many physicians who do not like it and will not do it.

It would be necessary to look at various amendments and changes to the 8 points for the rights that should be added to statute, this would be deferred to the next meeting to be able to incorporate edits and amendments. Justice Hardesty stated other recommendations the Commission has made in the language would also be incorporated and Mr. Rowe and Mr. Spitzer would offer changes and Ms. Buckley and Ms. Heying would assist Justice Hardesty to correlate these edits with other recommendations which have already been voted on. Justice Hardesty thanked Ms. Buckley for her hard work in putting together the Bill of Rights. The Commission did not have additional questions or comments.

Notice

The Commission discussed Judge Doherty's suggestions regarding notice. Mr. Rowe stated Mr. Spitzer's comments on NRS 159.081 from the previous meeting might move into other categories regarding how far down it should go. Depending upon the specific relationships or a person's desire for privacy regarding their medical and financial information it may not be appropriate to give to people all the way through the second

DRAFT

degree of consanguinity, as currently contemplated in statute. This issue would need to be addressed. Judge Doherty stated it is a public policy question of trying to serve the person subject to guardianship and recognizing they may have never shared their personal information with many of their family members and mandating the information be shared was an issue Judge Doherty has struggled with. The statute was written in a way that was rather neutral with a citation going out but not the petition. The Commission had heard public comment stating, "if I had only known" and this would require balancing what would require notice. Judge Doherty stated all notice on all matters with copies of the substantive underlying pleadings should go to the attorney for the person subject to guardianship and to the person subject to guardianship. Judge Doherty would be inclined to send notice to everyone else as well. The public policy discussion is regarding the paradigm shift in which the paradigm has shifted in the sense that the person who has protected their privacy all their life is now in a vulnerable circumstance, the records are largely public and the family is the extended village that should know the circumstances of that person.

Justice Hardesty asked the Commission to reference NRS 159.081 which is the statute that requires annual reports to be provided of the person to be filed with the court and served on the attorney for the person subject to guardianship. No other notice requirements are specified. Justice Hardesty clarified Judge Doherty's comments stating notice of that report should be served on the person subject to guardianship in all circumstances. The person subject to guardianship would get notice of every annual accounting and all other proceedings that affect their life. The question is who else should get the notice? The identified concern is if the notice of the annual reports, accountings, and other proceedings, go to other relatives of the ward. The balancing would be recognizing the privacy of the ward of not wanting their financial, mental health, and other information, shared with their brothers and sisters because the dynamic may change once the person is subject to a guardianship and their siblings should get notice. The Commission would need to address the policy question for purposes of this recommendation.

Judge Walker reflected the risk of invading a person's privacy is not minor. At the point in which a person becomes subject to guardianship, unless the village is watching and a person's privacy is invaded because they are watching, there may be risks that occur, however fewer may have happened had the village been watching. Very sensitive and private information is discussed with a ward, for example; sexually transmitted diseases, who they engage in meretricious relations with, and other private information, which may not need to be added to an annual report. If the notice given to do anything in a guardianship were consistently to the persons within the second degree of consanguinity, it would make the practice and policy much easier.

Mr. Rowe stated there should be an avenue for court waiver. If a person is dealing with a situation that has particularly private information or information that should not be shared for good reason or is not beneficial to the ward, a person should be able to request to the court that the information not be shared and notice not be given to certain individuals.

Ms. Spoon noted in order to find the individuals; most often, they had previously been notified before the first petition in order to verify they were appropriate guardians. Most family members may already know what is happening before the guardianship goes forward. It is invaluable to get the family involved, if appropriate, and the notices are helpful for many reasons because of the information they provide. Ms. Spoon stated she was concerned about the privacy of the individuals served but once the families are involved, it helps the client to extend the family or to protect the person from family that may be harmful.

Justice Hardesty stated the qualification would be that except upon the showing of good cause and order of the court, all the notices would go to the village. Mr. Spitzer asked if the notice would be a notice that the document was filed or a notice that a document was filed and a copy of said document. Justice Hardesty clarified it would

DRAFT

be a notice of all documents and the full report. Ms. Ramm asked if this could be narrowed to the first degree of consanguinity. Judge Walker stated the second degree of consanguinity would be the extension of parents, grandparents, children, and siblings. Justice Hardesty stated the first degree of consanguinity extends to only parents and children of an individual and when dealing with the elderly there may only be siblings or children and in some cases there are no children, parents are deceased, and all there is left are siblings.

Mr. Spitzer argued that sending out the notice to those in the second degree should be deemed adequate; it would then be up to those individuals to access the public records and obtain the documents. Justice Hardesty stated SCR VI is the statute that governs confidentiality of provisions within all pleadings. Anyone who is about to file a pleading with the court can file it provisionally on the request certain parts of the report to be excised and the court must rule on that request first, before the report or document can be filed. If there is sensitive information in a report, one would hope the ward's counsel would first file a motion to have the information redacted or sealed, first. Mr. Spitzer stated the sealing rule could be utilized, but if a guardian would file an annual report of the person, it would be up to them to ask for those things to be sealed.

Chief Judge Gibbons suggested the Commission could discuss special notice. Under special notice, a person would not receive notice unless a person makes a request to receive notice. At the outset, everyone would receive notice and there could be a tier 1 and tier 2, and if a person were in tier 1 they would not receive further notice, unless they specifically request it. Ms. Buckley stated it would be important for the person under guardianship to state whom they would not wish to receive notice from the outset. Mr. Timothy Sutton stated a provision exists in which a person entitled to notice could sign a waiver to not receive notice. Ms. Arnold stated there have been cases in which individuals within the second degree of consanguinity cannot be located and notice by publication would make a person under guardianship's information very public.

Mr. Michael Keane stated as an attorney, his practice is to provide notice to all parties. Mr. Keane stated District Court Rule 14 requires service of all documents filed with the court on all parties, it may be challenging to determine who "parties" are. This rule requires service on all interested persons.

Assemblyman Sprinkle stated he was struggling with absolute unveiling of the reports from a privacy standpoint. Judge Doherty stated she had pointed out the public policy dilemma; she would clearly come down on the side of notice to the second degree of consanguinity. The conversations with the public will be enhanced with the additional notice and the court has some discretion in waiving notice, as is appropriate. We have so few people in our courts talking about our persons who are vulnerable, to the extent that we can keep those persons engaged, we should, and the court can monitor the oversight of the appropriate release of information. We also have another area, which is training persons who are serving as guardians; sixty percent of these individuals are relatives. It would be important to improve training protocols to assist guardians in appropriately completing some of the forms to limit the sensitive information included in the documents.

Justice Hardesty stated concerning the exceptions the Commission had noted, some of the exceptions are included in the current Sealing Rule and the Commission may bring them in so that a guardian could not file an annual report that includes information, which is statutorily confidential. It would not involve a sealing request; it would be redacted from the outset except what is filed with the court. Justice Hardesty stated completing work on the exceptions might solve some questions. Justice Hardesty asked the Commission if general notices should be given to those within the second degree of consanguinity so long as there are exceptions or qualifications to the notice built in dealing with privacy or confidentiality. Mr. Sutton expressed concern regarding notifying grandchildren, who are within the second degree of consanguinity, because of the number of grandchildren a person may have due to them being so far removed and the age limit. Fourteen years of age may be too young of an age for youth to begin receiving notices and documents for their grandparents. Judge

DRAFT

Cynthia Dianne Steel stated a concern has been not having notice of what is going on from the individuals in the second degree of consanguinity. Another concern is if they are given the actual petition with redactions, a citation may not be needed. The purpose of a citation is to send notice that something is going to happen in court and if the individual is interested in what will happen, they are welcomed to go to the court and view the documents. This would take the problem away of the minors receiving information they should not. Sending all information to everyone would put too much of an onus on what the Commission is trying to accomplish because guardianship is a private thing. Mr. Rowe expressed concern regarding the contents of the petition. The contents of the petition have an extraordinary amount of information included. In terms of the individuals in the second degree of consanguinity, it may not be necessary to serve the petition on everyone, the citation should be enough to forge them an appropriate notice that something is happening and they can access information if they choose to take the time to do so. Justice Hardesty stated that was a good point, in the event a judge chooses not to appoint a guardian, a person may have been disclosed very sensitive and private information that they were not entitled to. If a judge were to conclude under the least restrictive means that a guardianship was only needed as to only one area, for example medications, and not to the financial affairs, there would be no reason for unnecessary information to go to siblings or others within the second degree of consanguinity.

Judge Walker stated he more negatively affect the rights of a ward than if he were to convict them of a crime, it would need to be a public proceeding. The legislature had already spoken on this area, the citation is a public document and the action is a public action because the constitutional rights of the ward are invaded by the action and by the continued action. There are things that a person may wish to not be shared in the public sphere but there is a concern regarding openness from the court.

Justice Hardesty stated his suggestion was that portions of the petition, annual reports, and other proceedings be sealed based upon known statutory declarations of confidentiality. It is already required for lawyers to file pleadings that certify that the social security numbers of the subjects in those proceedings are redacted, notwithstanding that requirement; there are lawyers that file pleadings with the subject's social security numbers in them. It is a statutory restraint, there are other statutory limitations on what can be in pleadings, and other public documents filed with the courthouse. The question is if the pleadings the individuals receive should be redacted. Justice Hardesty suggested the pleadings should be redacted and stated there were statutes that require that. Judge Steel stated often times attorneys are not redacting the documents, they have pro pers preparing the pleadings and often times the pro pers do not redact private information and that needs to be taken into consideration.

Ms. Buckley stated if at the time a person is processing the citation a special notice was given to anyone within the second degree of consanguinity, that if there was a presumption that anyone requesting notice within the second degree of consanguinity could receive it, except if the ward did not want them to or other reasons. Those persons interested would receive the special notice, disclose their desire or disinterest to receive notice and mail back the form. Justice Hardesty stated the issue would be if the person would receive the notice, the pleading, or both. Ms. Buckley stated the individuals would get both and summarize the case. Justice Hardesty asked how much of the pleading the person should get, especially when existing statutes state some information is confidential and should not be included in a pleading. At the beginning of a case there may be a different consideration than if a judge were not to grant a guardianship. If the judge were to reject the guardianship, there would not be a village to address. It would be important for the judge to decide if a guardianship would be granted first and then notices would be given consistent with the conversations and the exceptions previously discussed that would have limitations or protections within the documents as to what would be sealed and what would not be sealed.

DRAFT

Mr. Jay Raman stated he would be in favor of all materials being sent to family members within the second degree of consanguinity. There needs to be more transparency amongst family members regarding what is going on with their family member. Many public speakers have stated, "if they had known certain things they would have been more involved or done things differently. The Commission did not receive comments from the public that too much notice had been provided. Mr. Raman provided an example: If a ward is under guardianship due to a mental disability, which makes them believe their family is evil, would the court accept the person's wishes in this case and not provide notice to family, although they might have the best interest of the ward in mind. Mr. Raman suggested a hearing should be held before restricting notice to certain individuals.

Judge Steel stated the definition of a "party" in a guardianship would need to be clarified. Judge Steel suggested adding more information to the citation in order to provide enough information to the individuals receiving notice.

Judge Doherty stated there is a provision currently in statute that allows interested persons to seek the ability to be notified of hearings. Judge Doherty stated if the Commission were to summarize the public comment received throughout the year in a few words, the words would be "I did not know." The Commission would need to be careful to ensure the balance of the rights of the persons facing guardianship. The proceedings should not be closed any more than already are and the Commission should look toward a thorough system of notice. The Commission had no further questions or comments regarding notice.

Justice Hardesty would reach out to Commission members to work on taking into account a notice provision with some of the concepts that were highlighted during the discussion. There is a difference between the kind and type of notice that commences the case and who would receive it and the kind and type of notice sent out afterwards. Expanding the nature of the disclosure in the citation would help with respect to the commencement of the case. The Commission would need review the provisions in the existing statute regarding third-party notice and participation to decide if it is too broad or too narrow. The refined concepts would be discussed with the Commission during the meeting in August.

Data and Technology Subcommittee – Information Sheet

Justice Hardesty asked the Commission to discuss the Data and Technology Subcommittee recommendation. The Commission previously approved the recommendation by unanimous vote, but had not approved the proposed recommended information sheet. The Commission did not have additional comments or questions regarding the Guardianship Information Sheet.

> **Ms. Debra Bookout moved to approve the information sheet. Mr. Jeff Wells seconded the motion. The motion passed unanimously.**

Terminology

The Commission discussed alternative terms to the term ward. Justice Hardesty noted he was in favor of the recommendation to characterize a person who is the subject of a petition to be called a *respondent* in pre-adjudication, and a *protected person* or *protected minor person*, post adjudication. Concerns had been expressed in prior meetings from some sectors of the state with changing the term ward. However, the National Guardian Association's recommendations are worth considering and they reflect best practices. It would be crucial for the Commission to decide on a term in order to complete its final report.

DRAFT

Ms. Susan Sweikert stated she was in favor of using the terms *respondent* and/or *protected person* and *protected minor person* in order to remain consistent with national standards. Ms. Sally Ramm stated the term *respondent* would be confusing for the public. Ms. Terri Russell stated she was in favor of the term-protected *person* because it reminds everyone what is happening and why it is happening. Ms. Russell agreed with Ms. Ramm that the term *respondent* could be confusing to the public. Nevertheless, Ms. Russell stated the term would need to be changed in order to be progressive. Judge Steel stated she had conducted informal surveys of some seniors and all responded that they would not like to be referred to as *wards*. Attorneys and other individuals who work with Judge Steel had stated they would not like the term *ward* changed, it is a term that they are accustomed to. Judge Steel stated the seniors she surveyed preferred the term-protected *person* post-adjudication. Judge Steel stated she was not in favor of the term *respondent*. Justice Hardesty asked if Judge Steel would prefer the term *proposed protected person*, Judge Steel stated she would prefer that term. Ms. Arnold stated if the Commission recommended changing the term *ward*, it would become pejorative over a number of years regardless of what the term's connotations or denotations are. Ms. Arnold did not perceive a valid reason for changing the term *ward*.

Judge Doherty moved to alter the identification of the term now used as *ward* to *proposed protected person* or *proposed protected minor*, prior to adjudication and *protected person* or *protected minor* post adjudication. Ms. Russell seconded the motion.

Mr. Sutton asked if the National Guardian Association had preference to pre adjudication terminology. Justice Hardesty stated the National Probate Standard's preference is *respondent*. Mr. Sutton stated bigger organizations such as the National Guardian Association and the National Probate Standards may push for terminology to be changed, therefore the Commission should change the term in order to remain consistent with national standards. Judge Doherty stated her motion was based on the sense of the consensus of the Commission.

Ms. Heying took a roll call vote. Yeas 21, Nays 1, Abstain 0, Absent/Excused 4.

Attorney Fees

Justice Hardesty stated the Commission would pass on the discussion regarding attorney fees because the Commission was seeking additional information that was not yet available. Justice Hardesty asked Ms. Debra Bookout to assist Ms. Heying in reaching out on some material from her previous presentation and some updates that were identified. Judge Doherty stated her office had an intern working on a memo that she would forward.

Supportive Living Agreements / Power of Attorney

The Commission continued its discussion regarding Supported Living Agreements (SLA) following the June 13 meeting. Justice Hardesty asked the Commission if the statutes that govern Powers of Attorney (POA) and Durable Powers of Attorney (DPOA) adequately cover the scope of the Texas SLA. Justice Hardesty stated his view regarding this topic was that Nevada's POA approach was much like Texas' SLA. Justice Hardesty had asked a law clerk to look into what powers are enumerated in Texas Statutes, which are not included in Nevada's Statutes. If Nevada has more powers than Texas there may not need to be additional work done by the Commission in regards to SLA, Nevada could rely on the existing statutes. Justice Hardesty stated different lawyers approach different POAs in different ways; it may need to be clarified that provisions in one may be combined in provisions in others. There may not need to be a completely new statute to embody Texas' SLAs and call them that when Nevada currently has statutes that do the same thing.

DRAFT

Ms. Arnold stated the current statute provides for different POA, healthcare and financial decisions. Ms. Arnold stated it was a flexible document and a POA can say anything an individual would want it to say and it does not invalidate it. There is flexibility in the concept of the POA already. Mr. Rowe agreed with Ms. Arnold stating what Nevada currently has in place is adequate. Mr. Rowe stated he chooses not to combine them but there is flexibility to do so. Mr. Sutton also agreed stating there was not much that Texas has that Nevada does not already have and Nevada has flexibility in the existing statutes. Ms. Bookout stated she did not see too much difference in the Texas SLA and stated Nevada's statutes would be sufficient.

Judge Doherty stated the concept of the Supportive Decision Making Agreement was to recognize at the outset that the person entering the agreement was not delegating decision-making authority to the assigned supporters. It is not creating an agency relationship as a POA does; it is creating a delegation of authority to execute the decisions that the person with the disability does. The other concept was to create a team approach selected by the person with the disability with trusted individuals, typically more than one, who would execute and assist the person's planning with respect to all aspects of the person's life. Nevada has a good POA statute, which has gotten better but does not necessarily cover all contemplated independent options that a person with a disability has to avoid guardianship. Judge Doherty would compare them further and provide more in depth clarification. Judge Doherty stated she would like information regarding how Texas created the Supportive Decision Making Agreement in relation to their financial POA.

Mr. Conway stated the nature of the POA document is that a person's authority is divested and placed with one other individual, whereas the SLA is not divesting the authority, it allows the person to designate individuals to assist them. Ms. Arnold stated paragraph five on the Durable Power of Attorney for Healthcare Decisions states "notwithstanding this document, you have the right to make medical and other healthcare decisions for yourself, so long as you can give informed consent with respect to the particular decision. In addition, no treatment may be given to you over your objection and healthcare necessary to keep you alive may not be stopped if you object." If an individual had appointed someone, the person had not given away his or her own power, which is important to remember.

Justice Hardesty stated the SLA issue would be tabled until the Commission could review the POA under chapter 162 and 162 (a) and identify recommendations and changes that may be necessary. Nevada is not statutorily deficient in this area.

Public Guardian Office

Justice Hardesty asked Mr. Sutton to update the Commission on the status of the canvass of public guardians around the state. Mr. Sutton stated the canvass had not been completed, about half of the rural counties had provided information. This update and an update on AB 325 would be provided at the next meeting.

Senate Bill 262

Justice Hardesty asked the Commission to discuss the resolution of the role of the Secretary of State, which was precipitated by Senate Bill (SB) 262. The question was concerning why it would be necessary to have a resident agent for non-resident guardians. Judge Steel would like to know what a resident agent's role is and why a ward should have to pay for services when it is unclear what a resident agent is doing for them. Justice Hardesty stated once the resident agent is appointed by the court, they are a party of the proceeding and future notice could be accomplished by mail.

Justice Hardesty stated the topic regarding resident agents would be deferred for Senator Becky Harris to address. Justice Hardesty understood when the bill was passed in the Senate and Assembly, if non-residents wanted to be guardians in Nevada they would need to have someone within the state who could receive the service of process. This was the exact same role that a resident agent would provide for a non-resident corporation who would like to do business in the state. A guardian would be doing business in Nevada although they may not be residents of Nevada. Assemblyman Sprinkle stated it would be fair to say the Legislative intent of passing the bill was that a resident agent would be associated with this. Assemblyman Sprinkle would like confirmation of the legislative intent for the bill from Senator Harris.

Justice Hardesty asked the Commission to respond to Ms. Heying as soon as possible concerning the three potential future meeting dates and thanked the Commission for their participation.

Adjournment

The meeting was adjourned at 4:30 p.m.

DRAFT