

Nevada Supreme Court Permanent Guardianship Commission



November 2, 2018, Meeting Materials

Justice James W. Hardesty, Chair

AGENDA

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 NOTICE AND AGENDA

Name of Organization:

Supreme Court Permanent Guardianship Commission

Date and Time of Meeting: November 2, 2018, 9:30 a.m. to 5:00 p.m.
VIDEOCONFERENCE (Carson City, Las Vegas)

Place of Meeting:

LAS VEGAS	CARSON CITY
Nevada Supreme Court 408 E. Clark Street First Floor Conference Rooms A & B Las Vegas, NV 89101-4088	Nevada Supreme Court 201 S. Carson Street Conference Room 107 (Law Library) Carson City, NV 89701-4702

AGENDA

1. Call to Order

- a. Call of Roll and Determination of Quorum
- b. Approval of Meeting Summaries of July 30, 2018, and September 14, 2018. *See attachments.*
- c. Opening Remarks

2. Public Comment

Because of time considerations, the period for public comment by each speaker may be limited to 3 minutes, and speakers are urged to avoid repetition of comments made by previous speakers.

3. Reports from Second and Eighth Judicial District Court Compliance Officers

- a. Updated Summary Monthly Adult Guardianship Case Status Report (Washoe) *See attached report from Mallory Nelson.*
- b. Updated Report – Regarding Appointment of Counsel and Other Selected Statistics (Clark) *See attached report and 10/23/18 email from Riley Wilson.*

Supreme Court Building ♦ 201 South Carson Street, Suite 250 ♦ Carson City, Nevada 89701 ♦ (775) 684-1700 • Fax (775) 684-1723

Supreme Court Building ♦ 408 East Clark Avenue ♦ Las Vegas, Nevada 89101

4. **Report from Kate McCloskey, Guardianship Compliance Manager**
 - a. Update on County Survey of Recording Fees Collected. *See attachment.*
 - b. Updated Guardianship Compliance Office Status Report. *See attachment.*
 - c. Update from Eighth Judicial District Court regarding Hiring of Guardianship Investigators.
5. **Report from Rules Subcommittee—Submission of Additional Proposed Rules** *See attached rules approved by Rules Subcommittee listed below.*
 - a. DRAFT Rule 9 – Noticing
 - b. DRAFT Rule 10 – Attorney Fee Petitions and Payments
 - c. DRAFT Rule 11 – GAL
 - d. DRAFT Rule 12 – Attorneys for Protected Persons
 - e. DRAFT Rule 14 – Termination of Guardianships For Non-Compliance With No Further Identification of Whether a Guardianship Remains Necessary, and if so, a Successor Guardian.
 - (i) Proposed Rule 14 Termination of Guardianships—For Minor Guardianships only. *See attached proposed rule from Sabrina Sweet.*
 - f. DRAFT Rule 23 – Status Hearings After Establishment of Guardianship
 - g. DRAFT Rule 24 – Operating Accounts and Bonds
6. **Continued Discussion re Possible Amendments of 2017 Legislation**
 - a. Judicial Department Bill Draft Request. *See attachment.*
 - b. Create a statutory framework for guardianship succession or a standby guardian. *See attachment – RCWA 11.88.125.*
 - c. Redline of NRS 159.0807 Notice of Intent to Move/Change of Location procedures. [updated report from Karen Kelly]
 - d. Redline of NRS 159.154 to create priority/right of refusal for family members when disposing of a protected person’s property. [Discussion Completed]
 - e. Expansion of existing statutory guidelines regarding issuance of temporary guardianships. *See attached redline review of UGCOPAA Article 5 (John Michaelson)*
 - f. Proposed revision of NRS 159.179 regarding receipts and vouchers. [Discussion Completed]
 - g. Update from Shelly Register regarding waiver of service. [Discussion Completed]
 - h. Update from Shelly Register regarding protected persons being allowed to change appointed counsel. (Deferred from September agenda.) Because of the confidential nature of the documentation, materials for this portion of the agenda will be provided to Commission Members separately.
 - i. Minor Guardianship Statutes: Possible creation of uniform procedures to transfer minor guardianship into Nevada from other states. *See attached memo from Sabrina Sweet.*

- j. Discussion on Mediation training and possible creation of manual. *See attached redline and clean versions of Nevada Mediation Manual from Hank Cavallera and Homa Woodrum. Also see attached proposed DRAFT Rule 18 – Mediation (information only).*
 - k. Suggested revision of NRS 159.081 Reports of the Guardian. [Discussion Completed]
 - l. Proposed revision of NRS 159.0535—Attendance of proposed protected person at hearing. *See attached redline from Jennifer Richards.*
7. **Report from Jennifer Rains regarding Assisted Outpatient Treatment (AOT) and Discussion of Possible Resolution to Prepare Letter to Governor and Legislature Urging Consideration of AOT** *See attached emails dated 10/19/18 and 10/25/18.*
8. **Public Comment**
Because of time considerations, the period for public comment by each speaker may be limited to 3 minutes, and speakers are urged to avoid repetition of comments made by previous speakers.
9. **Adjournment**

AGENDA ITEM 1(b)
July 30, 2018, Meeting Summary

AGENDA ITEM 1(b)

September 14, 2018, Meeting Summary

AGENDA ITEM 3

**Reports from Second
and
Eighth Judicial District Court
Compliance Officers**

AGENDA ITEM 3(a)

**Updated Summary Monthly Adult Guardianship
Case Status Report (Washoe)**

SECOND JUDICIAL DISTRICT COURT ADULT GUARDIANSHIP CASE STATUS REPORT

Second Judicial District Court



State of Nevada
Washoe County

September 2018

Honorable Egan Walker
Summary Monthly Adult Guardianship
Case Status Report

Table of Contents

1.0 Caseload Reports

- 1.1 - Status of Pending Adult Guardianship Cases
- 1.2 - New Adult Guardianship Case Filings for the Last 12 Full Months
 - 1.2.1 - New Adult Guardianship Case Filings - 15 Year Trend
- 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

2.0 Additional Caseload Statistics

- 2.1 - Timeliness of First Hearing
 - 2.1.1 - Timeliness of First Hearing on Full Petition
 - 2.1.2 - Timeliness of First Hearing on Temporary and Extended Petition
- 2.2 - Alternative Dispute Resolution
 - 2.2.1 - Scheduled Mediations for the Last 12 Full Months
 - 2.2.2 - Scheduled Settlement Conferences for the Last 12 Full Months
- 2.3 - Count of Annual Reports and Inventories Filed for the Last 12 Full Months
- 2.4 - Guardianship Review Comparison
- 2.5 - Blocked Trust / Bond Waiver Reasons
- 2.6 - Court Appointed Counsel

3.0 Compliance Reports

- 3.1 - Milestones for all Adult Guardianship Cases
- 3.2 - Inventories and Annual Accountings
- 3.3 - Proof of Blocked Trust or Bond
- 3.4 - Certificate of Compliance
- 3.5 - Notice of Firearms Restrictions (left blank)

4.0 Demographic Data

- 4.1 - Adult Subject to Guardianship - Placement
- 4.2 - Adult Subject to Guardianship - Age Breakdown
- 4.3 - Types of Guardians

Caseload Reports

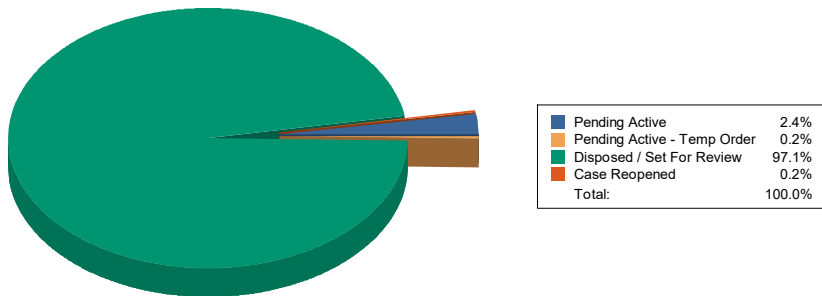
1.1 - Status of Pending Adult Guardianship Cases

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	12	5	4	2	0	0	23
Pending Active - Temp Order	0	0	0	2	0	0	2
Disposed / Set For Review	173	508	119	90	23	7	920
Case Reopened	2	0	0	0	0	0	2
Total	187	513	123	94	23	7	947

Pending Adult Guardianship Cases

Grouped by Status



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.

Reopened: A count of cases in which judgments have previously been entered but which have been restored to the courts pending caseload due to the existing filing of a request to modify or enforce existing judgments.

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.

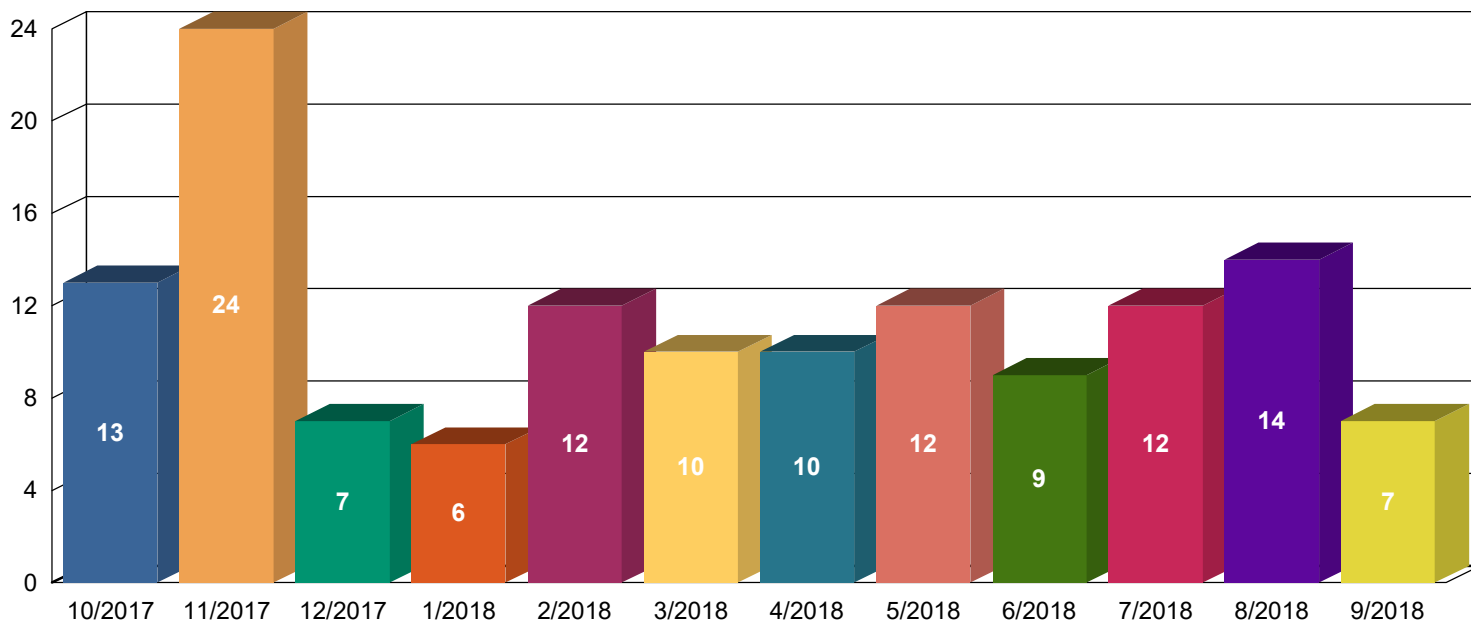
Caseload Reports

1.2 - New Adult Guardianship Cases

New Adult Guardianship cases filed in the previous 12 months.

New Case Filings

Last 12 Full Months



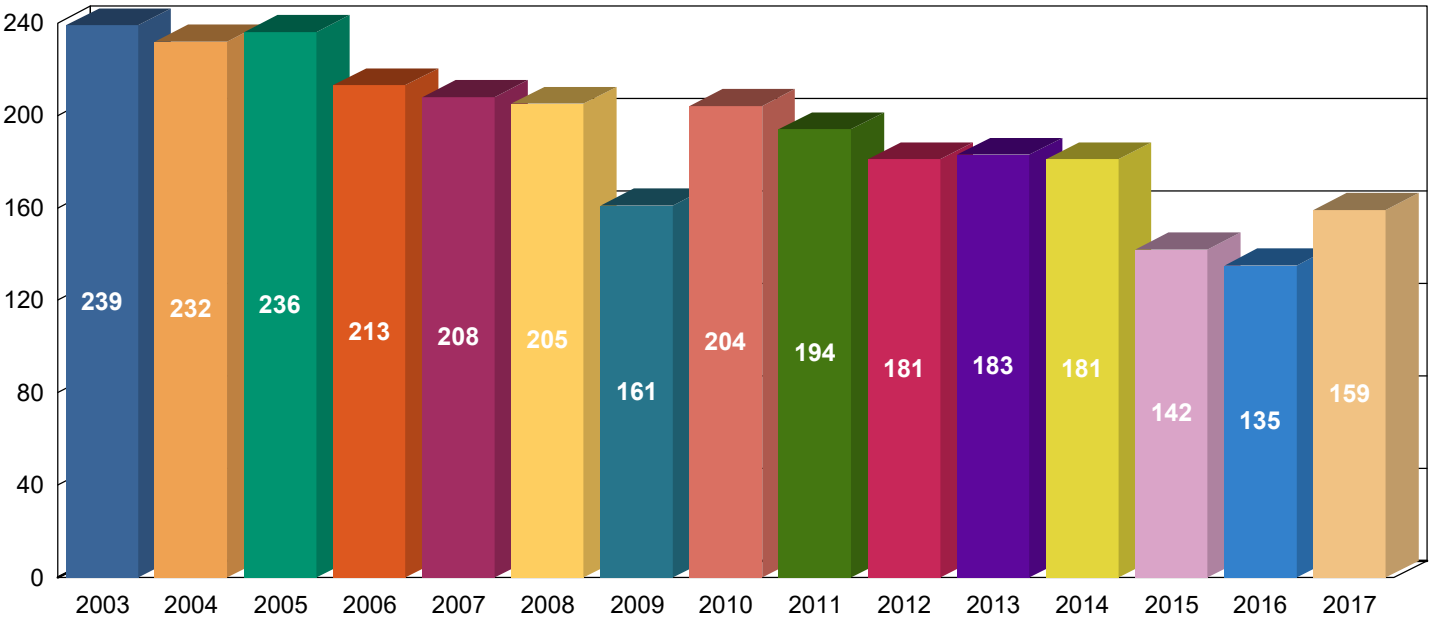
Caseload Reports

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

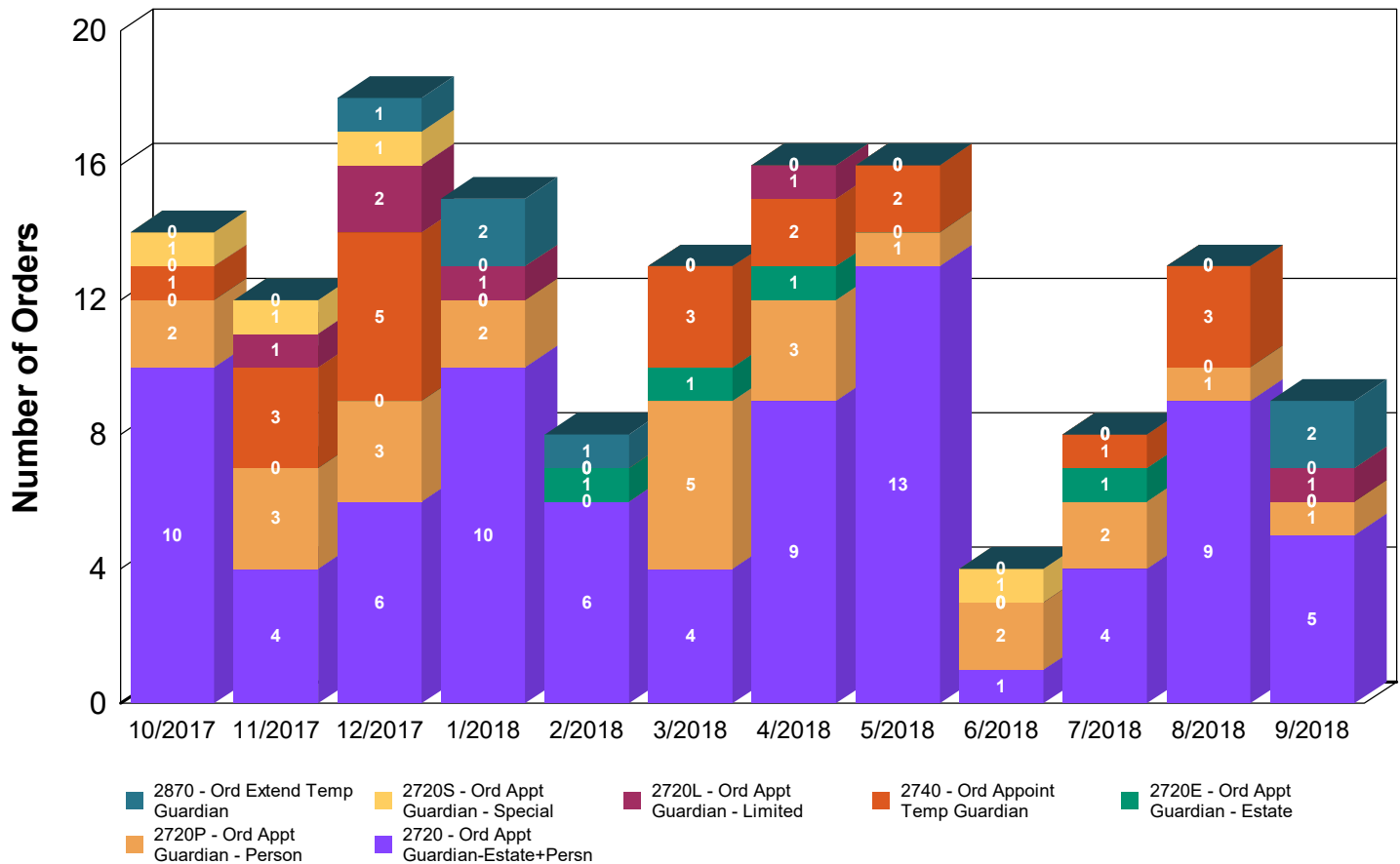
A. Probate courts should find that no less intrusive appropriate alternatives exist before the appointment of a guardian or conservator.

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 tailor the scope of and tailor the guardianship or conservatorship order to the particular needs, functional capabilities, and limitations of the respondent.

	10/2017	11/2017	12/2017	1/2018	2/2018	3/2018	4/2018	5/2018	6/2018	7/2018	8/2018	9/2018	Total
2720 - Ord Appt Guardian-Estate+Persn	10	4	6	10	6	4	9	13	1	4	9	5	81
2720P - Ord Appt Guardian - Person	2	3	3	2	0	5	3	1	2	2	1	1	25
2720E - Ord Appt Guardian - Estate	0	0	0	0	1	1	1	0	0	1	0	0	4
2740 - Ord Appoint Temp Guardian	1	3	5	0	0	3	2	2	0	1	3	0	20
2720L - Ord Appt Guardian - Limited	0	1	2	1	0	0	1	0	0	0	0	1	6
2720S - Ord Appt Guardian - Special	1	1	1	0	0	0	0	0	1	0	0	0	4
2870 - Ord Extend Temp Guardian	0	0	1	2	1	0	0	0	0	0	0	2	6
Total	14	12	18	15	8	13	16	16	4	8	13	9	146

Types of Guardianships Ordered



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). The average time to disposition for pending active cases may fluctuate significantly in a particular month depending upon various factors, which include whether a continuance is necessary due to notice deficiencies, objections to the guardianship, or where the parties did not set a hearing on the petition shortly after its filing.

	<u>10/2017</u>	<u>11/2017</u>	<u>12/2017</u>	<u>1/2018</u>	<u>2/2018</u>	<u>3/2018</u>	<u>4/2018</u>	<u>5/2018</u>	<u>6/2018</u>	<u>7/2018</u>	<u>8/2018</u>	<u>9/2018</u>	<u>Total</u>
Average Number of Days	72.8	88.6	70.5	86.9	89.3	87.7	83.5	43.3	62.8	47.4	56.5	62.5	71.69

Caseload Reports

1.5 - Adult Guardianship Cases Disposed.

State of Nevada - USJR definitions are provided in Appendix A.

	<u>10/2017</u>	<u>11/2017</u>	<u>12/2017</u>	<u>1/2018</u>	<u>2/2018</u>	<u>3/2018</u>	<u>4/2018</u>	<u>5/2018</u>	<u>6/2018</u>	<u>7/2018</u>	<u>8/2018</u>	<u>9/2018</u>	<u>Total</u>
First Dispositions													
Bench N/J/T Judgment Reached	14	13	16	14	6	9	13	13	2	6	10	9	125
Other Manner of Disposition	2	1	5	0	1	2	0	0	1	1	9	0	22
Setld/Withdrn w/o Jud Conf/Hrg	4	2	1	0	1	1	0	0	3	1	0	0	13
Transferred	0	0	1	1	1	0	1	1	0	0	0	0	5
Involuntary Dismissal	1	0	0	0	0	0	0	0	2	0	1	0	4
Setld/Withdrn with Jud Conf/Hg	1	0	0	0	1	0	1	0	1	0	0	0	4
Voluntary Dismissal	0	0	1	0	0	0	0	0	0	0	0	0	1
Voluntary Dismissals	0	0	0	0	0	1	0	0	0	0	0	0	1
Total	22	16	24	15	10	13	15	14	9	8	20	9	175
Final Dispositions													
Guard: Death	10	11	20	9	11	5	13	16	26	7	7	2	137
Guard: Restoration/Competency	1	1	2	1	0	1	1	4	2	0	2	2	17
Order Term Guard or Final Actg	0	0	1	1	2	2	0	0	1	0	2	0	9
Total	11	12	23	11	13	8	14	20	29	7	11	4	163

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.

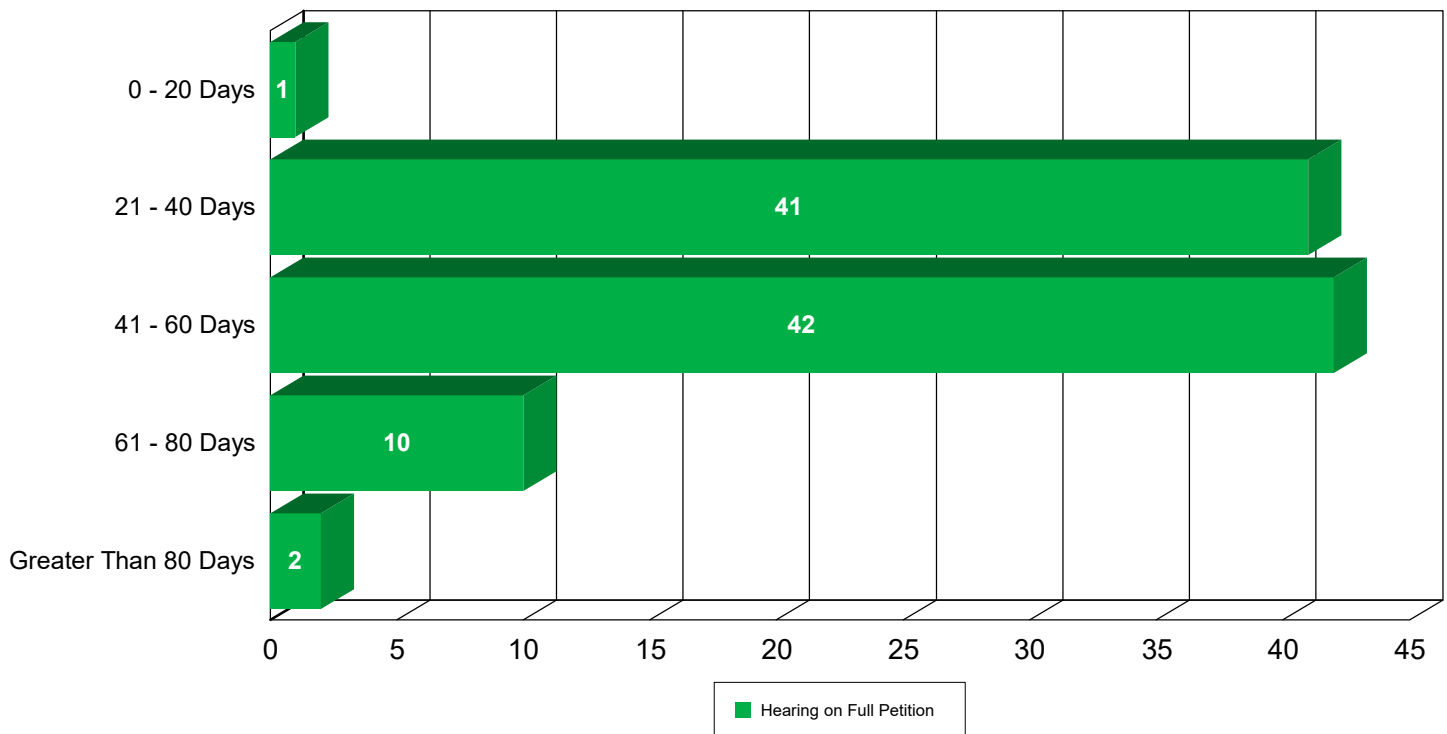
NPCS 3.3.8 Hearing

- 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 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>Greater Than 80 Days</u>	<u>Total</u>
Hearing on Full Petition	Granted	0	30	24	2	0	56
	Continued	0	9	15	8	1	33
	Denied	1	1	0	0	0	2
	Vacated	0	0	2	0	0	2
	Others	0	1	1	0	0	2
	Dismissed	0	0	0	0	1	1
	Total	1	41	42	10	2	96

Calendar 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.

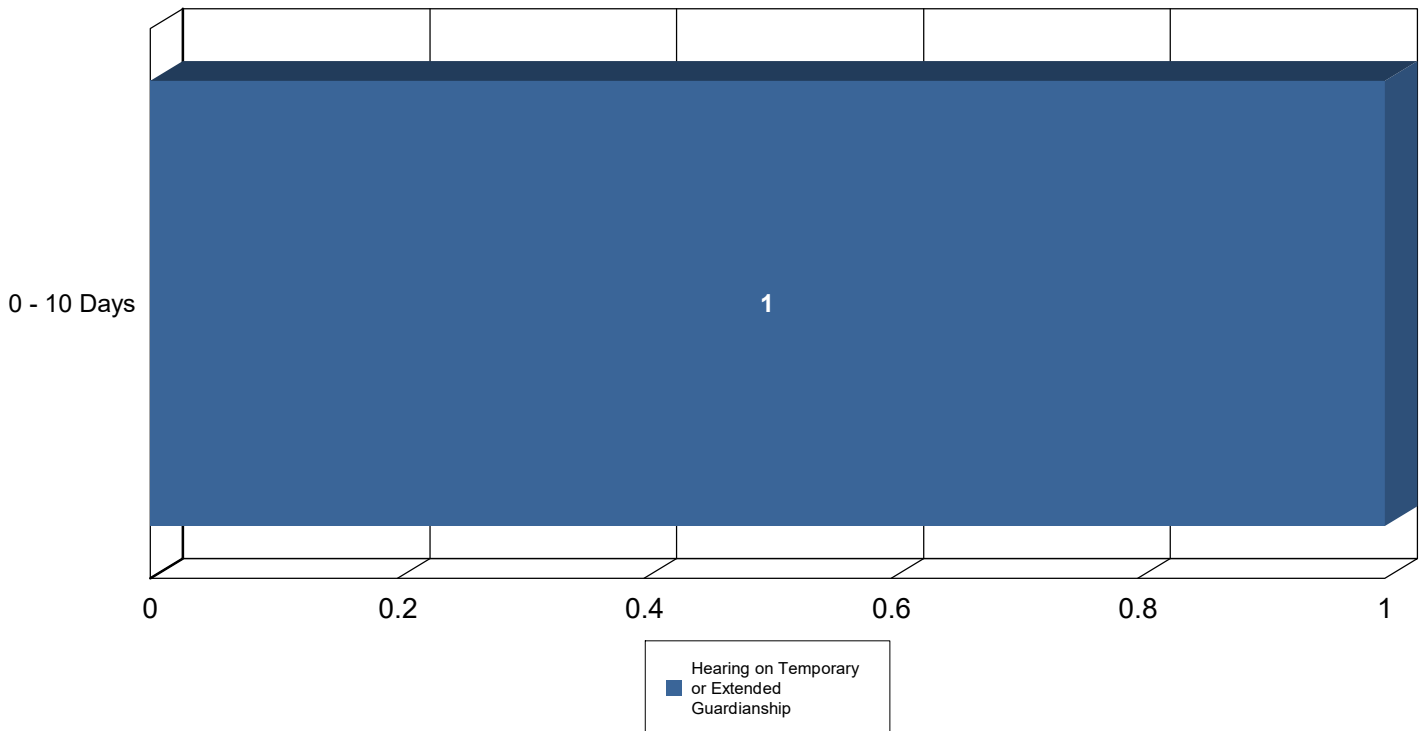
NPCS 3.3.8 Hearing

- 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 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>Total</u>
Hearing on Temporary or Extended Guardianship	<u>Granted</u>	1	1
	Total	1	1

Calendar 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

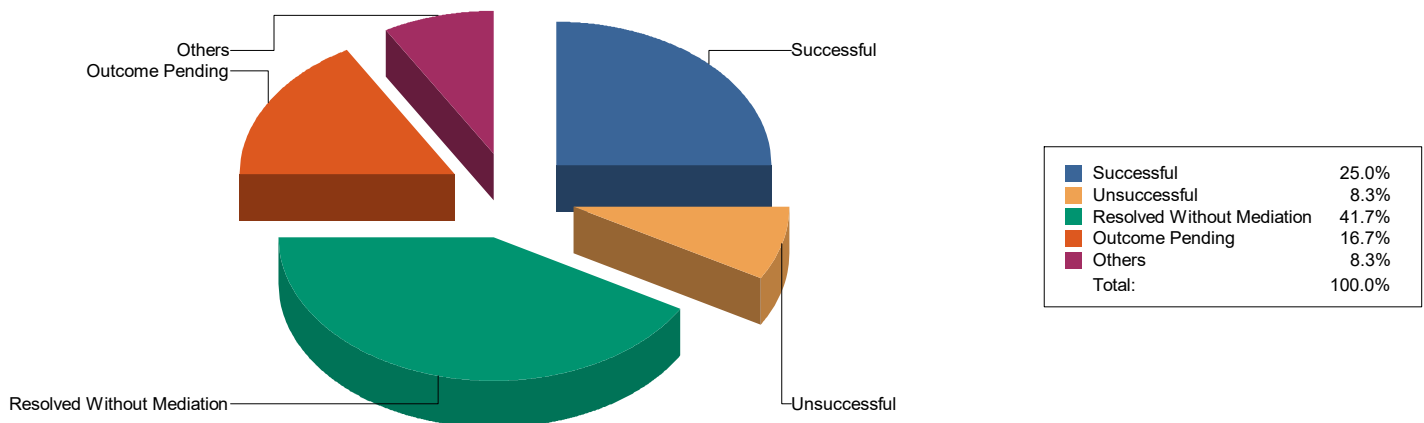
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- C. In the absence of governing statutes, probate courts, taking into account the wishes of the respondent, should use their inherent or equity powers to limit the scope of and tailor the guardianship or conservatorship order to the particular needs, functional capabilities, and limitations of the respondent.

	10/2017	11/2017	12/2017	1/2018	4/2018	5/2018	6/2018	7/2018	9/2018	Total
Successful	0	0	2	0	0	1	0	0	0	3
Unsuccessful	1	0	0	0	0	0	0	0	0	1
Resolved Without Mediation	0	1	0	1	1	0	1	1	0	5
Outcome Pending	0	0	0	1	0	0	0	0	1	2
Others	1	0	0	0	0	0	0	0	0	1
Total	2	1	2	2	1	1	1	1	1	12

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

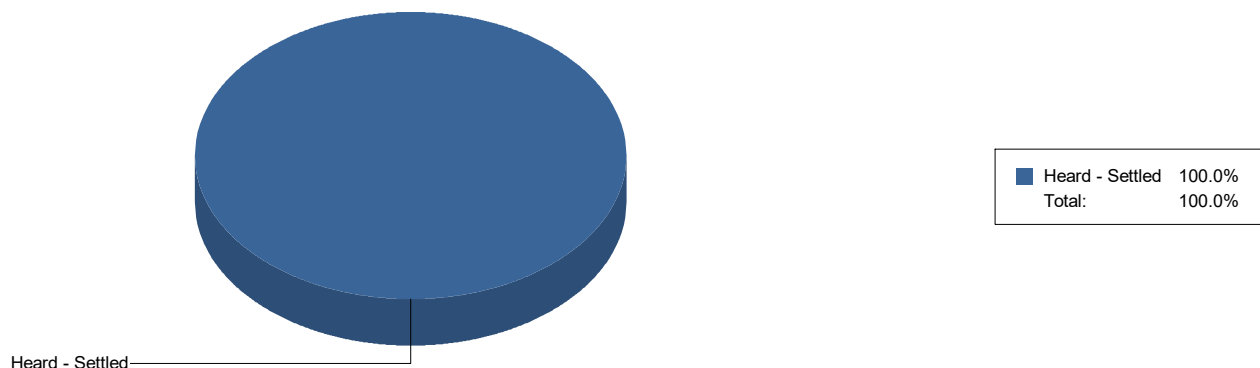
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	<u>4/2018</u>	<u>7/2018</u>	<u>Total</u>
Heard - Settled	2	2	4
Total	2	2	4

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>10/2017</u>	<u>11/2017</u>	<u>12/2017</u>	<u>1/2018</u>	<u>2/2018</u>	<u>3/2018</u>	<u>4/2018</u>	<u>5/2018</u>	<u>6/2018</u>	<u>7/2018</u>	<u>8/2018</u>	<u>9/2018</u>	<u>Total</u>
Accounting	17	12	12	8	16	13	15	17	7	18	21	18	174
Annual Report of Guardian	69	35	49	38	53	56	64	75	60	44	71	58	672
Inventories	18	6	15	16	8	14	18	9	12	23	10	8	157
Total	104	53	76	62	77	83	97	101	79	85	102	84	1,003

Additional Caseload Statistics

2.4 - Guardianship Review Comparison

The below table and chart show the number of types of guardianship cases that are pending active or set for review. Data regarding the estate value of new cases is typically entered upon submission of the inventory and/or entry of the order appointing guardian.

Guardianship - Estate Only	Non-Summary	\$0 - \$10,000	Total 3
		\$10,000 - \$20,000	1
		\$20,000 - \$200,000	11
		\$200,000 and up	1
		Total	16
	Summary	\$0 - \$10,000	7
		Total	7
Total			23
Guardianship - Person & Estate	Non-Summary	\$0 - \$10,000	4
		\$10,000 - \$20,000	14
		\$20,000 - \$200,000	81
		\$200,000 and up	72
		Total	171
	Summary	\$0 - \$10,000	502
		Total	502
Total			673
Guardianship - Person Only		\$0 - \$10,000	234
		Total	234
Total			234
No Data Entered		Others	37
		Total	37
Total			37

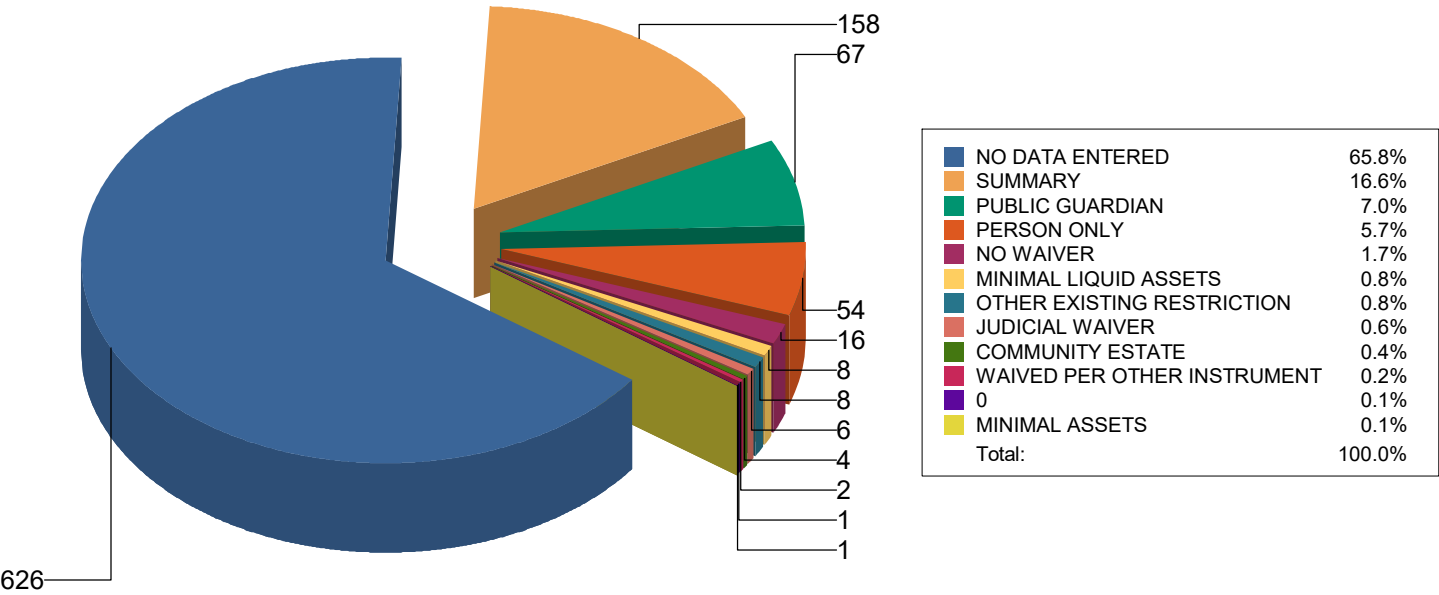
Combined Values of Estates: \$99,363,507.00

Additional Caseload Statistics

2.5 - Blocked Trust Account / Bond Waiver Information

	Total
NO DATA ENTERED	626
SUMMARY	158
PUBLIC GUARDIAN	67
PERSON ONLY	54
NO WAIVER	16
MINIMAL LIQUID ASSETS	8
OTHER EXISTING RESTRICTION	8
JUDICIAL WAIVER	6
COMMUNITY ESTATE	4
WAIVED PER OTHER INSTRUMENT	2
0	1
MINIMAL ASSETS	1
Total	951

Waiver Reasons



Additional Caseload Statistics

2.6 - 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:

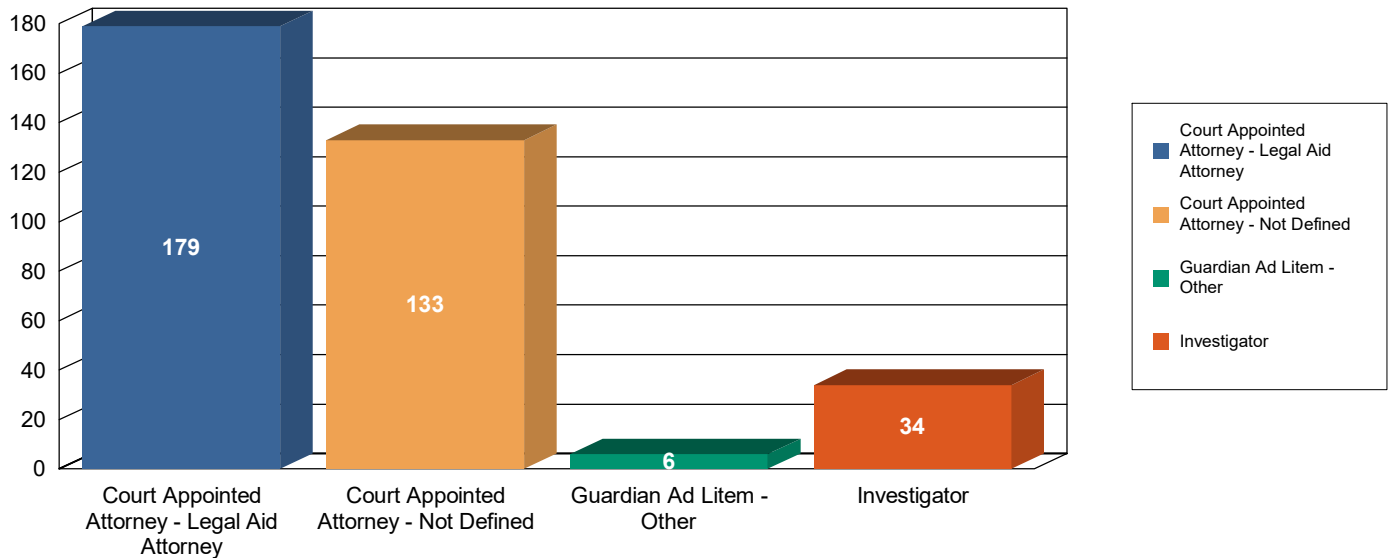
- (1) Requested by the respondent; or
- (2) Recommended by the visitor; or
- (3) The court determines that the respondent needs representation; or
- (4) Otherwise required by law.

B. The role of counsel should be that of an advocate for the respondent.

	10/2017	11/2017	12/2017	1/2018	2/2018	3/2018	4/2018	5/2018	6/2018	7/2018	8/2018	9/2018	Total
Court Appointed Attorney - Legal Aid Attorney	6	8	1	4	4	7	6	18	36	26	42	21	179
Court Appointed Attorney - Not Defined	6	13	5	5	4	13	15	15	21	8	4	24	133
Guardian Ad Litem - Other	1	1	0	3	0	1	0	0	0	0	0	0	6
Investigator	2	1	1	0	1	4	3	3	5	3	9	2	34
Total	15	23	7	12	9	25	24	36	62	37	55	47	352

Appointment of Counsel

Past 12 Full Months



Total Appointments: 352

Please Note: The 'Investigator' category includes appointment of Washoe County Public Guardian and/or the State Guardianship Compliance Office on a case.

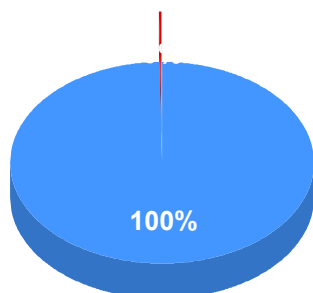
Compliance Reports

3.1 - Milestones for all Adult Guardianship Cases

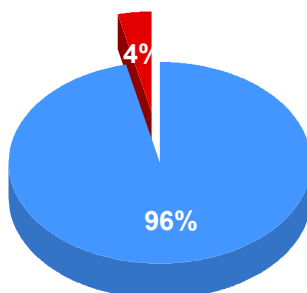
Every adult guardianship case requires the filing of the following:

- Order Appointing Counsel
- Letters of Guardianship
- Guardians Acknowledgment
- Annual Report of Guardian

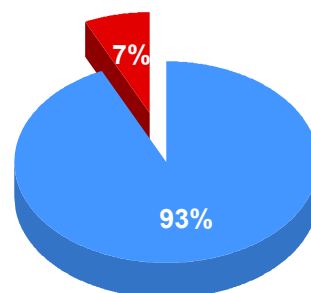
Compliance rate for **696** cases, filed from 2008 to present.



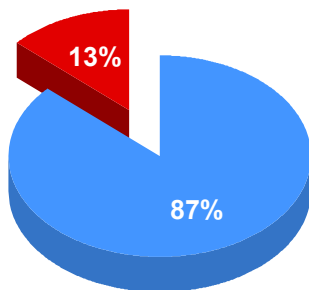
2715 - Ord Appointing Counsel



1910 - Letters of Guardianship



1780 - Guardian's Acknowledgment



1125 - Annual Report of Guardian

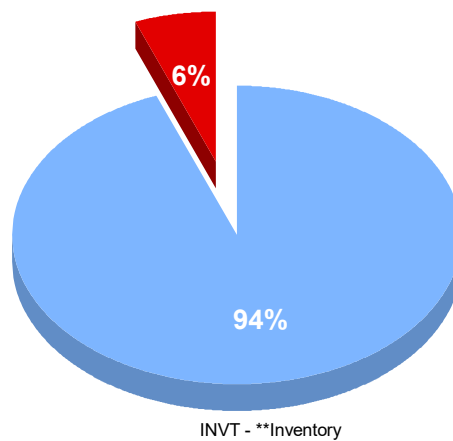
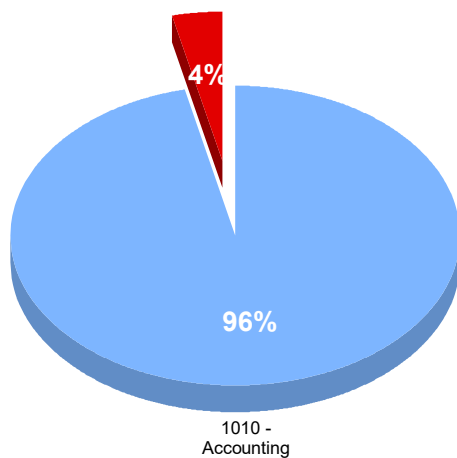
■ @Compliant ■ @Noncompliant

Compliance Reports

3.2 - Inventories and Annual Accountings

A small set of cases require the filing of an Inventory and Annual Accounting.

Compliance rate for **527** cases, filed from 2008 to present.

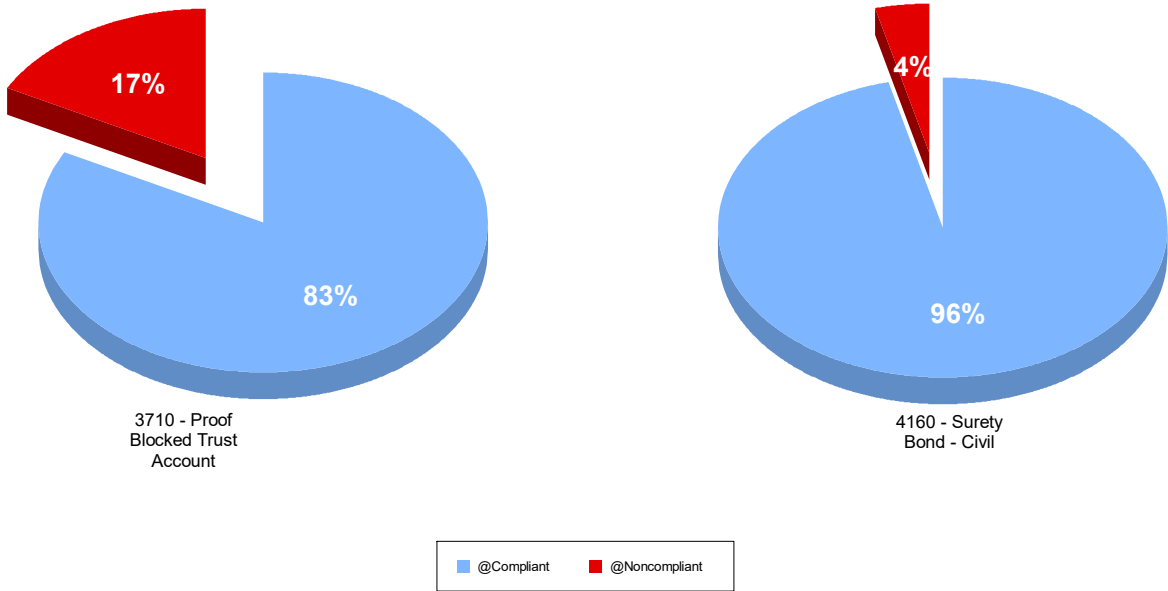


Compliance Reports

3.3 - Blocked Trust / Bonds

A small set of cases require the filing of a blocked trust or bond.

Compliance rate for 52 cases, filed from 2008 to present.



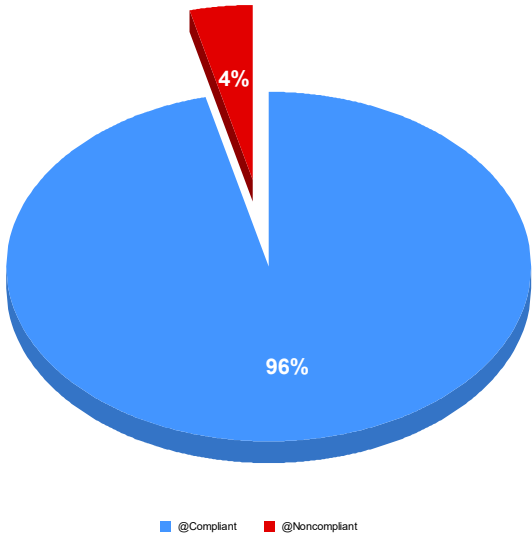
Compliance Reports

3.4 - Certificate of Compliance

Must be filed after completion of guardianship training.

Compliance rate for 155 cases, filed from 2008 to present.

Please Note: State training for guardians was not available until 2015. Public and private professional guardians are not required to complete the training and aren't represented in this data.



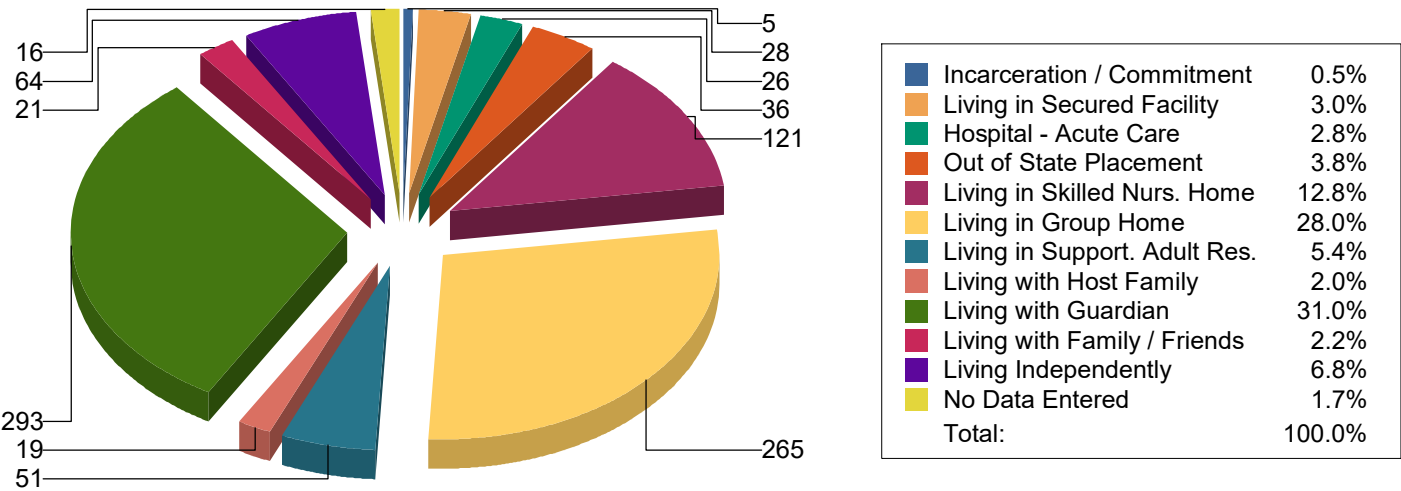
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Demographics
4.1 - Placement

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



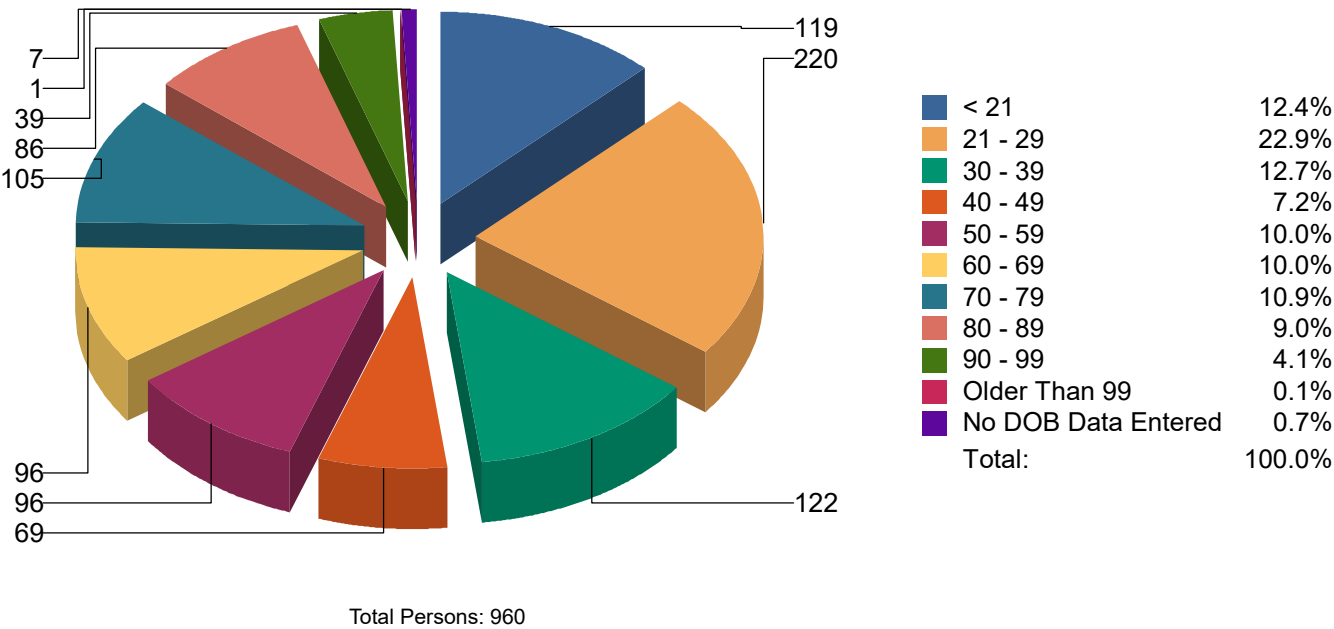
Total Placements: 945

Demographics

4.2 - 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

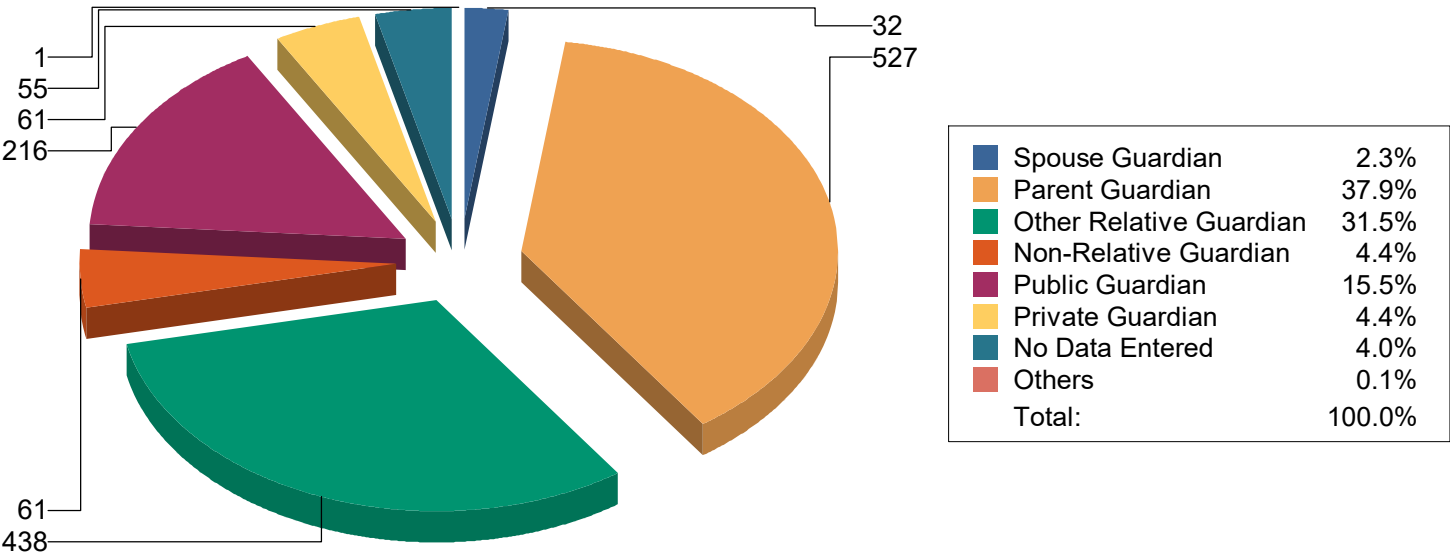


Demographics

4.3 - 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 Ward's 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 NRS 449.017.

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.

AGENDA ITEM 3(b)

**Updated Report – Regarding Appointment of
Counsel and Other Selected Statistics (Clark)**

EIGHTH JUDICIAL DISTRICT COURT

Information Regarding Appointment of Counsel and Other Selected Guardianship Statistics

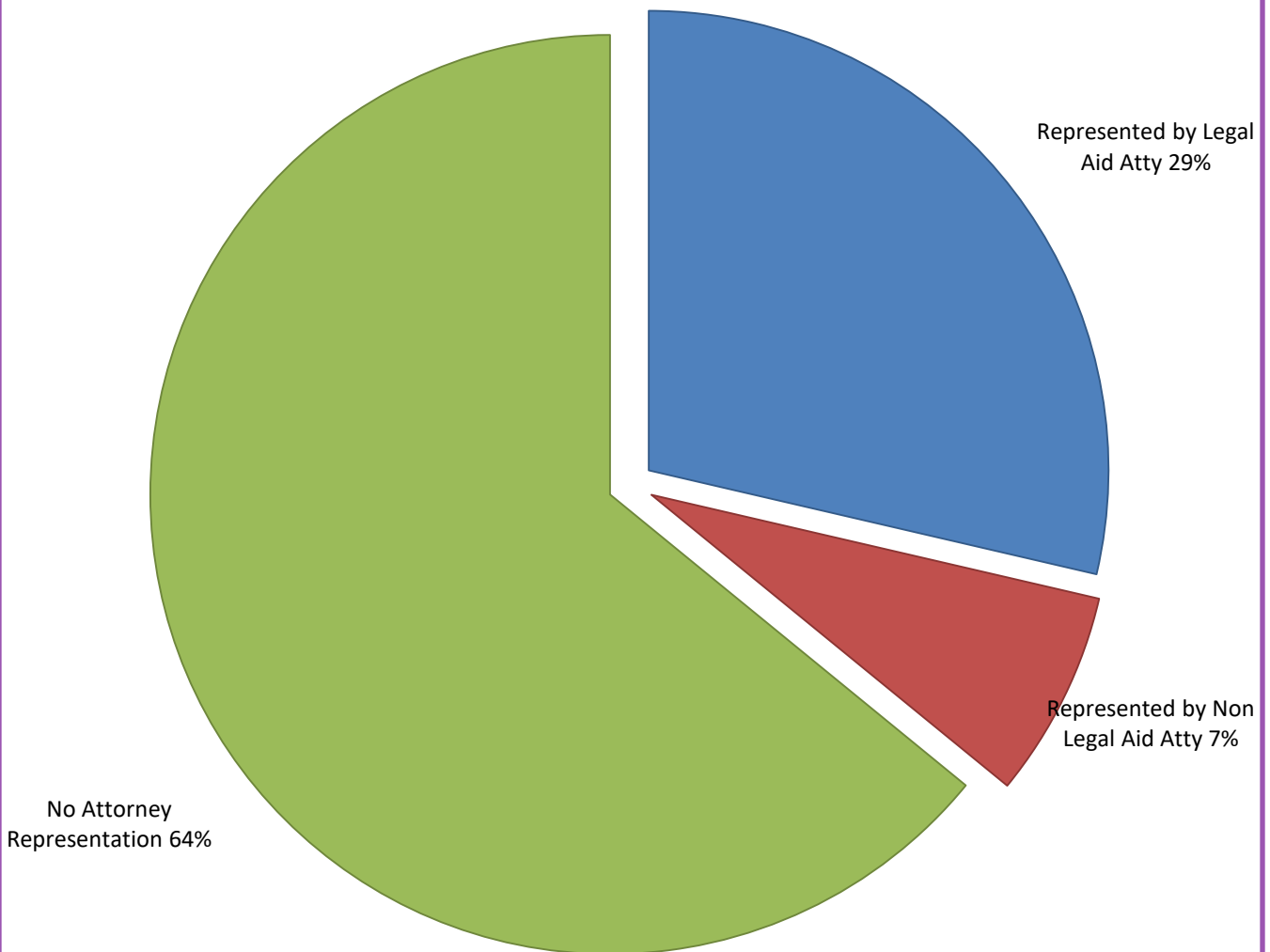
November 2, 2018

Nevada Supreme Court
Permanent Guardianship Commission Meeting

Adult Cases

Protected Person Represented by an Attorney

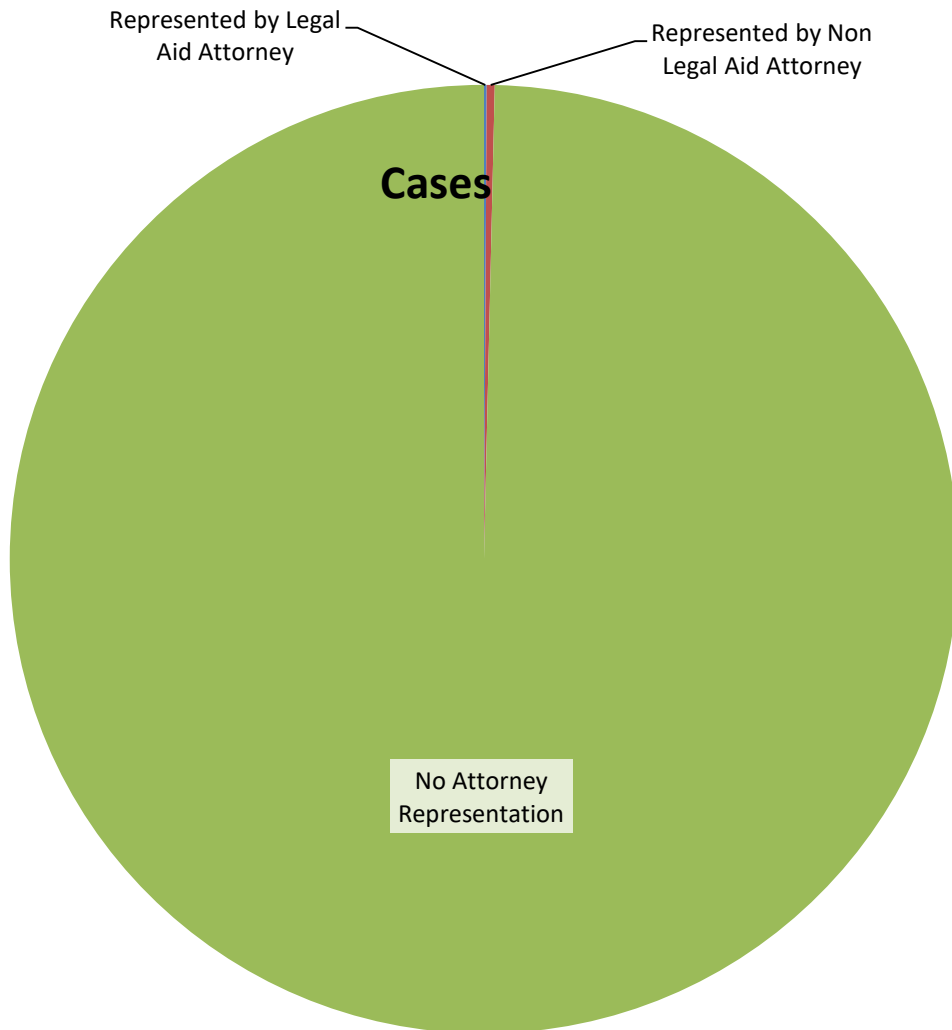
Representations	Case Count
Represented by Legal Aid Attorney	826
Represented by Non Legal Aid Attorney	210
No Attorney Representation	1,849
Total	2,885



Minor Cases

Protected Person Represented by Attorney

Representations (Minors)	Case Count
Represented by Legal Aid Attorney	4
Represented by Non Legal Aid Attorney	12
No Attorney Representation	4,394
Total	4,410

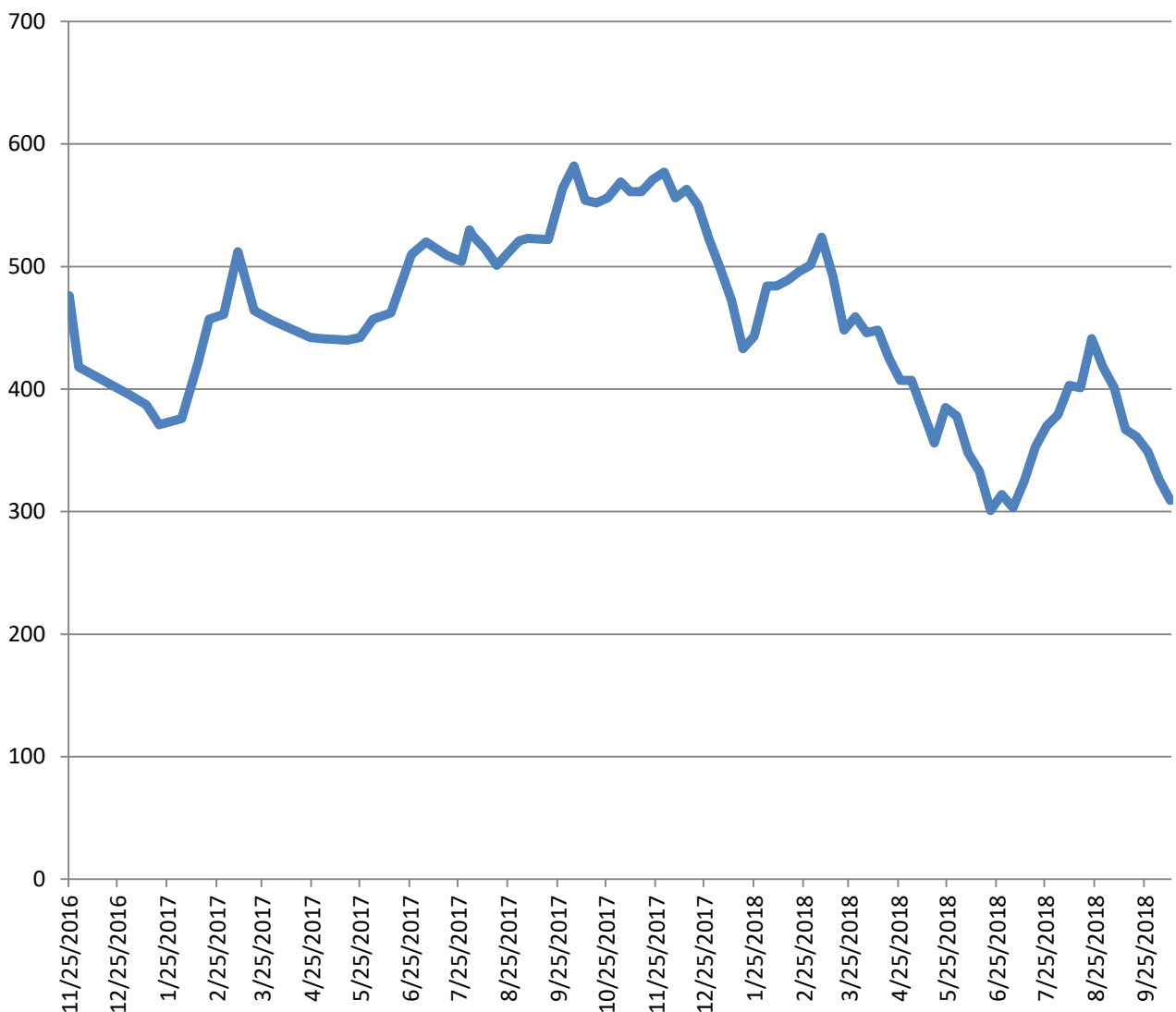


Total Number of Cases for Eighth Judicial District

- Adults Under Guardianship: 2903
- Adult Cases: 2885
- Minors Under Guardianship: 5777
- Minor Cases: 4410

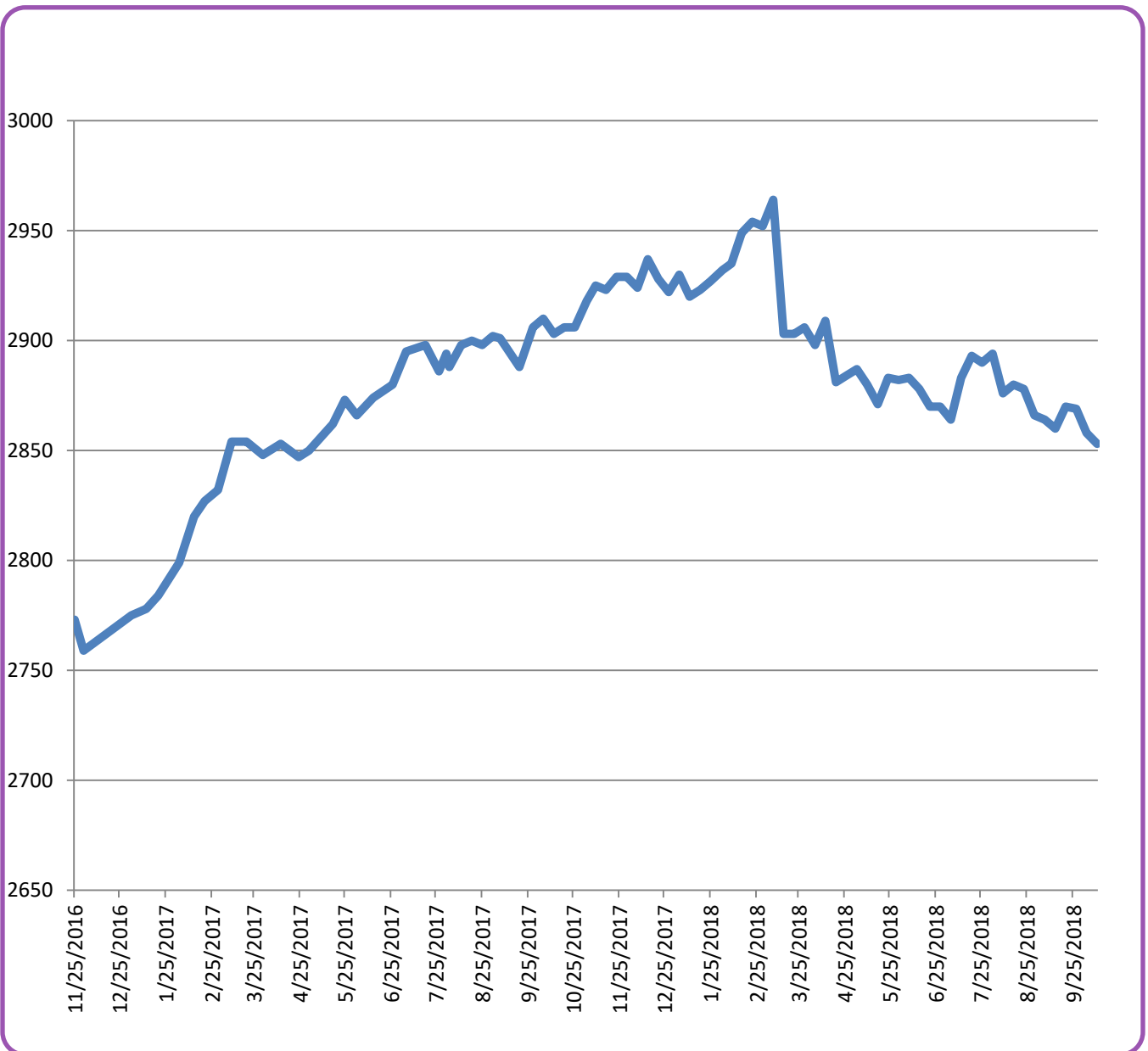
Adult Statistics

Total number of adult cases which are open and reopen.



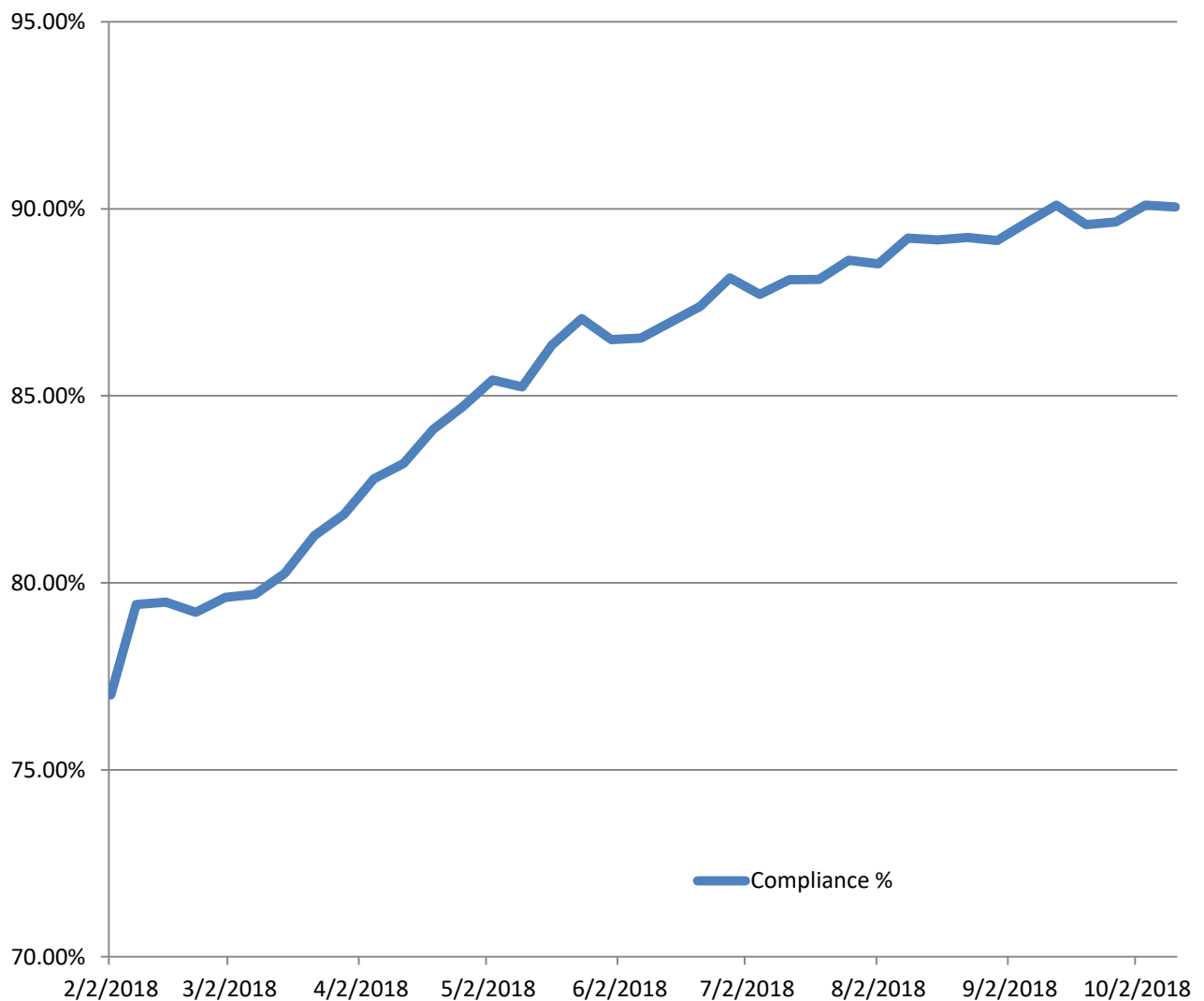
Adult Statistics, Continued:

Total Number of Adult Cases.
(includes cases without any pending hearings)

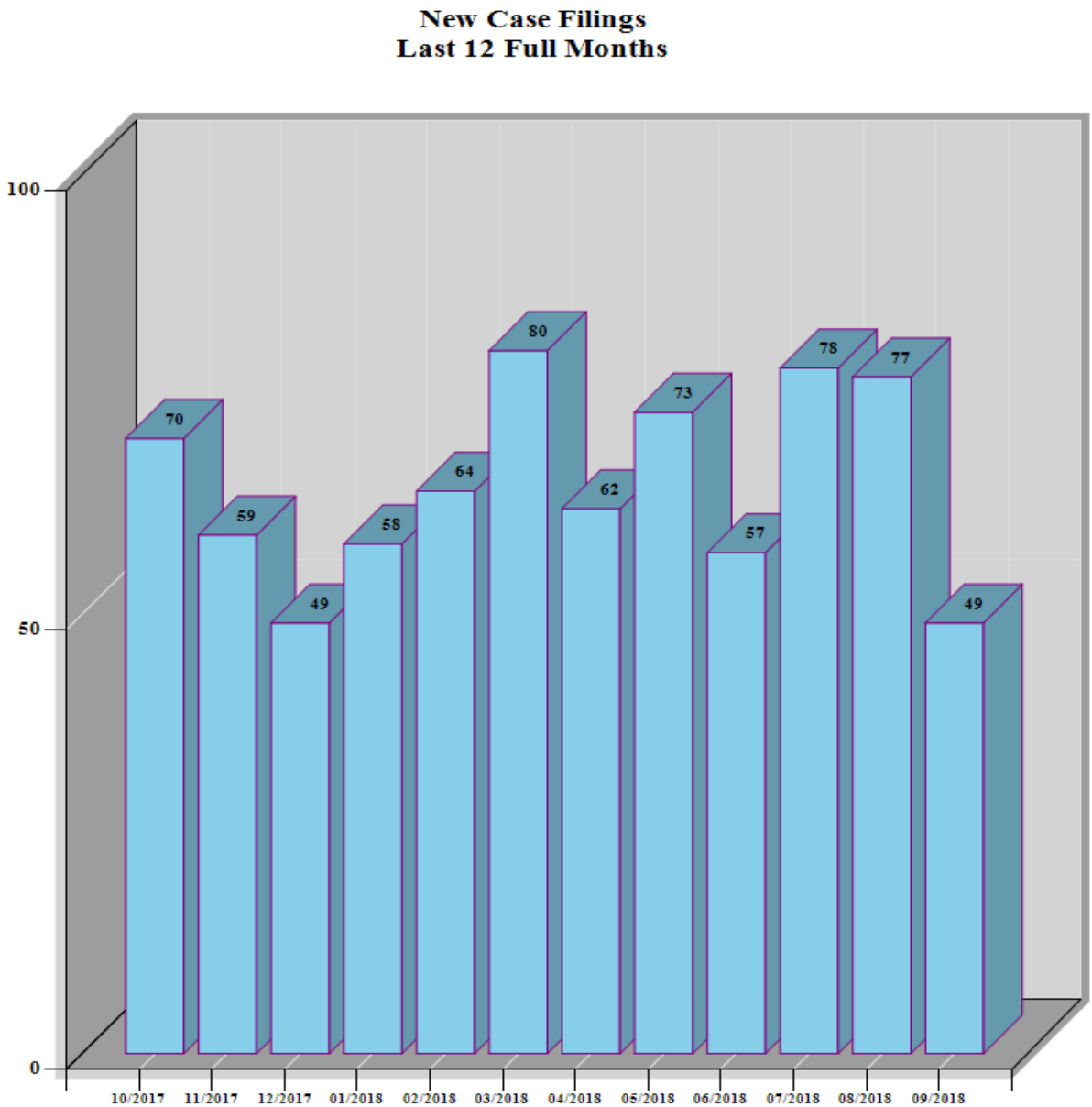


Adult Statistics, Continued:

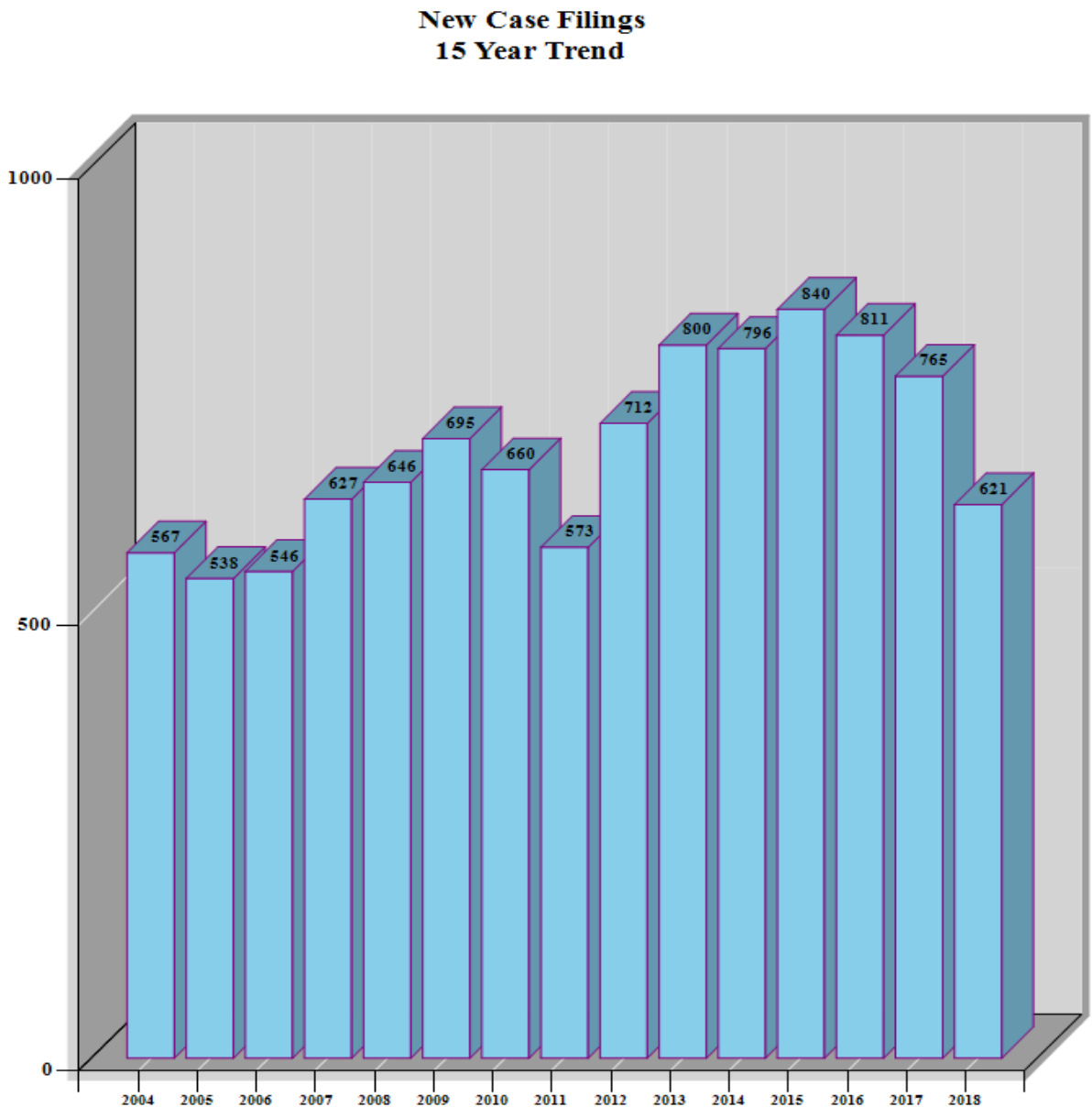
Percent of Adult Cases which have filed the statutorily required documents.



New Adult Case Filings in the Last 12 Months

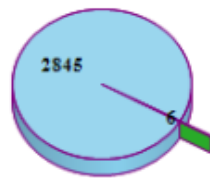


Adult Statistics Continued:



Adult Statistics Continued:

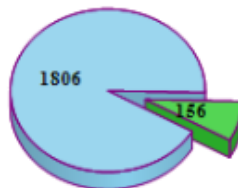
Letters of Guardianship



Compliant
Non-Compliant

Compliant	Non-Compliant
99.79%	0.21%

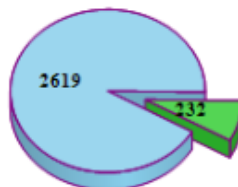
Guardian's Acknowledgment of Duties



Compliant
Non-Compliant

Compliant	Non-Compliant
92.05%	7.95%

Annual Report of Guardian

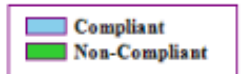
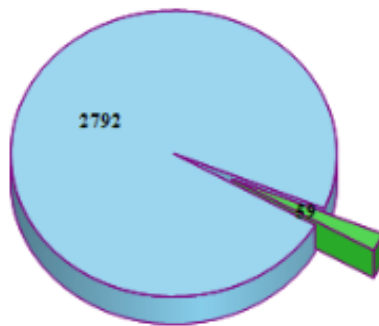


Compliant
Non-Compliant

Compliant	Non-Compliant
91.86%	8.14%

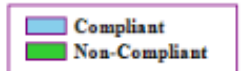
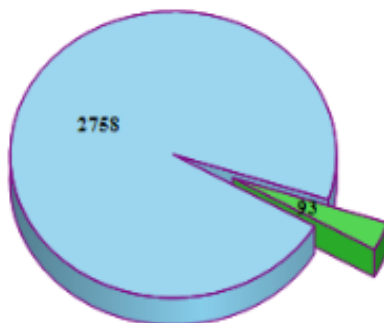
Adult Statistics Continued:

Accounting



Compliant	Non-Compliant
97.93%	2.07%

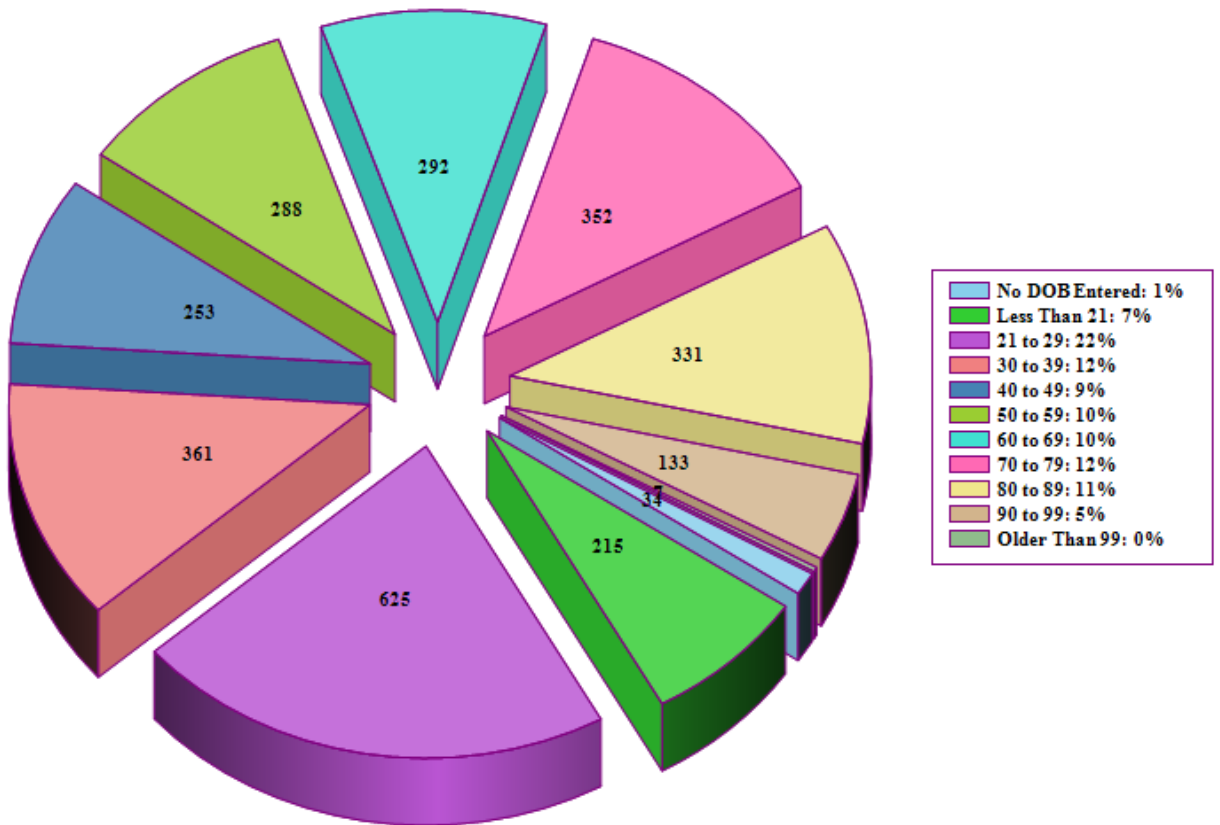
Inventory



Compliant	Non-Compliant
96.74%	3.26%

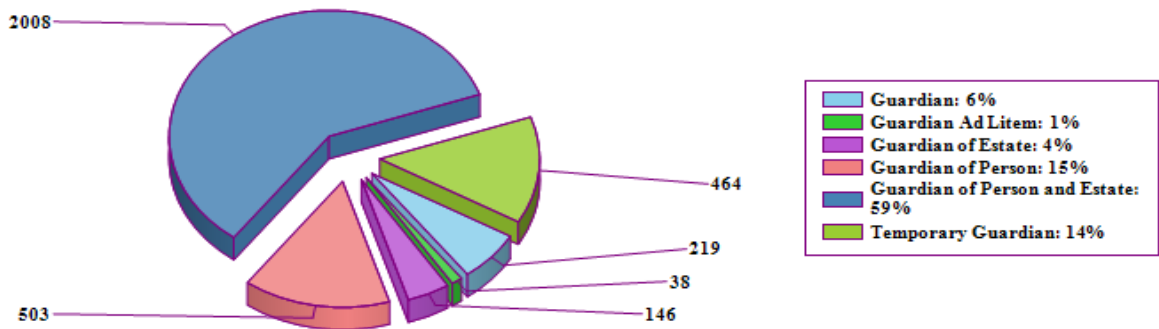
Adult Statistics Continued:

Age Breakdown



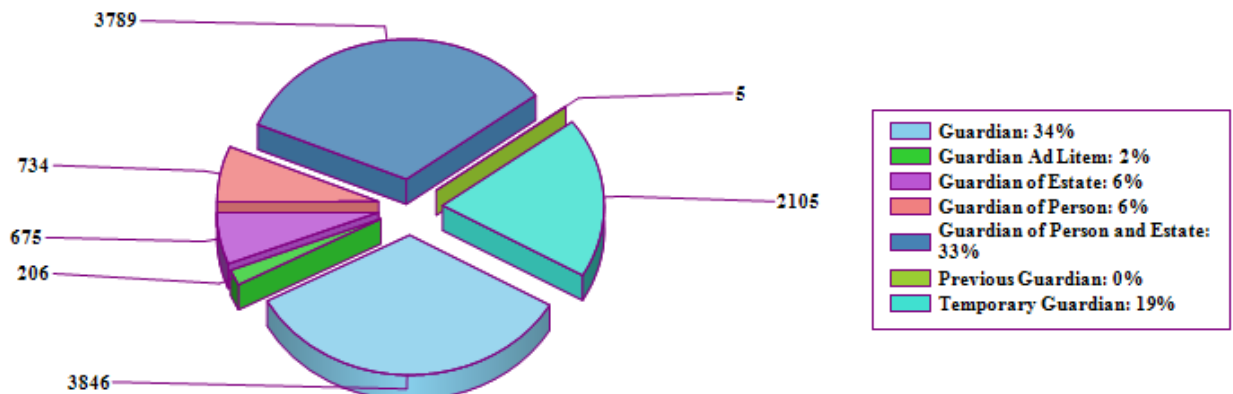
Adult Statistics Continued:

Types of Open Guardianship Cases



Total Number of Open Guardianship Cases: 3,378

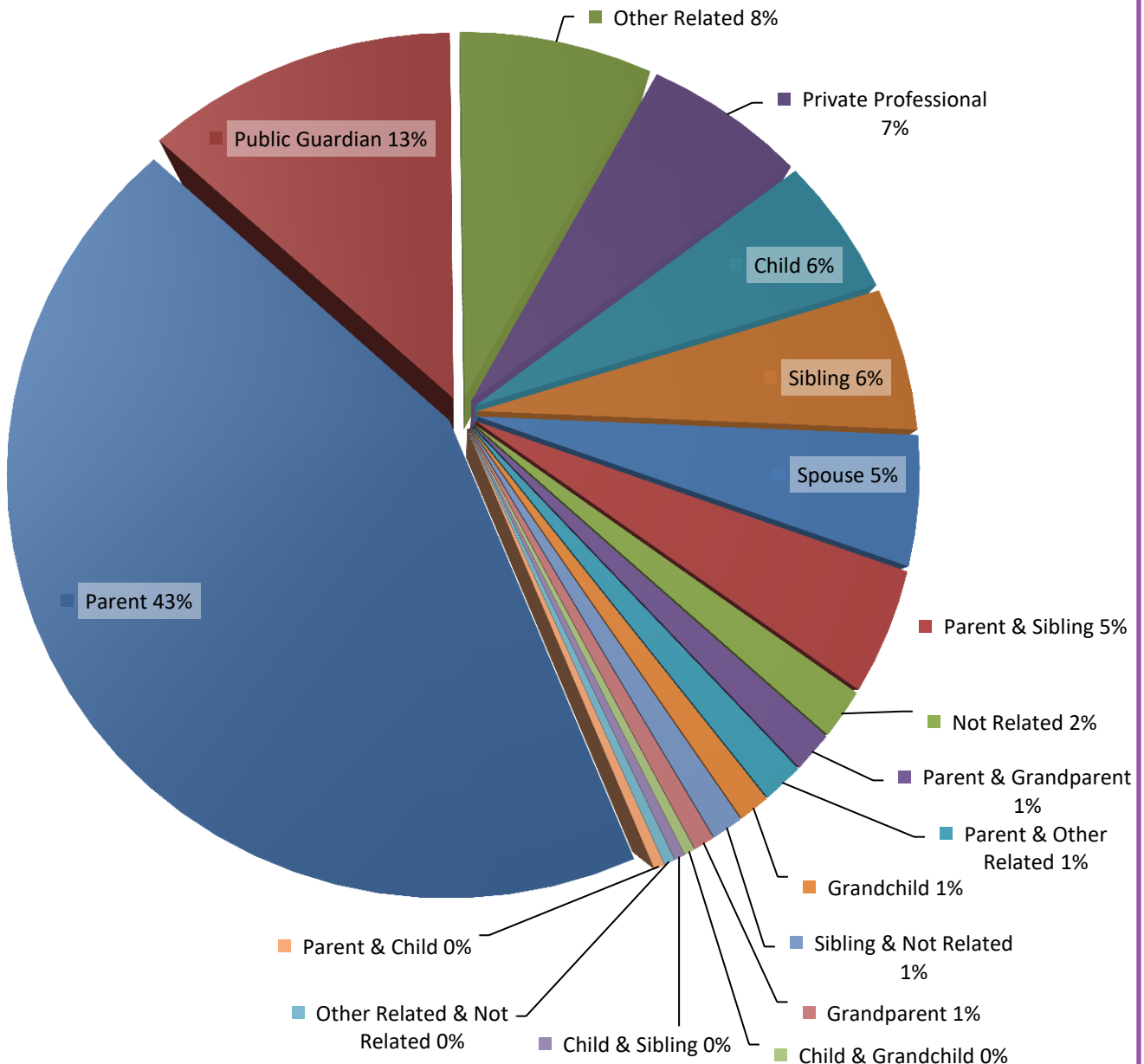
Types of Closed Guardianship Cases



Total Number of Closed Guardianship Cases: 11,360

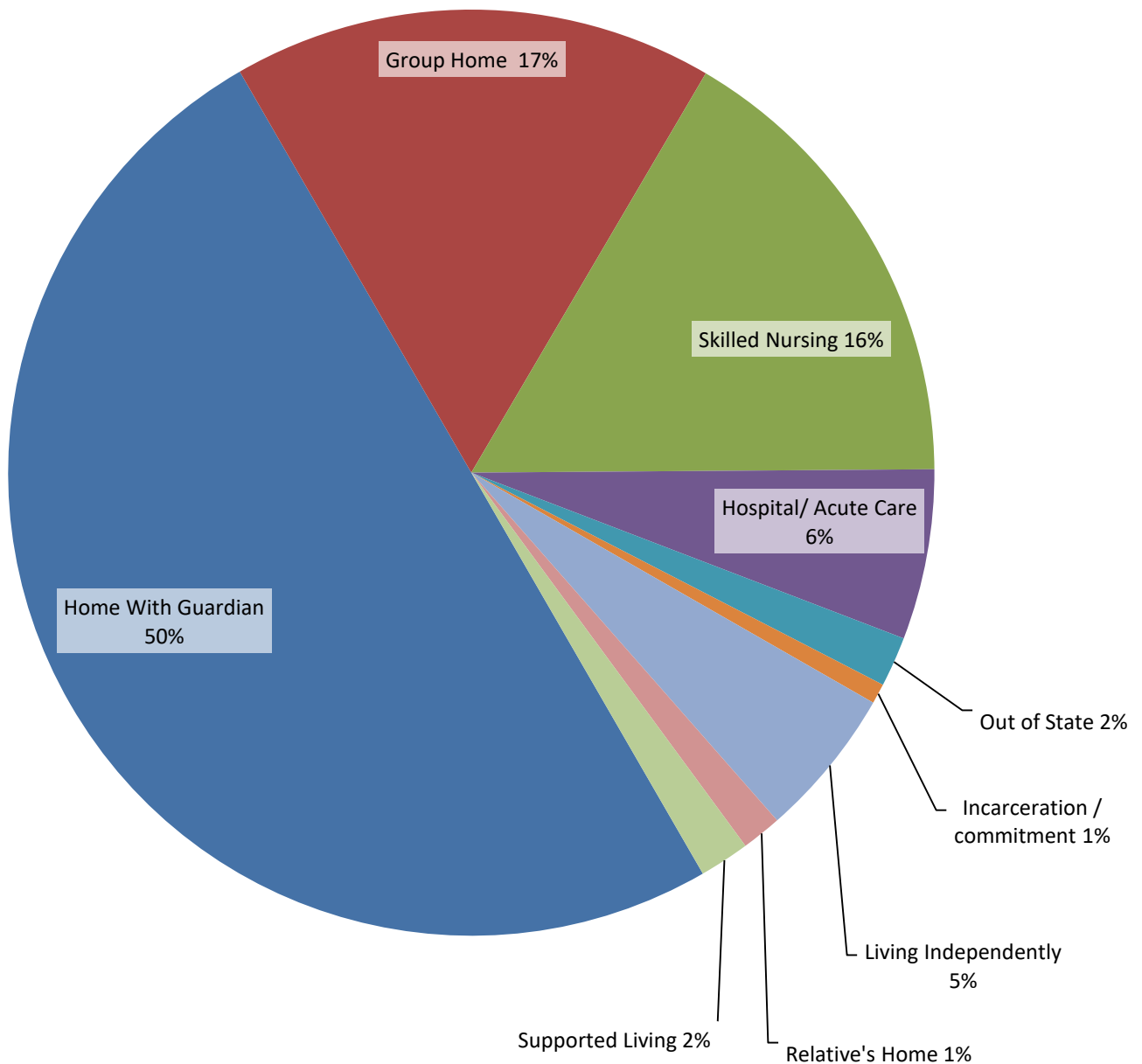
Adult Statistics Continued:

Guardian's Relationship to the Protected Person



Adult Statistics Continued:

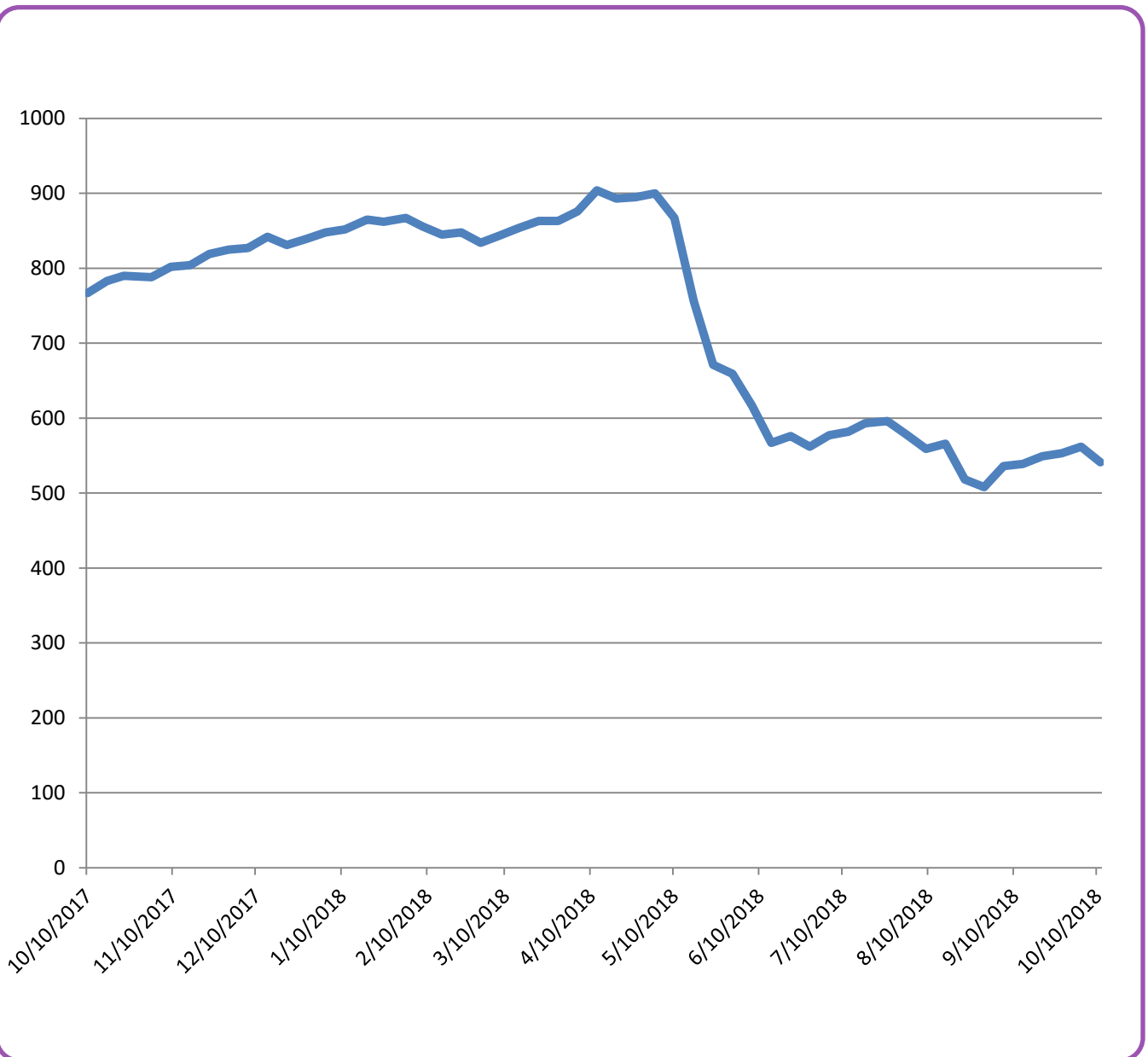
Placement Types



Information is from a survey of +/- 10% of the adult caseload.

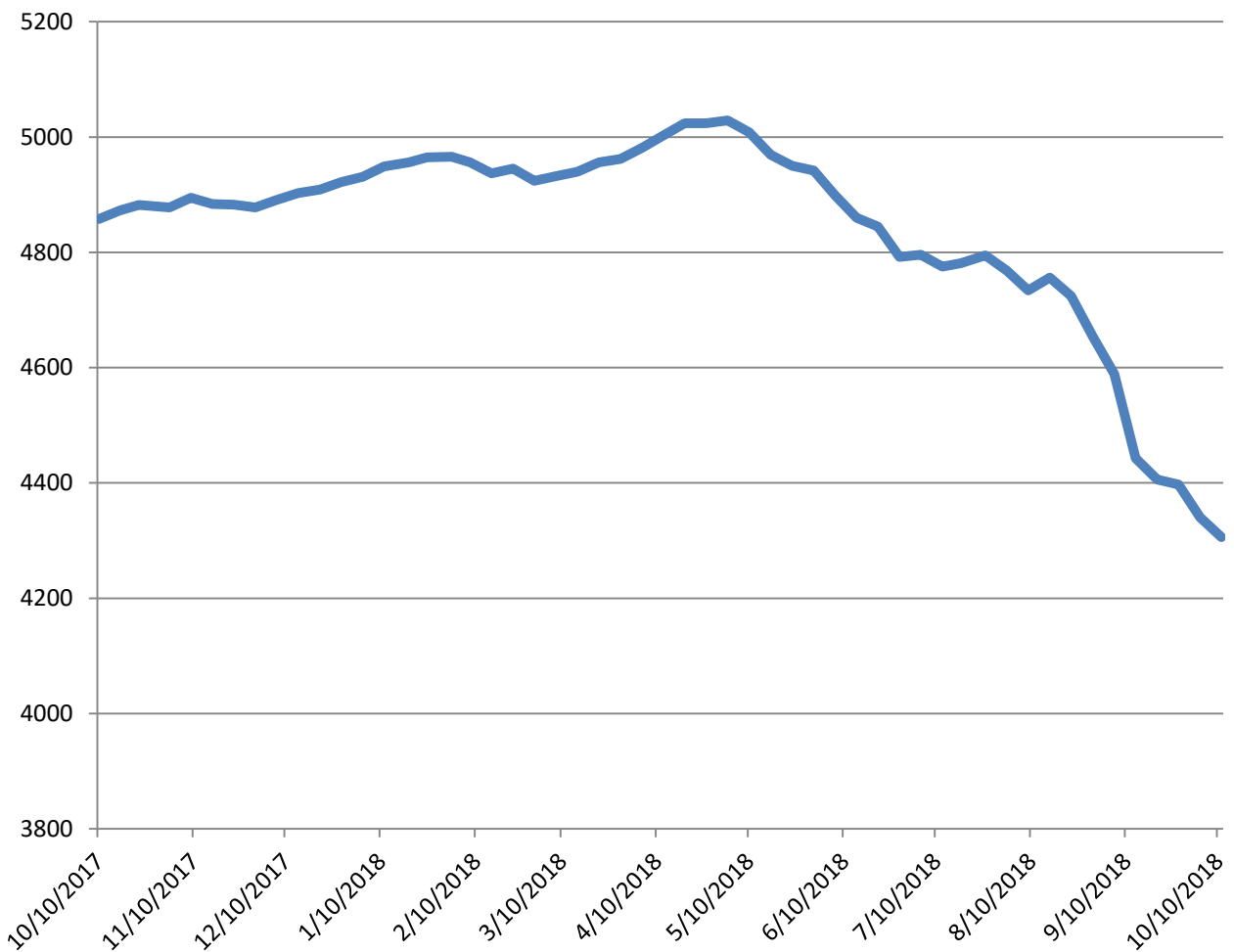
Minor Statistics:

Total Number of Minor Open and Reopen Cases



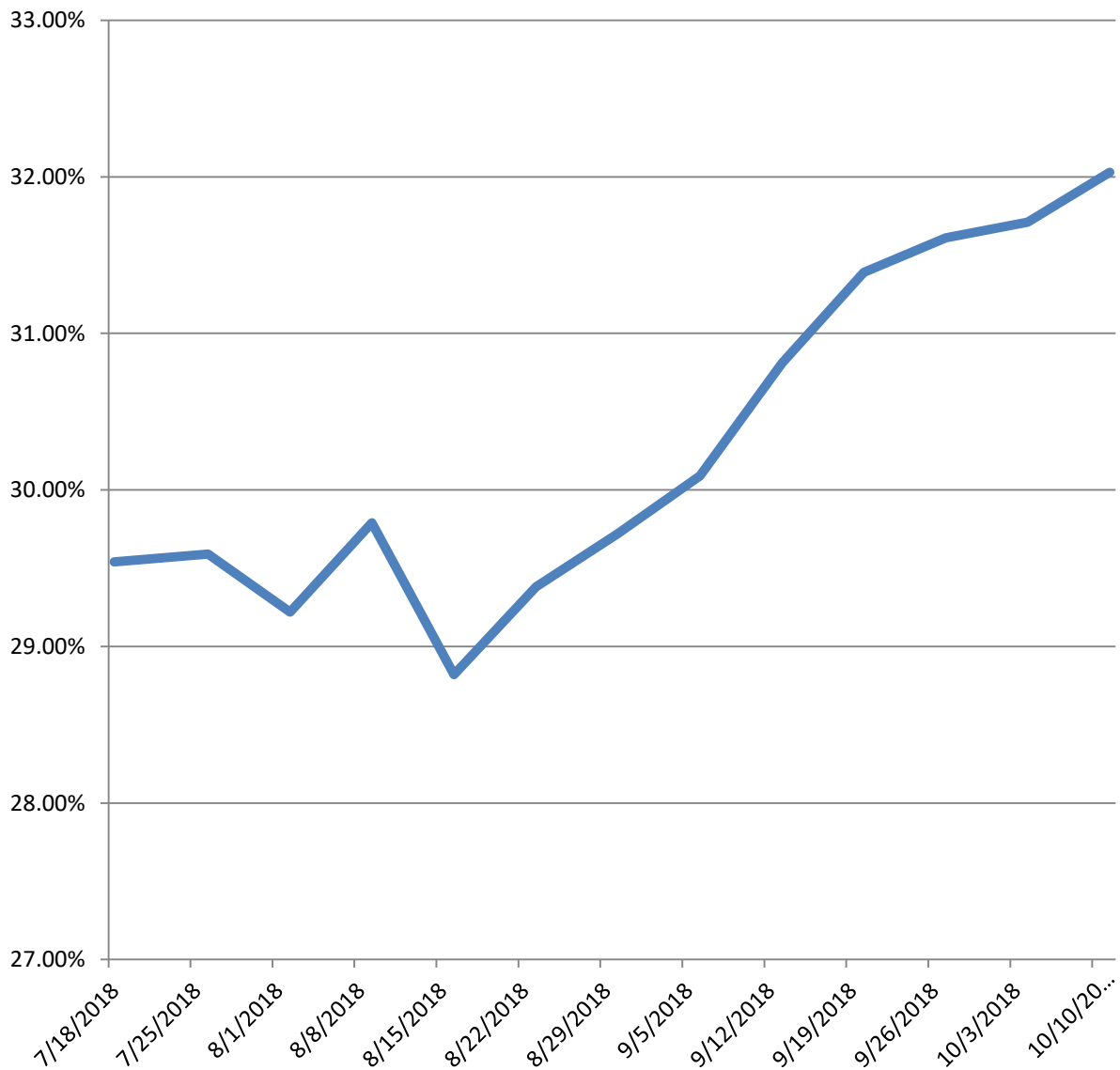
Minor Statistics, Continued:

Total number of Minor Cases
(includes cases without any pending hearings)

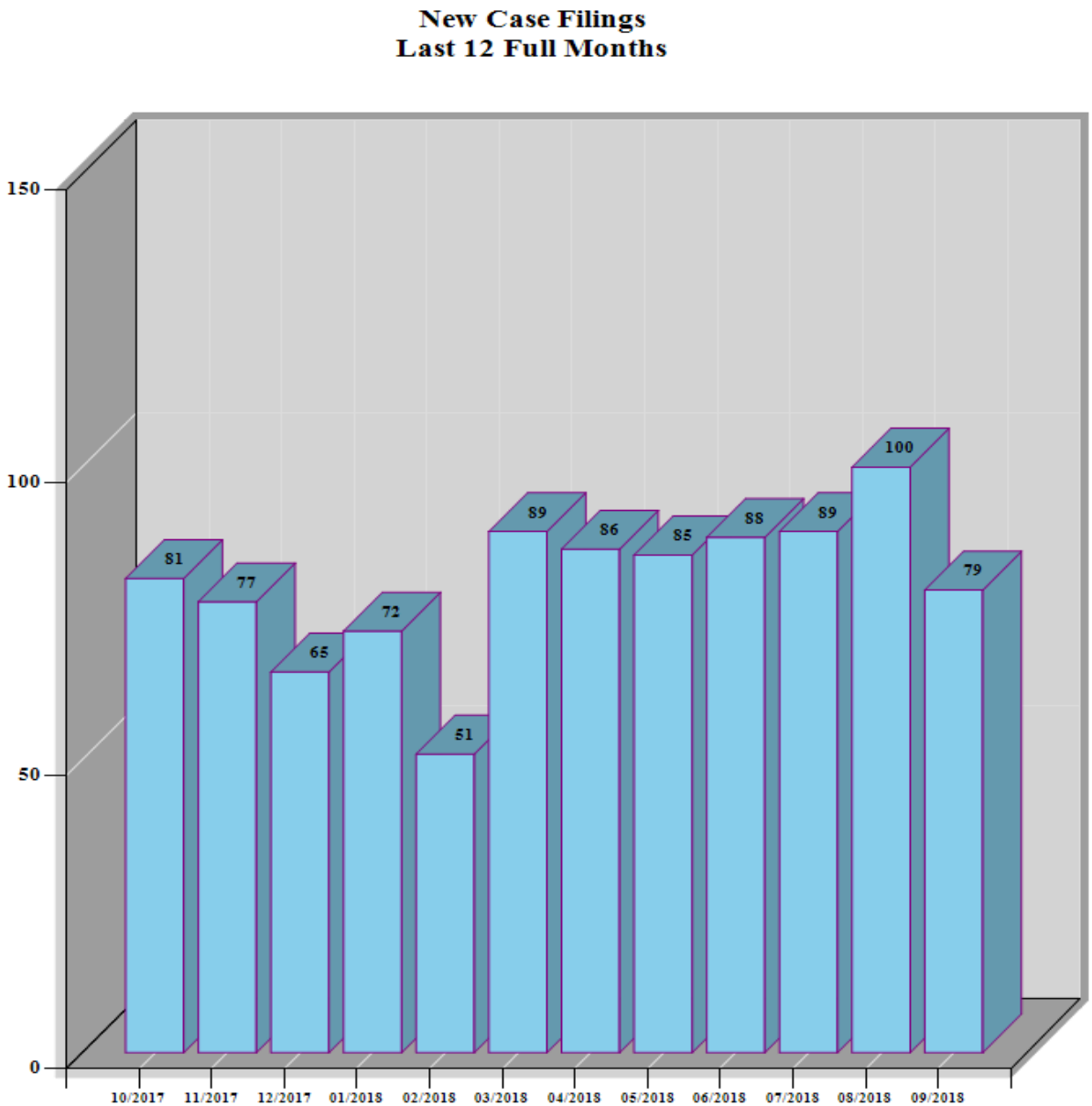


Minor Statistics, Continued:

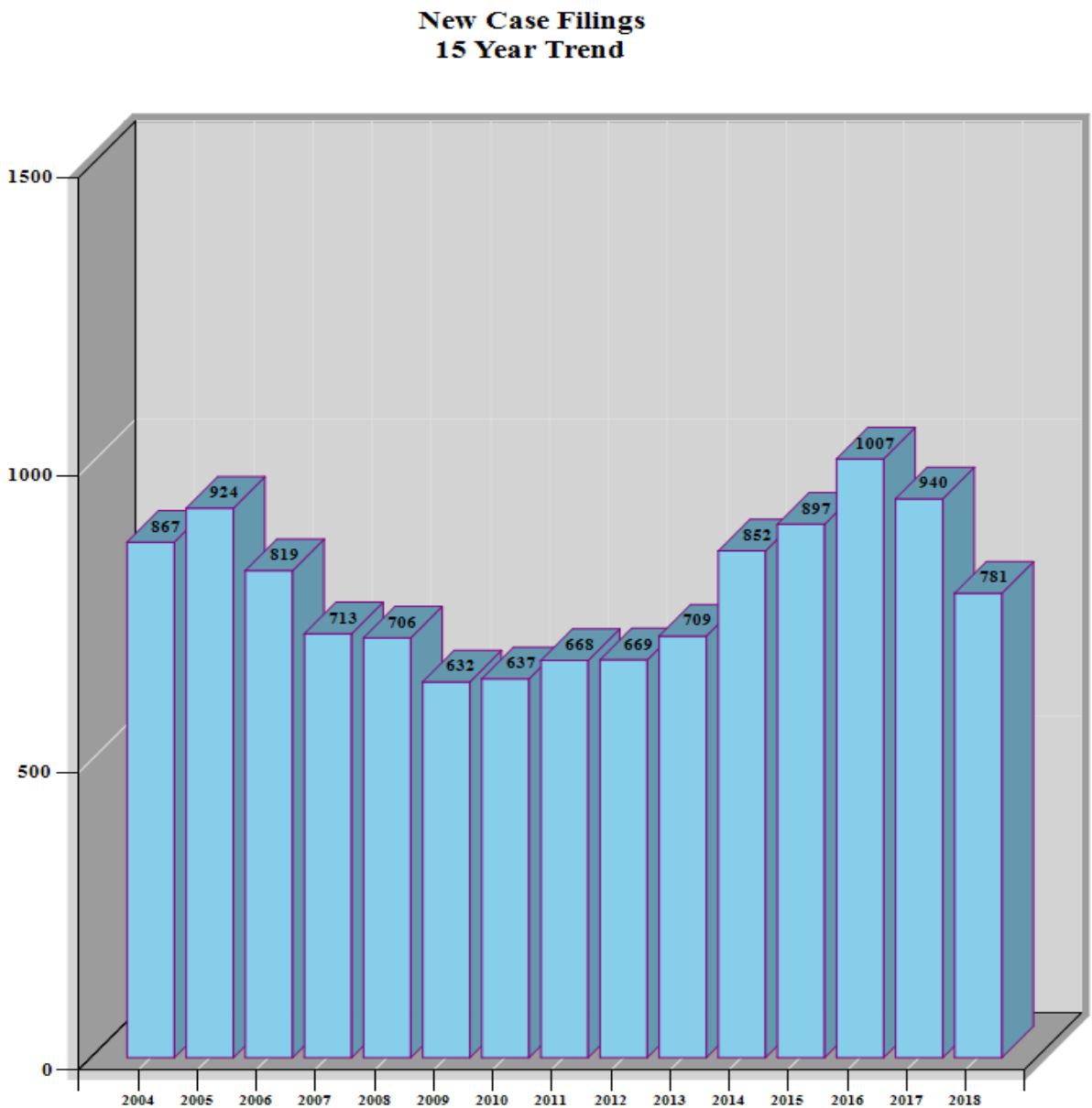
Percent of Minor Cases that have filed the statutorily required documents.



Minor Statistics Continued:

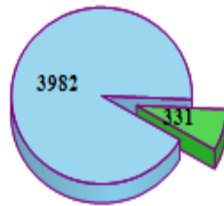


Minor Statistics Continued:



Minor Statistics Continued:

Letters of Guardianship



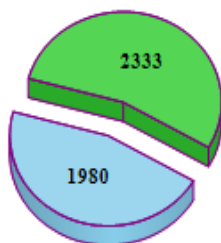
Compliant

92.33%

Non-Compliant

7.67%

Annual Report of Guardian



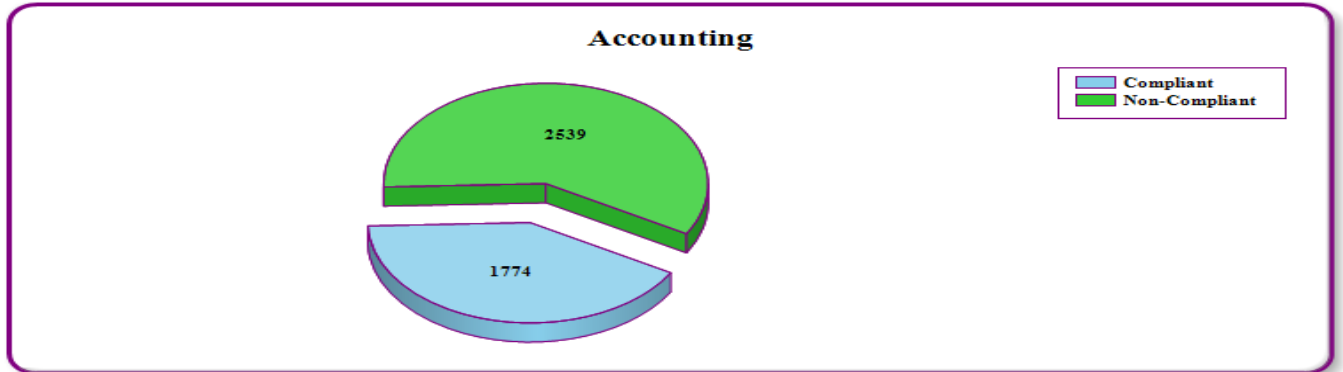
Compliant

45.91%

Non-Compliant

54.09%

Minor Statistics Continued:

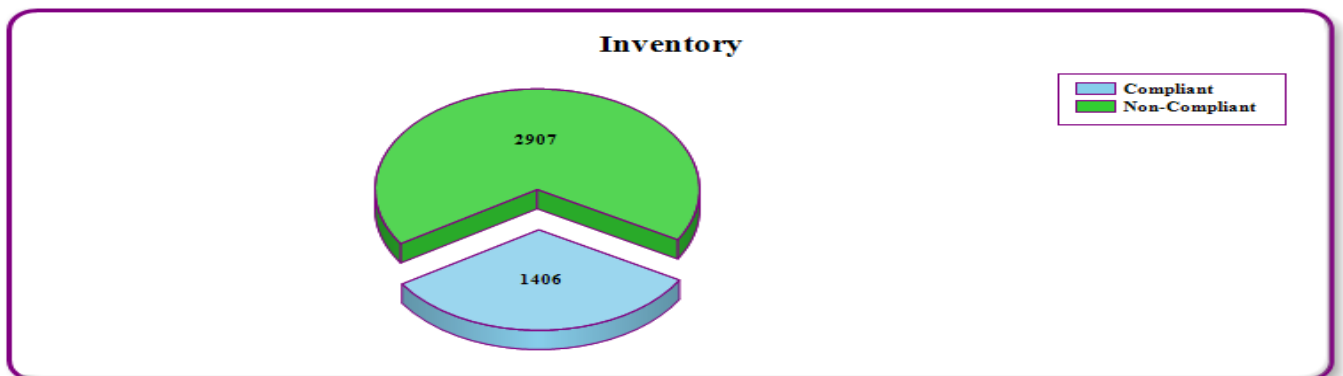


Compliant

41.13%

Non-Compliant

58.87%



Compliant

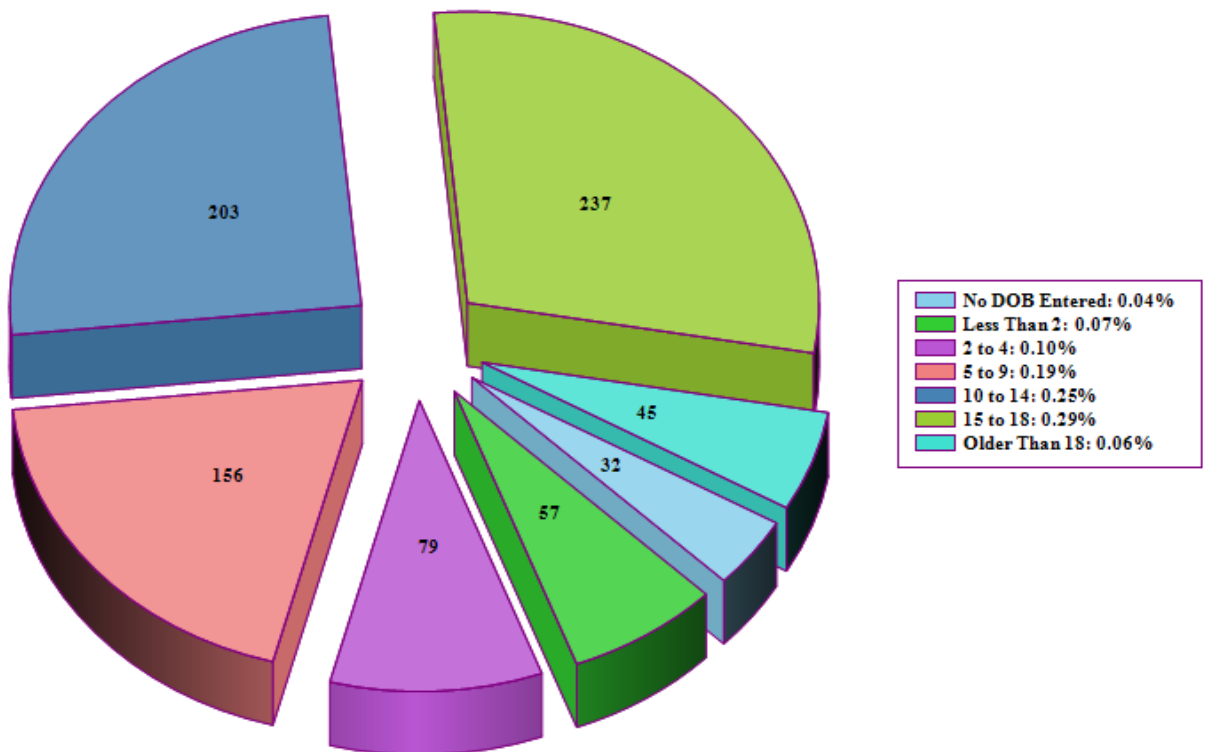
32.60%

Non-Compliant

67.40%

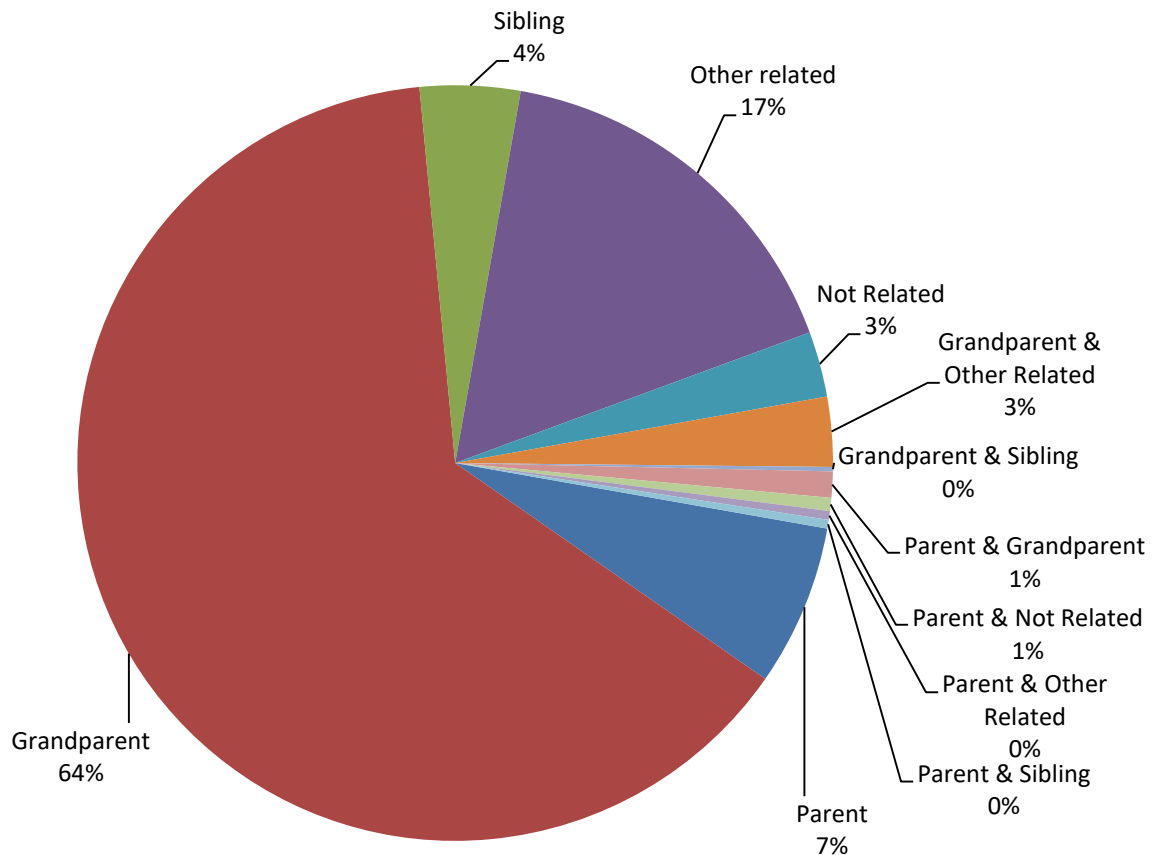
Minor Statistics Continued:

Age Breakdown



Minor Statistics: Continued

Guardian's Relationship to the Protected Person



Appendix A. Statutory Authority for Types of Guardianships

NRS 159.0487 provides for the appointment of 5 different types of Guardian

- Guardians of the Person, of the Estate, or of the Person and Estate for incompetents or minors whose home state is this Nevada.
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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 Ward's 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.
- 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.
- Guardians of the Estate for non-resident incompetents or non-resident minors who have property within this State. This describes a guardianship concerned with property held in this state only.
- Special Guardians (NRS §§159.026, 159.0801, 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.
- Guardians ad litem Not applicable to this analysis.
- Temporary Guardian of the Person and/or Estate (NRS §§159.0523, 159.0525, 159A.0523, 159A.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

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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.

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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.

Settle/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.

Age of Majority: A "final" disposition classification for guardianship cases that are "finalized" when the juvenile ward reaches the age of majority (generally 18 years of age).

Order Terminating Guardianship or Final Accounting: A "final" disposition classification for guardianship cases that are "finalized" with an order terminating guardianship or when the final accounting is filed with the court, whichever occurs first. Courts should only use this "final" disposition if the other above-defined "final" dispositions are not applicable.

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 not 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.

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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.

From: Wilson, Riley <wilsonr@clarkcountycourts.us>
Sent: Tuesday, October 23, 2018 10:19 AM
To: Coates, Sharon <scoates@nvcourts.nv.gov>
Subject: RE: November 2 meeting

I just visited with Jim Berchtold about this several times (including today). He agrees with my thought that the difference is most likely a matter of timing. The court closes (or opens) its cases at a different set of events than LACSN does. Additionally, it is likely that the date which the numbers were pulled for comparison purposes were different.

We have been communicating about this for a while.

Riley

From: Coates, Sharon [<mailto:scoates@nvcourts.nv.gov>]
Sent: Tuesday, October 23, 2018 9:46 AM
To: Wilson, Riley
Subject: RE: November 2 meeting
Importance: High

AGENDA ITEM 4

**Report from Kate McCloskey, Guardianship
Compliance Manger**

AGENDA 4(a)

**Update on County Survey
of Recording Fees Collected**

Guardianship Compliance Office
County Survey of Recording Fees Collected
October 1, 2017 through August 31, 2018
Date of Report: October 16, 2018

This report provides the Guardianship Commission information related to the collection and distribution of recording fees to support legal services for abused and neglected children, legal services for protected adults, as well as recording fees collected to support investigations in minor guardianship cases. The data presented reflects fees collected from October 1, 2017 through August 31, 2018, in each Nevada County, with the exception of Esmeralda County and Nye County. Esmeralda County has not yet been able to provide the Guardianship Compliance Office with its information. The Guardianship Compliance Office continues to follow up and when the information is received, we will issue an updated report to the Commission. Nye County has not yet been able to provide information on where funds for minor investigation have been distributed. An updated report will be issued to the Guardianship Commission once the complete information for these two counties is received.

There are currently five Nevada Counties (Churchill, Clark, Lyon, Pershing, and Washoe Counties) that collect a fee to support legal services for children who have been abused and neglected. Table A identifies the fee each county assesses, as well as how much has been collected between October 2017 through August 2018, as well as what entity or person the money has been distributed through. Tables B and C provide information on the amount collected and how those funds are distributed for both legal services for protected persons, as well as funds to support investigations into minor guardianship cases.

Table A: Counties Collecting Fees for Abused and Neglected Children

County	Fee	Total Collected	Where Distributed	Special Note
Churchill County	\$6.00	\$30,276.00	Kaitlyn Miller, Esq.	
Clark County	\$6.00	\$1,220,262.00	District Court Fund	
Lyon County	\$3.00	\$40,132.00	Washoe Legal Services	
Pershing County	\$3.00	\$7,113.00	11th Judicial District Court for Attorney's Fees	
Washoe County	\$6.00	\$235,577.00	Washoe Legal Services	The fee was increased from \$3.00 to \$6.00 in April 2018.

Table B: Fees to Support Legal Fees for Protected Persons

County	Fee	Total Collected	Where Distributed	Special Note
Carson City	\$3.00	\$20,343.00	Washoe Legal Services	
Churchill County	\$3.00	\$15,138.00	Jacob Sommer, Esq.	
Clark County	\$3.00	\$1,830,393.00	Southern Nevada Legal Law Program Legal Aid Center of Southern Nevada	
Douglas County	\$3.00	\$32,040.00	Nevada Legal Services	
Elko County	\$3.00	\$37,014.00	Nevada Legal Services	
Esmeralda County				As of report date, this county has not yet provided requested information.
Eureka County	\$3.00	\$4,542.00	Not Yet Distributed	The county reports the funds are held in an account and have not yet been distributed.
Humboldt County	\$3.00	\$19,947.00	Washoe Legal Services	
Lander County	\$3.00	\$14,841.00	State of Nevada/Legal Services for Genetic Marker Fund	
Lincoln County	\$3.00	\$6,597.00	State of Nevada/ Division of Child and Family Services	According to the state controller, funds are deposited into Budget Code 3181 Victims of Domestic Violence and Budget Code 3280 Transition from Foster Care.
Lyon County	\$3.00	\$40,132.00	VARN Nevada Legal Services Washoe Legal Services	
Mineral County	\$3.00	\$7,161.00	Not Yet Distributed	The county reports the funds are held in an account and have not yet been distributed.
Nye County	\$3.00	\$58,422.00	David Neely	
Pershing County	\$3.00	\$7,113.00	11th Judicial District Court for Attorney's Fees	
Storey County	\$3.00	\$5,001.00	Nevada Legal Services	
Washoe County	\$3.00	\$235,577.00	Washoe Legal Services	
White Pine County	\$3.00	\$8,871.00	Legal Aid Fund at District Court	Private Attorneys paid out of this fund: Richard Sears, Shain Manuele, Jane Eberhardy, Kelly Brown, and Kristy Pickering

Table C: Fees Collected for Investigations into Minor Guardianship

County	Fee	Total Collected	Where Distributed	Special Note
Carson City	\$1.00	\$6,781.00	Not Yet Distributed	
Churchill County	\$1.00	\$5,046.00	Kaitlyn Miller	
Clark County	\$1.00	\$610,130.00	District Court Fund	
Douglas County	\$1.00	\$10,680.00	District Court Fund	
Elko County	\$1.00	\$12,338.00	District Court Fund	
Esmeralda County				As of report date, this county has not provided the requested information.
Eureka County	\$1.00	\$1,511.00	Not Yet Distributed	
Humboldt County	\$1.00	\$6,649.00	District Court Fund	
Lander County	\$1.00	\$4,386.00	State of Nevada/Legal Services for Forensic Services	
Lincoln County	\$1.00	\$22,017.00	State of Nevada/Division of Child and Family Services	According to the state controller, funds are deposited into Budget Code 3181 Victims of Domestic Violence and Budget Code 3280 Transition from Foster Care.
Lyon County	\$1.00	\$13,489.00	Washoe Legal Services	
Mineral County	\$1.00	\$2,387.00	Not Yet Distributed	
Nye County	\$1.00	\$19,474.00		As of date of report, information as to where distributed has not been provided.
Pershing County	\$1.00	\$2,371.00	11th Judicial District Court for Attorney Fees	
Storey County	\$1.00	\$2,138.00	State of Nevada/Division of Child and Family Services	
Washoe County	\$1.00	\$78,519.00	District Court Fund	
White Pine County	\$1.00	\$2,957.00	Legal Aid fund at District Court	

AGENDA ITEM 4(b)

**Updated Guardianship
Compliance Office Status Report**

Supreme Court of Nevada
ADMINISTRATIVE OFFICE OF THE COURTS
GUARDIANSHIP COMPLIANCE OFFICE

MEMORANDUM

TO: Justice James Hardesty

FROM: Kate McCloskey, Guardianship Compliance Manager

COPY: Robin Sweet, Director

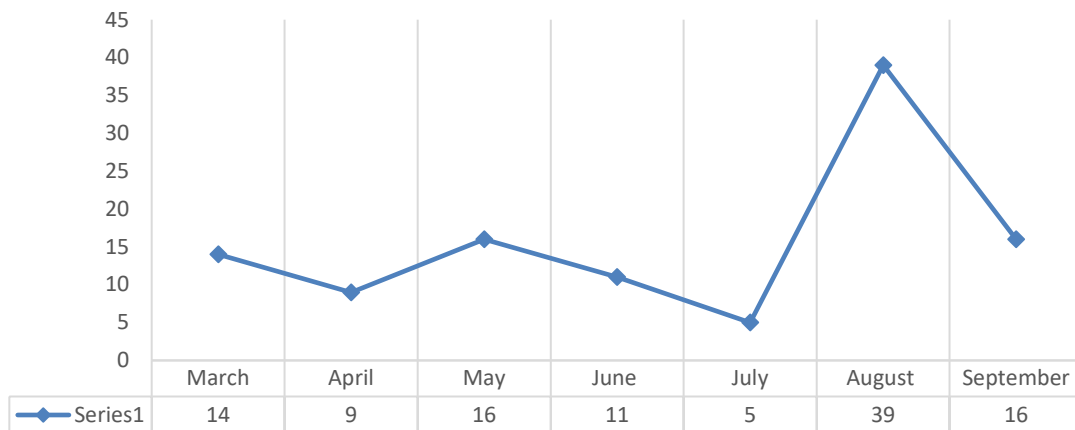
DATE: October 16, 2018

SUBJECT: Guardianship Compliance Office Status Report

District Court Orders Received By Month

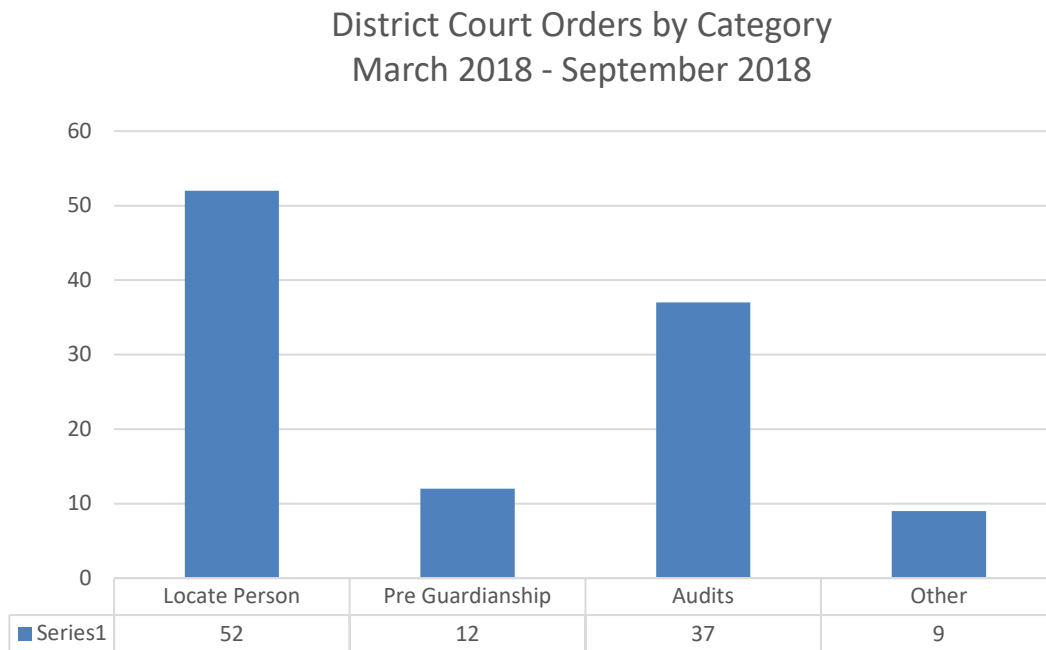
The Guardianship Compliance Office has received a total of 110 District Court orders since March 2018. August 2018 represents our busiest month, with 39 District Court orders, as represented in the line graph below. July was the lowest, with only 5 District Court orders issued to our office.

**DISTRICT COURT ORDERS TO GCO BY
MONTH
MARCH 2018 - SEPTEMBER 2018**



Category of District Court Orders

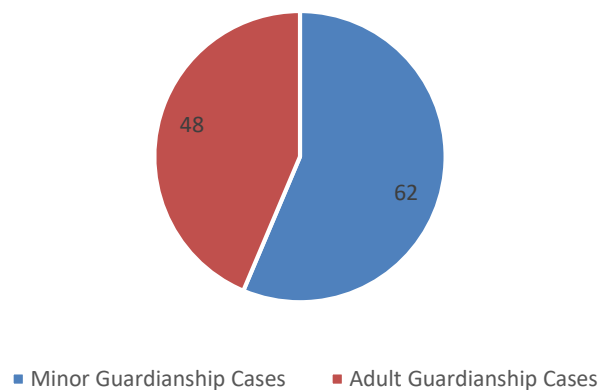
The majority of District Court orders from March 2018 through September 2018, are investigations to locate individuals where the court may have lost contact with the Protected Person. This represents 47% of the District Court orders. Second to this category are District Court orders for audits of Guardianship Estates, which represents 34% of District Court orders, Pre Guardianship Investigations are 11% and “Other” investigations are 8%. The bar graph below provides you with the number of court orders for each category of investigation or audit we have received between March 2018 and September 2018.



Type of Guardianships

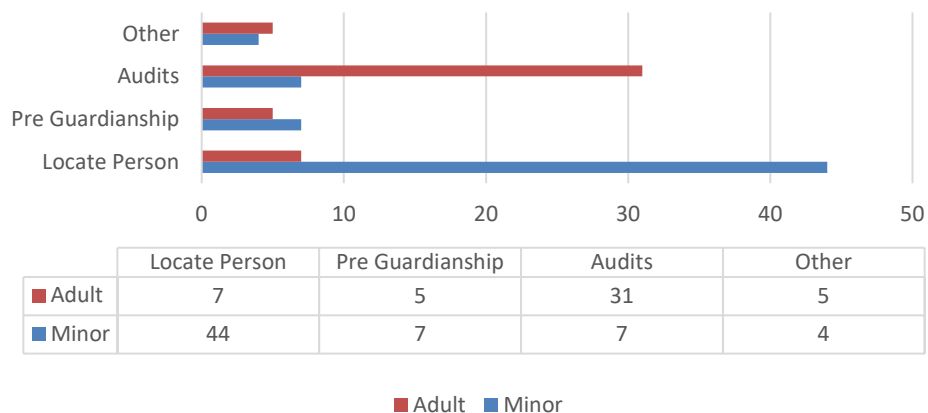
We have received 62 District Court orders for Minor Guardianship, which represents 56% of our work between March 2018 and September 2018. Adult Guardianships represent 44%, with 48 court orders having been received.

District Court Orders by Type of Guardianship
March 2018 - September 2018



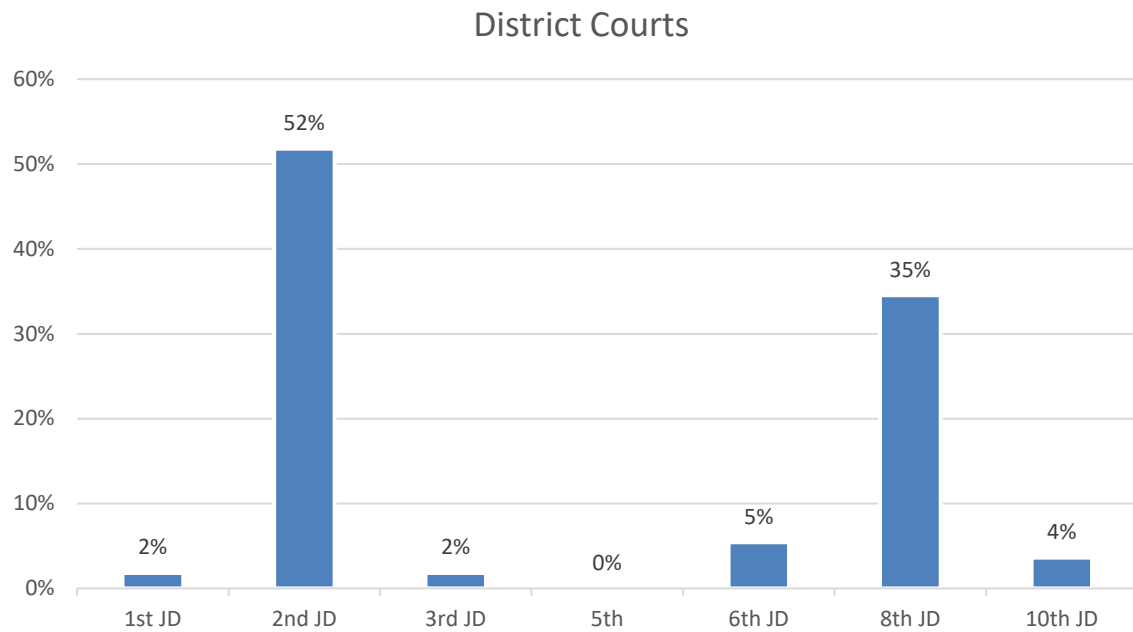
The graph below demonstrates the breakdown of category of District Court orders by type of guardianship. Minor Guardianships represent the majority of the category Locate Person (86%), while Adult Guardianships represent the majority of audits (82%).

District Court Orders by Guardianship Type and
Category August 2018 through September 2018

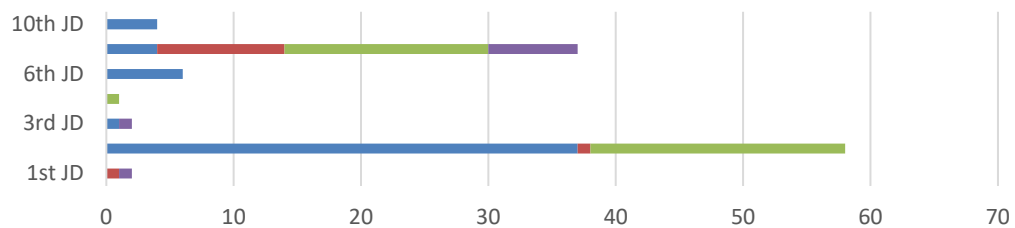


District Courts

The 2nd Judicial District court has issued the majority of court orders (52%), followed by the 8th Judicial Court (35%).



District Court Orders By Category and Court March 2018- September 2018



	1st JD	2nd JD	3rd JD	5th JD	6th JD	8th JD	10th JD
Locate	0	37	1	0	6	4	4
Pre Guardianship	1	1	0	0	0	10	0
Audits	0	20	0	1	0	16	0
Other	1	0	1	0	0	7	0

■ Locate
 ■ Pre Guardianship
 ■ Audits
 ■ Other

AGENDA ITEM 5

**Report from Rules Subcommittee
Submission of Additional Proposed Rules**

AGENDA ITEM 5(a)

**DRAFT Rule 9
Noticing**

DRAFT RULE #9

Submitted by Elizabeth Brickfield

APPROVED AS REVISED BY SUBCOMMITTEE 9/12/18

Noticing

Except as otherwise specially provided in these rules, in computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event or default from which the designated period of time begins to run must not be included.

(a) The last day of the period so computed must be included, unless it is a Saturday, a Sunday, or a non-judicial day, in which event the period runs until the end of the next day which is not a Saturday, a Sunday or a non-judicial day, or, when the act to be done is the filing of a paper in court or the mailing of a notice, a day on which weather or other conditions have made the office of the clerk of the district court inaccessible, in which event the period runs until the end of the next day which is not one of the aforementioned days. The County Clerk shall memorialize and maintain in a written log all such inaccessible days. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and non-judicial days must be excluded in the computation.

(b) If any day on which an act required to be done by any one of these rules falls on a Saturday, Sunday or legal holiday, the act may be performed on the next succeeding judicial day.

(c) whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper, other than process, a motion for a new trial, a motion to vacate judgment pursuant to NRCP 59 or a notice of appeal, and the notice or paper is served upon the party by mail, either U.S. Mail or court authorized electronic mail, or by electronic means, three (3) days must be added to the prescribed period.

AGENDA ITEM 5(b)

**DRAFT Rule 10
Attorney Fee Petitions and Payments**

DRAFT RULE #10
Attorney fee petitions and payments

Submitted by Judge Porter

APPROVED BY SUBCOMMITTEE 9/26/18

A petition for attorney fees, as required by NRS 159.344(4), shall be served on all those entitled to notice pursuant to NRS 159.034 and NRS 159.047. Such notice may be served by first class mail.¹

¹ Note from Judge Porter:

NRS 159.344(4) does not provide that the *petition* for attorney fees be served. That is why I have written this rule.

NRS 159.344(3)(d) does not specify how service should be made of the written *notice* to seek attorney fees, which is different than the petition for attorney fees. I could draft a rule stating that the notice may be served by first class mail, but it might be simpler to add a sentence to Rule 9, which pertains to noticing. We approved that rule on August 29. I know that the cost of certified mail has been a big issue. I suggest that we add a sentence stating, "Unless otherwise specified by statute or the Nevada Rules of Procedure, all notices may be served by first class mail."

AGENDA ITEM 5(c)

**DRAFT Rule 11
GAL**

DRAFT RULE #11
GAL

Submitted by Jim Berchtold, Jennifer Richards, and Mick Keane

APPROVED AS REVISED BY SUBCOMMITTEE 10/24/18

Guardian Ad Litem for Protected Person or proposed Protected Person

1. This rule applies to any Guardian Ad Litem appointed pursuant to NRS 159.0455 and NRS 159A.0455.
2. The Guardian Ad Litem shall zealously advocate for the best interest of the Protected Person or proposed Protected Person, in a manner that will enable the court to determine the action that will be the least restrictive and in the best interest of the Protected Person or proposed Protected Person.
3. A Guardian Ad Litem is an officer of the court and a representative of the Protected Person or proposed Protected Person and is not a party to the case.
4. A Guardian Ad Litem may be appointed if the Protected Person or proposed Protected Person will benefit from the appointment or the services of the Guardian Ad Litem or if the appointment will be beneficial in determining the best interest of the Protected Person or proposed Protected Person.
5. The order appointing the Guardian Ad Litem shall set forth with specificity the duties of the Guardian Ad Litem and shall identify the issues that the Guardian Ad Litem is directed to address. The Guardian Ad Litem shall address only the issues identified in the appointing order absent an additional order from the court. The order appointing the Guardian Ad Litem shall authorize the Guardian Ad Litem access to all relevant documents and information concerning the Protected Person or proposed Protected Person, including but not limited to private, confidential, financial and HIPAA protected information and documents.
6. The Guardian Ad Litem shall not have authority to waive any of the Protected Person's or proposed Protected Person's due process rights or protections including, without limitation, the Protected Person's or proposed Protected Person's right to counsel, right to oppose the guardianship, right to oppose the choice of guardian, right to attend hearings and the right to object to any action or proposed action by the guardian.
7. The Guardian Ad Litem shall advocate for the best interest of Protected Person or proposed Protected Person based on admissible evidence available to the Guardian Ad Litem. The Guardian Ad Litem shall conduct independent investigation and assessment of the facts to carry out the directives of the appointing order and may

submit recommendations to the Court that are based on admissible evidence. The Guardian Ad Litem shall not be a witness and shall not testify or be cross examined. The Guardian Ad Litem shall not be subject to a subpoena, except to the extent an attorney representing the Protected Person or proposed Protected Person would be subject to a subpoena.

8. A Guardian Ad Litem may be a trained volunteer from a court-approved advocate program, an attorney, or any other person that the Court finds has appropriate training and experience.

9. If the Guardian Ad Litem is a trained volunteer from a court-approved volunteer advocate program or an attorney providing services as a Guardian Ad Litem pro bono, the appointing order shall state that fact and state that the Guardian Ad Litem is not seeking compensation. If the Guardian Ad Litem is not a volunteer and will seek compensation in the case, the appointing order shall state the hourly rate to be charged by the Guardian Ad Litem and may limit the hours that may be charged by the Guardian Ad Litem, absent further order of the Court.

10. A Guardian Ad Litem that seeks compensation for the services provided is only entitled to compensation upon compliance with NRS 159.344, et al., and the request for payment whether or not payment is to be from the guardianship estate or from any third party shall be subject to the requirements and analysis as set forth in NRS 159.344.

11. An attorney that serves as a Guardian Ad Litem is bound by the Nevada Supreme Court Rules of Professional Conduct to the extent those Rules are applicable.

12. A Guardian Ad Litem shall not communicate with any party represented by counsel outside the presence of the party's attorney without first obtaining the attorney's consent.

13. The Guardian Ad Litem shall provide a copy to all parties of any written report of the Guardian Ad Litem that is filed with the Court.

14. The role of the Guardian Ad Litem is separate and distinct from the role of an attorney for a Protected Person or proposed Protected Person appointed pursuant to NRS 159.0485 and separate and distinct from an Investigator appointed pursuant to NRS 159.046. A Guardian Ad Litem for a Protected Person or proposed Protected Person shall not serve as an attorney for a Protected Person or proposed Protected, as an attorney for a Guardian(s) or as an Investigator in the same case or in a related matter.

15. The Guardian Ad Litem shall ensure the rights set forth in the Protected Persons Bill of Rights are upheld and the Guardian Ad Litem shall immediately report to the court any transgressions of said rights.

16. A Guardian Ad Litem who represents siblings or spouses in a guardianship(s) shall be alert to potential conflicts and request the court appoint a separate Guardian Ad Litem in the event that a conflict or potential conflict should arise.

AGENDA ITEM 5(d)

**DRAFT Rule 12
Attorneys for Protected Persons**

DRAFT RULE #12
Attorneys for Protected Persons

Submitted by Mick Keane

VERSION APPROVED IN CONCEPT BY SUBCOMMITTEE 10/24/18
Additional revisions to be made by Mick Keane, Jim Berchtold, and Barbara Buckley

Attorney for Protected Person or Proposed Protected Person

1. A Protected Person or proposed Protected Person has a right to legal representation and shall be entitled to retain counsel of their choosing to represent them in any guardianship or other related court proceeding. A Protected Person or proposed Protected Person may decline representation by an attorney or by a court appointed attorney, unless the Court finds that the Protected Person or proposed Protected Person lacks the minimum capacity to make those decisions. A Protected Person's or proposed Protected Person's waiver of right to counsel must be made knowingly and voluntarily and must be reasonable under the circumstances.
2. The attorney for a Protected Person shall zealously advocate for the Protected Person's express wishes and shall protect the Due Process Rights of the Protected Person or proposed Protected Person.
3. The attorney for the Protected Person or proposed Protected Person shall maintain, as far as reasonably possible, a normal client-attorney relationship as prescribed by the Nevada Rules of Professional Conduct and shall advocate for the expressed wishes of the Protected Person or proposed Protected Person even if those express wishes are in conflict with the client's apparent best interests.
4. An attorney for a Protected Person or proposed Protected Person shall in all cases:
 - a. review the petition for guardianship, certificates of current physical, medical, and intellectual examinations, and all other available court filings;
 - b. personally visit and interview the Protected Person or proposed Protected Person prior to the initial hearing to appoint a guardian and thereafter no less than every six months and as otherwise appropriate to foster communication as prescribed by Rule 1.4 of the Nevada Rules of Professional Conduct, unless the Protected Person or proposed Protected Person is located outside the judicial district in which the guardianship case is pending, in which case the attorney shall visit as frequently as necessary and practicable under the circumstances;

- c. explain to the Protected Person or proposed Protected Person, to the extent possible and in terms he or she is most likely to understand, the nature and possible consequences of the proceedings, the legal options and alternatives that are available, and the rights to which the Protected Person or proposed Protected Person is entitled, including specifically the person's right to oppose the guardianship or oppose the scope of the guardianship;
- d. secure and present admissible evidence and offer argument as appropriate and warranted to further the expressed wishes of the Protected Person or proposed Protected Person and to protect his or her rights and interests; and
- e. continue as the attorney for the Protected Person or proposed Protected Person unless and until relieved as counsel by order of the guardianship court;

NOTE: rules 4 and 5 are very similar and overlap except that Rule 4 is mandatory and can be utilized to require certain actions where rule 5 is more discretionary.

5. The duties of the attorney for a Protected Person or proposed Protected Person shall include, but are not limited to:

- a. zealously advocating for the express wishes of the Protected Person or proposed Protected Person, including those wishes contained in any advance directive or estate planning document;
- b. reviewing the petition for guardianship, certificates of current physical, medical, and intellectual examinations, and all other available court filings and supporting documents;
- c. personally meeting and interviewing the Protected Person or proposed Protected Person prior to a hearing to appoint a guardian or temporary guardian and thereafter as otherwise appropriate to foster communication, unless the Protected Person or proposed Protected Person is located outside the judicial district in which the guardianship case is pending, in which case the attorney shall communicate and/or meet with the Protected Person or proposed Protected Person as frequently as necessary and practicable under the circumstances;
- d. explaining to the protected person or proposed protected person, to the extent possible and in terms he or she is most likely to understand, the nature and possible consequences of the proceedings, the legal options and alternatives that are available, and the rights to which the Protected Person or proposed Protected Person is entitled, including specifically the person's right to oppose the guardianship or oppose the scope of the guardianship;

- e. securing and presenting available evidence and testimony and offering argument as warranted that would tend to further the expressed wishes of the Protected Person or proposed Protected Person and protect his or her rights and legal interests;
 - f. conducting independent investigation to ascertain the facts of the case;
 - g. participating in all court proceedings, mediations, settlement conferences and negotiations;
 - h. ensuring the Protected Person or proposed Protected Person is in attendance at court proceedings where attendance is appropriate, unless appearance is waived by the Court;
 - i. communicating, coordinating, and maintaining a professional relationship in so far as possible with all parties;
 - j. filing appropriate petitions, motions, briefs, and appeals on behalf of the Protected Person or proposed Protected Person; and
 - k. communicating the court's decisions and consequences to the Protected Person or proposed Protected Person.
- l. ensuring there is no less restrictive alternative to guardianship or to the matter before the court;
- m. ensuring proper due process procedure is followed and relevant statutes are complied with;
- n. ensuring no substantial rights of the Protected Person or proposed Protected Person are waived, except with the express or implied consent of the Protected Person or proposed Protected Person and the approval of the court;
- o. confirming the petition for guardianship can be supported by clear and convincing evidence in an initial proceeding, and applicable legal standards are met in any subsequent proceedings;
- p. confirming the proposed guardian is a qualified person to serve or to continue to serve, consistent with all statutory requirements;
- q. advocating for and confirming that if a guardian is appointed, the initial order and any subsequent order is least restrictive of the personal freedom of the Protected Person in type, duration, and scope, consistent with his or her need for care and supervision;
- u. protecting the dignity of the Protected Person or proposed Protected Person;
- r. protecting the personal, confidential, financial and medical information and documents concerning the Protected Person or proposed Protected Person; and
- s. continuing as the attorney for the Protected Person or proposed Protected Person unless and until relieved as counsel by order of the guardianship court.

7. Upon the appointment of an attorney for the Protected Person or proposed Protected Person, the court shall enter an order authorizing the attorney access to the Protected Person or proposed Protected Person and allowing the attorney access to all relevant documents and information concerning the Protected Person or proposed Protected Person, including but not limited to private, confidential, financial and HIPAA protected information and documents.

8. An attorney for a Protected Person or proposed Protected Person shall be entitled to waive rights and admit matters within the guardianship proceeding on behalf of the Protected Person or proposed Protected Person.

9. An attorney for a Protected Person or proposed Protected Person shall remain in that role and shall continue to act on behalf of the Protected Person or proposed Protected Person until relieved or removed as the attorney for the Protected Person by order of the court.

10. The role of the attorney for the Protected Person or proposed Protected Person is distinct from the role of a *Guardian Ad Litem* appointed under NRS 159.0455 or an investigator appointed under NRS 159.046. An attorney for a Protected Person or proposed Protected Person shall not serve as a *Guardian Ad Litem* in the same case or in a related matter. An attorney for a Protected Person or proposed Protected Person shall not serve as the attorney for the Guardian(s) in the same or related case.

11. If the Protected Person or proposed Protected Person is unable to express or communicate his or her wishes to the attorney or maintain, as far as reasonably possible, a normal client-attorney relationship, the attorney shall protect the legal interests and due process rights of the Protected Person or proposed Protected Person and the attorney may take reasonably necessary protective action pursuant to Rule 1.14 of the Nevada Rules of Professional Conduct, which may include requesting the appointment of a *Guardian Ad Litem* under NRS 159.0455 to advocate for the best interest of the Protected Person or proposed Protected Person.

12. The attorney for a Protected Person or proposed Protected Person shall ensure the rights set forth in the Protected Persons Bill of Rights are upheld and the attorney shall be authorized to bring an action on behalf of the Protected Person or proposed Protected Person to enforce the rights of the Protected Person or proposed Protected Person, including those rights set forth in the Protected Person's Bill of Rights.

13. An attorney who represents siblings or spouses in a guardianship(s) shall be alert to potential conflicts and request the court appoint separate attorneys in the event that a conflict or potential conflict should arise.

14. An attorney for a Protected Person or proposed Protected Person shall only be entitled to receive compensation for legal services provided upon compliance with NRS 159.344 and upon receipt of a court order approving of said payment, whether or not paid from the Guardianship estate or from a third party.

DRAFT

Role and Duties of Attorney for Protected Person or Proposed Protected Person

1. Upon appointment of an attorney for the protected person or proposed protected person, the court shall enter an order to allow the attorney access to the protected person or proposed protected person and all relevant documents and information. The order appointing counsel shall cite to this rule and shall expressly direct an appointed attorney to follow it.
2. The attorney for the protected person or proposed protected person shall maintain, as far as reasonably possible, a normal client-attorney relationship as prescribed by the Nevada Rules of Professional Conduct and shall advocate for the expressed wishes of the protected person or proposed protected person even if in conflict with the attorney's judgment or opinion as to the client's best interests.
3. If the protected person or proposed protected person is unable to express or communicate his or her wishes to the attorney consistently and coherently, the attorney shall protect the legal interests and due process rights of the protected person or proposed protected person.
4. The attorney shall endeavor to ensure that:
 - a. the attorney zealously advocates for the express wishes of the protected person or proposed protected person, including those contained in any advance directive;
 - b. there is no less restrictive alternative to guardianship or to the matter before the court;
 - c. proper due process procedure is followed and relevant statutes are complied with;
 - d. no substantial rights of the protected person or proposed protected person are waived, except with the express or implied consent of the protected person or proposed protected person and the approval of the court;
 - e. the petition for guardianship can be supported by clear and convincing evidence in an initial proceeding, and applicable legal standards are met in any subsequent proceedings;
 - f. the proposed guardian is a qualified person to serve or to continue to serve, consistent with all statutory requirements; and
 - g. if a guardian is appointed, the initial order and any subsequent order is least restrictive of the personal freedom of the protected person in type, duration, and scope, consistent with his or her need for care and supervision.
5. The duties of the attorney for the protected person or proposed protected person shall include, at a minimum:
 - a. reviewing the petition for guardianship, certificates of current physical, medical, and intellectual examinations, and all other available court filings;
 - b. explaining to the protected person or proposed protected person, to the extent possible and in terms he or she is most likely to understand, the nature and possible consequences of the proceedings, the legal options and

- alternatives that are available, and the rights to which the protected person or proposed protected person is entitled, including specifically the person's right to oppose the guardianship or oppose the scope of the guardianship; and
- c. securing and presenting available evidence and testimony and offering argument as warranted that would tend to further the expressed wishes of the protected person or proposed protected person and protect his or her rights and legal interests.
 - d. maintaining sufficient contact with the protected person after the granting of a guardianship and before any annual review to evaluate the safety and well-being of the protected person and to foster communication as prescribed by Rule 1.4 of the Nevada Rules of Professional Conduct. ;
6. The role of the attorney for the protected person or proposed protected person is distinct from the role of a guardian *ad litem* appointed under NRS 159.0455 or an investigator appointed under NRS 159.046.

AGENDA ITEM 5(e)

DRAFT Rule 14

Termination of Guardianships For Non-Compliance With No Further Identification of Whether a Guardianship Remains Necessary, and if so, a Successor Guardian

DRAFT RULE #14

Termination of guardianships for non-compliance with no further identification of whether a guardianship remains necessary, and if so, a successor guardian

Submitted by Mallory Nelson

APPROVED BY SUBCOMMITTEE BY VOTE OF 5-4 OF THOSE PRESENT DURING 9/12/18 MEETING

Termination of guardianships for non-compliance with no further identification of whether a guardianship remains necessary, and if so, a successor guardian

A. Where the court removes the sole guardian, suspends a sole guardian's authority, and/or revokes the letters of guardianship based upon the sole guardian's non-compliance with his or her duties and responsibilities under law,^{1 2} the court shall not terminate the guardianship without making specific findings as to:³

1. The protected person's current health and welfare,
2. The reasons a guardianship does or does not remain necessary, including identifying the existence of less-restrictive alternatives, and⁴⁵,
3. Whether maintaining the guardianship would serve the Protected Person's best interests.⁶

B. Where the location and circumstances of the protected person are unknown to the court and/or parties of record, prior to terminating a guardianship based upon a guardian's non-compliance with duties and responsibilities under law, the court shall

¹ National Probate Court Standards ("NPCS") 3.3.19: STANDARD 3.3.19 ENFORCEMENT OF ORDERS; REMOVAL OF GUARDIANS AND CONSERVATORS

A. Probate courts should enforce their orders by appropriate means, including the imposition of sanctions. These may include suspension, contempt, removal, and appointment of a successor.

B. When probate courts learn of a missing, neglected, or abused respondent or that a respondent's assets are endangered, they should take timely action to ensure the safety and welfare of that respondent and/or the respondent's assets.

C. When a guardian or conservator is unable or fails to perform duties set forth in the appointment order, and the safety and welfare of that respondent and/or the respondent's assets are endangered, probate courts should remove the guardian or conservator and appoint a successor as required.

² NRS 159.185 and NRS 159.1853.

³ Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act ("UGCOPAA"), revised 2017, SECTION 318. REMOVAL OF GUARDIAN FOR ADULT; APPOINTMENT OF SUCCESSOR, Comment, p124, "If the court removes a guardian, the court must then appoint a successor guardian. This is because removal simply ends *the particular appointment*, it does not terminate the guardianship or modify other terms of the guardianship." (Emphasis added).

⁴ NRS 159.1877

⁵ NRS 159.191(1)(c) and (3)(c).

⁶ NRS 159.1905(3).

order an investigation pursuant to NRS 159.046 and/or NRS 159.341 to verify the status of the protected person.⁷

C. The court may appoint the public guardian as temporary guardian during pendency of proceedings described in paragraph “A.”

⁷ NPC 3.3.19 at Commentary, para.4: “Where the whereabouts of a respondent are unknown to the probate court or the guardian/conservator, an immediate investigation should be ordered to locate the respondent, including checking the records of state and local agencies when state law permits the sharing of information.”

AGENDA ITEM 5(e)(i)

**Proposed Rule 14
Termination of Guardianships
For Minor Guardianships only**

SECOND JUDICIAL DISTRICT COURT MATERIALS RE: TERMINATION OF GUARDIANSHIPS

PROPOSED RULE ON TERMINATION

TO: SUPREME COURT OF NEVADA
PERMANENT GUARDIANSHIP COMMISSION

FROM: SABRINA SWEET, MINOR GUARDIANSHIP CASE COMPLIANCE SPECIALIST, SECOND
JUDICIAL DISTRICT COURT

SUBJECT: PROPOSED RULE ON TERMINATION

DATE: OCTOBER 11, 2018

The attached rule will be presented to the Nevada Supreme Court Permanent Guardianship Commission (Commission) at the November 2, 2018 Commission meeting. This rule was passed by the Commission Rule Subcommittee by a 5:4 marginal vote. This memo is intended to provide support for the proposed rule, based on practical experience.

Historically guardianship cases had limited case management resources and the caseloads were assigned to several different departments over the course of time. Since the creation of the Guardianship Case Compliance Positions, several measures have been taken to ensure corrective actions. During the course of cleaning up the minor guardianship caseload in the Second Judicial District, several cases were terminated, however, it was determined best practice that at minimum an annual report was filed in the last year. For cases in which there were no annual reports, some of which were missing reports for up to fifteen years, an Order to Show Cause Hearing was scheduled. Due to lack of contact with the Court, returned mail, and no appearances at the Show Cause hearings, the Court found there were 178 “missing” protected minors. The Second Judicial District Court retained jurisdiction over these cases as the health and welfare of the minor was unknown and it appeared unethical to simply terminate the case. Due to fortunate legislative changes, the Second Judicial District Court is currently working with the State Guardianship Compliance Office (GCO) to locate the missing protected minors and determine the appropriate action in each case.

During the course of cleaning up the minor guardianship cases, several concerns arose, such as the following findings: guardians were unsuitable to provide care for the minor; the minor was not living with the guardian(s) and the current caretaker(s) were unsuitable to provide care for the minor; imminent risk of harm to the minor warranted a referral to child protective services; the appointed guardian(s) were convicted felons; the minor had passed away; the minor was admitted to a residential treatment or psychiatric facility with no notice to the Court; the minor’s educational status was of emergent concern; and the minor had run away and the guardian(s) did not know their whereabouts. During the course of the investigations completed by the GCO (current $n = 29$), some findings have been similar to those previously listed, however, the Court received sufficient information to make appropriate findings in each case.

The Commission has provided Judicial District Courts guidance in best practice in the Guardianship arena, which has significantly improved oversight and management of the

Guardianship caseloads. Based on the concerning findings in the minor guardianship caseload in the Second Judicial District, it does not appear ethical to simply terminate a guardianship due to lack of contact, without making specific findings in each case. Practical experience has shown it is in the best interest of the Court to determine the status of the protected person prior to terminating a case.

The attached memo includes citations in 159A and corrections to the language of the rule to appropriately include minor protected persons.

Thank you, Commission members, for your consideration of my experience in your decision.

A. Where the court removes the sole guardian, suspends a sole guardian's authority, and/or revokes the letters of guardianship based upon the sole guardian's non-compliance with his or her duties and responsibilities under law,¹²³ the court shall not terminate the guardianship without making specific findings as to:⁴

1. The protected person's current health and welfare,
2. The reasons a guardianship does or does not remain necessary, including identifying the existence of less-restrictive alternatives, and⁵⁶,
3. Whether maintaining the guardianship would serve the Protected Person's best interests.⁷

Commented [SS1]: PP is capitalized here, but nowhere else in the rule. It should be consistent.

B. Where the location and circumstances of the protected person are unknown to the court and/or parties of record, prior to terminating a guardianship based upon a guardian's non-compliance with duties and responsibilities under law, the court shall order an investigation pursuant to NRS 159.046, NRS 159A.046, and/or NRS 159.341 to verify the status of the protected person.⁸

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C. The court may appoint the public guardian as temporary guardian of an adult during pendency of proceedings described in paragraph "A."

¹ National Probate Court Standards ("NPCS") 3.3.19: STANDARD 3.3.19 ENFORCEMENT OF ORDERS; REMOVAL OF GUARDIANS AND CONSERVATORS

A. Probate courts should enforce their orders by appropriate means, including the imposition of sanctions. These may include suspension, contempt, removal, and appointment of a successor.

B. When probate courts learn of a missing, neglected, or abused respondent or that a respondent's assets are endangered, they should take timely action to ensure the safety and welfare of that respondent and/or the respondent's assets.

C. When a guardian or conservator is unable or fails to perform duties set forth in the appointment order, and the safety and welfare of that respondent and/or the respondent's assets are endangered, probate courts should remove the guardian or conservator and appoint a successor as required.

² NRS 159.185 and NRS 159.1853. NRS 159A.185 and NRS 159A.1853.

³ NRS 159A.1877.

⁴ Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act ("UGCOPAA"), revised 2017, SECTION 318. REMOVAL OF GUARDIAN FOR ADULT; APPOINTMENT OF SUCCESSOR, Comment, p124, "If the court removes a guardian, the court must then appoint a successor guardian. This is because removal simply ends the particular appointment, it does not terminate the guardianship or modify other terms of the guardianship." (Emphasis added). SECTION 211. REMOVAL OF GUARDIAN FOR MINOR; TERMINATION OF GUARDIANSHIP; APPOINTMENT OF SUCCESSOR.

⁵ NRS 159.1877

⁶ NRS 159.191(1)(c) and (3)(c) and NRS 159A.191 (1)(c) and (2)(b).

⁷ NRS 159.1905(3) and NRS 159A.186.

⁸ NPCS 3.3.19 at Commentary, para.4: "Where the whereabouts of a respondent are unknown to the probate court or the guardian/conservator, an immediate investigation should be ordered to locate the respondent, including checking the records of state and local agencies when state law permits the sharing of information."

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AGENDA ITEM 5(f)

**DRAFT Rule 23 – Status Hearings After
Establishment of Guardianship**

DRAFT RULE #23

Status hearings after establishment of guardianship

Submitted by Dania Reid

APPROVED BY SUBCOMMITTEE 10/24/18

Rule __. Guardianship Review Hearing.

(a) Guardianship of person. A review hearing shall be held by the court on every guardianship of person not later than three years after the initial appointment of a general or special guardian of person, and not later than three years after each preceding review hearing. A review hearing may occur in response to the report of person required by NRS 159.081 or at any other time as the court may order.

(b) Guardianship of estate. The court shall review every guardianship of estate annually on which a hearing of account is required by NRS 159.181.

AGENDA ITEM 5(g)

**DRAFT Rule 24
Operating Accounts and Bonds**

DRAFT RULE #24

Operating accounts and bonds

Submitted by Lynn Hughes

APPROVED FOR SUBMISSION BY SUBCOMMITTEE 10/24/18

Operating accounts; Bonds

- (a) The Court may require blocked accounts for the guardianship in addition to or in lieu of requiring a bond of the guardian, and limiting the disbursements from the guardianship estate out of the blocked accounts. Such disbursements shall be made to a separate operating account under the name of the Guardian and on behalf of the protected person, to provide for the health, welfare and support of the protected person. This rule shall not apply to the Public Guardian, under NRS 253.010-250.
- (b) A guardian shall acquire a bond to secure performance of the guardian's duties if a court issues a finding that a bond is needed to protect the interests of the beneficiaries.
- (c) Using the inventory of a protected person which shows the value of the guardianship estate's personal property, the probable annual gross income of the estate, and the sum of the probable annual gross payments of the public benefits of the protected person, the Court may set a bond for the protection of a protected person. Except as otherwise provided by statute, every guardian of the estate must furnish a bond that includes an amount 10% in excess of the value of the estate as a reasonable amount for the cost of recovery to collect on the bond.
- (d) Posting of a bond does not protect a guardian or eliminate personal liability over and above the amount of the bond, should the bond be found to be insufficient to cover any losses to the protected person for improper actions of the guardian.
- (e) If two or more persons to serve as guardians and the Court does not waive bond, the Court may require each guardian to give a bond.
- (f) Because a corporate guardian (whether personal representative, guardian, conservator, or trustee) cannot assume responsibility for the acts of an individual co-guardian, an individual co-guardian who is required to give a bond must provide a separate bond, except to the extent that the court orders the assets to be held solely by the corporate co-guardian.
- (g) The Court may require an additional bond for the Guardian in the event real or personal property is sold from the guardianship estate.
- (h) The Court may increase, decrease, or terminate a guardian's bond at any time or upon the presentation of facts making it necessary or appropriate to adjust the amount of the bond.

- (i) Upon good cause, any party or interested person may make a request for an adjustment of the guardian's bond.
- (j) The Public Guardian's bond under NRS 253.160(2) shall be sufficient for this rule, and Court shall not require additional bonds.

AGENDA ITEM 6

**Continued Discussion
Possible Amendments of 2017 Legislation**

AGENDA ITEM 6(a)

Judicial Department Bill Draft Request

JUDICIAL DEPARTMENT BILL DRAFT REQUEST FOR THE 2019 LEGISLATIVE SESSION

Authority: NRS 218D.175

Deadline: BDRs from the Judicial Department must be submitted by the Supreme Court by no later than **September 1, 2018**.

Person Submitting Request:

John McCormick, Assistant Court Administrator

Person to Contact for Clarification or Additional Information:

Name: John McCormick

Email: jmccormick@nvcourts.nv.gov

Phone: 775-687-9813

1. Intent of Proposed Bill or Resolution (Describe the problem to be solved, intended effect, and/or the goal(s) of the proposed bill or resolution – may be attached as separate document):

This measure makes additional modifications to the guardianship statutes, the need for which have been identified by the Supreme Court's Commission to Study the Creation and Administration of Guardianships. Specific language to effectuate the following changes will be provided after the Commission's meeting on September 14:

- Create a statutory framework for guardianship succession or a standby guardian,
- Update statutory provisions regarding notice of intent to move/change the location of a protected person to prevent loss of facility placement and ensure ability to pay (NRS 159.0807),
- Create order of priority/right of refusal for family members when disposing of a protected person's property,
- Allow court discretion to waive service on protected person after initial case filing to prevent upsetting or agitating protected person (NRS 159.0475),
- Require social services agency to notify the court if an investigation has been undertaken regarding the possible abuse of a protected person,
- Expand the existing statutory guidelines regarding the issuance of temporary guardianships to allow a temporary guardian of counsel to apply for Medicaid for protected person to ensure proper care and placement (NRS 159.0523); and
- Define interested party for purposes of notice provisions.

- 2. If known, list any existing state law that is sought to be changed or which is affected by the measure (NRS Title(s), Chapter(s) and Section(s) affected, Statutes of Nevada Chapter(s) and Section(s) affected and/or Nevada Constitutional provision):**

NRS Chapters 159 and/or 159A

- 3. Any additional information that may be helpful in drafting the bill or resolution** (May include any relevant legislative measures, cases or federal laws or other supporting materials – may be attached):

Washington State RCW Ch. 11.92 contains provisions regarding the appointment of a successor or standby guardian

- 4. Effective Date:**

- ☒ Default (October 1, 2019)
- ☐ July 1, 2019
- ☐ January 1, 2020
- ☐ Upon Passage and Approval
- ☐ Other

- 5. Description of any known cost to the State or a local government that would result from carrying out the changes in the bill if enacted:**

No known cost.

REQUIRED PREFILING:

A bill draft requested by the Supreme Court is required to be prefiled on or before November 21, 2018. By statute, such a measure that is not prefiled on or before that date is deemed to be withdrawn. There is no authority to waive this requirement.

Please submit the completed Bill Draft Request form by mail to: Brenda Erdoes, Legislative Counsel, Legislative Building, 401 South Carson Street, Carson City, Nevada 89701; by e-mail at erdoes@lcb.state.nv.us; or by fax at (775) 684-6761.

AGENDA ITEM 6(b)

**Create a statutory framework for guardianship
succession or a standby guardian**

Attachment – RCWA 11.88.125

[West's Revised Code of Washington Annotated](#)

[Title 11. Probate and Trust Law \(Refs & Annos\)](#)

[Chapter 11.88. Guardianship--Appointment, Qualification, Removal of Guardians \(Refs & Annos\)](#)

West's RCWA 11.88.125

11.88.125. Standby limited guardian or limited guardian

Effective: July 28, 2013

[Currentness](#)

(1) Any individual or professional guardian appointed by the court as either guardian or limited guardian of the person and/or estate of an incapacitated person shall file in writing with the court, within ninety days from the date of appointment, a notice designating a standby guardian or standby limited guardian to serve as guardian or limited guardian at the death, legal incapacity, or planned absence of the court-appointed guardian or limited guardian. The notice shall state the name, address, zip code, and telephone number of the designated standby guardian or standby limited guardian. Notice of the guardian's designation of the standby guardian or standby limited guardian shall be given to the standby guardian or standby limited guardian, the incapacitated person and his or her spouse or domestic partner and adult children, any facility in which the incapacitated person resides, and any person who requested special notice under [RCW 11.92.150](#).

(2)(a) If the regularly appointed guardian or limited guardian dies or becomes incapacitated, then the standby guardian or standby limited guardian shall have all the powers, duties, and obligations of the regularly appointed guardian or limited guardian and in addition shall, within a period of thirty days from the death or adjudication of incapacity of the regularly appointed guardian or limited guardian, file with the superior court in the county in which the guardianship or limited guardianship is then being administered, a petition for appointment of a substitute guardian or limited guardian. Upon the court's appointment of a new, substitute guardian or limited guardian, the standby guardian or standby limited guardian shall make an accounting and report to be approved by the court, and upon approval of the court, the standby guardian or standby limited guardian shall be released from all duties and obligations arising from or out of the guardianship or limited guardianship.

(b) Letters of guardianship shall be issued to the standby guardian or standby limited guardian upon filing an oath and posting a bond as required by [RCW 11.88.100](#). The oath may be filed prior to the regularly appointed guardian's or limited guardian's death or incapacity. The standby guardian or standby limited guardian shall provide notice of such appointment to the incapacitated person and his or her spouse or domestic partner and adult children, any facility in which the incapacitated person resides, and any person who requested special notice under [RCW 11.92.150](#).

(c) The provisions of [RCW 11.88.100](#) through [11.88.110](#) shall apply to standby guardians and standby limited guardians.

(3)(a) A standby guardian or standby limited guardian may assume some or all of the duties, responsibilities, and powers of the guardian or limited guardian during the guardian's or limited guardian's planned absence. Prior to the commencement of

the guardian's or limited guardian's planned absence and prior to the standby guardian or standby limited guardian assuming any duties, responsibilities, and powers of the guardian or limited guardian, the guardian or limited guardian shall file a petition in the superior court where the guardianship or limited guardianship is being administered stating the dates of the planned absence and the duties, responsibilities, and powers the standby guardian or standby limited guardian should assume. The guardian or limited guardian shall give notice of the planned absence petition to the standby guardian or standby limited guardian, the incapacitated person and his or her spouse or domestic partner and adult children, any facility in which the incapacitated person resides, and any person who requested special notice under [RCW 11.92.150](#).

(b) Upon the conclusion of the hearing on the planned absence petition, and a determination by the court that the standby guardian or standby limited guardian meets the requirements of [RCW 11.88.020](#), the court shall issue an order specifying: (i) The amount of bond as required by [RCW 11.88.100](#) through [11.88.110](#) to be filed by the standby guardian or standby limited guardian; (ii) the duties, responsibilities, and powers the standby guardian or standby limited guardian will assume during the planned absence; (iii) the duration the standby guardian or standby limited guardian will be acting; and (iv) the expiration date of the letters of guardianship to be issued to the standby guardian or standby limited guardian.

(c) Letters of guardianship consistent with the court's determination under (b) of this subsection shall be issued to the standby guardian or standby limited guardian upon filing an oath and posting a bond as required by [RCW 11.88.100](#). The standby guardian or standby limited guardian shall give notice of such appointment to the incapacitated person and his or her spouse or domestic partner and adult children, any facility in which the incapacitated person resides, and any person who requested special notice under [RCW 11.92.150](#).

(d) The provisions of [RCW 11.88.100](#) through [11.88.110](#) shall apply to standby guardians and standby limited guardians.

(4) In addition to the powers of a standby guardian or standby limited guardian as noted in this section, the standby guardian or standby limited guardian shall have the authority to provide timely, informed consent to necessary medical procedures, as authorized in [RCW 11.92.043](#), if the guardian or limited guardian cannot be located within four hours after the need for such consent arises.

Credits

[[2013 c 304 § 1](#), eff. July 28, 2013; [2011 c 329 § 5](#), eff. July 22, 2011; [2008 c 6 § 805](#), eff. June 12, 2008; [1991 c 289 § 8](#); [1990 c 122 § 15](#); 1979 c 32 § 1; 1977 ex.s. c 309 § 10; 1975 1st ex.s. c 95 § 6.]

West's RCWA 11.88.125, WA ST 11.88.125

Current with all effective legislation from the 2018 Regular Session of the Washington Legislature.

AGENDA ITEM 6(c)

**Redline of NRS 159.0807 Notice of Intent to
Move/Change of Location procedures**

Current Language

NRS 159.0807 Moving location of protected person: Filing and service of notice of intent to move; necessary temporary action authorized for emergency conditions; circumstances in which notice not required.

1. Every protected person has the right, if possible, to:
 - (a) Have his or her preferences followed; and
 - (b) Age in his or her own surroundings or, if not possible, in the least restrictive environment suitable to his or her unique needs and abilities.
 2. Except as otherwise provided in subsection 5, a proposed protected person must not be moved until a guardian is appointed.
 3. Except as otherwise provided in this section and subsections 5 and 6 of [NRS 159.079](#), the guardian shall notify all interested persons in accordance with subsection 4 before the protected person:
 - (a) Is admitted to a secured residential long-term care facility;
 - (b) Changes his or her residence, including, without limitation, to or from one secured residential long-term care facility to another; or
 - (c) Will reside at a location other than his or her residence for more than 3 days.
 4. Except as otherwise provided in this section and subsections 5 and 6 of [NRS 159.079](#), a guardian shall file with the court a notice of his or her intent to move the protected person and shall serve notice upon all interested persons not less than 10 days before moving the protected person. If no objection to the move is received from any interested person within 10 days after receiving the notice, the guardian may move the protected person without court permission.
 5. If an emergency condition exists, including, without limitation, the health or safety of the protected person is at risk of imminent harm or the protected person has been hospitalized and will be unable to return to his or her residence for a period of more than 24 hours, the guardian may take any temporary action needed without the permission of the court and shall file notice with the court and serve notice upon all interested persons as soon as practicable after taking such action.
 6. Except as otherwise provided in this subsection, any notice provided to a court, an interested person or person of natural affection pursuant to this section or [NRS 159.0809](#) must include the current location of the protected person. The guardian shall not provide any contact information to an interested person or person of natural affection if an order of protection has been issued against the interested person or person of natural affection on behalf of the protected person.
 7. A guardian is not required to provide notice to an interested person or person of natural affection in accordance with this section or [NRS 159.0809](#) if:
 - (a) The interested person or person of natural affection informs the guardian in writing that the person does not wish to receive such notice; or
 - (b) The protected person or a court order has expressly prohibited the guardian from providing notice to the interested person or person of natural affection.
- (Added to NRS by [2017, 2550](#))

Proposed Changes:

Deletions in Red

Additions/moved language in purple

NRS 159.0807 Moving location of protected person: Filing and service of notice of intent to move; necessary temporary action authorized for emergency conditions; circumstances in which notice not required.

1. Every protected person has the right, if possible, to:
 - (a) Have his or her preferences followed; and
 - (b) Age in his or her own surroundings or, if not possible, in the least restrictive environment suitable to his or her unique needs and abilities.
2. Except as otherwise provided in subsection 5, a proposed protected person must not be moved until a guardian is appointed.
3. Except as otherwise provided in this section and subsections 5 and 6 of [NRS 159.079](#), the guardian shall notify all interested persons in accordance with subsection 4 ~~before the~~ if a protected person:
 - (a) Is admitted to a ~~secured~~ residential long-term care facility;
 - (b) Changes his or her residence, including, without limitation, to or from one ~~secured~~ residential long-term care facility to another; or
 - (c) ~~Will reside at a location other than his or her residence for more than 3 days.~~ Is admitted to the hospital or placed temporarily in a facility that provides rehabilitative services.
4. Except as otherwise provided in this section and subsections 5 and 6 of [NRS 159.079](#), a guardian shall file with the court a notice of his or her intent to move the protected person to a higher level of care and shall serve notice upon all interested persons not less than 10 days before moving the protected person unless:
 - a) An emergency condition exists, including, without limitation, the health or safety of the protected person is at risk of imminent harm and will be unable to return to his or her residence for a period of more than 24 hours, the guardian may take any temporary action needed without the permission of the court and shall file notice with the court and serve notice upon all interested persons as soon as practicable after taking such action
 - b) The move or placement is made pursuant to a written recommendation by a licensed physician, a physician employed by the Department of Veterans Affairs, a licensed social worker or an employee of a county or state office for protective services.
 - c) The move or placement is a result of an admittance to a hospital or facility that provides rehabilitative services.

If no objection to the move is received from any interested person within 10 days after receiving the notice, the guardian may move the protected person without court permission.

5. ~~If an emergency condition exists, including, without limitation, the health or safety of the protected person is at risk of imminent harm or the protected person has been hospitalized and will be unable to return to his or her residence for a period of more than 24 hours, the guardian may take any temporary action needed without the permission of the court and shall file notice with the court and serve notice upon all interested persons as soon as practicable after taking such action.~~ Once a permanent placement is established the guardian must file a Notice of Change of Address with the court as soon as practicable.

6. Except as otherwise provided in this subsection, any notice provided to a court, an interested person or person of natural affection pursuant to this section or [NRS 159.0809](#) must include the current location of the protected person. The guardian shall not provide any contact information to an interested person or person of natural affection if an order of protection has been issued against the interested person or person of natural affection on behalf of the protected person.

7. A guardian is not required to provide notice to an interested person or person of natural affection in accordance with this section or [NRS 159.0809](#) if:

(a) The interested person or person of natural affection informs the guardian in writing that the person does not wish to receive such notice; or

(b) The protected person or a court order has expressly prohibited the guardian from providing notice to the interested person or person of natural affection.

AGENDA ITEM 6(e)

**Expansion of existing statutory guidelines
regarding issuance of temporary guardianships**

**Attached redline review of UGCOPAA
Article 5 Submitted by John Michaelson**

RED-LINED VERSION Article 5 of the:

**UNIFORM GUARDIANSHIP, CONSERVATORSHIP,
AND OTHER PROTECTIVE ARRANGEMENTS ACT**

drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS ONE-HUNDRED-AND-TWENTY-SIXTH YEAR
SAN DIEGO, CALIFORNIA
JULY 14-JULY 20, 2017

WITH PREFATORY NOTE AND COMMENTS

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By
NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

August 28, 2018

[ARTICLE] 5

OTHER PROTECTIVE ARRANGEMENTS

SECTION 501. AUTHORITY FOR PROTECTIVE ARRANGEMENT	213
SECTION 502. BASIS FOR PROTECTIVE ARRANGEMENT INSTEAD OF GUARDIANSHIP FOR ADULT	214
SECTION 503. BASIS FOR PROTECTIVE ARRANGEMENT INSTEAD OF CONSERVATORSHIP FOR ADULT OR MINOR.....	216
SECTION 504. PETITION FOR PROTECTIVE ARRANGEMENT	221
SECTION 505. NOTICE AND HEARING	225
SECTION 506. APPOINTMENT AND ROLE OF [VISITOR]	226
SECTION 507. APPOINTMENT AND ROLE OF ATTORNEY	230
SECTION 508. PROFESSIONAL EVALUATION	232
SECTION 509. ATTENDANCE AND RIGHTS AT HEARING	234
SECTION 510. NOTICE OF ORDER	237
SECTION 511. CONFIDENTIALITY OF RECORDS	237
SECTION 512. APPOINTMENT OF [MASTER]	240

[ARTICLE] 5

OTHER PROTECTIVE ARRANGEMENTS

SECTION 501. AUTHORITY FOR PROTECTIVE ARRANGEMENT.

(a) Under this [article], a court:

(1) on receiving a petition for a guardianship of the person for an adult may order a protective arrangement instead of guardianship as a less restrictive alternative to guardianship; and

(2) on receiving a petition for a guardianship of the estate conservatorship for an adult individual may order a protective arrangement instead of guardianship of the estate conservatorship as a less restrictive alternative to guardianship of the estate conservatorship.

(b) A person interested in an adult's welfare, including the adult or a guardian of the estate conservator offer the adult, may petition under this [article] for a protective arrangement instead of a guardianship of the person.

(c) The following persons may petition under this [article] for a protective arrangement instead of guardianship of the estate conservatorship:

(1) the individual for whom the protective arrangement is sought;

(2) a person interested in the property, financial affairs, or welfare of the individual for whom the protective arrangement is sought, including a person or entity that would be affected adversely by lack of effective management of property or financial affairs of the individual for whom the arrangement is sought; and

(3) the guardian of the person for the individual for whom the protective

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arrangement is sought.

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Comment

Section 501, together with the subsequent sections of Article 5, create an alternative to guardianship of the person and guardianship of the estate~~conservatorship~~ for individuals whose needs can be met without the imposition of such a restrictive arrangement. Specifically, these sections allow the court to enter an order that is precisely tailored to the individual's circumstances and needs, and that is limited in scope and, potentially, duration. By allowing the court to craft a simpler and less intrusive protective arrangement, Article 5 is responsive to the Third National Guardianship Summit's call to embrace such less restrictive alternatives. *See generally Third National Guardianship Summit Standards & Recommendations*, 2012 UTAH L. REV. 1191 (2012). In addition, such limited orders may reduce the costs to the individual (e.g., by avoiding the expense of a paying a guardian of the estate~~conservator~~) and costs to the court system (e.g., by avoiding the costs associated with monitoring a guardian of the estate~~conservator~~).

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Subsection (a)(1) allows a court to proceed with the process for ordering a protective arrangement instead of guardianship of the person for an adult either upon a petition for such an arrangement or upon a petition for a guardianship of the person of an adult. Subsection (a)(2) allows a court to proceed with the process for ordering a protective arrangement instead of guardianship of the estate~~conservatorship~~ for either an adult or minor upon a petition for such an arrangement or upon a petition for guardianship of the estate~~conservatorship~~ for the adult or minor.

Commented [JM1]: Have we set this up to apply in the context of a minor?

Subsections (b) and (c) state who may petition for a protective arrangement instead of guardianship of the person or guardianship of the estate~~conservatorship~~. It grants standing to petition to the persons who would have standing to petition for guardianship of the person under NRS 159Section 302 or guardianship of the estate~~conservatorship~~ under NRS 159Section 402. It also gives standing to the guardian of the person ~~offer~~ the ~~respondent~~protected person to petition for a protective arrangement instead of guardianship of the estate~~conservatorship~~. This additional standing to petition is designed to allow the guardian of the person to protect the financial interests of the ~~respondent~~protected person without taking the more intrusive step of petitioning for guardianship of the estate~~conservatorship~~.

Commented [JM2]: The Comment section should clarify standing of institutions as inferred in (c)(2) above.

SECTION 502. BASIS FOR PROTECTIVE ARRANGEMENT INSTEAD OF GUARDIANSHIP FOR ADULT.

(a) After the hearing on a petition under ~~NRS 159~~~~Section 302~~ for a guardianship ~~of the person~~ or under Section 501(b) for a protective arrangement instead of guardianship ~~of the person~~, the court may issue an order under subsection (b) for a protective arrangement instead of guardianship ~~of the person~~ if the court **finds by clear- and-convincing evidence** that:

(1) the ~~respondent~~~~proposed protected person~~ lacks the ability to meet essential requirements for physical health; safety, or self-care because the ~~respondent~~~~proposed protected person~~ is unable to receive and evaluate information or make or communicate decisions, even with appropriate supportive services, technological assistance, or supported decision making; and

(2) the ~~respondent~~~~proposed protected person~~'s identified needs cannot be met by a less restrictive alternative.

(b) If the court makes the findings under subsection (a), the court, instead of appointing a guardian ~~of the person~~, may:

(1) authorize or direct a transaction or series of transactions, including appointing a master/administrator, necessary to meet the ~~respondent~~~~proposed protected person~~'s need for health, safety, or care, including:

(A) a particular medical treatment or treatments or refusal of a particular medical treatment or treatments;

(B) a move ~~to~~ or placement in a specified place of dwelling or treatment or rehabilitation program, indefinitely or for a shorter period of time; or

~~(C)~~ visitation or supervised visitation between the ~~respondent~~~~proposed protected person~~ and another person;

(2) restrict access to the ~~respondent~~~~proposed protected person~~ by a specified

person whose access places the ~~respondent~~proposed protected person at serious risk of physical, psychological, or financial harm; and

(3) order other arrangements on a limited basis that are appropriate.

(c) In deciding whether to issue an order under this section, the court shall consider the factors under ~~NRS 159Sections 313 and 314~~ which a guardian of the person must consider when making a decision on behalf of an adult subject to guardianship of the person.

Comment

Subsection (a) allows the court to order a protective arrangement instead of guardianship of the person for an adult if the court makes the findings required to appoint a guardian for that ~~respondent~~proposed protected person and, as is required for appointment of a guardian of the person, does so based on clear-and-convincing evidence. Thus, subsection (a) does not lower the standard for court-based intervention. Rather, it provides the court with the ability to order an arrangement that is less restrictive than guardianship of the person where such an order would meet the adult's need.

As set forth in subsection (b), after making the findings required by subsection (a), the court may authorize or direct any transaction necessary to meet the adult's need for health, safety, or care. The list of transactions in subsection (b) is non-exclusive. Listed are (1) a particular medical treatment or treatments or refusal of a particular medical treatment or treatments, (2) a move to a specified place of dwelling, and (3) visitation or supervised visitation between the ~~respondent~~proposed protected person and another person. An order requiring a third party to permit visitation with the ~~respondent~~proposed protected person, and potentially setting forth a schedule for such visitation, may be appropriate where the ~~respondent~~proposed protected person has been wrongfully denied the right to engage with others. The court may also order an arrangement that restricts access "to the ~~respondent~~proposed protected person by a specified person whose access places the ~~respondent~~proposed protected person at serious risk of physical, psychological, or financial harm."

When making an order under this section, the court is acting much like a guardian would in making a decision for an individual subject to guardianship of the person. Accordingly, subsection (c) requires the court to consider factors a guardian of the person must consider when making decisions for an adult. The result is that the court may not make an order simply because the court believes the order would be in the best interest of the adult. The court must enter an order consistent with what the court determines the adult would decide if the adult were able to make the decision. This standard will therefore require the court, for example, to consider the adult's wishes and values.

Commented [JM3]: Note that such an order likely would not meet the protected person's needs in many instances because institutions would invariably raise objections if the order was not specific enough or if additional documentation or actions needed to be addressed, or if unforeseen circumstances arose. This might be addressed with appointment of master/administrator. See section 512.

Commented [JM4]: Exactly, this is similar to a guardianship but sets up a kind of "mother may I" situation where the holder of the order would likely have to go back repeatedly to the court to get amended orders and directions and instructions to actually obtain benefits or handle property or deal with contingencies like a decline in the proposed protected person's health. Again, see section 512 for appointment of master/administrator. Will this suffice?

Deliberately not included in this section is a provision allowing for a protective order instead of guardianship of the person for a minor. The possibility of such an order was considered as part of the drafting process, but was rejected amid concerns that it would provide inadequate protection for minors and could impinge on other areas of child welfare law.

**SECTION 503. BASIS FOR PROTECTIVE ARRANGEMENT INSTEAD OF
GUARDIANSHIP OF THE ESTATE~~CONSERVATORSHIP~~ FOR ADULT OR MINOR.**

(a) After the hearing on a petition under ~~NRS 159Section 402~~ for guardianship of the estate~~conservatorship~~ for an adult or under Section 501(c) for a protective arrangement instead of guardianship of the estate~~conservatorship~~ for an adult, the court may issue an order under subsection (c) for a protective arrangement instead of guardianship of the estate~~conservatorship~~ for the adult if the court finds by clear-and-convincing evidence that:

(1) the adult is unable to manage property or financial affairs because:

(A) of a limitation in the ability to receive and evaluate information or make or communicate decisions, even with appropriate supportive services, technological assistance, or supported decision making; or

(B) the adult is missing, detained, or unable to return to the United States;

(2) an order under subsection (c) is necessary to:

(A) avoid harm to the adult or significant dissipation of the property of the adult; or

(B) obtain or provide funds or other property needed for the support, care, education, health, or welfare of the adult or an individual entitled to the adult's support; and

(3) the ~~respondent~~proposed protected person's identified needs cannot be met by a less restrictive alternative.

(b) After the hearing on a petition under ~~NRS 159ASection 402~~ for guardianship of the estate~~conservatorship~~ ~~offer~~ for a minor or under Section 501(c) for a protective arrangement instead of guardianship of the estate~~conservatorship~~ ~~offer~~ for a minor, the court may issue an order under subsection (c) for a protective arrangement instead of guardianship of the estate~~conservatorship~~ for the ~~respondent~~proposed protected minor if the court finds by a preponderance of the evidence that the arrangement is in the minor's best interest, and:

(1) if the minor has a parent, the court gives weight to any recommendation of the parent whether an arrangement is in the minor's best interest;

(2) either:

(A) the minor owns money or property requiring management or protection that otherwise cannot be provided;

(B) the minor has or may have financial affairs that may be put at unreasonable risk or hindered because of the minor's age; or

(C) the arrangement is necessary or desirable to obtain or provide funds or other property needed for the support, care, education, health, or welfare of the minor; and

(3) the order under subsection (c) is necessary or desirable to obtain or provide money needed for the support, care, education, health, or welfare of the minor.

(c) If the court makes the findings under subsection (a) or (b), the court, instead of appointing a ~~guardian of the estate~~conservator, may:

(1) authorize or direct a transaction or series of transactions, including potentially the appointment of a master/administrator, necessary to protect the financial interest or property of the respondent, including:

(A) an action to establish eligibility for benefits;

(B) payment, delivery, deposit, or retention of funds or property;

(C) sale, mortgage, lease, or other transfer of property;

(D) purchase of an annuity;

(E) entry into a contractual relationship, including a contract to provide for personal care, supportive services, education, training, or employment;

(F) addition to or establishment of a trust;

Commented [JM5]: Note that these guidelines are in the singular; they seem to envision one discrete action at a time being taken. This can be extremely cumbersome. But could be ameliorated by appointment of master/administrator per section 512.

(G) ratification or invalidation of a contract, trust, will, or other transaction, including a transaction related to the property or business affairs of the respondent; or

(H) settlement of a claim; or

~~(H)~~(I) If necessary to protect the respondent from exploitation or in order to facilitate the respondent's receipt of benefits to pay for the cost of care, the court may appoint an [administrator] of the estate upon a finding that the respondent is of at least limited capacity. The [administrator] of the estate may be authorized by an order of the court to freeze the accounts of the respondent not necessary for the immediate needs of said person and to have access to funds of the respondent in a sum approved by the court that is deemed necessary for respondent's needs for a period not to exceed 90 days, and in regards to health care benefits, such as Medicaid and /or county assistance, the court may (i) order the creation of a qualified income trust, name the trustee thereof, order that the temporary special guardian may transfer, on a monthly basis, the income of the respondent into a qualified income trust account in the name of the trustee and authorize the trustee of said trust to make such disbursements therefrom as are necessary to pay the monthly cost of care of the respondent, and if applicable; (ii) order the dividing of resources and income of the respondent and his/her spouse pursuant to NRS 123.259, and authorizing the [administrator] to access the accounts of respondent to separate the resources and income of the parties, and (iii) make such other orders to allow the [administrator] to take actions including spenddown any resources not necessary for the support of the community spouse, if any there may be, on the care of the institutionalized spouse not necessary to secure exempt assets, and to dispose of items of personal property for value that are not exempt or otherwise allowed to be held by respondent as a public benefits recipient; or

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(2) restrict access to the respondent's property by a specified person whose access to the property places the respondent at serious risk of financial harm.

(d) After the hearing on a petition under Section 501(a)(2) or (c), whether or not the court makes the findings under subsection (a) or (b), the court may issue an order to restrict access to the respondent or the respondent's property by a specified person that the court finds by clear-and-convincing evidence:

(1) through fraud, coercion, duress, or the use of deception and control

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caused or attempted to cause an action that would have resulted in financial harm to the respondent or the respondent's property; and

(2) poses a serious risk of substantial financial harm to the respondent or the respondent's property.

(e) Before issuing an order under subsection (c) or (d), the court shall consider the factors under Section 418 a ~~guardian of the estate conservator~~ must consider when making a decision on behalf of an individual subject to ~~guardianship of the estate conservatorship~~.

(f) Before issuing an order under subsection (c) or (d) for a ~~respondent proposed protected person~~ who is a minor, the court also shall consider the best interest of the minor, the preference of the parents of the minor, and the preference of the minor, if the minor is 12 years of age or older.

(f)

Comment

Subsections (a) and (b) allow the court to order a protective arrangement instead of ~~guardianship of the estate conservatorship~~ for an adult or minor ~~respondent proposed protected person~~ if the court makes the findings required to appoint a ~~guardian of the estate conservator~~ for that ~~respondent proposed protected person~~. Thus, subsection (a), which applies to adults, does not lower the standard for court-based intervention. Rather, it provides the court with the ability to order an arrangement that is less restrictive than ~~guardianship of the estate conservatorship~~ (including a limited ~~guardianship of the estate conservatorship~~) where such an order would meet the individual's need. Similarly, subsection (b) authorizes the court to order a protective arrangement instead of ~~guardianship of the estate conservatorship~~ for a minor if such an arrangement is in the minor's best interest. However, before ordering a protective arrangement for a minor, the court must give weight to the recommendation of a parent.

As set forth in subsection (c), after making the findings required by subsection (a) or (b), the court may authorize or direct any transaction necessary to protect the financial interest or property of the individual about whom the findings were made. The transactions listed in subsection (c) comprise a non-exclusive list. The list is similar to the list of transactions in Section 412(a) of the 1997 act except that this act expressly authorizes an action to establish eligibility for benefits.

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Unlike subsections (a) and (b), subsection (d) creates a basis for court intervention that does not exist in Article 4. It allows a court to restrict access to the ~~respondent~~proposed protected person or the ~~respondent~~proposed protected person's property by another person who has already engaged in certain types of bad acts. In order to impose the restriction, the court must find by clear-and-convincing evidence that the person being restricted has used fraud, coercion, duress, or deception and control to either cause or attempt to cause some act that did or would have financially harmed the ~~respondent~~proposed protected person or the ~~respondent~~proposed protected person's property. The court must also find by clear-and-convincing evidence that the person currently poses a serious risk of substantial financial harm to the ~~respondent~~proposed protected person or the ~~respondent~~proposed protected person's property.

Subsection (d) is designed to provide protection for individuals who are at serious risk of substantial financial harm as a result of the types of behaviors frequently referred to as "undue influence." Such behaviors constitute a pernicious, and particularly common, form of financial exploitation. *See generally* Stacey Wood and Pi-Ju Li, *Undue Influence and Financial Capacity: A Clinical Perspective*, 36 GENERATIONS 53 (2012) (discussing the phenomenon of undue influence from a psychological perspective); Mary Joy Quinn, *Friendly Persuasion, Good Salesmanship, or Undue Influence*, 2 MARQUETTE ELDER'S ADVISOR49 (2001) (describing undue influence and ways in which it can occur).

The relief provided by subsection (d) should be used sparingly and only if no less restrictive alternative is possible. While the restriction on access is placed on the third party who has engaged in bad acts, it also restricts the ~~respondent~~proposed protected person's freedom of association and choices. Moreover, as the court does not need to find that the ~~respondent~~proposed protected person's ability to reason or make choices is otherwise impaired before restricting access, subsection (d) can be used to restrict the liberty of an individual who would otherwise be considered fully able and entitled to make decisions for himself or herself.

While subsection (d) was drafted with situations often referred to as "undue influence" in mind, the term "undue influence" was deliberately not used. The decision not to use this term was made in part because the term has been used in so many diverse, and at times inconsistent ways, across a variety of contexts. *See* Mary Joy Quinn et. al, *Undue Influence: Definitions and Applications* (Report to the Borchard Center Foundation on Law and Aging, 2010) (describing the various ways states have defined undue influence and reporting that definitions are typically unclear or incomplete); Stacey Wood and Pi-Ju Li, *Undue Influence and Financial Capacity: A Clinical Perspective*, 36 GENERATIONS 53 (2012) (describing different ways undue influence has been defined in the psychology literature). In addition, the concept of undue influence developed in the in the context of testamentary challenges and, in that context, the "unnaturalness" of a disposition can be evidence of undue influence. *See* Carla Spivack, *Why the Testamentary Doctrine of Undue Influence Should Be Abolished*, 58 KAN. L. REV. 245, 264-67 (2010). The drafting committee did not want to suggest that whether the conditions of this section are met depends on the perceived "naturalness" of the ~~respondent~~proposed protected person's behavior as such perceptions are easily influenced by the cultural perspectives and biases of the perceiver.

Taken together, subsections (c) and (d) provide a concrete mechanism for protecting an individual from financial exploitation, without the more significant liberty restriction associated with imposition of a guardianship of the estate~~conservatorship~~. Under subsections (c) and (d), rather than imposing a guardianship of the estate~~conservatorship~~, a court may craft a remedy specifically targeted to the individual's circumstances and the threat. For example, a court might authorize a designated individual to apply for Veteran's, social security disability or Medicaid benefits on behalf of the individual; limit access to the adult's property by another person; order the creation and funding of a trust; change title to an account that was compromised by another; or order online automatic payment of a specified bill. These limited remedies can solve a specific problem without imposing a guardianship of the estate~~conservatorship~~ with the accompanying management costs to both the individual and the court system. This is important because financial exploitation of older adults is a significant problem around the country, and exploitation is often perpetuated by individuals with whom the victim has an ongoing relationship and thus from whom they may need ongoing protection. See RON ACIERNO ET AL., NATIONAL ELDER MISTREATMENT STUDY (2009) (in a national telephone survey of non-institutionalized persons aged sixty and older in the continental United States, finding that more than 5% had experienced financial exploitation by a family member in the past year alone). Such financial exploitation not only has profound implications for the well-being of its victims, it can also have a negative impact on public resources as states may be called on to provide assistance to its victims.

When making an order under this section, the court is acting much like a guardian of the estate~~conservator~~ would in making a decision for an individual subject to guardianship. Accordingly, subsection (e) requires the court to consider factors a guardian of the estate~~conservator~~ must consider when making decisions for the individual. The result is that the court may not make an order simply because the court believes the order would be in the best interest of the individual. The court must enter an order consistent with what the court determines the individual would decide if the individual were able to make the decision. This standard will therefore require the court to consider the individual's wishes and values, among other factors.

Finally, subsection (f) requires a court considering entering an order for a minor under this section to take into account the best interest of the minor, the preference of the parents of the minor, and the preference of the minor, if the minor is 12 years of age or older. This requirement is designed both to protect the minor and to provide adequate deference to parental rights in accordance with the U.S. Supreme Court's ruling in *Troxel v. Granville*, 530 U.S. 57 (2000).

Commented [JM6]: Placement actions could be included I presume. The real question is whether a single order would suffice when dealing with numerous third parties and stakeholders. Also what would the person authorized by the order be called? Petitioner? Are there reporting requirements similar to those imposed on a guardian?

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Commented [JM7]: This is problematic for at least a couple of reasons. One, it will increase the workload for the court because the court will have to make potentially multiple decisions and issue multiple orders in a single case to address contingencies. Another issue is that the court is not considering the best interest standard and therefore if the proposed protected person is objecting or being unreasonably uncooperative this methodology may not be available.

Commented [JM8]: Interesting that the court considers best interest in the context of a minor, presumably because the minor is legally incapacitated. However, many of the individuals that will be the subject of these protective arrangements are suffering from some form of diminished capacity. It seems logical that at least consideration of their best interest should be a factor. We are acting like this is impossible for courts when in reality they often consider a variety of factors in rendering a decision. It's not going to blow their minds to consider both the desires of the proposed protected person as well as best interest based on evidence that can be ascertained via the petitions, any objections and the hearing.

SECTION 504. PETITION FOR PROTECTIVE ARRANGEMENT.

(a) A petition for a protective arrangement instead of guardianship ~~of the person~~ or ~~guardianship of the estate~~~~conservatorship~~ must state the petitioner's name, principal residence, current street address, if different, relationship to the ~~respondent~~~~proposed~~ protected person, interest in the protective arrangement, the name and address of any attorney representing the petitioner, and, to the extent known, the following:

(1) the ~~respondent~~~~proposed~~ protected person's name, age, principal residence, current street address, if different, and, if different, address of the dwelling in which it is proposed the ~~respondent~~~~proposed~~ protected person will reside if the petition is granted;

(2) the name and address of the ~~respondent~~~~proposed~~ protected person's:

(A) spouse [or domestic partner] or, if the ~~respondent~~~~proposed~~ protected person has none, an adult with whom the ~~respondent~~~~proposed~~ protected person has shared household responsibilities for more than six months in the 12-month period before the filing of the petition;

(B) adult children or, if none, each parent and adult sibling of the ~~respondent~~~~proposed~~ protected person, or, if none, at least one adult nearest in kinship to the ~~respondent~~~~proposed~~ protected person who can be found with reasonable diligence; and

(C) adult stepchildren whom the ~~respondent~~~~proposed~~ protected person actively parented during the stepchildren's minor years and with whom the ~~respondent~~~~proposed~~ protected person had an ongoing relationship in the two-year period immediately before the filing of the petition;

(3) the name and current address of each of the following, if applicable:

Commented [JM9]: This seems broader than Nevada's current notice requirements

- (A) a person responsible for the care or custody of the ~~respondent~~proposed protected person;
- (B) any attorney currently representing the ~~respondent~~proposed protected person;
- (C) the representative payee appointed by the Social Security Administration for the ~~respondent~~proposed protected person;
- (D) a guardian of the person or guardian of the estate~~conservator~~ acting for the ~~respondent~~proposed protected person in this state or another jurisdiction;
- (E) a trustee or custodian of a trust or custodianship of which the ~~respondent~~proposed protected person is a beneficiary;
- (F) the fiduciary appointed for the ~~respondent~~proposed protected person by the Department of Veterans Affairs;
- (G) an agent designated under a [power of attorney for healthcare] in which the ~~respondent~~proposed protected person is identified as the principal;
- (H) an agent designated under a power of attorney for finances in which the ~~respondent~~proposed protected person is identified as the principal;
- (I) a person nominated as guardian of the person or guardian of the estate~~conservator~~ by the ~~respondent~~proposed protected person if the ~~respondent~~proposed protected person is 12 years of age or older;
- (J) a person nominated as guardian of the person by the ~~respondent~~proposed protected person's parent[,] [or] spouse, ~~fr~~[or domestic partner-]in a will or other signed record;
- (K) a person known to have routinely assisted the ~~respondent~~proposed protected person with decision making in the six-month period immediately before the filing of the petition; and if the ~~respondent~~proposed protected person is a minor:
 - (i) an adult not otherwise listed with whom the ~~respondent~~proposed protected person resides; and
 - (ii) each person not otherwise listed that had primary care or custody of the ~~respondent~~proposed protected person for at least 60 days during the two years immediately before the filing of the petition or for at least 730 days during the five years immediately before the filing of the petition;

Commented [JM10]: this would be difficult if not impossible in the context of a homeless person

(4) the nature of the protective arrangement sought;

(5) the reason the protective arrangement sought is necessary, including a brief description of:

(A) the nature and extent of the ~~respondent~~proposed protected person's alleged need;

(B) any less restrictive alternative for meeting the ~~respondent~~proposed protected person's alleged need which has been considered or implemented;

(C) if no less restrictive alternative has been considered or implemented, the reason less restrictive alternatives have not been considered or implemented; and

(D) the reason other less restrictive alternatives are insufficient to meet the ~~respondent~~proposed protected person's alleged need;

(6) the name and current address, if known, of any person with whom the petitioner seeks to limit the ~~respondent~~proposed protected person's contact;

(7) whether the ~~respondent~~proposed protected person needs an interpreter, translator, or other form of support to communicate effectively with the court or understand court proceedings;

(8) if a protective arrangement instead of guardianship is sought and the ~~respondent~~proposed protected person has property other than personal effects, a general statement of the ~~respondent~~proposed protected person's property with an estimate of its value, including any insurance or pension, and the source and amount of any other anticipated income or receipts; and

(9) if a protective arrangement instead of conservatorship is sought, a general statement of the ~~respondent~~proposed protected person's property with an estimate of its value, including any insurance or pension, and the source and amount of

Commented [JM11]: financial and property information is very difficult to obtain if a person is homeless, less capacity, or lacks family members who can help.

other anticipated income or receipts.

Comment

This section lists the information that must be contained in the petition for a protective arrangement instead of guardianship of the person for an adult under Section 502 or a protective arrangement instead of guardianship of the estate~~conservatorship~~ for a minor or adult under Section 503. The requirements for a petition for a protective arrangement instead of guardianship of the person for an adult largely mirror those for a petition for a guardianship of the person of an adult under Section 302. Likewise, the requirements for a petition for a protective arrangement instead of guardianship of the estate~~conservatorship~~ largely mirror those for a petition for a conservatorship under Section 402.

Paragraph (1) requires the petitioner to provide basic information about the ~~respondent~~proposed protected person. If the petitioner is proposing a change in the ~~respondent~~proposed protected person's place of dwelling, the petition must contain the address of the proposed new dwelling.

Paragraphs (2) and (3) require that the petition list family members and others who may have information useful to the court and to whom notice of the proceeding must be given under Section 505. These persons will likely have the greatest interest in protecting the ~~respondent~~proposed protected person and in making certain that the proposed arrangement is appropriate.

Paragraph (4) requires the petition to state the type of protective arrangement sought. As a wide range of arrangements can be ordered under Article 5, this statement will be critical to helping the court understand what the petitioner is requesting.

Paragraph (5) emphasizes the importance of least restrictive alternatives. The petitioner is required to state the nature and extent of the need alleged. The petitioner must also identify all less restrictive alternatives for meeting that ~~respondent~~proposed protected person's alleged needs that have been considered or implemented, to justify any failure to pursue less restrictive alternatives, and to explain why less restrictive alternatives would not meet the ~~respondent~~proposed protected person's alleged needs. These requirements serve to provide the court with important information relevant to whether an order under Article 5 is appropriate. These requirements also prompt would-be petitioners to explore less restrictive alternatives.

Paragraph (6) requires the petitioner to state any person with whom the petitioner seeks to limit the ~~respondent~~proposed protected person's contact. This provision is designed to alert the ~~respondent~~proposed protected person, and others who receive notice of the petition, of a potential consequence of the order that may raise significant concerns. Giving the ~~respondent~~proposed protected person, and those entitled to a copy of the petition under Section 504, full information will enable them to make more informed decisions about whether to oppose the petition.

Paragraph (7) requires the petitioner to set forth ~~respondent~~proposed protected person's need, if any, for an interpreter, translator, or other form of support to effectively communicate with the court or understand court proceedings. Thus, if the ~~respondent~~proposed protected person uses another person to help the ~~respondent~~proposed protected person communicate or understand, the petitioner should include this information.

Finally, paragraphs (8) and (9) require the petitioner to include a general statement of the ~~respondent~~proposed protected person's property, including an estimated value, insurance and pension information, and information about other anticipated income or receipts. This information should be detailed to enable the visitor to expeditiously complete the report required by Section 506, and to enable the court to determine whether a protective arrangement is needed. An exception is made if the only property is personal effects and the petitioner is seeking a protective arrangement instead of guardianship; if the petitioner seeks a protective arrangement instead of conservatorship, personal effects must also be included in the general statement.

To help petitioners satisfy the requirements of this section, Section 603 contains a sample petition form that petitioners may use.

Commented [JM12]: this information in real life is extremely difficult to obtain without a guardianship. It requires that the proposed protected person have some level of capacity and ability to assist in providing information. With homeless individuals or those with less family and less capacity, this would be virtually impossible to do without a guardianship.

SECTION 505. NOTICE AND HEARING.

(a) On filing of a petition under Section 501, the court shall set a date, time, and place for a hearing on the petition.

(b) A copy of a petition under Section 501 and notice of a hearing on the petition must be served personally on the ~~respondent~~proposed protected person. The notice must inform the ~~respondent~~proposed protected person of the ~~respondent~~proposed protected person's rights at the hearing, including the right to an attorney and to attend the hearing. The notice must include a description of the nature, purpose, and consequences of granting the petition. The court may not grant the petition if notice substantially complying with this subsection is not served on the ~~respondent~~proposed protected person.

(c) In a proceeding on a petition under Section 501, the notice required under subsection (b) must be given to the persons required to be listed in the petition under Section 504(1) through (3) and any other person interested in the ~~respondent~~proposed protected person's welfare the court determines. Failure to give notice under this subsection does not preclude the court from granting the petition.

(d) After the court has ordered a protective arrangement under this [article], notice of a hearing on a petition filed under this [act], together with a copy of the petition, must be given to the ~~respondent~~proposed protected person and any other person the court determines.

Comment

The notice and hearing requirements of this section largely mirror those of Section 303 and Section 403. This reflects the fact that a proceeding under this article should provide the ~~respondent~~proposed protected person with the same high level of due process as proceedings under Article 3 and Article 4.

Personal service of the petition and notice of hearing on the ~~respondent~~proposed protected person is required. Failure to personally serve the ~~respondent~~proposed protected person is jurisdictional, as is notice that does not substantially comply with the requirements of

subsection (b). Notice of hearing must be given to the persons who are listed in the petition, but as provided in subsection (c) failing to give notice to those listed (other than the ~~respondent~~proposed protected person) is not jurisdictional. For an explanation of why such notice is not jurisdictional, see the comments to Sections 303 and 403.

Subsection (d) addresses the notice requirements for hearings on petitions for orders subsequent to the entry of an order under Article 5. The individual subject to the order, and anyone else the court directs, must be given copies of any notice of hearing and a copy of any petition. This provision helps ensure that the individual subject to the order is kept informed of developments.

Notice under this section is also governed by the general notice requirements for hearings under Section 113, which requires that notice be given at least 14 days prior to the hearing.

SECTION 506. APPOINTMENT AND ROLE OF [VISITOR].*[THIS COULD BE MODIFIED TO FIT COUR-APPOINTED COUNSEL for NEVADA'S PURPOSES].**

(a) On filing of a petition under Section 501 for a protective arrangement instead of guardianship, the court shall appoint a [visitor]. The [visitor] must be an individual with training or experience in the type of abilities, limitations, and needs alleged in the petition.

(b) On filing of a petition under Section 501 for a protective arrangement instead of ~~guardianship of the estate~~conservatorship for a minor, the court may appoint a [visitor] to investigate a matter related to the petition or inform the minor or a parent of the minor about the petition or a related matter.

(c) On filing of a petition under Section 501 for a protective arrangement instead of ~~guardianship of the estate~~conservatorship for an adult, the court shall appoint a [visitor][unless the ~~respondent~~proposed protected person is represented by an attorney appointed by the court]. The [visitor] must be an individual with training or experience in the types of abilities, limitations, and needs alleged in the petition.

(d) A [visitor] appointed under subsection (a) or (c) shall interview the ~~respondent~~proposed protected person in person and in a manner the ~~respondent~~proposed protected person is best able to understand:

(1) explain to the ~~respondent~~proposed protected person the substance of the petition, the nature, purpose, and effect of the proceeding, and the

~~respondent~~proposed protected person's rights at the hearing on the petition;

(2) determine the ~~respondent~~proposed protected person's views with respect to the order sought;

(3) inform the ~~respondent~~proposed protected person of the ~~respondent~~proposed protected person's right to employ and consult with an attorney at the

~~respondent~~proposed protected person's expense and the right to request a court-appointed attorney;

(4) inform the ~~respondent~~proposed protected person that all costs and expenses of the proceeding, including ~~respondent~~proposed protected person's attorney's fees, may be paid from the ~~respondent~~proposed protected person's assets;

(5) if the petitioner seeks an order related to the dwelling of the ~~respondent~~proposed protected person, visit the ~~respondent~~proposed protected person's present dwelling and any dwelling in which it is reasonably believed the ~~respondent~~proposed protected person will live if the order is granted;

(6) if a protective arrangement instead of guardianship is sought, obtain information from any physician or other person known to have treated, advised, or assessed the ~~respondent~~proposed protected person's relevant physical or mental condition;

(7) if a protective arrangement instead of conservatorship is sought, review ~~financial~~ records of the ~~respondent~~proposed protected person, if relevant to the [visitor's] recommendation under subsection (e)(3); and

(8) investigate the allegations in the petition and any other matter relating to the petition the court directs.

(e) A [visitor] under this section promptly shall file a report in a record with the court, which must include:

(1) a recommendation whether an attorney should be appointed to represent the ~~respondent~~proposed protected person;

(2) to the extent relevant to the order sought, a summary of self-care, independent-living tasks, and financial-management tasks the

~~respondent~~proposed protected person:

- (A) can manage without assistance or with existing supports;
- (B) could manage with the assistance of appropriate supportive services, technological assistance, or supported decision making; and
- (C) cannot manage;

(3) a recommendation regarding the appropriateness of the protective arrangement sought and whether a less restrictive alternative for meeting the

~~respondent~~proposed protected person's needs is available;

(4) if the petition seeks to change the physical location of the dwelling of the ~~respondent~~proposed protected person, a statement whether the proposed dwelling meets the ~~respondent~~proposed protected person's needs and whether the ~~respondent~~proposed protected person has expressed a preference as to the ~~respondent~~proposed protected person's dwelling;

(5) a recommendation whether a professional evaluation under Section 508 is necessary;

(6) a statement whether the ~~respondent~~proposed protected person is able to attend a hearing at the location court proceedings typically are held;

(7) a statement whether the ~~respondent~~proposed protected person is able to participate in a hearing and which identifies any technology or other form of support that would enhance the ~~respondent~~proposed protected person's ability to participate; and

(8) any other matter the court directs.

Legislative Note: The term "visitor" is bracketed because some states use a different term for the person appointed by the court to investigate and report on certain facts.

Comment

Subsections (a) through (c) govern when a court may and must appoint a visitor.

Subsection (a) requires the court to appoint a visitor upon receipt of a petition for a protective arrangement instead of guardianship under Section 501. This provision mirrors the requirement in Section 304(a).

Subsection (b) gives the court **discretion to appoint a visitor** upon receipt of a petition for a protective arrangement instead of conservatorship for a minor under Section 501. Appointment is not required, but may be very helpful in assisting the court to determine whether a protective arrangement is appropriate and, if so, what form the protective arrangement should take. This provision mirrors the requirement in Section 405(a).

Subsection (c) requires the court to appoint a visitor upon receipt of a petition for a protective arrangement instead of a conservatorship for an adult under Section 501 unless: (1) the enacting state has included the bracketed language that no such appointment is required if the adult is represented by an attorney appointed by the court; and (2) the court has in fact appointed an attorney to represent the adult. Notably, if the adult is represented by an attorney appointed by the court, the court may still appoint a visitor if it so chooses. "Visitor" is bracketed in recognition that states use, and may wish to substitute, different words to refer to this position. This provision mirrors the requirement in Section 405(b).

Visitors **may be selected from a variety of professions, and may include physicians, psychologists, social workers, or nurses, among others. Regardless of the visitor's profession, subsections (a) and (c) require the visitor for an adult to have training and experience in the type of abilities, limitations, and needs the adult is alleged to have. This training and experience should be sufficient so that the visitor may serve as the "eyes and ears" of the court. Thus, for example, a visitor appointed for a ~~respondent~~proposed protected person alleged to have Alzheimer's disease must have training or experience in assessing the needs of those with Alzheimer's disease. As the appropriate disposition of the petition may well depend on what services are available to the ~~respondent~~proposed protected person, the visitor should also be knowledgeable about less restrictive alternatives, including supportive services available in the ~~respondent~~proposed protected person's community. As the visitor's role is to provide objective information to the court, it is essential that the visitor not have a conflict of interest. For example, the visitor should not be an employee of an institution where the ~~respondent~~proposed protected person resides. Similarly, the petitioner should not nominate a visitor, and any such nomination should be disregarded by the court.**

Commented [JM13]: Unfunded mandates. I little training in expectation imposed, but no discussion paying for this. Also the petitioner is not supposed to nominate that person so it would require a robust system to be in place.

Under subsection (d), the visitor is tasked with interviewing the ~~respondent~~proposed protected person in person and explaining to the ~~respondent~~proposed protected person the nature and potential consequences of the petition and the ~~respondent~~proposed protected person's rights. The visitor must determine the ~~respondent~~proposed protected person's views about the order sought. The visitor should communicate in a language in which the ~~respondent~~proposed protected person is proficient, accompanied by a qualified and disinterested interpreter as necessary. While the visitor is not required to speak the

~~respondent~~proposed protected person's primary language, it is best practice to use visitors who do. Where this is not practicable, both good practice and due process dictate the use of interpreters so the ~~respondent~~proposed protected person can understand and communicate. If assistive devices are needed in order for the visitor to explain to the ~~respondent~~proposed protected person in a manner the ~~respondent~~proposed protected person can understand, or for the ~~respondent~~proposed protected person to communicate with the visitor, the visitor should use those assistive devices.

The visitor, as set forth in subsection (e), is responsible for reporting to the court about a variety of matters about which the court will need information to act on the petition. The visitor's report must be in a record and include a list of recommendations or statements. The particular statements or recommendation required depend, in part, on the type of protective arrangement sought and the type of needs alleged. States enacting this act should consider developing a checklist for the items enumerated in subsection (e).

If the petition is withdrawn prior to the appointment of a visitor, no appointment of a visitor is necessary.

While appointment of a visitor is not without financial cost, appointment of visitors may reduce the states' overall costs by avoiding unnecessary guardianships and conservatorships. Courts faced with limited resources may also wish to consider using volunteer visitor programs. *See* Volunteer Guardianship Monitoring and Assistance: Serving the Court and the Community, which was published by the American Bar Association Commission on Law and Aging in 2011.

Commented [JM14]: Here the comment seems to contemplate some remuneration for the visitor.

SECTION 507. APPOINTMENT AND ROLE OF ATTORNEY.

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Alternative A

(a) The court shall appoint an attorney to represent the ~~respondent~~proposed protected person in a proceeding under this [article] if:

- (1) the ~~respondent~~proposed protected person requests the appointment;
- (2) the [visitor] recommends the appointment; or
- (3) the court determines the ~~respondent~~proposed protected person needs representation.

Alternative B

[*NEVADA SHOULD INCLUDE ALTRNATIVE B]**

(b) Unless the ~~respondent~~proposed protected person in a proceeding under this [article] is represented by an attorney, the court shall appoint an attorney to represent the ~~respondent~~proposed protected person, regardless of the ~~respondent~~proposed protected person's ability to pay.

End of Alternatives

(c) An attorney representing the ~~respondent~~proposed protected person in a proceeding under this [article] shall:

- (1) make reasonable efforts to ascertain the ~~respondent~~proposed protected person's wishes; advocate for the ~~respondent~~proposed protected person's wishes to the extent reasonably ascertainable; and
- (2) if the ~~respondent~~proposed protected person's wishes are not reasonably

ascertainable, advocate for the result that is the least restrictive alternative in type, duration, and scope, consistent with the ~~respondent~~proposed protected person's interests.

(c) The court shall appoint an attorney to represent a parent of a minor who is the subject of a proceeding under this [article] if:

(1) the parent objects to the entry of an order for a protective arrangement instead of guardianship or conservatorship;

(2) the court determines that counsel is needed to ensure that consent to the entry of an order for a protective arrangement is informed; or

(3) the court otherwise determines the parent needs representation.]

Legislative Note: Subsection (c) is in brackets because some states have different policies regarding rights of parents in these cases.

Comment

Alternative provisions are offered in subsection (a). Alternative A relies on the use of a "visitor," who can be chosen or selected to provide the court with advice on a variety of matters other than legal issues. Appointment of an attorney, nevertheless, is *required* under Alternative A when the court determines that the ~~respondent~~proposed protected person needs representation, or counsel is requested by the ~~respondent~~proposed protected person or recommended by the visitor. Alternative A is in accord with the National Probate Court Standards. National Probate Court Standards, Standard 3.3.5 "Appointment of Counsel" (2013) provides:

- (a) Counsel should be appointed by the probate court to represent the ~~respondent~~proposed protected person when:
 - (1) requested by an unrepresented ~~respondent~~proposed protected person;
 - (2) recommended by a court visitor;
 - (3) the court, in the exercise of its discretion, determines that the ~~respondent~~proposed protected person is in need of representation; or
 - (4) otherwise required by law.
- (b) The role of counsel should be that of an advocate for the ~~respondent~~proposed protected person.

It is expected that courts in states enacting Alternative A of subsection (a), will appoint counsel in virtually all cases in which the ~~respondent~~proposed protected person would otherwise be unrepresented. In such jurisdictions, courts should err on the side of protecting the ~~respondent~~proposed protected person's rights and find, absent a compelling reason otherwise,

that the ~~respondent~~proposed protected person needs representation. Visitors in such jurisdictions also need to be sensitive to the fact that the ~~respondent~~proposed protected person may lack the ability to knowingly waive appointment of counsel.

In light of these concerns and in the interest of providing full due process to ~~respondent~~proposed protected persons, states may wish to adopt Alternative B, which provides for mandatory appointment of counsel. Mandatory appointment has been strongly urged by the American Bar Association (A.B.A.) Commission on Law and Aging and helps ensure that the ~~respondent~~proposed protected person's rights are fully represented and protected in the proceeding.

Subsection (b), which is new to the act, specifies the role of the attorney for the ~~respondent~~proposed protected person, regardless of whether the state has chosen alternative A or B. It specifies that the attorney must make reasonable efforts to ascertain what the ~~respondent~~proposed protected person wishes and must advocate for those wishes. This has the effect of directing the attorney to maintain a normal attorney-client relationship with the ~~respondent~~proposed protected person. A.B.A. Model Rule of Professional Conduct 1.14, which is also applicable here, directs the attorney to maintain, **as far as reasonably possible**, a normal attorney- client relationship with a client of diminished capacity, and provides guidance on what may be done if maintaining a normal attorney-client relationship becomes difficult. Subsection (b) is also in accord with National Probate Court Standards, Standard 3.3.5 "Appointment of Counsel" (2013) with respect to the role of counsel.

Subsection (c), which is in brackets, gives states the option of creating a limited right to appointed counsel for parents whose minor children are the subject of a proceeding under Section 501. Subsection (c), if enacted, would require the court to appoint an attorney to represent such a parent if the parent objected to a protective arrangement instead of conservatorship, the parent appeared to be consenting to entry of an order for a protective arrangement instead of conservatorship but the court determined that counsel was needed to make sure that consent was informed, or the court otherwise determined that the parent needed counsel. Subsection (c) is designed not only to protect the interests of parents, but also to potentially empower parents to better protect the rights of their minor children. In determining whether to enact subsection (c), enacting jurisdictions should consider the substantial benefit of representation in protecting parents' fundamental rights and the important interest in parenting their own children.

Subsections (a) and (b) of this section mirror Section 305(a) and (b) and Section 406(a) and (b). Subsection (c) of this section mirrors Section 406(c).

Commented [JM15]: Note that the ABA rule is essentially the same as Nevada's rule of professional conduct 1.14. In both cases, and as referenced here in this model legislation, the directive is not that advocate attorneys zealously represent clients with diminished capacity no matter what, but rather, that they do so as long as it is reasonable.

SECTION 508. PROFESSIONAL EVALUATION.

(a) At or before a hearing on a petition under this [article] for a protective arrangement, the court shall order a professional evaluation of the ~~respondent~~proposed protected person:

- (1) if the ~~respondent~~proposed protected person requests the evaluation; or
- (2) or in other cases, unless the court finds that it has sufficient information to determine the ~~respondent~~proposed protected person's needs and abilities without the evaluation.

(b) If the court orders an evaluation under subsection (a), the ~~respondent~~proposed protected person must be examined by a licensed physician, psychologist, social worker, or other individual appointed by the court who is qualified to evaluate the ~~respondent~~proposed protected person's alleged cognitive and functional abilities and limitations and will not be advantaged or disadvantaged by a decision to grant the petition or otherwise have a conflict of interest. The individual conducting the evaluation promptly shall file a report in a record with the court. Unless otherwise directed by the court, the report must contain:

- (1) a description of the nature, type, and extent of the ~~respondent~~proposed protected person's cognitive and functional abilities and limitations;
- (2) an evaluation of the ~~respondent~~proposed protected person's mental and physical condition and, if appropriate, educational potential, adaptive behavior, and social skills;
- (3) a prognosis for improvement, including with regard to the ability to manage the ~~respondent~~proposed protected person's property and financial affairs if a limitation in that ability is alleged, and recommendation for the appropriate treatment, support, or habilitation plan; and

(4) the date of the examination on which the report is based.

(c) The ~~respondent~~proposed protected person may decline to participate in an evaluation ordered under subsection (a).

Commented [JM16]: This will be a common occurrence.

Comment

A professional evaluation of the ~~respondent~~proposed protected person is required in two circumstances. First, subsection (a)(1) mandates a professional evaluation when demanded by the ~~respondent~~proposed protected person. When represented by counsel, the ~~respondent~~proposed protected person may demand the evaluation through counsel. If the ~~respondent~~proposed protected person is truly incapacitated and not represented by counsel, it is unlikely that the ~~respondent~~proposed protected person will demand an evaluation. However, the court still can order a professional evaluation either on the visitor's recommendation or on its own motion.

Second, subsection (a)(2) mandates a professional evaluation in other cases unless the court explicitly finds it has sufficient information to determine both the ~~respondent~~proposed protected person's needs and abilities without that evaluation. Consistent with this requirement, a court should order a professional evaluation any time the nature and scope of the ~~respondent~~proposed protected person's abilities, limitations, and needs are not absolutely clear based on its own assessment and on the visitor's report. By providing the court with an expert evaluation of the ~~respondent~~proposed protected person's abilities and limitations, the professional evaluation not only helps the court determine whether a protective arrangement is necessary, but also helps the court determine how to craft an appropriate order.

If an evaluation is ordered, subsection (b) requires that it be performed by a professional who is qualified to evaluate the ~~respondent~~proposed protected person's alleged cognitive and functional abilities and limitations. Assessing both abilities and limitations is important because an individual's functional needs will likely reflect the interaction between abilities and limitations. As part of the evaluation described in subsection (b), the professional evaluator should generally include a summary of any consultation with the ~~respondent~~proposed protected person's treating physician.

Subsection (c) recognizes the right of the ~~respondent~~proposed protected person to decline to participate in the evaluation. A ~~respondent~~proposed protected person might so decline because of concern about undue invasion of privacy. However, if the ~~respondent~~proposed protected person refuses participation, the court will have less information on which to base its conclusion. For ~~respondent~~proposed protected persons who oppose the proposed protective arrangement, this may be particularly problematic as the bulk of the court's information may end up being supplied by the petitioner.

Section 508 largely mirrors Sections 306 and 407.

SECTION 509. ATTENDANCE AND RIGHTS AT HEARING.

(a) Except as otherwise provided in subsection (b), a hearing under this [article] may not proceed unless the ~~respondent~~proposed protected person attends the hearing. If it is not reasonably feasible for the ~~respondent~~proposed protected person to attend a hearing at the location court proceedings typically are held, the court shall make reasonable efforts to hold the hearing at an alternative location convenient to the ~~respondent~~proposed protected person or allow the ~~respondent~~proposed protected person to attend the hearing using real-time audio-visual technology.

(b) A hearing under this [article] may proceed without the ~~respondent~~proposed protected person in attendance if the court finds by clear-and-convincing evidence that:

(1) the ~~respondent~~proposed protected person consistently and repeatedly has refused to attend the hearing after having been fully informed of the right to attend and the potential consequences of failing to do so;

(2) there is no practicable way for the ~~respondent~~proposed protected person to attend and participate in the hearing even with appropriate supportive services and technological assistance; or

(3) the ~~respondent~~proposed protected person is a minor who has received proper notice and attendance would be harmful to the minor.

(c) The ~~respondent~~proposed protected person may be assisted in a hearing under this [article] by a person or persons of the ~~respondent~~proposed protected person's choosing, assistive technology, or an interpreter or translator, or a combination of these supports. If assistance would facilitate the ~~respondent~~proposed protected person's participation in the hearing, but is not otherwise available to the ~~respondent~~proposed protected person, the court

shall make reasonable efforts to provide it.

(d) The ~~respondent~~proposed protected person has a right to choose an attorney to represent the ~~respondent~~proposed protected person at a hearing under this [article].

(e) At a hearing under this [article], the ~~respondent~~proposed protected person may:

- (1) present evidence and subpoena witnesses and documents;
- (2) examine witnesses, including any court-appointed evaluator and the [visitor]; and
- (3) otherwise participate in the hearing.

(f) A hearing under this [article] must be closed on request of the ~~respondent~~proposed protected person and a showing of good cause.

(g) Any person may request to participate in a hearing under this [article]. The court may grant the request, with or without a hearing, on determining that the best interest of the ~~respondent~~proposed protected person will be served. The court may impose appropriate conditions on the person's participation.

Comment

[Hank Cavallerra comment:](#)

The policy of The Permanent Guardianship Commission of the Nevada Supreme Court is to ensure that the services, benefits, programs and activities of the courts are accessible to persons with disabilities as defined in the Americans with Disabilities Act of 1990. Hence, the guardianship system must provide a "person centered" process so that in each case that is presented the court has the opportunity to meet the person's needs in an individualized manner. Process should not restrict the court in its obligation to the disabled person. The UGCOPAA is a step forward. However, there are some circumstances that may not fit into the remedies set forth in the UGCOPAA. Two concerns come to mind but there are likely other areas where the new ACT's remedies are not sufficient. The two areas of concern are 1) exploitation and 2) accessing public benefits, specifically Medicaid. Fifty percent of people approaching retirement age have less than \$100000 for retirement. As a result it is necessary that the Nevada guardianship system protect persons who are victims of exploitation or who are in need of critical services by providing a quicker access to a remedy. The commission has heard public commentary from health care providers in Clark County who are concerned about delays in the system and how that caused financial loss because public benefits could not be obtained in a timely manner.

In the exploitation situation the quickest way to stop the exploitation is to cut off the power of the exploiter from accessing the persons assets by contacting each bank, broker, and other entity that the person has a relationship with. In the public benefits arena the process of accessing these services and cost payments requires someone with knowledge of the rules, and having someone with the authority and the legal power to get requested information of a type that cannot always be anticipated, access accounts, spend resources in an allowable manner, make special arrangements because a person's income is too high and requires what is called a qualified income trust, and try to preserve the persons home in case they do get better.

Protective arrangements may not suffice to solve these types of scenarios which take months to solve and multi-step tasks. Therefore, an intermediate step is needed between a general guardianship and a protective arrangement. To preserve the rights of the Proposed Protected Person or respondent while at the same time "helping" to solve the situations described above, the system should embrace the concept of a "temporary special guardian". A special guardian is defined in NRS159.026 as follows: "Special Guardian" means a guardian of a person of limited capacity..... A person because of illness, medications, mobility issues, and lack of specific knowledge could be of limited capacity in applying for Medicaid. Being a person of limited capacity does not mean there will be a loss of the rights a citizenship has such as voting, second amendment, etc. A doctor's report could set out appropriate factors in this regard. So, with a temporary limited guardianship a person a proposed protected person could get the benefits he needs without the loss of individual rights and other issues such as placement could be considered as the case moves forward. Changes would be appropriate as to how temporary guardianships are now treated under NRS.

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Subsection (a) provides that, except under the unusual circumstances set forth in subsection (b), no hearing on a petition for a protective arrangement instead of guardianship or conservatorship may proceed without the presence of the ~~respondent~~proposed protected person. The fact that the ~~respondent~~proposed protected person may not be able to attend the hearing at the location where the court normally conducts hearings does not justify holding the hearing without the ~~respondent~~proposed protected person. Rather, the court must try to hold the hearing at a location that the ~~respondent~~proposed protected person can attend or by using real-time, audio-visual technology. As a general matter, it is preferable to do the former, as in-person interactions will allow the court to observe the ~~respondent~~proposed protected person's context, which can help the court to understand factors that may be influencing the ~~respondent~~proposed protected person's behavior and communications. However, real-time, audio-visual technology can provide a reasonable alternative in appropriate situations if the technology allows both the court and ~~respondent~~proposed protected person to communicate with one another to the best of their abilities.

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The exceptions in subsection (b) to the requirement that the ~~respondent~~proposed protected person must attend the hearing are deliberately very narrow. For the hearing to proceed without the ~~respondent~~proposed protected person in attendance, the court must find at least one of three things by clear-and-convincing evidence.

The first exception is that the ~~respondent~~proposed protected person consistently and

repeatedly refused to attend the hearing despite being fully informed of the right to attend and potential consequences of not doing so. Thus, for example, a ~~respondent~~proposed protected person who cannot physically access the courthouse where the hearing is scheduled must understand that she has a right to have the hearing held at an alternative location or by using real-time, audio-visual technology. The ~~respondent~~proposed protected person should also understand that a guardian could be appointed for her in her absence, and that this appointment could strip her of the right to make important, personal decisions for herself. Among the responsibilities of the visitor in Section 506(d) is to explain the effect of the proceeding, the ~~respondent~~proposed protected person's rights at the hearing, and the effect of the order sought.

The second exception is that there is no practicable way for the ~~respondent~~proposed protected person to attend and participate in the hearing even with appropriate supportive services and technological assistance. Both parts of this requirement—that the ~~respondent~~proposed protected person cannot practically attend and that the ~~respondent~~proposed protected person cannot participate even with support—must be fully satisfied for this exception to apply. The exception should be used very sparingly as best practice is to hold the hearing in the presence of the ~~respondent~~proposed protected person regardless of the ~~respondent~~proposed protected person's abilities. Without the ~~respondent~~proposed protected person's presence the court is relying on third-party information to determine that it is in fact not feasible for the ~~respondent~~proposed protected person to attend and that the ~~respondent~~proposed protected person is not being prevented from attending for some other reason. Especially where this information is presented by the petitioner, or does not include a professional evaluation, courts should be extremely hesitant to rely on it to excuse the ~~respondent~~proposed protected person's presence.

The third exception is that the ~~respondent~~proposed protected person is a minor who has received proper notice and attendance by the minor would be harmful to the minor.

The ~~respondent~~proposed protected person has the right to take an active role in the hearing, as detailed in subsection (e). Subsection (c) recognizes that to exercise this right, the ~~respondent~~proposed protected person may need assistance. It therefore provides that the ~~respondent~~proposed protected person has a right to assistance at the hearing and places an affirmative duty on the court to take reasonable measures to facilitate the ~~respondent~~proposed protected person with receiving that assistance.

As indicated in subsection (d), the ~~respondent~~proposed protected person has a right to choose an attorney to represent the ~~respondent~~proposed protected person at the hearing. The ~~respondent~~proposed protected person is free to choose an attorney other than the one who would otherwise be appointed by the court. This provision does not govern payment of the attorney. That issue is addressed in Section 119.

Under subsection (f), the ~~respondent~~proposed protected person can request that the hearing be closed, but the court may grant the request only upon a showing of good cause.

Under subsection (g), others may make a request to participate, which can be granted by the court without a hearing, if the court finds that the ~~respondent~~proposed protected person's best interest is served by the participation. The court's order granting the request to participate may include appropriate conditions or limitation.

This section mirrors Section 408, except insofar as Section 408 requires a proposed conservator to attend the hearing unless excused for good cause. Section 408, in turn, largely mirrors Section 307, except that it does not contain the additional exception for allowing the proceeding to occur without the ~~respondent~~proposed protected person when the ~~respondent~~proposed protected person is a minor.

SECTION 510. NOTICE OF ORDER.

The court shall give notice of an order under this [article] to the individual who is subject to the protective arrangement instead of guardianship of the person or guardianship of the estate ~~conservatorship~~, a person whose access to the individual is restricted by the order, and any other person the court determines.

Comment

Section 510 requires the court to give notice of an order entered under Article 5 to the individual subject to the protective arrangement, any person whose access to the individual subject to the protective arrangement is restricted by the order, and any other person the court determines. The general notice provisions of Section 113 govern the form and timing of the notice.

SECTION 511. CONFIDENTIALITY OF RECORDS.

(a) The existence of a proceeding for or the existence of a protective arrangement instead of guardianship or conservatorship is a matter of public record unless the court seals the record after:

(1) the ~~respondent~~proposed protected person, the individual subject to the protective arrangement, or the parent of a minor subject to the protective arrangement requests the record be sealed; and

(2) either:

(A) the proceeding is dismissed;

(B) the protective arrangement is no longer in effect; or

(C) an act authorized by the order granting the protective arrangement has been completed.

(b) A ~~respondent~~proposed protected person, an individual subject to a protective arrangement instead of guardianship or conservatorship, an attorney designated by the ~~respondent~~proposed protected person or individual, a parent of a minor subject to a protective arrangement, and any other person the court determines are entitled to access court records of the proceeding and resulting protective arrangement. A person not otherwise entitled to access to court records under this subsection for good cause may petition the court for access. The court shall grant access if access is in the best interest of the ~~respondent~~proposed protected person or individual subject to the protective arrangement or furthers the public interest and does not endanger the welfare or financial interests of the ~~respondent~~proposed protected person or individual.

(c) A report of a [visitor] or professional evaluation generated in the course of a proceeding under this [article] must be sealed on filing but is available to:

(1)the court;

(2)the individual who is the subject of the report or evaluation, without limitation as to use;

(3)the petitioner[, visitor,] and petitioner's and ~~respondent~~proposed protected person's attorneys, for purposes of the proceeding;

(4)unless the court orders otherwise, an agent appointed under a power of attorney for finances in which the ~~respondent~~proposed protected person is the principal;

(5)if the order is for a protective arrangement instead of guardianship and unless the court orders otherwise, an agent appointed under a [power of attorney for health care] in which the ~~respondent~~proposed protected person is identified as the principal; and

(6) any other person if it is in the public interest or for a purpose the court orders for good cause.]

Legislative Note: Subsection (c) is bracketed in recognition that states have different policies and procedures regarding the sealing of court records.

Comment

Protective arrangements involve highly personal and other data whether the arrangement is in lieu of guardianship or is in lieu of conservatorship. It is important that the ~~respondent~~proposed protected person's privacy be protected. Furthermore, data found in guardianship or conservatorship records, such as Social Security numbers and information concerning financial accounts, can be used to facilitate fraud. Concern about access by the general public has increased as electronic filing of court records has made these records more accessible.

On the other hand, public access is important. One criticism of guardianship and conservatorship in some states is that too much happens behind closed doors. The public, and "watch-dog" groups in particular, want to know how the guardianship and conservatorship system is functioning. In addition, this act encourages family and others interested in the welfare of the ~~respondent~~proposed protected person to participate in the proceeding. Sections 504 and 505 working together require notice of the proceeding to be given to family and others whose participation might enhance the proceeding. In order for these persons to effectively monitor the protective arrangement, they need access to records. However, with the move to electronic filing and increasing concerns about protecting sensitive information, more courts are limiting access to guardianship or conservatorship records to the immediate parties and their counsel.

This section attempts to balance these conflicting policy concerns. Subsection (a) provides that the existence of a proceeding for a protective arrangement and the protective arrangement itself is a matter of public record. But even then, similar to the expungement of criminal records, the court has the authority to seal even the existence of the protective arrangement if the proceeding was dismissed, the protective arrangement is no longer in effect, or the actions authorized to be performed by the protective arrangement have been completed.

Subsection (b) addresses access to the underlying records of the protective arrangement. In addition to the individual and the individual's attorney, access is granted to a parent of a minor who is subject to a protective arrangement. Access is also granted to other persons the court determines, including persons whose access is in the best interest of the individual or in furtherance of the public interest and whose access does not endanger the welfare of financial interests of the individual.

The documents most likely to contain highly sensitive information are the visitor report under Section 506 and the professional evaluation under Section 508. Consequently, access to these documents is more restricted than other documents filed, which are covered by subsection (b). Pursuant to subsection (c), access to the visitor or evaluation report is available only to the court, the individual who is the subject of the proceeding and that individual's attorney, the petitioner and petitioner's attorney, and the visitor. Unless the court orders otherwise, access is also available to agents under powers of attorney for finances and, if the protective arrangement is in lieu of guardianship, to an agent under a power of attorney for health care. The court may also order notice to other persons if in the public interest or for other good cause. A partial or complete redaction of sensitive personal or financial information may be a practical solution for courts in balancing the need for disclosure to the public and the interests of family and friends, with the need to protect the individual's privacy and avoid misuse of sensitive data.

Because states vary considerably on their policies with regard to confidentiality in guardianship and conservatorship cases, subsection (c) has been placed in brackets, signaling that states are free to modify the language to match their local practice.

SECTION 512. APPOINTMENT OF [MASTER/ADMINISTRATOR].

The court may appoint a [master/administrator] to assist in implementing a protective arrangement under this [article]. The [master/administrator] has the authority conferred by the order of appointment and serves until discharged by court order.

A master/administrator appointment shall terminate no later than the date of the appointment of a permanent guardian of the estate or the lapse of six months from the date of the original order. The court may require such supplemental hearings as it deems necessary. The fact that a master/administrator of the person or estate has been appointed or the fact that respondent was previously found to be a person of at least limited capacity may not be used in a subsequent proceeding in the same case as evidence of the PP's need for a permanent guardian of the person or estate.

Legislative Note: The term "master/administrator" is bracketed in recognition that states have different terms for this role.

Comment

There may be times when it will be necessary, or simply advantageous, for the court to appoint a neutral party to help implement a protective arrangement under Article 5. The person appointed only has the authority conferred by the court in the order of appointment. Thus, the court order should specify the master's authority with respect to the particular transaction the court has approved. The person does not have the powers or duties of a guardian or conservator but only the powers or duties specific to the order.

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AGENDA ITEM 6(h)

**Confidential Documentation Provided to
Commission Members Separately**

AGENDA ITEM 6(i)

**Minor Guardianship Statutes:
Possible creation of uniform procedures to
transfer minor guardianship into Nevada from
other states**

Memo from Sabrina Sweet Attached

TRANSFER OF MINOR GUARDIANSHIP CASES INTO NEVADA FROM OTHER STATES: JURISDICTION

TO: SUPREME COURT OF NEVADA
PERMANENT GUARDIANSHIP COMMISSION

FROM: SABRINA SWEET, MINOR GUARDIANSHIP CASE COMPLIANCE SPECIALIST, SECOND
JUDICIAL DISTRICT COURT

SUBJECT: POSSIBLE CREATION OF UNIFORM PROCEDURES TO TRANSFER MINOR
GUARDIANSHIPS INTO NEVADA FROM OTHER STATES: FOLLOW UP FROM
SEPTEMBER 14, 2018 COMMISSION MEETING

DATE: OCTOBER 19, 2018

This subject matter was initiated in conversations on the Nevada Supreme Court Permanent Guardianship Commission (Commission) Forms Subcommittee (Subcommittee) at the March 13, 2018 Subcommittee meeting. The attached Petition to Transfer Adult Guardianship to Nevada and Provisional Order to Accept Guardianship/Conservatorship from Sending State forms were approved by the Commission and further in ADKT 0507 on September 26, 2018. NRS 159 includes provisions for transfers of guardianship into Nevada from another state and from Nevada to another state¹.

However, NRS 159 does not govern minor guardianships. Rather, NRS 159A, which governs minor guardianships, has no provisions establishing procedures to transfer minor guardianship cases into Nevada from other states, nor from Nevada to another state.

There are, however, provisions for transferring *within* this State. Below are related provisions and citations:

- A guardian shall petition the court prior to moving out of the State. This state shall maintain jurisdiction, unless jurisdiction is transferred to another state² (however, as noted above, there is no statutory procedure in NRS 159A for interstate transfer). A guardianship is terminated when the minor moves out of this State and upon transfer of

¹ NRS 159.2023. Transfer of jurisdiction of guardianship to another state. NRS 159.2024. Transfer of jurisdiction of guardianship or conservatorship from another state to this State.

² NRS 159A.079 (5). A guardian of the person shall petition the court for an order authorizing the guardian to change the residence of the protected minor to a location outside of this State. The guardian must show that changing the residence of the protected minor to a location outside of this State is in the best interest of the protected minor or that there is no appropriate residence available for the protected minor in this State. The court shall retain jurisdiction over the guardianship unless the guardian files for termination of the guardianship pursuant to NRS 159A.1905 or 159A.191 or the jurisdiction of the guardianship is transferred to the other state. Not later than 6 months after changing the residence of a protected minor to a location outside of this State, the guardian shall file a petition for guardianship in the state of the protected minor's residence.

jurisdiction to the court in the new State³. Although statute references the transfer of jurisdiction upon a move, there is no language in this section specifically describing how to transfer jurisdiction.

- A guardian can petition the court to transfer venue to another county, within this State, if it is in best interest of the protected minor, or for convenience to the guardian⁴.

NRS 159A documented provisions related to home state:

- Home state is defined⁵ and referenced throughout 159A.
- Home state is identified as the venue for appointment of guardian⁶, which allows courts in this State to grant guardianships if the minor has been living in this State for six months.
- Guardians can be appointed if this State is the home state, in an emergency situation when the minor is in this State, or if the estate is located in this State⁷.
- Home state is consistent with language in NRS 125A Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). **UCCJEA establishes jurisdiction and is inclusive of guardianship proceedings⁸**. Although this Uniform Act has been adopted by every state except Massachusetts, and it is assumed through the guardianship proceedings, it is not

³ NRS 159A.191 (1) (b). A guardianship of the person, of the estate, or of the person and estate is terminated: (b) Upon the protected minor's change of domicile to a place outside this State and the transfer of jurisdiction to the court having jurisdiction in the new domicile.

⁴ NRS 159A.041. Transfer of proceedings to another county. A court having before it any guardianship matter for a minor whose home state is this State may transfer the matter to another county in the interest of the minor or, if not contrary to the interest of the minor, for the convenience of the guardian. A petition for the transfer, setting forth the reasons therefor, may be filed in the guardianship proceeding. If the court is satisfied that the transfer is in the interest of the minor or, if not contrary to the interest of the minor, for the convenience of the guardian, the court shall make an order of transfer and cause a transcript of the proceedings in the matter, all original papers filed in such proceedings and the original bond filed by the guardian, to be certified by the clerk of the court originally hearing the matter and sent to the clerk of the court of the other county. Upon receipt of the transcript, papers and bond, and the filing of them for record, the court of the other county has complete jurisdiction of the matter, and thereafter all proceedings must be as though they were commenced in that court.

⁵ NRS 159A.018. "Home state" defined. "Home state" means the state in which the proposed protected minor was physically present for at least 6 consecutive months, including any temporary absence from the state, immediately before the filing of a petition for the appointment of a guardian.

⁶ NRS 159A.037. Venue for appointment of guardian. 1. The venue for the appointment of a guardian when the proposed protected minor's home state is this State must be the county where the proposed protected minor resides. 2. If the proper venue may be in two or more counties, the county in which the proceeding is first commenced is the proper county in which to continue the proceedings. 3. Upon the filing of a petition showing that the proper venue is inconvenient, a venue other than that provided in subsection 1 may accept the proceeding.

⁷ NRS 159A.0487. Types of guardians. Any court of competent jurisdiction may appoint: 1. Guardians of the person, of the estate, or of the person and estate for minors whose home state is this State. 2. Guardians of the person or of the person and estate for minors who, although not residents of this State, are physically present in this State and whose welfare requires such an appointment. 3. Guardians of the estate for nonresident minors who have property within this State. 4. Guardians ad litem.

⁸ NRS 125A.055. "Child custody proceeding" defined. 1. "Child custody proceeding" means a proceeding in which legal custody, physical custody or visitation with respect to a child is an issue. 2. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, **guardianship**, paternity, termination of parental rights and protection from domestic violence, in which the issue may appear. 3. The term does not include a proceeding involving juvenile delinquency, contractual emancipation or enforcement pursuant to NRS 125A.405 to 125A.585, inclusive.

cross-referenced in 159A and there is no language in this section specifically describing how to assume jurisdiction.

Often times, a minor guardianship petition or action is pending due to the fact a minor has not lived in this State for a total of six months, may be subject of a guardianship in another State, or has moved to another State. It is assumed Judicial Officers in this State will coordinate with Judicial Officers in another State when assuming jurisdiction, but this assumption is not clearly stated in 159A.

My recommendation to the Commission would be to develop a rule regarding Home State Jurisdiction, utilizing references to 159A and UCCJEA when assuming jurisdiction. Furthermore, I recommend the Commission consider establishing procedures to address other family law related issues implicated in minor guardianships but not clearly addressed or referenced in 159A, such as child support (NRS 125B), child custody (NRS 125C), and permanency plans of guardianship established through underlying dependency cases (432B). Thank you, Commission members, for your consideration of this proposal.

COURT CODE: _____
Your Name: _____
Address: _____
City, State, Zip: _____
Telephone: _____
Email Address: _____
Self-Represented

DISTRICT COURT
_____ **COUNTY, NEVADA**

In the Matter of the Guardianship of the:

- ☐ Person
☐ Estate
☐ Person and Estate

of:

(name of person who has a guardian)

A Protected Person.

CASE NO.: _____

DEPT: _____

PETITION TO TRANSFER ADULT GUARDIANSHIP TO NEVADA

Petitioner(s), (name of guardian/conservator) _____
and (name of co-guardian / conservator, or write "N/A" if only one)
_____, request this court accept jurisdiction over this
guardianship pursuant to NRS 159.2024.

1. The Petitioner(s) were appointed as guardians / conservators by the following court (*full name of the court, as noted on their pleadings, where guardianship and/or conservatorship was granted*):

Court Name: _____

Case/Cause No. _____

2. A certified copy of the provisional order of transfer from the original court is attached. (*this is mandatory*)

Protected Person's Information

3. The Protected Person is: (*name*) _____,

born on (*date of birth*) _____, currently age _____.

4. The Protected Person's residence address is:

Address

City, State, Zip Code

The Protected Person's mailing address is (*if different than residence address*):

Address

City, State, Zip Code

5. If the protected person does not currently live in Nevada, the person is expected to permanently move to Nevada on (*date*) _____.

First Guardian/Conservator's Information

6. Full legal name: _____.

7. Date of birth: _____; current age: _____.

8. Relationship to protected person: _____.

9. Residence address:

Address

City, State, Zip Code

Mailing address (if different than residence address):

Address

City, State, Zip Code

10. If you do not live in the State of Nevada: (☒ check one)

- ☐ A person or care provider in this State is providing continuing care and supervision for the adult;
- ☐ The adult is in a secured residential long-term care facility in this State;
- ☐ The guardian will move to the State of Nevada within 30 days of appointment; **or**
- ☐ The proposed protected person will move to the guardian's state of residence within 30 days of appointment.

[NOTE: If a nonresident is appointed as guardian for an adult, the guardian must designate a registered agent in the State of Nevada in the same manner as a represented entity pursuant to Nevada Revised Statutes Chapter 77.]

11. Qualifications. (Answer each item listed; "Has" answers must be explained)

The Guardian:

- ☐ has ☐ has not been convicted of a crime of moral turpitude, a crime involving domestic violence or a crime involving the abuse, neglect, exploitation, isolation or abandonment of a child, his or her spouse, his or her parent or any other adult.

Explain if Yes: _____

- ☐ has ☐ has never been convicted of a felony.

Explain if Yes: Petitioner was convicted of (*describe conviction*)

Petitioner (☒ **check one**) ☐ was / ☐ was not placed on parole and (☒ **check one**) ☐ was / ☐ was not placed on probation for that felony.

- ☐ has ☐ has never been suspended for misconduct or disbarred from the practice of law, the practice of accounting or any other profession which involves the management or sale of money, investments, securities or real property and requires licensure in Nevada or any other state.

Explain if Yes: _____

☐ has ☐ has not filed for bankruptcy within the past 7 years.

☐ is ☐ is not a party to pending criminal or civil litigation.

Explain if Yes: _____

Second Guardian/Conservator's Information

☐ Not Applicable (*check if there is only one guardian, and go to #18*)

12. Full legal name: _____.

13. Date of birth: _____; current age: _____.

14. Relationship to protected person: _____.

15. Residence address:

Address

City, State, Zip Code

Mailing address (*if different than residence address*):

Address

City, State, Zip Code

16. **If you do not live in the State of Nevada:** (☒ *check one*)

- ☐ A person or care provider in this State is providing continuing care and supervision for the adult;
- ☐ The adult is in a secured residential long-term care facility in this State;
- ☐ The guardian will move to the State of Nevada within 30 days of appointment; **or**
- ☐ The proposed protected person will move to the guardian's state of residence within 30 days of appointment.

[NOTE: If a nonresident is appointed as guardian for an adult, the guardian must designate a registered agent in the State of Nevada in the same manner as a represented entity pursuant to Nevada Revised Statutes Chapter 77.]

17. Qualifications. (Answer each item listed; “Has” answers must be explained)

The Co-guardian:

- ☐ has ☐ has not been convicted of a crime of moral turpitude, a crime involving domestic violence or a crime involving the abuse, neglect, exploitation, isolation or abandonment of a child, his or her spouse, his or her parent or any other adult.

Explain if Yes: _____

- ☐ has ☐ has never been convicted of a felony.

Explain if Yes: The Petitioner was convicted of (*describe conviction*)

The Petitioner (☒ **check one**) ☐ was / ☐ was not placed on parole and
(☒ **check one**) ☐ was / ☐ was not placed on probation for that felony.

- ☐ has ☐ has never been suspended for misconduct or disbarred from the practice of law, the practice of accounting or any other profession which involves the management or sale of money, investments, securities or real property and requires licensure in Nevada or any other state.

Explain if Yes: _____

- ☐ has ☐ has not filed for bankruptcy within the past 7 years.

- ☐ is ☐ is not a party to pending criminal or civil litigation.

Explain if Yes: _____

18. **Compensation.** Are you currently being paid for services as a guardian to more than one protected person who is not related to you by blood or marriage? (☒ **check one**):

- ☐ No, I am not being paid for services as a guardian.
☐ Yes, I am being paid for services as a guardian.

19. **Exhibit A: List of All of the Adult's Relatives** must be completed and attached to petition.

20. **Exhibit B: Information Regarding the Adult's Estate** must be completed and attached to petition if you are requesting guardianship over the adult's estate.

21. **Exhibit C: Copy of Other State's Provisional Order of Transfer to Nevada** must be attached.

22. **Monthly Budget and Care Plan:** Please be aware that the court may require you to submit a monthly budget and/or a care plan for the protected person.

DATED (*month*) _____ (*day*) _____, 20____.

(First Petitioner's Signature)

(Second Petitioner's Signature)

(Printed Name)

(Printed Name)

VERIFICATION

I, (*name of first petitioner*) _____, state that I am the Guardian / Conservator in the within action; that I have read the foregoing Petition and know the contents thereof; that the same is true of my knowledge except as to those matters therein stated upon information and belief and as to those matters, I believe them to be true.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

PETITIONER'S SIGNATURE

VERIFICATION

I, (*name of second petitioner*) _____, state that I am the Co-Guardian / Conservator in the within action; that I have read the foregoing Petition and know the contents thereof; that the same is true of my knowledge except as to those matters therein stated upon information and belief and as to those matters, I believe them to be true.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

CO-PETITIONER'S SIGNATURE

COURT CODE: _____
Your Name: _____
Address: _____
City, State, Zip: _____
Telephone: _____
Email Address: _____
Self-Represented

DISTRICT COURT
_____ **COUNTY, NEVADA**

In the Matter of the Guardianship of the:

- ☐ Person
☐ Estate
☐ Person and Estate

of:

(name of person who has a guardian)

A Protected Person.

CASE NO.: _____

DEPT: _____

**PROVISIONAL ORDER TO ACCEPT
GUARDIANSHIP/CONSERVATORSHIP FROM SENDING STATE**

UPON REVIEW of the Petition to Transfer Adult Guardianship to Nevada submitted by the Petitioners, the same having come before the above-entitled court on the date and time listed, it appearing to the satisfaction of the Court that proper notice of hearing of this matter has been duly given in the manner required by law, that the transfer is not contrary to the interest of the protected person, that the guardian(s) is/are eligible for appointment in this state, and good cause appearing therefore:

IT IS HEREBY ORDERED that this Court provisionally grants the Petition to Transfer Guardianship to Nevada.

IT IS FURTHER ORDERED that this Court shall appoint (*first guardian's name*) _____, and Co-Guardian, (*second guardian's name, or "n/a"*) _____, as the Guardian(s) of the Protected Person upon receipt of a final court order transferring the proceeding to Nevada from the sending state;

IT IS FURTHER ORDERED that Temporary Letters of Guardianship shall issue to Guardian, (*first guardian's name*) _____, and Co-Guardian, (*second guardian's name, or "n/a"*) _____, to expire on (*date*) _____, upon taking of the oath of office as required by law.

IT IS FURTHER ORDERED that the Guardian(s) shall mail a copy of this Order and the Notice of Entry of Order to all individuals entitled to notice under the Nevada Revised Statutes.

IT IS FURTHER ORDERED that the Court shall issue a final order grating guardianship upon the Guardian(s) filing a final order issued by the originating state terminating proceedings in that state and transferring the proceedings to this state.

Dated this _____ day of _____, 20____.

DISTRICT COURT JUDGE

Submitted by:

(Signature)

(Printed Name)

Child Custody Jurisdiction and Enforcement Act Summary. Retrieved on October 17, 2018 from: <http://www.uniformlaws.org/ActSummary.aspx?title=Child+Custody+Jurisdiction+and+Enforcement+Act>

INTRODUCTION

In 1968, the Uniform Law Commissioners promulgated the Uniform Child Custody Jurisdiction Act (UCCJA). By 1981, every state had adopted this Uniform Act. UCCJA was designed to discourage interstate kidnapping of children by their non-custodial parents. Before the UCCJA, it was a common practice for non-custodial parents to take children across state lines. They hoped to find sympathetic courts willing to reverse unfavorable custody orders. In too many cases, they were successful. The UCCJA operates upon novel principles that 1) establish jurisdiction over a child custody case in one state; and, 2) protect the order of that state from modification in any other state, so long as the original state retains jurisdiction over the case. If a non-custodial parent cannot take a child to another state and petition the court of that state for a favorable modification of an existing custody order, the incentive to run with the child is greatly diminished.

In 1981, Congress adopted the Parental Kidnapping Prevention Act (PKPA) for much the same purpose. The peculiarities of prior law, allowing easy modification of custody orders, were largely peculiarities in the interpretation of the Full Faith and Credit Clause of the Constitution of the United States. The Parental Kidnapping Prevention Act was an effort to put the weight of full faith and credit behind the principles of the Uniform Child Custody Jurisdiction Act. But there are some differences between the two acts, rooted in disagreements over application of jurisdictional principles. There are two main differences. The UCCJA does not give first priority to the "home state" of the child in determining which state may exercise jurisdiction over a child custody dispute. The PKPA does. The PKPA also provides that once a state has exercised jurisdiction, that jurisdiction remains the continuing, exclusive jurisdiction until every party to the dispute has exited that state. The UCCJA simply states that a legitimate exercise of jurisdiction must be honored by any other state until the basis for that exercise of jurisdiction no longer exists. In practice, the two acts tend to work together for the most part, but the differences do confuse the adjudication and settlement of child custody disputes in certain cases.

Neither the UCCJA nor the PKPA address another important issue, interstate enforcement of child custody orders (including visitation provisions). There have been provisions in the law of the states to permit interstate enforcement of child support orders since the 1950's. The Uniform Law Commissioners promulgated the Uniform Interstate Family Support Act to provide for even more effective interstate enforcement of child support orders in 1992. Interstate enforcement of child custody orders, therefore, remains a last frontier that needs to be crossed in order to make the law pertaining to children's needs complete.

In 1997, the Uniform Law Commissioners have promulgated a new **Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)**. It does two very important things. It reconciles UCCJA principles with the PKPA. It adds interstate civil enforcement for child custody orders. The UCCJEA replaces the UCCJA.

THE OBJECTIVE OF THE UCCJEA

The UCCJEA, the UCCJA and the PKPA are necessary because Americans are a mobile people who seldom stay in one state. Child custody disputes between parents, which arise when there is a divorce or when unmarried biological parents want to have custody adjudicated in a court, are impacted by that very mobility. When parents and children live and have lived in one state, the courts of that state may take jurisdiction over any child custody matter without question. But it is common for a parent to live in a different state from the one in which the other parent and the child live. More than one state may have the power to adjudicate a dispute between them. If more than one state does exercise its power, the competing decisions simply confuse, rather than conclude the dispute.

Child custody orders also have a quality that exaggerates the problem. They are modifiable orders, subject to reconsideration and change, until the children subject to them reach the age of majority. Circumstances may change between the parties governed by an order, and that may require a court to

change the order - to modify it. A common scenario involves a child custody order issued in a state where the parents and the child lived together before the parents divorce each other. Then the custodial parent moves with the child to another state. If there is a need to modify the order, in which state can that modification take place? And if the second state purports to modify the order from the first state, which order is to be recognized and enforced in the first state and in every other state in the United States? When there were no clear answers to these questions, the result was parental kidnapping of children to exploit the confusion. The UCCJEA, and the UCCJA and the PKPA before it, tries to answer these very important questions. It answers by establishing clear bases for taking jurisdiction and by providing rules that discourage competing child custody orders.

HOME STATE PRIORITY

In the UCCJA, there are four principles, or bases, for taking jurisdiction over a child custody dispute. These are child's home state; significant connection between state and parties to a child custody dispute; emergency jurisdiction when the child is present and the child's welfare is threatened; and, presence of the child in the event there is no other state with another sound basis for taking jurisdiction. (The term "taking jurisdiction" simply means that a state's courts have a good reason for summoning the contestants to come before them to adjudicate the dispute no matter where they reside. If there is jurisdiction, the court's orders are valid and enforceable.)

The original drafters of the UCCJA always thought that the home state of the child was the best state within which to find the information for making a custody decision in the best interests of the child. But it was also assumed that once a court took jurisdiction on any other acceptable basis, that state should be able to proceed without delaying to determine if some other state has home state status.

But the drafters of the PKPA took the opposite position, regarding "home state" as so significantly better than any other jurisdictional ground, that it should always be the priority ground. Under the PKPA the home state always has the first opportunity to take jurisdiction.

The UCCJEA now supports the PKPA position. Any state that is not the "home state" of the child will defer to the "home state," if there is one, in taking jurisdiction over a child custody dispute. Temporary emergency jurisdiction may be taken, but only long enough to secure the safety of the threatened person and to transfer the proceeding to the home state, or if none, to a state with another ground for jurisdiction.

CONTINUING EXCLUSIVE JURISDICTION

The UCCJEA also provides for continuing exclusive jurisdiction. If a state once takes jurisdiction over a child custody dispute, it retains jurisdiction so long as that state, by its own determination, maintains a significant connection with the disputants or until all disputants have moved away from that state. In contrast, the UCCJA allows jurisdiction to shift if the initial ground for taking jurisdiction ceases to exist. Thus, if a state takes jurisdiction over a child custody dispute because that state is the home state of the child, and the child subsequently establishes a new home state, jurisdiction can shift to the new home state, even if one parent remains in the child's original home state. The UCCJEA would not allow the jurisdiction to shift in this fashion, keeping it in the original home state so long as the parent remains there.

TEMPORARY EMERGENCY JURISDICTION

Under the UCCJA, grounds for taking emergency jurisdiction are on an equal footing with the other grounds for taking jurisdiction, including the "home state" ground. If the child is present in a state and there is evidence of abandonment or abuse to or mistreatment of the child, that state can take jurisdiction under the UCCJA.

The UCCJEA provides for temporary emergency jurisdiction, that can ripen into continuing jurisdiction only if no other state with grounds for continuing jurisdiction can be found or, if found, declines to take jurisdiction. The child's presence and its abandonment, mistreatment or abuse still trigger the taking of emergency jurisdiction, but threats to siblings or a parent also can trigger the taking of emergency jurisdiction. Because of the priority given to the home state of the child, the home state will most often be the state from which continuing jurisdiction is exercised.

The impact of these changes in the UCCJEA from the UCCJA is to reinforce the impact of the PKPA. Priority for home state jurisdiction, continuing exclusive jurisdiction and temporary emergency jurisdiction mean that orders made pursuant to the UCCJEA will have the full weight of the Full Faith and Credit Clause of the U.S. Constitution behind them.

ENFORCEMENT OF CUSTODY AND VISITATION ORDERS

The UCCJEA also adds enforcement provisions to the jurisdictional provisions. Interstate enforcement of custody and visitation decrees has proved frustrating to parents and to the courts. The UCCJEA requires a state to enforce a custody or visitation order from another state that conforms substantially with this Act. An order from a state that has continuing exclusive jurisdiction, therefore, will surely be enforced.

One enforcement procedure is reminiscent of procedures for enforcement under the Uniform Interstate Family Support Act for interstate spousal and child support orders and the Uniform Enforcement of Foreign Judgments Act, which governs the interstate enforcement of any civil judgment. The basic procedure is to register the out-of-state order. If the registration is not contested, the registered order may be enforced by any means available to enforce a domestic order. This would ordinarily mean using the contempt powers of the court to assure that the custody or visitation order is honored by the parent subject to it.

There is an expedited remedy, however, that also is available. Upon receiving a verified petition, the court orders the party with the child to submit to an immediate hearing (the next judicial day unless impossible) for enforcement. The court may rule with respect to enforcement at the hearing, although there are provisions to allow for extended hearing and standards to contest enforcement. This remedy operates much like habeas corpus, in which the body subject to the writ must be presented immediately to the court.

If there is danger to a child or if it appears that the child will be removed from the enforcing jurisdiction, a petition may also be filed for a warrant to take physical custody of the child along with a petition for an expedited proceeding. If the warrant issues, law enforcement officers will serve the warrant and obtain physical custody of the child.

As a last enforcement device, the UCCJEA gives prosecutors the power to enforce custody or visitation orders, and law enforcement officers the power to locate a child under instructions from prosecutors. These powers give parents and others who are the victims (along with children) of parental kidnapping the ability to seek help from those who enforce the criminal law. The effect is to provide a complete group of effective remedies.

CONCLUSION

It is not possible to cover all the details of the UCCJEA in a short summary. The best that it can do is point out the impact of major provisions. The UCCJEA does much more to update and streamline the original UCCJA, which was promulgated in 1968. It will provide much better relief for parents and children who suffer from interstate child-custody disputes, and ought to be uniformly adopted in all the states as soon as possible.

AGENDA ITEM 6(j)

**Discussion on Mediation
Training and Possible Creation of Manual**

**Redline Version of Nevada Mediation Manual
Submitted by Hank Cavallera
and Homa Woodrum**

~~Alaska-Nevada~~ Court System
Adult Guardianship/~~Conservatorship~~ Mediation
~~Pilot Project~~

Policies and Procedures Manual

~~August 2005~~November 2018

~~Revised July 2007 and April 2010~~

TABLE OF CONTENTS

POLICY #1: SUBSTANTIVE LAW	5
POLICY #2: REFERRALS TO MEDIATION	6
POLICY #3: VOLUNTARY PARTICIPATION	10
POLICY #4: PROFESSIONAL STANDARDS OF CONDUCT FOR MEDIATORS.....	11
POLICY #5: CONFIDENTIALITY	12
POLICY #6: TIME FRAMES.....	16
POLICY #7: MEDIATION PROCESS AND THE ROLE OF THE MEDIATOR.....	17
POLICY #8: PARTIES AND PARTICIPANTS IN MEDIATION AND THEIR ROLES.....	24
POLICY #9: SAFETY, BALANCE OF POWER, AND PROTECTION OF RIGHTS.....	31
POLICY #10: DOMESTIC ABUSE PROTOCOL	35
A. APPROPRIATENESS OF MEDIATION IN CASES INVOLVING EMOTIONAL, PHYSICAL, OR ECONOMIC ABUSE	35
B. INAPPROPRIATE CASES	36
C. SCREENING GUIDELINES FOR DOMESTIC ABUSE	36
PHASE 1	36
PHASE 2	38
PHASE 3	39
D. SUGGESTED SAFEGUARDS: IF THE VICTIM INSISTS ON MEDIATION OR IF THE CASE IS DEEMED APPROPRIATE IF SAFEGUARDS ARE IN PLACE.....	39
E. CONFIDENTIALITY IN SCREENING FOR DOMESTIC ABUSE	40
POLICY #11: CASE PROCESSING & SCHEDULING.....	42
POLICY #12: PROGRAM ADMINISTRATION.....	45
POLICY #13: MEDIATOR QUALIFICATIONS.....	49
POLICY #14: COMPLAINTS AND ALLEGED ETHICS VIOLATIONS.....	51
POLICY #15: PROFESSIONAL DEVELOPMENT	52

Adult Guardianship/Conservatorship Mediation Pilot Project Program Evaluation
Draft 12/28/05 Policies and Procedures Manual

This manual is designed to provide general information, policies and procedures regarding the Adult Guardianship/Conservatorship Mediation Program.

Background, Genesis and Goals of Project

This section explains the genesis of this project, as well as its goals and purposes.

A. Background

One of the most difficult dilemmas facing our society is maintaining a person's autonomy when health and mental capacities begin to fail and family and community supports may be needed. Families must increasingly make decisions that can affect the quality of life for adults who experience difficulties in care, safety, and decision-making related to mental health concerns; developmental disabilities; dementias; substance abuse aging and trauma. Balancing efforts to preserve their autonomy and self-determination of the while providing for their care and safety involves including them in decisions about their care or guardianship. Even in the best of situations, this balance can be difficult to maintain, particularly when there is disagreement about what is needed, who should provide care, in what setting, how finances are handled, whether a guardian or conservator should be appointed, and, if so, who that should be.

Families and others closely involved, when facing difficult decisions about care and intervention may be unable to communicate in a positive manner about difficult choices. The decision-making may then fall to the legal system. The very nature of the adversarial system in the court setting renders it ill-equipped to intervene in these situations in a way that effectively and satisfactorily addresses and resolves the conflict. The court is limited to statutory solutions, but is not well-equipped to address these problems. Although guardianship or conservatorship may sometimes be necessary to meet the needs of an incapacitated person, they should be considered only when no other less restrictive options are available. Bringing the system of people involved with the adult together with the adult for thoughtful, informed, planning and decision-making in which the voice of the adult heard is the focus of this mediation project.

B. Genesis of Project

Funding from the Alaska Mental Health Trust Authority (AMHTA) provided the means to pilot this project of the Alaska Court System. The initial pilot, for Anchorage, Kenai and Homer court cases, explored the potential benefits of offering mediation in court cases in which a petition has been filed to establish a guardianship or conservatorship. After the first 2 years of the limited pilot, the opportunity was extended to other interested court locations to implement this

Adult Guardianship/Conservatorship Mediation Pilot Project Program Evaluation Policies and Procedures Manual

~~program. Funding from the AMHTA was anticipated to be for 5 years, however in March 2009 the Judicial Council completed it's evaluation of this program and the Alaska legislature approved sustaining it as part of the court's budget.~~

~~The foundation of this project was developed as a collaboration including the court, organizations, agencies and individuals involved in areas related to guardianship and conservatorship concerns. Representatives from these groups also comprise an ongoing Advisory Committee to the project. Technical assistance was provided by The Center for Social Gerontology, Ann Arbor, MI which continues to be a resource to the project.~~

C. Project Goals and Purpose

~~The overall aim of this project is to develop an approach to guardianship and conservatorship concerns which will:~~

- ~~• Engage the adult, his or her family and others closely involved, in a productive, creative, problem solving process addressing care, safety and capacity concerns~~
- ~~• Protect the adult's autonomy~~
- ~~• Seek creative and least restrictive options by exploring alternatives to guardianship or conservatorship for meeting the needs of the adult~~
- ~~• Increase communication and understanding among family members and others involved~~
- ~~• Encourage consensus building among family and others closely involved~~
- ~~• Maintain supportive family relationships~~
- ~~• Prevent victimization of a vulnerable adult~~
- ~~• Create plans that reflect the real needs of the adult~~
- ~~• Provide the adult, family and others a satisfactory decision making process~~
- ~~• Avoid the trauma and adversarial nature of a court proceeding~~
- ~~• Eliminate unnecessary appointments of guardians or conservators~~
- ~~• Conserve judicial resources~~

Anticipated Outcomes (followed by Executive Summary of Judicial Council's formal evaluation of the program)

A. Mediation is successful when used to help participants reach agreements, make decisions and create plans.

~~When the parties elect to mediate, agreements on some or all of the issues are reached at least 70% of the time.~~

B. Plans are created in mediation that enhance the care and safety of the adults at high risk.

Adult Guardianship/Conservatorship Mediation Pilot Project Program Evaluation Policies and Procedures Manual

~~When Adult Protective Services is involved as a legal party, they are in agreement with plans created/agreements reached and agreements are reached at least 70% of the time.~~

C. ~~Mediation is successful in avoiding contested court proceeding.~~

~~Hearings or trials taken off the court calendar, or petition or motion dismissed/to be dismissed/held in abeyance as a result of mediation in at least 70% of mediations in which this was applicable.~~

D. ~~Issues requiring judicial decision are narrowed and reduced to more manageable level~~

~~At times in mediation parties may reach no agreements, or reach agreements on some, but not all of the issues, so that what may remain for judicial decision-making is narrowed. Through the process of being heard, understanding others, sharing information and considering options in a cooperative setting, the tone and intensity surrounding any remaining disagreements will be reduced.~~

E. ~~Participants are satisfied with the mediation process~~

~~Participants in mediation express at the conclusion of mediation that they:~~
~~Understood the mediation process~~
~~Felt respected~~
~~Were able to express their concerns, needs and wishes~~
~~Were heard~~
~~Had a better understanding of the views of others~~
~~Had an opportunity to be part of the decision making process~~
~~Would recommend mediation to others in similar situations~~

Adult Guardianship/Conservatorship Mediation Pilot Project Program Evaluation Policies and Procedures Manual

Alaska Court System Adult Guardianship Mediation Project Executive Summary

The Alaska Court System, with the support of the Mental Health Trust Authority, created a program to provide mediation in appropriate adult guardianship and conservatorship cases. The program began work in 2005, and has handled about 113 cases since then. To provide a basis for evaluating the program, project personnel compiled data from the mediators in 103 mediations, and from about 260 participants and parties.

The Alaska Judicial Council evaluated the program and found that:

- Agreements on some or all issues were reached in 87% of the cases mediated.
- If Adult Protective Services was involved in the case, agreements were reached 95% of the time.
- Participants were satisfied with the agreements reached most (91%) of the time.
- Participants believed that they were listened to and that their concerns were understood most of the time. Almost all would recommend mediation to others.
- The evaluation included 103 mediations conducted during the first three years of the project. The judge or professionals referred tough cases that they thought would need costly court hearings to resolve. Mediators and project staff believed that the referral for mediation avoided contested court hearings in all but a handful of cases.
- The mediators served much of the state, from Kotzebue to Kenai, all of Southeast, and Fairbanks and the Fourth District. Mediators also worked with parties by telephone.
- In most of the cases mediated, questions about whether there were alternatives to guardianship were discussed and resolved. Other common issues mediated included the finances of the protected adult, the level of care needed, and decision making and communication among family members and those responsible for the adult.

Alaska's senior population is projected to almost triple from 43,000 in 2005 to 124,000 in 2025, leading to an increased number of people who may need guardians or conservators.¹ The rest of the state's population will continue to grow at a slower rate,² resulting in an increasing number of guardianship cases for other vulnerable adults.

¹ (Source: DHSS Medicaid forecast, http://www.hss.state.ak.us/das/budget/pdfs/longterm_medicaidforecast'05-'25slideshow.pdf).

² *Id.* The rate of growth in the state's population will slow over the next 20 years from just over 1.0% currently to less than 0.6% by 2025.

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Adult Guardianship/Conservatorship Mediation Pilot Project Program Evaluation Policies and Procedures Manual

Alaska-Nevada Court System

Adult Guardianship/Conservatorship Mediation Pilot Project Policies and Procedures Manual

Subject:

Policy #1: Substantive Law Mediation Defined

Date adopted/revised:

The rights and responsibilities of parties in adult guardianship and conservatorship cases and the procedures that govern them are found in State Statute and in the Alaska Rules of Court. Rules and laws potentially applicable to guardianship and conservatorship cases include:

The Alaska Guardianship/Conservatorship Statute Alaska Statutes 13.26.001
Title 13. Decedents' Estates, Guardianship, Transfers and Trusts
Chapter 26. Protection of Persons Under Disability and Their Property; Powers of Attorney

Probate Rules 14, 16, and 17.

Probate Rule 4.5

Alaska Statute 47.24.010-900 (Amended 1994) Protection of Vulnerable Adults

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

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Adult Guardianship/Conservatorship Mediation Pilot Project Program Evaluation Policies and Procedures Manual

Alaska-Nevada Court System

Adult Guardianship/Conservatorship Mediation Pilot Project Policies and Procedures Manual

Subject:

Policy #2: Referrals to Mediation

Date adopted/revised:

This section describes which types of guardianship/conservatorship cases and issues should be referred to mediation under this program and the timing of referrals.

I. Judicial Order of Referral to Mediation

Cases are referred to the for Adult Guardianship/Conservatorship Mediation Project by a judge, or master or magistrate in response to a request from the respondent/ward/protected person; family of respondent/ward/protected person; plaintiff; attorneys for plaintiff/petitioner or respondent; court visitor; guardian ad litem; guardian/conservator/petitioner; other interested persons, or sua sponte.

The referral order (see Forms) shall:

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

II. Timing of Referral

Referrals may be made at any time or at any stage in a case once a petition is filed. A request for mediation may also be filed with the petition. This project emphasizes the importance of early referrals as soon as possible from the point of petition. These services are, however, also available throughout the life of the case. Mediation may also be requested at any point, even years, after a determination of incapacity has been made.

While the focus of this program is post filing referrals, the appropriateness of pre filing referrals is also being piloted and assessed in the latter three years of the project. The following two types of pre filing referrals may be made directly to the program:

- Referrals from Adult Protective Services in which the Long Term Care Ombudsman participates as advocate for adult
- Referrals from the Office of the Long Term Care Ombudsman in which the Long Term Care Ombudsman participates as advocate for adult

Adult Guardianship/Conservatorship Mediation Pilot Project Program Evaluation Policies and Procedures Manual

~~Other types of pre-filing referrals may also be considered.~~

III. Cases Appropriate for Referral

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

IV. Cases Not Appropriate for Referral

A. Ability to Participate in Mediation

Although some cases may be mediated with only a representative of the adult present, others are not appropriate for mediation if the adult cannot participate. The mediator has a duty to assure that all participants understand the nature of the process and how it proceeds, the role of the mediator and the parties' relationship to the mediator. If the mediator determines that any necessary participant is not able to understand these matters, mediation is not appropriate.

B. Emergency Cases

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

C. Abuse, Neglect and Exploitation Cases

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

D. Domestic Violence Protective Orders

~~As set forth in Probate Rule 4.5, e~~Cases in which there is an active domestic violence protective order between individuals who would be necessary participants in mediation, may not be referred to mediation

V. Issues Appropriate for Mediation

Mediation is available for both personal and financial issues.

Adult Guardianship/Conservatorship Mediation Pilot Project Program Evaluation Policies and Procedures Manual

When requesting mediation, the parties shall inform the court about which issues are contested or in need of decisions that they would like to discuss in mediation. Issues that may be appropriate for mediation include:

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

- Is a guardian/conservator needed?

What are the safety concerns?

Is the level of risk understood?

Is the level of risk acceptable?

Should autonomy and self-determination be limited?

- The type or level of care or assistance that might be needed

What alternatives exist?

- Who should provide needed services or care, or be the guardian/conservator

- Communication

How do we want to relate to each other?

What information is needed or missing?

How do we share information with those who need it?

- Decision-making

Who should have the authority to make decisions?

What input, if any, should others have?

What kind of decision-making process feels fair, respectful and satisfying?

Concerns over a coercive, involuntary or adversarial process

- Family disputes and impediments to decision-making

How should the family deal with disagreements?

How does the family deal with old relationship issues such as sibling rivalry?

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

- Financial decisions

How should money be spent?

How should investments be handled?

What to do about “unwise” spending

Adult Guardianship/Conservatorship Mediation Pilot Project Program Evaluation Policies and Procedures Manual

- Living arrangements

Where?

With whom?

How to decide?

How much independence or supervision?

Housekeeping concerns that threaten safety

- Health/Medical care decisions

What care is needed?

Who should provide it?

How should medical decisions be made?

Concerns about not following care or treatment recommendations

- Needs of other family members and caregivers

How to meet needs of adult and themselves

How to maintain positive relationships under stress

- Post-appointment issues

May included many of the above

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

VI. Issues Not Appropriate for Mediation

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

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

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

Adult Guardianship/Conservatorship Mediation Pilot Project Program Evaluation Policies and Procedures Manual

Alaska-Nevada Court System
Adult Guardianship/Conservatorship Mediation Pilot Project Policies and Procedures Manual

Subject:

Policy #3: Voluntary Participation

Date adopted/revised:

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

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

Adult Guardianship/Conservatorship Mediation Pilot Project Program Evaluation Policies and Procedures Manual

Alaska-Nevada Court System

Adult Guardianship/Conservatorship Mediation Pilot Project Policies and Procedures Manual

Subject:

Policy #4: Professional Standards of Conduct for Mediators

Date adopted/revised:

Mediators with this project shall comply with professional standards of practice. They shall strive for impartiality and neutrality in performance of their duties. ~~Mediators who have questions about these standards should discuss them with the Dispute Resolution Coordinator, and/or with the mediation participants.~~

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

Mediators are required to conduct mediations in accordance with the requirement of the Americans with Disabilities Act of 1990. Mediators are required to complete training in the model of mediation set forth in Policy 7, Section II "Mediation and Style."

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Adult Guardianship/Conservatorship Mediation Pilot Project Program Evaluation Policies and Procedures Manual

Alaska-Nevada Court System

Adult Guardianship/Conservatorship Mediation Pilot Project Policies and Procedures Manual

Subject:

Policy #5: Confidentiality

Date adopted/revised:

Mediation communications are private and confidential. The scope of this confidentiality is defined by the Confidentiality and Mediation Agreement and also by Probate Rule 4.5.

I. Scope of Confidentiality

A. Court Rule

~~Probate Rule 4.5 applies to mediation ordered by the court and states that mediation proceedings are to be “held in private and are confidential” and discusses other provisions.~~

B.A. Contractual and/or by Court Rule

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

C.B. Mediator Confidentiality

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

Mediators will not discuss or convey any specific information from or about a mediation to judicial officers. Mediator communication with the judiciary should be minimized. When needed, communication should be made in writing, or

Adult Guardianship/Conservatorship Mediation Pilot Project Program Evaluation Policies and Procedures Manual

through administrative personnel. The mediator has the responsibility to report the following without comment or recommendations:

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

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

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

D.C. Participant Confidentiality

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

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

II. Limits of Confidentiality

A. Limits Created by Statute of Law

Adult Guardianship/Conservatorship Mediation Pilot Project Program Evaluation Policies and Procedures Manual

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

possibly including:

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

~~Program m~~ Mediators may have other professional roles in which they are mandated reporters, ~~including and this program considers all program mediators to be mandated by program policy to report in accordance with Alaska Statute 47.24~~ when in the performance of ~~their~~ his/her duties as a mediator they have “...reasonable cause to believe that a vulnerable adult suffers from abandonment, exploitation, abuse, neglect, or self-neglect.” ~~When a mediator makes a report of harm, the mediator must also report this to the Dispute Resolution Coordinator.~~

B. Other Limits on Confidentiality

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

C. Final Agreements Released to Court

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

D. Limits Created by Consent

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

~~E. Limited Waiver for Mediator Case Consultation or Peer Review~~

Adult Guardianship/Conservatorship Mediation Pilot Project Program Evaluation Policies and Procedures Manual

~~Mediators may discuss cases with other mediators in the AGCMP mediation project during court sponsored case consultations. Mediators who discuss cases in consultation or peer review shall not include names and will make best efforts to withhold other identifying information. Mediators may also request a case consultation with the Dispute Resolution Coordinator. The Dispute Resolution Coordinator shall be subject to the same confidentiality provisions as the mediator.~~

F. ~~Limited Waiver for Administrative Reporting and Program Evaluation~~

~~The Dispute Resolution Coordinator may collect information, including information from the mediator, for administrative and program evaluation purposes. Disseminated information shall not contain identifying information.~~

G. ~~Limited Waiver for Observation in Mediation~~

~~At times it may be appropriate for an observer to be present in mediation. Observers may be present for the purposes of program evaluation, quality control, training or other purposes approved in advance, in writing by the Dispute Resolution Coordinator. No observation shall be permitted without the consent of all participants and the observer's signature on the CMA.~~

Adult Guardianship/Conservatorship Mediation ~~Pilot Project Program Evaluation~~ Policies and Procedures Manual

Alaska-Nevada Court System

Adult Guardianship/Conservatorship Mediation ~~Pilot Project~~ Policies and Procedures Manual

Subject:

Policy #6: Time Frames

Date adopted/revised: 20

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

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

Mediators accepting referrals should initiate preparatory contacts within ~~two~~-three working days of receiving the referral order and contact info.

Adult Guardianship/Conservatorship Mediation Pilot Project Program Evaluation Policies and Procedures Manual

Alaska-Nevada Court System

Adult Guardianship/Conservatorship Mediation Pilot Project Policies and Procedures Manual

Subject:

Policy #7: Mediation Process and the Role of the Mediator

Date adopted/revised:

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

I. Definition/Mediator Responsibility

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

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

II. Mediation Model and Style

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

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

Adult Guardianship/Conservatorship Mediation Pilot Project Program Evaluation Policies and Procedures Manual

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

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

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

III. Role of the Mediator

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

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

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

Mediators have the responsibility for identifying and assessing power imbalances and then work to balance or expose them. Ultimately, it is the role of the mediator to evaluate the continued appropriateness for mediation and to discontinue it when inappropriate.

IV. Stages of Mediation

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

A. Preparation and the Pre-Joint Session Meetings

The objectives of preparation are to:

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

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

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

The mediator asks in these meetings what it is that people want to mediate. What needs to be decided? What concerns or disagreements exist? What are the topics for discussion? The mediator looks for information both as to the substantive issues to be discussed, as well as the dynamics that might be involved in the case. The discussion of substantive issues should be focused on permitting the mediator to understand the issues likely to be mediated and to be prepared for mediation (not on fact-finding). The mediator will want to know the dynamic issues (for example, are there specific relationships that are problematic, or that are working well? Are there issues of [domestic abuse, neglect, or exploitation, and/or isolation](#) [See Policy #10 [Domestic Abuse, Neglect, Exploitation, and/or Isolation Protocol](#)]?) so that the mediator can structure the mediation in a way that will allow for safety and for people to feel that they can have a voice without a concern for intimidation, and that will deal with the needs and concerns underlying the substantive issues.

Adult Guardianship/Conservatorship Mediation Pilot Project Program Evaluation Policies and Procedures Manual

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

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

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

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

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

Other Considerations for Preparation

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

significant amounts of time gathering information about the case or the parties outside of the pre-mediation interviews.

B. Joint Mediation Session

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

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

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

The mediator will then proceed to assist the parties to:

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

Ongoing Screening

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

- Necessary participant is unable to participate effectively;
- Necessary participant refuses to participate or exhibits behavior that undermines the mediation;
- A power imbalance cannot be balanced;
- Mediator identifies undue coercion of a party;
- The respondent's or ~~ward's~~ protected person's rights are not adequately protected

Adult Guardianship/Conservatorship Mediation Pilot Project Program Evaluation Policies and Procedures Manual

- Mediator, after careful reflection, decides that he or she can no longer be of assistance to the parties.

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

Caucus

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

Subsequent Joint Sessions

Subsequent mediation sessions may be scheduled in the following situations:

- The participants have questions or concerns that cannot be satisfactorily addressed at the initial session, and that interfere with their informed consent to mediate, then the mediator shall refer them to do further research in the appropriate forum and postpone the mediation session. The mediator may reschedule mediation when the questions or concerns have been adequately resolved.
- A necessary participant did not attend mediation and the other participants wish to reschedule, the mediator shall schedule a subsequent session.
- Agreement is not reached at the first joint session and the participants wish to continue, the mediator shall schedule subsequent sessions.

Terminating Mediation

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

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

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

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

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

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

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

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

Subject:

Policy #8: Parties and Participants in Mediation and their Roles

Date adopted/revised:

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

I. Necessary Participants

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

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

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

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

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

Having all necessary participants involved in mediation is likely key to its effectiveness. If a necessary participant is not able or not willing to mediate, the mediator, with input

Adult Guardianship/Conservatorship Mediation Pilot Project Program Evaluation Policies and Procedures Manual

from the other participants, may determine that there are other issues that may still be effectively mediated, or may terminate the session and withdraw his or her services.

II. Potential Participants and their Roles

The Respondent or Ward-Protected Person

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

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

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

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

Attorney for Respondent or Ward-Protected Person

Generally, it is essential that the attorney for the respondent or ward-protected person participate in the mediation process. Attorneys tend to take a different role in mediation than they do in court. In mediation the role of the attorney is to assist the client in presenting his or her wishes, to help draft agreements and to advise the adult on possible outcomes or alternatives

Family of Respondent or Ward-Protected Person

Often family members are central to the concerns or conflicts that are referred to mediation, or to the decisions that need to be made. In those cases, family members are

Adult Guardianship/Conservatorship Mediation Pilot Project Program Evaluation Policies and Procedures Manual

also likely to be necessary participants to mediation. In many cases a family member is the petitioner and very likely to be a necessary participant.

Guardian ad litem (GAL)

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

Protected Person's Counsel

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

Adult Protective Services (APS) Worker

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

The participation of the APS worker may be structured in various ways. The worker may provide information to the group early in mediation about the facts pertaining to safety concerns and leave it to the group to mediate without ~~them~~ the worker to come up with a plan that addresses the concerns. The worker may rejoin the group to hear their plan and provide feedback as to how well it addresses the concerns, agreeing to the plan when it does. Alternatively, the APS worker may participate throughout the entire process. Any PS worker is entitled to having their counsel (the Deputy Attorney General for the Aging and Disability Services Division) present as would be the case in other settings such as a deposition or court hearing.

Assistant Attorney General (AAG)

~~The AAG is the attorney for APS. The AAG provides legal advice to the APS worker and represents the interests of the state in protecting the adult. The AAG is present for~~

Adult Guardianship/Conservatorship Mediation Pilot Project Program Evaluation Policies and Procedures Manual

mediation when the APS worker participates unless the APS worker and the AAG agree that the APS worker will participate without the AAG present.

Court Visitor

The court visitor is appointed by the court when a petition is filed for guardianship and may be appointed when a petition is filed for conservatorship. The visitor is also appointed when there is a review of the case. The visitor conducts an independent investigation of the needs of the adult, prepares a written report with recommendations and submits it to the court.

The important role of the visitor as an agent of the court may at times be, or seem to be, in conflict with their role as a participant in mediation. Therefore, the following issues are to be considered in deciding about the visitor's participation:

Possible Dilemmas Involving Confidentiality

If the visitor learns something in mediation that the visitor thinks is necessary information to be included in the report, then a dilemma may exist. Even the perception of the potential for this to occur could have a chilling effect on the mediation process.

Parties might be reluctant to talk openly and discuss real needs, concerns, and options because of the potential for that information to not be kept confidential. The visitor could be faced with the dilemma of not being able to include vital information because the only source was mediation.

The participants may perceive a breach in confidentiality if the visitor includes in a report, information that was discussed in mediation, but that the visitor also learned independently. That perception of a breach may cause the participants to feel betrayed, angry and disempowered, undermining the goals of the mediation process and of this program itself.

Desire for Autonomy, Self Determination and Privacy

People often seek mediation for the autonomy, self-determination and privacy it offers. If a necessary participant feels that the presence of the visitor in mediation might compromise those goals then the visitor should not participate.

If the necessary participants elect to include the visitor in mediation, it is with the understanding that it is not necessary for the visitor to agree with plans or decisions the participants reach in order for them to submit those agreements to the court. In other words, the visitor does not have veto power in mediation over the parties' agreements, and two different recommendations might be made to the court, through the mediated agreement and in the visitor's report.

Possible Benefits

Adult Guardianship/Conservatorship Mediation Pilot Project Program Evaluation Policies and Procedures Manual

~~While possible risks associated with including the visitor in mediation have been discussed, there may also be potential benefits from involving the visitor in mediation.~~

~~It may be very helpful for the court visitor to participate in mediation after the completion of their report. Once the report is completed it may be made available to the participants in mediation. Participants in mediation will then be able to consider the information and recommendations in the report as they discuss their options and possible agreements or plans in mediation.~~

~~If the mediated plan is in conflict with the visitor's recommendations, then the visitor may be invited to discuss this with the parties in mediation. If the visitor agrees to participate in mediation, a negotiated agreement between those in mediation and the court visitor may be the result. Even if agreement between the visitor and participants in mediation is not reached, each may have a better understanding of the other's perspectives.~~

~~Because the focus of both mediation and the court visitor's investigation may be to come up with a plan for the adult, and because both mediation and the investigation may be going on somewhat simultaneously, some coordination of the results of these efforts may be beneficial. If the adult and other necessary participants agree to the participation of the visitor in mediation, and the visitor agrees to participate, then they may be able to engage in a useful exchange of information and ideas that could lead to well informed mediated agreements and visitor report and recommendations that may also be in harmony.~~

Participation of the Visitor is at the Discretion of the Necessary Mediation Participants

~~The participation of the court visitor in mediation is at the discretion of the necessary participants in mediation. There are risks inherent in the inclusion of the visitor in mediation and the mediator must discuss those risks with the participants so that they are understood and so that any decision to include the visitor is truly an informed one. The mediator may not allow the visitor to participate in mediation over the objection of a necessary participant. There are also potential benefits to the inclusion of the visitor in mediation and those should also be considered. The decision of whether or not to include the court visitor and if the visitor is included, what form the participation will take is to be made on a case by case basis. As with the APS worker, the participation of the court visitor may be structured in various ways.~~

Guardian of the Person

Guardianship of the Person is a legal arrangement in which a person or other entity/agency institution is appointed as a guardian to make decisions for an incapacitated person - decisions about housing, medical care, legal issues, and services. If a guardian has been appointed in a case, it is likely ~~the~~ such guardian of the person will be a

Adult Guardianship/Conservatorship Mediation Pilot Project Program Evaluation Policies and Procedures Manual

necessary participant in mediation. The duties, powers and limitations of a guardian of the person are defined in statute, See NRS 159.077 et seq. AS 13.26.150 General Powers and Duties of Guardian.

Conservator/Guardianship of the Estate

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

Adult Guardianship/Conservatorship Mediation Pilot Project Program Evaluation Policies and Procedures Manual

Others

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

III. Authority to Enter into Agreements

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

IV-III. Others Who May Have a Role in Mediation

Others who may be involved in mediation include:

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

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

IV. Authority to Enter into Agreements

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

~~Alaska-Nevada Court System~~
~~Adult Guardianship/Conservatorship Mediation Pilot Project~~
Policies and Procedures Manual

Subject:

Policy #9: Safety, Balance of Power, and Protection of Rights

Date adopted/revised:

The mediator must prepare adequately for the mediation to be able to assess for safety, protection of the adult's rights, and balance of power issues. This assessment may include information from sources deemed necessary by the mediator. The mediator assesses for family violence, abuse, neglect and exploitation issues that might create an environment that is unsafe or would render mediation inappropriate. In most cases the mediator is capable of creating a safe, supportive environment in which power can be balanced, the respondent or ~~ward's-protected~~ person's adults rights protected, and non-coercive agreements formed. (Also see Policy #10, ~~Domestic~~ Abuse, Neglect, Exploitation, and/or Isolation Protocol.)

I. Balance of Power and Safety

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

Power imbalances may be related to:

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

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

- providing information and an orientation to the mediation process
- facilitating information sharing
- reframing issues
- clarifying interests

Adult Guardianship/Conservatorship Mediation ~~Pilot Project Program Evaluation~~ Policies and Procedures Manual

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

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

II. Protection of the Adult's Rights

A. Participation of the Respondent or ~~Ward~~Protected Person

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

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

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

The role of preparation and screening as discussed in Policy #8 is central to promoting the physical and emotional safety and protection of rights of the adult in mediation.

Adult Guardianship/Conservatorship Mediation ~~Pilot Project Program Evaluation~~ Policies and Procedures Manual

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

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

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

B. Medical Records in Mediation

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

C. Inclusion of Legal Counsel in Mediation

Legal counsel for the adult may not be excluded from attending mediation.

D. Determining Mediation Not Appropriate

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

E. Legal Counsel – Advocacy for the Legal Rights, Needs and Concerns of the Adult

Post-Petition, Pre-Hearing Cases

~~Because of~~ Due to the inherent doubt of mediating when the legal capacity of a party is in question, the availability of an attorney or advocate to support the respondent in mediation is vital. Access to counsel regarding legal rights and assurance that the adult's needs and concerns are articulated in the mediation process, and that they are not subject to manipulation and undue pressure, are key considerations in providing this protection.

In a guardianship case an attorney will be appointed for the respondent, and it is strongly encouraged that the attorney participate in mediation. The alternative of

Adult Guardianship/Conservatorship Mediation Pilot Project Program Evaluation Policies and Procedures Manual

the attorney reviewing any written agreement to be sure the adult fully understands it and its consequences before it is finalized may be considered in some instances, but may not be deemed to provide adequate protection.

~~Attorneys are not necessarily automatically appointed in conservator cases, so legal representation is not guaranteed. Respondents determined by the court to have sufficient means will be required to retain their own attorneys, if they wish. Respondents with eligible incomes may request that an attorney be appointed for them. In the absence of an attorney, an appropriate advocate may be available to support the respondent in mediation and assure that his or her interests are expressed.~~

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

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

Post-Appointment Cases - Guardianship

Whether or not the adult, or ~~ward~~protected person, attends the mediation, he or she should be represented in mediation. While best practice may be to assure that a person is present who specifically represents the ~~ward's~~protected person's own interests in the matter, the level of participation may be considered on a case-by-case basis, depending upon the unique facts of the situation.

F. Due Process

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

Adult Guardianship/Conservatorship Mediation Pilot Project Program Evaluation Policies and Procedures Manual

Alaska-Nevada Court System

Adult Guardianship/Conservatorship Mediation Pilot Project Policies and Procedures Manual

Subject:

Policy #10: Domestic Abuse, Neglect, Exploitation, and/or Isolation Protocol

Date adopted/revised: April 2010

NRS 200 includes definitions related to the abuse, neglect, exploitation, and/or isolation of older persons (over the age of 60) and vulnerable persons (adults with disabilities). It is acknowledged that the presence or involvement of a person of interest in a protective services matter, a defendant in a criminal case related to treatment of a party to the proposed mediation, or accomplices to such conduct (including the concealment of such conduct) can serve to The term "domestic abuse," as used in the context of this protocol, includes physical, emotional, psychological, or economic abuse by any family member, caregiver, or party to the mediation who could intimidate or exert coercion or influence over another party because of past or current actions. Self-neglect, on its own, does not rule out mediation. The term "victim" is used frequently throughout this protocol to describe the person against whom the domestic abuse conduct (alleged or substantiated) occurred.

A. Appropriateness of Mediation in Cases Involving Abuse, Neglect, Exploitation, and/or Isolation Emotional, Physical, or Economic Abuse

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

Adult Guardianship/Conservatorship Mediation Pilot Project Program Evaluation Policies and Procedures Manual

negative emotional responses not on a standard of the mediator projecting their own views of the alleged or actual conduct but on the actual feelings of the affected parties.

4. To determine appropriateness for mediation, thorough screening is a necessity. (See Section C - Screening Questions and Domestic Abuse Assessment)

B. Inappropriate Cases

1. Inappropriate cases would include:

- a. Cases in which there is a Domestic Violence Restraining Order/ No Contact Order protective order or other order that does not allow the parties to be in the same vicinity of one another. This is also prohibited in Probate Rule 4.5.
- b. Cases in which the issue to be mediated concerns whether or not the domestic abuse occurred.
- c. Cases in which one party feels intimidated by another party so that a voluntary agreement or negotiation is not possible.
 - i. Indicators of intimidation could include actions by the abusing party, such as chronic physical or emotional abuse; denial or making excuses for the actions; blaming the victim for the acts of the abuser; or admission by the victim that she/he fears a recurrence or feels unsafe in the presence of the other.
- d. Cases in which one party threatens another or demonstrates a desire to exert physical or psychological control over another party.

C. Screening Guidelines for Domestic abuse

Phase I

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

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

2. If Adult Protective Services (APS) has already made an investigation, the referring judicial officer should request appropriately redacted (as to the reporting party) records in orders related to the mediation to authorize the mediator's access to such records. the The APS worker should be consulted as to his/her findings. If an APS worker is a party

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to a case, it would be preferable for any APS investigations to occur before the mediation (to avoid mediation serving as a source of discovery for APS, or other mandatory reporters, and triggering an investigation that would otherwise not have occurred).

3. The success of the mediation may depend upon the parties being able to work together. Therefore, although mediation is oriented towards the future, past patterns of party interaction can have a significant impact upon the process. Questions about party interaction are also a valuable tool for detecting the presence of domestic abuse in a relationship. Some suggested initial screening questions are listed below.

a. Mediation often occurs with all parties in the same room together. Do you have any concerns about mediating in the same room with any of the parties?

i. *[If so:]* Can you tell me about those concerns?

ii. *[If the concerns are related to ~~domestic abuse~~/abuse:]* Are you fearful of this person for any reason?

iii. Has this person ever threatened to hurt you in any way?

iv. Has this person ever hit you or used any other type of physical force towards you?

v. Have you ever called the police, APS, requested a protection order, or sought help for yourself as a result of abuse by this person? ~~Did an investigation take place?~~

vi. Are you currently afraid that this person will physically harm you?

b. If you are experiencing any other fears, please describe them. Do you feel threatened financially or emotionally? To what degree?

c. What feelings are you experiencing related to the conflict and to the other person(s) involved?

d. How have decisions been made in the past with the other person(s)?

e. Do you feel able to express your own needs, interests, concerns with the other parties present? Are you able to disagree and talk about the disagreement with the others present?

i. *[If not:]* Are you intimidated by any other parties? *[If so:]* By whom?

f. *[If party feels intimidated by other parties:]* Would you be able to speak up for yourself in a separate room with a mediator?

g. Mediation is a process that helps parties to plan for the future. Are you able at this time to think about your own future needs?

4. Screening should be in a face- to-face interview. However, when that is not possible or feasible may be conducted over the phone. If the protected person or proposed

Adult Guardianship/Conservatorship Mediation Pilot Project Program Evaluation Policies and Procedures Manual

protected person is represented by counsel, they should be afforded the right to invite counsel to screening.

5. Screening should take into consideration the confidential nature of allegations of abuse, neglect, exploitation, and/or isolation.

Phase 2

1. If there is any indication of ~~domestic~~-abuse in Phase 1, further screening is necessary.

2. The mediator should then review the available information and perform an ~~Domestic~~ Abuse Assessment (DAA) before going forward with the mediation. The purpose of the ~~DAA~~ is:

a. To assess the victim's ability to participate and adequately represent her/himself, especially regarding the potential for non-coerced settlement.

b. To clarify the history and dynamics of the ~~domestic~~-abuse issues in order to determine the most appropriate manner in which mediation should proceed consistent with the other provisions of this protocol and to put procedures in place that assure all parties are able to negotiate to the maximum extent possible on an equal footing. In other words, to address the power imbalance and safety issues between parties before, during, and after the mediation.

c. To assist the parties in formulating an agreement that provides appropriate safeguards for victims, caregivers, family members, and others.

3. The ~~DAA~~ involves a more in-depth conversation than the initial screening questions. The ~~DAA~~ should help the mediator to assess the nature of the ~~domestic~~-abuse issues in the case and to evaluate the situation so that the mediator may deal with the participants in the most appropriate manner. During the assessment, the mediator may want to consider the following:

a. The nature of the alleged ~~physical, emotional, or financial abuse~~abuse, neglect, exploitation, and/or isolation, including the history, frequency, severity and level of dangerousness, and the impact of the abuse or abuse on all parties or family members.

b. Consideration and consultation regarding appropriate conditions and measures for protecting persons involved.

c. A review of any pertinent related information or documentation including consultations or investigations (written or individual interviews) with ~~social workers, APS workers, police, attorneys, or family members~~others involved regarding the nature of the ~~domestic~~allegations of abuse in the case.

Adult Guardianship/Conservatorship Mediation Pilot Project Program Evaluation Policies and Procedures Manual

d. At what stage in the case, the allegations were made, and whether any investigations are pending or are still likely to occur (note: the act of filing a guardianship may be in itself part of an attempt to continue a pattern of abuse/control).

Phase 3

1. If ~~domestic abuse~~, neglect, exploitation, and/or isolation is alleged, after initial screening and an ~~D~~A, the case will be determined as:

- a. Appropriate for standard mediation;
- b. Appropriate for mediation but necessitating some modification in form;
- c. Inappropriate for mediation

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

1. If the mediator has explained to the victim the mediation process and the reasons why the case is inappropriate for mediation, and the victim insists on mediation, the mediator must make a determination as to whether the mediation can occur with assurance of safety to all participants. (None of the factors listed under section B.1. a-c should be present, if the decision is made to mediate.)

2. If the victim insists on mediation, or if the case is determined to be appropriate with safeguards in place, the following arrangements may be made, depending on the situation. The mediator should explain to and consult with the victim regarding the need for additional arrangements before the mediation can occur:

- a. Consultation with the mentor and/or program director.
- b. Acknowledgment from both parties of the abusive behavior.
- c. ~~Domestic abuse or other a~~Appropriate advocates or supporters for the victim and the abuser (could be legal counsel) before, during, and after the mediation.
- d. A mediation site with separate waiting areas and available emergency support.
- e. Arrangements for the parties to arrive and leave the mediation session separately and at different times.
- f. If the parties are living separately, the mediator must avoid disclosure of the parties' addresses or other confidential identifying information to one another.

Adult Guardianship/Conservatorship Mediation Pilot Project Program Evaluation Policies and Procedures Manual

- g. Arrangements to hold the mediation entirely in caucus, if that becomes necessary.
- h. Mediator (or co-mediator) must have had special training in mediating ~~domestic~~ abuse cases.
- i. Prior to, or early in the mediation, the mediator should again explore power dynamics with the parties in order to confirm the comfort of each participant with the mediation format and confirm the ability of each participant to speak and negotiate for him/herself. (This is also part of the ~~D~~A A, but it is useful to confirm this at the time of the mediation.)
- j. Mediator and the victim should work out a "code" system for notifying the mediator if the victim feels intimidated; mediator should continually check in with the victim in caucus to make sure ~~s~~he/he is not feeling intimidated.
- k. Mediator must feel ~~s~~he/he can stop the mediation at any point at which s/he believes the mediation is unsafe or that one of the parties is intimidated. If necessary, mediator must summon appropriate security or emergency help. The mediator should always take responsibility for stopping a mediation; the victim could be placed at further risk of harm if the abuser knew the session ended on the victim's account. (Mediator might say simply that it appears the parties are quite far apart in their perceptions or ideas for resolution and it would not be helpful to continue the session.)

E. Confidentiality in Screening for ~~Domestic A~~buse, Neglect, Exploitation, and/or Isolation

1. The mediator must keep intake/screening information confidential in accordance with ~~Probate Rule 4-5 and program policy on confidentiality~~applicable rules and best practices, including any limits on confidentiality such reporting new allegations of abuse or a threat of imminent harm (these limits on confidentiality must be disclosed and clearly explained to participants during initial preparation/screening contacts).
2. Unless the victim consents to the mediator's disclosure about the ~~domestic~~ abuse allegations, the mediator may not disclose the information to others, including the court (unless the mediator is reporting new allegations of abuse or a threat of imminent harm to the proper authorities). (Others, including courts, should simply be told that the case is inappropriate for mediation.) The mediator should provide appropriate referrals to the victim.
3. If a case is determined to be inappropriate for mediation due to ~~domestic~~ abuse, the mediator should first establish that the victim is safe and protected. Then ~~s~~he/he should notify the victim of the decision not to mediate, provide appropriate referrals to the victim, and only to the extent that it is acceptable to the victim and assessed to be safe by the mediator, inform the alleged abuser of the reason why the situation is not appropriate

Adult Guardianship/Conservatorship Mediation Pilot Project Program Evaluation Policies and Procedures Manual

for mediation. If it is not acceptable to notify the alleged abuser of the reason why the case is not appropriate for mediation, the mediator should simply notify the alleged abuser that the mediator is unable to mediate the case. If pressed, it may be explained that the case does not contain issues of a nature that the program is qualified or able to mediate.

F. Notification of Program Director

The mediator's responsibility to the program is to notify the Program Director when:

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

Adult Guardianship/Conservatorship Mediation Pilot Project Program Evaluation Policies and Procedures Manual

Alaska-Nevada Court System

Adult Guardianship/Conservatorship Mediation Pilot Project Policies and Procedures Manual

Subject:

Policy #11: Case Processing & Scheduling

Date adopted/revised:

I. Processing the Referral

Referrals may be processed ~~differently in court locations. The Dispute Resolution Coordinator will provide information about specific procedures for processing referrals in accordance with local practice or as set forth in applicable local or guardianship court rules.~~

II. Assignment and Disqualification of Mediator

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

Mediators on the schedule to accept appointments are to begin the initial contacts within ~~5-three~~ working days of notice of appointment, unless referral information directs otherwise.

III. Scheduling

A. Mediation Session

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

B. Orientation Meeting

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

C. Follow-up Mediation Sessions

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

D. Canceling and Rescheduling

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

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

IV. Mediator Billing

The mediator bills the ~~court monthly~~ parties for time spent in the mediation process, recorded in six minute increments. ~~The Dispute Resolution Coordinator approves the invoices and arranges for payment.~~

V. Closing the Case

~~A. Participant Satisfaction Surveys~~

~~At the conclusion of the final mediation session, the mediator gives each participant a Satisfaction Survey with the mediator's name written on it (see Forms) along with a postage paid envelopes, pre addressed to the Dispute Resolution Coordinator. Explaining the purpose for the survey, the mediator asks the participants to fill it out and mail it. Parties may prefer to fill out the questionnaires at the session, and it is acceptable for the mediator to collect them at that time, encouraging parties to seal them in the envelopes so the mediator can forward them to the Dispute Resolution Coordinator. The mediator may not add a case number to a survey or otherwise identify it with a particular case. Copies of surveys received by the Dispute Resolution Coordinator are provided to the appropriate mediator.~~

Adult Guardianship/Conservatorship Mediation Pilot Project Program Evaluation Policies and Procedures Manual

~~B.~~ — Program Evaluation Data Form

~~At the conclusion of mediation in a case, the mediator completes the Program Evaluation Data Form (see Forms) and submits it to the Dispute Resolution Coordinator within 3 days of the conclusion of mediation.~~

~~G.A.~~ The Notice of Outcome Form

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

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

Adult Guardianship/Conservatorship Mediation Pilot Project Program Evaluation Policies and Procedures Manual

Alaska-Nevada Court System
Adult Guardianship/Conservatorship Mediation Pilot Project
Policies and Procedures Manual

Subject:

Policy #12: Program Administration

Date adopted/revised:

I. Staffing

~~The project is staffed by the Dispute Resolution Coordinator and a part time Administrating Assistant. The Dispute Resolution Coordinator and court staff are involved in monitoring all referral orders for timely scheduling and so that the court can determine where the case is in the mediation process. Staff assist with information so that the mediator will know court timelines, have copy of order, names, addresses, phone numbers of parties, etc.~~

II. Forms

The following forms are used in this program.:

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

II. Accomodations for Participants

III. Accommodations for Participants with Special Needs

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

The assistance of a sign language interpreter may be requested for necessary participants experiencing hearing loss. Often the court will pay for this. ~~Requests for this program to pay for the services of a sign language interpreter, if they are not covered by the court, must be directed to the Dispute Resolution Coordinator.~~

III. Publicizing the Program

The ~~Dispute Resolution Coordinator~~[Judicial District Courts](#) shall work to make parties, ~~judges,~~ attorneys and families aware of the option to mediate adult guardianship/conservatorship issues. ~~Initial orientation and training sessions are followed by regular contact with appropriate agencies, groups, and individuals to assure awareness and understanding of the program and how to utilize it. Persons seeking information regarding any aspect of the program are encouraged to contact the Dispute Resolution Coordinator.~~

Brochures describing the program and access to it are available to all parties and interested persons. ~~Brochures also are provided to various organizations. Community service and treatment providers are also informed of the mediation project and encouraged to discuss this with their clients and give them brochures. The brochures shall advise people that this Adult guardianship Manual is available at the office of the Court Clerk and online.~~

IV. Cost to Parties

The services of the mediator are available with the costs allocated by the mediator among the parties~~out charge to all referred by court order.~~ Costs associated with participating (participant transportation, counsel, etc.) must be borne by the participants.

V. Mediator Compensation

A. Rate

Mediators shall be compensated ~~by the Alaska Court System at~~ a rate set by the [Alaska-Nevada](#) Court System for case preparation, pre-mediation and mediation conferences. Mediators must submit copies of their bills to ~~the Dispute Resolution Coordinator.~~ ~~The rate increases after the mediator has mediated 10 cases post-mentorship~~the party designated by the referring judicial officer.

B. Billing

Charges appropriate for case preparation include time for necessary review of files and documents, phone calls and face-to-face contacts with parties to the case

Adult Guardianship/Conservatorship Mediation Pilot Project Program Evaluation Policies and Procedures Manual

as well as significant collaterals. Mediators' billing should document case preparation time in six minute blocks of time. Joint mediation sessions typically are scheduled for 3-hour blocks, but should be scheduled to accommodate the needs of the participants.

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

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

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

VI. Long Distance Phone Charges and Teleconferences

A. Reimbursement for long distance calls

~~Mediators will be reimbursed for necessary long distance expenses incurred preparing for and conducting mediation. To conserve program funds, using the least costly means available (such as pre-paid phone cards) is urged.~~

~~If you are using a pre-paid card or plan, multiply your total number of minutes by the applicable rate per minute and show total due on your invoice. If your long distance charges are documented on phone bills you will later receive, submit copies of bills with your invoice.~~

B. Teleconference calls

~~When one (1) participant is telephonic and is not able to pay for the call, then program funds may be used. Mediators may be reimbursed for these charges made using prepaid or other phone cards. To conserve program funds, using the least costly means available is urged.~~

~~Mediators will be provided teleconference cards to be used when more than one participant is telephonic. The program will be billed directly for these calls. Notify the Dispute Resolution Coordinator by email of the date and case number~~

Adult Guardianship/Conservatorship Mediation Pilot Project Program Evaluation Policies and Procedures Manual

~~of the teleconference so that charges may be accurately accounted for and the phone bill reconciled.~~

~~Recording of conference calls is **not** permitted~~

~~Deactivation of teleconference card~~

~~Teleconference card service automatically de-activates a card after a period of non-usage. Check your card before a teleconference to be certain that it will work. If you need to reactivate your card you should be able to do so through their customer service, otherwise contact Rhonda McLeod, Fiscal Manager at rmeleod@courts.state.ak.us, or 907-264-8215.~~

~~Lost cards~~

~~Report lost cards to Karen Largent. A new card will be requested for you.~~

VIII. Cultural Competence and Diversity

This program strives to incorporate into its policies, procedures, practice, and philosophy, a knowledge and understanding of, sensitivity to, and appreciation for the culture and diversity of the community it serves. In this view, traditional contexts of culture integrate with diversity and the specific histories, characteristics and qualities of each individual in recognition that each person embodies a “culture” that is uniquely his or hers.

Subject:

Policy #13: Mediator Qualifications

Date adopted/revised:

I. Mediator Qualifications and Competencies

Mediation in adult guardianship/~~conservatorship~~ cases is highly specialized and requires a variety of competencies and specific skills to be effective. While basic mediation skills are essential, it is not sufficient to understand the principles and process and demonstrate a capacity to apply those concepts. Mediators in this arena must also have extensive knowledge of the adult guardianship/~~conservatorship~~ system; the special issues affecting these adults, their families and caregiver and support networks; and of family functioning. They must understand the substantive law relevant to these cases and have a good grasp of available community resources. ~~Mediators must also understand and respond appropriately to the context of culture and diversity within which they practice. Additionally, mediators must be committed to the goals and underlying values of this program.~~

Qualifications sought include the following:

- 1) A degree in a relevant area of study (such as social work, law, psychology).
- 2) Experience related to issues and concerns associated with adult guardianship cases.
- 3) Empathy and compassion for adults and those involved with them who face concerns about capacity and care-giving needs.
- 4) Communication skills that foster rapport and trust building
- 5) Training and experience in the mediation of family issues
- 6) Knowledge in the following areas:
 - Adult guardianship ~~and conservatorship~~ proceedings
 - State statutes and court rules relevant to adult guardianship cases
 - Family functioning and dynamics
 - Abuse and exploitation of vulnerable adults
 - Understanding of the following as they may affect capacity, care-giving needs, and the support and service resources related to them:
 - Mental illness
 - Developmental disabilities
 - Substance abuse and addictions
 - Dementias and related disorders, including Alzheimer's Disease
 - Impacts of aging
 - Traumatic brain injury
 - Other physical trauma or illness

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- 7) Cultural awareness and understanding of issues of diversity, with an emphasis on ~~Alaska Native issues~~ marginalized populations;
- 8) Availability to provide mediation services.

Mediators must also complete the required week-long, 40 hour, multi-party mediator training in the facilitative model of mediation and provided in the context of adult guardianship/conservatorship issues.

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

II. Mediator Selection, Monitoring and Evaluation

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

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

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

~~The administrative responsibilities of quality assurance, scheduling, coordination and payment of mediators are overseen by the Dispute Resolution Coordinator.~~

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Policies and Procedures Manual

~~Alaska-Nevada~~ Court System

~~Adult Guardianship/Conservatorship Mediation Pilot Project~~
Policies and Procedures Manual

Subject:

Policy #14: Complaints and Alleged Ethics Violations

Date adopted/revised:

Any complaints against mediators or allegations of ethical violations are directed to the ~~Dispute Resolution Coordinator for processing~~
Guardianship Compliance Office for consideration of involvement.

~~The Dispute Resolution Coordinator may counsel or sanction a mediator regarding an ethical violation. Sanction for a violation includes removal from the list of qualified mediators.~~

Adult Guardianship/Conservatorship Mediation Pilot Project Program Evaluation Policies and Procedures Manual

**Alaska-Nevada Court System
Adult Guardianship/Conservatorship Mediation Pilot Project
Policies and Procedures Manual**

Subject:

Policy #15: Professional Development

Date adopted/revised:

Mediators are expected to continue to expand and update their skills and knowledge in the field of mediation as well as in the substantive areas central to mediation practice in this program (see Policy #13: Mediator Qualifications). ~~As this program has resources available, it will make such opportunities available.~~ Training and education are also available through professional seminars, workshops, and university-based programs ~~in most communities, as well as outside our communities.~~

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

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AGENDA ITEM 6(j)

**Discussion on Mediation
Training and Possible Creation of Manual**

**Clean Version of Nevada Mediation Manual
Submitted by Hank Cavallera
and Homa Woodrum**

Nevada Court System
Adult Guardianship Mediation Policies and
Procedures Manual

November 2018

TABLE OF CONTENTS

POLICY #1: MEDIATION DEFINED	2
POLICY #2: REFERRALS TO MEDIATION	3
POLICY #3: VOLUNTARY PARTICIPATION	7
POLICY #4: PROFESSIONAL STANDARDS OF CONDUCT FOR MEDIATORS	8
POLICY #5: CONFIDENTIALITY	9
POLICY #6: TIME FRAMES.....	12
POLICY #7: MEDIATION PROCESS AND THE ROLE OF THE MEDIATOR.....	13
POLICY #8: PARTIES AND PARTICIPANTS IN MEDIATION AND THEIR ROLES.....	20
POLICY #9: SAFETY, BALANCE OF POWER, AND PROTECTION OF RIGHTS.....	24
POLICY #10: ABUSE, NEGLECT, EXPLOITATION, AND/OR ISOLATION PROTOCOL	28
A. APPROPRIATENESS OF MEDIATION IN CASES INVOLVING ABUSE, NEGLECT, EXPLOITATION, AND/OR ISOLATION	28
B. INAPPROPRIATE CASES	29
C. SCREENING GUIDELINES FOR DOMESTIC ABUSE	29
<i>PHASE 1</i>	29
<i>PHASE 2</i>	31
<i>PHASE 3</i>	31
D. SUGGESTED SAFEGUARDS: IF THE VICTIM INSISTS ON MEDIATION OR IF THE CASE IS DEEMED APPROPRIATE IF SAFEGUARDS ARE IN PLACE.....	32
E. CONFIDENTIALITY IN SCREENING FOR ABUSE, NEGLECT, EXPLOITATION, AND/OR ISOLATION	33
POLICY #11: CASE PROCESSING & SCHEDULING	35
POLICY #12: PROGRAM ADMINISTRATION.....	37
POLICY #13: MEDIATOR QUALIFICATIONS.....	40
POLICY #14: COMPLAINTS AND ALLEGED ETHICS VIOLATIONS.....	42
POLICY #15: PROFESSIONAL DEVELOPMENT	43

Adult Guardianship Mediation Policies and Procedures Manual

Adult Guardianship Mediation Policies and Procedures Manual

Nevada Court System Adult Guardianship Mediation Policies and Procedures Manual

Subject:

Policy #1: Mediation Defined

Date adopted/revised:

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

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

Subject:

Policy #2: Referrals to Mediation

Date adopted/revised:

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

I. Judicial Order of Referral to Mediation

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

The referral order (see Forms) shall:

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

II. Timing of Referral

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

III. Cases Appropriate for Referral

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

IV. Cases Not Appropriate for Referral

A. Ability to Participate in Mediation

Adult Guardianship Mediation Policies and Procedures Manual

Although some cases may be mediated with only a representative of the adult present, others are not appropriate for mediation if the adult cannot participate. The mediator has a duty to assure that all participants understand the nature of the process and how it proceeds, the role of the mediator and the parties' relationship to the mediator. If the mediator determines that any necessary participant is not able to understand these matters, mediation is not appropriate.

B. Emergency Cases

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

C. Abuse, Neglect and Exploitation Cases

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

D. Domestic Violence Protective Orders

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

V. Issues Appropriate for Mediation

Mediation is available for both personal and financial issues.

When requesting mediation, the parties shall inform the court about which issues are contested or in need of decisions that they would like to discuss in mediation. Issues that may be appropriate for mediation include:

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

- Is a guardian needed?

What are the safety concerns?

Is the level of risk understood?

Is the level of risk acceptable?

Adult Guardianship Mediation Policies and Procedures Manual

Should autonomy and self-determination be limited?

- The type or level of care or assistance that might be needed

What alternatives exist?

- Who should provide needed services or care, or be the guardian
- Communication

How do we want to relate to each other?

What information is needed or missing?

How do we share information with those who need it?

- Decision-making

Who should have the authority to make decisions?

What input, if any, should others have?

What kind of decision-making process feels fair, respectful and satisfying?

Concerns over a coercive, involuntary or adversarial process

- Family disputes and impediments to decision-making

How should the family deal with disagreements?

How does the family deal with old relationship issues such as sibling rivalry?

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

- Financial decisions

How should money be spent?

How should investments be handled?

What to do about “unwise” spending

- Living arrangements

Where?

With whom?

How to decide?

How much independence or supervision?

Housekeeping concerns that threaten safety

- Health/Medical care decisions

What care is needed?

Who should provide it?

Adult Guardianship Mediation Policies and Procedures Manual

How should medical decisions be made?

Concerns about not following care or treatment recommendations

- Needs of other family members and caregivers

How to meet needs of adult and themselves

How to maintain positive relationships under stress

- Post-appointment issues

May included many of the above

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

VI. Issues Not Appropriate for Mediation

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

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

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

Adult Guardianship Mediation Policies and Procedures Manual

Nevada Court System Adult Guardianship Mediation Policies and Procedures Manual

Subject:

Policy #3: Voluntary Participation

Date adopted/revised:

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

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

Adult Guardianship Mediation Policies and Procedures Manual

Nevada Court System Adult Guardianship Mediation Policies and Procedures Manual

Subject:

Policy #4: Professional Standards of Conduct for Mediators

Date adopted/revised:

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

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

Mediators are required to conduct mediations in accordance with the requirement of the Americans with Disabilities Act of 1990. Mediators are required to complete training in the model of mediation set forth in Policy 7, Section II “Mediation and Style.”

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

Subject:

Policy #5: Confidentiality

Date adopted/revised:

Mediation communications are private and confidential. The scope of this confidentiality is defined by the Confidentiality and Mediation Agreement and also by Probate Rule 4.5.

I. Scope of Confidentiality

A. Contractual and/or by Court Rule

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

B. Mediator Confidentiality

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

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

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

Adult Guardianship Mediation Policies and Procedures Manual

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

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

C. Participant Confidentiality

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

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

II. Limits of Confidentiality

A. Limits Created by Statute of Law

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

possibly including:

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

Adult Guardianship Mediation Policies and Procedures Manual

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

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

B. Other Limits on Confidentiality

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

C. Final Agreements Released to Court

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

D. Limits Created by Consent

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

Adult Guardianship Mediation Policies and Procedures Manual

Nevada Court System Adult Guardianship Mediation Policies and Procedures Manual

Subject:

Policy #6: Time Frames

Date adopted/revised:

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

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

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

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

Subject:

Policy #7: Mediation Process and the Role of the Mediator

Date adopted/revised:

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

I. Mediator Responsibility

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

II. Mediation Model and Style

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

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

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

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

Adult Guardianship Mediation Policies and Procedures Manual

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

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

III. Role of the Mediator

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

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

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

Mediators have the responsibility for identifying and assessing power imbalances and then work to balance or expose them. Ultimately, it is the role of the mediator to evaluate the continued appropriateness for mediation and to discontinue it when inappropriate.

IV. Stages of Mediation

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

A. Preparation and the Pre-Joint Session Meetings

The objectives of preparation are to:

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

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

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

The mediator asks in these meetings what it is that people want to mediate. What needs to be decided? What concerns or disagreements exist? What are the topics for discussion? The mediator looks for information both as to the substantive issues to be discussed, as well as the dynamics that might be involved in the case. The discussion of substantive issues should be focused on permitting the mediator to understand the issues likely to be mediated and to be prepared for mediation (not on fact-finding). The mediator will want to know the dynamic issues (for example, are there specific relationships that are problematic, or that are working well? Are there issues of abuse, neglect, exploitation, and/or isolation [See Policy #10 Abuse, Neglect, Exploitation, and/or Isolation Protocol]?) so that the mediator can structure the mediation in a way that will allow for safety and for people to feel that they can have a voice without a concern for intimidation, and that will deal with the needs and concerns underlying the substantive issues.

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

Adult Guardianship Mediation Policies and Procedures Manual

provide to the group? Who might be part of the solution? Is there a need for a support person?

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

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

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

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

Other Considerations for Preparation

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

B. Joint Mediation Session

Adult Guardianship Mediation Policies and Procedures Manual

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

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

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

The mediator will then proceed to assist the parties to:

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

Ongoing Screening

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

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

The mediator shall immediately terminate the mediation if a participant has brought a weapon of any kind to the mediation room. The mediator may

Adult Guardianship Mediation Policies and Procedures Manual

reconvene the mediation when all participants can agree to not bring weapons into the mediation room.

Caucus

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

Subsequent Joint Sessions

Subsequent mediation sessions may be scheduled in the following situations:

- The participants have questions or concerns that cannot be satisfactorily addressed at the initial session, and that interfere with their informed consent to mediate, then the mediator shall refer them to do further research in the appropriate forum and postpone the mediation session. The mediator may reschedule mediation when the questions or concerns have been adequately resolved.
- A necessary participant did not attend mediation and the other participants wish to reschedule, the mediator shall schedule a subsequent session.
- Agreement is not reached at the first joint session and the participants wish to continue, the mediator shall schedule subsequent sessions.

Terminating Mediation

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

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

Agreements that are legal documents, such as stipulations, must be prepared by one of the attorneys, and not the mediator. The mediator is usually the person who prepares other informal agreements. Those necessary to fulfill the terms of the agreement shall review the agreement

Adult Guardianship Mediation Policies and Procedures Manual

and sign if they choose to be bound. The drafter of the agreement will provide copies to each necessary participant, party to the agreement, and/or signatory.

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

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

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

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

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

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

Subject:

Policy #8: Parties and Participants in Mediation and their Roles

Date adopted/revised:

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

I. Necessary Participants

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

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

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

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

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

Having all necessary participants involved in mediation is likely key to its effectiveness. If a necessary participant is not able or not willing to mediate, the mediator, with input

Adult Guardianship Mediation Policies and Procedures Manual

from the other participants, may determine that there are other issues that may still be effectively mediated, or may terminate the session and withdraw his or her services.

II. Potential Participants and their Roles

The Respondent or Protected Person

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

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

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

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

Attorney for Respondent or Protected Person

Generally, it is essential that the attorney for the respondent or protected person participate in the mediation process. Attorneys tend to take a different role in mediation than they do in court. In mediation the role of the attorney is to assist the client in presenting his or her wishes, to help draft agreements and to advise the adult on possible outcomes or alternatives

Family of Respondent or Protected Person

Often family members are central to the concerns or conflicts that are referred to mediation, or to the decisions that need to be made. In those cases, family members are

Adult Guardianship Mediation Policies and Procedures Manual

also likely to be necessary participants to mediation. In many cases a family member is the petitioner and very likely to be a necessary participant.

Guardian ad litem (GAL)

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

Protected Person's Counsel

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

Protective Services (PS) Worker

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

The participation of the PS worker may be structured in various ways. The worker may provide information to the group early in mediation about facts pertaining to safety concerns and leave it to the group to mediate without the worker to come up with a plan that addresses the concerns. The worker may rejoin the group to hear their plan and provide feedback as to how well it addresses the concerns, agreeing to the plan when it does. Alternatively, the PS worker may participate throughout the entire process. Any PS worker is entitled to having their counsel (the Deputy Attorney General for the Aging and Disability Services Division) present as would be the case in other settings such as a deposition or court hearing.

Guardian of the Person

Guardianship of the Person is a legal arrangement in which a person or other entity/agency is appointed as a guardian to make decisions for an incapacitated person -

Adult Guardianship Mediation Policies and Procedures Manual

decisions about housing, medical care, legal issues, and services. If a guardian has been appointed in a case, it is likely such guardian of the person will be a necessary participant in mediation. The duties, powers and limitations of a guardian of the person are defined in statute, *See* NRS 159.077 et seq.

Guardianship of the Estate

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

Others

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

III. Others Who May Have a Role in Mediation

Others who may be involved in mediation include:

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

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

IV. Authority to Enter into Agreements

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

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

Subject:

Policy #9: Safety, Balance of Power, and Protection of Rights

Date adopted/revised:

The mediator must prepare adequately for the mediation to be able to assess for safety, protection of the adult's rights, and balance of power issues. This assessment may include information from sources deemed necessary by the mediator. The mediator assesses for family violence, abuse, neglect and exploitation issues that might create an environment that is unsafe or would render mediation inappropriate. In most cases the mediator is capable of creating a safe, supportive environment in which power can be balanced, the respondent or protected person's adults rights protected, and non-coercive agreements formed. (Also see Policy #10, Abuse, Neglect, Exploitation, and/or Isolation Protocol.)

I. Balance of Power and Safety

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

Power imbalances may be related to:

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

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

- providing information and an orientation to the mediation process
- facilitating information sharing
- reframing issues
- clarifying interests

Adult Guardianship Mediation Policies and Procedures Manual

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

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

II. Protection of the Adult's Rights

A. Participation of the Respondent or Protected Person

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

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

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

The role of preparation and screening as discussed in Policy #8 is central to promoting the physical and emotional safety and protection of rights of the adult in mediation.

Adult Guardianship Mediation Policies and Procedures Manual

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

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

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

B. Medical Records in Mediation

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

C. Inclusion of Legal Counsel in Mediation

Legal counsel for the adult may not be excluded from attending mediation.

D. Determining Mediation Not Appropriate

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

E. Legal Counsel – Advocacy for the Legal Rights, Needs and Concerns of the Adult

Post-Petition, Pre-Hearing Cases

Due to the inherent doubt of mediating when the legal capacity of a party is in question, the availability of an attorney or advocate to support the respondent in mediation is vital. Access to counsel regarding legal rights and assurance that the adult's needs and concerns are articulated in the mediation process, and that they are not subject to manipulation and undue pressure, are key considerations in providing this protection.

In a guardianship case an attorney will be appointed for the respondent, and it is strongly encouraged that the attorney participate in mediation. The alternative of

Adult Guardianship Mediation Policies and Procedures Manual

the attorney reviewing any written agreement to be sure the adult fully understands it and its consequences before it is finalized may be considered in some instances, but may not be deemed to provide adequate protection.

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

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

Post-Appointment Cases - Guardianship

Whether or not the adult, or protected person, attends the mediation, he or she should be represented in mediation. While best practice may be to assure that a person is present who specifically represents the protected person's own interests in the matter, the level of participation may be considered on a case-by-case basis, depending upon the unique facts of the situation.

F. Due Process

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

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

Subject:

Policy #10: Abuse, Neglect, Exploitation, and/or Isolation Protocol

Date adopted/revised:

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

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

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

Adult Guardianship Mediation Policies and Procedures Manual

4. To determine appropriateness for mediation, thorough screening is a necessity. (See Section C - Screening Questions and Domestic Abuse Assessment)

B. Inappropriate Cases

1. Inappropriate cases would include:

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

C. Screening Guidelines for Domestic abuse

Phase 1

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

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

2. If Protective Services (PS) has already made an investigation, the referring judicial officer should request appropriately redacted (as to the reporting party) records in orders related to the mediation to authorize the mediator's access to such records. The PS worker should be consulted as to his/her findings. If PS is a party to a case, it would be preferable for any APS investigations to occur before the mediation (to avoid mediation serving as a source of discovery for PS, or other mandatory reporters, and triggering an investigation that would otherwise not have occurred).

Adult Guardianship Mediation Policies and Procedures Manual

3. The success of the mediation may depend upon the parties being able to work together. Therefore, although mediation is oriented towards the future, past patterns of party interaction can have a significant impact upon the process. Questions about party interaction are also a valuable tool for detecting the presence of domestic abuse in a relationship. Some suggested initial screening questions are listed below.

a. Mediation often occurs with all parties in the same room together. Do you have any concerns about mediating in the same room with any of the parties?

i. *[If so:]* Can you tell me about those concerns?

ii. *[If the concerns are related to abuse:]* Are you fearful of this person for any reason?

iii. Has this person ever threatened to hurt you in any way?

iv. Has this person ever hit you or used any other type of physical force towards you?

v. Have you ever called the police, requested a protection order, or sought help for yourself as a result of abuse by this person?

vi. Are you currently afraid that this person will physically harm you?

b. If you are experiencing any other fears, please describe them. Do you feel threatened financially or emotionally? To what degree?

c. What feelings are you experiencing related to the conflict and to the other person(s) involved?

d. How have decisions been made in the past with the other person(s)?

e. Do you feel able to express your own needs, interests, concerns with the other parties present? Are you able to disagree and talk about the disagreement with the others present?

i. *[If not:]* Are you intimidated by any other parties? *[If so:]* By whom?

f. *[If party feels intimidated by other parties:]* Would you be able to speak up for yourself in a separate room with a mediator?

g. Mediation is a process that helps parties to plan for the future. Are you able at this time to think about your own future needs?

4. Screening should be in a face- to-face interview. However, when that is not possible or feasible may be conducted over the phone. If the protected person or proposed protected person is represented by counsel, they should be afforded the right to invite counsel to screening.

5. Screening should take into consideration the confidential nature of allegations of abuse, neglect, exploitation, and/or isolation.

Adult Guardianship Mediation Policies and Procedures Manual

Phase 2

1. If there is any indication of abuse in Phase 1, further screening is necessary.
2. The mediator should then review the available information and perform an Abuse Assessment (AA) before going forward with the mediation. The purpose of the AA is:
 - a. To assess the victim's ability to participate and adequately represent her/himself, especially regarding the potential for non-coerced settlement.
 - b. To clarify the history and dynamics of the abuse issues in order to determine the most appropriate manner in which mediation should proceed consistent with the other provisions of this protocol and to put procedures in place that assure all parties are able to negotiate to the maximum extent possible on an equal footing. In other words, to address the power imbalance and safety issues between parties before, during, and after the mediation.
 - c. To assist the parties in formulating an agreement that provides appropriate safeguards for victims, caregivers, family members, and others.
3. The AA involves a more in-depth conversation than the initial screening questions. The AA should help the mediator to assess the nature of the abuse issues in the case and to evaluate the situation so that the mediator may deal with the participants in the most appropriate manner. During the assessment, the mediator may want to consider the following:
 - a. The nature of the alleged abuse, neglect, exploitation, and/or isolation, including the history, frequency, severity and level of dangerousness, and the impact of the abuse or abuse on all parties or family members.
 - b. Consideration and consultation regarding appropriate conditions and measures for protecting persons involved.
 - c. A review of any pertinent related information or documentation including consultations or investigations (written or individual interviews) with others involved regarding the nature of the allegations of abuse in the case.
 - d. At what stage in the case, the allegations were made, and whether any investigations are pending or are still likely to occur (note: the act of filing a guardianship may be in itself part of an attempt to continue a pattern of abuse/control).

Phase 3

Adult Guardianship Mediation Policies and Procedures Manual

1. If abuse, neglect, exploitation, and/or isolation is alleged, after initial screening and an AA, the case will be determined as:

- a. Appropriate for standard mediation;
- b. Appropriate for mediation but necessitating some modification in form;
- c. Inappropriate for mediation

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

1. If the mediator has explained to the victim the mediation process and the reasons why the case is inappropriate for mediation, and the victim insists on mediation, the mediator must make a determination as to whether the mediation can occur with assurance of safety to all participants. (None of the factors listed under section B.1. a-c should be present, if the decision is made to mediate.)

2. If the victim insists on mediation, or if the case is determined to be appropriate with safeguards in place, the following arrangements may be made, depending on the situation. The mediator should explain to and consult with the victim regarding the need for additional arrangements before the mediation can occur:

- a. Consultation with the mentor and/or program director.
- b. Acknowledgment from both parties of the abusive behavior.
- c. Appropriate advocates or supporters for the victim and the abuser (could be legal counsel) before, during, and after the mediation.
- d. A mediation site with separate waiting areas and available emergency support.
- e. Arrangements for the parties to arrive and leave the mediation session separately and at different times.
- f. If the parties are living separately, the mediator must avoid disclosure of the parties' addresses or other confidential identifying information to one another.
- g. Arrangements to hold the mediation entirely in caucus, if that becomes necessary.
- h. Mediator (or co-mediator) must have had special training in mediating abuse cases.
- i. Prior to, or early in the mediation, the mediator should again explore power dynamics with the parties in order to confirm the comfort of each participant with

Adult Guardianship Mediation Policies and Procedures Manual

the mediation format and confirm the ability of each participant to speak and negotiate for him/herself. (This is also part of the AA, but it is useful to confirm this at the time of the mediation.)

j. Mediator and the victim should work out a "code" system for notifying the mediator if the victim feels intimidated; mediator should continually check in with the victim in caucus to make sure she/he is not feeling intimidated.

k. Mediator must feel she/he can stop the mediation at any point at which s/he believes the mediation is unsafe or that one of the parties is intimidated. If necessary, mediator must summon appropriate security or emergency help. The mediator should always take responsibility for stopping a mediation; the victim could be placed at further risk of harm if the abuser knew the session ended on the victim's account. (Mediator might say simply that it appears the parties are quite far apart in their perceptions or ideas for resolution and it would not be helpful to continue the session.)

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

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

F. Notification of Program Director

The mediator's responsibility to the program is to notify the Program Director when:

- The mediator makes a report of harm or threat of imminent risk

Adult Guardianship Mediation Policies and Procedures Manual

- The mediator terminates a mediation as inappropriate due to domestic abuse

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

Subject:

Policy #11: Case Processing & Scheduling

Date adopted/revised:

I. Processing the Referral

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

II. Assignment and Disqualification of Mediator

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

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

III. Scheduling

A. Mediation Session

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

B. Orientation Meeting

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

C. Follow-up Mediation Sessions

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

D. Canceling and Rescheduling

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

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

IV. Mediator Billing

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

V. Closing the Case

A. The Notice of Outcome Form

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

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

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

Subject:

Policy #12: Program Administration

Date adopted/revised:

I. Forms

The following forms are used in this program.:

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

II. Accommodations for Participants

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

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

III. Publicizing the Program

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

Brochures describing the program and access to it are available to all parties and interested persons. The brochures shall advise people that this Adult guardianship Manual is available at the office of the Court Clerk and online.

Adult Guardianship Mediation Policies and Procedures Manual

IV. Cost to Parties

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

V. Mediator Compensation

A. Rate

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

B. Billing

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

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

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

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

VI. Cultural Competence and Diversity

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

Adult Guardianship Mediation Policies and Procedures Manual

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

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

Subject:

Policy #13: Mediator Qualifications

Date adopted/revised:

I. Mediator Qualifications and Competencies

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

Qualifications sought include the following:

- 1) A degree in a relevant area of study (such as social work, law, psychology).
- 2) Experience related to issues and concerns associated with adult guardianship cases.
- 3) Empathy and compassion for adults and those involved with them who face concerns about capacity and care-giving needs.
- 4) Communication skills that foster rapport and trust building
- 5) Training and experience in the mediation of family issues
- 6) Knowledge in the following areas:
 - Adult guardianship proceedings
 - State statutes and court rules relevant to adult guardianship cases
 - Family functioning and dynamics
 - Abuse and exploitation of vulnerable adults
 - Understanding of the following as they may affect capacity, care-giving needs, and the support and service resources related to them:
 - Mental illness
 - Developmental disabilities
 - Substance abuse and addictions
 - Dementias and related disorders, including Alzheimer's Disease
 - Impacts of aging
 - Traumatic brain injury
 - Other physical trauma or illness
- 7) Cultural awareness and understanding of issues of diversity, with an emphasis on marginalized populations;

Adult Guardianship Mediation Policies and Procedures Manual

8) Availability to provide mediation services.

Mediators must also complete the required week-long, 40 hour, multi-party mediator training in the facilitative model of mediation and provided in the context of adult guardianship issues.

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

II. Mediator Selection, Monitoring and Evaluation

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

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

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

Adult Guardianship Mediation Policies and Procedures Manual

Nevada Court System Adult Guardianship Mediation Policies and Procedures Manual

Subject:

Policy #14: Complaints and Alleged Ethics Violations

Date adopted/revised:

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

Adult Guardianship Mediation Policies and Procedures Manual

Nevada Court System Adult Guardianship Mediation Policies and Procedures Manual

Subject:

Policy #15: Professional Development

Date adopted/revised:

Mediators are expected to continue to expand and update their skills and knowledge in the field of mediation as well as in the substantive areas central to mediation practice in this program (see Policy #13: Mediator Qualifications). Training and education are available through professional seminars, workshops, and university-based programs.

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

AGENDA ITEM 6(j)

**proposed DRAFT Rule 18 – Mediation
(information only)**

DRAFT RULE #18

Mediation

Submitted by Hank Cavallera

10/24/18: Referred to Guardianship Commission for discussion only at 11/2/18 meeting

9/12/18 Revision:

Mediation Policy and Definition: Mediation is a voluntary and confidential process in which a neutral third-party facilitator (the mediator helps people discuss difficult issues and negotiates an agreement. People in mediation create their own solutions and the mediator does not have any decision-making power over the outcome. The mediator is not a judge.

Referrals to Mediation:

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

I. Judicial Order of Referral to Mediation

Cases are referred to the Adult Guardianship mediation project by a Judge or master in response to a request from the respondent/protected Person; family of respondent/protected person, plaintiff attorney for Plaintiff or respondent; guardian ad litem, guardian or other interested Persons, or sua sponte.

II. Timing of Referral

Referrals may be made at any time or at any stage in a case once a petition is filed. A request for mediation may also be filed with the petition. Mediation is also available throughout the life of the case.

Processing Referrals/Forms and Accommodations:

Referrals may be processed in accordance with local practice.

Forms used in Adult Guardianship mediation are:

Request for Mediation

Order of Referral to Mediation

Mediation Contact List

Notice of Outcome of Mediation

Confidential and Mediation Agreement

Consent for Release of Information

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

Mediation Information:

The Adult Guardianship Mediation Policy and Procedures Manual is on the court's website at [will insert web address] and is available in the office of the District Court Clerk for review by the Participants.

Brochures Available at District Court Offices:

Brochures describing the mediation program are available in the office of the clerk of each District Court in Nevada.

AGENDA ITEM 6(I)

**Proposed revision of NRS 159.0535
Attendance of Proposed
Protected Person at Hearing**

Redline of NRS 159.0535

Coates, Sharon

From: Jennifer Richards <jrichards@washoelegalservices.org>
Sent: Wednesday, September 19, 2018 9:02 AM
To: Coates, Sharon; 'Jim Berchtold'
Subject: Guardianship Commission - Addition to BDR re NRS 159.0535

Follow Up Flag: Follow up
Flag Status: Flagged

Sharon,
Jim and I had a teleconference with Justice Hardesty on Monday regarding some of my concerns with the proposed forms. We have resolved those concerns in favor of pursuing modification of the statute under NRS 159.0535. Below is my proposal to amend the statute with added language in red.

Thank you!
Jennifer

NRS 159.0535 Attendance of proposed protected person at hearing.

1. A proposed protected person who is found in this State must attend the hearing for the appointment of a guardian unless:
 - (a) A certificate signed by a physician or psychiatrist who is licensed to practice in this State or who is employed by the Department of Veterans Affairs specifically states the condition of the proposed protected person, the reasons why the proposed protected person is unable to appear in court and whether the attendance of the proposed protected person at the hearing would be detrimental to the physical or mental health of the proposed protected person; or
 - (b) A certificate signed by any other person the court finds qualified to execute a certificate states the condition of the proposed protected person, the reasons why the proposed protected person is unable to appear in court and whether the attendance of the proposed protected person at the hearing would be detrimental to the physical or mental health of the proposed protected person.
2. A proposed protected person found in this State who cannot attend the hearing for the appointment of a **temporary**, general, or special guardian as set forth in a certificate pursuant to subsection 1 may appear by **telephone** or videoconference. If the proposed protected person cannot attend by videoconference, the person who signs the certificate described in subsection 1 or any other person the court finds qualified shall:
 - ~~—(a) Inform the proposed protected person that the petitioner is requesting that the court appoint a guardian for the proposed protected person;~~
 - ~~—(b) Ask the proposed protected person for a response to the guardianship petition; and~~
 - ~~—(c) Ask the preferences of the proposed protected person for the appointment of a particular person as the guardian of the proposed protected person.~~
- ~~3. The person who informs the proposed protected person of the rights of the proposed protected person pursuant to subsection 2 shall state in a certificate signed by that person:~~
 - ~~—(a) The responses of the proposed protected person to the questions asked pursuant to subsection 2; and~~
 - ~~—(b) Any conditions that the person believes may have limited the responses by the proposed protected person.~~
- ~~4. The court may prescribe the form in which a certificate required by this section must be filed. If the certificate consists of separate parts, each part must be signed by the person who is required to sign the certificate.~~
- ~~5. 3. If the proposed protected person is not in this State, the proposed protected person must attend the hearing only if the court determines that the attendance of the proposed protected person is necessary in the interests of justice.~~

(Added to NRS by 1981, 1932; A 2003, 1781; 2009, 2522; 2013, 915; 2017, 875, 2555)



Jennifer M. Richards, Esq.
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Fax: 775-227-9396
Phone: 775-321-2066

Washoe Legal Services is a 501(c)(3) nonprofit legal aid organization that provides Northern Nevada's vulnerable populations access to justice (regardless of their ability to pay) to protect their rights, safety and family stability

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AGENDA ITEM 7

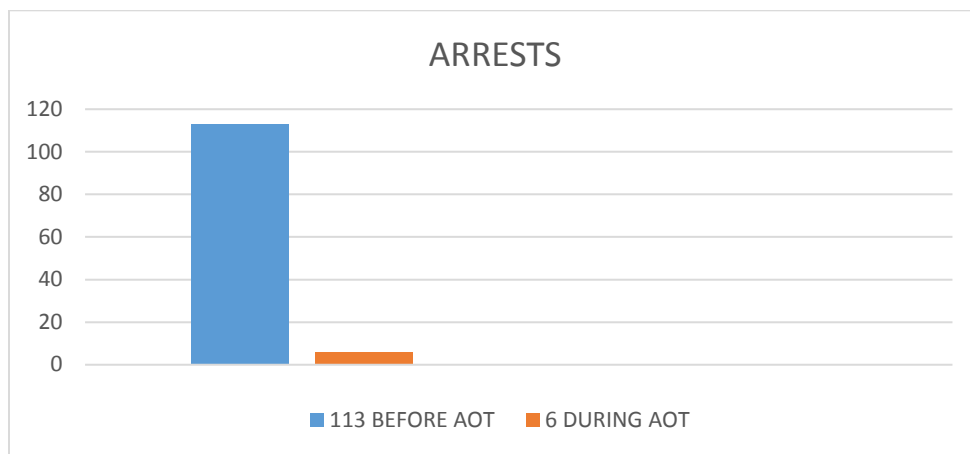
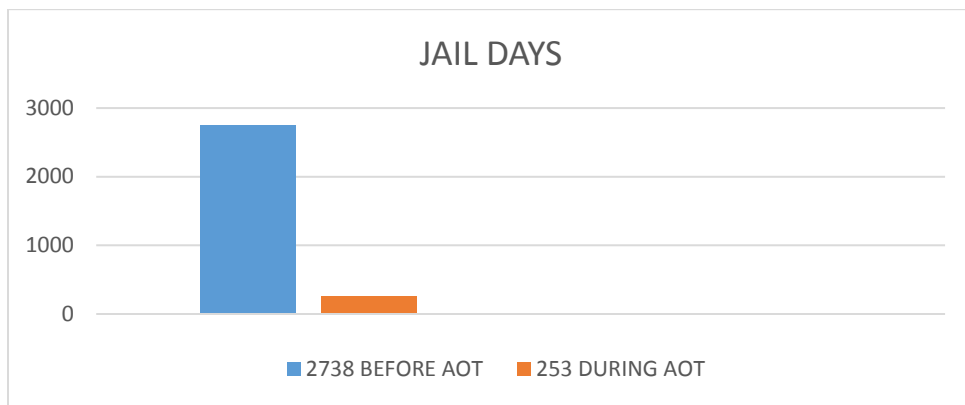
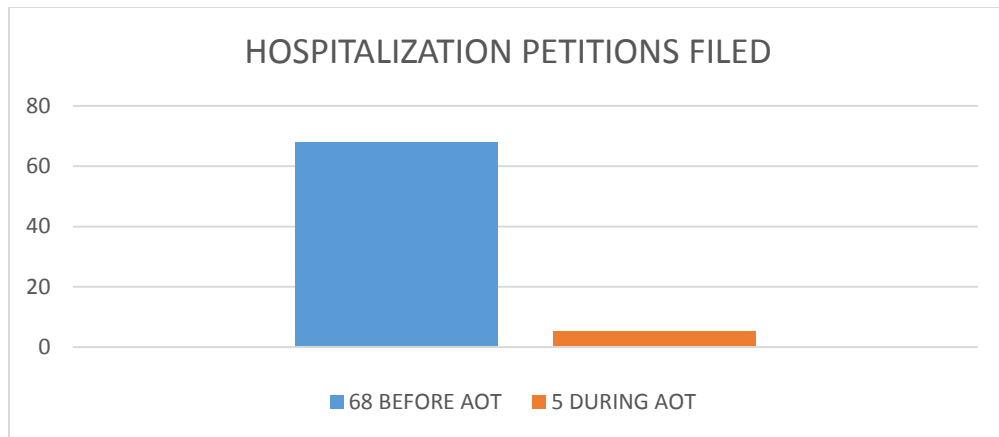
**Report from Jennifer Rains regarding Assisted
Outpatient Treatment (AOT)**

and

**Discussion of Possible Resolution to Prepare
Letter to Governor and Legislature Urging
Consideration of AOT**

Emails Attached dated 10/19/18 and 10/25/18

WASHOE COUNTY ASSISTED OUTPATIENT TREATMENT PROGRAM



***DATA IS LIMITED TO WASHOE COUNTY AND FIVE YEARS PRIOR TO ENTERING THE AOT PROGRAM**

PRELIMINARY DATA, 4/16/2018

Coates, Sharon

From: Rains, Jennifer <JRains@washoeconomy.us>
Sent: Thursday, October 25, 2018 5:50 PM
To: Coates, Sharon
Subject: RE: update RE: 11/2 Guardianship Commission meeting

Sharon,

I was able to confirm that the BDR for AOT did not make the final cut for the group working on it – they decided to go with another option.

I spoke with Judge Lu and had an e-mail exchange with Bitia Yeager from Clark to check on her ideas as well. They both agreed that north and south AOT programs would benefit from additional state funding to increase the number of consumers/patients served. Right now the bulk of AOT referrals in the south are coming directly from the inpatient hospital Rawson Neal (SNAMHS) and referred from SNAMHS or are given AOT as a condition of probation (currently 15 out of 75 participants). This leaves little capacity for community or family referrals, which I think is the concern we heard. For the north, the AOT program is still grant-funded with backup from the state limited to approximately 50 spots. The program is at or near capacity in the north leaving little room for additional spots for community referrals. Safe housing is also a challenge for north and south. In the northern, it has been difficult for provider homes to remain options. The housing option for many consumers in Reno is weekly motels. There are also barriers in service-delivery because the grant-funded case managers are not permitted to transport clients in state vehicles.

The stakeholders who participate in the northern AOT program (taken from the most current invitation to a stakeholder meeting) are:

Judge Cynthia Lu (and her department staff)
Helen Troupe – AOT program director
Rains, Jennifer – PD
Julie A. Slabaugh – AG
Christina Brooks – NNAMHS
Guido Tevini – NNMAHS
Clark, Jeffery – Washoe County Sherriff
Kaplan, Herbert – DA
Lynne Bigley – Nevada Disability Advocates
Mary Beth Merry
Marylou Etcheberry – NNAMHS
Dr. Philip D. Malinas – NNAMHS
Riley, Kristine – PD
Shelly Bryant – NNAMHS
Veronica Lopez – Reno Municipal Court
Edwards, Dorothy – Washoe County
McKinnon, Sandy – Washoe County/MOST
Patricia Romo-Macaluso – NNAMHS
Kevin Wu – grant researcher
Butler, Christy – MOST

I have a sentencing hearing set for the morning of November 2nd. There is a chance that will be continued, but I won't know until the first part of the week. I don't expect it to go more than 2 hours, so I will join the meeting as soon as I can.

I hope I have provided answers to Justice Hardesty's questions.

Happy Nevada Day!

Jennifer

From: Coates, Sharon [mailto:scoates@nvcourts.nv.gov]
Sent: Wednesday, October 24, 2018 12:04 PM
To: Rains, Jennifer
Subject: update RE: 11/2 Guardianship Commission meeting

I forwarded your email to Justice Hardesty and he indicated that this information is good, but he does want to know the names of all of the stakeholders. Can you forward that information to me? Thank you.

Sharon Coates, PP, CLP
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From: Rains, Jennifer <JRains@washoecounty.us>
Sent: Friday, October 19, 2018 2:25 PM
To: Coates, Sharon <scoates@nvcourts.nv.gov>; Gloria Sturman <sturmang@clarkcountycourts.us>; Lynda Hascheff (lhascheff@aarp.org) <lhascheff@aarp.org>
Subject: RE: 11/2 Guardianship Commission meeting

Good afternoon,

I reached out to AOT stakeholders in Washoe County, and the feedback I received is the best support would be additional state funding for sustainability and possible expansion. The program in Washoe County is still operating on a federal grant with help from the state. That program is close to capacity based on those funding sources. Barriers to providing the high level of services needed for the target population include access to transportation (the grant-funded contractors working as psychiatric case workers cannot transport in state cars) and affordable (and possibly supported) housing (many clients are being housed in the only available resources of motels). In Washoe County, several of the participants are also protected persons. The guardians are able to work with AOT staff and participate in court hearings. In other circumstances, AOT can support an individual such that he or she can meet her needs without guardianship.

I don't know if this is specific enough for what Justice Hardesty had in mind. I had heard of one plan to request state funding for AOT but I have not been able to verify if that made the final BDR cut as of this sending deadline.

Thank you,
Jennifer

From: Coates, Sharon [<mailto:scoates@nvcourts.nv.gov>]
Sent: Wednesday, October 17, 2018 10:30 AM
To: Gloria Sturman; Rains, Jennifer; Lynda Hascheff (lhascheff@aarp.org)
Subject: 11/2 Guardianship Commission meeting

I wanted to follow-up with all of you regarding a homework assignment you were given at the 9/14 meeting. All of you were going to collaborate regarding AOT to see who all the players in the North and South that are working on this issue to see where they are with the possibility that the Guardianship Commission may be able to offer some assistance. Justice Hardesty wanted the information so we could discuss a resolution to prepare a letter to the Legislature and the Governor urging them to look at this. Can you give me an update on where you are? I need any information that you have by 5 p.m. on Friday, 10/19 so it can be included with the meeting materials. Thank you.

Sharon Coates, PP, CLP
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