

Nevada Supreme Court

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



June 21, 2016, Meeting Materials

Justice James W. Hardesty, Chair

AGENDA

Supreme Court of Nevada

ADMINISTRATIVE OFFICE OF THE COURTS

ROBIN SWEET
Director and
State Court Administrator



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 Commission to Study the Administration of Guardianships
In Nevada's Courts**

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

Place of Meeting:

LAS VEGAS	CARSON CITY	ELKO
Regional Justice Center Nevada Supreme Court 200 Lewis Ave., 17 th Floor, Courtroom	Nevada Supreme Court 201 S. Carson Street Law Library, Room 107	Fourth Judicial District 571 Idaho Street Dept. 2

AGENDA

- I. Call to Order
 - a. Call of Roll and Determination of Quorum
 - b. Approval of Meeting Summary from June 13, 2016 (for possible action)
- II. Bill of Rights (for possible action)
- III. General Policy Questions 22 – 25 Specific Recommendations (for possible action)
 - a. Fee structure to compensate guardians and those they hire
 - b. Process, notice, and findings required for the approval of fees to guardians and others they hire
 - c. Process and timing for filing and evaluating an inventory and care plan for the ward
 - d. Process, timing, notice and findings the Court must make concerning accountings of the ward's estate
- IV. General Policy Questions Follow-Up/Motions (for possible action)

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

Regional Justice Center ♦ 200 Lewis Avenue, 17th floor ♦ Las Vegas, Nevada 89101

- a. Supportive Living Agreements (Q 9)
 - b. Notice Requirements (Q 11)
 - c. Management/Administration of the Ward's Estate (Q 27)
 - d. Office of State Public Guardian (Q 31)
 - i. Update from Tim Sutton
 - e. Attorney Fees
 - f. Secretary of State's Office – SB 262
- V. Terminology - Alternative to Ward (for possible action)
- VI. Data/IT Subcommittee Recommendation Information Sheet (for possible action)
- VII. Updates (for possible action)
 - a. AB 325 – Private Professional Guardians Licensure (*Kim Spoon and Susan Hoy*)
- VIII. Other Business
- IX. Next Meeting Date
 - a. TBD
- X. Adjournment

- Action items are noted by (for possible action) and typically include review, approval, denial, and/or postponement of specific items. Certain items may be referred to a subcommittee for additional review and action.
- Agenda items may be taken out of order at the discretion of the Chair in order to accommodate persons appearing before the Commission and/or to aid in the time efficiency of the meeting.
- If members of the public participate in the meeting, they must identify themselves when requested. Public comment is welcomed by the Commission but may be limited to three minutes per person at the discretion of the Chair.
- The Commission is pleased to provide reasonable accommodations for members of the public who are disabled and wish to attend the meeting. If assistance is required, please notify Commission staff by phone or by email no later than two working days prior to the meeting, as follows: Stephanie Heying, (775) 687-9815 - email: sheying@nvcourts.nv.gov
- This meeting is exempt from the Nevada Open Meeting Law (NRS 241.030 (4)(a))
- At the discretion of the Chair, topics related to the administration of justice, judicial personnel, and judicial matters that are of a confidential nature may be closed to the public.
- **Notice of this meeting was posted in the following locations:** Nevada Supreme Court website: www.nevadajudiciary.us; Carson City: Supreme Court Building, Administrative Office of the Courts, 201 South Carson Street; Las Vegas: Regional Justice Center, 200 Lewis Avenue, 17th Floor.

BILL OF RIGHTS

BILL OF RIGHTS DRAFT

Bill of Rights: When a person is appointed a guardian, he or she does not lose all their rights or the right to take part in important decisions affecting his or her property and way of life. Here are some of your rights:

1. You have the right to be treated with respect and dignity. (DIGNITY)
2. You should be granted the greatest degree of freedom possible consistent with the reasons for the guardianship. (FREEDOM)
3. You have the right to have due consideration be given of your current and previously stated personal desires, medical treatment preferences, religious beliefs and other preferences and opinion, and to have your wishes considered. (CONSIDERATION OF YOUR WISHES/PREFERENCES)
4. You have the right to be treated fairly by your guardian. (GOOD CARE)
5. You have the right to participate in the development of a plan for your care, including management of your assets, your personal property, where you will live, and how you will live. (CARE PLAN)
6. You have the right to remain as independent as possible, including having your preference as to place and standard of living honored, either as you expressed or demonstrated prior to the determination of incapacity or as you currently express, as long as the request is reasonable under the circumstances. (WHERE YOU LIVE)
7. You have the right to receive timely, effective, and appropriate health care and medical treatment that does not violate your rights. (MEDICAL TREATMENT)
8. You have the right to receive calls and mail and to have visitors, unless the guardian and the court determine that the visitors will cause you substantial harm. (MAIL AND VISITORS)
9. You have the right to personal privacy and confidentiality in personal matters, subject to state and federal law. (PRIVACY/CONFIDENTIALITY)
10. You have the right to ask questions and to express concerns and complaints about your guardian and/or their actions, either in writing or orally. (RIGHT TO SPEAK UP/COMPLAIN)
11. You have the right to have family, interested parties, or medical providers speak or raise concerns, either orally or in writing, to the court about issues of concern to you, including conflicts with the guardian.
12. You have the right to ask the court to review the guardian's management if disputes cannot be worked out. (RIGHT TO GO TO COURT IF PROBLEMS)

13. You have the right to an attorney before the guardianship is imposed and at any time during the guardianship to ask the court for relief. (RIGHT TO AN ATTORNEY)
14. You have the right to ask the court to end the guardianship. (END GUARDIANSHIP)
15. You have the right to receive a copy of all documents filed in the guardianship action. (RIGHT TO ALL GUARDIANSHIP SUIT DOCUMENTS)
16. You have the right to have all services provided by a guardian at a reasonable rate of compensation to have a court review requests for payment to avoid excessive or unnecessary fees or redundant or double billing. (EXCESSIVE BILLING)
17. You have the right to receive regular detailed financial accounting reports, including reports on any investments or trusts that are held for the benefit of the ward, as well as any expenditures and fees charged to the estate. (DETAILED FINANCIAL UPDATES/EXPENDITURES)

Nothing in this document abrogates other remedies existing in law. All of these rights are enforceable through a private right of action.

RIGHTS THAT SHOULD BE ADDED TO STATUTE:

1. Visits/Communications

1. A ward has the right to receive communications and visits from any visitor of his or her choosing. The ward may also refuse communications and visits. A guardian may limit, supervise, or restrict communication or visits, but only to the extent necessary to protect the ward from harm. If restrictions are made, the guardian must notify that court within ten days. If the ward or their attorney, or any interested party objects, the court shall schedule a hearing on the restriction.
2. If the ward is express consent to interact with other persons due to a mental, emotional, or physical condition, then consent may be presumed based on the person's prior relationship with such other persons unless the ward has previously documented his or her wishes not to interact with the person seeking access to him or her.

2. Moves – NRS 159.079(4)

Except as otherwise provided in subsection 6, a guardian of the person should not change the residence of a person if the person objects. If the person objects, the guardian must request the permission of the court. The guardian has the burden of proof to show the proposed move is in the best interest of the ward and must state compelling reasons for the relocation there. If the guardian does change the residence of a person, the guardian shall promptly notified a ward's closest known family members and any person designated by the ward. If the ward is hospitalized or admitted to a medical facility, the guardian shall also notify the ward's closest known family members and any person designated by the ward.

3. Remedies:

If a guardian violates the rights contained in this chapter, a court may take appropriate actions, including, but not limited to:

- a. Issuance of an Order that certain actions be taken;
- b. A disallowance of any fees payable to the guardian surrounding said action;
- c. An order compensating the person under the guardianship for any injury or death or loss of money or property caused by the action or caused by failing to take the appropriate action;
- d. Removal of the guardian;
- e. Such other action as may be fit and proper under the circumstances.

For any action deemed deliberate, fraudulent, or committed with malice, the court may also impose:

- a. Twice the actual damages incurred by the person;
- b. Attorney's fees and costs.

4. Initial Plan

1. Upon the filing of a guardianship action, the proposed guardian shall also file a proposed initial guardianship plan. The plan shall include:
 1. The place and kind of residential setting best suited for the needs of the ward and the proposed place of residence;
 2. The provision of medical, mental, or personal care services for the welfare of the ward;
 3. The provision of social and personal services for the welfare of the ward;
 4. The financial plan of care for the ward with proposed income and expenses, including:
 1. The application of health and accident insurance and any other private or governmental benefits to which the ward may be entitled to meet any part of the costs of medical, mental health, or related services provided to the ward; and
 2. The utilization of the ward's assets.
- b. Unless the ward has been found to be totally incapacitated, the initial guardianship plan must contain an attestation that the guardian has consulted with the ward and, to the extent reasonable, has honored the ward's wishes consistent with the rights retained by the ward under the plan. To the maximum extent reasonable, the plan must be in accordance with the wishes of the ward.
- c. The guardianship plan may not restrict the physical liberty of the ward more than reasonably necessary to protect the ward or others from serious physical injury, illness, or disease and to provide the ward with medical care and mental health treatment for the ward's physical and mental health.
- d. An initial guardianship plan continues in effect until it is amended or replaced by the approval of an annual guardianship plan, until the restoration of capacity or death of the ward. If there are significant changes in the capacity of the ward to meet the essential requirements for his or her health or safety, the guardian may file a petition to modify the guardianship plan and shall serve notice on all persons who received notice of the plan. At the hearing on such petition, the court may modify the guardianship plan and specify the effective date of such amendment.

- e. In exercising his or her powers, the guardian shall recognize any rights retained by the ward.
- f. The ward has the right to request an annual review of the guardianship plan.

5. Accountings – NRS 159.179

- 1. If the ward has assets, the report must include a beginning balance and ending balance.
- 2. All reports must be served on ward and ward's attorney.
- 3. All expenses must be itemized; receipts for amounts over \$100 must be filed (optional now).

6. Appointment of Attorney, duties - NRS 159.0455 should be revised as follows:

- 1. On or after the date of the filing of a petition to appoint a guardian, a court must appoint an attorney to represent the ward or proposed ward. In counties where legal aid is available to represent the wards and funding has been provided, legal aid services shall provide counsel. Counsel shall receive a copy of the petition upon appointment and copies of all other documents upon filing with the court. Counsel shall consult with the proposed ward prior to any hearing, and to the maximum extent possible, explain to the ward the meaning of the proceedings and of all relevant documents. Counsel shall be entitled to receive any and all documents pertaining to the Ward. Counsel for the ward shall follow a client directed model of representation to the greatest extent possible and where the client does not have the capacity to direct the attorney, the attorney shall act as a client advocate for the ward. The attorney shall not substitute counsel's own judgment for that of the ward on the subject of what may be in the best interest of the ward. Counsel's role shall be distinct from that of a volunteer guardian ad litem. At a minimum, counsel shall endeavor to ensure that:
 - i. the wishes of the Ward, including those contained in estate planning documents, are presented to the court;
 - ii. there is no less restrictive alternative to guardianship or to the matter before the court;
 - iii. proper due process procedure is followed;
 - iv. no substantial rights of the ward are waived, except with the ward's consent and the court's approval;
 - v. the petitioner proves allegations in the petition by clear and convincing evidence in an initial proceeding, and applicable legal standards are met in subsequent proceedings;
 - vi. the proposed guardian is a qualified person to serve or to continue to serve, consistent with [the statute](#);
 - vii. if a guardian is appointed, the initial order or any subsequent order is least restrictive of the personal freedom of the person under guardianship consistent with the need for supervision;
 - viii. the Bill of Rights for Adults under Guardianship is followed and enforced.

7. Appointment of Volunteer Guardian ad Litem or Attorney Guardian ad Litem

- a. If a court approved program for volunteers exist in the county, a court may appoint a person to represent the ward or proposed ward as a guardian ad litem or as a court visitor if they feel that the individual could benefit. If established, the programs must offer appropriate training as determined by national or state sources.
 - b. The guardian ad litem or court visitor is an officer of the court and is not necessarily an attorney. His or her duty is not to offer legal advice but to advocate for the best interest of the person in a manner that will enable the court to determine what action will be the least restrictive and best for the ward. A GAL is not always appointed in guardianship proceedings and is only utilized when the court has reason to believe their services would be beneficial in determining the best interest of the proposed ward.
 - c. If a court believes that an attorney representing the ward is insufficient to provide information needed by the court to make a determination, and no volunteer guardian ad litem or court visitor program exists and/or can provide a volunteer, the court may appoint an attorney guardian ad litem. This attorney will not represent the ward, but will act as an officer of the court to advocate for the ward's best interest and to provide information to the court.
8. Advising a Ward of their Legal Rights: NRS 159.0535 This statute needs to be amended to remove the physician from obligations to advise the ward that they have a right to an attorney. The court or attorney for the ward should advise the ward of this

GENERAL POLICY QUESTIONS 22-25

SPECIFIC RECOMMENDATIONS

Specific Recommendations General Policy Questions 22 -25

Q22 – Recommendations concerning the fee structure to compensate guardians and others they hire.															
Judge Steel	<p>Private PROFESSIONAL Guardians need to be able to run their business through receipts from the Persons Recommended for Guardianship Protection. If they cannot financially maintain their own business, they run the risk of being forced to resign or being removed for cause.</p> <p>There needs to be a business plan.</p> <p>Hard costs are estimates only:</p> <table style="width: 100%; border: none;"> <tr> <td style="padding-left: 20px;">Office Overhead: (Rent/phones/bonds/miscellaneous)</td> <td style="text-align: right; padding-left: 20px;">\$4,000.00</td> </tr> <tr> <td style="padding-left: 20px;">Travel Expenses:</td> <td style="text-align: right; padding-left: 20px;">\$1,500.00</td> </tr> <tr> <td style="padding-left: 20px;">Assistant at \$15.00 per hour x 40 x 52 divided by 12 =</td> <td style="text-align: right; padding-left: 20px;">\$2,600.00</td> </tr> <tr> <td style="padding-left: 20px;">Employee taxes & benefits</td> <td style="text-align: right; padding-left: 20px;">\$2,600.00</td> </tr> <tr> <td style="padding-left: 20px;">Guardian Salary</td> <td style="text-align: right; padding-left: 20px;">\$5,000.00</td> </tr> <tr> <td style="padding-left: 20px;">Storage</td> <td style="text-align: right; padding-left: 20px;"><u>\$500.00</u></td> </tr> <tr> <td style="text-align: right; padding-right: 20px;">Total</td> <td style="text-align: right; padding-left: 20px;">\$16,200.00</td> </tr> </table> <p>Divided by National Guardian Wards per Certified Guardian (25) = \$648.00 per Ward as base monthly fee.</p> <p>With two certified Guardians: (50) = \$325.00 per Ward ----and so on.</p> <p>Setting overhead costs as basic monthly costs eliminates billing time for administrative costs.</p> <p>Then bill for services by the certified guardian at an hourly rate which covers the salary and benefits of the certified guardian for such services as attending Doctor Appointments, well checks, communication with relatives/attorneys/facilities, locating family, funding sources, placement....(Indicate any increased hourly rate for specialized services.)</p> <p>My numbers are for example only as I am not familiar with the specific billing hours for certified guardian/social service provider or the overhead necessary to operate a successful venture.</p>	Office Overhead: (Rent/phones/bonds/miscellaneous)	\$4,000.00	Travel Expenses:	\$1,500.00	Assistant at \$15.00 per hour x 40 x 52 divided by 12 =	\$2,600.00	Employee taxes & benefits	\$2,600.00	Guardian Salary	\$5,000.00	Storage	<u>\$500.00</u>	Total	\$16,200.00
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<p>Judge Doherty</p>	<p>A. Guardians: The Guardianship Commission should develop a fee schedule to compensate guardians that should include but not be limited to the following:</p> <ul style="list-style-type: none">○ Reasonable fees commonly charged for such services in the community;○ Degree of difficulty of services provided;○ Qualifications and experience of guardian performing services;○ Whether services charged could be performed at a lower rate by another service or individual;○ Whether services charged are services necessary to the guardianship;○ Whether services charged were incurred after court ordered appointment of guardian;○ Whether services charged were performed with reasonable frequency or were excessively performed, such that charges should be reduced or denied.○ Guardians should be required to specify nature or work performed to 1/10 of an hour increments.○ Guardians should be prohibited from any form of block billing, including block billing for administrative charges.○ Guardian billing should not include cost of fee payment request or preparation of billing statement. <p>B. Attorney's fees:</p> <ul style="list-style-type: none">▪ The Brunzell Factors should be incorporated into statutory provision for payment of attorney's fees, <i>Brunzell v. Golden Gate Nat'l Bank</i>, 85 Nev. 345, 350, 455 P.2d 31, 33 (1969)). 1. Attorney's professional qualifications;; 2. The nature of the case/litigation; three. The quality, nature and difficulty of work performed; 4. The result.▪ Reasonable rate in the legal community for such charge should be starting point for court's analysis.▪ Fees should be specified within 1/10 of an hour increments;▪ No block billing permitted, including administrative charges; <p>C. Other professionals: Similar standards of review should apply to other professional services retained by guardian with charges to the estate, including but not limited to: accountants, appraisers; real estate agents; medical experts.</p>
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Jay Raman	<p>Guardianship is a system where people rights and control have been taken away because they have been determined incapable of making those decisions due to mental or physical deficits. What is accomplished by a guardian and ancillary services are things that often would be done at very little cost if the person was of sound mind and body. Because the guardian is stepping into the ward's shoes in fulfilling those duties, and because the ward has a significantly reduced say in the process, all measures must be employed to make decisions, which are least costly to the wards and ward's estate. A guardian is a fiduciary, and likewise is supposed to 'guard' the money – not used it in a way that damages the ward.</p> <p>I feel the safest way to protect our wards who do not really have a say how their money is being used, is to set a fee schedule for guardians, as well as any attorneys or accountants they may endeavor to hire for the purpose of fulfilling their duty to their ward. With a fee schedule, the definition of fee (which is currently "reasonable" and nothing more) will finally be defined. With a fee schedule, judges who are normally reluctant to chop attorneys or guardians fees will have the rule of law on their side when it comes to how much is charged. When a limited and reasonable fee is all that is allowed in the first place, the need to cut a fee is far less likely.</p> <p>There must also be a percentage cap on how much the guardianship and related professional services can consume of the wards estate on an annual basis. Obviously with any rule there are exceptions, so when services are expected to exceed that cap, the professional must petition the court (at their own expense) as to why the cap must be exceeded, why this is a necessary function for the ward to have to bear, and how much it will be exceeded by.</p> <p>In the context that soon wards will have appointed counsel, and those counsel will either be provided free or on a fee schedule type basis – it is only fair and equal that the attorneys the guardian hires to help themselves with the ward's affairs (and then bills to the wards estate) is also on a reasonable fee schedule. Without such a mechanism, it's an unfair and potentially hypocritical system.</p> <p>Regarding the actual fee structure for guardians, I highly recommend the Florida structure. It's been in place for years, provided compensation in line with the guardian's years of experience, and is drastically cheaper than what is currently being charged in Nevada (in some cases 50% cheaper). Regarding a fee structure for attorneys, I would suggest the same rate as what appointed counsel on criminal cases normally gets, \$150/hr. I do not see the guardianship attorney profession folding up due to the fee schedule, there is a glut of supply currently in the legal profession and many newer lawyers will gladly work for these wages. In both instances, I would recommend a cap similar to what the Veterans Administration uses, 4% per year.</p>
David Spitzer	<p>Once a guardian has been appointed, they should be required to submit a proposed budget that includes their anticipated fees for the next calendar year. This filing should be made along with the inventory within 60 days of the appointment. Any anticipated extraordinary fees should be required to be approved in advance by the court.</p>

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

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

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

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

	Attention should be paid to services that can be provided to the ward at a lesser rate and more cost effectively. Such as shopping or delivering items to the ward, utilizing personal shoppers or courier services if at all possible.
Rana Goodman	The fee structure should be based on common sense and good business practice; i.e. we have no long distance charges within our city limits so why are charges made for sending faxes from one office to another? There should be a simple office services fee per hour, per client for a person to do filing, billing, banking and anything else a staff member need do in a week or a day to service the account of a ward. It is not reasonable to charge fragments of an hour to file a notice, make a phone call, fax a document etc.
Assemblyman Trowbridge	Something that is tied to the number of cases handled by a Professional Guardian.
Kim Spoon	Keep guardian fees under current reasonableness standards. Guardians should be allowed to hire others under the NGA standards, which prohibit conflicts of interest and set standards for decision making for the best interest of the ward. Court oversight for all hires done by a guardian would be incredibly cumbersome and very expensive for the ward.
Desiree Ducharme	Private Guardian as well family guardians' fees should be standardized throughout the State of Nevada. Public Guardian fees should remain determined by their operational budget.
Q23 – Recommendations concerning the process, notice, and findings required for the approval of fees to guardians and others they hire.	
Chief Judge Gibbons	WDCR 35 (6) (a) and (b) and NJDCR 20.1 (e) (1) and (2) set forth the procedure for approval of fees. A uniform procedure should be included in the NRS and these rules provide a model. These rules do not require findings so a mandate for written findings that the fees were reasonable and necessary should be added.
Judge Steel	The professional guardian should attach their basic monthly fee, plus an outline of services available and the billable rate (or set fee) as an exhibit to the petition for guardianship approval. The Petition to approve, or petition for instructions, should list any special services anticipated for a particular person considered for guardianship protection. The court needs to find that the compensation is reasonable (to be determined for universal application); review expenses to determine that they were necessary and reasonable, whether the professionals engaged to perform services on behalf of the guardianship, or the person or estate of the Protected Person were necessary, reasonable and appropriate.

<p>Judge Doherty</p>	<ul style="list-style-type: none"> ▪ Guardian and attorney's fees should receive prior approval of the court in terms of rate and payment source. ▪ The guardianship estate and the person subject to guardianship are not responsible for any guardian or attorney's fees not approved by the Court. ▪ The Court should review guardian and attorney's fees even when third party or trust outside of Court's jurisdiction pay such fees if services performed by Guardian fall within, or are related to the authority granted by the Court. ▪ Standardized fee schedules for attorney's and guardians should be adopted by the Commission upon recommendation of an inclusive body of professionals for use in evaluating reasonable charges and fees in guardianship hearings. Such schedules should be updated each 24 months. Deviation from such standardized fees must be a result of court findings specifying basis for deviation in specific cases. ▪ Courts shall make findings on reasonableness of Guardian and attorney's fees in each relevant order addressing the same.
<p>Jay Raman</p>	<p>I feel that in this future system, the anticipated fees need to be provided to the court, so that the court can make sure that they are not excessive and provide enough detail for potential investigation. There are clear examples where notice needs to be given in a similar way as was done at the inception of a guardianship. Notice needs to be provided to all interested parties (family included) if the fees exceed the annual cap, or if real estate is being sold or disposed of, or if property valued at more than \$5000 is being sold or disposed of.</p> <p>I believe in the approval process, private professional guardians far too often rely on the services of an attorney for tasks, which they should be able to accomplish on their own. It seems unnecessary that an experienced guardian who is in charge of 50+ wards runs their annual accountings through an attorney, costing the ward considerably more money than the guardian just doing their work on their own. One would presume if any ancillary services are needed for an annual accounting – it would be from an accountant. Despite that common sense, private professional guardians are normally using an attorney for these basic functions that non-professional guardians hardly ever hire an attorney for. There must be guidelines on when the guardian can hire an accountant or attorney to do or check over 'their work'.</p> <p>Other suggestions are good, such as approval of the attorney being used or other services by the court. The suggestion of including what guardian and ancillary services will cost in the care plan is a fair suggestion as well.</p> <p>Otherwise, this question was largely covered in the answer to policy question #22.</p>
<p>David Spitzer</p>	<p>Guardians should be required to submit fees requests annually for routine matters, such as hourly compensation, travel-mileage, and small miscellaneous expenses. These may be compensated by the court allowing the guardian to spend the respondent's assets at a capped amount per month, i.e. no more than \$1000 per month. All these expenses should be included in the annual report and fee request, along with an itemized statement. This request would be noticed just as the annual report is and should be addressed at a court hearing. The court should be required to find that, after review and hearing, the fee requests are adequately documented, necessary and reasonable</p>

	<p>and do not substantially impact the viability of the respondent's estate. All extraordinary expenses should be the subject of a special request for instructions to the court detailing the nature and necessity of the proposed expense. After notice to all parties and family who have been previously noticed, the court at its discretion could approve the request if there is no opposition, or hold a hearing on the matter.</p>
<p>Christine Smith</p>	<p>All processes must ensure the best interest of the person under guardianship.</p> <p>The process should include approval by judges for the hiring of professionals by guardians at reasonable fees so the assets of the person under guardianship are not spent unreasonably for unreasonable attorneys' or other professionals' fees in the event disputes must be settled.</p> <p>The person under guardianship should receive notice in writing of fees/services of professionals and other financial ramifications at the beginning of the guardianship process. The notice must provide a general explanation of the compensation arrangement and how the compensation was computed.</p> <p>All bills for services provided must include a detailed breakdown of the services.</p> <p>Fees must be commensurate with the services rendered and allowed only when the guardian and/or attorney has performed the services ensuring the needs and best interests of the person under guardianship.</p> <p>When family members initiate legal proceedings in connection with the person under guardianship, if they lose in the proceedings they should pay all fees, and the fees should not come out of the finances/assets of the person under guardianship.</p>
<p>Kim Rowe</p>	<p>There are already sufficient statutory requirements regarding this area. Once again, the use of a budgetary process will focus all participants, the guardian, judge and interested parties on the costs likely to be incurred. Prior approval of expenditures more than a certain percentage over the the estimated budget could be used as a control. The planning required to file a budget and care plan will reduce uncertainty and later surprises to the judge and parties.</p>
<p>Elyse Tyrell</p>	<p>Same as above in response to question 22 - I would like to see a Guardian lay out for the Court and the parties involved as early in the case as possible what their rates are, as well as the rates of those they hire. Perhaps in their initial petition to become Guardian, which is then noticed to all interested parties. There has always been the understanding that a guardian who hires someone for a service for the ward is responsible for the bill, and only when the Court determines those fees to benefit the Ward and approve them, is it appropriate to pay them from the Ward's estate. The Court should maintain its discretion on approving the payment of fees and expenses, as the Court deems appropriate for the Ward.</p>

	I think the Court should continue to use the reasonable and necessary determination as provided for in NRS 159.183.
Susan Sweikert	All requests for fees must be accompanied by an itemized description of services performed, how it benefited the ward, and receipts if applicable. Only those fees determined by the court to be reasonable and customary for the community should be approved.
Julie Arnold	I think fees must be approved by the court, with notice of the hearing to interested parties.
Susan Hoy	<p>The Guardian should disclose the hourly rates and fee schedule in the initial petition.</p> <p>Any expectation of any vendor or provider that may be hired could be disclosed upon the initial petition with confirmation that the fee paid will not exceed the community's going rate. Or in the case of a CPA (just as an example) the fee to the CPA will not exceed \$350.00 without further court authority. (The guardian needs the ability to hire certain providers and vendors without having to constantly petition the court. For example: If a ward owns a home, it is assumed that the guardian to provide the value for the inventory will need to hire appraisers, (real property and personal property) Or if the ward has a coin collection, an expert in the field should be hired to provide an accurate inventory and value. As much as possible these should be disclosed to the court and included in the petition with a request/statement "these services are necessary to the accuracy, preservation of the estate and the well-being of the ward and will not exceed \$xxxx amount without court authority and shall be provided by a licensed and bonded individual/company" This approach may still make it difficult for the guardian to get the work done timely and cost effectively; but would provide the court with a template of the plan for the case. The same would apply with any placement. The Guardian intends to seek placement in an assisted living that based upon the wards income and assets will not exceed \$xxxx amount monthly.</p> <p>Guardians should be able to advance payment from the wards' estate towards fees that have been earned and invoiced pending confirmation at the annual accounting. The fee advancement could be limited to \$xxx amount per month. The explanation as to any additional fees owed upon confirmation should be explained in the petition as to the circumstances.</p> <p>Petitions should include Brunzell Analysis that the fees were reasonable.</p>
Rana Goodman	These questions seem repetitive, but I'm doing my best here. If a guardian goes to court for several clients and they are in court per client 20 minutes, 30 minutes, etc. the fee should be divided equally including travel time between the total amount of client covered that day. The exception would be if one client took far more time in court than the others.
Assemblyman Trowbridge	A certified letter (return receipt required) that is provided to a Professional Guardian when licensed and the same process when the rates change.

Kim Spoon	The present process seems to work, notice has been discussed, and notice needs to include all those required to be noticed. Findings should be dealt with under reasonableness standards. Any findings to cut fees should be based on specific line item findings or specific findings under the reasonableness standards.
Desiree Ducharme	<p>Estimated guardian fees should be reviewed by the court upon submittal of the initial budget with the inventory. During the annual and or final accounting the fees should be reviewed for appropriate billing standards such as:</p> <p>Utilizing best interest, best practice, by utilizing cost effective services when appropriate. This would include billing at a tiered rate depending on the complexity of the task.</p> <p>For example: Purchasing personal items would not be appropriate by the guardian when contract services can be utilized at a reduced rate.</p> <p>Duplication of service is not appropriate:</p> <p>For example: Multiple visits during a month would not be appropriate unless significant issues warrant the activity.</p>
Q24 – Recommendations concerning the process and timing for filing and evaluating an inventory and care plan for the ward.	
Judge Steel	A care plan, along with the budget and the inventory should be filed no later than 60 days after the guardianship is established, sooner if possible. Supplements to information regarding inventory or care plan should be encouraged. Initially, the guardian may not have all the information to make measured decisions on behalf of the person considered for guardianship protection. A care plan will determine the level of intervention into the life of the person qualified for guardianship protection. Once the guardianship is established, the guardian has been awarded the tools to determine the status of the estate and the true needs of the qualified person. Reasons must be stated in the petition for the level of intervention of the guardianship over the person. Those reasons must be a basis for the final decision approving the guardianship. (The court needs to either adopt the reasons for the level of support or deny the proffer and explain the denial).
Judge Doherty	<ul style="list-style-type: none"> ▪ Notice of inventory should go to person subject to guardianship and counsel, persons within second degree of consanguinity and interested persons identified by the Court; ▪ A copy of the inventory should also be sent to person subject to guardianship and counsel. ▪ Preliminary Plan of Care should be filed with the Guardianship Petition <i>and</i> updated within 60 days of issuance of Letters of Guardianship. ▪ Preliminary Plan of Care and updated version should address personal care and estate management plan. ▪ Notice of the Plan of Care should be served on the person (and counsel) responding to the guardianship petition when filed and when updated.
Jay Raman	The inventory should be filed within 30 days of a petition for guardianship that has been initially and temporarily granted. The inventory should have to include a photographing of the entire dwelling of the wards home/property, and the running of a credit report to identify bank accounts and liabilities. There should be a court-mandated form sent to all noticeable parties about objecting to the inventory if

	<p>something appears to be missing from the inventory. It might be best to have a court appointed person separate from the guardian doing or supervising the taking of the inventory.</p> <p>Care plans should be submitted as soon as practicable, generally with the petition for guardianship and within 60 days a plan with more detailed planning for the long term.</p>
David Spitzer	The Inventory, care plan and a proposed budget should all be filed within 60 days of the appointment of a guardian. All parties should be notified, including family and the court should set a hearing if it receives any objections.
Christine Smith	<p>The inventory must include a care plan and budget.</p> <p>The ward must be notified of the care plan including fees at the beginning of the process.</p>
Kim Rowe	I believe the current statutory requirements concerning the timing of the filing of the inventory are sufficient. This may also be the appropriate time to file a budget as well as a care plan. Requiring service of the inventory in the same manner and on the same parties as the Petition has been discussed and I have no real objection to that concept.
Elyse Tyrell	Current statutes mandate the Inventory being filed with the court within 60 days of the appointment of the Guardian. I think this is a reasonable period of time for the guardian to get an idea of what the assets and income of the ward are. I think it would be appropriate for a care plan to be filed at the same time. Both of which can be amended if needed, but neither of which should be required to be set for hearing, unless special circumstances arise and the Court can order such a hearing.
Susan Sweikert	Initial and final inventory should include photos or video of any and all valuables of the ward. Notice to family members of initial inventory for verification and accuracy.
Julie Arnold	<p>An initial inventory should be filed within 30 days of letters being issued – with a requirement that it be updated if significant assets are found or assets thought to be the Ward's turn out not to be.</p> <p>If copies of the inventory are mailed out to interested parties with a speak-now-or-forever-hold-your-peace response time (30 days? 45 days?) Then assets thought to have significant value can be appraised if necessary.</p> <p>Hopefully, there will be a care plan for the Ward when the petition is filed, but lacking that, I think at least a preliminary plan should be produced within 30 days.</p>

Susan Hoy	<p>Whenever possible the care plan should be filed with the initial petition. At a minimum, a preliminary care plan should be drafted and submitted with the petition or as a supplement prior to the first hearing. The Care Plan should be filed within the first 60 days of the case. Care plans should include the following components: residence, any rights the ward will retain, that the plan for care is the least restrictive to meet care needs of the ward, the means in which the care plan will be met such as a budget and that the estate supports the plan for the long term and if not the plan for continued care. The care plan is then holistic to include the direct care to the ward and the financial means that this plan will entail. The budget should include the burn rate of the estate with the current plan and a projected plan once the funds are depleted.</p> <p>Inventories should include the anticipated annual income.</p>
Rana Goodman	<p>The inventory, if unusual should be authenticated by an appraiser of those types of furnishings, art objects, jewelry etc. If a safe deposit box is to be accessed, a bank manager should be in attendance to verify what is there and photographs should be taken to verify any items contained.</p> <p>All inventory should be verified with the insurance company of the ward.</p> <p>A care plan should be verified with the family doctor if possible and most assuredly the family if possible.</p> <p>Medication MUST be verified with a doctor and signed off on before dispensing. Over medicating seems to be reoccurring in group homes and many facilities.</p>
Assemblyman Trowbridge	<p>Inventory records should go to the "ward", the ward's family if available, and a copy to the court. The inventory should be made within 7 calendar days after being appointed guardian AND no disposition or removal of any asset until the ward or the ward's family has the opportunity to respond. The expected value should also be included on assets with a value of over \$200 or so.</p>
Kim Spoon	<p>Inventories and Record of Values (I& Rs) are to be done within 60 days of appointment. The care plan and estimated budget should be due at the same time. This should be a filing requirement only, as is the I & R, and noticed to all parties that the I & R is noticed to.</p>
Desiree Ducharme	<p>Sixty days is a reasonable time for the guardian to evaluate the assets/income of the ward to complete the initial budget and inventory. Upon receipt of additional assets those items are reflected on the next accounting with a revised budget if applicable.</p>

Q25 – Recommendations concerning the process, timing, notice and findings the Court must make concerning accountings of the ward’s estate.	
Chief Judge Gibbons	<p>WDCR 35 (8) and NJDCR 20.1 (g) set forth the procedure for accountings. A uniform procedure should be included in the NRS and these rules provide a model.</p> <p>The accountings should also be sworn to or affirmed as accurate and complete to the best of the knowledge of the author of the reports. The court should make written findings that the accountings are accurate and complete if the accountings are traversed.</p>
Judge Steel	<p>A. Annual accounts for general guardianships; more frequent at ordered by the court;</p> <p>B. There should be the ability for the court to consider summary guardianships where the income is consumed by the monthly expenses on behalf of the Person Provided with Guardianship protection, especially for private guardians. To insist on annual accountings that can consume precious resources, or potentially eliminate the possibility of obtaining a guardian does not seem prudent or protective.</p> <p>C. Findings:</p> <ol style="list-style-type: none"> a. The specific time covered by the accounting b. All income captured in correct category c. All expenditures captured and explained; d. Are expenditures responsible, appropriate, and reasonable, in line with budget and care plan? e. Entries for Guardianship services are examined and found to be for the benefit of the Person Awarded Guardianship Protection. f. Entries for Legal Representation to be paid out of the estate of the Person Awarded Guardianship Protection are examined, compared and contrasted to Brunzell factors; the work was necessary to protect the interests of the person and the estate. g. Insure that all elements required to be included in the Accounting has been addressed pursuant to NRS 159.179.
Judge Doherty	<ul style="list-style-type: none"> ▪ NRS 159.115 requires services of <u>notice</u> of annual accountings on persons subject to guardianships and within the second degree of consanguinity; it <i>does not</i> require a <u>copy</u> of the accounting be sent to the person subject to guardianship – it should unless Court specifically exempts such requirement by specific finding. Question remains whether accounting should be sent to persons within second degree. ▪ NRS 159.081 requires annual reports of person be filed with Court but has no provision for notice of filing or copy of report being sent to person subject to guardianship – it should unless Court specifically exempts such requirement by specific finding. Question remains whether accounting should be sent to persons within second degree. ▪ 60 day late filing of inventory, personal or financial care plan, accounting or report of the person should result in issuance of OSC and hearing set.

Assemblyman Trowbridge	This will require additional staff or contract personnel, but a "challenge" by the ward or the ward's family needs to be reviewed and possibly have an independent estate inventory completed. Some review may also be required in the event the value of an asset is challenged.
Kim Spoon	Findings need to be specific, not broad based. Additional forensic accounting should be available to the Court if deemed necessary.
Jay Raman	Accountings must occur annually, and there always should be some independent action taken to verify an accounting is accurate. Ultimately, it was the court that granted the guardianship and stripped the ward of the ability to manage their finances. The court must take responsibility and ownership of making sure the guardian is not taking advantage through misleading accountings. It is probably best that annual accountings be provided to family members of the ward as well. A robust investigative mechanism is the only thing that can enable the court to be the check and balance on the guardian taking advantage of a ward. Without verifiable facts, I do not believe findings of fact can be accurately made.
Christine Smith	Require trust accountings.
Kim Rowe	I have no problem with the current requirements concerning filing accountings. The primary concern emanates from courts not uniformly requiring the filing of accountings. When used in connection with care plans and budgets, I think accountings on an annual basis are sufficient. Notice should go to the persons who receive the Petition so if there are objections they can be raised by interested parties at that time.
Elyse Tyrell	I think the statutes in place for the process, timing and notice are adequate. I think a reasonable and necessary standard would be good for the approval of the accounting of expenditures made on behalf of the ward.
Susan Sweikert	Require additional, immediate, accountings whenever well-founded complaints are filed against the guardian. Fines for guardians who do not file accountings in timely manner.
Julie Arnold	Barring allegations of wrongdoing, I think annual accountings make sense. I really like the Florida model for investigations. Notice to interested parties. Findings that the Ward's assets are accounted for and expenses are Reasonable.
Susan Hoy	Estates with values (greater than \$1 million) or complex portfolio the court would have the discretion to order more frequent accountings or require that the accountings are prepared or reviewed by a CPA.

	<p>Accountings should include a summary page, exhibits including the register of actions. A register of action would include the date, check number, payee and reason for the payment (memo). Each transaction should be categorized to match the budget and any discrepancies should be addressed in the petition.</p> <p>The inventory to the beginning balances of each year should match and thereafter.</p> <p>Private Guardians should be allowed to have summary accountings. When the ward is a recipient of public benefits and all income is used towards care a synopsis of this could be provided in the Annual Report of Guardian.</p>
Rana Goodman	<p>Depending on the value of the ward's estate, it is my opinion that an accounting must be delivered to the court or compliance office no less than each 6 months.</p> <p>Although most guardians are honest, the few that are not have made it bad for those that are not. It is far too easy to drain a bank account in a year.</p>
Desiree Ducharme	<p>There should be no change to the existing statute regarding the time to file, the estate value to file, and who is entitled to notice.</p>

GENERAL POLICY QUESTIONS

General Policy Questions 6/21/16 Meeting

- **Question #9** – Does the Commission support a recommendation to adopt Supportive Living Agreements similar to the approach taken in Texas, with the exception that the court would retain jurisdiction and inventories and annual reports would be required to be filed with the court?
- **Question #11** – Should the notice requirements in Chapter 159 be amended, and if so how?
- **Question #27** – Does the Commission wish to make recommendations concerning the management/administration of the ward's estate including the process and notice requirements to sell estate assets and personal property?
- **Question #31** – Does the Commission recommend an Office of State Public Guardian to serve as the Public Guardian in all counties. The Office would include the retention of accountants, auditors, and investigators to provide support to counties whose population is 100,000 or less.
- **Attorney Fees** – A motion for Attorney Fees will be offered at the meeting.

**SUPPORTIVE DECISION-MAKING
AGREEMENTS
TEXAS S.B. 1881**

S.B. No. 1881

AN ACT

relating to authorizing supported decision-making agreements for certain adults with disabilities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle I, Title 3, Estates Code, is amended by adding Chapter 1357 to read as follows:

CHAPTER 1357. SUPPORTED DECISION-MAKING AGREEMENT ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1357.001. SHORT TITLE. This chapter may be cited as the Supported Decision-Making Agreement Act.

Sec. 1357.002. DEFINITIONS. In this chapter:

(1) "Adult" means an individual 18 years of age or older or an individual under 18 years of age who has had the disabilities of minority removed.

(2) "Disability" means, with respect to an individual, a physical or mental impairment that substantially limits one or more major life activities.

(3) "Supported decision-making" means a process of supporting and accommodating an adult with a disability to enable the adult to make life decisions, including decisions related to where the adult wants to live, the services, supports, and medical care the adult wants to receive, whom the adult wants to live with,

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and where the adult wants to work, without impeding the self-determination of the adult.

(4) "Supported decision-making agreement" is an agreement between an adult with a disability and a supporter entered into under this chapter.

(5) "Supporter" means an adult who has entered into a supported decision-making agreement with an adult with a disability.

Sec. 1357.003. PURPOSE. The purpose of this chapter is to recognize a less restrictive alternative to guardianship for adults with disabilities who need assistance with decisions regarding daily living but who are not considered incapacitated persons for purposes of establishing a guardianship under this title.

SUBCHAPTER B. SCOPE OF AGREEMENT AND AGREEMENT REQUIREMENTS

Sec. 1357.051. SCOPE OF SUPPORTED DECISION-MAKING AGREEMENT.

An adult with a disability may voluntarily, without undue influence or coercion, enter into a supported decision-making agreement with a supporter under which the adult with a disability authorizes the supporter to do any or all of the following:

(1) provide supported decision-making, including assistance in understanding the options, responsibilities, and consequences of the adult's life decisions, without making those decisions on behalf of the adult with a disability;

(2) subject to Section 1357.054, assist the adult in accessing, collecting, and obtaining information that is relevant to a given life decision, including medical, psychological,

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financial, educational, or treatment records, from any person;

(3) assist the adult with a disability in understanding the information described by Subdivision (2); and

(4) assist the adult in communicating the adult's decisions to appropriate persons.

Sec. 1357.052. AUTHORITY OF SUPPORTER. A supporter may exercise the authority granted to the supporter in the supported decision-making agreement.

Sec. 1357.053. TERM OF AGREEMENT. (a) Except as provided by Subsection (b), the supported decision-making agreement extends until terminated by either party or by the terms of the agreement.

(b) The supported decision-making agreement is terminated if:

(1) the Department of Family and Protective Services finds that the adult with a disability has been abused, neglected, or exploited by the supporter; or

(2) the supporter is found criminally liable for conduct described by Subdivision (1).

Sec. 1357.054. ACCESS TO PERSONAL INFORMATION. (a) A supporter is only authorized to assist the adult with a disability in accessing, collecting, or obtaining information that is relevant to a decision authorized under the supported decision-making agreement.

(b) If a supporter assists an adult with a disability in accessing, collecting, or obtaining personal information, including protected health information under the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) or educational

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records under the Family Educational Rights and Privacy Act of 1974
(20 U.S.C. Section 1232g), the supporter shall ensure the
information is kept privileged and confidential, as applicable, and
is not subject to unauthorized access, use, or disclosure.

(c) The existence of a supported decision-making agreement
does not preclude an adult with a disability from seeking personal
information without the assistance of a supporter.

Sec. 1357.055. AUTHORIZING AND WITNESSING OF SUPPORTED
DECISION-MAKING AGREEMENT. (a) A supported decision-making
agreement must be signed voluntarily, without coercion or undue
influence, by the adult with a disability and the supporter in the
presence of two or more subscribing witnesses or a notary public.

(b) If signed before two witnesses, the attesting witnesses
must be at least 14 years of age.

Sec. 1357.056. FORM OF SUPPORTED DECISION-MAKING AGREEMENT.
(a) Subject to Subsection (b), a supported decision-making
agreement is valid only if it is in substantially the following
form:

SUPPORTED DECISION-MAKING AGREEMENT

Appointment of Supporter

I, (insert your name), make this agreement of my own free
will.

I agree and designate that:

Name:

Address:

Phone Number:

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E-mail Address:

is my supporter. My supporter may help me with making everyday life decisions relating to the following:

Y/N obtaining food, clothing, and shelter

Y/N taking care of my physical health

Y/N managing my financial affairs.

My supporter is not allowed to make decisions for me. To help me with my decisions, my supporter may:

1. Help me access, collect, or obtain information that is relevant to a decision, including medical, psychological, financial, educational, or treatment records;

2. Help me understand my options so I can make an informed decision; or

3. Help me communicate my decision to appropriate persons.

Y/N A release allowing my supporter to see protected health information under the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) is attached.

Y/N A release allowing my supporter to see educational records under the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g) is attached.

Effective Date of Supported Decision-Making Agreement

This supported decision-making agreement is effective immediately and will continue until (insert date) or until the agreement is terminated by my supporter or me or by operation of law.

Signed this _____ day of _____, 20____

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Consent of Supporter

I, (name of supporter), consent to act as a supporter under
this agreement.

(signature of supporter)(printed name of supporter)

Signature

(my signature)(my printed name)

(witness 1 signature)(printed name of witness 1)

(witness 2 signature)(printed name of witness 2)

State of

County of

This document was acknowledged before me

on _____ (date)

by _____ and _____

(name of adult with a disability)(name of supporter)

(signature of notarial officer)

(Seal, if any, of notary)

(printed name)

My commission expires:

WARNING: PROTECTION FOR THE ADULT WITH A DISABILITY

IF A PERSON WHO RECEIVES A COPY OF THIS AGREEMENT OR IS AWARE
OF THE EXISTENCE OF THIS AGREEMENT HAS CAUSE TO BELIEVE THAT THE

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ADULT WITH A DISABILITY IS BEING ABUSED, NEGLECTED, OR EXPLOITED BY THE SUPPORTER, THE PERSON SHALL REPORT THE ALLEGED ABUSE, NEGLECT, OR EXPLOITATION TO THE DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES BY CALLING THE ABUSE HOTLINE AT 1-800-252-5400 OR ONLINE AT WWW.TXABUSEHOTLINE.ORG.

(b) A supported decision-making agreement may be in any form not inconsistent with Subsection (a) and the other requirements of this chapter.

SUBCHAPTER C. DUTY OF CERTAIN PERSONS WITH RESPECT TO AGREEMENT

Sec. 1357.101. RELIANCE ON AGREEMENT; LIMITATION OF LIABILITY. (a) A person who receives the original or a copy of a supported decision-making agreement shall rely on the agreement.

(b) A person is not subject to criminal or civil liability and has not engaged in professional misconduct for an act or omission if the act or omission is done in good faith and in reliance on a supported decision-making agreement.

Sec. 1357.102. REPORTING OF SUSPECTED ABUSE, NEGLECT, OR EXPLOITATION. If a person who receives a copy of a supported decision-making agreement or is aware of the existence of a supported decision-making agreement has cause to believe that the adult with a disability is being abused, neglected, or exploited by the supporter, the person shall report the alleged abuse, neglect, or exploitation to the Department of Family and Protective Services in accordance with Section 48.051, Human Resources Code.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as

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provided by Section 39, Article III, Texas Constitution. If this
Act does not receive the vote necessary for immediate effect, this
Act takes effect September 1, 2015.

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President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1881 passed the Senate on April 27, 2015, by the following vote: Yeas 29, Nays 1.

Secretary of the Senate

I hereby certify that S.B. No. 1881 passed the House on May 27, 2015, by the following vote: Yeas 144, Nays 0, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor

Notice in Guardianship Proceedings

- NRS 159.034, NRS 159.115 and NRS 159.134 require notice of hearings of petition, sale of real estate, accountings or other significant transactions and, NRS 159.047 requires citation notice to be served on all proposed wards 14 and over. **Reality:** Service may not always take place on proposed wards who are not considered competent to understand or appreciate contents of petition. **Judge Doherty's Recommendation:** Consider strengthening statute to require service of notice of hearings, accountings and citation on proposed ward *without exception*. There is a general consensus in the North that Citation Notice and Hearing on Petition should be served on proposed subject of guardianship regardless of that person's condition or placement.
- Neither NRS 159.034 nor 159.047 require service of the *Petition for Guardianship* on the proposed ward. NRS 159.115 does not require service of *annual accountings* on persons subject to guardianship (this statute does require notice of the "particulars" of the petition be given to person and those in second degree of consanguinity). **Judge Doherty's Recommendation:** The statutes should be amended to require service, absent waiver by the court, of notice *and* annual accountings on the proposed or actual person subject to guardianship prior to hearing unless waived by the court. Washoe Bench/Bar concurs the statute does not currently require copy of Guardianship petition be attached to Citation.
- NRS 159.081 requires annual reports of the person be filed with the Court and served on the attorney for the person subject to guardianship. **Problem:** No other notice requirements are specified. **Recommendation:** Notice of such report should be served on the person subject to guardianship in all circumstances. **Further Discussion:** The Commission must address the public policy question of expanding notice to include all persons within second degree of consanguinity and other formally recognized interested persons.
- NRS 159.085 requires the filing of an inventory by the guardians of the estate within 60 days of appointment. **Problem:** There is no notice requirement associated with the filing of the inventory. **Judge Doherty Recommendation:** Require notice of filing and copy of inventory be served on person subject to guardianship and his/her attorney and GAL. **Further Discussion:** Whether notice of filing inventory should be sent to all persons within second degree of consanguinity and other formally recognized interested persons and, whether actual inventory should be sent to such persons.
- NRS 159.095 requires guardians to appear and represent all persons subject to guardianship *in all actions*. Guardians are not identified or noticed in criminal actions in which persons subject to guardianship are subjects of criminal actions. **Judge Doherty's Recommendation:** Guardians, if known, should be notified of pending criminal actions against persons subject to guardianship. **Further Discussion:** Does NRS 159.095 implicitly exclude criminal actions from "all actions".
- NRS 159.152 requires a confirmation hearing before the court, before a guardian may sell a security of the person subject to guardianship. There are no notice requirements for such hearing. **Judge Doherty's Recommendation:** Require notice of hearing consistent with the provisions of NRS 159.134.

- NRS 159. 1535 sets forth publication requirements for notice of sale of the person subject to guardianship's personal property. **Judge Doherty's Recommendation:** The provisions of notice to the person subject to guardianship and those within the second degree of consanguinity at NRS 159.134 should apply.

NOTICE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NRS 159.0475 Manner of serving citation.

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

- (a) Certified mail, with a return receipt requested, on each person required to be served pursuant to [NRS 159.047](#) at least 20 days before the hearing; or
- (b) Personal service in the manner provided pursuant to [N.R.C.P. 4](#)(d) at least 10 days before the date set for the hearing on each person required to be served pursuant to [NRS 159.047](#).

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

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

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

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

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

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

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

- 1. Proposed ward may be adjudged to be incompetent or of limited capacity and a guardian may be appointed for the proposed ward;
- 2. Proposed ward's rights may be affected as specified in the petition;
- 3. Proposed ward has the right to appear at the hearing and to oppose the petition; and
- 4. Proposed ward has the right to be represented by an attorney, who may be appointed for the proposed ward by the court if the proposed ward is unable to retain one.

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

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

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

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

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

**RECS APPOINTMENT OF REGISTERED
AGENT BY NONRESIDENT GUARDIAN OF
ADULT**

Recommendation relating to the Appointment of Registered Agent by Nonresident
Guardian of Adult

Whereas, the Secretary of State currently accepts and records appointments of registered agents for business entities created and qualified pursuant to Title 7 of the Nevada Revised Statutes; and

Whereas, the Secretary of State's office currently has the mechanism in place through its public facing web site and Copies Division for the public to search and obtain public information of registered agents of business entities on file in the office; and

Whereas, the Secretary of State has the process and capability to collect and record public information relating to an Appointment of Registered Agent by Nonresident Guardian of an Adult and provide that information through the same registered agent search; and

Whereas, as of 07/01/2015 the Secretary of State currently accepts Appointments of Registered Agents by Nonresident Guardians of Adults with limited information, modified to fit the guardian-ward context, as reflected in the proof of appointment of guardianship; and

Whereas, the Secretary of State does not have the authority to verify the information in the appointment of registered agents, with the exception of the order appointing guardianship, the knowledge of when a nonresident guardianship is terminated, the ability to ensure that the information related to the ward, guardian, or the registered agent is kept current, or that the resignation of an appointed registered agent complies with the court's terms and whether a reassignment is appropriate; from whom a notice to cancel, resign, or reassign an appointment of registered agent should be honored; and

Whereas, it will be the responsibility of the Courts to monitor the information of a registered agent of a nonresident guardian through the Secretary of State's public search services; and

Whereas, changes to registered agent information will be the responsibility of the nonresident guardian or the Courts; and

Whereas, it is the desire to maintain the ministerial nature of this function as it relates to the appointment of registered agents for nonresident guardians of adults; and

Whereas, the Secretary of State has and will continue to cooperate with Court system;

It is hereby recommended that the process of filing an Appointment of Registered Agent for Nonresident Guardian of Adult with the Secretary of State follow the ministerial filing processes currently in place for filing with the Secretary of State; collecting and placing in the public record the information contained in the Appointment of Registered Agent by Nonresident Guardian of an Adult form, and that the responsibility for

oversight and monitoring the validity, accuracy, and status of the nonresident guardians of an adult and their registered agents be the responsibility of the Commission and the Courts.

TERMINOLOGY

Ward

Prior to Guardianship Approval:

Person Facing Guardianship (PFG)

Candidate for Guardianship Protection (CGP) *

Person Considered for Guardianship Protection (PCGP)

Adult Considered for Guardianship Protection (ACGP)

Minor Considered for Guardianship Protection (MCGP)

Post Guardianship Approval: (Physical Disability/Mentally Disadvantaged)

Protected Person (PP) *

Incapacitated Person (IP)

Person Subject to Guardianship (PSG) *

Person Under Guardianship (PUG)

Person Awarded Guardianship Protection (PAGP)

Adult Awarded Guardianship Protection (AAGP)

Minor Awarded Guardianship Protection (MAGP)

Respondent *

Ward *

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

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

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

Two responses were received.

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

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

GUARDIANSHIP DATA AND TECHNOLOGY COMMITTEE REPORT AND RECOMMENDATIONS

ADMINISTRATIVE OFFICE OF THE COURTS

ROBIN SWEET
Director and
State Court Administrator

JOHN MCCORMICK
Assistant Court Administrator
Judicial Programs and Services



RICHARD A. STEFANI
Deputy Director
Information Technology

VERISE V. CAMPBELL
Deputy Director
Foreclosure Mediation

MEMORANDUM

TO: Guardianship Commission

FROM: Guardianship Data and Technology Workgroup

DATE: May 13, 2016

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

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

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

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

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

GUARDIANSHIP INFORMATION SHEET

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

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

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

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

III. Please fill out the information requested for Guardianship

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

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

_____ Date

_____ Signature of initiating party or representative

AB 325

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

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

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

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

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